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CONTENTS

ISSN – 2394 - 0298 Volume 7, 2020

1. Buddhist Concept of State and Humanitarian values in ancient Indian Polity — **01**
   Vinita Malik

2. Securing Human rights through Good Governance – A peep into Mauryan State History of Early India — **16**
   Dr. Smita Sahgal and Prof. Aparna Srivastava

3 Role of Nehru with special reference to protection and promotion of human rights — **31**
   Hira Khan

4 The Role of International Human Rights and 21st century challenges — **44**
   Sofia Khatun and Deepa Salian

5 From violation of perceived animal rights to prevention and protection of the same – A study of ritual shifts within Bull cults of early India — **67**
   Dr. Smita Sahgal

6 Rise of Terrorism in Jammu & Kashmir & the Role of Locational Personality — **85**
   Dr. Satya Raj and RBP Singh

7 Nxal Movement – Causes of Persistent Violence — **106**
   Dr. Sheetal

8 Looking back to dam, crisis and movement – With Special reference to selected dams in the context of human rights — **126**
   Dr. Abu Tahir Mullah

9 COVID 19 Pandemic impact on Livelihood – An analysis — **142**
   Dr. Anju Sinha

CONTENTS

ISSN – 2394 - 0298 Volume 7, 2020

10 Hate Crimes against LGBT and crumbling human rights: Continuing impact of Section 377 IPC and the Criminal Justice System — **165**
   Divyanshu Chaudhary & Aditya Rawat

11 Human Rights Advocacy on Women's Rights of Health and nutrition: Challenges and opportunities — **186**
   Rachna C Raval and Dr. Bhavesh H Bharad

12 Access to Justice and the need of High Court bench in Western Uttar Pradesh — **203**
   Dr. V Visalakshi and Aditya Rathi

13. Understanding Social Transformation through the eyes of local people – A study on South West Coastal Village of Bangladesh — **224**
   Dr. Farhana Zaman

14. Plight of Migrant Workers amidst the COVID 19 crisis with special reference to Asia — **249**
   Dr. Naina Hasija

15. Implications of Corona virus pandemic on the protection of economic & cultural rights of children under human rights instruments in Nigeria — **260**
   Hanafi Adekunle Hammed

16. Report Review Migrant Poor in South Asia: A review of the SAAPE Poverty and Vulnerability Report 2020 — **282**
   Swati Mohana Krishnan

17. The Force of Non-Violence: An Ethico-Political Bind. Judith Butler; 2020 — **288**
   Sonali Huria

CONTENTS

ISSN – 2394 - 0298 **Volume 7, 2020**

18. Study of Bride Trafficking in India with Special Reference to State of Haryana **292**
Dr. Niteesh Kumar Upadhyay

19. Corruption: A violation of human rights **313**
Dr. Rajiv Verma

20. Human Rights as a component in Indian Media Education Curricula : Current status and future Directions **323**
Dr. Amit Kumar, Dr. Poonam Gaur and Dr. OP Dewal

21. Right To Political Representation and 73rd Amendment Act: The Critical Assessment of Participation of Women in Panchayati Raj Institution in Punjab **339**
Dr. Prabhjot Kaur

22. Continuum of Taliban repression and endangered women's rights in Afghanistan **361**
Akshaya Saroha and Dr. Akshay Kumar Singh

23. Legislative measures for the protection of interests of LGBTQ Community in India **381**
Dr. Manu Singh and Dr.Vibha Srivastava

24. COVID-19 Impact on Lease Transactions: Issues and Possible Solutions **397**
Dr. Harleen Kaur

Message from the Vice Chancellor

The NIU International Journal of Human Rights 2020 seeks to broaden the study of human rights by fulfiling the existing approaches to human rights and developing new perspectives on the theory and practice of human rights.

We at NIU believe in quality education and inclusion among our priorities and objectives. We sincerely work towards the active engagement of youth in all facets of life through research, academia and our outreach programmes. We consider it central to achieving a stable society, a steady and prosperous country beginning from our campus.

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

The theme of the 2019 Human Rights Day was Youth Standing Up for Human Rights. We work towards utilizing the idealism of youth and empower them to stand up for equal rights and fair treatment of everyone, everywhere. We give them a direction towards making human rights a reality by elucidating them that human rights are the foundation of peace, development and justice. They are not abstract, thematic, remote and faraway concepts, rather these rights are very much around us. Just that each one of us has to fulfil our duties and be fair as a matter of practice and commitment to claim these rights for ourselves and others.

This in fact is the crux of Universal Declaration of Human Rights which has been in vogue for more than 70 years now and proclaimed for the first time that human rights are inalienable rights to which all are entitled irrespective of race, class, sex, place, gender or status.

In NIU, we ensure that students participate in decision-making processes and have their voices heard in any and every matter that pertains to them, we also practice a humanitarian and inclusive approach towards addressing the concerns of our employees.

NIU Journal of Human Rights is a step further in this direction. Initiated in 2014, the objective of the Journal is to achieve excellence in research in human rights. It has always been enthusiastically received by researchers and policy makers across spectrum. In 2018, the Journal got UGC – CARE listed under the Editorship of Prof. Aparna Srivastava (Head, School of Liberal Arts) and her brilliant team.

2020 issue of the Journal contains research papers on myriad issues pertaining to various dimensions of human rights. It also includes papers from international authors.

My congratulations to the Editorial and Advisory board of the Journal for their persistent and successful efforts for a timely and quality publication of the 2020 issue. We hope the Journal would be found useful for human rights practitioners, academicians', researchers and policy makers alike.

Prof. (Dr.) Jayanand
Vice Chancellor (i/c)
vc@niu.edu.in

Editorial

It gives me immense pleasure to present Vol 7, 2020 issue of the NIU International Journal of Human Rights (ISSN 2394 -298) to the esteemed readers.

Human Rights constitute the basis of democracy while education & research are the biggest tools to prevent human rights violations in any society. This year's Human Rights Day theme is Recover Better - Stand Up for Human Rights. It relates to the COVID-19 pandemic and focuses on the need to build back better by ensuring Human Rights are central to recovery efforts.

The United Nations highlights that human rights must be at the centre of the post-COVID-19 world. "The COVID-19 crisis has been fuelled by deepening poverty, rising inequalities, structural and entrenched discrimination, and other gaps in human rights protection. Only measures to close these gaps and advance human rights can ensure we fully recover and build back a world that is better, more resilient, just, and sustainable," UN's website says.

This issue covers research papers on wide ranging issues pertaining from the historial context of human Rights to the Challenges before human rights, Good Governance, Terrorism, Rights of LGBT community, Womens Rights, Access to Justice, Impact of COVID 19 on health and livelihood and so on. There are two review reports in the issue. Thematic details of the reaserach papers are Buddhist Concept of State and Humanitarian values in ancient Indian Polity, Securing Human rights through Good Governance – A peep into Mauryan State History of Early India, Role of Nehru with special reference to protection and promotion of human rights, The Role of International Human Rights and 21st century challenges,From violation of perceived animal rights to prevention and protection of the same – A study of ritual shifts within Bull cults of early India, Rise of Terrorism in Jammu & Kashmir & the Role of Locational Personality, Continuum of Taliban repression and endangered women's rights in Afghanistan, Nxal Movement – Causes of Persistent Violence, Looking back to dam, crisis and movement – With Special reference to selected dams in the context of human rights, COVID 19 Pandemic impact on Livelihood – An analysis, Hate Crimes against LGBT and crumbling human rights: Continuing impact of Section 377 IPC and the Criminal Justice System, Human Rights Advocacy on Women's Rights of Health and nutrition: Challenges and opportunities, Access to Justice and the need of High Court bench in Western Uttar Pradesh, Understanding Social Transformation through the eyes of local people – A study on South West Coastal Village of Bangladesh, Plight of Migrant Workers amidst the COVID 19 crisis with special reference to Asia, Implications of Corona virus pandemic on the protection of economic & cultural rights of children under human rights instruments in Nigeria, Report Review Migrant Poor in South Asia: A review of the SAAPE Poverty and Vulnerability Report 2020, Book Review The Force of Non – Violence: An Ethico – Political Bind, Judith Butler 2020, Study of Bride Trafficking in India with Special Reference to State of Haryana, Corruption: A violation of Human Rights and Human Rights as a component in Indian Media Education Curricula : Current status and future Directions.

We ensure the quality of selected papers by a strict double blind review process under the guidance of eminent advisory board members including international ones and in consultation with our guest editors.

It is hoped the Journal serves it purpose and is valued as a esteemed source of analytical information by all stakeholders committed to the cause if human rights including academicians, researchers' and policy makers alike.

We express our sincere thanks gratitude to the Hon'ble Chairman Dr. Devesh Kumar, Chancellor Prof Vikram Singh(IPS Retd) and Vice Chancellor (i/c) Prof Jayanand for their valuable guidance and support without which this mammoth task would not have been completed within the specified time line.

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Buddhist Concept of State and Humanitarian Values in Ancient Indian polity

*Vinita Malik**

Abstract

The Pali canonical literature throws immense light on the state and the human values. Tersely saying, early Buddhism has to do more with moral and ethical values and less to do with rituals. Objective of the study is to comprehend Buddha's concept of political philosophy, state policies and humanitarian values that he inculcated within his followers. The hypothesis is that Buddha supported the concept of kingship as the basis of state through the social contract.This research focuses and raises question, did Buddhism create the condition of equality, human rights for every section of society? Today there is an urgent need to retrospect and introspect about equality to create a much needed heterogeneous but inclusive culture in India. This paper will try to analyse notion of kingship and state the above mentioned aspects and their nuances through textual analyses. Buddhist sources are compassionate toward people from diverse walks of life. The contract theory of the origin of state is a good contribution to ancient Indian thought and helps build the argument on origin of state in ancient India.

Key words: - *Social Contract, Kingship, Political Philosophy, Humanitarian Values, Dhamma.*

Introduction

Sources and Social Background

To understand early Buddhist philosophy of kingship, Pali literature mainly, the Vinaya Pitaka and Nikayas (dialouges of Buddha) pertaining to 500 BCE or pre Ashokan period is of immense importance. In the

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dialogues between Buddha and his disciples he is a main lead in the conversation.

To understand the construct of society, nature of state and idea of kingship during 5th century BCE, we must consider the fact that urban centres (second urbanization) and economic changes in terms of surplus agrarian generation had set in and that gave rise to Buddhism[1]. These urban centres, which evolved due to the economic conditions and encouraged food surplus, were also the market and administrative centres of polity. During this period paddy cultivation had increased especially in eastern regions of India. As per the sources the main issue of discord was the hoarding of paddy by some, over and above their consumption and also stealing of the paddy field which initiated the election of the chief[2]. Advertently we must consider the socio-economic conditions during the age of Buddha that would have implications on understanding the ancient Indian kingship and state. In the Nikayas we do come across Buddha not only in his role as head of the Order but one engaged in discourse with people from different strata of ancient Indian society - with kings and princes, brahmins, ascetics, with villagers and many others on issues of grave economic and political concerns. It is here that the Buddha emerges in the role ascribed to him in the canonical literature as that of the Blessed One, a leader and guide to many.

Taking one such example is in sutta 2 of DN Samannaphala Sutta: (The Fruits of the Homeless Life). King Ajatasattu of Magadha, comes to the Buddha with a question, 'What are the fruits, visible here and now (in this life) of the life of renunciation'? The Buddha tells him, and then goes on to speak of the higher benefits, the various meditative states, and finally true liberation. The King, deeply impressed, declares himself a lay-follower. The Buddha later tells his disciples that but for his crime Ajatasattu would have become a Stream-winner by the 'opening of the Dhamma-eye'.

Emergent Ideas of Polity: Humanitarianism as its Base

The earliest Buddhist understanding of state and kingship, its nature and functions passed through various stages. The origin of state as mentioned in the theory of creation or as called a theory of genesis mentioned about

1 Chakravarti, U. (1996). Social dimensions of early Buddhism.Delhi: Munshiram Manoharlal Publishers Pvt. Ltd..
2 Sharma, R. S. (1969). Aspects of Political Ideas and Institutions. Ancient India, Delhi, IInd ed

Mahasammata (a story from Digha Nikaya. As per B.G. Gokhale, state begins as a quasi-contractual set up in which king agrees to perform functions for people who in lieu of the obligations/rights would pay taxation. With this perspective we would initiate the understanding of ancient Indian polity during age of Buddha. The objective is to evaluate the nature of state, kingship as well as humanitarian values as part of Buddhist political philosophyas evident in the Pali canon and how the early Buddhists perceived it. Through this perspective we analyse governance, human values and some rights along with morality as the basis of understanding polity in the Buddhist literature.

The Buddhist thinking of state and political philosophy emerged out of 'perceived' anarchy that prevailed in the society in its initial stage. The Buddhist ideas were against the institutions based on a caste-based society (varna-jati) linked to the Vedas which favoured divine origin of rulers, and the upper caste, of the Brahmins. The early Buddhists negated this system as it was against individual freedom and encouraged inequalities in society. By the 5thcentury BCE the early Buddhist philosophy became relevant for the socio-economic classes with their agrarian interests to do with paddy cultivation, trade activities related to the urban areas. The Buddha virtually became the spokesperson of these new urban based merchant class in rejecting Brahmin orthodox, particularly the religious justification of social inequalities arising from the status ordering of human relations [3].

While interpreting the origin of kingship, early Buddhist literature in the pre-Ashokan period highlighted that all men in the beginning were virtuous, There was respect for elders, no theft or violence as a result state did not exist. It is stated that prior to this time people lived in a state of bliss and happiness. But as soon as anarchy set in, the behaviour of the humans deteriorated and there was violence, theft, untruth against others. Subsequently people decided to elect one from amongst them to be a king with a task of putting things in order and improve social conditions. This shows an aspect of social investigation, reflecting that in absence of social stratifications, the situation was of happiness. When the king was elected it was through an agreement and social contract as people had to pay for his obligation, one sixth of their share of the paddy. This was the initial stage of kingship as per the early Buddhists and the concept evolved over time. As per the canonical literature the king was a khattiya as it is the highest in order among the classes or castes. The good king

3 Jayasuriya, L. (2008). Buddhism, politics, and statecraft. International Journal of Buddhist Thought and Culture, 11, 41-74.

invariably, a male, was supposedly to be moral, humble, non-violent and with the values of attha (prosperity) and dhamma (righteousness or a sense of justice) [4]. The literature also talks about the king's power and authority to give orders but receive none. The subsequent perception of the kingship as evident in early Buddhism is about its power, violence and taking over of the property. Due to the fear of the king, people may just flee away from the region or migrate in the earlier stages. Despite all these conditions kingship was considered necessary for orderly life of men in early Buddhism.

The genesis of state as an arrangement under which the king agrees to perform specific functions on behalf of the people in return for certain rights conferred on him, including taxation. The view of kingship initially is of the 'Great Elect', also a republican head. The basis of kingship involved psychological factors rather than divine will. Buddha himself was from Sakya clan which had a republican polity. The organization founded by Buddha was based on model of republican polity, where members were encouraged to express their views. The difference between King and subjects depicts divergence of physical beauty, attractiveness, capability. As is evident in the Digha Nikayathe social aspect i.e. the family and then the private property preceded and the political aspect followed i.e. election as a king and obligations on the men. The emphasis is on beauty, popularity and aesthetic physical qualities of the king along with his head and heart. Buddhist was negating violence and any kind of force, but how they were dealt with is not really evident in the literature. The punishment mentioned is of banishment of guilty. The elected chief himself was to carry out many obligations towards the people especially protection of the fields.

This contractual relation between the king and the people is suggestive of proprietary right of oligarchy over land and also as the representative of the community. In return, as their contribution, people were to pay merely part of the paddy they produced. In the story of creation in the DN initially the contract is between a kshatriya and the people and subsequently it took form of obligation between kshatriya oligarchs on the one hand and non-kshatriyas on the other. The oligarchies were undoubtedly powerful in the north -eastern regions during the times of Buddha. The Buddhist theory of social contract applies not to an individual but all the individuals of the ruling class. This symbolises republican tendencies of the times and also the reformist attitude of

4 Gokhale, B. G. (1966). Early Buddhist Kingship. The journal of Asian studies, 26(1), 15-22

Buddhism in its social and spiritual matters. The limitation proposed on the ruler is to act as per dharma but is not directly part of contract theory. In Digha Nikaya it is stated that the origin of ruling oligarchy took place as per dharma or righteousness and this theory of creation is in connection of refutation of Brahmana claim to superiority.

In the Digha Nikaya (The Book of Long Sayings) and the Anguttara Nikaya (The Book of Gradual Sayings) the concept of kingship becomes evident as an integral feature of early Buddhism. The Buddhist "contractual theory" of kingship (as it is often referred to) rarely fails to have a prominent place in discussions on Indian political ideas. Ghoshal for instance called it "the most original contribution of the early Buddhist canonists to the store of our ancient social and political ideas." [5] Many scholars have discussed early Buddhist political ideas and have identified it as rationalistic and consider Buddha as a political philosopher. Such thoughts put it clearly that Buddhism was not merely about salvation but also had a distinct political philosophy. The evidence of the idea of Kingship is evident in Agganna Sutta of Dighanikaya. The Agganna Suttanta [6], literally meaning the sutta 'pertaining to beginnings', to which Rhys David's termed as 'a book of Genesis'.

It was believed that it was directed against the existent brahmanical ideas but in other context it is a distinct reference of early Buddhist philosophy in context of creation of kingship, state ,human values , social aspects culminating into the becoming of a bhikku who desires to renounce the world process. This notion was a creation of evolution that included both temporal and spiritual ideas. As the humans began to degenerate they collectively decided to select a king who should banish the guilty, 'the handsomest, the favoured, attractive and capable to be given in return for a tax payment of rice. The sutta refers to the name 'Mahasammata' is usually translated as 'acclaimed by the many', 'The Great Elect' as he was chosen by the people. This is a very good and pertinent example of contract theory of the origin of the state. The king is chosen by the people attractive and with good behaviour and is paid for the obligations. This is identified as a period when people lived in happiness which prevailed for quite some time till the decline set in. With the differences that developed later inequalities set in, differences with in men and women. Soon people set into institutions like family and property which initiated theft and

5 Tambiah, S. J. (1978). The Buddhist conception of kingship and its historical manifestations: A reply to Spiro. The Journal of Asian Studies, 37(4), 801-809.

6 The twenty-seventh sutta in DighaNikayaiii

unsocial conduct. He was named khattiya because of being lord of fields (khetta). By making the king master of the farms state control becomes evident, and gradually this right is linked with dhamma (righteousness), probably to contain the authority inherent in the state. He was also called Raja as he charmed the people with dhamma. These policies that were ruled by oligarchies gradually turned to monarchies and empires and dhamma was made as a basis of the kingship. This speculation was due to break up the tribal set up and in a stage of social development there was clash of interest between sexes and between people of different race, colour and unequal wealth.(R.S. Sharma)

There is no doubt that the Buddhist creation story must be read as a challenge to the Brahmanical version, which had the four status orders of society through the concept of varnasaramadharma with the Brahman as the interpreter of dharma. By comparison the Buddhist polity makes society appear under the aegis of kingship that was elected. The ideal king had to be the embodiment of worldly morality and virtuous conduct, and sees all this as the basis upon which the higher morality of the bhikkhu arises. The discourse actually criticises the Brahmanical structure and kingship. Early Buddhists put the example of bhikkhus who are linked with the idea of morality and are liberated through knowledge. The king is mentioned as a mediator between social order and disorder and the bhikku (from diverse social status if adopts a homeless life)is considered superior as is evident in the Samaririaphala Sutta: The Fruits of the Homeless Life. Basham generously remarks: 'The story of the Mahasammata gives, in the form of a myth worthy of Plato, one of the world's earliest versions of the widespread contractual theory of the state, which in Europe is specially connected with the names of Locke and Rousseau'.[7] Scholars claimed that the Buddha was a 'political philosopher' but we need to question that if Buddha attempted to develop a political philosophy or to formulate a distinct form of political practice to meet the existing conditions? Emergence of private property as a cause of emergence of state and production of food surplus were connected processes. The paddy cultivation; the technique of transplanting rice in wet-land cultivation that led to greed, theft, desire and necessitated a state and the 'Great Elect' ,instituted by people to settle social conflicts. Political authority lies in people who fix for the King a portion of their produce. The contract is a basic condition of organized human society for in the absence of such a contract before the birth of the state, anarchy

7 Basham, A. L., & Rizvi, S. A. A. (1956). The wonder that was India. London: Sidgwick and Jackson.

prevailed. It is, therefore, existential and neither the men nor the state have any choice outside it, charged with the responsibility of imposing law and order without which human beings cannot survive as an orderly society. The settlement between the state and the people takes place, wherein the ruled transfers a part of their sovereignty and share to the state for a specific purpose.

Buddha belonged to the Sakya clan and supported the ganasanghas (republics) favoured their open social structure as against the then monarchies like Kosala and Magadha. The vajjianrepublic in promoting happiness and harmony was imbibed with a sense of public spirit and moral attitude. This political idea which also included respect for elders, women, was more receptive to the teachings of the Buddha. The offences against state were diverse and the main taken up by Buddha were pertaining to family and property that Buddha also related to the with rise of state vajji confederacy. The idea of kingship is constructed and identified with the punishment to the thieves in context of property they are to be punished by the King through hanging or cutting of body parts (corporal punishment) .In terms of family mainly women and girls not to be abducted. As per Buddhist sources kings are not to uphold caste. Dharma is likewise identified in the vajjis. This is a good example of kingship in the confederacies that emerged.

Monarchy was consolidating during Buddha times where the Brahmanical code prevailed. His relations with some of the monarchs was also very cordial as a result the Vinayacode was modified for them especially for king Bimbisara. Many of the people from the royal family joined as monks and nuns. Buddha was from the tribal oligarchs (gana sangha) of the fifth BCE and supported this form of organisation and adopted its ideology in his own Sangha the gave his advice to vajjians who were being threatened by Ajatashattu. Buddha was aware that monarchy would be a dominant form of political organization. As a result, accepting it he and early Buddhists came with their own alternative political philosophy that would contain it. Advertently or inadvertently they accepted kingship with spirit of morality as kingship now was a necessity to prevent people into the state of anarchy. The general consensus is that the Buddha's teachings (the dhamma) contained insights of a social and political nature. The Buddha did get support of monarchs like Bimbisara, Ajjatasattu of Magadha and Pasendi of Kosala. Buddhism did spread and acquire patronage from the monarchs in forms of construction of art monuments. As a result the relationship between state and Buddhism developed over the time. Buddha could attract attention of many and the early Buddhists had a distinct relationship with the state.

Though Buddhism strived outside the organised society of Magadha, Buddha and the subjects of the state could not go against the king. As Buddhism evolved as a religious ideology it opened up to many lay followers that included people from diverse professions who worked for the state. Buddha and his disciples realised their relationship with the state as is distinctly evident in the Vinaya Pitaka. On the other hand, the Buddhists could manage to persuade the rulers to live up to the ideal of the state that they were laying down that would accommodate humanitarian ideals as well. Buddhists had prescribed both temporal and spiritual structure of a state. While discussing the evolution of kingship and state into next stage, Gokhale refers to attha and dhamma.[8] The term attha is identified with terms like interest, gain, profit, prosperity. There is reference about the theory of the two wheels (dhammachakka): the wheel of law and (anachakka) the wheel of command. The first was for Buddhists and the second for the king. This became the basis of early Buddhist philosophy which identifies with aspects of this world and the other. They are also like wheels of the chariot and the axle of the wheel is the society and their desires meaning dhamma cannot be on its own and needs support of ana or the state. The state and the Order are separate but interdependent. Attha, as part of worldly beings involves the right to enjoy private property and family and can exist only with ana. Attha if left to itself may create anarchy of dhamma and adhamma as mentioned through genesis of state which justifies kingship. The dhamma becomes the basis of the state and the king gets linked with property and through dhamma with righteousness which is like an antidote for state.

Buddhist Views on War and Violence

For early Buddhists the state meant kingship, a necessary entity to protect property and family. The state is expressed through ana or command. Dhamma cannot operate on its own it needs the support of the state. Buddhist works are against the violence and war but only to an extent. They realised their inability to influence the state beyond ethical values. The sangha withdrew from war but we don't know if Buddha actually advised kings not to wage wars. Complete peace and non-violence was not possible always. All citizens may not behave righteously and had to be kept on the righteous path. The Buddhist literature realises the state could also abuse its power and kings could be intolerant. The Buddhists

8 B.G.Gokhale The Early Buddhist view of the state journal of American Oriental Society 89,no.4 1969 pages 731-738

also stress on the need of the state for the orderly human society and to protect the private property and social norms in the society. As per the story of creation of state the authority of the state emerges from the people. This thought comes up from the context of authority entrusted by people to the state like imprisonment, fines, confiscation of unlawfully gained property. As per the Vinaya code monks were forbidden from eating the flesh of the elephant as it was considered a royal animal. Early Buddhists carefully avoided any conflict with the state but in case of it they would just leave the state or migrate. They recognised the necessity of the state and believed in the theory of contractual obligations but soon the state was becoming powerful. The early Buddhists regarded the institution of war as strictly within the jurisdiction of state (attha and ana).As a result to control the state it had to be subordinated to dhamma. The early Buddhists regarded the institution of war as strictly within the jurisdiction of state. Buddhist perception against violence were more often related to the level of individual and inter-group relations. The problems of war were recognized, but war was not outlawed. The Buddhists realised their inability to influence the conduct of state beyond ethical aspect. There is no evidence to support that the Buddha advised his contemporary kings to disband their armies. Though Sangha withdrew itself from consideration of war; admission of soldiers was not allowed in Sangha and watching army parades was discouraged.

The theory of creation is regarded as the earliest stage when state and kingship were identified as political organization. State soon got powerful so in the next stage of the state, Buddhists used it to promote dhamma. They talk about relationship between Buddhism and the monarchical set up and the solution is provided in two equal spheres of life, dhamma and anato which the Buddhists put dhamma above ana. There is reference to Buddha mentioning dhamma above the state. However in the final stage as per the sources, kingship was no more limited to the contract rather acquired many other aspects like treasury, army, territorial control and taxation. There is reference to fortified capital, towns, cities but no forts or fortifications. In the subsequent stage where Buddhists have their own ideal of the state when state becomes an instrument of dhamma and finally dhamma assumes a form of cosmic force regulating the state. The state then becomes an ethical institution drawing authority from the dhamma and guided by its basis, the Sangha. (Monastic governance).

Relationship between State and Populace

Many of the crucial features of the Buddhist approach to social

philosophy and political governance were acquired from the principles and practices of the monastic order (the sangha). It contained many features of statecraft present in the self-governing confederacies rather than from the large monarchies of the North. Whereas the monarchical kingdoms were guided by Brahmanical norms, the self- governing confederacies had much in closer to the Buddhist ethics. Buddha suggested to the republics that if they wished to maintain their independence they should strengthen their more democratic forms of governance. This normative code of conduct included the primacy attached to human freedoms and the equality of all human beings was more characteristic of governance in the self-governing. In defence of the oligarchies the Buddha builds up a session with Ananda on vajji confederacy and its political nature. Though we are familiar that Buddha had cordial relations with many monarchs but he did give relevance to the ganas. In the Mahaparinibbana [9] Sutta of Digha Nikaya The Great Passing (The Buddha's Last Days). The longest Sutta of all, telling the story of the Buddha's last days. King Ajatasattu, wishing to attack the vajjians, sends to the Buddha to know what the outcome will be. The Buddha replies indirectly, pointing out the advantages of the vajjian republican system, and later urges the monks to observe comparable rules for the Sangha. At Pataligama he prophesies the place's future greatness (it became Asoka's capital Pataliputra). Buddha in this discourse as a main interlocutor of the conversation with Ananda mentions as the vajjians hold regular and frequent assemblies, they may be expected to prosper and not decline. As long as the vajjians meet in harmony, break up in harmony, and carry on their business in harmony, they may be expected to prosper and not decline. They honour, respect, revere and salute the elders among them, and consider them worth listening to .that they do not forcibly abduct others' wives and daughters and compel them to live with them. Provision is made for the safety of Arahants, so that they may come in future to live there. The democratic principles of governance were evident in the Vajjian constitution.

The principle of equality in Buddhism, applied equally to the relationship between the ruler and the ruled, and was a governing principle in matters of statecraft. However, this idea of equality in a universal community is questionable in terms of gender equality in context of women as nuns. In the monastic order a discussion amongst equals was recognised. The rationale for Emperor Asoka's model of governance, though primarily

9 Sixteenth Sutta of DighaNikayaiii

inspired by Buddhist practices, also bore the impact of the historical legacy of modes of governance inherited mainly from the self-governing confederacies or tribal republics. Asoka's concept of the Dhamma often used as a synonym for Buddhism was aimed at creating an attitude of mind in which the ethical behaviour of one person towards another was primary. The Buddhist idea of 'social contract' proposed an evolutionary view of society opposed to the Brahmanical.

For the welfare of the community of monks and patronage of the kings or the governing authorities of the self-governing republics and even the rich merchants a symbiotic relationship between Buddhism and the State evolved. Scholars feel that significance of Buddhist social and political philosophy is best revealed in the Ashoka practice of statecraft which incorporated Buddhist ideals of governance for social justice and peace. The normative code of the Ashoka governance was one in which there was equality, economic prosperity and the practice of the good life. The 'welfare state' of Emperor Asoka, was of Universal Monarch whose philosophy of compassionate love portrayed in the Buddhist texts is expressed in Asoka's Edicts. The philosophy and political ideas which evolved during the reign of Emperor Asoka (208 BCE - 239 BCE), were influenced by Buddhist ideas.

King and Dhamma: Concept of Cakkavati Ruler

Buddha also said dhamma was above the state and is a cosmic force which regulates conduct of the state and the citizens. If the king does not follow the dhamma there could be any kind of natural calamity. Kingship was declared to be the result of good deeds in the former life. It was in the second stage that early Buddhists gave spiritual and moral character to state. So moral and political character was added to the state and king was comparable to Buddha and Boddhisattva. The semi divine character of the king to be obeyed by his subjects. Earlier it was suggested that in case of powerful state the option was migration or fleeing but as the state began to expand this was no more a desirable option. The solution was the implementation of dhamma against an unjust king. This culminated into cakkavatti concept. The universal monarch or the Cakkavatti, a boddhisatva or a great man with thirty two signs of great man.[10] The only one who is a Cakkavatti with these attributes was the Buddha. The early

10 Third sutta AmbattaSutta:DighaNikaya iii

Buddhists created linkage with the dhamma as a higher agency to legitimize state. The balance between ana and dhamma was to restrict the authority of the state. The Cakkavatti or a Universal Monarchhas characteristics of Boddhisattva like marks of great men and on his death his funeral is conducted as that of Buddha. At a time there was to be only one Cakkavatti. The kingship and the mysticism attached to it has morality (dhamma). It can be obtained by someone who is pure and affiliated to morality. Thus dhammabecomes the basis of kingship. As a result state is powerful, helps people achieve means to an end. The state, for Buddha, stands for orderly human behaviour and morality. Did morality transform man as a political being? The morality becomes evident through a Cakkavatti who is beloved to his son. This aspect finally gets synchronised with Ashoka when he says all men are my children and calls for their welfare. In the existent socio-economic situation there is mention of equality of spiritual opportunities.

The state and the values of life had to be influenced by moral aspect. This was much different from Brahmanical aspect of justice and rule that was bases on rituals and hierarchy, Arthashastra refers to danda. In early Buddhist political thought and statecraft there is reference to non-violence. Buddha talks about rule without force was not possible nor did he encourage disarmament. Buddha just to show disapproval of institution of war, forbid monks from witnessing army parades. The texts did mention that the state was to function as universal morality for transformation of man from merely political to moral being. What actually did early Buddhists contribute to political philosophy in ancient India? Most important being the high morality as a spirit behind the state. The state thus stands between social order and anarchy.

In the Digha Nikaya, there are six suttas in which the cakkavatti appears as an integral component, and that in most of them there is an explicit comparison between the two great men, the Buddha and the cakkavatti. While three others—the Lakhahana, the Mahapadana and the Ambatta Suttas—explicitly refer to the thirty two bodily marks of the mahapurisa or give descriptions of them, it is to one other sutta, the Mahaparinibbana[11] Sutta reports that the Buddha wished his remains to be treated with all the honours due to a Cakkavatti and that he reminded Ananda that the settlement of Kusinara is the chosen location of his death because he had in a previous birth ruled over this same place as the

11 Ibid. 16
12 Ibid.17

cakkavatti Mahasudassana[12]. The Great Splendour (A King' Renunciation) Mahasudassana lived in fairy-tales splendour and possessed the seven treasures, but finally retired to his Dhamma palace (built by the gods) to lead a life of meditation. The sutta occupies a central place because it presents the norms of the community of bhikkhus should observe, the fruits accruing to the meditator, the entrusting to laymen of the Buddha's relics and their enshrinement, the sanctioning of making pilgrimages, the loss to laymen resulting from wrong actions. Buddhist thought could express how the world can be transcended and how the householder can lead a moral existence in this world, with the orderly maintenance of that world being assigned to the righteous king and on the other the bhikkhu can be instructed on renunciation concept of Buddha. Buddhist canonists showed great concern to develop the cakkavatti image beyond the limits of their brahman rivals with Buddha as universal ruler.

As to Buddha's sense of equality and equal treatment is concerned, he never claimed any exception and whatever rules were made were accepted by him and followed by him as much as by the bhikkhu. There is reference to issues like bonded labour, exploitation, slavery and one could evolve from this merely by renouncing as is evident in the sutta of Digha Nikaya were common. Buddha's solutions to all sufferings were in the form of dhamma, a collection of elements of natural elements of natural truth for the restoration of human rights and fundamental freedom. The message included, teaching of Ahimsa (nonviolence), peace, justice, love, liberty, equality and fraternity etc. which clearly and conclusively indicate that Buddha very much gave a social message for a peaceful society through his teachings of dhamma and political thoughts which even illustrated the duties on one and the rights of the other, thus reciprocating obligations.

Conclusion

The relationship between the state and Buddhism could be realized through the fact that Buddhism could not for long remain outside its society. The Buddha and his disciples were subjects of the state in the area they lived and worked, and accordingly accommodated the demands of the state by modifying the Vinaya rules. Human life comprised two distinct spheres: the temporal and the spiritual. The Human life was also explained by two other terms:attha and dhamma. Attha initially meant something that is desirable both in this world and the next and later meant it was used to denote affairs of this world, especially of organized society. As worldly good, it involves the right to enjoy private property and the

family. However, property and family can exist only under a set of laws, which ana can impose on all. It came closer to artha, as was used by Kautilya, to describe economy and polity. Both Buddhist rulers, Bimbisara and Ajatasattu recognized the two spheres of human life, temporal and spiritual. As the basis of Buddhist political theory, it was asserted that the affairs of this world and those of next are like two wheels. Each has its own distinctive identity, but they are also like the wheels of the chariot, the axle on which they revolve. Here, they reflect the human society, its desires, aspirations and destiny. This altogether indicates that dhamma cannot operate in this world by itself, as it needs the assent of the state, if not support of the state. The state finally became an instrument of the dhamma, a cosmic force capable of containing the power of state and regulating its behaviour and the state becomes an ethical institution drawing its authority from dhamma and guided by its repository, the Sangha. The monarchy is provides an alternative of being a righteous king to avoid misuse of his arbitrary powers. To legitimise his authority dhamma is made the basis in the early Buddhist literature. In the Pali canon we come across Buddha distinct understanding of state and kingship. Buddha personality and his philosophy helped in the understanding of the polity during ancient India. All of his thoughts embedded in the canonical literature provide basis for the understanding of the kingship. We have tried to attempt and understand the notion of kingship as it finds its way in early Buddhist literature. Buddhist perception of the king as a righteous ruler in the social and political expression is distinctively identified with dhamma. As per Buddhist perspective king is the upholder of the dhamma and with its help as a cosmic rite kingship is able to uphold the society. It can be expressed through humanitarian measures like equality, freedom and welfare of subjects. It was out of Buddhist understanding of morality and ethics that became the basis of the Buddhist politics.

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Securing Human Rights through Good Governance: A peep into Mauryan State history of Early India

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Abstract

In the light of the changing world and on the strength of their own experiences, developed countries and major international Organizations have recommend the institution of good governance everywhere. A lot has been conversed about governance in India and the need to improve it in the present times, too. Governance includes concepts such as decision-making processes, the interrelationships among different partners, negotiation and defence mechanisms of diverse interests, ways and means of achieving the common good, as well as the role and place of man in the whole process. It is through this assessment that the notion of "good governance" comes into play. Citizens, the private sector as well as entire segments of the civil society are longing for the rapid institution of good governance today. There is an increasing demand that the State must identify and address the issues related with decentralisation, participation and policy implementation and improve the administrative performance of the country. Good Governance, however, a dynamic concept. It encompasses fast changing political, social and economic milieu, along with international environment and conditions of operational governance[1]. Hence, there is a need for revisiting the models available particularly in the history of the country and examine its relevance to the present, learn and adopt what is significant. The search for good governance is a continuing exercise.

Key words: - *Mauryan, Buddist, Human rights, Kautilya, Good governance.*

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1 https://books.google.co.in/books?id=oJCMijy_8nUC&pg=PA153&lpg=PA153&dq=Good+Governance retrieved on June 24th, 2020.

Introduction

The objective of our paper is to explore historical models of good governance in the context of Indian history and mull over the possible associations with current times. An additional exercise is to work out conceivable connection of good governance with the idea of Human Rights. We cannot but agree that Human Rights itself is a very contemporary idea but do wonder if the study of historical periods in Indian history can help us trace its beginnings to older historical contexts where the state structure pushed for a growing connect between good governance and some humanist traditions that would not just safeguard the interest of the populace but also consolidate the structure of the state.

It is our hypothesis that all good state systems would be predicated on a certain format of administration that would take cognisance of the larger interest of its people. Older states were largely monarchical, with the potential of becoming despotic or absolute. But it is our premise that within such monarchical state structures, that appeared centralized with theoretical power resting with the ruler, an alliance with the subject population was possible. Through conciliatory measures, execution of public works, recognition of some basic rights as right to some economic stability, maintenance of law and order, peace in the state, the state and the population could work together to extend the life of the state itself. We cannot think in terms of ancient societies and states producing full-fledged citizenry in the modern sense of the term that would indulge in debates and discussions with the heads of the state, but we can certainly trace the possibility of a state structure that looked upon its subjects as long-term alliance partners and hence, willing took their interest into political reckoning. One such state was the famous ancient Indian Mauryan state.

Exploring Sources, Temporal and spatial spread

Our research is largely text-based research where we are looking into primary and secondary sources. Apart from studying Kautilya's Arthaśāstra and Ashoka's epigraphs, we would look into a range of secondary researches on the issue. The issue of good governance and Human Rights would also require a deeper study of theoretical constructs. We need to specify our area of research and its temporal spread. We are looking at ancient Mauryan state that spread across the Indian subcontinent, stretching from Indo-Gangetic belt down to Karnataka, from Tamluk (Odisha) in East to Kandahar (Afghanistan) in the west and

continued to exist for almost two centuries between the 4th and the 2nd centuries BCE.

Arthaśāstra: Prescriptive concept of Good Governance

The Background

The Kau ilīyaArthaśāstra is a treatise on statecraft though it calls itself as a 'science which is a means of o acquisition and protection of earth'[2]. It contains fifteen adhikara s or books. For centuries there was only an oblique reference to it before it was finally discovered in entirety and edited by Shamashastry in early years of the twentieth century. The book is ascribed to Vis ugupta or Kau īlya who was apparently the chief minister of the founder king of Mauryas, Chandragupta Maurya. There has been a debate on the dating of the text and now scholars agree that this does not appear to be the work of an individual or a composition of one time and the broad date given to it is between what is referred to as Mauryan and post-Mauryan periods, i.e 4th century BCE TO 3rd century CE.[3] The Arthaśāstra, was a text that deals with nītiśāstra, politics of state ; it was intended to teach the would be conqueror, the vijigi u, the art of acquiring power and keeping it. It's a theoretical work that must have come up as a result of amassing of floating literature on statecraft, after authors sanitised and brahmanized the scatter of information. We need to remember that a state as huge as the Mauryas, which they had inherited from the Nandas, must have faced a range of challenges: right from collection of revenue to, maintenance of huge army, agrarian planning and so on. Numerous people would have resided within it who would have experienced progress and social evolution at different levels and differences of opinion could have become a potential threat to the stability of the state and the ruler too. So, what the authors of Arthaśāstra tried to do was to caution the king in terms of potential dangers while also giving advice on good governance. Somewhere there was a recognition of the fact that good governance was directly related to the stability of the empire and even as we find the tenor of the text as quite harsh and discriminatory in favour of brahmans, acknowledgement of simple human values does filter in.

2 For details, see, R.P.Kngle, The Kau ilīyaArthaśāstra, Part-III, Delhi: MotilalBanarsidass, 1965,P.6.

3 Thomas. R.Trautman, Kautiliya and the Arthaśāstra:a statistical Investigation of the Authorship and Evolution of the Text, Leiden:BRILL, 1971.

Aspects of Good Governance

A discussion on governance from a human rights perspective will involve some basic questions; what is governance? Why governance and how does one govern. This interrogation leads us to three dimensions, real, legal and moral. The prefix good to governance involves all these three dimensions. In that sense, the whole debate is value laden, particularly so when it is discussed from a human rights perspective.

There are some Kautilyan indicators of good governance with which we start building up the case. These are as follows:

- King must merge his individuality with duties towards the populace; there should be a properly guided administration
- Disciplined life with code of conduct for king and ministers
- Law and order chief duty of king
    - Looking personally into the affairs of his subjects
- Carrying out preventive/punitive measures against corrupt officials
- Replacement of inefficient ministers by good ones by the king
    - Recognition of faiths of other people
    - Preparing the state against a condition of āpad or emergency to defend the populace: Protection of the people foremost duty of the king
    - Responsibility of the state to find occupations for its populace

The first and foremost duty of the king was to protect his subjects. When he carries out this duty of protecting his subjects, he is said to go to heaven.[4] This protection, rak ana or pālana means primarily the protection of the person and property of the subjects. Book Four, called ka aka odhana, is concerned with such protection of people form anti-social elements like deceitful artisans and traders, dacoits, murderers, as well as their protection from natural calamities such as fire, floods etc. Another term used to express protection is yogak ema[5] which implies the idea of welfare, well-being, including the idea of prosperity, happiness and so on. That is why the text asserts, 'in the happiness of people lies the happiness of the king, and in what is beneficial to the subjects his own benefit'[6]. Further it states what is beneficial to himself is not beneficial to the king, but what is dear to the subjects is beneficial (to him). The import is clear that the king was expect to subordinate his personal desires to what is good for his people. R.P. Kangle is of the opinion that the ruler in

4 Arthaśāstra, III.1.41
5 Yoga refers to successful accomplishment of an object, while k ema refers to the peaceful undisturbed enjoyment of that object. AS, I.13.7
6 AS I.19.34

this śāstra is 'dependent on the suffrage of the ruled'. [7]

In order to look after the welfare of the subjects, the state is expected to engage in various activities. The ruler is expected to undertake such activities as to bring virgin land under cultivation which is referred to as śunyaniveśana,[8] building of setubandh, that is tanks, dams and other irrigational works, vraja, providing pastures for cattle, Va ikpatha, opening trade routes and providing safety on them, khani, working of mines and so on.[9] The vijigi u is also expected to work out foreign relations keeping the interest of his populace in mind, and if that requires is signing a treaty, karmasa dhi, with an enemy that should also be undertaken.[10]

The ruler is encouraged to let the interest of the subjects to prevail even in the area of sale and purchase of commodities. It is laid down in the Arthaśāstra, that the sale of commodities whether indigenous or imported, should be arranged in such a way that the people of the state stand to benefit (prajānāmanugrahe a) and that any profit that may be harmful to the subject should be avoided (II.16.4-6). It is also mentioned that when the subjects are struck down by natural calamities, the ruler should take care of them like a father (IV.3.43). The paternal duty of a king is recorded elsewhere. It is stated in II.1.18 that, 'he should, like a father, show favours to whose exemptions have ceased'. The ideal before the ruler was that of paternalistic rule and we would see that this was emulated by Asoka in his edicts where he claimed to be like a father to his subjects. In fact, this became a common ideal to be pursued in later days too. The king was asked to look personally into the affairs of his subjects (I.19.26ff).

We are also informed that the protection of people and maintenance of law and order can be done with help of da a, the staff or rod, which is the symbol of rulers authority (I.416). With help of da a the ruler would enable the weak to hold their own against the strong. In the absence of da a, we are told that the weak would be swallowed up by the strong and there would be anarchy everywhere (1.4.13-15). But what catches our attention is the way the use of da a was prescribed; with much care and that's where the idea of good governance and humanitarian values gets reproduced. Only a just use of da a secures

7 Op cit, p.118.
8 AS, VII.11
9 AS,II.1.1, 19-20
10 AS, XII, Kangle, op cit, p118.

protection of the people and happiness of the for the ruler in the next world (III.1.41). An unjust or improper use of the power by the ruler might lead to serious consequences, the most serious being the revolt of the subjects against the ruler (I.4.12). The ruler is cautioned against the reaction it can cause from forest tribes and wandering ascetics, leave alone the householders. So we get an idea that the ruler cannot function as a despot and the state cannot be an absolutist state. This threat of prak tkopa or a revolt of the people was expected to serve as a check on the wanton use of ruler's coercive power. Kangle takes this as an indication of direct dependence of ruler's position on contentment of his subjects.[11]

There was also a prescription for the vijigi u that, after he conquered a new territory, he should act in conformity with the behaviour, dress, language etc. of his new subjects, so that he may make himself acceptable to them (XIII.5.7). According to the provisions, the king is required to respect the religious sentiments of the conquered people not only by following the policy of toleration, but by positively observing their religious practices, while introducing the main tenets of Brahmanism there. We get an idea of conciliatory tone in this prescription. On the issue of animal slaughter and concept of ahi sa we do get some idea as the king was advised to prohibit the slaughter of animals for half a month during the period of caturmasya, for four nights during the period of full moon, and for a night on the day of birth star of the conqueror or of national star. The king should also interdict the slaughter of females as also castration of young ones.[12]

But one must exercise a word of caution. The above discussion gives us an idea that the state was conceived to be an ideal state where the vijigi u was advised to bring about law and order, occupations, commodities to people in a fair way and expect support from them in return. In modern parlance it was close to a state that would take human rights and humanitarian values into consideration. However, it must be reiterated that the ideal state conceived of within the text was one based on Brahmanical social order, structured within varnā ramdharma that castigated men placed low in social ladder or those beyond the pale of Brahmanism such as the pāsa as (heretics). The pāsa as who were beyond the pale of Vedic system were marked out for discriminatory treatment. The pāsa as and can ālas were required to live on the

11 Kangle, op cit, p.120.
12 AS XIII.5

border burial grounds.[13] Possibly the pāsa as (who included the Buddhist monks) were associated with anti-state activities for Kautilya lays down certain regulations regarding crimes committed by them.[14] If Śākyas, Ājīvikas and shudras were invited to a feast, fine had to be paid up. Kau ilīya clearly showed antipathy towards some classes of ascetics, whose movement was to be regulated by the state (II.1).

What we can state with a degree of certitude is the Arthaśāstra did attempt to bring about good governance through its range of policies but it did not always secure Human Rights as many within the empire remained discriminated. However, it may be unfair to evaluate what Kautilya and others composed, from modern vantage. In their estimate a strong state required a grade of strong control that may at times lead to erasure of some humanitarian values. Human Rights as fundamental rights is a contemporary idea and a state structure, atleast two thousand years old may not be based on it. Yet these modern ideas have had precursors and Kautilyan concept of good governance was not bereft of it as our study has reflected.

Aśoka: Application of Good Governance and initiatives taken to safeguard Human Rights

Kautilya's Arthaśāstra gives us an insight into how the responsibility of the state was theoretically envisaged in terms of good governance and securing of popular support by initiating people-friendly state initiatives that touched upon humanitarian value system. With Ashoka, the third Muaryan ruler, we get a sense of application of this theory. The circumstances of composing the Arthaśāstra, and that of Ashoka's policies might have been a little different but not drastically so. Aśoka inherited a set of political ideas and resolutions from his predecessors, added his ideals to those and then proceeded to apply those in terms of state policies in his humongous empire. But there are some problems with which a review of Aśoka's place in ancient Indian political thought and his contribution to governance must contend. Almost, all of the political thought of the age was submersed with religious or quasi-religious considerations. Asoka himself was primarily an administrator rather than a theorist or a quazi-theorist but he was a self-acclaimed Buddhist. A fundamental issue stays for analysis is whether his policy of Dhamma came within the ambit of good governance or his attempt at extension of

13 AS II.4.23
14 R.S.Sharma, Aspects of Political Ideas and Institutions in Ancient India, Delhi: MotilalBanarsidass, 1999 (repeat print), p.261.

Buddhism. Aśokan edicts, that deciphered by James Princep deciphered and connected to Asoka after reading of the Maski inscription, constitute our main source of study for this section.

We are familiar with Ashoka's story about a change of heart after the Kalinga war when he decided to abandon a policy of warfare and pursue dhammavijaya based on the law of piety and non-violence. Ashoka assumed throne in around 272 BCE. The imperial regions which Asoka inherited were impressive, stretching from the Himalayas to Karnataka and from the Tamluk in East to the Arabian Sea. For a number of years after his accession, Asoka ruled uneventfully, and apparently closely followed the practices of his predecessors. Then in 261 Asoka launched a war against the Kalingas, a people inhabiting the coastal regions of Eastern India. The war was successfully prosecuted, but the persistent confrontation of the Kalingas produced enormous fatalities; Asoka's conscience was deeply shaken, and the Emperor thereafter relinquished wars of conquest and devoted himself to a life of charity and piety, designed for the moral edification of himself and of his subject. Here we witness the beginning of a new king whose commitment to the idea akin to modern Human rights began to evolve.

Rock edict XIII was almost like an apology for the disaster caused by incessant warfare and violence. He had turned Buddhist and influence of the tradition cannot be denied. Buddhism arose in the Sixth Century BC. When Asoka ascended the throne, Buddhism was a well-known sect in North India. Religiously, Buddhism fell in the category of nāstika traditions, the one that did not believe in the existence of Vedic gods but accepted the theory of karma and repeated births that would come to an end with Nibbāna, comprehended on the lines of spiritual salvation.

From our perspective the political significance of Buddhism for ancient India was immense; it endorsed the assumption of the equal potential of all men; caste origin was irrelevant to entrance into sa gha, and moral merit was the only test. Caste conferred no intrinsic merit, a situation whose inferences are clear-leadership in society should rest on talent; no caste possesses a monopoly of wisdom and the interpretation of higher law; the king himself is not endowed with divine qualities, nor does he rule by divine ordination. As explained earlier. The Buddha explained that kingship results from and is justifiable by a distant state of dislocation, out of which an 'agent' or king was appointed to pull the community back together.

In some sense this kind of idea on kingship, emergence of the state and governance became a guiding torch for Ashoka. Without doubt he was a practicing Buddhist and worked towards expansion of Buddhism. His

control over ostentatious brahmanical ceremonies is a case in point as can be witnessed from Rock edict IX. He actually told that the auspicious ceremonies of Dhamma brought great fruit. But what is significant is that he goes on to elaborate the idea as something bordering on our understanding of good governance and securing of human rights. The edict draws our attention to the concept of dhamma which 'included proper behaviour towards slave and servants: dāsa-bhatakamhisamyapratipati, reverence towards teachers: gurūna apacitisādhu, and charity towards ascetics and brahmans: bamha samā sādhudāna . Interestingly, these and similar acts are known as the auspicious ceremonies of dharma.

Asoka was personally active in spreading the influence of Buddhism. He made pilgrimages, promoted the holy places of Buddhism, created shrines, carved out caves for Buddhist monk worship, extravagantly sponsored the Buddhist order's work, and even assumed the chore of preventing schisms within Buddhism. But even as he was devoted to the propagation of Buddhism, Asoka did not make Buddhism his state religion and was respectful toward other sects, and his sense of fair play led him to declare that '. . . in all places there reside people of diverse sects. For they all desire restraint of passions and purity of heart. But men are of various inclinations and of various passions. They may, thus, perform the whole or a part (of their duties)… Those who are content in their respective faiths, should also be told that His Sacred Majesty does not value so much gift or external honour as that there should be the growth of the essential elements, and breadth, of all sects' (REVII).The edict looks like a replica of RE XII, where Ashoka distinctly says that he does not think of dāna andpūja so highly as that of restrain of speech, vacaguti, and willingness to learn the tenets of other sects. In RE VII also, Ashoka did not attach so much importance to dāna as to sa yama or self-restrain and knowing what is correct in conduct. What we see is an attempt on part of an emperor to acknowledge fundamental Human rights; the right of each individual to pursue his/her own faith and the necessity of other people to respect that. He was making a plea for religious co-existence, a novel idea for the day.

His formulations of dhamma came quite close to our understanding of Human Rights of the contemporary times. These were intended to influence the conduct of categories of people in relation to each other, especially where they involved unequal relationships.[15] There was a

15 RomilaThapar, 'Ashoka - A Retrospective', Economic and Political Weekly, Vol. 44, No. 45 (NOVEMBER 7-13, 2009), pp. 32.

repeated emphasis on harmonious social relations and often, though not always, of categories described almost as opposite pairs, as for example, parents and children, kinsmen and friends, teachers and pupils, employers and employees, brahmanas and śramanas. The empire included a spectrum of societies where these categories were variously organised. The underlining of this social ethic was virtually the reversal of the other system, the varnashrama dharma. Ashoka mentions neither varna nor jati nor does he refer to caste relations as important. A social conduct based on values was called up for and included acts such as not injuring animals and humans, being forgiving, observing piety and adhering to the truth. His advocacy of tolerance and non-violence as official policy made him an unusual ruler.

This issue of ahi sa or non-violence was close to his heart. In Rock edict 1 he asserts that, 'many hundred thousand of animals used to be daily slaughtered for food in his kitchen and claims that he had brought the numbers down to two peacocks and one deer a day and promises that their slaughter would also be stopped. In a sense he had begun training people in avoiding brutality towards animals. The Kandahar bilingual edict of the regnal year ten refers to this measure, and its Greek version specifically mentions that king's huntsmen and fishermen thereafter abstained from their calling.[16] In some what a same vein, he also declares, in RE VIII, that there was a time when ruler undertook vyavahārayāttas primarily for the purpose of hunting and chase and that he converted these into dhammayāttas to familiarize his populace of the virtues of dhamma.[17] His concern for humanitarian work, that often extended to animals, can be seen from some other epigraphs too. In Rock edict VI, he calls for 'welfare of all people (savalokahita)'. In Rock edict II, he claims that he has made arrangements for medical treatment (cikitisā) for human beings as well as cattle(pasu). Medical herbs, good for human beings and cattle, were supplied and planted where they were not found. On the roads (maga), Ashoka asserted, trees were planted and well (kūpa) dug for the comfort of cattle and human beings. Here was a ruler concerned for both his subjects and for animals too, a trait rarely found in polity of any kind anywhere in the contemporary world. Could it be that he genuinely looked upon his populace as his children and extended his paternal concern to all? In Kalinga edict he says, 'All men are my

16 Irfan Habib and Vivekanand Jha, Mauryan India, NewDelhi: Tulika, 2004, p.78.
17 Kanai LalHazra, Asoka as Depicted in his edicts, New Delhi: Munshi Ram Manohar Lal, 2009, pp.172-174.

children. As, on behalf of my own children, I desire that they may be provided with complete welfare and happiness both in this world and the next…'.

While energies were doubled to deliver necessary services to the destitute, to ensure honest administration, and to promote justice under the law, the main innovation in administrative organization was related to entrusting officials with moral as well as political functions.[18] For standard governmental officers, a fresh modulation was given to their traditional duties: 'The Rājukas [Provincial governors] have been placed by me over many hundred thousand lives. What is their (administration of) Law of Justice has been made by me subject to their own authority, so that the Rājukas, assured, and without being afraid, may set about their tasks, distribute the good and happiness of the people of the country, and also bestow favours. They shall acquaint themselves with what causes happiness and misery, and, with the help of the pious, admonish the people of the provinces that they may gain both here and hereafter (RE IV)'. To supplement the work of such regular officials, the institution of Dhamma- Mahammattas was created . . . they were employed among all the sects for the establishment and growth of Dhamma and for the good and happiness of those devoted to religion . . . They were also employed among the soldiers and their chiefs, Brahmanical ascetics and householders, the destitute. They were also employed for taking steps against imprisonment, for freedom from molestation, and for granting re leases, on the ground that one has numerous offspring or is over whelmed by misfortune or afflicted by age (RE V). Were they associated with spread of Buddhism or their presence mandated of a certain kind of social conduct on the part of the populace that helped in maintenance of peace and harmony and strife-free milieu? They were sent as emissaries of the king even to the Yonas (the Hellenistic world). But were they really preaching Buddhism there? Hellenistic sources are silent about such supposed missions. The only part of the then Hellenistic world where Buddhism had a presence was Gandhara and this was within Ashoka's empire. The spread of a religion requires more than just sending emissaries backed by the royal authority. Ashoka's humanitarian steps were not really a push for Buddhism even as these were impacted by it.

18 Henry S. Albinski, The Place of Emperor Ashoka in Ancient Political Thought, Midwest Journal of Political Science, Vol. 2, No. 1 (Feb., 1958), pp. 62-75

Assessment of Ashoka's Humanitarian policies against Kautilya's prescriptions

Unlike Kautilya, Asoka was motivated not by idealization of a new state, but by administrative humanitarianism that would help consolidate the state with strong supportive populace. Interestingly, his results were in some measure parallel to the ends espoused by the Arthashastra's author.[19] Kautilya urged a powerful king so that the state might be powerful; Asoka became a powerful king by putting into practice some ideals suggested by Kautilya but more by innovating with a strong administrative machinery that went beyond just collecting taxes but working for the people. Kautilya, too, had preached tight administrative organization and elaborate public works in order to appease the people and to ensure uninterrupted regulation at the centre.

In the realm of external policy, there was similarity between Kautilyan teachings and Asokan achievements in so far as the prestige of state and kingship was concerned. Kautilya conceived of global relations as moving around the pivot of a great dominant state, and lesser, subservient states around it. Kautilya advocated wars of conquest to strengthen this circle of states (man ala theory). Here lay some difference; Asoka abjured wars of armed conquest, but embarked on campaigns of moral conquest, the dhammayattasanddhamma Vijaya. By delegating missionaries and 'morals ministers' to remote sections of the Empire and to distant lands, he may not have been instrumental in spreading of Buddhistic ideas alone but working out peace with neighbour states, and also establishing his hegemony. Some scholars believe that by bringing into moral conformity of outlying peoples, Ashokan policies had much the same effect as Kautilya's ambitions as these were calculated to have- the 'gathering into the fold' of border communities by virtue of the dominant state's initiative.[20] While Asoka's motives diverged in many areas from those of Kautilya, he no doubt knew the Arthashastra and extrapolated from its pages useful information on governmental management. One must never forget that despite giving up largely on violence, Ashoka never gave up on maintaining his army and often threatened atāvikas (recalcitrant forest tribes) with harsh action in case they did not fall in line with his policies. It is a fact that his policy of ahi sa had its limitations as he was first a statesman and then a Buddhist upāsaka.

19 Albinski, op cit, p.71.
20 Ibid.

From the above analysis one is tempted to conclude that Ashoka's humanitarian policies were largely absorbed from Buddhism even as these were not a replication of Buddhist ideas. Ashoka did not make Buddhism his state religion but learnt to become a true humanist and as a one continued to respect numerous religious traditions and made a plea to his populace to do so along with showing respect to elders, teachers, brahmans, śramans and parents. Practice of ahimsa and compassion for slave, servants and the weak at large also formed a part of his reformist understanding. Good governance was surely the resolution to growing social conflicts of the time as Ashoka responded by attempting to secure fundamental human rights.

Reflection of Asokan Philosophy in State Emblem of India

Ashoka pillar in Allahabad, Ashoka pillar in Sanchi, Ashoka pillar in Vaishali, andAshoka pillar in Sarnath are considered to be four pillars of Indian History. The chakra, which features in the middle of the Indian tricolour, has twenty-four spokes and was adopted on July 22, 1947. 5.

The wheel is called the Ashoka Chakra because it appears on a number of edicts of Ashoka, the most prominent among which is the Lion Capital of Ashoka.

The State Emblem of India, as the national emblem of the Republic of India is called, is an adaptation of the Lion Capital of Ashoka from 250 BCE at Sarnath, preserved in the Sarnath Museum near Varanasi.. The capital has four Asiatic lions—symbolising power, courage, pride and confidence—seated on a circular abacus facing four different directions, namely north, east, south, and west

A representation of the Lion Capital of Ashoka was initially adopted as the emblem of the Dominion of India in December 1947. The current version of the emblem was officially adopted on 26 January 1950, the day when India became a republic. Forming an integral part of the emblem is the motto inscribed below the abacus in Devanagari script: Satyameva Jayate (Sanskrit: सत्यमेवजयते; lit. "Truth alone triumphs"). This is a quote from Mundaka Upanishad, the concluding part of the sacred Hindu Vedas.

This line itself is the crux of human rights that constitute the basis of democracy and all of us, in our own way, are responsible to ensure that these cherished rights are promoted in all possible ways. Citizens, the private sector as well as entire segments of the civil society are trying for

the rapid institution of good governance today.[21]

The formal acknowledgment of Human Rights World over

Human rights were codified under the Universal Declaration of Human Rights (UDHR) which is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations.

It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages.[22]

Human rights abuses did not end when the Universal Declaration was adopted. But since then, countless people have gained greater freedom. Violations have been prevented; independence and autonomy have been attained. Many people – though not all – have been able to secure freedom from torture, unjustified imprisonment, summary execution, enforced disappearance, persecution and unjust discrimination, as well as fair access to education, economic opportunities, and adequate resources and health-care. They have obtained justice for wrongs, and national and international protection for their rights, through the strong architecture of the international human rights legal system.[23]

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21 https://shodhganga.inflibnet.ac.in/bitstream/10603/122963/4/3%20chapter%203.pdf retrieved on June 24th, 2020

22 https://www.un.org/en/universal-declaration-human-rights/retrieved on Sept 16th, 2020

23 https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf retrieved on Sept 16th, 2020

Role of Nehru: with Special Reference to Protection & Promotion of Human Rights

*Hira Khan**

Abstract

Jawaharlal Nehru, the India's first prime minister, has carefully designated and adopted national integration policy focused on consensus, recognition, independence, and decentralization. He was a keen student of Indian history, environment, culture, economy, politics, and psyche. At an important stage, when India faced several national and global challenges to its independence and dignity and confronted severe financial and social problems, it would be unreasonable to underestimate its importance. The paper attempts to assess Jawahar Lal Nehru's ideas on human rights security. As a national leader for over two decades, Nehru has been a skilled administrator trying so hard for conservation and human rights protection. The philosophy on human rights and its consequences is relevant to take into consideration when evaluating Nehru as the guardian of human rights. Human rights are, in general, the inherent and alienated human rights that are important to human life and which all people possess as individuals and are important for human development. During the Second World War, the Worldwide Campaign for Human Rights originated in the 20th century but it was present in many of the dominant religions, ideologies, and cultures of the world. 'Human rights' is a word of the 20th century, about what has historically been known as Moral rights. Several European philosophers, particularly John Locke, introduced the principle of natural rights in the 17th and 18th century, that individuals hold such human rights irrespective of citizenship, race, tradition, faith, or ethnicity.[1] The theory of natural rights became so famous that the Declaration of Independence was issued by the thirteen American states in July 1776.

Key words: - *Human Rights, Ideologies, Fighter, Liberal, Socialist.*

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1 Vincent N.Parrilo, Encyclopedia of Social Problems, (London: Sage Publications, 2008),p460.

Introduction

We hold these truths to be self-evident; that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.[2]

Likewise, in 1789, the French Declaration of the Human and Citizens' Rights declared that 'men are born and continue to be free and equal in the right' because 'the object of every political organization' is to safeguard man's natural and inalienable rights- these rights are liberty, property, security, and resistance to oppression.[3] These are not only recognized as universal by the French resident but by all citizens.

The word natural right was ultimately lost, but during the 18th century, the idea of universal rights took hold. The definition has been extended by philosophers including Thomas Paine, John Stuart Mill, and Henry David Thoreau. Lastly, the first to use the word "human rights" was the Universal Declaration of Human Rights (UDHR) by the General Assembly of the United Nations in 1948. The rights mentioned in it (UDHR) can be usually divided into two areas language and material. The terminology of the early papers of the UDHR is the standard of natural rights between 3 and 21. It increases traditional rights; right to life, right to liberty, right to exclusive rights and enjoyment of happiness; free movement of persons; right to own property individually and together with others; right to marriage; right to equal status and a fair trial when any violation is threatened; right to privacy; right to freedom of faith; right to freedom of expression and a democratic assembly. It also contains such rights under Economic and Social Justice terms, from Article 22 to 28, which are:-Fundamental right to education; the right to join syndicates, the right to fair pay for equal work; and "the right of everybody to an acceptable standard of life to guarantee the health or well-being and well-being of the person and his families." [4]

Economic and social rights were not acknowledged by the Nature Rights

2 Jeffery L. Sammons, Wolfgang Mieder, YES WE CAN Barack Obama's Proverbial Rhetoric, (New York: Lang Publishing, Inc.,2009), p262.

3 G.Haragopal, Political thought of Human Rights, (Delhi: Himalaya Publishing House,1998), p5.

4 Pravin H. Parekh, Human Rights Year Book 2010, (New Delhi: Universal Law Publishing House,2010),p231.

Thinker of the 18th century, and civil rights may be considered symbolizing change. The UDHR was based on the premise that economic, socio-cultural, and political rights must be included. The concept of human rights was later accepted nearly universally. Even before the United Nations launched the UDHR in 1948, Nehru was fairly a civil rights activist of this vision.

Regarding the idea of the human rights of Nehru's evolution, many aspects affected him. Nehru was behaviorally receptive to the suffering of people and enthusiastic about human dignity abuse. In his early childhood, he always heard his family members' debate about the English people's overweight nature and way of offending against Indians and how it was the obligation of any Indian to fight this and not accept it. He was filled with anger at the foreign rulers in his territory, who had misbehaved with his compatriots.[5] The Constituent Assembly of India, which first convened on December 9, 1946, set out the Indian Constitution. Equal dignity became the main feature of India's Constitution. Four reasons led to the call for a declaration of fundamental rights.

1. Lack of civil liberty in India during the British rule
2. Deplorable social conditions, particularly affecting the untouchables and women
3. Existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers
4. The exploitation of the tenants by the landlords.[6]

India was a signatory to the Universal Declaration of Human Rights. The terms of the Universal Declaration of Human Rights are identical to a variety of basic rights granted to persons in part Ill of the Indian Constitution. This includes the right to justice, democracy, right against exploitation, freedom of religion, rights to culture and education, and right to remedies to the constitution.

"The Universal Declaration of Human Rights does not form a legally binding instrument but demonstrates how, through the adoption of the Constitution, the world acknowledged the essence of human rights," observed the Indian Supreme Court through Keshavananda Bharati v. Kerala. "The Indian Supreme Court recognizes the constitutional rights of the three legislative bodies as 'Natural Rights' or 'Human Rights.' In India, the judiciary has been the frontline of human rights.

5 Vinod Bhatia, Jawaharlal Nehru: A Study in Indo-Soviet Relations, (New Delhi: Panchsheel Publishers,1989), p4.
6 Subhash C. Kashyap, The Political System and Institution Building Under Jawaharlal Nehru, (New Delhi: National Publishing House, 1990), p.51.

Nehru's passion for human rights and nationalism was cultivated during both the Boer War (1899-1902) and the Russian-Japanese War (1905). He read several books in Harrow which aroused his inborn feelings and started to gain views on the like of gallant struggles for the liberty and rights of Indians. He imbibed the principles and ideals of the British humanist movement, which stresses the superiority of rationality, individual superiority, and logical normality in England. When in Cambridge he was an Indian nationalist who wanted the independence of India more inclined to the more radical wing as far as the political relations were concerned.

The logical ethical philosophy of Buddhism in India inspired Nehru. Gandhi's position in South Africa was admired by him. He was greatly influenced by Mahatma Gandhi and began fighting for human rights under his guidance. However, according to Nehru's finding in India, "The initial urge came to me, I suppose, through pride, both individual and national, and the desire, common to all men, to resist another's domination and have the freedom to live the life of our choice."[7] As he grew up and took initiative to lead India's liberty, he threw energies into it and worked hard when a special chance was generated like the uprising – the Indian Indenture rule in Fiji and the Indian issue in South Africa.

The idea of Nehru's rights was based on his philosophy of life, where the individual enjoyed the principal role. He stressed people's personality, dignity, and role in shaping society. According to him, cultures can increase and vanish, and nations can be quakes and forget, but in the ages, the man persists in glory and glory. He argued that no human being should be dumped into the pile of waste.[8] It should be considered to be meaningful, and nobody should attempt to suppress the individual. For the individual, there is the economy, culture, and all organizations, not the individual. His principle was his pillar.[9] He argued that if private interests were subordinate to the state, the rights of a person would be diminished under every political structure. The main ingredients of Nehru's strategy of nation-building were:

a) The making of a constitution based on consensus and accommodation,
b) secularism,
c) parliamentary democracy,

7 Ananya Vajpeyi, Righteous Republic: The Political Foundations of Modern India, (United States of America: Library of Congress, 2012),pxi.
8 Byrappa Ramachandra, Is India Democracy without Human Rights? (Budapest: Department of Modern and Contemporary History,2020), p35.
9 Ibid.

d) federalism,
e) linguistic re-organization of states,
f) democratic decentralization for Panchayati Raj
g) party building and
h) penetration of the Centre into the periphery through the administrative process.[10]

In Nehru's opinion, whether it consists of free citizens is a prerequisite for a genuinely free society. People will be considered free if political as well as economic independence is accomplished. Wherever political, economic, or social injustice occurs, culture cannot be defined as just culture. In his speech at Allahabad in 1923, he said:

Today we are a society in which there are tremendous differences between man and man, great riches are on one side and great poverty on the other. Some people live in luxury without doing any work, whilst others work from morning to night with no rest or leisure and yet have the barest necessities of life. This cannot be right.[11]

Nehru claimed that the denial of justice to humanity was such a condition that it hampered individual imaginative capacities. Each man and woman must be able to grow to the best of his abilities.The same connotation one may note in Article 22 of UDHR wherein it says:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and following the organization and resources of each state of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality.[12]

The foundation of civilization, Nehru held, was in some measure of security and peace without which there could be no civilization or social existence. Yet he feared that in the current culture the millions were robbed of it. They barely had anything to hold their bodies and their souls alive and it's a strange thing to talk about protection to them. He observed, “As long as, in our world's history, you can see rebellion, not because any group or person is a lover of bloodshed, brutality, and trouble, but because many people need more protection.[13] ” He also said

10 Singh, Ranbir, and Anupama Arya. "NEHRU'S STRATEGY OF NATIONAL INTEGRATION." The Indian Journal of Political Science 67, no. 4 (2006): 919-26. Accessed September 19, 2020. http://www.jstor.org/stable/41856275
11 Jawaharlal Nehru, ed. S.Gopal, Selected Works of Jawaharlal Nehru: Volume 3, (New Delhi: Orient Longman, 1972), p218.
12 United Nations. General Assembly, Key Resolutions of the United Nations General Assembly 1946- 1996, (United Nations: CUP Archive,1997), p.322.

that real stability and world development can be reached only by demonstrating that a significant number, if not all, of citizens, not just a small minority is well-being. The tougher the effort, the more urgent it is for society to do this. Thus, Nehru linked human rights with justice and stability in the world. One may find similar expressions in the Preamble of the UDHR, where it is said:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.[14]

That expression understands the fact that "disregard and violation" of human rights has been the result of the horrendous memory of World War II and other "barbarous activities." The organizers announced that the main goal of the manifesto was to create a world that accepted different opinions, that accepted human liberties, and aware of economic stability.

Nehru was a crucian of the rights of underdogs and a sign of hope for the oppressed of the world due to his philosophy. Nehru threw itself into the movement because of his immense commitment to the preservation of human rights when Gokhale called for aid during Gandhi's South African struggle and became the organization's Secretary set up to collect money. While Nehru joined the Indian National Congress in 1913, he was politically inactive for a while. He did, however, engage in campaigning for the native peoples of Fiji who intended to abolish their enslaved labor regime. He explained the aims of the congress in 1928 with the definition of civil rights. He declared:

Congress stands for Indian freedom, the freedom for the entire people of India, not the freedom of a class only which will dominate over other classes and while it carries on the struggle for political freedom and against political reaction, it strives equally for social freedom and against social reaction. In particular, it has declared war against untouchability and all it implies. And neither of the two struggles admits of any compromise. There can be only one end to them; complete political freedom or independence, and complete social freedom, that is, the right of every man and women to have the fullest opportunity for the development without any restrictions or barriers of religion, caste,

13 S.P. Agrawal, J.C. Aggarwal, Nehru on Social Issues, (New Delhi: Concept Publishing, 1989), p204
14 Elisabeth Reichert, Social Work and Human Rights: A Foundation for Policy and Practice, (New York: Columbia University Press,2011),p50.

custom, or economic privilege.[15]

Therefore, Nehru considered human rights as a precondition for human progress. This puts him closer to the philosophy of interest approach, which claims that human rights have a primary role as the protection and advancement of fundamental interests. The human rights agenda comprised four main components:

a) an entrenched bill of rights
b) a limited but affirmative government
c) State accountability and
d) Independent judiciary for enforcement of fundamental rights.[16]

The foundation of a democratic society was these universal rights. Nehru says that a democratic society, in political and economic terms, ensures freedom for all the non-caste, class, or gender citizens. Nehru has also advocated rights not only for the Indians but for people all over the world. The Declaration of Independence, drawn up jointly by Mahatma Gandhi and Nehru, was adopted during Nehru's presidency in 1930 by the Lahore Congress:

We believe that it is the inalienable right of the Indian people, as of any other people, to have the freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth. We believe also that if any government deprives a people of these rights and oppresses them the people have further right to alter or to abolish it.[17]

It is evident from the above assertion that Nehru insists that safeguarding human rights is a vital requirement for every government's stability. Even after 28yrs, this fact was accepted by United Nations in Preamble of UDHR, "where it is essential if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law." [18]

In March 1930, Nehru raised his voice against the brutality against

15 Jawaharlal Nehru, S. Gopal, The Essential Writings of Jawaharlal Nehru, Volume1, (UK: Oxford University Press,2003), p141.
16 Bijayalaxmi Nanda and Nupur Ray, Discourse on Rights in India: Debates and Dilemmas, (New York: Routledge,2019),
17 Richard L Johnson, Gandhi's Experiments with Truth: Essential Writings by and about Mahatma Gandhi, (New York: Rowman & Littlefield Publishers, INC. 2006), p181.
18 Roger Normand, Sarah Zaidi, Human Rights at the UN: The Political History of Universal Justice, (USA: Indiana University Press, 2008), p186.

prisoners. In addition to a comprehends of the list of prescribed books and too many books and magazines legitimately obtained and read in the facility, the prisoners were denied the second and distinct censorship in the facility. Besides, because of the restrictions imposed on them, they did not use literature. Therefore, he raised the question, "If a court of law sentences a person to imprisonment, does it follow that only his body but also his mind should be incarcerated? Why should not the minds of prisoners be free even if their bodies are not?" He argued that his attention should be approached and distracted from reclaiming a prisoner and making him a person and that he should be literate and taught the craft.[19] He hated that from time to time the prisoner's body was counted, but little care was taken to measure the spirits that are running through the dreadful environment of tyranny. But long after it, in 1948 in Article 5 of UDHR it was stated: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."[20]

Moreover, Nehru was interested in a Resolution on Fundamental Rights and national economic policy in the Annual Congress Session held in Karachi in March 1931. After the required modifications by Gandhiji, a Nehru Subcommittee reviewed numerous amendments to the Resolution which were adopted at the plenary sitting of the Congress. To make true political freedom, Nehru, under Marx's influence, realized that political independence alone was not appropriate for individual advancement. Thus, during the Karachi conference, to encourage people to understand what Swaraj meant to them in his conference, he discussed basic rights and economic policy. He announced that the Swaraj Government should be able to provide whatever constitution agreed to provide the following:

1. Fundamental's Rights and Duties

i. Every citizen of India has the right of free expression of opinion, the right of free association and combination, and the right to assemble peacefully and without arms, for the purpose not opposed to law or mortality.
ii. Every citizen shall enjoy the freedom of conscience and the right

19 Jawaharlal Nehru, Jawaharlal Nehru: An Autobiography, (London: Oxford University Press, 1989), p350.
20 J. Hermann Burgers, The United Nations Convention Against Torture: A Handbook on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, (London: MartinusNijhoff Publishers, 1988), p11.

freely to profess and practice his religion, subject to public order and mortality.

iii. The culture, language, and script of the Minorities and the different linguistic areas shall be protected.
iv. All citizens are equal before the law, irrespective of religion, caste, creed, or sex.
v. No disability attaches to any citizen, because of his or her religion, caste creed, or sex, regarding public employment, the office of power or honor, and in the exercise of any trade or calling.
vi. All citizens have equal rights and duties concerning well, tanks roads, school, and pieces of public resort maintained out of state or local funds, or dedicated by private persons for the use of the general public.
vii. Every citizen has the right to keep and bear arms, following regulations and reservations made on that behalf.
viii. No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered, or confiscated, save following law.
ix. The state shall observe neutrality regarding all religions.
x. The franchisee shall be based on universal adult suffrage.
xi. The state shall provide for free and compulsory primary education.
xii. The state shall confer no titles.
xiii. There shall be no capital punishment.
xiv. Every citizen is free to move throughout India and to stay and settle in any part thereof, to acquire property and to follow any trade or calling, and to be treated equally concerning legal prosecution or protection in all parts of India.

2. Labour

a) The organization of economic life must conform to the principle of justice, to the end that it may secure a decent standard of living.
b) The state shall safeguard the interests of individual workers and shall secure for them, by suitable legislation and in other ways, a living wage, health conditions or work, limited hours, suitable machinery for the settlement of disputes between employs and workmen, and protection against the economic consequences of old, age sickness and employment.
c) Labor to be freed from serfdom and conditions bordering on serfdom.
d) Protection of women workers, and especially adequate provision for leave during the maternity period.

e) Children of school-going age shall not be employed in mines and factories.
f) Peasants and workers shall have the right to form unions to protect their interests.[21]

Nehru's previous efforts were essentially the product of this resolution, for which he was well-known. The rights mentioned have also been integrated and accepted by the UDHR.

Nehru also represented the rights of women and asserted the abolition of the separate typologies of inequalities in ancient Indian customs and rituals. In 1947 the independence of India granted women legal recognition of the same political and civilian rights.[22] Speaking at the Mahila Vidyapith, Allahabad in 1928, Nehru quotes the French idealist, Charles Fourier who said, "One could judge the degree of civilization of a country by the social and political positions of its women. If we are to judge India today, we shall have to judge her by her women. The future that we built up will also be judged by the position of Indian women". He was not happy with the condition of women in Indian society. Indian culture, customs, and rules were developed by people so that they could play a more important role and see women as a talk and a play for themselves and themselves.[23] Under such constant pressures, women did not raise or develop their capabilities to their full. The social evils and customs that surround him have had to be eradicated. Since becoming India's prime minister, Nehru implemented several laws that are women on the same footing as men. Both men and women must do physically safe, psychologically aware, creative, lucrative work.

Nehru preserved education as a central factor in the development of a good community. Education was the foundation of social and economic growth and an important step towards equal opportunity for him; and, because of his commitment to industrial development, Nehru was prepared to minimize engineering costs instead of education. He clearly stated, "I have come to feel that it is the basis of all and, on no account unless our heads are cut off and we cannot function, must we allow education to suffer.[24] Interestingly, UDHR has also introduced the right to education. He advised government officials not to cut primary education

21 Mahatma Gandhi, Young India, Volume 13- Volume 14, Issue 2, (Gujarat: Navajivan Publishing House, 1931), p210.
22 Bijayalaxmi Nanda and Nupur Ray, Discourse on Rights in India: Debates and Dilemmas, (New York: Routledge,2019),
23 Sobhag Mathur, Shankar Goyal, Spectrum of Nehru's Thought, (New Delhi: Mittal Publications, 1994), p195.
24 Bipan Chandra, India Since Independence, (UK: Penguin Books,2008).

spending because of the nature of financial diligence.

Further, he was an ardent supporter of the rights of the children. In his words, "I can tell you nothing pains me so much as when I see little children who are denied a proper education. Sometimes, they are denied that what is our India of tomorrow going to be?" He found it the State's responsibility to provide each child in the country with good education and free education. The same worry for the children can be conveyed in Article 25 of UDHR. Furthermore, Nehru claimed, every child in India from the age of 7 to 14 must undergo basic education for seven years and that the schooling must have an appropriate context for anyone to perform.[25]

Nehru sees racialism as an opponent of civil rights founded on multicultural supremacy horrors. Refuting the theory, he said, "Biologists tell us that racialism is a myth and there is no such thing as a master race"[26]. However, since the advent of British rule, we in India have seen racialism in all its manifestations. The speech, however, was the most insightful and strong against Herrenvolk's Nazi ideology, contributing to the search for the man and the deportation of millions of Jews outside its borders. He was genuinely touched. "We of all people," he said at that time, "could not tolerate the racial views and racial views and oppression of the Nazis." [26]

Not only was Nehru condemned in their colonies to strip the European countries of human rights. He believed that their leaders' barbaric transformation of vast crowds into small drawers of water and wood was to put the advantage of civilization to an end. He also remained as a colonial survivor champion and he showed his determination to avoid it in practice and, in December 1961, successfully returned to police action against India-owned Portuguese settlement Goa.[27] In 1961 South Africa retreated not just because it condemned South Africa's policies on apartheid and expressed its views with the other Commonwealth nations. He made his first public statement on foreign affairs of his country shortly afterward, when he became the Acting Prime Minister of the national government, he clearly stated:

25 Jawaharlal Nehru, An Anthology, (UK: Oxford University Press, 1980), p271-272.
26 Harish Trivedi, Richard Allen, Literature and Nation: Britain and India 1800-1990, (London: Routledge, 2000), p317.
27 Jawaharlal Nehru, Selected Works of Jawaharlal Nehru: Volume 11, (New Delhi: Orient Longman, 1972), p105.

We believe that peace and freedom are indivisible and the denial of freedom anywhere must endanger elsewhere and lead to conflict and war. We are particularly interested in the emancipation of colonial and dependent countries and people, and in the recognition in theory and practice of equal opportunities for all races… [28]

Nehru then found a world of free nations and free people with rights without prejudice. He assumed that no one had been born decent enough to rule another under Abraham Lincoln's dictum. He and this great liberator both agreed that the strongest form of democracy is the people's democracy.[29] He followed these policies as Prime Minister, intending to uphold human rights in India and elsewhere in the world. While addressing the Constituent Assembly on March 8, 1949, he said, "Our main stake in the world affairs is peace, "therefore the endeavor would be," to see that there is racial equality and that the people who are still subjugated should be free. He asserted that world peace, racial equality, freedom for all would be the three watchwords of Indian foreign policy.[29]

The historical Objective Resolution, drawn up by Nehru itself, in its Constitutional Assembly 13, 1946, also granted the Indians their rights. Moreover, its initial draft was created by Nehru. It was stated, in particular, that the Constituent Assembly proclaimed its strong and solemn commitment to proclaim India as an Independent Sovereign State and to create a Constitution to govern the future, guaranteeing social, economic, and political justice, equal status, opportunity and before the rule, to all of India; freedom of thinking, speech, life, religion, and adoration; Besides, appropriate provisions for minorities, the backward and tribal regions, and the impoverished and other withdrawing groups are given in the resolution.

Nehru was the Constituent Assembly's philosopher and prime legislative theorist. Austin explains in his constitutional form the position of two great leaders – Patel and Nehru – who both have their special interest. The first was more interested in the princely states, the civil sector, and the Home Office, whilst the latter was more interested in fundamental rights. Aspects of the Constitution for the defense in ethnic rights and

28 K.T. Narsimhachar, Profile of Jawaharlal Nehru, (New Delhi: Book Centre, 1969), p.115.
29 N. Jayapalan, Foreign Policy of India, (New Delhi: Atlantic Publishers and Distributors, 2001), p.34.
30 K.T Narasimhachar, Profile of Jawaharlal Nehru, (New Delhi: Book Centre, 1969), p.145.

social change. In these places, everybody else has almost complete freedom. Nehru maintained that, considering the cynicism of Patel and the fact that Rayagopalachari refused to promote fundamental rights, the fundamental rights enshrined in the Karachi Resolution were eventually integrated into the III and IV of the Indian Constitution.[30] Nehru's human rights esteem has again been accorded asylum to Dalai Lama and certain of his fans, who have survived Tibet and were suppressed by China's oppressive policies.

Conclusion

It is thus clear from Nehru's writings and speeches that he was a civil rights exponent long before the United Nations embraced UDHR. His views on human rights are focused on different human values and principles practices. Probably in India and elsewhere he is pioneering human rights in exploring human rights violations and mass repression. He put universal freedom at the very height of his thinking, believing that certain civil liberties, which human beings cannot live like humans, are inherent to man. It also argued that the creation of an equal democracy cannot be accomplished, or that in the absence of such rights peace cannot be sustained in the world. A range of activists for human rights, from political to commercial, social, and educational. He also defended the people's right to topple the regime, which opposes them. In his lifetime he strived courageously to bring respect to the people of the world, with consistent compassion for the poor. He spoke about it eloquently everywhere that human rights violations happened. Since being Indian Prime Minister, he has introduced it in the Constitution. However, you might argue he was a champion in human rights.

31 Goraya, Surender Kaur. "NEHRU AS CHAMPION OF HUMAN RIGHTS." The Indian Journal of Political Science 69, no. 4 (2008): 869-78. Accessed September 25, 2020. http://www.jstor.org/stable/41856477

32 Ibid.

The Role of International Human Rights & 21st Century Challenges

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Abstract

Human rights are universal rights declared by the UN charter, which is required to be followed by all countries and be made available to all citizens irrespective of the kind of government or their cultural laws. However, it is seen that the modern context of authoritarianism and right-winged government, including the theocratic states, have shown instances where human rights are violated by those nations. The rights are civil, political, social, economic and cultural, which are stated by the UN convention of human rights. The political and civil rights that are present to the citizens of a particular country the right to life, the right to form assembly, and the right to have a fair and equal trial before consists of the law. The economic rights that are available to citizens constitute the right to have free education, social security, along with the cultural right of forming family without any intervention from the government. It is also seen that the authoritarianism, repression and corruption are three aspects that reduce the following about human rights and lead to its violation in society. It is seen that the UN intervention in the authoritarian states, the theocratic states and the right-winged government helps in curtailing the occurrences about human rights violation. UN convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is the core treaty imposed by the UN. Since its adoption in 1979, it has been approved and implemented in over 180 countries. Apart from the law formulated by the UN, American Convention of Human Rights was adopted in the USA in 1969. Children rights is another concerned human rights and purpose of the laws to provide basic rights to the children. Security and protection of the rights of the individual and his free access

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to justice are key constituents of the walk of a civilized society. Its emphasis is more in a democratic setup, based on rule of law where safeguarding human rights and assuring dignity of the individual is the responsibility of the state. Infringed enjoyment of human rights would just remain the defensive umbrella of the organised and viable instrument are made for redressal of complaints identifying with human rights. This article envisages over the international covenants on human right and its significance with the interest to make human right a viable reality in 21st century.

Key words: - *Human Rights, Human Trafficking, Challenges, Corruption, Human security*

Introduction

International human rights are an attempt to lay down a few regulations or laws that would be common to all human beings on the planet. However, it is also noted that the challenges of the 21st century lie in the blatant failure of its achievement throughout the world. The countries that are still a monarchy often subjugate the freedom of thought and expression of the public. In the same way, the countries that are theocracy are often found to subjugate the rights of women. The cultural differences also pave the way to curtail human rights in several situations like a natural disaster or civil war. The goal in regards to the international convention about human rights is to reduce the exploitation or torture of the citizens by any state in a globalised world after the Second World War. Underdeveloped countries are facing most of the threat of human trafficking due to economic issues. Poor economic condition is working as a factor in those countries to involve some people in human trafficking. While, civil war, terrorism, natural disasters have become the cause of people smuggling from one nation to another.

The universal declaration about human rights had occurred in the United Nations on 10th December 1948, which stated that every individual needs to have right to life, equality before the law, freedom of expression, rights to social security, work and education. The role about human rights is mainly to foster universal values in all the nations of the world and agree upon the fact that the human rights be available to citizens irrespective of the small differences in legal regulations between one country and another. The assignment covers the general section corresponding to the universal declaration of human rights, women and human rights as well as children rights. Furthermore, the assignment sheds light on human trafficking, gender politics, authoritarianism, and approaches to mitigate global challenges to human rights in the 21st century.

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

The international covenant on political and civil rights or ICCPR is a mutual treaty made by United Nations General Assembly Resolution 2200A (XXI) on 16th December 1966, and it came in to force on 23rd March 1976 in regards to Article 49 from the covenant[1] . The covenant had given the commitment to all parties to have their respective political and civil rights, which included the right to life, freedom to practice any religion, freedom to form assembly, electoral rights and the rights of a fair trial[2]. The covenant was ratified by 173 parties along with six more signatories without any type of ratification.

The right to life indicated that under no circumstances, the right to life of an individual would be compromised by society[3]. For example, if common citizens are made prisoners by a criminal organisation, then the state would be bound to save the common citizens as much as possible, and never compromise the lives of citizens for catching the criminals. In the same way, the right to practice any religion indicated that the countries would mainly provide permission to every individual to practice their own faith and religion[4]. The next right is the electoral rights, and the freedom to form assembly, which means that people have the power to accumulate in groups and choose their own political leader for the benefits of society.

The rights of a fair trial indicate that every individual will be considered as equal in the eyes of the law, and under legal proceedings, no individual can be favoured more by the legal system of the land[5]. It has also been found that even criminals have the right to keep a lawyer, and expect fair proceedings, and not being charged with the problem unless they are proven to be guilty of the particular offence.

1 Ohchr.org. 2020. OHCHR | International Covenant On Civil And Political Rights. [online] Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> [Accessed 26 June 2020].
2 Treaties.un.org. 2020. [online] Available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> [Accessed 26 June 2020].
3 Kempadoo, K., Sanghera, J. and Pattanaik, B., 2015. Trafficking and prostitution reconsidered: New perspectives on migration, sex work, and human rights. Routledge.
4 Osler, A. and Starkey, H., 2017. Teacher education and human rights. Routledge.
5 Clapham, A., 2015. Human rights: a very short introduction. OUP Oxford

International Covenant on Social, Cultural and Economic Rights

The United Nations General Assembly on 16th December, 1966 incorporated ICESCR for mutual treaty by the GA, Resolution 2200A (XXI), and it also came into force from the 3rd January 1976[6]. It is also committed that the parties work towards the gaining of social, cultural and economic rights or ESCR of the non-self-governing as well as trust individuals and territories. It includes labour rights, right to health and education, as well as the right to an adequate standard of living[7] . It is also stated that according to the provision made in January 2020, the covenant consisted of 170 parties, which included four countries, along with the United States, which has not certified the government.

The labour rights include the right to specific working hours, the right to take leaves, and form trade union for stating the employees' demands in a transparent and legal manner[8]. The right to health and education indicates that the healthcare of individual people is required to be free, and the education rights mean that school education is also required to be free for every individual[9]. The right to a proper living standard means that even though there is a freedom to acquire wealth in society, every individual including the poorest section of the society needs to have the availability of basic needs.

The right to a proper living standard also denotes the right to employment against the amount of education an individual has studied in the state[10]. For example, an individual can be graduated from the university due to the right to education, but the failure to provide jobs to individuals by the government does not satisfy the right to get a proper living standard for the individual. Article 10 of the covenant ensures that every individual of adult age has the right to marry and form a family, and the state cannot

6 Ohchr.org. 2020. OHCHR | International Covenant On Economic, Social And Cultural Rights. [online] Available at: <https://www.ohchr.org/EN/professionalinterest/pages/cescr.aspx> [Accessed 26 June 2020].

7 Pwescr.org. 2020. [online] Available at: <http://www.pwescr.org/PWESCR_Handbook_on_ESCR.pdf> [Accessed 26 June 2020].

8 Schabas, W.A., 2015. The European convention on human rights: a commentary. Oxford University Press

9 Goold, B.J. and Lazarus, L. eds., 2019. Security and human rights. Bloomsbury Publishing

10 Merry, S.E., 2016. The seductions of quantification: Measuring human rights, gender violence, and sex trafficking. University of Chicago Press

put restrictions on individuals in terms of marriage[11]. The Article 15 of the covenant ensures the right to participate in cultural life, and enjoy the benefits of scientific progress, and also, to benefit from the material rights for any kind of scientific discovery created.

Women and Human Rights

International Law and Policy

There are various international and regional instruments to the human rights issues of the gender-related dimensions. Among these, the most comprehensive treaty is the UN convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This law was adopted in the year of 1979[12]. This law refers that women have the right to be free from any instances of discrimination and sets out key principles to protect this right. It acts on the quality between both men and women by making sure that women have equal access to as well as have equivalent opportunities in education, health and many more. CEDAW is the only law that covers the reproductive rights of women and approved by 180 states of UN.

Convention on the Elimination of All Forms of Discrimination against Women is the law issued by the United Nations General Assembly on 18th December, 1979. This becomes an international treaty on 3rd September 1981 as until then 12 countries approved this law. Approximately 100 nations have agreed to be bound to the provisions of this law by the year of 1989[13]. This treaty plays an important part to bring females into the focus of human rights issues. This law sets out three important aspects; reaffirming the faith of fundamental human rights, dignity and worth of human person and equal rights of men and women. This policy refers to the definition of equality and how it can be practised. The important aspect of this law is that along with establishing an

11 World Health Organization, 2018. WHO meeting on ethical, legal, human rights and social accountability implications of self-care interventions for sexual and reproductive health, 12–14 March 2018, Brocher Foundation, Hermance, Switzerland: summary report (No. WHO/FWC/18.30). World Health Organization.

12 Unfpa.org. 2020. The Human Rights Of Women. [online] Available at: <https://www.unfpa.org/resources/human-rights-women> [Accessed 26 June 2020].

13 Ohchr.org. 2020. OHCHR | Convention On The Elimination Of All Forms Of Discrimination Against Women. [online] Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> [Accessed 26 June 2020].

international bill of rights it also sets out agendas for ensuring the rights.

The American Convention of Human Rights was adopted at the Inter-American Specialised Conference on Human Rights in 1969. Article 4, Right To Life, capital punishment cannot be imposed upon any pregnant women. Article 6 of this law, Freedom of Slavery, sets out no person should be the subject of slavery and ensures such practice is prohibited and also the slave trade and traffic in the women[14]. Article 17 of this law, Rights of the Family, also refers that the rights of marrying and raising a family should be recognised.

The Arab Charter on the Human Rights was planned on May 22 in 2004 and entered into force on March 15 in 2008. The law is based on the noble Islamic religion and other divine religion's eternal principles of fraternity, equality as well as tolerance among humans. The Article 2 of this law sets out people irrespective of gender have the freedom of choosing political system and can pursue economic, cultural and social development. This law also sets out men and women both have the right to national sovereignty and territorial integrity. In the Article 3 of this law refers that women have the equivalent in terms of human dignity, obligations and rights within the positive discrimination framework by the Islamic Shariah and other laws and by applicable laws and legal instruments[15]. Every state party is pledged to take all possible requirements for establishing equal opportunities between men and women. The Article 7 of this law sets out that death penalty is not applicable for pregnant women before the child birth or to a nursing mother who has not completed two years after giving birth so the primary consideration in both the cases is infant. Article 33 of the law sets out that women have equal rights in marriage and in finding a family based on the rules and conditions of marriage. Protection of women and the prohibition of any sorts of violence towards them. The Article 34 refers that there should not be any discrimination towards women on their rights of training, employment as well as job protection.

International Norms and Standards

The Convention on the Rights of the Child (CRC) was adopted by the

14 Cidh.org. 2020. Basic Documents - American Convention. [online] Available at: <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm> [Accessed 26 June 2020].

15 Who.int. 2020. [online] Available at: <https://www.who.int/hhr/Arab%20Charter.pdf> [Accessed 26 June 2020].

United Nation's General Assembly resolution 44/25 of 1989 and entered into force in 1990 as per Article 49. Children need utmost care from the family and family is the appropriate place for the growth and environment of the family thus it needs proper protection and assistance to take good care of the responsibilities[16]. Article 1 of this law outlines that every human being who is under 18 years old. The law focuses on the four aspects of the rights of the children: Firstly, children can participate in decisions that may affect them, secondly children must be protected against discrimination, neglect and exploitation, thirdly prevention of harmful actions towards children and lastly prohibition of a child's basic needs. The law reflects on the special concern against the rights of children that includes various aspects; firstly the right to freedom from sexual exploitation, secondly child labour, thirdly education, fourthly children in armed conflict and lastly children within the context of criminal law.

The International Labour Organization (ILO) Conventions addressed the issues of Child labour. The International Labour Organization Minimum Age Convention (ILO 138) specifies that the minimum age of employment is mainly 15 years although it is different in Western Countries as they mainly specify the minimum age of 14 years. For the employment under the case of health hazards, the minimum age is 18 years as per the Worst Forms of Child Labour Convention (1999) of ILO 182[17]. The members who ratify this policy are responsible for taking immediate measures to secure the elimination and prohibition of the worst forms of child labour as a matter of urgency. The Article 3 of this law explains what the term the worst forms of child labour by pointing out the sale and trafficking of children, debt bondage, labour (forced or compulsory), recruitment of children for using them in armed conflict. The standard restricts any use and offering of children for prostitution or any work related to pornography and pornographic performances. It also restricts the associated of children in illicit activities such as making and trafficking of drugs as per the relevant international treaties. The worst forms of child labour also include health, safety and morals of children.

There is law for sexual exploitation, the Optimal Protocol to the

16 Unicef.org. 2020. Convention On The Rights Of The Child. [online] Available at: <https://www.unicef.org/child-rights-convention> [Accessed 26 June 2020].

17 Ilo.org. 2020. Convention C182 - Worst Forms Of Child Labour Convention, 1999 (No. 182). [online] Available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312327> [Accessed 26 June 2020].

Convention on the Rights of the Child on the sale of children, child prostitution and child pornography which entered into force 18th January, 2002[18]. There are certain acts such as sexual exploitation of child, transferring the organs of child for making profit or engaging the children in the forced labour and every state party is responsible for punishing people who commit such offences towards children.

The league of Arab States, Arab Charter of Human Rights', Article 17 refers each state party have the responsibility to ensure a child who committed any offence must have the right to special legal system for the minors for all stages of investigation, trail, and sentence enforcement along with special treatment based on the age, protection of the dignity and facilitation of the rehabilitation, reintegration and enabling a child to play beneficial role for community[19]. Article 29 of this standard reflects on the responsibilities of state parties based on the domestic laws of nationality for allowing a child to take the nationality of his or her mother although the entire choice is depended on the child. As per Article 33, it is the responsibility of state parties for the assurance of protection, endurance, well-being and development of a child in an enriched environment of freedom and dignity.

Human Trafficking and smuggling of people

Human trafficking is the phenomenon that deals with recruitment and movement of humans for various forms of exploitation like slavery or organ removal, sexual exploitation. The victims of such practice can be both children and adults irrespective of genders by using threat or force, power, deception and fraudulent schemes[20]. Human trafficking happens within a country and also across the borders. As per United Nations Office on Drugs and Crimes (UNODC), human trafficking is an act of specific means for exploitation.

18 Ohchr.org. 2020. OHCHR | Optional Protocol To The Convention On The Rights Of The Child. [online] Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> [Accessed 26 June 2020].

19 Magliveras, K. and Naldi, G., 2016. The Arab Court of Human Rights: A Study in Impotence. Revue quйbйcoise de droit international/Quebec Journal of International Law/Revista quebequense de derecho internacional, 29(2), pp.147-172.

20 Unodc.org. 2020. Human Trafficking And Migrant Smuggling. [online] Available at: <https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html> [Accessed 26 June 2020].

The global report of UNODC on human trafficking exposes the new form of slavery in the 21st century by evaluating data of 155 countries across the world. As per the data, the most prevalent mean of human trafficking is sexual exploitation that amounts to 79 per cent of cases of sexual exploitation. The victims of such exploitation are mostly girls and women. On the other hand, the data regarding the trafficker's gender has shown that majority of the traffickers are women. Women engaged in such practice is norm in some parts of the world. The second most means of human trafficking is forced labour that amounts to 18 per cent of the overall cases of human trafficking[21]. This data can be misleading as the detection and reporting of forced labour is less as compared to sexual exploitation. The 20 per cent of the trafficking victims are children across the world. But, the rate is the majority in parts of Africa and the Mekong region.

The main forms of trafficking in persons are intra-regional and domestic trafficking. The first international agreement, the United Nations Protocol against Trafficking in Persons came in force in 2003. The implementation of this protocol increased from 54 to 125 out of 155 in past few years among the member states. Although there are many countries who do not have proper legal instruments or any political will.

The officials of UNODC pointed out that the data provides a moderate understanding of moderate slave markets also shows the negligence of UN. The pull of data is impressed and wrongly defined and lacks reliability. As per the reports and data manipulation, UNODC estimates that the situation is declining but it cannot be proved due to lack of precise data as many governments impeding the activity of UNODC[22]. Therefore, the organisation asked governments and social scientists to enhance collecting and sharing process of information as the issue cannot be resolved if there is a huge crisis of knowledge. The main challenge of modern human trafficking is many governments are still living in denial. The intensity of denial further increases when there is any issue of reporting on or prosecuting cases of human trafficking.

21 United Nations : Office on Drugs and Crime. 2020. Global Report On Trafficking In Persons. [online] Available at: <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> [Accessed 26 June 2020].

22 United Nations : Office on Drugs and Crime. 2020. United Nations Office On Drugs And Crime. [online] Available at: <https://www.unodc.org/> [Accessed 26 June 2020].

Figure 1. Major Parts of the world smuggling transits and destinations

As per the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, people or migrant smuggling is an act of directly or indirectly obtaining for financial or any other material benefit of unethical entry of a person into a state party of which the person does not qualify for national or permanent resident. The challenge relies on the fact that there are no proper statistics on the migrant smuggling in every year. As per the evidence, nearly 2.5 million people were smuggled for financial benefits that amount to US$ 5.5-7 billion in 2016[23]. The amount is similar to the humanitarian aid globally by the USA and the countries of European Union. This data is not entirely true as it shows only the known part of such practice.

23 Unodc.org. 2020. [online] Available at: <https://www.unodc.org/documents/data-and-analysis/glosom/GLOSOM_2018_web_small.pdf> [Accessed 26 June 2020].

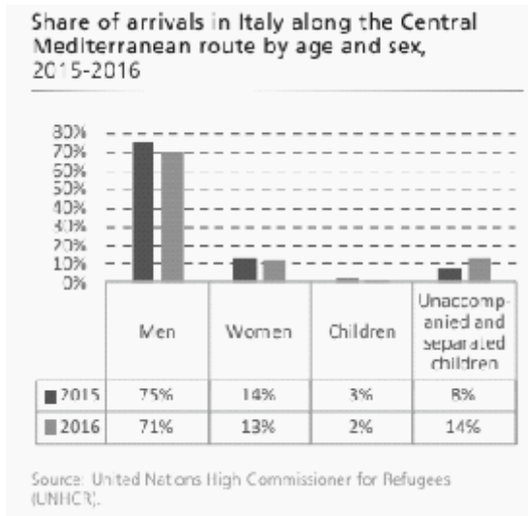

Figure 2. Number of arrivals based on age and sex

Majority of the smuggled people are mostly young men and also unaccompanied children. But it is different in parts of South-East Asia where women are the majority of the smuggled people. The composition of gender, in this case, is mainly influenced by the circumstances that drive their mobility. There are many families among the smuggled Syrian migrants who are mostly escaped from the armed conflict, has fewer reports among the other groups of smuggled migrants. The practice causes the risk of lives of these people as the data refers that 58 per cent of the migrants are drawn while travelling through sea routes, 19 per cent of the deaths of smuggled migrants is mainly due to harsh conditions and illness[24]. They are often indulged into other crimes such as violence, extortion, kidnapping, rape or human trafficking in persons. The challenge remains on the degree of the institutional control over such routes as well as the reception of migrants in transition and destination countries.

Gender, Politics and State Development

The Gender Development Index (GDI) finds out the gaps of development accomplishments considering the inequalities between women and men in basic aspects of human development such as health, knowledge and the standards of living[25].

24 Refugees, U., 2020. Syria Emergency. [online] UNHCR. Available at: <https://www.unhcr.org/syria-emergency.html> [Accessed 26 June 2020].

25 Hdr.undp.org. 2020. Gender Development Index (GDI) | Human Development Reports. [online] Available at: <http://hdr.undp.org/en/content/gender-development-index-gdi> [Accessed 26 June 2020].

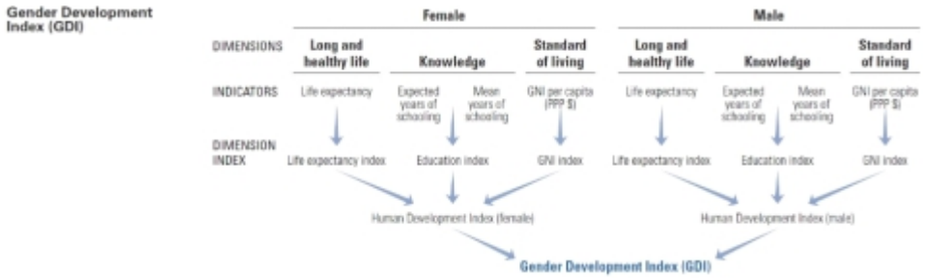

Figure 3. Gender Development Index (GDI)

The data of the GDI shows how much women are still remaining behind their male counterparts and how many of them need to catch up based on the three aspects. The challenge is that the data of recent times is nowhere to be found. As per the data of 2016, the cause of death due to communicable disease among female aged at 15-34 was 42.5 per cent[26]. But, the data was only 22.7 per cent for male of same age group[27]. This gap reflects the lack of development between men and women.

In case of economic opportunities, the employment services for women and men or the percentage of both male and female employees across the world is 45.2[28]. The data is from the year 2020 reflects that the availability of this data on employment of majority of the nations is available.

The World Bank has taken the initiative to take help of politics for development. This is useful in harnessing Transparency and Citizen Engagement as there are the core aspects that can solve the failure of

26 Databank.worldbank.org. 2020. Gender Statistics | Databank. [online] Available at: <https://databank.worldbank.org/indicator/SH.DTH.COMM.1534.FE.ZS?id=2ddc971b&report_name=Gender_Indicators_Report&populartype=series> [Accessed 26 June 2020].

27 Databank.worldbank.org. 2020. Gender Statistics | Databank. [online] Available at: <https://databank.worldbank.org/indicator/SH.DTH.COMM.1534.MA.ZS?id=2ddc971b&report_name=Gender_Indicators_Report&populartype=series> [Accessed 26 June 2020].

28 Databank.worldbank.org. 2020. Gender Statistics | Databank. [online] Available at: <https://databank.worldbank.org/indicator/SL.SRV.EMPL.MA.ZS?id=2ddc971b&report_name=Gender_Indicators_Report&populartype=series> [Accessed 26 June 2020].

governments by forming the function of political markets. In the 21st century, besides queuing on the voting booths, people are coming on street and taking help of technological advancements to choose, sanction as well as pressure the powerful leaders in the government[29]. But this is a nuanced way of engagement can be within same formal institutional context as well as across the various sets of political values that range from autocracy to democracy. The development of policies becomes unhealthy when the leaders are chosen based on their prohibition of private benefits instead of public opinion that leads to many of the government failures.

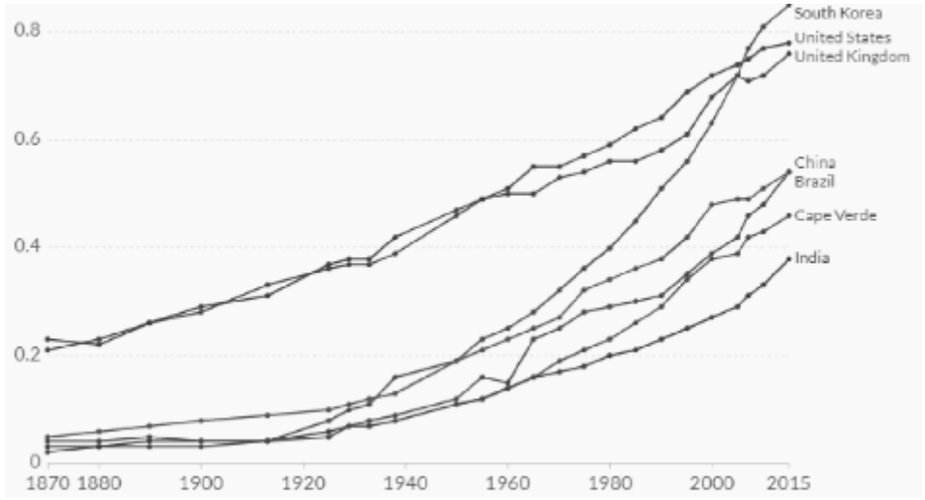

Figure 4. Historical Index of Human Development

The development of states can be measured by the Human Development Index (HDI). The differences in the data differ hugely as the higher values can be seen in North America, Europe, Japan and Oceania and the lower values can be seen in central Africa. As per the historical index of human development (1870 to 2015), South Korea has scored highest score as per the three dimensions of a long and healthy life, being conversant as well as decent standard of living.

29 World Bank. 2020. Making Politics Work For Development: Harnessing Transparency And Citizen Engagement. [online] Available at: <https://www.worldbank.org/en/research/publication/making-politics-work-for-development> [Accessed 26 June 2020].

Authoritarianism, Repression and Corruption

Authoritarianism

Authoritarianism is a kind of government, which is characterised by powerful central power with limitations in terms of political freedom[30]. The political scientists have shared their opinions about different kinds of authoritarian government, where the authoritarian regimes might either be oligarchic, and autocratic, and it is also based on the rule of military or party. The human rights are compromised to a huge extent in the authoritarian society because the power mainly lies in the central government, and not in the hands of people in that kind of a regime, which mainly results in curtailing of freedom and human rights of individuals.

The countries in the 21st century that can be considered as having authoritarian regimes are North Korea, China, Saudi Arabia, Bahrain, Spain, Norway or Sweden. The countries like Hungary and Switzerland have authoritarian democracy, which means it is a democracy of the elites, and common people cannot have any participation in the democracy[31]. Every authoritarian regime is found to curtail human rights like the civil rights of forming assembly, and the right to expression. It is because there is limited political pluralism in an authoritarian regime, which has constraints of political parties, legislature and interest groups.

In an authoritarian regime, the political legitimacy is based on emotion towards the identification of the present regime, minimising political mobilisation, and suppression of anti-regime activities[32]. Also, the authoritarian regimes have lesser executive powers, and it is quite vague. So, the freedom of expression for the normal public is affected as the public are not provided with the freedom to criticise the ruler, the regime or the government. The political party is generally one-party system, and it also suppresses any movement that is against the regime.

30 Mehta, R.L., Cerdб, J., Burdmann, E.A., Tonelli, M., Garcна-Garcна, G., Jha, V., Susantitaphong, P., Rocco, M., Vanholder, R., Sever, M.S. and Cruz, D., 2015. International Society of Nephrology's 0by25 initiative for acute kidney injury (zero preventable deaths by 2025): a human rights case for nephrology. The Lancet, 385(9987), pp.2616-2643.

31 Claeys, P., 2015. Human rights and the food sovereignty movement: Reclaiming control. Routledge.

32 Degener, T., 2016. Disability in a human rights context. Laws, 5(3), p.35.

Repression

One of the challenges in the 21st century that had created a violation of human rights is the repression, or more commonly, which is known as political repression. Political repression mainly indicates a method by which certain groups, phenomenon, or movement is suppressed in the society even though the state is a democracy, or every human being is given their rights to form assembly or freedom of expression[33]. For example, the repression by different states constitutes police brutality, surveillance abuse, involuntary settlement, imprisonment, lustration and genocide in a society. The violent actions that take place as a part of forced disappearance of activities are done by political activists, general population and dissidents.

The 21st century has often observed such violations about human rights due to repression like altering the citizenship rights of specific people in a nation and forcing them to leave the land against a small sum of money[34]. The violation about human rights due to lustration is forcing specific people like the people of a specific community, or a religion to face more punishment before the law, and use genocide to reduce their spread in the society. For example, the police brutality on the black population in the UK, along with the punishment given to the communist leaders in many parts of the world is examples of lustration.

Corruption

Corruption is a kind of dishonesty or criminal offence that is undertaken by an organisation or an individual who is entrusted with authority, takes negative benefit or abuses that particular power for the sake of individual gain[35]. Corruption constitutes different types of activities like embezzlement or bribery, and also it involves different practices that are legal in several countries. Political corruption occurs in a state when the bureaucracy or a person in the governmental authority uses his or her power negatively for personal financial gain. It is quite common in countries that are authoritarian or have an authoritarian democracy.

According to the United Nations charter of human rights, it has been

33 Levy, B.S. and Patz, J.A., 2015. Climate change, human rights, and social justice. Annals of global health, 81(3), pp.310-322.

34 Struthers, A.E., 2015. Human rights education: Educating about, through and for human rights. The International Journal of Human Rights, 19(1), pp.53-73.

35 De Schutter, O., 2016. Towards a new treaty on business and human rights. Business and Human Rights Journal, 1(1), pp.41-67.

found that every individual citizen needs to be equal before the law, and needs to have a fair trial in court for any offence committed[36]. However, due to the presence of corruption, it is found that criminals are often framed, and the actual offender escapes due to the power of money. Corruption occurs mainly for private gain, and so, the government employees have the leverage to set any offender free after taking some amount of money.

21st Century: Human Society – A new approach to today's Global Challenges

Global challenges in today's society are many, which are related to the problems like terrorism, theocracy and authoritarian regimes in different states. The problem is also with the differences in culture, which might be against the human rights that are mentioned by the UN charter[37]. For example, freedom of expression might be a human right, however, in an authoritarian regime, or a monarchy, expressing or criticising the government and its method of ruling is a crime. In the same way, in a theocratic country, criticising the main official religion of the land is considered as a crime, and a punishable offence, which hampers the human rights of the citizens.

The problems of lustration under the right-wing government in many countries are also a problem that leads to the violation of human rights[38]. For example, the right-wing government generally comes to power by pleasing the majority community in a particular nation, and its motto is suppressing the minority in order to get support from the majority. Hence, minorities are suppressed, which often includes genocide and police brutality. The right-wing government in the United States are against Asian minorities because it is believed that they are taking away the jobs, which actually belongs to white Americans. Hence, the police brutality on the Asian people is quite higher than the white Americans.

36 Ramasastry, A., 2015. Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability. Journal of Human Rights, 14(2), pp.237-259.

37 Salomon, M.E., 2015. Of austerity, human rights and international institutions. European Law Journal, 21(4), pp.521-545.

38 Hafner-Burton, E.M., Mansfield, E.D. and Pevehouse, J.C., 2015. Human rights institutions, sovereignty costs and democratization. British Journal of Political Science, 45(1), pp.1-27.

The globalisation is also bringing the problems of religious fundamentalism in a theocratic society. Generally, in liberal secular states, religion is considered as an aspect of personal belief of the society, which has no formal relationship with the government or legal regulations[39]. On the other hand, the problems in theocratic states are related to the law that the public is not allowed to criticise or make any opinion, which is against the overall main official religion of the state[40]. It is seen that the people practising other religions in places like Saudi Arabia, Iran or Oman often faces violation about human rights from the authority, and they are not allowed to take leave or practice their own religions on several occasions.

Generally, in the third world countries, it has often been observed that corruption plays an important part in the overall system of government. It has been found that corruption damages the UN convention about human rights in relation to fair trial and equality before the law[41]. It has been found that corruption makes the wealthier population to buy justice, and gain extra privilege before the law with money, which makes economically backward sections of the society, suffer due to lack of justice in the society.

The global challenges are possible to be addressed by means of giving power to the UN charter to intervene in any state irrespective of the kind of regime or regulations in case the human rights are violated[42]. It has been found that UN intervention helps in resolving several issues that influence the violation of human rights to be more precise. As a whole, the UN commission establishment in different authoritarian and democratic states help in curtailing the violations. It is also found that the states that are authoritarian, and right-winged are required to be closely monitored by the UN in order to reduce the violation of human rights.

39 Ienca, M. and Andorno, R., 2017. Towards new human rights in the age of neuroscience and neurotechnology. Life Sciences, Society and Policy, 13(1), pp.1-27.

40 Cole, W.M., 2015. Mind the gap: State capacity and the implementation of human rights treaties. International Organization, pp.405-441.

41 Bartels, L., 2015. Human rights and sustainable development obligations in EU free trade agreements. In Global Governance through Trade. Edward Elgar Publishing.

42 Von Stein, J., 2016. Making promises, keeping promises: democracy, ratification and compliance in international human rights law. British Journal of Political Science, 46(3), p.655.

Conclusion

It is concluded from the assignment that the UN charter had established regulations on human rights on 10th December 1948, which claimed that there must be certain civil, political, social, cultural and economic rights that are common to all nations. This had led to the formulation of human rights like the right to life, freedom of expression, and equality before the law. Along with that, it has also been seen that the right to form a family, women and children rights including labour rights that justified maternity leaves for women are human rights that are required to be followed in all nations.

However, it has been found that most of the human rights violations had occurred in the 21st century due to challenges like authoritarian states, suppression of internal violence and reports along with the corrupted government in the third-world countries. It has been found that such problems are possible to be curtailed if there is a regulation for managing the human rights violation, and a provision for UN intervention in the nations that are accused of violating human rights. Also, special monitoring is required to be implemented on authoritarian regimes, and the places having the right-wing government to check if any violation of human right takes place. We have had enough Declaration, Convention and Covenants on human rights. The focal point is that these covenants are only tools of limited utility and the real thrust for achievement of human rights has to come from the government and the people themselves. From the Far East toward the western demography there has been inconsistent counteraction of torment to human race. We have visualised our grand old lady the universal declaration on human right have incomplete framework in protecting human rights of vulnerable groups all over the world. The first is to protect and empower vulnerable groups by eliminating violence and discrimination based on gender, race, ethnicity, disability, sexual orientation and gender identity. Secondly the declaration needs to be reinvigorating in the matters of human trafficking and people smuggling. This criminal activity which is infringing fundamental right of human being need to address at the highest level by every nation so to improve the effectiveness of the domestic human rights architecture. Everyone in this society is born free with equal dignity and rights to preserve the same is the responsible of every human being. Our only hope is that government and civil society will work together to articulate vision of human right.

In order to implement the protection about human rights by the UN charter in all nations, it should be made universal, and every nation

should be forced to allow UN intervention in regards to violation of human rights. In case the nation does not comply, the nation should be boycotted in business by other nations that are connected with the UN in order to build international pressure. In order to reduce the challenges about human rights violations in the 21st century, the monitoring of authoritarian regimes and the regimes having the right-winged government should be done. The theocratic states should also be monitored closely for violation of human rights.

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From Violation of Perceived Animal Rights to Prevention and Protection of the same: A study of Ritual Shifts within Bull Cults of Early India

Smita Sahgal *

Abstrac

Bovine worship in India is of some antiquity. It may not have had its genesis in any organized belief system but remained pervasive as cultic practice with a sound grasp on the psyche of the populace. How do we define a cult? Within Indian religio-philosophic traditions the expression cult is used to designate a diffused and individualistic belief system, centred on an animal, deity or an individual. It spans a stretch of time and may experience some modification without being subjected to formal indoctrination. Today, it's the cow that holds a very venerated place in the sacred schema of majority of Indians but historical explorations reveal a far more exalted status for the bull. Bull cults spanned their hold on the people through an array of practices that included myth formations, ritual performances and community participation.

The focus of the paper is to explore the role of rituals in expanding the popularity base of bull cults of early India. Did it have something to do with bull's tremendous power of symbolism and ritual adaptability? The bull was one animal that could cut across divides of many kinds and associate itself with both divine or mundane and elite or populace. Did the mythic formulations within the ritual frame reveal bull as a metaphor of masculinity, fertility and strength? How did ritual shifts help in the sustainability of its reverence levels? In other words how did it retain its hold on religious aspirations of the populace through a long historical trajectory, roughly stretching from first millennium BCE to first millennium CE? The shift that we seek to study is contextualized in a larger religious-historical frame and relates to changing notion of sacred. What is sacred? We need to start our study by defining scared.

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Key words: - *Bovine worship, cult, deity, sacred, masculinity.*

Introduction

Defining sacred

In common parlance sacred is considered something 'worthy of spiritual respect or devotion; or inspiring awe or reverence among believers in a given set of spiritual ideas.' In the world of sociology sacred is often distinguished from profane. Today sacred is associated with something intensely religious while profane with the secular. Performance of cultic rituals especially the sacrifice at a designated space became the key to this definition of sacred in ancient times. The definition is, nevertheless, subjected to variation. Scholars like Durkheim analysed the sacred as originating in a symbolic projection of clan or tribal group identity, as an intensely social phenomenon.[1] On the other hand, Rudolf Otto portrays the holy/ sacred as power far greater than and lying far beyond the human realm.[2] Mircea Eliade's[3] generation has invested the sacred with the same connotation that Otto's generation did to the 'holy'. The sacred/holy is associated with the numinous or a particular awareness of the presence of divinity and mysticism or what Otto calls tremendum (awe-inspiring, overpowering, and transcendent). For Eliade this sacrality was cosmic and primordial with an on-going revelatory capacity, and rituals and myths were integral to it. The rituals recapitulate the cosmogenic reality and myths decode these. For those who have a religious experience the entire nature can reveal itself as cosmic reality. Malinowski does accord more relevance to individual than Durkheim does but sociologists argue that this consciousness 'cannot be disconnected from social sphere'.[4]

So, should sacred be taken as something social, something unanimously shared by people or something individually experienced, considered a response to divine stimulus and mystical in its dynamism, removed from any social experience? The possibility of the overlap cannot be denied. For instance, a sacrifice within the designated space/ temple can be at

1. E. Durkhiem, Elementary Forms of Religious Life (1912), trans. Karen. E. Fields, New York: Simon and Schuster Inc, 1995.
2. Rudolf Otto used the word holy and not sacred, cf., The Idea of the Holy, trans. JW Harvey, (New York. OUP, 1923; 2nd edn., 1950; reprint, New York, 1970.
3. Mircea Eliade, The Sacred and Profane: The Nature of Religion, (English Trans.) New York: Harcourt. 1957.
4. Reimon Bachika, 'On the Sacred and the Profane', archives.bukkyo_u_as.jp, p. 165.

once a social as well as an individually spiritual and experiential phenomenon.

The aim of the paper is to study ritual shifts especially the move from sacrifice of the bull to its release as a sacred rite. We need to understand both what mandated the sacrifice of bull in the first place and also what prompted the change to an act of its release. Was this linked to changing social formations or to some theological shift? This would require understanding of both these rituals but before that we need some clarification on the concept of sacrifice in ancient times.

Sacrifice within the frame of 'sacred'

Sacrifice constitutes an act of worship within the context of a cult, especially of the ancient period throughout the world. Sacrifice may be defined as an act at the core of which lies a very fundamental expectation or anticipation of a bountiful return of what has been deliberately destroyed or given up to appease the divine. At another level it may also be defined as a way of communicating with transcendent reality in words, thought or by ritual performance, the most popular being the last one. As in the case of myths sacrifice has also been identified as the cause of the origin of the world. Among all the sacrifices, animal sacrifice has been the most common one. The victim would be first consecrated and then put to a ritualized death. Thereafter all those participating in the ritual would partake of the meal of the consecrated dead animal.

French sociologists Henri Hubert and Marcel Mauss believe that a sacrifice establishes a union between the realms of the sacred and profane.[5] This occurs through the mediation of the slain animal, which acts as the buffer between the two realms, eliminating the need for direct contact. The victim represents or 'becomes' both the invisible divine recipient of the offering and the human being who makes the offering. In other words, he represents the god as well as the sacrificer who seemingly gets merged in him.

Other scholars such as A.K. Coomaraswamy put it that to sacrifice and to be sacrificed are one and the same thing.[6] Sylvain Levi has similarly

5. H.Hubert and M.Mauss, Sacrifice: Its Nature and Function, pp.31-32.
6. A.K.Coomaraswamy, ' tmayajca: Self-sacrifice', Harvard Journal of Asiatic Studies, Vol 6, p.359.

suggested that the only authentic sacrifice would be a suicide. In fact; it is only in the context of a sacrifice that animal-offering is not regarded as a sin; a suicide,[7] murder or deicide even when it actually might be so. René Girard notes a paradox arising because of victim's sacrality, 'because the victim is sacred, it is criminal to kill him—but the victim is sacred only because he is to be killed'.[8]

The sacrificer is able to save himself from the sin of death by the act of consecrating the victim. For all the sacrifice is defined by substitution. It is in the first place a substitute for an impossible or prohibited real act, such as actual coalescence of the divine and the human, a real suicide. or un-ritualized violent aggression and murder. All substitutions within a sacrificial ritual are therefore substitutions for a prior and definitive substitution. The substitute victim is a symbol, a symbol for the pair of opposites like the sacred and the profane, recipient and the giver or god and human. It stands for something else, and therefore it may be an animal, vegetable, drink, etc. If substitution is the key to sacrifice, then the only thing the victim will not stand for is itself or more precisely it alone; a bull may symbolize bulls in general or cattle or even the owner of the cattle. It may be worth noting how this substitution works to the point when animal sacrifice itself may be declared redundant. Let us now take a look at the sources that we would study to explore ritual shifts within early Bull cults

Sources: Their Time and Expanse

There is no dearth of primary literary material. Texts such as the Vedas (1500-500BCE), Dharmaśūtras, G hyasūtras, Śrautsūtras. (500- 100 BCE), Dharmaśāstras, (200BCE-200CE), epics especially the Mahābhārata (Fourth century CE), Purā as (from fifth century onwards), some texts of the Buddhist canon (from fourth century BCE onwards), constitute the main sources of our research.

Most of these texts were composed and compiled in north-west and northern India extending up to central part. It is actually very difficult to pinpoint an exact locale of their compilation; only broad tracts can be inferred. We must also acknowledge the relevance of material finds which

7. cited in Brian.K.Smith and Wendy Doniger, 'Sacrifice and Substitution; Ritual mystification and mythical demystification', Numen, Vol.XXXVI, Fas.2, pp. 188-219.
8. Renй Girard, Violence and the Sacred, p.1

also constitute vital religious expression and provide us with tangible proof of physical artefacts and centres associated with cultic beliefs. However, here we are going to confine our study to textual material, as it allows us to peep into mental frames that made the bull a revered being in the estimate of ancient Indians. Prima facie most of the literary evidence provides a brahmanical (upper caste) perspective alone. A closer scrutiny, however, enables one to sift through the views of the populace which may have been decried, proscribed or grudgingly accommodated in the texts.

Historic Location of Sacrifice within the Vedic Corpus

The Rksa hitā, the oldest extant literary source, depicts various societies adhering to different cultural forms. The authors of the text were pastoralists as can be verified from innumerable hymns that are cattle-oriented. However, they practised some agriculture also. Since pastoral migrants often have close relations with local sedentary communities, the situation would have, at times, led to confrontations. At other times it may have warranted negotiations. Conflicts are bound to arise from stealing cattle, from disputes over grazing grounds or controlling river water. Families or clans would often own herds but the pastures used must have been in common.

A rapid increase in livestock or its reallocation could be easily achieved through a raid. Religious practices such as performance of sacrifices were aimed at acquisition of cattle. Land became important only form the 'later Vedic' period (1000-500 BCE) as agriculture came be practised on a larger scale. Class and caste differences became sharp as the society came to be divided amongst brahmins (priests), kshatriya (warriors), vaishyas (cultivators and traders) and shudras (service providers). By this time the authors of the Vedic corpus had moved geographically into the middle Ganga belt, the most fertile belt of the Indian subcontinent. Popular religious aspirations rested on both hope for constant food supply and many more children, especially sons. Skirmishes over cattle and land would have continued.

The Rigvedic pantheon appears to be a polytheistic one, and gods were predominantly male as was natural in a patriarchal society. Among the gods the most important was lndra. Always ready to smite dragons and demons, fond of feasting and drinking soma, he was followed in his might and popularity by Agni, Soma, Varu a, Mitra and Dyaus. Many myths were woven around these gods; the existent tradition of the text has not preserved these myths in their full form. These were tales with whom the people were already familiar and these seeped into these hymns

which, at times, give us very little clue to their background. From the hymns we also get an idea of ritual practices like the performance of sacrifices and giving of dakshina as a part of sacrificial rituals.

The Rksa hitā is replete with numerous references to the terms v isha (1.175.1. 8. 13.33), vrishan (3.35.3; 6.22.6; 8.13.22) and vrishabha (3.36.5; 3.38.5; 3.55.17; 6.18.1). Vrisha implies 'to rain down, shower down, pour forth, effuse and shed. It also implies male, husband, a bull, the chief of a class or anything eminent. Vrishan means raining, sprinkling, impregnating, manly, vigorous, powerful, strong, mighty and great. Myths around the bull highlight its male character as the Mudgal-Mudgalani myth.[9] Ritual performance often took the form of bull sacrifice.

Ritual performances reiterate the notion of sacred within any cultic frame. These often took a form of sacrifice. An explicit reference to the cooking of a bull comes in the verse X.27.2, where sage Vasukara (Indra's son) is said to have stated that he would cook a bull and prepare a soma drink for Indra when the latter would lead a battle against enemies. The offering and consumption of the sacrificed bull implied the transfer of its might to the sacrificer, the yajamāna.

Did consumption of a bull by Indra hold any special significance? A.B. Keith[10] has pointed out that by eating certain animals their animal qualities were attained by men (and even gods). Therefore, by eating bulls the god (Indra) strengthened his nature in the bull aspect. Hence, Indra received bulls and buffaloes, Pū ana received goats and so on. Similarly, when the yajamāna (who was more often than not the tribal chief or a ruler of janapada) partook the sacrificial meat, he, too, assumed the dominant quality of the consecrated beast; in this case its strength. Participation in such rituals and listening to the recitation of associated myths made participants an active part of the entire ritual drama. And when that entailed primordial recreation, participation would become significant manifold. Such rituals made both social and experiential aspects of the ritual more tangible for all associated with it. A case in point would be the sacrifice of the so-called cosmic bull as pointed out in the Atharvaveda.

9 Riksamhita, X.102.
10. A.B.Keith, The Religion and Philosophy of the Veda and Upanishads, p.280.

The Atharvaveda[11] (IX.4) bull appears as an androgynous being, a primordial self-seminating force, and became associated with cosmic parturition. The bull, here, was directly related to the origin myth. The occasion for the recitation of the hymn was the sacrifice of the bull. This sacrificial bull in the verse IX.4.22 got identified with the Cosmic Bull. It is stated that when only waters existed, and the Primeval Bull became the counterpart of the waters. The waters were the fertilizing cosmic waters, and in the beginning their 'counterpart', the Bull, was likewise established as a primordial fertilizing force. In this capacity he was Vishvarupa. Thus, the Cosmic Bull carried all forms of phenomenal reality in his several bellies (vaksha a) which may be likened to female breasts or wombs. The Cosmic Bull had several seemingly contradictory features. It was both impetuous and possessed of milk and had womb-like qualities. It was associated with both masculine and feminine attributes. Verse IX.4.3 reflected the bi-sexual imagery of the bull: a male (yet) pregnant, strong, rich in milk, the Bull carries a vessel of wealth. Evidently the cosmic Bull was conceived to be an androgynous being, carrying in his womb all phenomenal forms which the poet calls his 'vessel of wealth'. Did it become the primeval being as it subsumed within itself both male and female characteristics?

It may be worth asking if the sacrifice brought within itself an element of mysticism. We have referred to the concept that sacrifice was not considered violent at all. Therefore, the mechanism of putting to death the animal within the context of sacrifice was differentiated from ordinary bloodshed or hunting. 'They should not end the animal by striking on the head or by hitting behind the ears. The death should be caused by closing the mouth [and suffocating it] or strangulating it. It should not be said 'execute it (jahi)' but 'put it to death (marayati)'. By saying 'make it acquiesce, it has passed away' the victim 'would go straight to god'.[12]

Therefore, emphasis was on eschewing the human technique for putting the animals to an end and the straightforward terminology humans used to refer to such an act. By substituting the god-like method of erasure and divine euphemistic language of death ('it has passed away'), a profane act was transformed into a sacred one. Such mystification of the central act

11. Atharvaveda, ed.by C.R.Lanman, Trans.by W.D.Whitney, Hos 1905, Delhi, India reprint, 1962, 1971[reprint].
12. Shatapatha Brahmana, III. 8.1.15.

may have also arisen from the classic paradox that Girard mentions: the victim is sacred and hence should not be slain, but because it's sacred it must be sacrificed. The resolution of this inner conflict must have come up through linguistic juggling and dramatized ritualistic presentation that made it seem that no erasure had taken place.

Later this was seized on to justify a reluctant continuation of the practice of sacrifice in the post-Vedic age that apotheosized the apparently contradictory principle of ahimsa or non-violence. As Manu puts it, 'offering in the sacrifice is not sinful at all'. [13]

The sacrifice of the bull continued. Agnishtoma ('praise of Agni') sacrifice, too, was a soma ritual and included animal sacrifice. The Taittiriya Brahmana [14] and Pancavimsha Brahmana [15] mentions Agastya offering of a hundred bulls at a sacrifice. This myth seemed to be a part of Pancashradiya rite. The Panchashradiya ritual was a five-day sacrifice of many bovine and the preparation time for this ritual spanned five years. Similarly, within the Shulagava [16] also a bull is offered to Rudra but the sacrifice here is conducted without the presence of agni or fire and the spot chosen is also outside the village, and at night. Was it so because Rudra was still considered an outside 'deity' to the main Vedic pantheon? But interestingly bull was acknowledged as an important cultic animal that may have allowed for divine association for both Vedic and non-Vedic populations and rituals associated with it were relevant to all people at that time.

Sacrifice, then, was performed to receive the might of the bull, to participate in the re-creation of cosmic recreation drama or to ensure fertility amongst cattle. But no sacrifice could be complete without dakshina. In fact, the dakshina (sacrificial fee to the priests) was the keystone of the sacrifice, without which the sacrifice was incomplete. Only a well-performed sacrifice was a potent sacrifice. For the sacrifice to become efficacious, the services of well-qualified priests had to be secured, and for ensuring that gods would be pleased dakshina had to be willingly given. Therefore, the giving of dakshina became an intimate

13. Manusmriti, V.39.
14. Taittiriya Brahamana, II.7.1.1
15. Paanchvimsha Brahmana, XXI. 14.5
16. Paraskara Grihyasutra, 3.8

aspect of a complete ritual right from the early days, as can be gathered from the earliest text, Riksamhita.

The bull's value as an item of dakshina grew with the passage of time. We come across references to rites like the Vishvajit, [17] which required the yajamana to give away all his wealth, including cattle, during the ritual, and in the process acquire the blessings of the gods who would replenish wealth in course of time. In the Vishvajyoti [18] rite as well, a thousand cattle were given away as dakshina; but by giving away these, the yajamana was told he would actually gain them all. Such rites were evolved to 'apparently' remove sufferings that followed the giving away of every form of property. It was an interesting way of assuaging the sacrificer for his loss.

Changes Reflected in Post-Vedic Texts

The post-Vedic centuries witnessed a transition to a new historical scene in north India with the establishment of kingdoms, oligarchies and chiefdoms and the emergence of towns. Attention now shifted from the north-west and Punjab to the Ganga plain, although the former area continued its activity. Changes in polity were evident; especially from chiefdoms, janapadas, to kingdoms, mahājanapadas. We are looking at the beginning of state formation and second urbanization that brought in changes in the socio-economic milieu that would have an impact on cultic beliefs as well as notions of the sacred. There was agrarian expansion, and this type of agriculture got more and more integrated with animal husbandry, but the elaborate ritual that gained currency in the late Vedic period only promoted the depletion of bovine wealth.

To be fair, right within the Vedic corpus we start locating a protest against sacrifices, especially during the later phase. In the passage III. 1.2.2.1 of Śathapath Brāhmana, an appeal was made to avoid erasure of cattle in sacrifice or otherwise. Hans-Peter Schmidt draws our attention to a passage in Taittīrīya Sa hitā where violence is reduced in a counter-sacrifice.[19] Accordingly, somebody whose rival performs a sacrifice in order to harm him should offer a counter-sacrifice where a vegetal sacrificial cake substitutes a bovine to foil an expensive sacrifice with a less expensive one and also contain violence against animals.

17. Pancavimsha Brahmana, XVI.6.1-2.
18. Pancavimsha Brahmana, XVI.9.1.
19. Hans-Peter Schmidt. 'Ahimsa and Rebirth', in Michael Witzel. ed. Inside the Text Beyond the Text, p.207-234.

At a mythic level too, animal substitution was worked out within the realm of sacrifice as animals began gaining relevance within the socio-economic milieu and animal wealth was deemed too precious to be wasted. Myths are found in Aitareya Brāhmana[20] and Maitrayānī Samhitā[21] that allude to substitution. 'The gods offered man as sacrificial victim. Then the sacrificial quality (medha) passed out of the offered man. He became a ki purusha. It (medha) entered the horse'. They offered the horse but the sacrificial quality passed out of the horse to enter the bull. They offered the bull but medha passed out of him and entered the ram and then passed out of him also to enter the goat. It stayed the longest in the goat; therefore, the goat is the paśu most often used for sacrifice.

Later it entered vegetal offerings too. The argument is that once the sacrificial essence has left the animal it should not be consumed. The ground for eventually giving up meat was being prepared.

We see the change coming within the Upanishads themselves. The trend starts with the Brihadaranyaka Upanishad [22], where there is a general side-lining of the idea of performing animal sacrifice as a part of religious acts. The text revolves around the notion that knowledge was greater than sacrifice. It states, 'there are three kinds of worlds—the world of men, the world of fathers, and the world of gods. This world of men is to be attained by son only, that of fathers through sacrifice and the world of gods only through knowledge'. Acquisition of knowledge was touted as greater than performing karmakanda rituals.

However, the most emphatic protest against animal sacrifice was registered in early Pali texts. The earliest Buddhist text, the Suttanipata[23] , considered non-violence to be amongst the greatest virtues that had to he inculcated amongst the lay devotees or upasakas. By means of a story in the Suttanipata, the Buddha taught that cattle should be protected. Talking of ideal brahmins of the older times, he stated that they performed a sacrifice in which cattle were present but were not killed. 'Like mother, father, brother and other kinsmen, cattle are our great friends, and

20. Aitareya Baahmana II.8.,
21. Maitrayani Samhita III.10.12
22. Brhadaranyaka Upanisad,I.5.16
23. Suttanipata, ed. by D. Andersen and H.Smith, Pali Text Society, London 1913; Trans. Woven Cadences of Early Buddhists by E.M.Hare, SBB, London , 1944

because of them plants grow. They are givers of foods, strength, beauty and happiness'. [24]

This was indeed revolutionary for the time. It may be added that Jainism also strongly rejected animal sacrifice as prescribed in the Vedas. In the Uttaradhyayana Sutra, [25] which is considered to be one of the earliest Jain canonical texts, we find a condemnation of the act of offering of animals. Brahamanical emphasis on goraksha is similar to the Buddhist concept of gorakkha and the Jain concept of ahimsa. And all the three traditions may have been eventually influenced by a growing discontent with sacrifice of animals.

Suffice it to suggest that the economic value of the cattle in general and the bull in particular certainly founded a ground to their ritual status in the ancient as well as the contemporary world. The popularity of the so-called heterodox sects and their condemnation of animal sacrifice may have created an intellectual milieu that made brahmin theoreticians also reconsider their demand for decimation of bovine wealth, and we begin to witness a very gradual revising of their views on animal sacrifice. Did this imply an end to animal sacrifice'?

It would be incorrect to say that bull sacrifice came to an end, but gradually the purpose of sacrifice, and the benefits accrued therein, seemed to become more fluid, and 'sacred' as a concept began to accommodate new ritualistic aspects. We have already mentioned the concept of animal substitution and vegetal offerings within the sacrifice. The shrauta (large scale public) rituals gradually gave way to g ihya or domestic rituals. Now the bull became important in some marriage rituals. The bull's presence in marriage rituals is explicable from the fact that the animal was considered enormously virile and productive. Kaushikasutra[26] informs us that at the time of a marriage, a bull was covered with a piece of cloth that was besmeared with residue oblation (sampata) made with Atharvaveda 11.36 mantra, 'may a wooer come to this girl... '. Consecrated with this text, the bull would be let loose and the bridegroom was asked to come from the same direction from which the bull had turned. The bride was made to sit on the red bull's skin,[27] while taking hold of the bridegroom's hand. In most of the texts this act would

24. Yatha mata pita bhata anne vapi ca nataka gavo no paroma mitta yasu jayanti osadha, annada balada ceta, vannada sukhada thata etamahthavaso{ natva nassu gave hamisu te, Suttanipata [Varanasi edn.] Brahmanadhammika-Suttam 13-14.
25. Uttaradhyana Sutra, Chapter 25.
26. Kaushikasutra , 37.4 .
27. Also in Shankhayana Grihyasutra, 16.1

take place in the couple's house where it preceded the ceremony of placing a boy in the bride's lap. Every detail of the ceremony was important. It was also specified that the bull whose skin was used should not have died of old age or disease.[28] Is this a reference to bull sacrifice as a part of marriage ritual? The neck of the skin of the bull was to be turned eastward and the bride should be seated on the hairy side (which was considered to contain productive power).

Shifts in Popular Bull Rituals (first millennium CE)

Vrishotsarga: Ritual of Release of the Bull

As violence against the bull came to be contained, the practice of Vrishotsarga or the release of the bull as a part of ancestral rites (vidhi) became more popular. We start getting its recurrent reference within the post-Vedic texts starting from the Grihyasutras, Vishnu Dharmasutra moving out to the normative texts such as Anushasanaparva of the Mahabharata, Visnusmriiti right up to Garuda Purana of around 900 CE. Within the Grihyasūtra, Vishotsarga was a ritualized traditional farmer's or cattle keeper's custom. It was primarily a fertility ritual, or what has been referred to as the "wedding of an excellent bull" meant for fertilization of cows and multiplication of cattle wealth.

Not only did the rite strongly bring out the 'manly' attribute of the bull which alone was chosen to impregnate many cows, but it also deflected attention from continuous sacrifice and sacrificial consumption of meat. The rite which might have begun as an independent tradition became a part of the ancestral ritual, the shraddha, wherein the release of a bull brought satisfaction to ancestral spirits, reiterating the fertility dimensions of the sacred, and lowering emphasis on removal within sacrificial context. It is important to note that even pitrs are shown to be satiated not by a sacrifice but the release of the animal.

The vidhi or the procedure is described at length in the texts. The Vishnu Dharmasutra gives us the details; ‘The ceremony should happen on full moon day in Kartika or Ashvin. The bull should be examined first, he should be the offspring of a milch cow having young ones living, he must

28. Kaushikasutra, 7.24; 18.5.

have all auspicious marks (not deficient in any limb) and must be dark coloured or red but having a white mouth, white tail, white teeth, white horn she must be the one that protects cows. Thereafter having kindled a blazing fire among cows (in the cow pen) and having strewn Kusha grass around it, a blacksmith should mark the bull on one flank with a discuss and on the other with a trident and subsequently wash it as mantras are recited. The bull should be decked and together with four young cows, which also should have been washed and decked (and mantras recited), be readied for release and roaming around. A prayer to be constantly uttered (by the officiating priest) to the cows is, 'This young bull I give you as husband, roam around sportingly as your lover. May we not lack progeny, O King Soma!, nor physical fitness and may we not succumb to our enemy'… The water of the pool at which the bull is let loose (in honour of the deceased person by his son or like and is consumed by the bull reaches the manes. Wherever this bull scratches the earth, the earth becomes abundant in food supply and the manes are also satiated with abundant food and water'[29]. The Anusasanaparva informs us that that the pitrs (manes) are represented as by letting loose dark a dark coloured bull, by offering, a man becomes free from the debt he owes to the pitrs water mixed with sesame and by lighting lamps in the rains. [30]

In the Garuda Purana it is mentioned that the deceased person for whom a bull is not let loose on the11th day after death permanently remains a preta (ghost) even if hundreds of sradhas were offered for him. In case a bull is not available then an effigy of the bull made of darbhas of flour or clay should be symbolically let loose.[31] Within the same text the merits accrued to performing of V ishotsarga are made comparable to that of the Ashvamedha.

What could be main idea behind the concept of release of the bull? According to P.V.Kane, if a conjecture is hazarded, it appears to have been thought that , 'if a bull were freed from toil (that is the lot of most of the bulls) and placed in midst of pleasant surroundings, the act ….may bring happiness of the departed spirit'[32]. That may have been the one of the reasons but it is also worth dwelling upon bull being a popular symbol of fertility that is often remembered for its potency to increase cattle supply.

29. Vishnu Dharmasutra, 86, 1-20
30. Mahabharata, XIII. 125. 73-74.
31. Garuda Purana II.5.40, 44-45
32. P V Kane, History of Dharmashastra, Vol. IV, p.542.

One bull could impregnate many cows and a healthy and consecrated one with ritual protection was more likely to do so. Its association with sons can also not be missed out. A son has to release for the pitrs (fathers) who on the other side would also help by blessing the son with progeny. The Garuda Purana made it almost mandatory to perform the ritual lest the fathers became ghosts. If not the real one an effigy had to be released. Could a near total ban on bull sacrifice and substitution of bull with bull image have to do with growing recognition of its worth in mundane activities as well a general abhorrence towards animal violence? The emphasis on non- violence or ahimsa placed by heterodox sects would have impacted general social milieu though one cannot deny that this kind of questioning had also come in within the Upanishads where animal-offering of any kind was being questioned in more esoteric terms. But the worth of bull was estimated in areas beyond the mundane too. Release of the bull as a part of Vrishotsarga was to accrue as many merits in the next world as the Ashvamedha ritual that had mandated putting many animals to death. Now, we are informed that animal offering is not needed at all, rather the bulls were required to thrive and mate with cows. In the process the concept of sacred acquired a new meaning all together.

At a historical level this would imply a growing relevance of the animal that occupied the minds and lives of the people. Even as times were changing and shifts in social formation could be witnessed, the logic of bovine worship did not diminish. The bull continued to have the ability to bring about a link between the domains of sacred and profane. The Puranas give us an insight into the possible acculturation of local bull cults within a more expansive Shaiva pantheon. From Matsya Purana we gather that the bull was recognized as a sacred being by none other than Shiva, who told Narada that a learned bull, Nandi, would explain rituals connected with his ordinances—the Maheshvara Dharma.[33] In a prolonged dialogue which runs through more than ten chapters, Nandi explained to Narada the procedure of following various vratas (vows), along with the fruits and benefits accrued. The dialogue stretches from serious issues like eternal abode in the universe, the position of various gods therein, asceticism, self-denial, purity of heart to mundane topics like peace and health or the duties of women towards their husband and god and so on. One of the chapters[34] is devoted to an explanation of sixty vratas which dispel great sins, and another ten sections are devoted to the

33. Matsya Purana, Maheshvara Dharma, 2-3.
34. Matsya Purana, 101.

importance of Prayaga as a place of pilgrimage.

Forms of worship changed, and now bloody-sacrifice gradually became a taboo. Bull cults adapted themselves to a new form of worship: Along with growing practice of vrishotsarga that continued to remain important as an ancestral rite, the bull surfaced in the bhakti worship that came to be associated with puranic traditions. For instance, Padma Purana[35] emphatically states that on certain days a bull should be worshipped with various kinds of article like sandalwood, flowers, oils, etc., that bulls were equal in status to brahmins, and that there was V sha tirtha, a pilgrimage place associated with the bull, and the goloka, a supra-mundane realm of the bovine divine, that devotees should aspire to reach. This would be subsequently translated into temples specifically reserved for bull worship, as indicated by the Bull temple on the Chamundi hills, Mysore, where the worship of bull is done till this date by women aspiring for sons. Compared to early periods there was a positive waning of demand for live cattle as a form of dakshina (sacrificial fee) or dana (gifts) Instead of giving away live cattle, both bulls and cows (often made of grass, sugar, jaggery or gold could be given away as their substitutes. However, it needs to be reiterated that the practice of donating live cattle did not disappear; the practice of substitute images came up along with it.

Conclusion

The study elucidates the trajectory of how bull cults adapted themselves to the changing notions of the sacred especially within the domain of rituals. What really stood out was the reinterpretation of the term sacrifice: the bloody sacrifice was gradually replaced by sacrifice of vegetal offerings and the substitution of models for live animals. Simultaneously there was also a theological shift to atmayagyana or the sacrifice within, so well expounded in Upanishadic philosophy. Even at the karmakanda level, instead of offering a bull within the context of sacrifice, its release to impregnate cows as a part of V ishotsarga became religiously more meritorious. Gradually, even the giving away of a live bull as dakshina or dana was replaced by substitutes, and followers were convinced that the merits of the rites would not diminish. In Puranic context, the bull continued to be the communicator between the live and the dead and also an instructor of vratas. More important it adapted well

35. Padma Purana, chap.Vl

to the ritualistic need of historical times as deified and new forms of reverence emerged within the growing framework of vratas, tirthas and temple worship. This is a testimony to amazing ability of Bull Centric religious traditions to mutate with changing milieu and transform their practices from heavily ceremonial karmakanda traditions first to the one based on knowledge or jnana (gyan) and then to bhakti traditions where the sacred took the form of devotion and rites abjured violence.

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Rise of Terrorism in Jammu and Kashmir and the Role of Locational Personality

Satya Raj and R.B.P. Singh***

Abstract

There is no universal definition of terrorism as of now. A lot of ambiguity surrounds the word terrorism. An objective and internationally accepted definition of terrorism can never be agreed upon as one man's terrorist can be another man's freedom fighter.The term 'terrorism' is also very often confused with terms like 'extremism', 'guerrilla warfare', 'insurgency' etc. Though these terms appear synonymous, but there exists significant differences between them. The form of terrorism that exists in Jammu and Kashmir (J&K) is jihadi terrorism which is transnational, and somewhat a hybrid of insurgency and terrorism. There appears to be no coherence with the real meaning of jihad as interpreted by Muslim scholars which is a personal purification project that each Muslim should undertake and the militants version of jihad that is a holy war waged against the non-believers that advocates the use of violence and terror.

Apart from highlighting the definitional problem of terrorism, this paper also investigates into several causative factors and situations that have led to the emergence of terrorism in the state of Jammu and Kashmir. The locational personality of this land is the most important factor that has led to the emergence of terrorism and the evolving geostrategic interests of nations and geostrategic tension in the region. The neighbouring countries of China and Pakistan have occupied different parts of this territory due to which it is wedged between India, Pakistan and China, all nuclear powers. China has been keenly interested to get a passage through Jammu and Kashmir to Arabian sea, for serving her economic, political and geostrategic interests. On the other hand U.S.A. and other powerful Western countries had developed an impression that Pakistan must be supported on various issues, so that it does not play in the hands of red flag holders. Hence it is locational misfortune of this land and the evolving geostrategic interests of nations which caused geostrategic tension and made this land a 'geostrategic hotspot'.

Key words: - *Terrorism, Guerrilla warfare, Insurgency, Locational personality, Geostrategic hotspot.*

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Introduction

The word 'Terrorism' is one of the most ambiguous words in the contemporary political vocabulary.Most researchers tend to believe that an objective and internationally accepted definition of terrorism can never be agreed upon; after all, they say, ''one man's terrorist is another man's freedom fighter''(Laqueur, 1987). In their view, it is sufficient to say that what looks like a terrorist, sounds like a terrorist, and behaves like a terrorist is a terrorist. The other school of thought belongs to states that sponsor terrorism who are trying to persuade the international community to define terrorism in such a way that the particular terror groups they sponsor would be outside the definition (Ganor, 2002).The United Nations High-Level Panel on Threats, Challenges and Change (2004), states that lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism and has stained the United Nations image."

Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that 'terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them". UN Security Council, in its resolution 1566 (2004), referred to "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organisation to do or to abstain from doing any act"(UN Human Rights, Fact Sheet No. 32). The United States Department of Defence defines terrorism as "the calculated use of unlawful violence or threat of unlawful violence to inculcate fear;

intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological." Within this definition, there are three key elements—violence, fear, and intimidation and each of these elements produce terror in its victims.

Thus we see that a lack of a universal definition is perceived widely as one of the factors likely to encourage future terrorism (Schmid, 2004). Besides terms like bad and worse terrorism,' 'internal terrorism and international terrorism,' or 'tolerable terrorism and intolerable terrorism' reflect the subjective outlook of whoever is doing the categorising and purely subjective categories will not help us to determine who are the real terrorists. A correct and objective definition of terrorism can be based upon accepted international laws and principles regarding what behaviors are permitted in conventional wars between nations. These laws are set out in the Geneva and Hague Conventions, which in turn are based upon the basic principle that the deliberate harming of soldiers during wartime is a necessary evil, and thus permissible, whereas the deliberate targeting of civilians is absolutely forbidden (Ganor,2002).Terrorism has been described variously as both a tactic and strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination (terrorism-research.com).One thing is obvious that terrorism is a criminal act that influences an audience beyond the immediate victim. It aims at the very destruction of human rights, democracy and the rule of law.

Terrorism is not only having the definitional problem, it is often confused with terms like 'Extremism', 'Guerrilla warfare', 'Insurgency' etc. Thus apart from highlighting the definitional problem, this paper also attempts to differentiate it with terms like 'Extremism', 'Guerrilla warfare' and 'Insurgency' and find out the nature of terrorism in Jammu and Kashmir. This paper also investigates into the causative factors that have led to the emergence of terrorism in the state. It again focuses on the locational aspects of the state, that is supposed to be the root cause of the current state of affairs in the state.

Conceptual Differences between Terrorism, Extremism, Guerrilla Warfare and Insurgency

As mentioned earlier, the word 'terrorism' is often confused with terms like 'Extremism', 'Guerrilla warfare', 'Insurgency' etc. However, there exists a significant difference between all of them. Extremism is a term used to describe the actions or ideologies of individuals or groups outside the perceived political center of a society; or otherwise claimed to violate common standards of ethics and reciprocity (Rizvi, 2015). Although the

word extremism is often used interchangeably with terrorism the basic difference between the two is that terrorism is essentially the use of physical violence while extremism involves use of non-physical instruments to mobilize the minds to achieve political and ideological ends. For instance, Al Qaeda is involved in terrorism while Iranian revolution of 1979 was a case of extremism.

Terrorism can also be distinguished from Guerrilla warfare. However both come into play when the form of conflict is asymmetrical, it is the 'fear factor' which is created through the use of threat and violence in terrorism, which distinguishes it from both conventional and guerrilla warfare. The word guerrilla means 'small war' and deals with small-scale raids, ambushes, and attacks. In ancient times these actions were often associated with smaller tribal polities fighting a larger empire, as was the struggle of Rome against the Spanish tribes for over a century. The guerrilla army uses intelligence and surprise and draws the army to terrain not suitable to them and thus a handful of guerrilla army can fight a major army. Contrary to terrorism, guerrilla warfare deals with military victory while terrorism on the other hand aims to achieve political or other goals, when direct victory is not possible. This has resulted in some social scientists referring to guerrilla warfare as the "weapon of the weak" and terrorism as the "weapon of the weakest"(Encyclopedia Britannica).

An Insurgency, or insurrection, is an armed uprising, or revolt against an established civil or political authority. Persons engaging in insurgency are called insurgents. Although insurgency is often assumed to be synonymous with terrorism as both of them have similar goals but the basic difference is that insurgency is a movement - a political effort with a special aim. This sets it apart from both terrorism and guerrilla warfare as they are both methods available to pursue the goals of the political movement (terrorism-research.com/insurgency). One important difference between insurgency and terrorism is that the former, can go well even without the use of terror. Although there are some insurgent activities which employ terrorism or terror tactics while there are still others which have strictly rejected the use of terrorism. The ultimate goal of an insurgency is to challenge the existing government for control of all or a portion of its territory, or force political concessions in sharing political power. Insurgencies require the active or tacit support of some portion of the population involved. External support, recognition or approval from other countries or political entities can be useful to insurgents. On the other hand, a terrorist group does not require the support of the local population and it rarely has that. Also, terrorism does not attempt to challenge government forces directly, but acts to change perceptions as to the effectiveness or legitimacy of the government itself.

This is done by ensuring the widest possible knowledge of the acts of terrorist violence among the target audience. Insurgents frequently describe themselves as "insurgents" or "guerrillas" but terrorists will never call themselves "terrorists". Instead terrorists would like to call themselves as freedom fighters, martyrs, soldiers, activists. Lastly, the ultimate difference between terrorism and insurgency or guerrilla warfare is that the latter two can adhere to international norms, regarding the law of war in achieving their goals but the acts of terrorists are regarded as criminal activities under both civil and military legal codes as they follow no international norms of war (terrorism-research.com/insurgency).

Nature of Terrorism in Jammu and Kashmir (J&K)

The form of terrorism, prevalent in Kashmir is of the most lethal form that India has ever witnessed.A series of grenade blasts in Srinagar in the late-1988 marked the beginning of militancy in Kashmir and has grown into one of the most serious challenges to India's internal security since then (Garge and Sahay, 2018).Praveen Swami argues in his book, India, Pakistan and the Secret Jihad: The Covert War in Kashmir that a Jihad sponsored by Pakistan was initiated in J&K immediately after the partition of the country and creation of Pakistan. Since then Pakistan has indulged in a range of ways to ignite a religious war in India to gain control over the state (Swami, 2006).

(According to Jammu and Kashmir Reorganisation Act, 2019, the state of Jammu and Kashmir was reorganised into two Union territories, Ladakh (comprising the districts of Leh and Kargil of the pre-existing state of Jammu and Kashmir) and Jammu and Kashmir comprising the territories of the pre-existing state of Jammu and Kashmir without the districts of Ladakh). However, in this paper the state of Jammu and Kashmir implies to the entire State of Jammu and Kashmir including Ladakh as was before the Jammu and Kashmir

Reorganisation Act, 2019.)

The form of terrorism prevalent in J&Kis 'religious terrorism' or better called 'Jihadi terrorism'. 'Jehad' or 'Jihad' has a great significance in Islam and in the life of a Muslim. 'Jehad' means financial and physical sacrifice made for the protection and promotion of Islam. It not only means to fight against the enemy but also to make a struggle for the promotion and enforcement of Islamic teachings. In course of time Jihad has taken the form of violent terrorism performed in the name of religion by religious extremists groups which include suicide bombings performed by various terrorist groups like Al Qaeda, Hamas, Hezbolla etc. One

important quality of Jihadi terrorism is that they are transnational contrary to insurgency which takes place primarily in a single country. This global jihadi threat is something new: a hybrid of terrorism and insurgency (Croke, 2006). Presently Jammu and Kashmir is suffering from this kind of terrorism.There is no unanimity on the actual meaning of jihad among Muslim intellectuals or amongst the terrorist outfits and their ideologues.

Rise of Terrorism in Jammu and Kashmir

The problem of Kashmir has many unique features-ones that cannot be analysed within the boundaries of the presently constituted nation-states in the region. On one hand, Kashmir poses an acute dilemma for India's federal equation; on the other hand, it has regional and international dimensions that set it apart from other dissident states in the union. Kashmir is the only state in India on which Pakistan has territorial claims. The Kashmir conflict is rooted in the colonial history of the subcontinent (Hilali,1999). The rise of Jihadi terrorism in Kashmir therefore dates back to the partition of the Indian Territory in 1947 which resulted in the birth of a new state called Pakistan. Pakistan believed that the main cause of partition was the Two-nation theory based on religion. So, according to them the princely state of Kashmir being a Muslim majority state should have been a part of Pakistan. In the wake of the October 22, 1947 Pakistani aggression in Kashmir under Major-General Akbar Khan, the Maharaja of Kashmir, Hari Singh, signed the letter of accession on October 26, 1947 which formally united Jammu and Kashmir with the rest of India. Pakistan still considers Jammu and Kashmir as a 'disputed territory' which on the basis of Muslim majority principal or the so-called two-nation theory should not have become the part of a 'Hindu majority' Indian state. Since then it has always questioned the accession of Jammu and Kashmir to India and defines the problem of Kashmir as an 'unfinished agenda of partition'(Mishra, 2005). However, Mohammed Ali Jinnah, the founder of Pakistan, had said on June 17, 1947: 'Constitutionally and legally the Indian (princely) States will be independent sovereign states on the termination of British paramountcy and they will be free to decide for themselves to adopt any course they like - accede to India or Pakistan or decide to remain independent. But this right belonged to the ruler. We do not wish to interfere with the internal affairs of any state, for that is a matter primarily to be resolved between the rulers and the people of the states' (Kotru, 1994). In sharp contrast stood the resolution passed on June 15, 1947 by the All India Congress Committee. It said: The people of the (Princely) States must have a dominating voice in any decision regarding them. Had the

proposition been accepted by Jinnah all three non-acceding states then - Kashmir, Junagadh on India's western coast, and Hyderabad - would have had a plebiscite. Even when Lord Mountbatten, the last Viceroy and Governor General to India, went to Lahore on November 1, 1947, he had proposed for a plebiscite in all the three states.

The truth is that Mr. Jinnah was unsure of the outcome of plebiscite at that time. Even Mountbatten recorded Jinnah's rejection of plebiscite. 'It was redundant and undesirable to have a plebiscite when it was quite clear that the states should go according to their majority population, and if we (India) would give him the accession of Kashmir he would offer Junagadh direct to India' (Kotru, 1994). Jinnah, the astute man that he was, knew that even in an ordinary opinion poll, forget a full-fledged plebiscite in Kashmir then, the result could have gone against him. What followed was the Pakistani aggression on Kashmir, and the accession of the state of Jammu and Kashmir to India by the signing of instrument of accession by Maharaja Hari Singh of Kashmir. Since then, four wars have been fought between India and Pakistan in which Pakistan have been severely defeated so, now Pakistani policy towards Kashmir rests on two legs: (i) Cross-Border terrorism and (ii) UN resolutions. Although during the time of partition Pakistan rejected the concept of a plebiscite in Jammu and Kashmir, and now after seven decades, when it has disturbed the state of Jammu and Kashmir through cross-border terrorism, it regards plebiscite as the only solution to the problem of Jammu and Kashmir.

Another reason for the rise of terrorism in Jammu and Kashmir was the war of 1947 or the First Kashmir war. As Pakistan refused to acknowledge the accession of Jammu and Kashmir to India it started a strong military campaign against India in 1947 which led to the outbreak of first Kashmir war and which lasted till 1948 when Indian Prime Minister Jawaharlal Nehru, sought UN intervention to solve the issue. This led to the delineation of 'Line of Control' or of the ceasefire line between India and Pakistan in the state of Jammu and Kashmir. Pakistan occupied 78,114 square kilometres of the state of Jammu and Kashmir. The Pakistani controlled part of Jammu and Kashmir is called by India as POK or Pakistan occupied Kashmir which is divided into two parts, that is, Azad Kashmir and Gilgit-Baltistan. The concept of Azad Kashmir has caused the division of Kashmiri culture.

Jammu and Kashmir is divided into three sections and is a kaleidoscope of different ethnic and religious groupings. While Sunni Muslims comprise the vast majority of inhabitants of the actual valley of Kashmir, there are other sections of the state where they are the minority. Jammu

itself is populated principally by Sikhs and Hindus while Ladakh in the east is home to Shia Muslims and Buddhists (Jones, 2008).Muslims comprise a total of 67 percent ofthe population of Indian administered part of Jammu and Kashmir and in the valley itself, the percentage of Muslim population is 97(Jammu and Kashmir Official Portal). So, Pakistan projects that a majority of population in Jammu and Kashmir have not been convinced by the merger of Jammu and Kashmir with India where Hindu population is in majority. Besides, Pakistan sponsored terrorism has spoiled the situation. Pakistan has time and again highlighted that the main cause of sufferings of the people of Jammu and Kashmir is due to Indian oppression and their problem, could only be solved if the entire state, merged with Pakistan just as Azad Kashmir at present. However, Pakistan feels frustrated at not being able to secure the confidence of entire Kashmiri people, who reject a merger with Pakistan as the only solution.

The idea of incorporating the state of Jammu and Kashmir to Pakistan has been the topmost agenda of the government in Pakistan since the last seven decades. The four wars fought between India and Pakistan for Kashmir has taught a lesson to Pakistan that they can never attain victory over Indians in an open war. So Pakistan's efforts channel led through the Inter-Services Intelligence (ISI), is on aiding Pakistan-based militant groups who are waging a proxy war against Indian security forces in the State. With the two countries going overtly nuclear in 1999, the issue is also perceived globally as a nuclear flash point (satp.org). This Pakistan-sponsored terrorism has paralyzed normal life in Jammu and Kashmir. Over the years, PoK has become a safe haven not only for terrorists operating in Kashmir but also for those linked with international terror outfits like Al Qaeda. At least 55 militant training camps are said to be located in the region and their cadre numbers close to 5,000.The proximity of these camps to the Indian administered Kashmir and the terrain of the region make infiltration much more convenient especially during summers. Muzaffarabad and Kotli are known epicentres of such camps and dreaded militant organisations such as Lashkar-e-Toiba (LeT) and Hizbul Mujahideen have their operational headquarters there. Terrorist camps are noted to be widespread in Bhimber, Bakryal, Balakot, Chawari, Kotli, and Mangla (Fig. 1). Lashkar has two camps in Muzaffarabad –Abdul-Bin-Masud and Danna. Hizbul has one in Muzaffarabad and the other in Mangla. Jaish-e-Mohammed also has a strong foothold in the region even though it operates chiefly from Balakot (Singh, 2009).

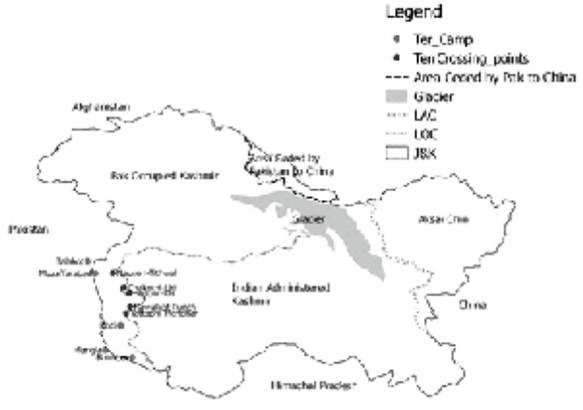

Figure 1. Areas of Terrorist Camps and Points of Infiltration of Terrorists in J&K

(Base Map redrawn from Google Earth and Points plotted on QGIS)(Note: The map drawn is just for academic pursuit and is not to scale. So the boundaries drawn should not be the basis of any legal, territorial claim)

As per data of Union Ministry of Home Affairs, India, between 1988 to 2019 (March) a total of 56,232 terrorist incidents took place which claimed 14,930 lives of civilians, 6,413 lives of security personnel and 23,386 lives of terrorists. Altogether this proxy war has claimed 44,729 lives for the said duration (UMHA, 2019) (Table 1).

Table 1
Fatalities in Terrorist Violence in Jammu and Kashmir (J&K): 1988 to 2019 (March)

Year	Incidents	Civilians	Security Force Personnel	Terrorists	Total
1988	*390*	*29*	*1*	*1*	*31*
1989	*2154*	*32*	*13*	*0*	*92*
1990	*3905*	*862*	*132*	*183*	*1177*
1991	*3122*	*594*	*185*	*614*	*1393*
1992	*4971*	*859*	*177*	*873*	*1909*
1993	*4457*	*1023*	*216*	*1328*	*2567*
1994	*4484*	*1012*	*236*	*1651*	*2899*
1995	*4479*	*1161*	*297*	*1338*	*2796*
1996	*4224*	*1333*	*376*	*1194*	*2903*
1997	*3004*	*840*	*355*	*1177*	*2372*

Year	Incidents	Civilians	Security Force Personnel	Terrorists	Total
1998	*2993*	*877*	*339*	*1045*	*2261*
1999	*2938*	*799*	*555*	*1184*	*2538*
2000	*2835*	*842*	*638*	*1808*	*3288*
2001	*3278*	*1067*	*590*	*2850*	*4507*
2002	*NA*	*839*	*469*	*1714*	*3022*
2003	*NA*	*658*	*338*	*1546*	*2542*
2004	*NA*	*534*	*325*	*951*	*1810*
2005	*1990*	*557*	*189*	*917*	*1663*
2006	*1667*	*389*	*151*	*591*	*1131*
2007	*1092*	*158*	*110*	*472*	*740*
2008	*708*	*91*	*75*	*339*	*505*
2009	*499*	*71*	*78*	*239*	*388*
2010	*488*	*47*	*69*	*232*	*348*
2011	*340*	*31*	*33*	*100*	*164*
2012	*220*	*15*	*15*	*72*	*102*
2013	*170*	*15*	*53*	*67*	*135*
2014	*222*	*28*	*47*	*110*	*185*
2015	*208*	*17*	*39*	*108*	*164*
2016	*322*	*15*	*82*	*150*	*247*
2017	*342*	*40*	*80*	*213*	*333*
2018	*614*	*39*	*91*	*257*	*387*
2019	*116*	*9*	*59*	*62*	*130*
Total	**56232**	**14930**	**6413**	**23386**	**44729**

*** Data till March 31, 2019**

(Source: Union Ministry of Home Affairs)https://www.satp.org/datasheet-terrorist-attack/india-jammukashmir/Fatalities-in-Terrorist-Violence-in-jammu-and-Kashmir-1988%E2%80%932019

The Jammu Kashmir Liberation Front (JKLF), created in 1965, was foremost in launching the tirade against the Jammu and Kashmir Government and the Centre with support from Pakistan (Mishra, 2005). Between August 1988 and end 1989, JKLF was the only organization involved in insurgency. The State in Pakistan had serious differences with JKLF as the outfit was committed to J&K's independence rather than accession to Pakistan. Later on, ISI facilitated the formation and promotion of various other militant groups (the number of militant organizations had reached three figures by 1992). Prominent groups included the Hizb-ulMujahideen (militant wing of the Islamic

organisation Jamat-e-Islami), Harkat-ul-Ansar and Lashkar-e-Toiba. Unlike JKLF which favoured independence for the state, these organizations were more adaptable to the pan-Islamic Pakistani nationalism being promoted by Pakistan (satp.org). Table 2 gives a list of different terrorist, insurgent and extremist groups operating in Jammu & Kashmir. Some have become inactive, while some are active. So, we see that the terrorist movement was initially led by Kashmiri youth, who were trained and armed in Pakistan-controlled Kashmir. In course of time, the indigenous movement weakened when the army and police forces gained the upper hand in 1992-93 and most of these groups became defunct. The movement has since been controlled by foreign jehadis (Islamist warriors).

Table 2:List of Terrorist, Insurgent and Extremist Groups in Jammu & Kashmir

Proscribed Terrorist/Extremist Groups	Active Terrorist/Insurgent Groups	Inactive Terrorist/Insurgent Groups
Hizb-ul-Mujahideen (HM)	Lashkar-e-Omar (LeO)	Al Jehad
Lashkar-e- Toiba (LeT)	Al Barq	Al Jehad Force (AJF, combines Muslim Janbaz Force and Kashmir Je
Jaish-e-Mohammed (JeM)	Al Badr	Al Mujahid Force (AMF)
Al Umar Mujahideen (AuM)	All Parties Hurriyat Conference (APHC)	Al Mustafa Liberation Fighters (AMLF)
Dukhtaran-e-Millat (DeM)	Jammu & Kashmir Liberation Front (JKLF)	Ikhwan-ul-Mujahideen (IuM)
Harkat-ulMujahideen (HuM) previously known as Harkat-ul-Ansar	Lashkar-e-Jabbar (LeJ)	IslamiInquilabiMahaz (IIM)
Harkat-ul-Jihad-al-Islami (HuJI)	MutahidaJehad Council [(MJC), aka United Jehad Council (UJC)]	IslamiJamaat-e-Tulba (IJT)
Jammu and Kashmir Islamic Front (JKIF)	Tehrik-ul-Mujahideen (TuM)	Islamic Students League (ISL)
Jamait-ul-Mujahideen (JuM)	Muslim Mujahideen	Jammu & Kashmir National Liberation Army (JNLA)
Jamaat-e-Islami (JeI), Jammu and Kashmir	AnsarGhazwat-ul-Hind	Jammu & Kashmir Students Liberation Front (JSLF)

Proscribed Terrorist/Extremist Groups	Active Terrorist/Insurgent Groups	Inactive Terrorist/Insurgent Groups
Jammu and Kashmir Liberation Front – Yasin Malik faction (JKLF-Y)		Kashmir Jehad Force (KJF)
Islamic State/Islamic State of Iraq and Levant /Islamic State of Iraq and Syria/Daish (ISIS)		Mahaz-e-Azadi
		Muslim Janbaz Force (MJF)
		People's League
		Tehrik-e-Hurriat-e-Kashmir (TeHK)
		Tehrik-e-Jehad (TeJ)
		Tehrik-e-Jehad-e-Islami (TeJI)
		Jammu and Kashmir Islamic Front (JKIF)
		Al-Mansoorain

Source: https://www.satp.org/terrorist-groups/india-jammukashmir

In December 1993, during a state visit to Pakistan, Maulana Araslan Rahmani, the Deputy Prime Minister of Afghanistan, acknowledged that Afghanistan had played a major role in uniting Islamist organizations, Harkatul-Jehad al-Islami (HUJI) and Harkatul-Mujahideen (HUM), into the potent Harkatul-Ansar group for fighting in Kashmir. According to Rahmani, this merger was part of the active support given by Afghanistan to the Islamist fighters in Kashmir, Tajikistan, Bosnia, Palestine and elsewhere (Jafa, 2005).According to a report of Peter Chalk, an expert on terrorism at the RAND Corporation, Washington, Pakistan provides training and logistical, financial and doctrinal support to Kashmiri insurgents. Basic courses are run on weapons handling, demolition and urban sabotage. Selected militants are trained in special skills such as use of heavy arms, reconnaissance and sniper assaults. Most of the camps are located near major Pakistani military establishments, which, according to Indian intelligence, provide the bulk of the military resources, including weapons, ammunition, explosives, binoculars, night vision devices, communications and uniforms.

The report says that the annual ISI expenditure on sustaining militancy in Jammu & Kashmir is between US$ 125-250 million. Pakistan remains a

centre of ideological indoctrination for the Kashmir struggle, which is largely coordinated through its numerous madrasas, the theological schools. Trainers in these schools equate the concept of Jehad-holy war or striving for justice-with guerrilla warfare. Jehadi warriors are trained to fight for capturing Kashmir for Pakistan and the Islamic cause. The ISI 'has sought to specifically replicate and transplant the success of the anti-Soviet Afghan campaign in Kashmir, exhorting foreign militants to participate in the conflict as part of the wider moral duty owed to the jehad' (Chalk, 2001). Militant training courses also include rock climbing, mountaineering, survival in jungles, mock exercises for border crossing including first aid and paramedical training. Simultaneously, the Pakistani army has been imparting wireless communication training (Morse and computer-based data mode) for four to twelve weeks to ensure that trained staff is available to maintain direct links between the Kashmir militants and the Pakistan authorities. In training camps inside Pakistan stress is laid on the practical handling of explosive devices. Emphasis is now also laid on achieving tough physical standards and the development of leadership qualities. Educated militant youth, preferably with scientific and technical background are imparted specialized and prolonged training. The use of new weapons including SVD Dragnov sniper rifles, 12.7 mm heavy machine guns and 82 mm mortars is taught (Honawar, 2005).

The nature of arms and ammunition being seized from the militants in the State indicates that the focus of insurgency has been gradually shifting from selective killings to generating an atmosphere of terror in the State through bomb explosions. The quantity of RDX seized by security forces has risen from 104 kg in 1996 to 1280 in 2000 (until November 15) (satp.org).

Besides the above mentioned reasons, demographic attributes of Jammu and Kashmir is also responsible for the growth of terrorism in the state. The level of literacy, that is, 67.16% (Census 2011), unemployment, poverty, and low social economic development have all contributed a lot to terrorism. It is very easy to misguide uneducated youth and get them indulged in criminal activities. The problem of unemployment in the state, especially, that of the educated unemployed has reached alarming proportions and deserves immediate focused and coordinated attention with new policy initiatives, sound institutional arrangements and effective operational strategies for creating employment opportunities and enhancing employability.As per the Economic Survey Report of 2016, nearly a quarter of its population in the age group of 18 to 29 years is unemployed, which is far more than the national rate of 13.2 percent.

There are 2,50,000 educated young women and men in Jammu and Kashmir who are bearing the brunt of the lack of employment and struggle to find jobs due to the lack of a job policy - thus pushing them and their families' backs to the wall (firstpost.com). Thus unemployment acts as a catalyst in the growth of terrorism in Jammu and Kashmir as poverty stricken rural youth are easily lured, bribed, trapped or coerced, and motivated by Pakistani officials thus turning them into militants.

Lastly, the role of environment cannot be ignored in the growth of terrorism in Kashmir. Environmentally, the state of Jammu and Kashmir is mountainous and suffers from many natural disasters like earthquake, landslides, snowfall, forest fires etc. The terrain is also not very suitable for agricultural purposes in many areas. Inaccessibility is a major problem, as the mountainous terrain has hindered the growth of roads, railways or other infrastructural facilities due to which, mere sustenance is also very difficult at places. The region being seismic prone, landslide prone etc., also adds up to the low level of economic development due to very low investment in developmental activities. All these have created a cumulative effect in the living standards of the people of Jammu and Kashmir, as a major percentage of them are living in poverty, illiteracy and ignorance. Young and jobless boys have limited vision and take the recourse of Islam for salvation. This environmental aspect of Jammu and Kashmir is actually due to its unique locational personality which attracts the geostrategic interests of nations and is responsible for the growth of terrorism and geostrategic tension the region.

Role of Locational Personality in the Growth of Terrorism

The state of Jammu and Kashmir occupies the northwestern niche of India and is surrounded by Pakistan in the west, China in the east and Afghanistan in the north. The Central Asiatic Republics and Russia are also in close proximity. It is the only territory in the world which is surrounded by four nuclear powers of the world. They are India, China, Russia and Pakistan. Unfortunately all these nuclear powers have clashing geostrategic interests in this state of India. Pakistan has already occupied 78,114 km2 area of the state of Jammu and Kashmir. Besides this, it has also illegally handed 5,180 km2area to China. China also holds 37,555 km2 area of Aksai Chin of Jammu and Kashmir thus bringing a total of 42,735 km2of the state under Chinese occupation (Fig.2). Pakistan is an important ally of China and is considered by the latter as an all-weather friend.

Figure 2. Jammu and Kashmir Map
(Source: https://commons.wikimedia.org/wiki/File:Kashmir_map.jpg, Public Domain)

The Karakoram Highway built in this area of the state ceded by Pakistan to China is strategically very important as all-important arms and ammunitions are transferred by China to Pakistan through this highway. The 1,300 km long Karakoram Highway is an all-weather road linking Gilgit-Baltistan with the rest of Pakistan. It also connects Abbottabad of Pakistan to Xinjiang region of China. Thus it is also called China-Pakistan Friendship Highway (Torres, 2019). China's declared positions on the Kashmir issue have evolved through the following distinct phases:

(i) In the 1950s, Beijing upheld a more or less neutral position on the Kashmir issue.

(ii) The 1960s and 1970s saw China shift its position in favour of Pakistan's views on the issue as Sino-Indian relations deteriorated.

(iii) Since the early 1980s, however, with China and India moving towards normalization of bilateral relations, Beijing returned to a position of neutrality even as it sought to balance between the need to satisfy Pakistan's demands for support and the growing interest in developing a better relationship with India.

(iv) By the early 1990s, China's position became unequivocal that the Kashmir issue is a bilateral matter to be solved by India and Pakistan through peaceful means (Garver, 2004).

(v) The normalized state of tension escalated in2017 with the Doklam standoff, when China tried to wrest Bhutanese territory from Indian troops. China's Belt and Road (BRI) development plans in Nepal and PoK have exacerbated these tensions. In 2020, Chinese soldiers entered Indian-administered territory in Ladakh and Sikkim (Davis et al., 2020).

Both China as well as erstwhile Soviet Union have been keenly interested to get a passage through this region to Arabian sea, for serving their economic, political and geostrategic interests. On the other hand U.S.A. and other powerful Western countries had developed an impression that Pakistan must be supported on various issues, so that Pakistan does not play in the hands of red flag holders. They are aware of the fact that India cannot be a parasite state. Pakistan seems to be a potential parasite and they consider Pakistan as a geopolitical base ground from where Americans can spread their influence in South Asia and Middle East. Their presence in Pakistan would also help them to keep a close watch on the activities of Russia, Central Asiatic states, China, India and the vulnerable Arab world. However post- 9/11, India is receiving significant importance in US' strategic fight against terrorism and policy towards the Indo-Pacific. India's emergence as a credible power in the Indian Ocean region has brought both countries much closer. Undoubtedly, a militarily strong India can counter China in the Indian Ocean region and ensure freedom of navigation in the water body (Joshi, 2019).

The Afghanistan connection regarding the terrorism in the state of Jammu and Kashmir also dates back to the time of partition and the creation of India and Pakistan. During that time Pathan (Pashtuns) tribes of NWFP of Pakistan aimed for the creation of a 'Greater Pashtunistan' up to the banks of River Indus and this was the biggest threat to Pakistan(Khan, 2003). Fig. 3 shows the Pashtun areas in Afghanistan and Pakistan. Pakistan tactfully diverted the attention of Pashtun tribes from Peshawar to Kashmir. Pakistan wanted the Maharaja of Jammu and Kashmir to accede to Pakistan forcefully. They also knew that an outright invasion could lead to greater war. So they tried to arouse the religious sentiments of the Pathans to go for a Jihad against the infidel maharaja of Jammu and Kashmir who was crushing millions of Muslims of his kingdom under his tyrannical rule. The invasion began on the 21st October 1947 in which a large number of Pakistani army officers in the guise of Pathans merged with the tribesmen (Lashkar). The Pathans killed innocent people, raped women and looted bazaars wherever they went. Despite best efforts of Pakistan Army officers and men to make these Pathans reach Srinagar, they were beaten back by the Indian Army landing at Srinagar airfield in early hours of 27 October, 1947 after the Maharaja of Jammu and

Kashmir had signed the 'Instrument of Accession'.

Again in 1979, the Soviet invasion of Afghanistan made Pakistan a front-line ally of the Western World in its battle against Communism. This presented Zia UlHaq, the Military Dictator of Pakistan, a golden opportunity to kill two birds with one stone, that is, remove the problem of 'Greater Pashtunistan' and also ensure control over Afghanistan's affairs. In addition, Pakistan got billions of dollars in aid and military equipment. Undoubtedly, Afghanistan became a training ground and the base of operations of Islamic extremists belonging to different regions of the world for example, North American countries, Europe, Africa, the Middle East, and Central, South and Southeast Asia. The Taliban, which controlled most Afghan territory, permitted the operation of training and indoctrination facilities for non-Afghans and provided logistics

Figure 3. Pashtun Areas in Afghanistan and Pakistan (Redrawn from Source: http://www.ccc.nps.navy.mil/si/jan03/southAsia.pdf)

support to members of various terrorist organizations and Mujahiddin, including those waging jihads (holy wars) in Central Asia, Chechnya, and Kashmir. There has been enough evidences to show Pakistani support, especially military support, to the Taliban, which continues to harbour terrorist groups, including Al-Qaida, the Egyptian Islamic Jihad, al-Gama'a al-Islamiyya, and the Islamic Movement of Uzbekistan"(Raman, 2001).

Hence, it is not only the locational nearness but trans-border religio-cultural continuity and Himalayan terrain, that have facilitated the Islamic foreign mercenaries and militants to look into the peaceful land of Jammu and Kashmir. Most of the countries surrounding the state of Jammu and Kashmir are hostile to India and are also Islamic states. They have resented the merger of the state of Jammu and Kashmir with a country where Hindus are in majority. However as per recent developments, now the Arab world is focused on tapping the economic opportunities offered with India and no longer tries to see their relations with India through the Pakistan angle. (Quamar, 2018).Also, due to the hilly terrain, border areas of Jammu and Kashmir, are porous and it is difficult to put check posts at each and every peak which is at a very high altitude. So infiltration of armed militants from neighbouring countries is a common phenomenon that creates havoc in the state. Thus we see it is the locational misfortune of this land which caused the growth of terrorism and geostrategic tension and the innocent, nature-loving people of Jammu and Kashmir have been trapped in the global power politics.

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Naxal Movement: Causes of Persistent Violence

Sheetal *

Abstract

With the dawn of the human civilisation on earth, violence has become a part of human existence for its survival. Herbert Spencer believed in "the survival of the fittest", through violence an individual struggles to survive in society. The violence in different forms like ethnic, communal and Naxal has its presence in the different corners of India. The advancement of technology gave impetus to the violence. In the light of different psychological perspectives, this paper aims to examine the causes of the Naxalite violence. These perspectives on violence, it is hoped, will enable us to understand the causes (frustration, aggression, deprivation and institutions) of the Naxalite violence. The present study also deals with the views of the prominent scholars and thinkers like Karl Marx, George Sorel, Mahatma Gandhi and Johan Galtung on violence. This article is a modest attempt towards understanding the persistent causes of the growing Naxalite problem which has rocked the nation for the last 50 years. The research methodology is mainly based on historical and analytical method in which four theories of violence have been analysed. The data is based primarily on historical studies.

The term 'Naxalism' has its origin in the Naxalbari village in West Bengal. The violence started as the peasant uprising and soon spread to the other parts of India. Naxalites comprised the tribals (scheduled tribes and scheduled castes) of the central region of the country. In 1972 the movement was suppressed by the Indian government. In the same year Charu Mazumdar, who was the strongest leader of the Naxalite movement, died. They live in the dense forest areas of the Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra,

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Odisha, Tamil Nadu, Telangana, Uttar Pradesh, and West Bengal. The southern part of the Chhattisgarh state which adjoined by the few areas of other states like Maharashtra, Andhra Pradesh and Odisha.

Key words: - *Naxalite, frustration, aggression, deprivation, violence.*

Introduction

Shah and Jain depicted the Naxalite literature into five genres.[1] The first part of genre deals with the security studies specialists, political scientists, administrators, and sociologists which defined the problem within the diameter of the Indian state and at the same time they seem to comment on the state response to the Naxal problem. The second genre includes the activists who seek to define the Naxalite violence as the social revolutionary change. The third genre refers to the activists and journalists who are assisted by the Maoists. They have been influenced by the revolutionary ideas of the Maoists. The fourth genre that is anthropologists and sociologists have analysed the common sufferings of the repressed people who have been a part of the Left-wing Extremist violence. The fifth or the last genre concludes the participants in the Maoists violence. The literature is found in abundance on the Naxalite violence.

Naxalism has two connotations: the first one is defined by the state and another one is depicted by the by the Left wings.

1. State's Discourse

Former Prime Minister Manmohan Singh described the Naxalite violence as "the single biggest internal security threat" to the nation.[2] The Naxal crisis has spread in the ten or eleven Indian states and disturbed the law and order situation in the affected zone. According to the state governments, Naxalites are posing the problem to the security, public socio-economic infrastructure and state institutions. The Ministry of

1 Shah, Alpa and Jain, Dhruv. (1998). Naxalbari at Its Golden Jubilee: Fifty Recent Books on the Maoist Movement in India. Modern Asian Studies Journal, 51, 2017, doi:10.1017/S0026749X16000792, reetrived on December 12, 2017, http://eprints.lse.ac.uk/83715/1/Review Article Naxalbari for LSE_Final.pdf.

2 India's Deadly Maoists. (2018). The Economist, July 26, 2006, http://www.economist.com/node/7215431#print. (retrieved on January 17, 2018) .

Home Affairs stated the Naxalism or Left Wing Extremism as the one of the internal security concern.[3] The state described the Naxalite as a threat to the internal security of the country. The violence caused lethality to the masses. However, the violence resulted in death to the security forces on the one hand and Naxalites on the other hand. Violence or insurgency defined:

"A protracted politico-military activity directed towards completely or partially controlling the resources of a country through the use of irregular military forces and illegal political organisations. It is a struggle for power between a state and one or more organised, popularly based on internal challenges."[4]

The state perspective depicted that violence is directed against the authority to gain political power and attack on the political institutions. Ahluwalia commented that Naxalites are pocketed in the adjoining areas like Abhujmarh, Balaghat, Balrampur, Malkangiri, Gadchiroli, Saranda and Sarguja of the different states.[5] It is clear from his argument that Naxalites are concentrated themselves into the dense forest. The adjoining areas are covered by the Naxals.

2. Leftist's Discourse

They are following the Marxist-Leninist ideology inspired by the Karl Marx, Engels and Lenin. Mao Zedong followed the footsteps of the Marxist in the Asiatic approach. Mao believed that the peasant class should free itself from the oppression of middle bourgeoisie class. Both Marx and Mao insisted on the importance of the working class in the revolution and all the revolutionary organisations are attached to the basic ideology of the class structure.[6] Mao guided the path of the war. He

3 Home Affairs, Ministry of. (2016-17). Annual Report 2016-17. New Delhi: Government of India, p. 4. retireved on December 4, 2017, http://mha.nic.in/sites/upload_files/mha/files/anual_report_18082017.pdf.

4 Chandrasekaran , A. V. (2013). Insurgency Counter Insurgency: A Dangerous War of Nerves. New Delhi: KW Publishers Pvt. Ltd., p. n. retrieved on January 18, 2018, https://books.google.co.in/books?id=Nky6DQAAQBAJ&printsec=frontcover#v=onepage&q&f=false.

5 Ahluwalia, V. K. (2014). Maoists Look for Safe Santuaries and External Support. Institute for Defence Studies and Ananlysis, p. 1. retrieved on February 21, 2016, http://idsa.in/idsacomments/MaoistsLookforSafeSanctuariesandExternalSupport_vkahluwalia_270114.

6 Ray, Ravindra. (2010). Naxalism and Class Hatred. In Pradip Basu (Ed.), Discourses on: Naxalite Movements 1967-2009 (pp. 92-93). Setu Prakashani.

stated: "War is the highest form of struggle for resolving contradictions, when they have developed to a certain stage, between classes, nations, states, or political groups, and it has existed ever since the emergence of private property and of classes." [7] Naxalites followed that ideology and the only source of their passion to take weapons against country. The Communist Party of India (Maoist) (CPI-M) is the most deadly group of the Naxalites movement which was banned by the government of India in 2009.[8] This group was the result of the fusion of the Communist Party of India (Marxist-Leninist) and People's War (PWG) in 2004. They believed that they are demanding for the rights of the poor and economically backward classes. It is generally believed that Leftist primarily believed in the social justice and the equality in the society. They have their faith in the bringing revolutionary changes in the society. The main task of the Marxist-Leninist is to change the regime through the armed forces to seize the political power. In India, Naxalites claimed that their movement is aimed to change the system and demanding social justice. IDSA Research Fellow P. V. Ramana asserted:

"The CPI (Maoist) considers the Indian caste system as "obnoxious" and holds that the Dalits are "victims of untouchability, caste discrimination and upper caste chauvinism." [9]

The movement does not have only men but also characterised by the presence of women and children. Punwani pointed out that women have been forcibly displaced and sexually harassed in the affected areas... and children have been used as Special Police Officers (SPOs).[10] Women joined the movement and carrying weapons to fight against the state. R. G. Foundation has conducted research in 2014 and found that the children are suffering from the poor condition of malnutrition in Andhra Pradesh,

7 Tse-tung, Mao. (1936). Problems of Strategy in China's Revolutionary War. Foreign Language Press. retrieved on February 6, 2018, https://www.marxists.org/reference/archive/mao/selected-works/volume-1/mswv1_12.htm.

8 Centre Bans CPI Maoist. (2010). The Hindu. March 22. retrieved on February 7, 2018, http://www.thehindu.com/todays-paper/Centre-bans-CPI-Maoist/article16583345.ece.

9 Ramana, P. V. (2011). Measures to Deal with Left-Wing Extremism/Naxalism. Institute for Defence Studies and Analyses, p. 7. Retrieved on May 7, 2016, http://www.idsa.in/system/files/OP_MeasurestodealwithNaxal.pdf.

10 Punwani, Jyoti. (2007). Traumas of Adivasi Women in Dantewada. Economic and Political Weekly, pp. 276-77, retrieved on July 23, 2014, http://www.jstor.org/stable/4419179 .

Chhattisgarh, Jharkhand and Madhya Pradesh.[11] The report further explains that the crime rates against women are increasing in these states and they also trafficked to another place.[12] The local people of the region are facing the consequences of the on-going violence between state and Naxalites.

Women on their way to join the vigil of Minpa villagers outside the Sukma thana

Source: https://thewire.in/20794/darkness-at-noon-in-the-liberated-zone-of-bastar/

Naxalite Movement has taken a vibrant form for the existing society. Naxalites are approaching new areas to spread their network. After the death of the Charu Mazumdar, the movement got a blow and the movement shifted from the original centre to the other parts of the country such as Bihar, some parts of the Madhya Pradesh (modern Chhattisgarh), Andhra Pradesh. The study tries to find out the cause of the movement as casualties rate has escalated.

11 Foundation, R. G. (2014). Impact of Naxalism on Developmental Programmes Related to Women and Child. Ministry of Women and Child Development, Government of India. p. 129, retrieved on September 9, 2016, http://wcd.nic.in/Schemes/research/ImpactofNaxalism-FinalStudyReport.pdf.

12 R. G. Foundation, Impact of Naxalism, pp. 71-72.

Causes of the Persistence of the Naxalite Violence

The article has dealt with four theories of violence to understand the nature of the violence. To highlight the causes of the Maoist violence the author need to understand theories. Through these theories, the study attempts to classify the main cause of the Naxalite violence. These theories are as follows:

1. Frustration-aggression theory

The study is dealing with the different theories of the Naxalite violence. The theory of the frustration-aggression is one of them. This theory is essential to highlight the causes of the Naxalite violence. Felson argued that "violence is the expression of the instrumental behaviour that is aggression guided by rational choices." [13] According to this theory, "the human beings involved in violence because of their aggressive behaviour and they have not been guided by the social norms of the society." There are different kinds of violence like violence against children and women, domestic violence, child abuse, homicide and mass murder. The aggressive and frustration people are intended to harm the other person to whom they think that they are reasons for their oppressive condition. They become violent to affect the society. Felson further defined aggression as intentionally harm but are not successful and excludes behaviours that involve accidental harm.[14] It means the violence is governed by the aggressive behaviours. The definition gives more significance to the aggressor's view. Here "legitimate aggression and illegitimate aggression" can be distinguished. "If the aggression is used by the legitimate authority of the state can be justified being governed by the legitimate power." In the other words we can say that if the violence is guided by the collective group who is guided by the self-interest or group interest being not in the interest of the nation or the state or we can say general interest.

K. Savitri highlighted that the "frustration- aggression theory is one of the cause of the political violence in society." [15] The Naxalites are directed by the aggressive policy because they think that they are socially and

13 Felson, Richard B. (2009). Violence, Crime, and Violent Crime. International Journal of Conflict and Violence, 3, (1), p. 24, retrieved on January 23, 2018, www.ijcv.org/index.php/ijcv/article/download/46/46/.
14 Felson. Violence, Crime, p.26.
15 K., Savitri. (1999). Political Violence in India: Implications for Human Rights. In Abdulrahim P. Vijapur and Kumar Suresh (Ed.), Perspectives on Human Rights (p. 104). Manak Pubications.

economically excluded people by the government. They have been marginalised for centuries by the welfare policies of the nation. They carried weapons in their hand just to punish the politicians and big contractors and government officials. They are taking law and order into their own hands. According to Felson "all aggression are instrumental behaviour is inspired by the rational choice approach." The violent people wanted to take hold of the attention of the common public and of the nation. Several times, Naxalites attacked the politicians and public property to gain the attention of the media and the government. "Aggression and frustration are psychological phenomena that are guided by the basic instincts of the human behaviour." Through aggression and frustration, they wanted to fulfil their aspirations and desires.

Illiteracy, Poverty, unemployment and economically backwards added the fuel to the fire to the Naxalite violence. Nowadays, the left-wing extremists became so violent in attacking Indian state. They attacked only to the political institutions and politicians, not the civilians.

2. The Theory of Relative Deprivation

This theory has been so prominent among the scholars to identify the relationship between the relative deprivation and rising violence. In the condition of relative deprivation, "an individual started to think that he is deprived of honour, power and assets that lead towards anger as they observe injustice and unsatisfied with his status." [16] The theory of relative deprivation defined that how the unequal distribution of economic resources promoted violence. The relation between the economic deprivation and the violence is old. Prof. Savitri highlighted that they the people do not have opportunities and equal distribution of resources, they feel socially deprived from the mainstream.[17] The economic inequality can rise because of two reasons: either the state is not capable to accomplish all needs of its citizens or state is not responding to all requirement of the society. This theory has performed a greater role in the theoretical framework of violence. According to Ted Gurr "relative

16 Abeles, Ronald P. (1976). Relative Deprivation, Rising Expectations, and Black Militancy. Journal of Social Issues, 32, p. 120, retrieved on November 28, 2017, http://onlinelibrary.wiley.com/doi/10.1111/j.1540-4560.1976.tb02498.x/full.
17 Savitri. Political Violence, p. 105.

deprivation is the conflict between the value expectation and their capabilities to accomplish all these potentials." [18] These expectations refer economic requirement like employment, changing economic conditions of the tribals and better implementation of the economic policies regarding the welfare of the economically poor people who have been ignored for a long time. Ted Gurr put more emphasis on the economic aspects of the violence. The state is responsible to fulfil all the basic needs of the society or the people. The state came into existence to accomplish all the requirement of an individual. The absence of the economic facilities may promote an individual towards violence.

The terms of aggression, frustration and deprivation are linked together because they collectively promoted an individual to take weapons and they involve in violence. "The check on economic inequalities also paves a way towards the solution of the problem of economic deprivation." [19] The acceleration of relative deprivation in relation to political participation, privileged circumstances, collective worth and societal status can lead to a 'decline in ideational coherence' which finally it promotes to perturb law and order and leads to violence.[20] The administrative system has totally broken in the Naxalite affected areas. The government has not fulfilled all expectations of the tribals of the backward areas in the forest areas. The government can resolve all the issues regarding socio-economic backwards. There is a gap between the expectations of the poor from the government and accomplishing these expectations by the government. The poor economic condition leads to the cause of the violence. The marginalisation of the socially and economically backward people makes them feel alienation from the mainstream of the nation. Since independence, the policies regarding the land reforms have not been fully regulated to the ground level.

The feeling of unjust and deprivation motivated a human being to involve in the social movement.[21] The individual started to take participate in the

18 Tanter, Raymond. (1970). Why Men Rebel. by Ted Gurr. Midwest Political Science Association, 14 (4), p. 726, retrievd on March 26, 2017, https://www.jstor.org/stable/pdf/2110363.pdf.

19 D uverovic, Nemanja. (2013). Does More (or Less) Lead to Violence ? Application of the Relative Deprivation Hypothesis on Economic Inequality-Induced Conflicts, (68), p. 117, retrived on November 26, 2017, file:///C:/Users/dell/Downloads/CIRR_19_68_2013_Dzuverovic.pdf.

20 Saleh, Alam. (2013). Relative Deprivation Theory, Nationalism, Ethnicity and Identity Conflicts. Geopolitics Quarterly, 8 (4), pp. 165–66, retrieved on March 26, 2017, http://www.ensani.ir/storage/Files/20130623093839-9617-60.pdf.

21 Abeles. Relative Deprivation, p. 120.

violence to accomplish his needs and to end his deprivation. Stephen argued "the theory of "relative deprivation was no longer considered the primary cause of collective violence".[22] However, the theory has not totally neglected by the other social scientists. This theory has been discussed by so many thinkers in 1970s. Muller and Seligson argued that "improper distribution of land in agrarian societies is generally implicit as an important factor of mass movement and political violence." [23] Ahuja and Ganguly argued that Naxalite movement is the apparent example of the peasant movement which has escalated because of the increasing extreme poverty, ill-treatment and inconsistency in distribution.[24] At the one side, the country economic growth rate at a speed and on the other hand the economic and social condition is not improving in the rural and backward areas where the people have an abundance of natural resources yet unable to get rights to access to these mineral resources. The theory expresses the growing economic gap between the rich and poor people.

3. Theory of Systematic Frustration of Collective Groups or Collective Violence

Collective violence is a violent behaviour of a large number of people towards a certain cause. The collective violence can be categorised into two ways: firstly it can be defined as "an unconstrained behaviour of people whose reaction is based on the perceiving the situation as dangerous or threatening."[25] On the other hand, the violence can be defined as the "organised form of the violence like revolt, army coups, terrorism and war."[26] An individual Violence can be defined into two types of violence: individual violence and collective violence. In the

22 G. Brush, Stephen. (1996). Dynamics of Theory Change in the Social Sciences: Relative Deprivation and Collective Violence. Journal of Conflict Resolution, 40 (4), p. 524, retrieved on March 26, 2017, http://www.jstor.org/stable/pdf/174456.pdf.

23 Muller, Edward N. and A. Seligson, Mitchell. (1987). Inequality-and-Insurgency. The Americam Political Science Review, p. 425, https://my.vanderbilt.edu/seligson/files/2013/12/Inequality-and-Insurgency.pdf.

24 Ahuja, Pratul and Ganguly, Rajat. (2007). The Fire Within : Naxalite Insurgency Violence in India. Small Wars & Insurgencies, 18 (2), p. 251, doi:10.1080/09592310701400861 retrieved on April 24, 2016 .

25 Delaney, Tim. Collective Violence. Encyclopaedia Britannica, p. 1, retrieved on November 28, 2017, https://www.britannica.com/topic/collective-violence.

26 Delaney. Collective Violence. p. 1.

individual violence, only one person is involved is responsible for required violence and in the collective violence the group of people are involved in the violence. Riots, war, terrorism, group violence are a clear demonstration of the collective violence. Charles argued that the collective violence does not include individual action and indirect consequences but it impacts a greater range of social interaction. He gives examples of collective violence such as American gunfights, Malaysian sabotage of combines and Rwandan massacres.[27] Generally, collective violence can be divided into three parts: "situational collective violence organised collective violence and institutional collective violence."[28] The situational violence is based on the sudden reaction by the aggressive people. The organised violence can be defined as the systemic planning by the group of people to carry fight against any stimulus. The last category institutional violence includes the violence initiated by the institutions.

An eminent scholar Paul Brass depicted "riots, pogroms and genocide as the forms of the collective violence in contemporary India."[29] The violence may be in the form of groups, systematically and in an organised form or may be in the unorganised form. Robert defined that the violence is a social control which has four forms: lynching, rioting, vigilantism, and terrorism.[30] Lynching means an "unsystematic form of collective violence for which the human being or collective group of people are responsible, vigilantism means killing of someone in a systematic way with human responsibility." Rioting means collective violence by the group of people. Terrorism does not have any single definition it has more than or approximately 200 definitions.[31] Terrorism means violence by the group of people. It may target to attain political benefit or may be inspired by hatred of one group of people of the community against other

27 Tilly, Charles. (2003). The Politics of Collective Violence, Vol. 30. Cambridge Univerity Press, p. 3-4, doi:10.2307/20033694, retrieved on March 26, 2017, http://content.schweitzer-online.de/static/catalog_manager/live/media_files/representation/zd_std_orig__zd_schw_orig/002/353/318/9780521824286_content_pdf_1.pdf.
28 Delaney. Collective Violence. p. 2.
29 R. Brass, Paul. (2011). Forms of Collective Violence: Riots, Pogroms, and Genocide in Modern India.Three Essays Collective, pp. 228.
30 Senechal de la Roche, Robert. (2017). Collective Violence as Social Control. Sociological Forum, 11 (1), p. 97, https://www.jstor.org/stable/pdf/684953.pdf.
31 What is Terriorism?, p. 2, https://www.sagepub.com/sites/default/files/upm-binaries/51172_ch_1.pdf.

another community. "Lynching and rioting are categorised under low-level confederation but the vigilantism and terrorism are a high-level confederation." [32] These four forms of Robert highlighted several forms of collective violence involving one individual or more than one individual in violence. Collective violence takes place in the absence of law and order and weak administration in the region. At the same time, "collective violence also arises where the order is maintaining and the law is also prevailing in the area. Collective violence seems more prominent among different culture rather than same culture." [33] Collective violence can hunt the group of people or the one individual. Land distribution seems as one of the causes of the growing resentment among the masses. The land reform in any county, especially in developing countries, is considered as a universal remedy for the chaos of inequality.[34]

4.Violence in the lag between the Development of Political Institutions and the Process of Socio-economic Change

The violence always originated in the absence of the rights and in the unequal distribution of the natural as well as economic resources. The Indian political system (executive, legislature and judiciary) are developing but the socio-economic change is stagnant. The government launched several programmes and schemes but they are not implemented at the root level. At the grass root, the policies are on paper or in other words it can be addressed that there is a difference between theory and practice. The wide gap between regulating and implementation is increasing. Galtung's theory of structural violence[35] has relevance to defining the widening gap between the developing political institutions and socio-economic changes at the ground level. He defines that the violence is built into the structure.[36] Collective violence is sometimes

32 Roche. Collective Violence. p. 103.
33 Roche. Collective Violence. pp. 109-110.
34 Muller and Seligson. Inequality. p. 443.
35 Galtung, Johan. (2016). Violence, Peace, Peace Research. Journal of Peace Research, n.d., p.174, retrieved on September 9, 2016, http://academic.regis.edu/bplumley/Galtung1969JPRViolencePeacePeaceResearch.pdf.
36 Galtung. Violence, Peace. p.171.

referred to the political violence. It means when the violence is instigated by the three organs like the judiciary, executive, and administrative violence.[37] In another word, it can be defined that the government institutions are responsible to arouse violence in the public. The increasing prosperity, better literacy rate, growing urbanisation and industrialisation caused to enhance the expectations of the individual for rising socio-economic conditions.[38] However, the institutions have failed to meet these expectations, caused rising violence or civil war.

Stephen emphasised the importance of the police "if society wants less violence, it would be more effective to have honest police than welfare programs." [39] The authorities have to work honestly with their work regarding the implementation of the policies and any programmes. The country can respond to threat in two ways either by penance to the insurgents or by force the insurgents.[40] The democratic country should prefer a cooperative and consultative method which should be reformative in nature rather than in an oppressive way.

Different perspectives on violence

Charles has defined human violence into three parts: relation people, idea people and behaviour people.[41] He further explains that the relation people as they make interaction and transactions among people which is more significant than idea and behaviour, the idea people are divided over the significance of the individual and society and the behaviour people emphasised on the goals, stimulus and advantages. [42] Idea people more emphasised on the consciousness of the human being. These are three factors to motivate the individual to take violence into their own hands. The violence is inspired by the different factors which have been discussed in the present study. The study has taken four scholars for a theoretical framework to assess the causes of the persistence of the violence in the affected Naxalite districts in the country. Several studies have been conducted on the violence.

37 Renn, Ortwin. (2011). Aleksandar S. Jovanovic and Regina Schrцter. Social Unrest. OECD/IFP Project on Future Global Shocks, European Virtual Institute for Integrated Risk Management, p. 19, doi:10.1787/9789264173460-en, retrieved on March 26, 2017, http://www.oecd.org/gov/risk/46890018.pdf.
38 Abeles. Relative Deprivation. p. 121.
39 Brush. Dynamics of Theory Change. p. 529.
40 Muller and Seligson. Inequality. p. 432.
41 Tilly. The Politics of Collective. p. 5.
42 Tilly. The Politics of Collective. pp. 5-6.

Karl Marx

Karl Marx was the prominent philosopher who favoured convulsion to make revolution possible. It is generally understood that the Naxalite violence has inspired from the Mao Zedong, a Chinese leader, Karl Marx and Lenin. The Naxalite violence took inspiration from the Marxist ideology follower Mao Zedong, "China's Chairman is our Chairman and China's path is our path".[43] The violence followed the road of violence to fight against the government institutions to take justice and demanding equality from the government. Almagor represented three interpretations of the Marx' ideology: the Radical School, the Instrumental School and the third is Moderate School.[44] According to him, the first school means violence is mandatory to finish the capitalists rule. The second school defines that the violence is used as an instrument as there is no other option to end the exploitation of the upper class. The third school did not mention the use of the violence. The proletariat class took arms to defeat the bourgeois class:

"Force is a means, not an end. Force will be the midwife of revolution in those countries which have not advanced from the point of democratic processes, a fact which may force the proletariat to take sword in hand." [45]

The term force is used to gain their rights from the higher class. Karl Marx believed in the revolutionary ideas to bring an end the rule of the oppressor class bourgeois. Marx believed in the overthrowing the bourgeoisie class by the revolution. Marx consented to the proletariat class to take weapons in their hands to fight against the tyrannical government.[46] The revolution was mandatory to bring the socialist rule under which everyone would be able to get according to their needs. He believed in the transformation of the society. According to the Marx, "violence may help to refine the souls of the workers".[47] Violence is

43 Ray, Sankar. (2011). An Encounter with Charu Majumdar. Frontier, 44 (2), p. 1, retrieved on January 9, 2018, http://www.frontierweekly.com/archive/vol-number/vol/vol-44-2011-12/vol-44-2/encounter-44-2.pdf.
44 Cohen.Almagor, Raphael. (1991). Foundations of violence, terror and war in the writings of Marx, Engels and Lenin. Terrorism and Political Violence, 3 (2), pp. 2-3, retrieved on March 26, 2017, http://www.hull.ac.uk/rca/docs/articles/FoundationsofViolenceTerrorandWarupdate.pdf
45 Almagor. Foundations of violence. p. 3.
46 Almagor. Foundations of violence. p. 6.
47 Almagor. Foundations of violence. p. 9.

regarded as the main instrument of the social change. Through the violence, working class can change the regime. In China, Mao followed the Asian version of the Marxist revolution by the peasant class. Violence can be used to bring equality in the society and it is also used to fill the gap between the rich class and poor by giving power in the hands of the proletariat from the capitalist class.

Another Marxist thinker and friend of Marx Frederick Engels pointed out that violence is an essential part of the social change and he criticised the role of the police as it is used as a safeguard in the hands of the people.[48] According to both the thinkers the violence was required in the society. The socialist revolution was the priority for Marx. The peasant class in the Asian context has to struggle against the exploitation of the capitalist's class. "The experience in the Condition of the Working Class in England led to think Marx to recognise the revolutionary role of the working class." [49] Further, Marx asserted that the probability of the revolution is depended on the circumstances created by the bourgeoisie class.[50] Utopian Marxists criticised the bourgeoisie class for its economic tyranny and oppressing of demands of individual and looking for a new society that is socialism in which everyone's needs would be fulfilled.[51] Although utopian socialism criticised the revolutionary method of the Marxists they favoured the evolutionary method to change the system which would be called a communist state. "Communism could be achieved only through the armed overthrow of the existing state, and the establishment of a revolutionary dictatorship." [52] The final rule would be of the working class. All the Marxists thinkers focused on the freedom of the working class and the peasant class in the context of Asia. They wanted to get rid of the exploitation of the elite class. They are using violence in accomplishing their goals.

The Marxists theorists focused on the freedom of the worker class and the peasant class from the exploitation of the bourgeoisie or capitalists class.

48 Almagor. Foundations of violence. p. 10.
49 Callinicos, Alex. (2004). The Revolutionary Ideas of Karl Marx. Bookmarks, p. 20, retrieved on January 8, 2018, http://mexicosolidarity.org/sites/default/files/Callinicos%20-%20Revotionary%20idea%20of%20Marx.pdf.
50 Callinicos. The Revolutionary Ideas. p. 21.
51 Callinicos. The Revolutionary Ideas. p. 48.
52 Callinicos. The Revolutionary Ideas. p. 51.

M.K. Gandhi

Mohandas Karamchand Gandhi was a philosophical anarchist and Indian activist. He took non-violence propaganda against the brutish rule by the British in the country. He played a significant role during the Indian independence rule in India. He is also known as 'Bapu' as the father of the nation. The birthday of the Indian leader celebrated as the 'International Day of Non-violence' all over the world. He believed in the two basic principles called the trusteeship (Satya) and non-violence (Ahimsa). Although these concepts were not new to Indian people yet it has significance to direct the people towards the path of independence. There are various tools of the non-violent: conflict resolution, national defence, social reform and justice, nation-building, protection of democracy and self-rule.[53] He was most influenced by the personality of Tolstoy (Russian writer), Henry David Thoreau (American poet, philosopher, and essayist) and Ruskin. Gandhi synthesised ideas of Tolstoy and Ruskin into the Indian scenario.[54]

Gandhi adopted trusteeship and non-violence along with civil disobedience and non-cooperation as the strong weapon to fight against the imperial rule. Gandhi was a social reformer, thinker and philosopher. He mobilised people all over India. Gandhi believed in non-violence means to achieve liberty rather than by the violent methods against the British Empire. He also introduced certain programmes in a social field like swadeshi, khadi, empowerment of women and abolition of untouchability.[55] Gandhiji said: "Ahimsa is the farthest limit of humility...grant me the boon of Ahmisa in mind, word and deed." [56] He defined violence and non-violence:

53 King, Mary. (1999). Mahatma Gandhi and Martin Luther King Jr.: the Power of Nonviolent Action. UNESCO Publishing, pp. 2-3.
54 Dantwala, M. L. (1995). Gandhiji and Ruskin's unto this Last. Economic and Political Weekly 30(44), p. 2793, retrieved on February 1, 2018, https://www.jstor.org/stable/pdf/4403395.pdf.
55 Mazumdar, Bherati. (2003). Gandhiji's Non-violence in Theory and Practice. Meghshaym T. Ajgaonkar, Executive Secretary Mani Bhavan Gandhi Sangrahalaya, p. n., retrieved on March 23, 2017, http://www.mkgandhi.org/ebks/Gandhiji%27s-Nonviolence-In-Theory-and-Practice.pdf.
56 Gandhi, M. K. an Autobiography or the Story of my Experiment with Truth, trans. Mahadev Desai. Navajivan Publishing House, n. p. retrieved on February 3, 2018, http://www.arvindguptatoys.com/arvindgupta/gandhiexperiments.pdf.

"Violence does not mean emancipation from fear but discovering the means of combating the cause of fear. Non-violence, on the other hand, has no cause for fear. The votary of non-violence has to cultivate the capacity for sacrifice of the highest type in order to be free from fear. He recks not if he should lose his land, his wealth, his life. He who has not overcome all fear cannot practise ahimsa to perfection. The votary of ahimsa has only one fear, that is of God." [57] Harijan, 1940.

Gandhiji worshipped non-violence as the ideal form resistance to fight against the British rule. He directed that all the people of India should follow the path of non-violence instead of violence. Gandhi advocated civil disobedience to counter the disorder in the society. Non-violence is not merely to abstain from using force rather than it is having compassion and love towards the oppressor. Gandhi believed that nothing can be achieved by the use of violence. Gandhi believed in forgiveness to the enemy and violence cannot never be long-lasting and remedy for the human being.[58] Gandhiji's ultimate faith was kept in the theory and practice of non-violence.

Frantz Fanon

Political theorist Frantz Fanon was a psychiatrist, belonged to the French colony of Martinique. He examined the different dimensions of racism and also studied that how it influences an individual.[59] Frantz explained the theory in the context of the freedom of the colonised people from the imperialism and the colonial rule. In order to make colonial free country native people are using violence. By saying "violence was both the poison of colonialism and its antidote" [60] Fanon argued that the violence theory has two arguments: first violence has been used by the imperial power and second by the colonies as its only solution to expel from the

57 Mary. Mahatma Gandhi. p. 232.
58 Gandhi, M. K. My Non-violence, comp. Sailesh Kumar Bandopadhyaya. Navajivan Publishing House, p. 5 and 19, retrieved on January 3, 2018, http://www.mkgandhi.org/ebks/my_nonviolence.pdf.
59 Encyclopaedia of World Biography on Frantz Fanon, retrieved on January 16, 2018, http://www.bookrags.com/biography/frantz-fanon/#gsc.tab=0.
60 Violence, Fanon Frantz on. International Encyclopaedia of the Social Sciences, p. 1, retrieved on January 18, 2018, http://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/violence-frantz-fanon.
61 "Violence. International Encyclopaedia.

country. Fanon emphasised on the revolutionary activities of the colonialists and used the term "absolute violence".[61] Jha, who criticised Fanon's theory of violence, argued that according to Fanon revolutionary activities created a new man through his inner consciousness. Here one thing seems clear that Marx believed that human being is the creation of the labour and Fanon used to say that individual is the creation of his own.[62]

Meanwhile, Fanon expressed an optimistic view of violence because it collectively unites all the people of the country against the foreign rule. Scholar Jha asserted that Fanon categorised violence in two ways: sudden outbreak of violence which is unorganised and other one is systematised or politicised.[63] The first one is motivated by the ethnic ideas and another one is intensified by the political ideas. Hanson depicted Fanon as "glorifier of violence", "apostle of violence", and "prisoner of hate", etc.[64] Fanon emphasised on the freedom of the individual from the violent colonial rule.

There are few remarkable similarities between Marx and Fanon. Both the thinkers focused on the freedom of the workers and the colonial people respectively. Marx highlighted the grievances of the working class and Fanon emphasised on the violent activities of the colonisers, therefore, he suggested to violence back in resistance to the foreign rule. On the one hand, Fanon used the exertion form of violence to root out the colonist rule from the native territory and on the other hand, Mars referred revolutionary overthrow of the capitalist's class. Therefore, Fanon emphasised the violence by the people for gaining independence from the colonisers.

62 Jha, B. K. (2014). Fanon's Theory of Violence : A Critigue. The Indian Journal of Political Science, 49 (3), pp. 460-61, https://www.jstor.org/stable/pdf/41855881.pdf.
63 Jha. Fanon's Theory. p. 362.
64 Hanson, Emmanuel. (1976). Freedom and Revolution in the thought of Frantz Fanon. Ufahamu: A Journal of African Studies, 7 (1), p. 114.

Johan Galtung

Johan Galtung, sociologist and mathematician, belong to Norway. He has given his theory on peace, violence and conflict studies. He has founded Peace Research Institute Oslo (PRIO) in 1959. He depicted violence as the result of the structure. He stated violence in his own words:

"I understand violence as the avoidable impairment of fundamental human needs or, to put it in more general terms, the impairment of human life, which lowers the actual degree to which someone is able to meet their needs below that which would otherwise be possible. The threat of violence is also violence." [65]

He explained that violence is something that cannot be ignored by the human being to lead their life. Galtung advocated the concept of the 'cultural violence', 'direct violence' and 'structural violence'.[66] Cultural violence means different elements of culture like religion, ideology, language, mathematics, etc. can be used to justify or legitimise direct and structural violence.[67] Structural violence means that the violence has inspired by the structures. The cause of the violence is existed somewhere in the exploitative method by the structures and untouched by the development and growth of the nation. They felt marginalised from the mainstream of the nation. The structure determines the volume of violence.

All these thinkers gave different arguments for the existence of the violence. The primary argument in the thinking of all the scholars entirely focused on the freedom of the people yet ways are different. Gandhi and Marx are two opposite side of the same pole both have focused on the freedom of the people. Both thinkers are favouring different dimensions to the liberty of an individual. Gandhi believed in the non-violent and trusteeship while Marx kept faith in the revolutionary and violent ideas. The dynamic framework of the violence has sketched by these

65 Violence Typology by Johan Galtung (direct, structural and cultural violence), retrieved on November 10, 2017, http://www.friedenspaedagogik.de/content/pdf/2754.

66 Galtung, Johan. (1990). Cultural Violence. Journal of Peace Research, 27 (3), p. 291, doi:10.1177/0022343390027003005, https://www.galtung-institut.de/wp-content/uploads/2015/12/Cultural-Violence-Galtung.pdf, retrieved on Novemeber 10, 2017.

67 Galtung. Cultural Violence. p.291.

philosophers who figured out on the solution to get freedom. The Naxalite movement has been inspired by the Marxist ideology i.e. in the revolutionary ideas to fight against the state. Frantz Fanon and Gandhi concentrated on the independence of the individual from the colonial rule, one of them directed towards violence to get freedom and other one directed towards non-violence to get independence for the colonial power. Galtung tried to explain the reasons for the violence in society. After analysing it can be said that the violence is preferred by two thinkers: Marx and Fanon and Galtung refer the cause of the violence in society. Gandhi directed the way of civil disobedience and non-violence to resist the foreign rule.

After discussing ideas of these prominent scholars Marx, Gandhi, Fanon and Galtung, it can be stated that the violence got inspiration from the Karl Marx to continue the violence for a long time in the different parts of the country. The Marxian theory was further expanded by the Chinese leader Mao Zedong who believed in the peasant revolution to take away the power from the hands of the higher class to transfer in the peasant class. Mao adopted the Asian version of the Marxist ideology. The paper further examined the four theories to identify the cause of the violence in the Naxalism movement.

Conclusion

After analysing these approaches in detail the study can define that frustration, aggression and deprivation theory has relevance regarding the cause of the persistence of the Naxalite violence. The Naxalites are boosted by the ideology of the Karl Marx, Lenin and Mao Zedong. The poor condition of the Indian society and poor governance in the affected regions seems as the main reason for the persistence of the Naxalite problem. Naxalite violence is a social, political and economic disease. The problem required a solution embedded with the all these (social, political and economic) aspects: to raise the social standard, to participate in the political process and to the economic welfare of all the economically backward people. The socially and economically backward people are discriminated at the social level, for instance, the lower class is exploited by the higher class. This problem is still persisted at the local or village level. The governance and the administrative structure are weak in the affected Naxalite affected districts. The aggression and frustration theory is well fitted to define the Naxalite violence. The new economic and administrative structure is required to resolve the violence. These

policies should be regulated and rooted at the ground level. The literacy and employment can reduce the intensity of violence. The strong political will and fulfilling economic needs can also satisfy the basic requirement of the individual. The fulfilling of all the needs and political participation can reduce the level of the aggression, frustration and deprivation of the tribals. The new strategies can be formed to promote equal distribution of the economic resource

Looking Back To Dam, Crisis And Movement small Letter With Special Reference to Selected Dams in Context of Human Rights

Abu Taher Mollah*

Abstract

Big dam is a debatable issue. If we look back to the history of constructing big dams we come across that many agitation and protest were led by different NGOs, social thinkers, activists and environmentalist in protest of constructing big dam. If we peep into the past then we can come across why constructing big dam projects have been questioned time and again. It is true that big dams are the symbol of national development and have tremendous potential for economic growth and prosperity of a country. Dams are not only used for irrigation and for producing hydro-electric power but also have developed a certain zone around the dam which could be a place for tourist attraction. But the big dams have bleak side also which must be addressed. Any development at the cause of gross violating of human rights should not be upheld in any circumstances. Let's take an example of Narmada Valley Project which caused a huge displacement. It is said that one million tribal and non-tribal people were affected. Thousands of people had to leave their home lands where their forefathers' bones were buried and cremated. They do not have land to belong, paddy fields to grow their dreams, river for fishing and community to celebrate. Big dams derailed the people from their place and put them into the sense of 'the other' which is very fatal. In recent past, people across North East India joined Akhil Gogoi who led the agitation in protest of Subansiri Dam. Recently, Farrakka Barrage discharged 16 lakhs cum/sec water. It crushed down the life of common settlers who live in river basin areas of West Bengal and blocks fresh water to flow. It affects adversely the ecology and economy of Bangladesh as a large population of Bangladesh depends on Ganges

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Basin. Few months ago, Kopili Hydro Electric Project which is located in Dima Hasao district of Assam drew attention. The water pipe got ruptured, left a disastrous effect. People were missing too. The paper tries to focus on how big dams across India are threat to human beings and to their basic human rights. By reviewing the literature on various dams, the paper initiates to find out the knowledge gap. Methodology that I applied to study on Dams across India is based on secondary sources.

Key words: - *Big Dam, Crisis, Ecology, Environment, Human Rights.*

Introduction

A dam is a barrier. It takes of water or underground stream. It serves the primary purpose of retaining water. There are some structure like floods gates is to prevent water to flow into specific land region. But dams have some other significant purpose. It generates electricity. It is used as water storage. Later on, stored water can be evenly distributed to different locations. A big dam is taller than four-story building. It is higher than 15 meters. There are more than 40,000 big dams across the world. India has 1550 big dams. Big dams draw attention of environmental groups. Big dams create ecological problems. The tribal and native people are displaced. Their socio-economic conditions become worsen for being displaced. Above all, people living lower basin are under threat.

The Subansiri is a lower dam. The official name of this dam is Subansiri Lower Hydro Electric Project (SLHEP). This dam is located at Lower Subansiri district on border of Assam and 2.3 km upstream of Gerukamukh village in Arunachal Pradesh. The Subansiri dam is expected to generate 2,000 MW of power. The concrete gravity dam is designed to be 116 m (381 ft.) tall. Its length will be 284 m (932 ft.) and the dam will have a structural volume of 2,250,000 m3 (2942889 cu yds.). The reservoir created by the dam will have a huge storage capacity. It can store 1.37 Km3 (1,110,677 acre.ft.), of which 0.44 Km3 (356,714 acre.ft.) can be used for power generation and irrigation. If the dam is constructed as per plan, it will be the largest Hydro-electric power project in India.

Kopili Hydroelectric project is a project of producing 275 MW electricity. It is on the Kopili river and its tributary i.e. Umrang stream. The project is located in Dima Hasao district of Assam. The project is developed and operated by North Eastern Electric Power Corporation Limited (NEEPCO). It is an important Project. The Indian States Assam, Meghalaya, Mizoram, Nagaland and Tripura gets benefit from this

project.

Farakka barrage across the Ganges River is situated in Murshidabad district of West Bengal. The Barrage is about 2,240 meters (7,350 ft.) long. The barrage serves water to Farakka Super Thermal Power Station. There are sixty small canals. They can divert some water to other destination. The purpose of the diversion is to get drinking water and to get irrigation utility. The purpose of the barrage is to divert 1,100 m3/sec (40,000 cu. ft.) of water from the Ganges to the Hooghly River for flowing out the sediment deposition from the Kolkata harbor without the necessity of normal mechanical dredging.

Kadana Dam is situated on the Mahi River. It is an earthen and masonry dam. The river flows in Western India. Mahi River rises in Madhya Pradesh. It flows through the Vagad region of Rajasthan. It enters Gujrat and falls into Arabian Sea. It is one of the few west flowing rivers in India. Kadana Dam was started to construct in 1979. It continued till 1989. The dam supports a pumped storage hydro- electric power station. The purpose of hydro- electric power station was to generate power. It had a few more purposes. It was used for irrigation and water storage.

There is Karjan Dam (KarjanReservoire project). The Karjan Dam is situated near Jigadh Village of NandedTaluka. It falls under the district of Narmada of Gujrat. Karjan is a tributary of Narmada. The low down areas across the river are remained submerged during heavy rain. In 2006, August 12, The Times of India had a news on massive flood occurred due to releasing water from the dam. The threat of massive floods loomed large over central Gujarat. The massive flood occurred due to heavy rainfall. It was a heavy rain in the region and adjoining areas of Rajasthan. The officials of irrigation department became anxious due to heavy rain that caused flood in the downstream. The news reported that the officials ordered to release nearly 11 lakh cusecs water into Mahi River from three separate dams. The released water flooded the large tracts of land in the districts of Godhra, Vadodara, Kheda and Anand districts. The respective authorities issued warning to residents. Peoples of hundreds of villages and towns across the dam were rescued. They were shifted to safe place. The Gujarat government attributed to release of water from Bajaj Sagar dam in Rajasthan. It was reported that the release of water from these dams was the highest in last fifteen (15) years. Sauli and Padratalukas in Vadodara district, Lunevala, Khanpur, Shehre and Kadana in Panchmahals of Godhra districts, Umreth, Borsad, Anklav and Anand districts have been affected by the release of flood water. The maximum release of water nearly 8.50 lakh cusecs took pace from the

Kadana dam in Dahod district. It received inflow to the tune of 9.50 lakh cusecs from the catchment areas situated in Rajasthan and Madhya Pradesh. The Times of India, Aug 12 2006 reported that the Information director Bhagyesh Jha said that the problem got aggravated as two Rajasthan dams, Bajaj Sagar and Som Kamla began overflowing. The report also said that the downstream areas of Kadana were put on high alert.

There had been a huge debate on Sardar Sarovar Dam. Arundhati Roy in her book 'The Cost Of Living' stated that big dams were to a nation's development what Nuclear Bombs were to its Military Arsenal. She accorded that they are both weapons of man destruction. They are weapons government use to control their own people. She said so in regards of Sardar Sarovar Dam. The reason for saying so was that the Sardar Sarovar dam was a concrete gravity dam on Narmada River in Kevadiya near Navagam, Gujrat in India. The four Indian States Gujarat, Madhya Pradesh, Maharastra and Rajasthan were supposed to get water and electricity from the dam. The foundation stone was laid down in 1961. But the project was stalled by the Supreme Court of India in 1995 in the backdrop of Narmada Bachao Andolan over concerns of displacement of people. One of the 30 dams planned on river Narmada. Sardar Sarovar was the second largest structure. It was largest in context of volume of concrete used to construct dam. It would be grand after Coulee Dam across River Columbia, U.S. The Narmada Valley Project was the large hydraulic engineering project. It involved the construction of a series of large irrigation. It was a hydroelectric multi purposes dam. The Naramada Control Authority had to have several changes of its original plan under the monitoring of Supreme Court of India. It had changed the final height of the dam so that displacement and flush flood can be minimized. The project was supposed to irrigate more than 18000 km2 (6900 sq. mi). It was supposed to irrigate the draught areas of Kutch and Saurashtra. The Narmada Dam was fallen into several controversies. Medha Patkar, Arundhati Roy led protest against the height of the dam. They demanded to maintain status quo of Social and environmental justice.

The Hindu reported that 'Is the Sardar Sarovar Dam boon or bane? The reporter Himanshu Thakkar wrote in The Hindu that the social and environmental impacts have gone far beyond what was estimated at the outset when the project was cleared in the late 1980s. It was reported that rehabilitation of displaced people remained incomplete. It was also reported that 80% of rehabilitation of affected people was to ensure. It

also reported that even the highest judiciary of the country could not assure that the displaced population could get their just rehabilitation. There were many other dimensions of the negative impacts caused by the dam. The 150 km land across Narmada downstream remains dry in most of the time of a year. The livelihoods of at least 10,000 families were destroyed. The families lived on estuary were badly affected. They did not get proper rehabilitation. They did not get compensation either.

Similarly, as reported by The Hindu, Sept. 22, 2017 there is no rehabilitation for all the other categories of people displaced by the dam. The Maheswar Hydropower project is one of the planned dams and hydropower plants in the Narmada basin. It is known as Narmada Valley Development Plan (NVDP). It was started in 1975 by the NVDP. It was planned for power generation purpose. The project was suspended because of noncompliance of dam authorities with Indian Law about settlement and rehabilitation of displaced people. The proposed installed capacity of Maheswar dam is 400 MW. Reports said that if the proposed height was installed, 70,000 peoples and at around 8,000 families had to displace. Front Line of June 2,2020 had published news of Lyla Bavadam. Lyla Bavadam reported that there had been misappropriation of funds allotted to Dam. The report argued for forensic audit. The report also said that the rehabilitation was not done properly. More than 60,000 peoples had lost their land and homes. But they were not resettled properly. It also reported that 85 per cent people were yet to get proper re-settlement even after 23 years.

Subernarekha multipurpose project (Icha Dam) is located across the three states (Jharkhand, West Bengal and Orissa) in the eastern part of India. The project is originally envisaged in two dams viz, Chandil dam and Icha dam and two barrages (kharkai and Galudih). The project was started in 1982. The purpose of the project was to supply water for agriculture in Jharkhand, Orissa and West Bengal. Besides this, the other aims of the project was to reduce flood damage in Orissa and West Bengal and to generate 30 MW of hydroelectric power through medium, mini and micro hydroelectric projects located at various points of the canal system. The dam area is mainly inhabited by the tribal and they belong to 'Ho Religion'. The tribe of 'Ho' religion believes in the worship of Mother Nature. Their social and religious conventions and customs do not permit them to part with their land and let them allow for mass displacement. The villagers across the dam area mentioned that if the dam is constructed, about 124 villages will be submerged. The Times of India (Sep.26, 2012) published a news. "Tribal oppose fresh bid to construct

Icha Dam". In that news it is said that tribal community in Saranda forest of west Singhbhum district, strongly opposed Subernarekha multipurpose project. The villagers refused to give consent for land acquisition to construct Icha Dam.

Chandil Dam is situated in Jharkhand. The dam stands on the Subernarekha River. The dam has a beautiful ambience. There is a museum next to Chandil Dam. The museum has kept scripts written on rocks which are 2000 years old. The Chandil Dam is built on the meeting place of two rivers. The dam is 220 meters in height. The water level height of the dam is 190 meters. Tourist can enjoy its scenic beauty from different places. The Swarnarekha River flows through Chandil region. The Karkori River originating from the Hundru falls and mingles into Swarnarekha River at Chandil. The Business Standard of December 5, 2019 reported that hundreds of families which were displaced to build the Chandil Dam are still struggling from last 10 years to get their rights of proper compensation and rehabilitation. It was reported that Chandil Dam was constructed 40 years back when Bihar and Jharkhand were undivided. It reported that one hundred sixteen (116) villages comprising nineteen thousand one hundred fifteen (19,115) families were displaced. They were promised jobs and better rehabilitation with compensation. However, all those promises turned to vain. It reported that the displaced people had told that promises were not fulfilled in the way they were supposed to be and then they were forced to live in a worsen conditions. Shyamlal Madi, their representative told ANI "Before displacement, everyone had at least three acres of land, but everything is lost now. We have been shifted to rehabilitations lands, but life is really miserable here. Neither the job promises were kept by the government, nor were any better arrangements made for our livelihood". Another man who had to leave his property behind due to land acquisition for Chandil Dam, said- "We were living a good live there, now they have settled us here without any proper care". We made the house on our own, but we don't have any legal documents for this property". (Business Standard December 5, 2019,by ANI).

Koel-Karo dam project was the first proposed dam in 1957. The propose dam was resolved to construct under second five year plan and the final project report was completed in 1973. The total cost was estimated of Rs.137 crore. The project had connected two dams situated at Basia. The dam was planned over South Koel River and North Karo river of Jharkhand. The two dams were to connect by 34.7 km canal. The dam was constructed primarily for facilitating power. Initially the dam had to

face many protests. Tribals across the river basin protested at large. They feared large scale social and cultural displacement. The Down to Earth (Feb 2,2001) reported about a violence that took place while anti dam protester protested against the proposed Koel-Karo dam in the Torpa block of Ranchi district, Jharkhand. It was reported that police opened fire on two thousand (2000) tribal people. They gathered to protest at Tapkara village. Five people among them died on the spot and several spotted injured. Soma Munda of Lohajini village in Torpa block, Chair Person of the Koel- Karo Jan Sangathan (KKJS) said in the report "We felt betrayed. We don't trust any political party. Whenever a dam has come up, political parties have fond of the people. We know the government is interested as long as we have the land. Once we move out, we will lose everything". Shibu Soren, one of the oldest leaders of Jharkhand movement, seemed also non committed on the dam issue. The journalist of Down to Earth newspaper asked him whether he would scrap the project if his party came to power in the state? He replied that he and his party ensured that the displaced people would get benefit from the project. Down to Earth (Sunday June 7,2015) reported that about 120 villages are to be submerged over 22000 ha. At about one lakh people were displaced. It reported that the land acquisition was not properly done. Out of the whole acquiesced land, 12000 ha land were reported as agricultural land while 10000 ha comprises forests. Even displaced people were not got compensation.

Mahi Bajaj Sagar dam is situated 16 km away from Banswara town. Banswara town is situated at Banswara district of Rajasthan. The dam was started to be constructed in 1972. And it was completed in 1983. The Dam was constructed for generating hydroelectric power. It was also constructed for the purpose of water supply. It is considered to be the second largest dam in Rajasthan. The dam is named after Jamnalal Bajaj. And the dam was located in the tribal area of Rajasthan. It was reported that the Mahi River was the host of crocodiles and many species of turtles. But due to the construction of the Mahi Bajaj dam the animals' species were on the verge of extinction. The species were on the verge of extinction due to pollution and salinity too. Fisher folk and non-governmental organizations (NGOs) of Vadodara, Gujarat blamed the construction of dam over the Mahi River. They argued that due to the dam crocodiles and other aquatic species were getting extinct. They also said that water flow on the surface had been stopped due to dam. The river was facing an intrusion of saline water. The saline water was coming from the sea. There was no surface flow which caused the paddy

fields dried. Even high concentration of nitratetoxicis found in water body. Even maximum phosphate was observed in water body during rainy season.

Indravati Dam is a gravity dam. It is situated on the Indravati River. Indravati River is a tributary of Godavari. It is about 90 km away from Bhawanipatna. Bhawanipatna is located in the state of Odissa, India. It is connected with to the main Indravati reservoir via 4.32 km long and 7 m dia. headrace tunnel. The height of the dam is 45 m (148 ft.) and the length is 539m (1768 ft). The main purpose of the dam was to produce hydroelectricity. It was started for irrigation purpose also. The project Indravati Dam was operating and maintaining by Govt. of Odissa and water resource department. The dam was completed by Govt. of Odissa in 1996. Noted that the upper Indravati Project was meant for diversion of water of the Indravati River in its upper reaches into Mahandi River Basin for power generation and irrigation. In addition to the power house, the Indravati Dam project had a plan to construct four (4) dam across the Indravati and its tributaries, 8 dykes and two inter-linking channels to form a single reservoir with a capacity of 1435.5 Million m3 and a barrage across Hati River in Mahanadi river basin. A field survey was done in July, 2003 on upper Indravati Irrigation project. The survey said that the objective of the project was to ensure the increment of agricultural productions and improvement of productions because farmers had to depend on rain water for better production. Therefore, the upper Indravati Irrigation project would be helpful in growing food in around the year. It hoped to contribute to alleviate poverty among scheduled caste and scheduled tribes people. It thought to be helpful to minimize the Social suffering due to discrimination and extreme poverty. It also helped in raising the states food self-sufficiency rate. But the report said the water is not distributed as planned. The report also said that farmers have had no experience of harvesting in dry season. So, they faced difficulties to use the irrigation at optimum level. Even detailed rainfall data for the local area and the project area was not available. Business standard, August 09, 2019 reported that the two gates of Indravati dam opened in rain battered Odissa. It reported that two gates of Indravati dam were opened due to relentless rain. The relentless rain triggered flash floods. Many villages and areas were turned under water logging due to heavy over flowing of water from the dam. It was also reported that one person had lost his life and two had sustained injuries after they were swept away by excessive water on the road at Dedshuli village of Kale Handi district. Besides, roads and houses, trains scheduled were also hampered.

A few trains were cancelled, delayed and diverted to other route.

Maharana Pratap Sagar is popularly known as Pong Dam. It was constructed in 1975. It was built on the Beas River. Beas River is situated in the wetland zone of the Siwalik Hills of the Kangra district of the state of Himachal Pradesh. The reservoir is bounded by rugged Dhauladhar mountain range. It is surrounded by low foothills of the Himalaya on the Northern edge of the Indo- Gangatic plains. Pong dam is located on Beas River. Beas River is one of the five major rivers of the Indus Basin. Pong Dam projects necessitates its operation to achieve highest benefit in irrigation and power generation. Various kind of migratory birds come around the year to the dam. Therefore, it is a place of tourist attraction. Hence, it is declared as a bird sanctuary in 1983. The reservoir is 5 km from the periphery of the lack. It has been declared as buffer zone for the management of the bird sanctuary. Nearly 40 villages forest development committees are functioning to prevent poaching of birds. It has installed nine check posts and two mobile check post to monitor suspicious activities in the sanctuary areas. Yet such vigilance is not sufficient in protecting the wild and human life. India Today had reported on August 2, 2020 that two Rajasthan youth visited the area to see the beauty of Pong Dam Lake and went into the deep water to take a Selfie and they drowned.

Hindustan Times of Jan.21,2020 also reported that 1.5 lakh people were displaced due to Pong Dam. Hindustan Times reported a bleak story of Raman Kumar. Raman Kumar, age 25 fights a battle that his father and grandfather could not win. The report said that his grandfather gave up 10 acre of fertile land for the Pong Dam Projects five decades ago. But they did not get any facility from the Govt. Kumar and his family live on a small Island. The Island has no electricity. It has neither a school nor any other facility to have primary education. It has only one hand pump that was installed a few years ago. The reports said that except for carrying out the seasonal farming on the banks of Pong Lake, when the water recedes every winter, Kumar has no other means of earning a livelihood. It is to be mentioned that even the promise of compensation is not accomplished. The displaced people did not get the land to resettle in Rajasthan. This is not only the story of Raman Kumar but it is the story of every one who was displaced. It is the story of Rajendra Kumar, age 55 and Kaka Ram, age 56 also. They have the same version of angst “the land promised in Rajasthan was never allotted and still fighting for it”. According to government data as reported in the news more than half of

the displaced families are still awaiting for rehabilitation.

Ichampalli Dam project was a multi-purpose project. It was proposed in 2008. The purpose of the project was to generate hydroelectricity. Irrigation and flood control etc. were also the purpose of the project. This project is proposed as joint project of Telangana, Maharastra and Chhattisgarh. The project is located on the downstream point where Indravati River joins Godavari River in Karimnagar district of Telangana. Ichampalli reservoir is proposed with 10,379 million m3 (367tmc) gross storage capacity at full reservoir level (FRL) 112.77 m MSC tentatively. The reservoir project precisely would eliminate the frequent floods taking place in lower Godavari river basin area in Telangana and Andhra Pradesh. But the dam project submerged the coal mines and coal deposit located in the area. The Hindu Oct. 26, 2019 reported that the Polavaram Project was initially conceived as a flood water diversion project. But presently it is being seen as a storage reservoir project. P.K. Haranath, former superintendent Engineer also said as reported in The Hindu, that certain amount of infrastructure is needed to store flood waters. The news also reported that the Polavaram project had a diversion scheme with a full reservoir level (FRL) of 150 feet only to reap the benefits of Bhopalapatnam and Ichampalli with both acting as storage reservoir for Polavaram. But with the dropping of the Bhopalapatnam and Ichampalli Project, Polavaram project was being seen as storage reservoir. And that is a loss. So, it is found that Ichampalli dam is not giving optimum benefit to people. Business Line, November 1, 2019 published a news on the dam entitled AP: with new contractor, work resumes on Polavaram project. The news reported that Y S Jagan Mohan Reddy, Chief Minister of Andhra Pradesh, accused the previous government for neglecting relief and rehabilitation of displaced people in their term.

The Bhakra Nangal Dam is located in the border of Punjab and Himachal Pradesh. It is the highest dam which claimed to be the second largest dam in Asia. It is the highest straight gravity dam. The height of the dam is about 207.26 meters. It runs across 168.35 k.m. The Bhakra Nanga Dam project was signed by the Punjab Revenue Minister Sir Chhotu Ram with the king of Bilaspur in November, 1944. The dam was constructed primarily for irrigations and storing rain water. The dam provides irrigation water to Haryana, Rajasthan, Gujrat and Himachal Pradesh. It is also used to provide electricity for the states of Haryana, Rajasthan, Gujrat and Himachal Pradesh. The Times of India, Jun13, 2012 reported that the Bhakra Dam was completed in 1970s. It is now 40 years that displaced peoples are yet to get their dues from the government. Villagers

are yet to be rehabilitated and recompensed. The news also reported that the displaced people have decided to participate in the proceedings of independent people tribunal by taking out a procession. The political party is found very reluctant to address issues pending for last 40 years. The displaced people have decided to publish a book titled 'Visthapiton Ki Dastan'. The book will be the testimony of their plight, suffering and worsen conditions which they went through over the years.

Tultuli Dam is an earthfill dam. It situated on Khobragadi River near Gadchiroli in the state of Maharastra. The height of the dam is 21.59 meter (70.8 ft). And the capacity of the Dam is 216948 km3. The main purpose of the Dam was irrigation. The dam has been proposed by the central government. Tultuli Dam is situated in Gadchiroli district and the entire Gadchiroli district is included in the drainage basin Gadavari River. Noted that Gadavari River enters Gadchiroli district from the south of western boundary near Sironcha. It flows for about fifty kilometer. Later on, it confluences with Indravati and Gadavari turns south into Andhra Pradesh. The dividend between Gadchiroli district and Chandrapur is Wainganga River. Khobragadi, Kathani and Mirgadola rivers are also major tributaries of Gadchiroli district of Maharastra state where Tultuli Dam is located. It is true that Tultuli dam is one of the prominent dams in the state of Maharastra. Indigenous people across the dam were displaced due to the dam. Nandita Kushal in her article 'Displacement: An Undesirable and Unwanted Consequence of Development' said that dam is an indispensable part for economic growth. It is needed for the progress and prosperity of a country. Development is taking place since human existence found on the planet earth. Without Development, there will be no progress and growth. A society needs economic development. Economic development raises the living standard of people so that people could have better life. Development necessarily demands basic infrastructure like railways, roads, shipping, civil aviation, power station, irrigation facilities, means of communication and establishment of industries.

Such projects like the construction of dam are invariably required as they improved lives of people, provide employment and supply better services. It is true that economic development not only generate positive consequences. It also gives rise to negative consequences in the form of forced displacement. Forced displacement is the other side of the rosy picture that happened when dam is constructed. Dam induces displacement. Not only dam, all kinds of development encourages displacement which is the other eerie side of the development. Since

displacement is induced by development, so policy makers and government of a country cannot ignore the harsh reality caused by displacement. Internal displacement is occurred due to dam. Internal displacement is a condition where a person or a group of persons have been forced or obliged to flee or leaves their homes or places of residence remain with the borders of their own countries. Internal displacement grossly affects people economy all of a sudden. Internally displaced persons are cut off from their homes. They are cut off from their communities and source of livelihood. Therefore, they have to live in destitute condition conditions. They become vulnerable to human right abuses. In recent years the term 'forced migration' and 'forced resettlement' have been emerged. Both of them are different from each other. Forced migration is the result of political, environmental and developmental displacement. Forced re-settlers are development induced displaced person. Forced displaced people are involuntarily re-settled by allocating a specific area within their country. And they have been provided compensation for leaving their plots. Despite, it is true that all kinds dam bring crisis to people. Behind every dam there is a sage of loss, pain and homelessness.

Generally big dam projects left serious issues after their completion. Peoples are displaced from their ancestral home. Their displacement caused loss of traditional professions and occupation. The word commission on Dam reported that forty to eighty million people are displaced due to dam related project. Twenty million peoples are displaced in India.

The Statistical Data Of Displaced People

S. No.	Name of the project	State	Population facing Displacement.	Tribal people as % of displaced.
1	Karjan	Gujarat	11,600	100
2	SardarSarovar	Gujarat	2,00000	57.6
3	Maheshwar	M.P	20,000	60
4	Bodhghat	M.P	12,700	73.91
5	Icha	Bihar	30,800	80
6	Chandil	Bihar	37,600	87.92

S. No.	Name of the project	State	Population facing Displacement.	Tribal people as % of displaced.
7	KoelKaro	Bihar	66,000	88
8	Mahi Bajaj Sagar	Rajasthan	38,400	76.28
9	Polavaram	A.P	1,50,000	52.90
10	Maithon&Panchel	Bihar	93,874	56.46
11	Upper Indravali	Orissa	18500	89.20
12	Pong	H.P	80,000	56.25
13	Inchampalli	A.P-Maharastra	38,100	76.28
14	Tultuli	Maharastra	13,600	51.61
15	Daman Ganga	Gujarat	8,700	48.70
16	Bhakra	H.P	36,000	34.76
17	Masan Reservoir	Bihar	3,700	31.00
18	Ukai Reservoir	Gujarat	52,000	18.92

Source: Satyajit Singh, Taming the waters, OUP, 1993, and government figures.

Peoples are displaced owing to big dams. They have to lose their beliefs, myths and rituals. People lose lands. And people's belief, make beliefs, custom and rituals germinate in a piece of land. There are 32 families around Subansiri dam. Expert said that the displacement issue is not very serious in context of Subansiri dam. The place Gerukamukh and its surrounding is a seismic zone. Therefore the proposed height 115 meters is highly risky. The Hindu reported that the height of the Subansiri Project must be reduced from proposed height to a much smaller level. If the 115 metre dam were to burst, its effect will be fatal. The Times of India published news on Subansiri Dam expressing ecological anxiety. It stated that 450 cu.m/sec water is needed in an average to ensure ecological health of the river. But report said that the NHPC and MOEF planned to release water at the rate of 6 cu.m/sec for 20 hours. Apparent that lower Subansiri area of Subansiri Range will remain dry and it put down the health of ecology. The cultivator and fisherman community will be shackled too.

The Geneva Convention (1994) embodies the right of every human being to a healthy, secure and ecological sound environment. It affirms equity, security, attainment of basic human needs and environmental justice to all. Protecting Bio-diversity is one of the important components of Geneva Convention. Article 3 of the UDHR and Article 6 of the ICCIR in 1992 convention on Biological Diversity emphasizes the importance of preserving bio-diversity. The Convention, in its preamble acknowledges the importance of bio-diversity for evolutions. It asserts to maintain ecology for better life and place. The United Nations Human Rights Council raises their concern about climate Change. The climate and rights of human being are partially interlinked. Report said that India's dam "emit an amount of Methane that is equivalent to 850 million tons of CO2 per year". CO2 and Methane releases from decaying vegetation of spillways, reservoirs and tribunes of Hydropower dam. CO2 and Methane causes Global Warming. It leads to Climate Change. Increasing frequency of extreme weather event occur due to global warming. Sea water rising, droughts, water shortage and spread of tropical and vector borne diseases are the effects of global warming. So, it is clear that how big dams are threat to people. In the month of September, 2019, Farakka Barrage discharged 16 lac cu.m/sec water and it caused flood like situations in some parts of the state of Bengal. 37 percent of the total area and 33 percent of the total population of Bangladesh is depended on Ganges Basin. Farakka Barrage impounds water and disrupts the natural water flow. Therefore, Bangladesh faces problems in the field of agriculture, Industry, fisheries, navigation, salinity etc. in the south western region. 1/3 (one third) of the total area of Bangladesh is directly beneficial on the Ganges Basin for their livelihood. In these circumstances water diversion at Farakka is bound to have an impact as it was an attempt to introduce a new ecological system against the usual course of nature. Due to Farakka Barrage, the water scarcity has brought much misery and hardship to the people of South Western part of Bangladesh. It causes disruption of fishing and navigations. It brought unwanted salt to rich farming soil. Due to Ganges diversion the minimum discharge of the river Padma fell far below. The ground water level in the highly affected area went down particularly in the district of Rajshahi, Khulna and Jessore. The south west region has faced critical problems too due to drastic reduction of fresh water flows in the Gorai River. The Kopili Hydro Electric Project on the Kopili River and its tributary of Umrang stream cause pollution due to fuel combustion in various equipment. It contaminates the river water with acid discharge. Very recently; the hydro project site was submerged and flooded. The Hindustan Times reported on 10th October, 2019 "It has been four days of excruciating wait 23 years old Monaj

Balmiki whose father Prempal Balmiki, a sweeper at the state run NEEPCO's Kopili Hydel Project, got trapped with three others in the power house which got flooded as the penstock (pipe) punctured early morning on Monday".

Conclusion

To conclude, we may say that underprivileged peoples are badly affected by dam/big dam. They do not only lose their piece of land but also lose their tradition and culture. They have to inhale gaseous air which is harmful. Even the fresh water blockage causes draught. The farmer and fisherman community are badly affected due to fresh water blockade. Even people live in constant threat of unnatural flood. The United Nation Universal Declaration of Human Rights UNDHR enshrined 'social security and food' and 'shelter' for all across the globe, but big dam restrict those rights in the name of development and thus fallacy occurs.

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COVID-19 Pandemic Impact on Livelihood: An Analysis

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Abstract

In times of a crisis, people's livelihood is the first thing to take a hit. The State's role in this is to protect its people and resources so that when the dust starts to settle down, everyone has a bare minimum quality of life to return to with the necessities they need. As when man is left defenceless, s/he always turns to the Government they have elected to be their final safety net. This paper talks about how people's livelihood has taken a hit during this pandemic and how even though it's the same virus, the impact it has had on different communities is very different. The impact of COVID on different communities needs to be studied kept a broad mind an aim to devise a different solution for each. This paper is broadly divided into four main areas of operation. It starts with a basic introduction into the ground realities, from there we go on to talking about the broader Global perspective and then funnel down to India, talking about how different communities have been hit from each one whether it be a migrant worker or one who is self-employed. This section is complemented by talking about Legal Frameworks in place for the same. From there it narrows down attention to the main segment of this article that is the Right to Livelihood everyone has and finally we sum it up with a conclusion and few suggestions. This paper has been written to offer better insights into the ground-level realities and how a basic right people have to livelihood with dignity isn't being met.

Key words: - *Human Rights, Life, Livelihood, Pandemic and Constitution.*

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Introduction

There is a lot one can understand about a Nation through the actions and policies it carries out for its citizens. Especially when the World is going through a pandemic and the priority of each Nation is to protect its people and resources. Certain factors have to be taken into consideration were formulating a good strategy to deal with the pandemic. One of the very important factors is Human Rights considerations, and to ensure that if protecting people's lives is prioritized, people also have a dignified life with necessities to return to. One such basic necessity that needs to be protected and ensured by the State is the Right to Livelihood which says that each person has the right to earn a minimum wage to carry out life with basic dignity.

While analysing the impacts of COVID 19 pandemic, a grave question arises that in what ways this pandemic has affected the exercise of one's right to livelihood. The pandemic which spread like a wildfire, and has grappled the whole world within itself, has affected individual's right to livelihood, from students to employees, from millionaire to daily wage worker, or from businessmen to domestic workers. On one hand, where demeaned, deserted and distressed labourers are struggling to get back to their native places, simultaneously on the other hand businessman are also struggling to get hold off their labourers to get their work back on track.

COVID-19 pandemic is trying out the democratic, federal, and constitutional structure of a country. The circumstance it has created is examining the overall ability of the executive, legislature, and judiciary. The role State governments and local authorities have played in combating the virus, the type of work executive has put forward in enforcing laws to flatten the curve, along with upholding the constitutional fabric of the nation and the role of the judiciary as a watchdog of government in enforcing rights of those who are deprived of it.

While battling with the virus, various questions aroused of saving the lives or the livelihoods, but the point here is that both lives and livelihoods are interdependent and are not mutually exclusive, choosing any will anyway impact the other sooner or later. The government does not have a choice to make, hence it becomes the duty of the government to protect both. Most of the countries across the globe are struggling to maintain equilibrium between protecting lives and livelihoods. The government must ensure the providence of employment, wages, food, education (protecting livelihood) along with ramping up health

infrastructure by ensuring uninterrupted supply of health equipment (protecting lives). It is high time for countries with poor health infrastructure to understand the meaning of the phrase "health is wealth" and start implying it by improving its poor status on providing a healthy living to its citizens.

This paper intends to provide a better understanding of repercussions of the COVID-19 pandemic, focusing differently upon both global and local perspectives, it impacts upon different groups and also the domestic and international laws governing such situations.

Ground Realities During Coronavirus Pandemic

The global health crisis has overshadowed the world and has devastating effects on everyone and everything. The world is also on the verge of getting hit by the global recession. It is even forecasted that the recession hit by the pandemic will be twice as deep as the recessions during World War II.[1] Since the livelihood of individuals is completely dependent on the day to day economic functions of the country. The lengthy lockdown imposed to battle the virus has brought the economy to a standstill leading to the loss of livelihoods. The imposition of sudden lockdown brought unimaginable hardships with it to the millions of families in and around the world. Lakhs of people lost their jobs, and most of them were the only bread earners in their families. Small traders, migrants' workers, domestic workers, daily wage labourers are the worst affected as their livelihood depends upon their daily earnings and do not possess any fixed assets or savings, that they can afford their daily expenses without earning. Such groups did not only have to confront with the virus but also have to struggle for their daily survival. Various surveys recorded a mind-boggling rise in unemployment, not only in India but worldwide. In India most of the workers are employed in unorganized or informal sectors, with little security of employment, the circumstances here are worse. The pandemic along with destructing health has also proved to be a livelihood-destructor to many. The virus itself does not discriminate among any groups, it can strike anyone but the lockdown has significantly affected certain sections of the society more than others.

1 KoseAyhan and Sugawara Naotaka, "Understanding the depth of 2020 global recession in 5 charts" available at wwwblogs.worldbank.org (last visited on June,20,2020).

Also, the lockdown may save one from viruses but the loss it is incurring upon individuals' livelihood could be beyond irrecoverable. To understand the deeper scenario let's look into both global as well as national perspectives:

(i) Global Perspective

Struggling with the unforeseen crisis like coronavirus is taking its toll on people all around the world. Various countries are employing different strategies to flatten the coronavirus curve and bring back the situation to normalcy. Some countries have taken the path of complete emergency, while others have employed the strategy of self-isolation along with important measures like social-distancing, social bubble, etc. Such a situation has led to a state of ambiguity worldwide. Global Stock Markets too suffered a major setback during the outbreak[2] . Along with it, physical as well as mental health is highly endangered, due to the provisions of physical distancing, people are at high risk of suffering from various mental issues, like depression, stress, irritability, etc[3] and physical health issues like backaches, suffocation, etc. International Labour Organization (ILO) released its latest data revealing the impact of coronavirus on the labour market, upholding that the pandemic has incurred a devastating effect on employees in the informal sector, which constitutes more than half of the workforce globally. ILO has warned that 1.6 billion workers in the informal sector stand in immediate danger of losing their livelihoods. Other than laborers, more than 436 million enterprises in the accommodation sector, real estates, food services, manufacturing, wholesale and retail, etc are facing a high risk of disruption, due to the pandemic.[4] After recording such data, ILO calls for immediate and

2 Duffin Erin, "Impact of Corona virus pandemic on the Global Economy-Statistics and Facts" available at wwwstatista.com(last visited on June 27, 2020)

3 Varsney Mohit, Parel Jithin Thomas, Raizada Neeraj and Sarin Shiv Kumar "Initial psychological Impact of COVID-19 and it correlates in Indian Community; An online (FEEL-COVID) survey" available at www.journals.plos.org (last visited on June 20, 2020)

4 "COVID19: Stimulating the economy and employment, ILO: As job losses escalate, nearly half of global workforce at risk of losing livelihoods," International Labor Organization, press release April 29,2020available at www.ilo.org (last visited on May 28,2020)

flexible measures, targeted to particularly vulnerable groups to support workers in the informal economy and small businesses. Mitigating the risk involved with the contagiousness of the disease various big firms like Facebook, twitter, google, have established mandatory work from home policies to ensure the obedience of compulsory directives of Social Distancing, but aviation, automobile, retail, financials, and reality are some sectors which received the worst-hit worldwide due to it. While battling with the virus, people are living under the constant fear of losing their freedom and leading a dignified life. Those underserved, unreserved and excluded groups are the ones going through extreme hardships.

(ii) National Perspective

Due to the structural weakness of employment in India, certain groups like farmers, small entrepreneurs, daily wage earners labourers, etc are highly vulnerable to economic disruptions. World Bank also mentions that the lockdown in India has impacted an immense fraction of the country's population livelihoods, migrants are desperately struggling to go back to their villages, with the hope of sustaining their livelihood as the economic setback has left them with nothing in their places of work. It is also pointed out by the World Bank that the measure of internal migration in India is more than twice the international migration, which again throws light on the weak employment structure of the country. After the loss of livelihood and wages, when the vulnerable migrants set off on their trip to villages were subjected to severe hardships due to transport suspension in lockdown. Many of them started their journey by foot or by other manual vehicles like bicycles, tricycles, etc and met with severe accidents leading to deaths. Taking away the livelihoods of these groups subsequently led them to death, this proves very well how one's deprivations of the right to livelihood can result in the violation of one's right to life. Talking locally, these groups were not only deprived of their right to livelihood, but the pandemic also highlighted the severe shortage of health facilities, food, shelter, etc, which stands in complete violation of Article 21[5] of Constitution that

5 Constitution of India,1950, Article 21- No one should be deprived of life and personal liberty except according to procedure established by law

is a fundamental right constitutionally guaranteed to every person of the nation. Statistics of migrants dying while covering unbelievable distances home is tragic.[6] Fear of starvation loomed large upon migrants when they were forced to sit at home during the imposition of restriction which was followed by job cuts or low pay, all of it combined took them to streets, leaving the government's efforts to disarray. It is recorded that 80% of citizens reported a loss in sources of income, whereas 49% of household workers reported that they did not even have money to meet their daily needs.[7] Taking a closer look reveals the following:

(a) Self employed

The impact of lockdown was more severe in urban areas than in rural areas. According to a livelihood survey conducted recently revealed that 84% of self-employed workers lost their livelihoods in urban areas, while 47% of these lost livelihoods in rural areas[8]. Those who were self-employed in non- agricultural sectors reported negligible income during the lockdown.

(b) Casual workers

The same survey also revealed that 81% of casual workers in urban areas while 66% of the casual workers suffered the loss of livelihood, during the imposition of restrictions while battling the global health crisis.[9] Those who still have jobs, reported of reduction in income by half, making the sustenance of life during the crisis, even more difficult. In most cases, the necessary nutritional demands to fight the virus were not fulfilled.

6 Sircar Jawhar, "A long look at exactly why and how India failed it's Migrant Workers" available on www.thewire.in (last visited on June 5, 2020)
7 Ibid
8 Chakraborty Satyaki, "Urban Job loss more severe than that in Rural India; continued lockdown has made India's worker poorer" National Herald, May 14,2020.
9 Ibid

(c) Regular salaried workers

Further, it was also mentioned that 76% of regular salaried workers in urban areas and 62% of the same met extremities, and struggled for daily survival. And, among the rest half reported the instances of no salary or reduced salary.[10]

Hence, casual workers and self-employed individuals are always at greater risk during disruptions, and also it is due to lack of other employment opportunities, that people resort to these. Hence, improvement in the structure of job availability can reduce the risk of losing livelihood at such magnitude.

Impact of the Pandemic on Different Groups

Since, we all know that epidemic like these are biological as well as communal and reflects upon the fissures of the society. Along with daily wage earners, farmers, migrants, domestic workers, hawkers, vendors, etc, entrepreneurs, micro, medium & small enterprise, shop owners which are the backbone of the country's economy are also hugely impacted by the restrictions imposed to contain pandemic and stopping it from spreading further. These are all in a delicate state, depending upon their savings/ profits to sustain a living as their origin of income have frozen due to restriction on the right to occupation. Racial and ethnic minority groups are going through the extremities worldwide. All this together paints a picture of uncertainty among citizens. It is clear that, the new virus affects us all, but certain groups discussed below are affected more than others, those living with poverty, and other burdens are worst affected:

(I) Farmers

In an agricultural economy like India, farmers play an important role. The situation of farmer tells a lot about the situation of more than half of the population of the country. While the media of the country was covering the plight of migrant workers about how their livelihood suffered a major disappointment due to sudden imposition of lockdown, little attention was paid to another vulnerable group of workers, constituting the largest share of workforce participation in

10 Ibid

rural India–the average Indian farmer. Every year, individuals in agriculture sector face risks such as low rainfall, price disruptions and rising debts. But the sector that are already under danger facing new problems due to COVID19 pandemic.[11] The lockdown was imposed during the time of garnering season for winter crop. Labour and equipment were scarce due to lockdown. Labours generally move to villages during harvesting time were unable to move due to lockdown Moreover small farmers generally take harvesting equipment on rent as it is more economical but due to sudden lockdown they were unable to do it. As a result, certain places suffered abandonment of crop whereas at other places harvest is delayed by months[12].

(ii) Labourers

The condition of poor labourers during the pandemic is beyond imagination; in this battle of life and death, they are fighting alone with negligible resources. The imposition of restrictions took away their livelihood, further deteriorating their poor status. They fear starvation more than virus, while whole world is into a battle with virus, they are battling with the worst social evil i.e. poverty. Further, the sudden lockdown gave them no time to prepare themselves for the coming days. Fearing government and police they started their journeys at night or took to difficult or isolated paths. Further, when government took charge, and took initiatives to escort them to their native places, they were charged with extraordinarily high fare. Also, those staying in dormitories provided by government have poor health and hygiene, ill accommodation facilities, and no room for practice like social distancing. The pandemic is more than a health crisis for laborers.

The effect of the country wide lockdown on daily wage workers has been catastrophic in the short term and as time passes, even long-term effects will be known. Shutdown of industrial activities across the world has contributed to unemployment. The sudden declaration of lockdown did not provide enough time neither to laborers to collect their wages nor to the owners to provide them with the same, further

11 Deepanshu Mohan, "Four Measures That Can Help Farmers Deal with the Impact of COVID-19 Lockdown" available on www.thewire.in (last visited on May 25, 2020).

12 Maggo Deepa, "Impact of COVID-19 on farmers- insights from India" available at www.wbcsd.org (last visited on June,23, 2020)

the arrangements to live indoors without wages also could not be made possible.

Due to the measurements taken to contain the outbreak, transportation facilities were also shut down as a result of which the migrants are trapped at various places with negligible resources to fulfil their basic needs and maintain physical distances Industry shutdown has rendered workers unemployed across the country. Since they typically live in very small rooms which they share with several others. Migrant households face the risk of hunger, poor or no access to hygiene and consequent health issues. Other than migrant labourers, daily wage earners, domestic workers vendors, contractual labourers, etc are all going through the same. Fighting every day to live another day.

(iii) Sex Workers

Another most vulnerable section of society, hit hard by the pandemic is sex workers. The community that relies on in person contact has lost its livelihood to the rules of social distancing this pandemic comes with. The virus has taken away their source of income and left them at the peril. Other than this continuous Social Discrimination and lack of government support has further added to their grief. Most of the individuals were reluctant in distributing Ration kits in the areas inhibited by sex workers. This is the section of our society which everyone knows exists but denies acknowledging it, even the government. Overwhelmed by the plight of sex workers two organizations representing sex workers the All India Network of Sex Workers and the National Network of Sex Workers wrote to the Central government asking for inclusion in the welfare schemes and social security schemes, as they will have no source of income for coming 6-12 months due to social distancing norms, but received no response [13].

For sex workers, these times are more difficult than fighting the invisible virus from a health perspective. The pandemic is affecting not only the well-being of the individuals but their livelihood, die to the nature of their profession. Even if corona virus is gone, their lives

13 Nileena MS, "Struggling amid COVID-19 crisis, sex workers demand inclusion in welfare schemes" The Caravan, June 12,2020.

will not return to normal for a very long time. The sex workers are mostly dependent on NGO's as there is no provision for help from the government.[14] The schemes and plans launched to help the underprivileged during this halt of income that have been run by the Government don't support this community as they do for others as a lot of these women have kids they don't hold official documentation for and that makes it impossible to ask for necessities for another member. The Women had to step out of the houses to take their share of rations, which is provided in limited capacity. Even when the lockdown will be over, their livelihoods will still suffer widely.

(iv) Small Traders and Entrepreneurs

Every crisis brings challenges and threats to entrepreneurs and their organizations, no matter if initiated by human behaviour, natural disasters or economic mechanisms. As a desperate attempt to alleviate the damages of the outbreak and save lives, governments in affected portions of country imposed various restrictions on travelling, movement and social gatherings many facets of various economic activities had to be digitalized like education, online shopping, online meetings and conferences etc. The entire world adopted the principle of working from home to which small traders and businessman were no exception. Although, digitalizing process was requirement of the time but it cannot always work in a country like India because everything cannot be done online. COVID-19 has significantly influenced the entrepreneurial engagement of self-employed persons. Some, governmental restriction resulted in the temporary closing of entrepreneurial activities, most of them had to impose various measurements to get their businesses on track, and alleviate the losses caused to them. The worldwide health catastrophe has also caused a global economic slowdown. Trade, Investment and development all had hit a big blow due to it. It is reported that more than 70% of start-ups terminated their full-time employment contract.[15] Further, due to the drying up of finances investment too suffered a setback. Due to low economic functions taking place, the conditions of the small

14 Mondal Manisha, "For sex workers on Delhi's G.B. Road COVID has robbed them of a livelihood like no other" available on www.theprint.in(Last visited on July 15,2020)

businessmen are also fragile. Due to low incomes, the businesses had to cut jobs and salaries of their employees, adding to the plight. Small economic fall out of the pandemic has hit small businessmen. Young entrepreneurs and women even harder, due to the disturbance in supply chain and fall in demand in most of the sector. Government must play critical role in creating jobs and improving livelihood which could be attained by enabling and restoring economic activities and supporting finance, information and market because the COVID virus has dented the business activities seriously, which will take time to get back on track.

(v) Police and Health Workers

These did not explicitly suffer from the loss of livelihood, but while performing their duties they are constantly exposed with the risk of losing their lives.

Despite all the precaution, health workers while treating patients are at risk of catching virus. Also, the equipment is not enough to meet the outbreak of virus at such massive scale. Health workers work rigorously to treat patients in ill-equipped zones even longer than the working hours, to mitigate the effects of less health workers. Due to this, several cases of death of doctors are reported while treating patients.

Similar is the case of policemen who stood to ensure the proper implementation of restrictions were also at the constant risk of catching virus. Further, they also faced violence at the hands of agitated labourers, and other persons. Article 21 of the constitution [16] mentions about right to life and personal liberty of every person which includes basic right of individuals to have safe and secure environment while exercising their right to livelihood.

Legal Framework

(i) Global Scenario

Various Conventions and declarations made by United Nations regarding

15 Dewan Neha,"Not all SMEs will survive the COVID-19 crisis, but what should an economic bailout package look like?" Economic Times; March 27,2020,

16 Supra note 5

right to life which includes right to livelihood are as follows:

(a)Universal Declaration of Human Rights,1948 (UDHR)

UDHR is the first document which has set out certain guidelines to protect and promote the basic rights of humans, internationally. Article 2 of the document mentions that every individual is equally warranted with all the rights and freedom mentioned in the declaration, without any discrimination on any basis. The right to life finds its most general recognition in Article 3. Further Article 23 provides for Right to work and freely choose one's employment, in just and fair environment and be protected against employment. It also upholds everyone has the right to equal pay for equal work. Article 25(1) throws light on the fact that everyone has a right to adequate standard of living.

(b) International Covenant on Civil, and Political Rights, 1966 (ICCRR)

ICCPR is a multilateral treaty adopted by United Nations General Assembly. The convention aims at protecting and promoting civil and political rights on individuals all around the world. India is also party to the ICCPR signed it in July, 1979, the treaty mentions seven provisions from which no derogation is permitted. Article 2 provides obligation on the state parties to pass laws in their respective countries furthering the objective and giving effect to the rights of the treaty and abiding by it. Article 6(1) recognises the inherent right of every person to life. Article 4(1) provides that derogation from the right to life and security will not be justified even in certain exceptional situations. The general recognition of the right to life of every person in the aforementioned international instruments constitutes the legal basis for the work. Various other treaties, resolutions, conventions and declarations adopted by competent United Nations bodies contain provisions relating to specific types of violations of the right to life.

(c) Convention on the Rights of the Child, 1989 (CRC)

The right to life of persons under the age of 18 and the obligation of States to guarantee the enjoyment of this right to the maximum extent

possible are both specifically recognized in Article 6 of the Convention on the Rights of the Child.

(d) International Covenant of Economic, Social and Cultural Rights, 1966 (ICESC)

ICESC aims to ensure that all men and women enjoy economic, social and cultural rights. Article 6(1) provides that every person has right to work which includes opportunity to gain living by work and Article 11that everyone has the right to gain a means of living and attaining adequate standards of living for himself, assuring their freedom from hunger and Article 7 furthers it by adding the availability of healthy working conditions, ensuring equal pay for equal work and everyone must be given equal opportunity. Thus, as per various United Nations declarations and conventions, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of this right.

(ii) National Scenario

A strong legal framework is necessary to tackle epidemics like these. Currently, the main legal weapon at the hands of the government is the Epidemic Disease Act of 1897 and the National Disaster Management Act of 2005.

(a) Epidemic Disease Act, 1897

This is a colonial law which provides special powers to the government for the prevention of dangerous epidemic like COVID-19. It was engineered to tackle the plague that devastated life in Bombay. The Act empowers the State to inspect and segregate patients, while Centre plays an advisory role. At most the centre can inspect ships or vessel arriving at any port. While State governments can impose temporary regulations to prevent the spread of epidemic, can empower any person to take necessary measures, issue public notice, etc. Various States are employing this law to tackle COVID-19, provisions have been made and guidelines have been issued to be followed by authorities and residents. It was realized that the law is ineffective while dealing with pandemics or disasters as it provided

only advisory powers to the Centre, Centre was not even in capacity to regulate the transfer of biological samples It also prescribes that any individual who is caught violating the laws will be considered to have committed an offence punishable under section 188 of Indian Penal Code.

The Epidemic Act 1897 focuses more on the prevention of the outbreak of any disease rather than stopping or eradicating the one which has already started to spread throughout .Further, the Act also fails to define the term epidemic or disease and does not provide for any measures that should be undertaken by the government during its battle with any such outbreak or epidemic. It commonly provides for the empowerment of issuing general regulations in case it is thought that the epidemic cannot be controlled by the laws of the land.

Colonial time law, the Epidemic Act does not even provide for the formation of any special committee or team which will take charge during such crisis, or to provide for precautions or measures to be followed by general public to mitigate the harm caused by such outbreaks. Further, it fails to come up with any measures for isolation centres or isolating the infected individual to contain the virus. The State governments must build isolation centres in hospitals and housing societies which will play a vital role in pausing the spread of any virus.

(b)National Disaster Management Act, 2005

The Disaster Management Act, 2005, was enacted with a purpose of envisaging an Act to primarily deal with the management of disasters. The Act proposes a three tier Disaster Management structure namely at National, States and District levels. The Disaster Management Act provides for the constructive administration while tackling disaster. Section 2(d) of the Act defines the term 'disaster' as a catastrophe, mishap, and calamity or grave occurrence in any area. Section 3 of the Act provides for the Establishment of National Disaster Management Authority which is chaired by Prime Minister who is responsible for laying down policies and guidelines that must be carried out with the sole intention of containing the damage of disaster. It also empowers the government to issue relief in repayment of loans and flexibility while granting new loans. Section 12 provides Guidelines[17] for minimum standards of relief which gives power to the National Authority to provide relief to person affected by disaster which

includes providing food, shelter, drinking water and also restoration of livelihood. Similarly, State government are also provided with the provision to set up a state disaster management authority under section 14 of the Act.

The National Disaster Management Act is criticised at various instances due to its top down approach, providing extensive powers to the tiers of government namely central, state and district authorities. Further, it marginalises non-governmental organisations, non-profit groups, and local communities, elected local leaders. The Act is also claimed to becoming a law at the will of bureaucrats.

Right to livelihood and Indian Constitution

Rights enshrined in part III of the Constitution aims to ensure one's existence as deserving and values every life on equal scale. Article 21 of the constitution [18] encompasses wide array of rights within itself, as the right to life or personal liberty includes so much more than, that meets the eye. Fundamental rights are enforceable against state as mentioned under Article 12 of the constitution [19]. The corresponding aspect of the Article 21 of the Constitution is the right to life includes livelihood which is not possible without any means of living. If one is not protected under right to livelihood, then right to life could easily lose it's meaning because one can be stripped off his right to life by depriving one of his livelihoods, until they reach their point of annulment.

17 National Disaster Management Act, 2005,Section12: Guidelines for minimum standards of relief.—The National Authority shall recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include,—
(i) The minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation;
(ii) The special provisions to be made for widows and orphans;
(iii) Ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood;
(iv) Such other relief as may be necessary.

18 Supra note 5

19 Supra note 5, Article12- In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

The right to life and personal liberty mentioned under Article 21 of Indian Constitution does not consider mere physical existence of individual as life hence; it intends to incorporate basic fabric of human dignity, which makes an individual's life worth living. Right to life and liberty encompasses right to food, right to health right to livelihood, Right to education, right to privacy, right to one's security, etc with in itself. Article-19 (1) d[20] of Indian Constitution provides freedom of movement that is one can move freely across the territory of India. This the fundamental right is guaranteed to every citizen of the country and cannot be taken away except under Article 19 (5)[21]. This right combined makes the existence of a self-actualized individual in a free society, plausible.

Hence, it becomes important to protect one's right to livelihood under their right to life, as they are mutually interdependent and one cannot exist without another. Indeed, which explains the wide scale of migration among countryside dwellers to urban areas. They wander because of minimal means of livelihood in villages. The struggle of survival propels them to dessert their homes in search of better livelihood.

In Munn vs. Illinois[22], Supreme Court of United States held that the expression 'life' does not refer to mere physical existence, the deprivation of rights is equal to chopping off one's limbs and all the faculties by which life in enjoyed.

In Chameli Singh vs. State of Uttar Pradesh[23],3 judges bench took a step forward and also encompassed right to food, water and decent environment with in the ambit of right to life and personal liberty.

In Kharak Singh vs. State of Uttar Pradesh [24] Supreme Court pronounced that Article 21 of the Constitution must include 'Right to privacy' as part of 'right to protection of life and personal liberty' Later Justice Subba

20 Supra note 5, Article 19 (1) d: All citizens shall have the right to move freely throughout the territory of India;

21 Supra note 5, Article 19(5)- Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

22 94 US 113 (1876)

23 1995 Supp (6) SCR 827

Rao compared personal liberty with privacy. Hence, privacy forms an inherent part of one's livelihood, due to which it also serves as the basic thread of right to life and personal liberty.

Later in year 1985, in a landmark case of OlgaTellis and ors vs. Bombay Municipal Corporation[25] ,popularly called 'Pavement dwellers case' upheld that right to livelihood is borne out of right to life and personal liberty, claiming that the exercise of one's right to life is impossible without any means of living. Hence, Article 21 of the Constitution aims to ensure that every individual is leading a life in an environment which sustains and enhances an individual social, physical as well as psychological development. It is also confirmed by judiciary that having an environment which leads to one's self-actualisation is a principal right and anyone must not be deprived of it. Depriving one of his/her livelihood to the extremity of repudiation is exactly similar to depriving one of their lives. So, right to livelihood must be treated as a part of right to life as both of them are interdependent and deprivation of one will lead to the destitution of other. One cannot be deprived to one's livelihood except through the due process of law, which should be just and fair.

The Directive Principles of State Policy, although are not enforceable, but they constitutionally provide goals and sanctions the state to work accordingly to attain them. Hence, Article 39 and Article 41 must be considered equivalently fundamental in comprehending the meaning and the content of right to livelihood[26] It becomes the responsibility of the State to secure its citizens with the right to life and provide them with suitable sources of livelihood and right to work, it would be absolute folly to exclude right to livelihood from right to life. The State to must be committed to provide adequate means of livelihood or work to all its

24 1963 AIR 1295

25 [1985] 2 Supp SCR 51.

26 Supra note 5, Article 39-The state shall and must, aim its policies towards getting hold of –
(a) that every citizens, including all men and women equivalently possess the right to appropriate manner of livelihood;
(b) To perform common good, the possession of all the material assets of any community must be distributed in an equitable manner;
(c) the consequences of any economic system must not be the aggregation of wealth or sources of production to the usual detriment;
(d) that there should not be any discrimination on any grounds for payment ensuring equal pay for both men and women.

citizens.

Hence, this is indicative of the fact that the framers of our Constitution were aware of such a requirement and were prepared to provide citizens with principal livelihood necessities.The state within it's economic size and growth should provide for efficient provisions to secure one's right to work, to education and public assistance during the instances of unemployment, old age, sickness and defacement. As per Article 43[27] the state shall attempt to secure all workers, agricultural, commercial or otherwise, a living wage, conditions of work ensuring a decent standard of life and relishment of recreational, social and cultural opportunities by issuing proper guidelines or enforcing laws. Further, the state shall also encourage cottage industries on an independent or collaborative basis in rural areas utilizing legislation.

All the rights guaranteed to us by the framers of Constitution intend to ensure human dignity as its essence. Furthering the objective, Article 21of the Constitution acts as a protective guard against the threat to life and personal liberty. It should be noted that Article 21 has been probed at various instances, by diverse courts of law in the country. Hence, it should be taken care that the article incorporates 'n' number of rights with in itself, and the scope of right to life cannot be restricted. With time, the article has been exposed to various interpretations through constant jurisprudence in multiple ways; some of these also includes the right livelihood and right to live with dignity.

A historical breakthrough was made by the court in expanding the ambit of Article 21 when it was proposed that the term 'life' in Article 21 does not stand for mere physical existence but it intends to ensure one living with dignity. This provided immense parameters to Article 21. As it was observed in Francis Coralie Mullin vs The Administrator, Union Territory of Delhi[28], which questioned the right to life and its limitation and held by Justice Bhagwati that right to life includes right to live with human

Article 41- Right to work, to education and to public assistance in certain cases The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

27 Supra note 5, Article 43- Living wage, etc, for workers The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co operative basis in rural areas

dignity.

In the landmark judgement of Olga tellis[29] it was upheld that the right to life under part III of the Indian Constitution guaranteed right to earn a livelihood and mentioned that State cannot deprive any citizen of his livelihood except according to the procedure established by law on just and fair grounds.

The Supreme Court in another case of M.J. Sivani v. State of Karnataka &ors,[30] upheld that the Right to life under Article 21 protects livelihood along with a rider that it's deprivation cannot be expanded so far to the side-lining, business or trade injurious to public interest or have surreptitious effect on public morals or public order. Therefore, it was held that regulation or outlawing of some video games are not adverse of Article 21 nor are unfair or unjust.

In other judgement of U.P. Avas Vikas Parishad v. friends Coop. Housing Society Limited[31], it was upheld that the right to shelter which falls under the range of the right to residence enshrined under Article 19(1)(e) and right to life mentioned under Article 21 is a fundamental Right. To ensure the meaningfulness of poor's life, the State is obliged to provide basic amenities and opportunities to construct houses ensuring their shelter.

In case of Delhi Transportation Corporation v. D.T.C Mazdoor congress and others[32] the same view was employed as "The right to life encompasses right to livelihood but it cannot hang on the bounties of individuals in authority. It was upheld that the employment is not a reward from authorities hence, its survival too cannot be at their pity. Proposing that the Income is the foundation of many fundamental rights and the very source of income too becomes equivalently fundamental K. Ramaswamy J. in that very judgement laid that depriving any worker of the means of livelihood must be as per procedure that is just, fair and reasonable under Art 21 & Article 14 of the constitution.

The role of judiciary becomes vital when there is deliberate violation of human rights. Judiciary must provide relief to those who are vulnerable and are subjected to various violations of their rights. During the global

28 1981 SCR (2) 516
29 Supra note 25
30 1995(3) SCR 329
31 1996 AIR 114,
32 1991 AIR 101,

health crisis too, it was the duty of judiciary to protect citizens and take responsibility of not letting a general health crisis taking face of a severe health crisis. Some of the important Judgments passed by judiciary recently during the time of COVID19 are as follows;

In Harsh Mander and anr. Vs. Union of India and anr[33] It was argued that the liability of payment of wages to workers or migrant labourers lies upon the Union and the State governments, who are under obligation to do so, the burden of paying wages should not be transferred to private firms in the hard times of lockdown. The attention of the court was also drawn to the poor quality of food provided in the shelter homes The Court directed the petitioner to look upon the status report provided by the government and refused to stand in in the way of policy matters. The petition was disposed of with direction that Centre will issue guidelines as deemed fit to resolve the concerns of the migrants.

Alakh Alok Srivastavavs. Union of India petition was filed seeking shifting of migrants, walking miles on foot, to government provided shelter and basic amenities. The petition was disposed of based on status report of government stating that all migrants are provided with food and basic amenities. The bench remarked its satisfaction over the steps taken by the union for the prevention of the spread of virus.

In Aayom Welfare Society &anr vs. Union of India and ors the Court declined to give into the prayers of the petitioner to provide ration to all the non-ration card holders, declaring it a policy issue and leaving the matter at the hands of the Centre and State governments.

The Supreme Court was widely criticised for not responding to the plight faced by the migrant workers and dismissing to pass any orders in Alakh Alok Stivastava .Later, Supreme Court undertook suo moto cognizance of various media reports pointing out the miserable condition of migrant labourers covering their journeys by foot or bicycles amid the global crisis in N RE: Problems And Miseries Of Migrant Labourers and issued

33 Writ Petition (Civil) No. 10801/2020

directions regarding the same. Supreme Court mentioned that the Government of India and State governments have taken measures intending to pause the spread of virus but it had various loopholes and also pointed out the need of " effective concentrated efforts" to redeem the situation.

Conclusion

As per Article 21of the Constitution no one can be deprived of his right to livelihood except according to the just and fair procedure established by law. When government of India declared a sudden lockdown as an attempt to flatten the COVID19 curve as prescribed in the Disaster Management Act,2005 ;the government was under obligation to compensate those whose livelihood were affected with the countrywide lockdown according to the settled law of Olga Tellis. Nevertheless, the lockdown turned out to be the worst nightmare for lakhs of people who lost their jobs, livelihoods as relief schemes being released on paper and having effect in on ground are two extremely different realities. Most of them are demeaned, deserted and distressed workers who decided to leave for home. Due to the suspension of transportation amidst the virus outbreak many began to walk home or used futile means of transportation like bicycle, tricycle, etc. The workers homecoming to their villages prompted guidelines from the State government ensuring safe arrival, provisions of food, shelter and employment, yet nothing was done. Moments like these become monumental in understanding State's stand when it comes to the poor and how the divide that exists between the rich and poor has never been clearer not just in terms of the disparity in resource allocation for both parties but also the behaviour of an appointed neutral and unbiased body has also been eye opening when it comes to the treatment of the underprivileged.

34 Writ Petition (Civil) No. 468/2020
35 Writ Petition Civil No. 11031/2020
36 Supra note 34
37 Suo Motu Writ Petition (Civil) No. 6/2020

Moreover, COVID19 crises is not going to end soon and it is the high time to call for immediate and effective implementation of provisions to provide relief to the vulnerable sections and fuel economic activities providing boost to the traders, entrepreneurs, businessmen, etc. For this government shall pass rules to ensure that everyone can get access to food, healthcare facilities, and environment that is safe and secure (shelter). Ensuring the return of Normalcy is the next big challenge for the governments all around the world. Hence, the government must probe the policies and ensure justice to every fragment of the society. The justice delayed any further could take face of a major human rights crisis, as the citizens of the world's greatest democracy took to streets protesting for their Rights. And the world crippling with a worldwide health catastrophe definitely, cannot afford subsequent human rights crisis.

One thing has to be realised amidst this pandemic is that there always need to be an emergency plan that is elaborative with it'sfocus on ensuring human rights and the fact that after a state of emergency is over, people still have a quality life with necessities to return to. Every preventive measure to protect ourselves from this virus are very privileged concepts as social distancing cannot be followed in the house of a poor man who has five people living under the same roof. So, at the end of the day, it boils down to survival of the fittest based on who has the most resources. Following are some suggestions that can be put in place:

- Ensuring food security: Due to businesses shutting down and people's revenues dropping to the point of global recession, food security is a very big issue. To ensure everyone is getting minimum needed food, temporary food stations could've been opened on the paths of migrant workers for them to stop and get food at. Of course, this needs to be done with several elaborate precautions put in place.
- Prioritising resource allocation: In case of limited resources, there needs to be a prioritisation in terms of their allocation to document

38 Supra note 25

and understand who needs them more. Access to health care has been one such area where the same hasn't happened since a poor man can't afford COVID tests and medication with the same ease as his counterpart can.

- Safety net: This pandemic has led to a lot of people losing their jobs and being forced to dip into their savings. There needs to be a provision or plan from the Government's side that kicks in as a contingency plan to ensure that its citizens have necessities at least. There needs to be a plan to ensure targeted assistance with income security.
- Offering employment as a relief measure: With both companies and labourers in a state of loss, Government could have fixed a problem for both of them by giving wage workers opportunities to work in the transport industry as last-mile transporters which would both ensure that the migrants can earn a wage for themselves and companies would also not come to a halt.
- Setting up temporary housing: Set up temporary shelter homes for people who don't have places to go to. With schools and colleges shut down, the government could have turned them into temporary shelter homes where people could come and stay.

Hate Crimes Against LGBT & Crumbling Human Rights: Continuing Impact Of Section 377 IPC & The Criminal Justice System

Divyanshu Chaudhary and Aditya Rawat***

Abstract

With no strong reasons to be furnished, the LGBTs have been and are one of the most marginalized sections in the society who are largely subjected to various atrocities in different forms such as defamatory comments, ill-treatment by public officials, discrimination on the basis of sexuality, societal trauma and stigma etc. which tramples upon their human, constitutional and other legal rights. However, it is ironic that even the law and the criminal justice system (hereinafter referred as CJS) which are meant to address such issues and provide relief or justice to the victim, while punishing the wrongdoer, are silent on the issue (for instance, absence of proper provisions against hate crimes). It is, therefore, apposite to mention that the role and true essence of CJS is being diluted by the impact of Section 377 of Indian Penal Code and also by absence of certain legal principles required to provide them (LGBTs) a similar place in the society as others. Against this background, the paper, employing secondary research methodology, presents how the LGBTs are being confronted with different forms of crimes even in the presence of uniform CJS and how the system is being a mute spectator leading to their basic rights' violation. Furthermore, the paper also brings out the instances where CJS, which includes police, is itself involved in violation of their rights. The paper depicts as to how this gross violation and denial to equal treatment may be prevented by incorporating specific legislation to protect their rights. The authors conclude the paper while finding that present CJS for LGBTs is not sustainable in view of constitutional principles and also in light of Navtej Singh Johar v. Union of India and Justice K.S. Puttaswamy (Retd.) v. Union of India wherein Suresh Kumar Koushal v. Naz Foundation has been overruled.

Key words: - *Constitution, Criminal Justice System, Human Rights, LGBT (Lesbian, Gay, By- sexual & Transgender).*

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Introduction

The evolution of Criminal Justice System (hereinafter referred to as the CJS) is the primary evidence of the presence of the criminal activities in today's society. Crime may be defined in terms of an act which affects the other person (the victim, the by-product of crime) in such a way that an immediate need of his/her reinstatement arises. Hate Crime (committed on the basis of constitutionally protected values such as race, caste, sex, religion etc.) being one of the types of crime similarly affects the victim. Therefore, to say that the criminal activity has the character to impact the very basic rights and values which all the people enjoy in the society is not wrong. These criminal activities consequently affect victims in a number of ways—that may be physically, mentally and sometimes in both manners.

The developmental pace of today's civilization has also been caught into the clutches of crime and eventually the CJS has evolved. Therefore, the very purpose behind origination of CJS is to mitigate or slacken the impact of these crimes on the victims who are lawfully required to be reinstated into their former position. On the other hand, the wrongdoer or the culprit (one who commits the crime) necessarily needs to be punished in accordance with the law (the kind of punishment differs). This is how the CJS performs its functions by providing justice to the victim and punishment to the wrongdoer.

In a democratic country, like ours, wherein the rule of law has its place, the CJS is supposed to provide equal representation to all irrespective of their practices but unfortunately, CJS has failed to perform its assigned function in case of LGBT community as their rights are not being protected but it, in a way, has sanctioned the commitment of such criminal activities against this very community in the absence of proper provisions to tackle the crimes based on sexual orientation. The reason may find its origin in the societal morality which is based upon personal beliefs, practices, customs and traditions (which vary from place to place and person to person). The edifice upon which such deprivation of justice and justification for the same is based is not sustainable in the light of

universal human rights and Indian constitutional law.

The scenario prevalent at present pushes one to appreciate that certainly majoritarianism has overlooked and suppressed the justifiable voices of the minority (herein LGBT). Then too, how can it be forgotten that in a country where the Constitution not the mandate of the people is supreme, such a sanction is bad and has no place; for the reason, if such majoritarian tendency would have been allowed to spread its arms then the very notion of "We, The People of India" would have absolutely been diluted as the expression "We, The People of India" is one that does not connote the specific category of people but is inclusive of all whether they are heterosexuals, homosexuals, bisexuals or transgender.

The long denial of rights to LGBT and the continuing emergence of "hate crimes" against them have made the situation even worse leading to such collusion between the genuine rights of LGBT and the CJS of the country that legally permitted the denial of such genuine rights. Resultantly, in absence of a proper legal protection to the rights of these sexual minorities, the rate of hate crimes has drastically increased in the present time—leading from mental torture to physical torture not only by individuals but also by public authorities including the police.

Therefore, for this reason, the need has arisen to discuss all aspects related to their rights and to provide them an equal platform and protection as availed to others in time of attack on their rights. For this reason, it is for the legislature to revisit Indian Penal Code, 1860 and amend it in order to give full effect to Navtej Singh Johar v. Union of India [1] which read down Section 377.

The authors of this paper are, therefore, inclined to understand the relation between S. 377 and societal attitude towards the LGBT that has led to the emergence of hate crimes against them and also the failure of the CJS in protecting their rights. In this process, the authors begin firstly, with the development behind S. 377 and its approach to the Indian society; secondly, S. 377 and the CJS towards the LGBT community; thirdly, emergence of hate crimes in absence of proper CJS; violation of basic fundamental rights in such an absence; fourthly, suggestions in order to mitigate the effect of S. 377 in the light of Delhi High Court's

1 AIR 2018 SC 4321.
2 Naz Foundation v. NCT of Delhi, (2009) 160 DLT 277.
3 Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 SCC 1.

judgment in Naz Foundation v. NCT of Delhi [2] and of the Supreme Court in Justice K.S. Puttaswamy (Retd.) v. Union of India [3] & Navtej Singh Johar v. Union of India; fifthly and lastly, the authors conclude the paper with the recommendation that the present CJS needs to effect certain reforms in order to mitigate the existing effect of S. 377 and to protect the minority from hate crimes.

History & Origin Of Section 377

Before going into the technicalities and different dimensions emanating from S. 377, it becomes pertinent as to when and why this particular provision was inserted in the Indian Penal Code, 1860. Tracing the roots of its origin, Fleta, 1290 and Britton, 1300[4] were the two common laws of England which had enshrined the concept of sodomy law. The punishment which was prescribed for these was to burn the offender alive. Later, the punishment for the act of sodomy also known as buggery was converted to hanging under the Buggery Act, 1533;[5] under this Act, buggery has been defined as 'detestable and abominable Vice of Buggery committed with mankind or beast'.[6] Thereafter, the Act of 1533 was repealed by Queen Elizabeth I but later, it was re-enacted in 1563.[7] What 19th century faced is that the oral sexual activities were removed from the contours of this Act but sodomy still continued its existence within its penal law.

This evil legislation found its end in the 19th century in England when the Wolfenden Committee submitted a report on the legislation governing the sodomy laws recommending that "homosexual behavior between consenting adults in private should no longer be a criminal offence" [8]. The very important and foundational point which the committee raised

4 Kush Kalra, Be Your Own Layer - Book For Layman (Vij Books India Pvt Ltd 2013).
5 Ibid.
6 Michael Kirby, 'The Sodomy Offence: England's Least Lovely Criminal Law Export?', (2011) Journal of Commonwealth Criminal Law, 22, 24.
7 H. Montgomery Hyde, The Love That Dared Not Speak Its Name: A Candid History of Homosexuality in Britain, (Boston, Little Brown 1970).as seen in footnote 45, 14 of Human Rights Watch, This Alien Legacy: The Origins of "Sodomy" Laws in British Colonialism, New York (2008).
8 The Wolfenden Report, Report of the Committee on Homosexual Offences and Prostitution, (1963), 23.

was that the law was not supposed to question or intervene into the private life of the individuals and also not justified to enforce a particular kind of behavior from the people; the report also questioned the very basis of labeling homosexuality as a disease[9] . The report had a huge positive impact which ultimately led to the passing of The Sexual Offences Act, 1967 [10] which decriminalized sexual activities between the adults of same sex but not less than 21 years of age (that was further made equal to the age to which all were subjected by the Sexual Offences Act, 2003). [11]

Now, when we, keeping this historical background in our minds, analyze the Indian scenario with respect to the law governing homosexual activities, we find its roots from the British rule upon India during which Indian Penal Code, 1860 was drafted by Lord Macaulay inserting S. 377 into it on similar lines as the Buggery Act, 1533 [12] (that has already been repealed in view of the Wolfenden Committee's report). Therefore, S. 377 of IPC laid down the following:

"**Unnatural Offences** - Whoever voluntarily has carnal[13] intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

Of course, it is very important to understand the objective behind the insertion of such a provision for the Indian society; for this reason, one must appreciate the fact that while we were under the reign of British Empire, many laws had their basis or validation based upon the religious

9 Ibid.
10 Sexual Offences Act, 1967.
11 Sexual Offences Act, 2003, s. 7; R Wintermute, C Mccrudden, G Chambers 'Sexual Orientation Discrimination in Individual Rights and the law in Britain' in Sandra Fredman, Discrimination Law, Clarendon Law Series (2nd ed. Oxford University Press, 1994).
12 Kalra, n 4.
13 "Carnal" is defined as "of the body or flesh; worldly" and "sensual, sexual" in Concise Oxford Dictionary (9th ed. 1995).

views and moral standards of the society (specifically Judeo-Christians according to which the sexual intercourse if done for non-procreative purpose was against the order of the nature).[14] Certainly, this belief may easily be reflected in the ideology behind the enactment of S. 377 which was drafted during that period.

The fact itself is ironic and also a matter of great concern that even after more than 150 years of this archaic law and when the parent country behind this provision has itself repealed such law, India continued to move ahead with this evil legislation which had tendency to make the lives of millions of people sufferable and subject to many atrocities. It is also to be appreciated that it was the British from whom the roots of this law have been derived and so the Indian society continued to be governed by this provision for more than 150 years. The society, therefore, was deployed, in a way, with a weapon to defend them while attacking on the sexual freedoms of others.

Impact Of Section 377 On Criminal Justice System: Hate Crime Perspective

The CJS of a country is meant to serve justice to one whose rights have been violated by the criminal act of another while providing the appropriate punishment to the person who has committed that criminal act; the purpose of CJS is clear and has its origin in the natural law that considers every human being equal and therefore does not discriminate while conferring rights on the basis of religion, race, sex or sexual orientation. Therefore, the primary objective behind contemplation of CJS is to reinstate the victim (one whose rights have been trampled upon) into the same position which nature has allotted to them.

The principle upon which the foundation of CJS is based is that of the 'rule of law' under the Constitution of India which provides for 'equality before the law' and also the 'supremacy of law'. The concept of equality before law is one which interprets in a sense that everybody has equal status before law and everyone, therefore, is subject to the same treatment and sanctions irrespective of their religion, race, sex etc.; it also confirms the concept of constitutional supremacy but when it is seen in the Indian perspective then it may undoubtedly be found that CJS in case of S. 377

14 Siddarth Narrain, 'The Queer Case of Section 377' (2012), http://www.sarai.net/publications/readers/05-bare-acts/06_siddharth.pdf.

has completely negated the values of Indian Constitutional Principles as it not only targeted the sexual orientation of the people with different approach towards it (LGBT people who were criminals by virtue of S. 377) and therefore such a CJS was not only a legally sanctioned weapon in the hand of authorities but also reposed itself as a threat to the constitutional autonomy.

In Indian CJS, the presence of S. 377 had nullified the effect of many legal rights which sexual minorities would have availed in its absence. It is thereby one of the biggest reasons why the LBGT community is continuously being targeted in society as aliens or those suffering with disease. Societal morality was given a higher place than that of law of nature and constitutional scheme which does not discriminate on the basis of sexual orientation. The Indian CJS, undoubtedly, finds its origin from the organic text of the Constitution of India, 1950 (hereinafter referred to as the COI) which certainly is the 'grundnorm' [15] of the democratic structure of India promoting the idea of equality, justice, and individual dignity etc.

Therefore, with utmost criticism, it is to convey that no substantive or procedural law can sustain in time of its conflict with the COI and for this reason the very provision under IPC, S. 377 had no legal sanctity to be continued as it was against the very principles of constitutional phenomenon.

Hate Crimes Against LGBT In The Absence Of Proper Provisions In CJS

Hate crime is a crime motivated by the victim's race, color, ethnicity, gender, sexual orientation, et cetera. [16] The criminal justice system, which is an organizational arrangement, consists of the police, prosecution, court and the correctional organization in order to attain specific goal.[17] The entire mechanism of the criminal justice system can be explained as follows: "legislature makes the law, the police is to set the law in motion, to investigate the case and to produce the result of the investigation

15 *Hans Kelsen, General Theory of Law and State (1945) 115.*
16 *Black's Law Dictionary, 399, (8th ed. 2008).*
17 *S. Venugopal Rao, Criminal Justice. Problems and Perspectives, (Konark Publications 1991) 4.*

before the court through the prosecutor, the executive has to guide and supervise the action of the police, the court is to examine the material produced before it in the light of the laws, to find out whether the accused is guilty or innocent and if an accused is found guilty, to sentence him according to law, in some cases it has to send the accused to prison where he will be lodged and which is now supposed to be a correctional institution".[18] Criminalization creates a culture of silence and intolerance in the society and perpetuates stigma and discrimination against homosexuals. [19]

First, the law enacted by the legislature led to the emergence of hate by setting enacting anti-LGBTs law and hence setting it into motion. Second, actions of the judiciary led to the subjugation of the minority by the majority is evident when the court stated that "decision to repeal Section 377 has to be left to the parliament" and hence "directing a group that it recognizes as a minority that it right should be protected by a majoritarian arm of the government .i.e. Parliament" [20] and thereby itself made a path for emergence of hate crime by enabling the legislature to create laws which seeks to discriminate minorities (LGBTs). It in a way removed all kinds of constitutional barriers and hence enabled the legislature to create discriminatory laws by allowing majority to persecute the minorities. The lack of the approach of the judiciary was evident from decision of the court in which it said that "the details are wholly insufficient for recording a finding that homosexuals, gay, etc. are being subjected to discriminatory treatment either by state or its agency".[21] Thus, the Court allowed the subjugation of the minority by the majority. Since 1930, there has been only one prosecution of adults having same-sex consensual sex.[22] Of the 50 reported judgments under Section 377 reviewed by Gupta, [23] 30% were cases of sexual assault or abuse of minors, with the remainder involving non-consensual sex between adults. [24]

18 *Anup Kumar Varshney, 'Criminal Justice System: Need for Reform' (International Conference-Criminal Justice under Stress, Indian Law Institute, 1956-2000).*
19 *Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1.*
20 Gautam Bhatia, The Unbearable Wrongness of Koushal vs Naz, (Outlook INDIA, Dec. 11, 2013), <http://www.outlookindia.com/article/The-Unbearable-Wrongness-Of-Koushal-vs-Naz/288823> accessed 10 July, 2020.
21 Suresh (n 19) 63.
22 Bina Fernandez, Gay rights. In: Humjinsi: A Resource Book on Lesbian, Gay and Bisexual Rights in India, (Indian Centre for Human Rights and Law, University of Pune, 2002) 55–65.

Third, the police, who was responsible for the maintenance of law and order was also responsible for the violation of the rights of LGBTs. The overall hate crime was more visible to the police officer than to the judges and the prosecutor.[25] The police, who was responsible to prevent the violation of law, itself became a violator. It led to "underreporting to the police by victims significantly compromises the criminal justice system's response to hate crime".[26] Due to presence of Section 377, i.e. absence of criminal justice system without any reasonable ground, acted as a free pass for "blackmailers, extortionist and violent homophobes". Police used it as a tool to extort people.[27] A gay man was picked up by the people from public toilet merely because it was a common cruising point and he had condom in his wallet.[28] Due to victim's fear of being prosecuted or social concern, the crimes went unreported which provided tools in the hands of the conservatives group to threat the minorities. Achieving a prosecution only required arresting two people carrying out the sexual act, which usually takes place in private. NGOs who were distributing condoms to homosexuals to prevent HIV were put into jail under Section 377 [29] which clearly shows that despite no violation of Section 377, the people were wrongly accused and the only reason for this was the lack of proper criminal justice administration. A man was arrested by the police after finding that he is homosexual, may be the man

23 A Gupta, 'Section 377 and the dignity of Indian Homosexuals' (November 2006) Economic and Political Weekly.
24 Geetanjali Misra, 'Decriminalizing Homosexuality in India', 2009 Reproductive Health Matters 20-28.
25 European Union Agency for Fundamental Rights, Ensuring Justice for Hate Crime Victims: Professional Perspectives, (2016) 28.
26 ibid.
27 Sukhdeep Singh, 'Section 377 & India: How Safe is India for Gay Tourist' <https://www.ebab.com/gay-travel-blog/gay-travel/section-377-india-safe-india-gay-tourist/223> accessed on 10 July, 2020; Bhavya Dore, 'Rare Law Invoked in Case of Gay Man Extorted for Seeking Sex', (Mumbai Mirror, 2015) <https://mumbaimirror.indiatimes.com/mumbai/other/rare-law-invoked-in-case-of-gay-man-extorted-for-seeking-sex/articleshow/49476918.cms> accessed on 10 July, 2020.
28 Poulomi Banerjee, 'Section 377 and Biases against Sexual Minorities' (Hindustan Times, 4 October, 2015) <http://www.hindustantimes.com/india/section-377-and-the-biases-against-sexual-minorities-in-india/story-qGJGC9jMxGiirCGgooYMKK.html> accessed on 10 July, 2020.
29 A Gupta, 'Section 377 and the dignity of Indian homosexuals' (November 2006) Economic and Political Weekly.

has submitted his number somewhere in order to meet with other gay men.[30] These instances clearly lead to the conclusion that, in the absence of a fair, impartial and reasonable criminal justice system, LGBT rights were being violated, merely on the grounds of their sexual orientation, even when they had not committed any criminal act as envisaged under Section 377.

Fourth, the prison administration left no stone unturned to violate the rights of the homosexuals. A group of doctors recommended to the prison administration to distribute condoms in the prison where the rate of homosexual intercourse is high which was denied by the prison authorities on the ground that homosexual intercourse was illegal [31] and distribution of condoms meant condoning homosexuality. [32]

To establish the ill-effect of S.377 (even after it got read down by the Supreme Court) in a clear manner, it is apposite to analyse the ongoing incidents of hate crimes against the people belonging to LGBT community in India. Amnesty International through its initiative "Halt the Hate" highlights as to how between the period of September 2015 and June 2019, there have been 30 incidents of hate crime against people with vulnerable sexual orientation and gender identity[33]. Recently, a priest was attacked by a violent mob in Mangaluru on the pretext that he is a gay[34]. It is altogether highly disturbing to see how the National pride Dutee Chand who is openly gay athlete has been disowned by her own village[35]. To add further, a gay boy was killed by his boyfriend for the fear of disclosing of

30 'Preliminary Report of the Fact Finding Team on the Arrest of Four Men in Lucknow under IPC 377' (Suedasien.info 26 January 2006) <http://www.suedasien.info/analysen/1974> accessed on 10 July, 2020.
31 Priyanka Bhattacharya, 'Indian Prisons Becoming HIV Heaven' (8 April 2009) <https://www.ndtv.com/india-news/indian-prisons-becoming-hiv-haven-390929> accessed on 10 July, 2020.
32 G Agoramoorthy G and M Hsu, India's Homosexual Discrimination and Health Consequences, (Revista de Salude Publica, 2007).
33 Amnesty International India, 'Halt the Hate' (2019) < https://amnesty.org.in/wp-content/uploads/2019/10/Halt-The-Hate-KeyFindings-Amnesty-International-India-1.pdf> accessed on 10 July, 2020.
34 Joe Sommerlad, 'Violent mob attacks Indian priest because they think he is gay' (Indy100, 16 May, 2019) < https://www.indy100.com/article/india-priest-attack-mob-gay-homophobia-lgbt-rights-8915171> accessed on 31 August 2020.
35 "It's humiliating for us': village disowns Dutee Chand, India's first openly gay athlete' (The Guardian, 05 June, 2019) < https://www.theguardian.com/world/2019/jun/05/dutee-chand-india-athlete-coming-out> accessed on 31 August 2020.

their relationship[36]. Most recently on June 04, 2020, a gay couple was brutally attacked in India[37]. What these incidents provide to us is the existence of homophobic approach of people in society who still have not come out of the clutches of their arbitrary norms against people with different sexual orientation. The CJS has therefore in a way strengthened such hate crimes because of the impact of S.377 which the society still continues to suffer.

To conclude, the CJS, which is responsible for the protection of rights of the individual, irrespective of their sexual orientation, in a way, became the starting point from where the discrimination started which further empowered the general public to persecute LGBTs. It ultimately empowered the majority to violate the rights of minority without any fear of law. The law, which is the will of the society, has become a tool to harass this minority of society due to the lacks within the CJS.

Impact Of Section 377: Infringement Of Fundamental Rights

Relevance And Importance Of Fundamental Rights

The relevance of human or fundamental or foundational rights can be well traced in the fact that no civilized society can exist without certain basic principles which are guaranteed in order to provide the citizens a way for their development in the civil society without which it will not be possible to realize the true essence of the equality, justice, dignity and liberty.[38] Therefore, for this purpose, the COI has envisaged the fundamental rights under Part III which are enforceable against the state and in some cases against the individuals also. Putting emphasis on the significance of these rights, the Supreme Court in Daryao v. State of Uttar Pradesh, [39] observed:

"The fundamental rights are intended not only to protect individual's rights but they are based on high public policy. Liberty of the individual and the protection of his fundamental rights are the very essence of the democratic way of life adopted by the Constitution."

36 '16-year-old murdered in Madurai to hide homosexual relationship?' (The New Indian Express, 04 June, 2020) < https://www.newindianexpress.com/states/tamil-nadu/2020/jun/04/16-year-old-murdered-in-madurai-to-hide-homosexual-relationship-2152346.html> accessed on 31 August 2020.
37 'Brutal attack on a gay couple' (The Times of India, 04 June, 2020) < https://timesofindia.indiatimes.com/topic/Brutal-Attack-On-A-Gay-Couple> accessed on 31 August 2020.
38 Harold J. Laski, A Grammar of Politics (1925).
39 Daryao v. State of Uttar Pradesh, AIR 1961 SC 1457 at 1461.

The above observation of the Hon'ble Supreme Court depicts the genuine portrait of the tremendous relevance of these natural rights.[40] The value can also be ascertained by analyzing the objective for inserting Articles 12, 13, 32 and 226 of the Constitution that respectively provide for the State, Laws Inconsistent with COI to be declared void, Constitutional Remedies by the Supreme Court and Power of High Courts in matter of fundamental and other legal rights.

Fundamental rights were incorporated bearing the objective in mind that they would provide a code of conduct for the executive and legislatures as whenever they begin to trample upon the rights of the citizens then they may remind them of their encroachment and confers rights upon the citizens to form an opinion to it.[41] Article 12 is the key with respect to provisions of Part III of the COI.[42] These fundamental rights are conferred upon the citizens and are enforceable against the state; therefore unless state is defined it would not be possible to completely enforce the fundamental rights against it.[43]

Therefore to protect this very cornerstone (herein the fundamental rights) of the COI, Article 13 was inserted into Part III which accords the power of judicial review[44] upon the Supreme Court and High Courts. The concept of judicial review is one which positively & indisputably connotes the Constitutional Courts' power to review a piece of legislation and if inconsistent with the Constitution then consequently to declare it invalid.[45] Dr. Ambedkar jeweled its significance by terming it constitutive in context of our legal system;[46] the utility of its existence can also be perceived by the appreciation of basic structure doctrine. [47]

40 Golak Nath v. State of Punjab, AIR 1967 SC 1643 para.16.
41 M.V. Pylee, Constitutional Government in India, (2nd ed. 1968) 190.
42 The University of Madras v. Shanta Bai, A.I.R. 1954 Mad. 67.
43 VII Constitution Assembly Debates (1948) 607-610.
44 Vibhuti Singh Shekhawat, 'Judicial Review In India : Maxims And Limitations' (1994) The Indian Journal of Political Science.
45 Kermit L. Hall and John J. Patrick, The Pursuit of Justice: Supreme Court Decisions that Shaped
46 America (OUP 2006) 15; The Constitution of India, Article 13.
47 C.A.D. Vol. 7. 700.

Section 377 & Part III of the COI

i. Article 14 of the Constitution of India

The clouds around the concept of equality as used in the Constitutional framework (how is it different from the normal english terminology 'Equality') and enshrined in Article 14 have already been cleared by the verdict of the Supreme Court in State of West Bengal v. Anwar Ali Sarkar,[48] wherein it formulated the test to determine whether a law classifying (classifying for the purpose of realizing the true essence of Article 14) between the persons is in conformity to Article 14 or not; for this purpose, the court laid down the two-fold tests—firstly, the classification must be such which implies an intelligible differentia in order to distinguish one group of persons or things form the one which is left out; secondly, the differentia must bear a rational relation to the object that is intended to be achieved.

Therefore, the High Court of Delhi has rightly relied on the judgment in Budhan Choudhry v. State of Bihar,[49] wherein the Supreme Court has emphasized that there must be a causal connection between the classification and the objective to be sought [50]. The various diverse facets related to the arbitrariness have also been settled by the Supreme Court and the rule now is that if a law is arbitrary then it is violative of Article 14 of the COI.[51] The High Court then went on to appreciate the reasoning of Deepak Sibal v. Punjab University,[52] in which the Supreme Court had held that the classification would consequently become unreasonable and arbitrary if the objective sought by it is irrational and unreasonable. For appreciation, it is pertinent to emphasize that the sole objective of S. 377 was to criminalize private consensual acts between two adults; the acts are certainly those which do not conform to the moral and religious views of a section of a society.[53] Resultantly, such law denied the right to dignity and other rights of LGBTs.[54] Therefore, the objective was

48 Indira Nehru Gandhi (Smt.) v. Raj Narain & Anr, 1975(2) SCC 159; Sampath Kumar v Union of India, AIR 1987 SC 271; Subhash Sharma v Union of India, AIR 1991 SC 631.
49 State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.
50 Budhan Choudhry v. State of Bihar, AIR 1955 SC 191.
51 Naz Foundation (n 2)
52 Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722.
53 Deepak Sibal v. Punjab University, (1989) 2 SCC 145.
54 Naz Foundation (n 2) para. 92.

unreasonable and failed to promote public health and public morality but targeted a particular section because of their sexual orientation. Therefore, the High Court of Delhi concluded that:

"The inevitable conclusion is that the discrimination caused to MSM and gay community is unfair and unreasonable and, therefore, in breach of Article 14 of the Constitution of India".[55]

The equality before the laws and the equal protection of the laws[56] as guaranteed to every person are being exceptionally overlooked in the blindfold of so-called societal morality.

ii. Article 15 of the Constitution of India

Further on, S. 377 outrightly invaded into the rightful essence of Article 15 of the COI which evidently prohibits (only for citizens) discrimination on the grounds of religion, race, caste, sex or place of birth.[57] Taking roots from this provision, it can clearly be synopsized that a watertight differentiation can never be drawn between the various facets of sex and sexual orientation as they are certainly mutually analogous; as the sexual orientation refers to:

'each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.'

Following this notion, the sexual orientation of various sexual minorities can never be queued up in order to challenge the very purpose of such unions as that would go against the spirit and objective of Article 15 of the COI and would result into the discrimination which implies:

'…the less favourable treatment of a person or group than another on various grounds (direct discrimination), or where an apparently neutral provision is liable to disadvantage a group of persons on the same grounds of discrimination, unless objectively justified (indirect discrimination).'

Therefore, the High Court of Delhi found S. 377 to be violative of Article 15 and held that:

55 ibid para 77.
56 ibid para 98.
57 The Constitution of India, Article 14.

"We hold that sexual orientation is a ground analogous to sex and that discrimination on the basis of sexual orientation is not permitted by Article 15." [58]

The judgment of the High Court had the nature of full acceptance in logical and legal terminology; that is to say S. 377 targeted the natural dimension of a human being and resultantly violated his/her fundamental right under this Article.

iii. Article 19 of the Constitution of India

No other fundamental right can truly be enjoyed if the citizens' right to freedom is not protected; right to freedom, therefore, is one of the essential attributes which has been conferred by the COI under Article 19 that enjoins citizens with the right to freedom of speech and expression, right to assembly and right to reside and settle[59] etc. Now, if examined critically then it may be surmised that in the presence of S. 377, it was extraordinarily difficult to realize all these rights which are assigned under Article 19.

The reason behind such obstruction is the law which itself has sanctioned society by criminalizing consensual sexual activity between two adults of same sex. This, in a way, authorized the people to target such minorities as they have already been made as criminals in the eyes of law. Such a construction restricted their way to come out in the society in the manner they wanted to express, present and assemble themselves. Therefore, the conclusion is that the sexual minorities were continuously being deprived of their fundamental right which they all are entitled to as others are.

iv. Article 21 of the Constitution of India

Article 21 of the COI furthers the idea which has expressly been declared by the Preamble to the COI in the form of liberty and dignity of the individuals.[60] The expression "liberty" is wide and various dimensions that certainly lead a person towards an actual human life. What has to be considered is that the concept of life and personal liberty with respect to the human beings is different from that of the animal's (that is more than

58 The Constitution of India, Article 15.
59 http://yogyakartaprinciples.org/introduction/ accessed 10 July, 2020.
60 Naz Foundation (n 2) para 104.

just survival or animal's existence),[61] a life with human dignity.[62] Therefore, Article 21 articulates that aspect of life which would be meaningful, complete and worth living[63]. In this manner, the basic objective of the Article 21 is to prevent the encroachments upon the life and personal liberty; it is the repository of all human rights which are required for a citizen or non-citizen; a true and successful life can be achieved only when it is full of dignity, honour, health and welfare.[64] The Supreme Court while invoking and referring to Joseph Adison's 'Better to die ten thousand times than wound my honour' observed that 'if dignity or honour vanishes, what remains of life?' [65] It is undoubtedly clear as to what is the relevance of this provision in Part III.

Of course without any objections, this right under Article 21 is applicable to all whether they are citizens or non-citizens[66]; moreover it does not discriminate on the basis of various grounds as mentioned in Article 15 & 16 of the COI. Though it is also to be appreciated that this right is also not absolute but the rights which are enjoined by this provision are also subject to 'the procedure established by law' [67]. Therefore, what is pertinent here is to emphasize upon the procedure which goes on to deprive a person of their right to life and personal liberty. On this, the Supreme Court has held that such procedures must be reasonable, fair and just[68]. Now if we go on to analyze the actual concept of the gone provision of S. 377 then we clearly find out that it clearly attacked upon the very roots of dignity, honour, and life of the LGBT community merely on the basis of their sexual orientation (clearly discrimination); it is also to be appreciated that S. 377 also violated the procedure (as laid down in Maneka Gandhi v. Union of India) which has to be followed while depriving someone of their life and personal liberty.

The dimensions of Article 21 are wide and include a plethora of rights

61 The Constitution of India, Article 19.
62 The Constitution of India, Preamble.
63 State of Maharashtra v. Chandrabhan, AIR 1983 SC 803.
64 Francis Coralie Mullin v. Union Territory Delhi, Administrator, AIR 1981 SC 746, para 3.
65 Maneka Gandhi v. Union of India, AIR 1978 SC 597.
66 Durga Das Basu, Commentary on the Constitution of India, Vol. 5 (9th ed. 2014) 4724.
67 Khedat Mazdoor Chetna Sangath v. State of M.P., AIR 1995 SC 31.
68 National Human Rights Commission v. State of Arunachal Pradesh, (1996) 1 SCC 742.

such as the right to live with human dignity[69] and right to privacy[70]. Therefore, the concept of privacy has to be understood in terms of individual dignity that is if the dignity is not protected then the foundational basis of privacy would collapse. In this regard, Thomas, J., observed:

"Probably [no human right] is more basic to human dignity than privacy. It is within a person's sphere of privacy that the person nurtures his or her autonomy and shapes his or her individual identity. The nexus between human dignity and privacy is particularly close" [71] .

For this purpose, in order fully to appreciate the importance of privacy, it is necessary to understand the concept of "dignity" and the way in which privacy interferences undermine it[72]. Therefore, the emphasis must be put upon the mutual interrelation between the privacy and concept of human dignity wherein without proper protection of the latter, the former cannot be maintained untouched that is if the dignity of the individuals will not be protected then the question of privacy will be of no weigh and relevance. Due to S. 377, their dignity was grossly overlooked that too merely in the light of public morality and arbitrary 'social norms'. Consequently, it also clearly violated the right to privacy to which the LGBTs are entitled by virtue of being human and also being within the umbrella of this fundamental right under Article 21. To support it, various judgments of the Supreme Court may be well referred; the Supreme Court in Ram Jethmalani v. Union of India[73] held that the right to privacy is an integral part of right to life. The Court then went on to observe that:

"The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others" [74].

69 The Constitution of India, Article 21.
70 Maneka Gandhi (n 64).
71 ibid.
72 Justice K.S. Puttaswamy (n 3).
73 Brooker v. Police, (2007) 3 NZLR 91, para 182.
74 N. A. Moreham, 'Why is Privacy Important? Privacy, Dignity and Development of the New Zealand Breach of Privacy Tort' <https://www.victoria.ac.nz/law/about/staff/nicole-moreham/publications-nicolemoreham/nm-law-liberty-legislation.pdf>

In its recent historic judgment delivered in the case of Justice (Retd.) K.S. Puttaswamy & Anr. v. Union of India & Ors[75] also, the Supreme Court by 9:0 has held the right to privacy as an intrinsic part of this fundamental right under Article 21. The Court unanimously held that:

"Neither of the above reasons can be regarded as a valid constitutional basis for disregarding a claim based on privacy under Article 21 of the Constitution. The purpose of elevating certain rights to the stature of guaranteed fundamental rights is to insulate their exercise from the disdain of majorities, whether legislative or popular. The guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion. Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution." [76]

The constitution bench of five judges of the Supreme Court finally in Navtej Singh Johar v. Union of India [77], read down S. 377 and held that:

"Section 377 violates the right to life and liberty guaranteed by Article 21 which encompasses all aspects of the right to live with dignity, the right to privacy, and the right to autonomy and self-determination with respect to the most intimate decisions of a human being" [78].

Therefore, no doubt may secure a valid place in the mind in so far as the constitutionality of S. 377 in the context of Article 21 is concerned as it is beyond doubt apparent that S. 377 violated the right to dignity and privacy of an individual merely on the basis of sexual orientation.

Way Forward

If a family is considered a microcosm of society, one cannot seek to

75 Ram Jethmalani v. Union of India, (2011) 8 SCC 1.
76 Ibid, para 83-84.
77 Justice K.S. Puttaswamy (n 3), Conclusion no. 3C at 262.
78 Justice K.S. Puttaswamy (n 3), para 126.

achieve radical changes in society while seeking acceptance into its traditional family norms.[79] If two people want to make a commitment of marriage, they should be permitted to do so, and excluding one class of citizens from the benefits and dignity of that commitment demeans them and insults their dignity.[80] Sexual orientation cannot be used as a tool by the majority to persecute (in the name of public morality and hate crime) minorities in the name of their own moral conviction.

The ill-effects of S. 377 can only be mitigated by the instrumentality of state including the judiciary, the executive and legislature. In order to prevent hate crimes, therefore, the legislature must come with the amendments in S. 153A[81] of IPC which must be in conformity with the recent judgment of Supreme Court reading down S. 377and must term crimes as hate crimes which are committed on the basis of sexual orientation. A Statute should be analyzed in light of social, economic and political changes occurring in society.[82] The growth and new concepts must be taken into consideration while amending a Statute.[83]

Not only the legislature and judiciary, it is the executive too which has to play an important role in the realization of rights; it is the executive which has to maintain law and order in society and protect the rights of the people being a welfare state. Until the administration of justice in this regard is improved, hate crimes against LGBT community would continue to be committed. Therefore, the state must conform to the constitutional principles in this respect and must protect the interests of the citizens equally.

Moreover, sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of

79 (2018) 10 SCC 1.
80 Id. at 446.
81 Nayantara Raichandran, 'Legal Recognition of Same-se Relationships in India', 2014 Indian Journal of Law and Society, 99.
82 Martha Nussbaum, 'A Right to Marry? Same-sex Marriage and Constitutional Law', Dissent Magazine (2009).
83 Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.

sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.[84] Therefore, every act against the realization of such rights must be condemned by the state. Sexual orientation, which is an attribution of identity, the identity of each individual has to be protected without any form of discrimination[85]. However, if seen in the present context, the state is failing to protect the rights of the people and the growth of hate crimes on the ground of sexual orientation has drastically increased.[86]

Ultimately, it is the society that needs to be educated in this respect. The steps should be taken to create awareness among the people about their perception towards LGBTs. There are always ups and downs i.e. always a time comes minority retaliates against the majority. Therefore, necessary steps must be taken to change the law otherwise the entire society will be destroyed by the monster of hate crimes.

Conclusion

After reading down S.377 of IPC, the Supreme Court has given a fair verdict by performing its constitutional obligation to uphold the rights of the people; it is now on the other pillars of the state that are executive and the legislature to mitigate the effect of the long prevalence of the provision in the Indian society as it is not only the verdict which will bring the complete change but the whole machinery which has to be deployed.

The present hostility of the society against the LGBT community needs to be addressed at the earliest as it impacts their rights in two ways; earlier they were deprived of their rights and now they are being targeted if they enjoy their rights. Therefore, the evil of hate crimes need to be restricted by the state as for it, everyone is equal. The police administration also needs to be educated in this regard. What is important to understand is that though the provision has gone but its impact still injures the people and seems to last long in the Indian society.

84 The Municipal Corporation of Greater Bombay v. The Indian Oil Corporation Ltd., AIR 1991 SC 686, para. 17.
85 ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd., 2010 (10) SCC 1, para. 15.
86 Justice K.S. Puttaswamy (n 3), para. 126.

Therefore, it may be well concluded that although the rights which were trampled upon by the existence of S. 377 can never be restored but it is for the state to ensure that further infringements do not take place under the new phenomenon of hate crimes which has affected the realization of their rights to large extent and for this reason the present CJS must also be looked into by the legislature as to include crimes based upon hate towards the victim.

Human Right Advocacy for Women's Right to Health and Nutrition: Challenges and Opportunities

Rachana C. Raval * and Bhavesh H. Bharad **

Abstract

Women in most of the countries are occupied with major familial responsibility for their families' health and nutrition. But, on contrary, their own health and nutrition are often at risk due to social and biological stresses of society and family. Advances leading towards improvement of women's status in society may improve overall health and nutrition which are most important for their progress. Moreover, any activities intended for preventing malnutrition rely substantially on women's activities and their empowerment. Also, major emphasis should be given on nutritional status and necessary techniques must be applied with changing time. An approach of welfare should be implied by protecting health of a woman throughout life rather than during important phases of pregnancy and lactation. Also, it is important to safeguard the nutrition of new-borns, children and indeed future generations too. Indian tribal communities are considered the most vulnerable by economy and socially as well as the are isolated from main stream of the society and used to live in barren jungle are mountain areas where elite castes are rarely found. Tribal community has separate life styles and unique customary traditions based on different geographical setting. The health and hygiene of tribes are at high risk due to lack of systematic and formal education, inadequate health care services, haphazard feeding of child, orthodox and rigid religious rituals and certain local customs and beliefs of particular tribe. Tribal females in India are rich in social status because they enjoy freedom of thought in family, social independency and economic liberty due to own earning through various trades. Somehow, the age-long

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established ideologies are responsible for devaluation of females and their influence on family. The gender bias and sex differences have led to the defamation of woman; they are exploited and deprived of basic rights and freedom, and are controlled with rigid restrictions as a part of life duties. Tribal community is disappearing and the existence of certain tribe is at high risk as they are declining in numbers. The alarming rate is the result of growing rate of mortality and inadequate access to health care facilities available to them. The victory over the self-motivated tribal progress is the result of positive aspects like favours for education, raised girl's literacy ratio, sustainable development, folk empowerment, easy access to health care as well as various human resource pointers. It is highly advisable to make reproductive health care facilities accessible and reasonably priced, with available basic requirements, capacity building of local women be enriching their employment skills and opportunities, and also assisting working women with transport and related amenities.

Key words: - *Tribals, Woman Empowerment, Gender Justice, Customary, Sustainable.*

Introduction

The women in India undergoes pathetic phase irrespective of age and marital status and it is a known fact at global level. The World Economic Forum while considering the status of gender equality around the world has placed our nation at the bottom of 113th position out of 130 registered nations like Bangladesh and the UAE. The highest rankings nations like Norway are characterized by outstanding achievements like employment prospects, modern education system, good governance, and welfare aspects as well as access to health care services on equality bases without any social or political differences. In this context, India has secured special reservation to motivate women for leadership in polity and has given 33% mandatory seats to females at block level in village Panchayats, employment field and in area of health and hygiene too, but still Indian women faces health issues in major parts due to various reasons. Our nation stands at the least position of 128th out of 130 in the area of health and hygiene for female and child.

Exploitation bases on gender differences has many faces like verbalized pressure and corporeal force, bullying and threat of abandonment practiced against any individual irrespective of a girl or woman or boy. This deprivation leads towards traumatic situations like suicidal disorder, panic psychological condition, depression and sometimes insomnia.

The gender difference does not result due to sex variation but due to stereotypes and social attributes prevailing in our society since long back. The biological differences in male and female are incapable to create

preferential and discriminative environment human being in the society. Moreover, the concept of gender is directly connected with social norms about specific behaviour any man or woman does, expectations accordingly; and, based on the same norms the Indian society is featured with certain roles and identification attributed by mainly two sexes. The expectation of any social role is straightforward connected with already established gender-based notion for male and female and it will be an act of discrimination in bestowing supremacy and control upon family and community. Males and females are conferred with right of equality but females are still kept away from matters like decision-making, using familial resources and property of in-laws and easy access to monetary privileges. Female members are carriers of generations as they give birth to infants but they stand at the least position in terms of hard-core decision regarding conceiving the pregnancy, child miscarriage, mode of giving birth to child (Caesarion or normal) and use of certain pills. Back to back deliveries of children without required gap, illegal termination of pregnancy and unhealthy method of delivery lead towards worst future and may likely cause high level of anaemia, urinary tract infections, cervical cancer, weakening pelvic organs and uterine descensus.

The downgrade situation of women affects the overall health and hygiene as they are unable to access the basic health care needs in India. High expectation of child bearing and rearing leads to early marriage, repeated pregnancies, abortions (sex selection attitude) and reproductive complications. Moreover, lack of proper nutrition and health either due to economic crisis or lack of freedom, no rest during and after delivery and overloaded work pressure aggravates women's reproductive health.

Ever expanding gender inequality at large impacts the progress of every nation and also pulls back the accomplishment of MDG-20 (Millennium Development Goals), specially laid for eradication of global issues. Global efforts to demolish gender disparity and steps towards woman empowerment and equality are the ways to reach MDG-20 in actual sense. The intention for gender equality must be the pre-decided step to ensure woman empowerment globally without the fear of public chaos and social uproar. This may demand for revolutionary and positive attitude in each sphere and the existing norms must be enforced to make sure that women must be getting their laid right in political field, employment opportunities, legal fairness and equal dispersal of joint property.

Right of Access To Health-Care Services

A. Basic features of Right of Health and Hygiene:

A.1: The right to health-care service is inclusive of basic welfare rights:
Commonly, the health aspect is inclusive in nature as it is directly connected with other basic welfare amenities like right to access assistance by health care professionals and clean and hygienic building of hospitals. The relation is appropriate but the field of health rights is broader and extends to larger context. It is inclusive of all the factors that can assist us to enjoy stable and healthy life ahead. The monitoring committee of Economic, Social and Cultural Rights established under the International Covenant on Economic, Social and Cultural Rights has given certain standards to be achieved for healthy life. The basic requirements are as under:

- Clean drinking water and sanitation facility with hygienic environment;
- Food Safety and Security under prescribed standards (FSSAI);
- Nutritious food at certain age for proper wellbeing
- Housing facility with basic requirements;
- Healthy working environmental with safety measures;
- Health oriented education and basic information;
- Gender equality.

A.2: The right to health-care service is synonymous with right of freedom:
The freedom refers to as protection against medical negligence and free from forced medical practices, ensured safety upon mere experiments of medical equipment upon alive body, forced sterilization and right of dignity against cruel and inhumane torture by the professionals.

A.3: The right to health-care service encompasses certain privileges:
These human rights under health-care services are as under:

- Everyone has equal opportunity to achieve qualitative standard of health, irrespective of social status and standards;
- Everyone has right of protection and treatment against any disease and even during any pandemic;
- Availability of basic medications and first-aid;
- Special care during Pre-Natal and Post-Natal period and care for newly born child;
- Timely availability of basic health care facilities in every region without fail;
- Health and Hygiene oriented training and information;
- People's Participation in health-related decision-making at block and national levels.

A.4: Equality in providing health services, goods and facilities to all without any discrimination:
The principle of non-discrimination is the important aspect to achieve goals laid down under various articles of Declaration of Human Right because ensured rights with equality are the only key to attain quality health for all.

A.5: Essentials under the right must be handy and reachable and be of the best quality:

- The state must be occupied with adequate quantity of public health and health-care oriented various facilities, goods and aid anytime.
- They must be friendly in nature to ensure safely for every social group such as offspring, youngsters, aged people, persons with disabilities and other vulnerable groups. The services must be at affordable rates based on the grounds of non-discrimination. It also comprises of right to information on health and hygiene in understandable format like leaflets, pamphlets and posters but excludes the right to information covered under confidentiality clause.
- The facilities, goods and services should also comply with medical ethics as well as it should be sensitive and cultural centric. They should be acceptable on grounds of medical science and cultural norms.
- The services must be authentic and scientifically proven. It should be medically reliable and of good quality. It also requires trained professionals, scientifically approved and usable medications and adequate hospital equipment, clean drinking water and sanitation.

B. Fallacies about Right of Health and Nutrition:
B.1:The right to health and right to be healthy are different:
A very common misconception is that it is the State to guarantee us good health and access to health services. On contrary, good health is achieved by various factors like person's heredity and genetic structure as well as socio-economic situation but they are beyond the orbit of direct control of the nation. Also, the right to health care gives privileges to enjoy variety of goods, conveniences, amenities and conditions necessary for being healthy. Thus, it is more precise to consider it as the right achieve quality standard of psycho-physio-social health, rather than mere unrestricted right to be merely healthy.

B.2:The right to health-care service must be a part of life than just a goal for future:
The healthy life is the key towards development of the nation and any

state must not be excluded from any obligation to provide health care services in any condition. Rather than making it just tangible programmatic goal, it should be actually applied at the fullest to serve all with equality. In fact, States must make every possible effort through available resources to recognize this right in true direction and to take steps in that way without unnecessary delay. Still, resource constraints and some obligations do give adverse effect, such as the responsibility to guarantee the health care right in a non-discriminatory manner, to draft specific legislation and plans of action and other similar steps for the actual implementation of said right. Every nation must ensure a restricted level of access to the certain medical components of the health care right such as the provision of essential drugs as well as maternal and child health care services.

B.3:A country's critical economic condition does not provide an option in taking due action for the right to health clause:

It is often claimed that any nation suffering from economic crisis are not obliged to take steps to realize the health care privilege in any flexible manner or they may delay their commitment still further notice. The availability of resources and probability of expansion are interpreted before considering the level of implementation of this right within particular State. Even so, no State can validate the failure to defend its obligations on the basis of lack of resources. It is the responsibility of the states to provide the right of health to the maximum available resources in every manner and situation. As implementing policy may depend on the specific context, nation as a whole must put an effort towards meeting their commitments to respect, protect and fulfil the health-care right.

B.4:Nexus between Health-care services and Human Right:

Human rights are inter-reliant, inseparable and interconnected in nature. More specifically, contravention of the health-care right may affect the enjoyment of other human rights; for example, the rights to education and work, and vice versa. The importance given to the responsible key factors for health are depended upon each other, which protect and promote the health-care privilege; beyond health services, goods and facilities, displays that the privilege of health care facility is dependent on and subsidizes other human rights as well. Because it also comprises basic rights of food, clothes and shelter, protection against discrimination, right of privacy, right to information, right of participation in public matters and the right of advantage in scientific progress done by nations.

Relation between health-care right and the right of clean drinking water

"I'll health is the result of unavailability of clean and safe drinking water and contact with impure drinking water, nonexistence of sanitation and mismanagement of natural resources. The major cases of diarrhoea at global level are the result of perilous water, lack of sanitation and cleanliness. Nearly 1.5 Million people died of diarrhoea worldwide in year 2002."

The access of health-care privileges is directly connected with poverty. People with severe vulnerable conditions have only one asset and that is their health status. The good health is the only base for the survival because they can work only in healthy conditions. Physical well-being and mental fitness said grownups to work and educate their children. Unhealthy individual becomes the liability for himself and must care for the self in order to survive the family. Contrariwise, person's healthcare privilege cannot be fully implied without rendering them their related basic rights and the contraventions of such rights may lead to poverty and vulnerability. The related rights are the rights to work, food, housing and education, protection against discrimination.

B.5:Right to Health and Principle of Non-discrimination:

Discrimination refers to distinction, exclusion and restriction implied upon various grounds which by invalidating the recognition direct or indirect contravenes the utilization of conferred human rights and essential liberties. Certain social groups are marginalized and deprived of their rights and privileges and perhaps this has been the main root-cause of prevailing age-long dissimilarities and differences in India. This may result in adverse situation and may make such marginalized and down trodden population more vulnerable under the poverty and lack of access to health care services. Very often, traditionally discriminated and marginalized population often are debarred from access to health care service and face severe and major health problems. Many researches have exhibited that in some countries, minority community and indigenous group are given provided with fewer health services, receive limited or no basic health care information and are hardly provided with basic needs like suitable housing and safe drinking water; as a result, mortality rate is higher in their community and children suffer from severe malnutrition than children in other communities.

The impact of discrimination is adverse when an individual suffers multiple discrimination on various grounds such as based on sex, caste, creed, race, age and national origin. For instance, the indigenous women are deprived of privilege of health-care as well as pre-natal and post-natal

care services; sometimes the worst is when they are more indulged into physical and sexual ferocity compared to the general population.

Aspects like non-discrimination and equality are fundamental human rights principles and basic components for rendering health-care pleasure. The International Covenant on Economic, Social and Cultural Rights [art. 2 (2)] and the Convention on the Rights of the Child [art. 2 (1)] consider religion, sex, race, color, language, political and other opinion, national or social origin, property and social status, physical or mental disability, birth place and other status as the grounds of discrimination. The Committee on Economic, Social and Cultural Rights states that "other status" may hold "health status" [e.g., HIV/AIDS]and sexual orientation [male, female or transgender].The Nation is responsible for prohibition of all the forms of exploitation and discrimination on all the grounds; it is the duty of nation to ensure equality for easy access of health care. The Article 5 of The International Convention on the Elimination of All Forms of Racial Discrimination states that it is the duty of the country to eliminate the practice of racial discrimination and guarantee everyone for the enjoyment of health care and medical services.

Principle of non-discrimination and equality further imply that every country should recognize the prevailing partialities and must fulfill specific needs of marginalized groups that are actually deprived of health-care right and are facing health challenges. Among the issues, the major risky are higher mortality rates and spread of incurable diseases and pandemics. To comply with the obligation for safeguarding the health standards, extra care must be applied to specific vulnerable groups of society, such as women, children or persons with disabilities. Extra protective measures are utmost required when certain community groups are continuously been discriminated and marginalized by government or other groups.

Also, the Committee on Economic, Social and Cultural Rights has mentioned clearly that there is no scope of justification against the lack of protection of vulnerable group from health care service-related discrimination and failure to provide the same with equality, irrespective of being in law or in-fact. Thus, in the hard times and crisis situation, the states are bound to protect vulnerable members of society even through policy of adoption of comparatively low-cost targeted programmes.

B.6:Right to Health and International Law of Human Right:

The International Law of Human Right observes the right to attain the highest qualitative standard of health as the basic is a human right. The International Covenant on Economic, Social and Cultural Rights, widely considered as the central instrument for the protection of health-care

privileges narrates that "it is the right of every individual to enjoy qualitative standards of physical and mental health, irrespective of residing in any state." It is important to note that the Covenant recognizes both; mental health, which has often been neglected on major grounds, and physical health which has differences in terms of equality.

International Covenant on Economic, Social and Cultural Rights: Article 12:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;
   (b) The improvement of all aspects of environmental and industrial hygiene;
   (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
   (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness

A subsequent International and State Human Rights regime observes the health-care privilege in different ways. Some are the part of general laws and some have specific legislative structure, such as the human rights of specific groups like children, women, aged, person with disabilities etc.…

Health-care Right and International Human Rights Treaties

- The 1965 International Convention on the Elimination of All Forms of Racial Discrimination: art. 5 (e) (iv)
- The 1966 International Covenant on Economic, Social and Cultural Rights: art. 12
- The 1979 Convention on the Elimination of All Forms of Discrimination against Women: arts. 11 (1) (f), 12 and 14 (2) (b)
- The 1989 Convention on the Rights of the Child: art. 24
- The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families: arts. 28, 43 (e) and 45 ©
- The 2006 Convention on the Rights of Persons with Disabilities: art. 25.

Moreover, the monitoring bodies like the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination

of All Forms of Discrimination against Women and the Convention on the Rights of the Child have implemented general regulations and recognized recommendations on health-care and health-related issues. The treaties explain every privilege in detail under different articles and conventions. Several conferences and declarations, such as the International Conference on Primary Health Care (also known as "the Declaration of Alma-Ata"), the United Nations "Millennium Declaration and Millennium Development Goals (UN's MDG)", and "the Declaration of Commitment on HIV/AIDS", have also assisted is clarifying current aspects of public health pertinent to health-care.

Declaration of Alma-Ata, 1978

"This Declaration encourages the vital responsibility of primary health care because it is associated with the root of any health problems. It also provides institutional and non-institutional after care services. Item phasis on primary health care as it is the key to achieve highest status of health and will make an individual capable for sustainable development."

The health care services may also be recognized under several regional instruments. They are the African Charter on Human and Peoples' Rights-1981, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, named as the Protocol of San Salvador -1988, and the European Social Charter-1961(revised in 1996). The American Convention on Human Rights-1969 and the European Convention for the Promotion of Human Rights and Fundamental Freedoms-1950comprise provisions related to health in different terms, such as the right of life and liberty, the prohibition of torture and other cruelty, protection against insensitive and humiliating treatment, and the right to family and privacy. The health Care provisions have been comprised under more than 115 constitutions of various nations. Accordingly, they set out duties and obligations in relation to health, to develop health services and to allocate specific budget to them.

The Health Care Provision under various Constitutions

Constitution of South Africa (1996):

Chapter II, Section 27: Health care, food, water and social security:

"(1) Everyone has the right to have access to
   a. health-care services, including reproductive health care;
   b. sufficient food and water; […]
(2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.
(3) No one may be refused emergency medical treatment."

Constitution of India (1950):

Part IV, art. 47, articulates a duty of the State to raise the level of nutrition and the standard of living and to improve public health: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties…"

Constitution of Ecuador (1998):

Chapter IV: Economic, Social and Cultural Rights, art. 42: "The State guarantees the right to health, its promotion and protection, through the development of food security, the provision of drinking water and basic sanitation, the promotion of a healthy family, work and community environment, and the possibility of permanent and uninterrupted access to health services, in conformity with the principles of equity, universality, solidarity, quality and efficiency."

Gender Bias and Influence on Health and Hygiene

Social transformation cannot be achieved by personal change; therefore, laws are enacted and enforced in the society. The social change can be brought by improving the workable social status rendered to the girl child and females, through compulsory education and schooling, health and hygiene, employment opportunities, and substantive legal equality. But with this practice, a stringent watch and follow-up is required to monitor and punish doctors practicing the most heinous and inhuman crime known to modern Indian society as female feticide.

The child sex ratio seems to the negative inclination and calls for emergency concern for anthropologists, population scientists, policy makers as well as planners. Increasing sex selection trend and rapid practice of female feticide has resulted in low sex ratio in India. Female feticide or sex selective abortion is the killing and removal of the fetus of female child in the womb before. The declining child sex ratio is the outcome of various affecting factors such as neglecting female child and it results in higher mortality rate in their early ages, female infanticide and female feticide. Female feticide is the practice wherein the female fetus is surgically removed after prenatal sex determination and killing the girls before their birth. Familial pressure of sex selective abortion and higher declining Child Sex Ratio (CSR) clearly indicates the practice of child homicide in India.

Factors responsible for Female Feticide in India:

- The craze of male child and social pressure
- The homicide of female child

- The socio-economic instability and voluptuous insecurity
- The evil of dowry prevailing in the society
- The single mother family and worry of girl's marriage
- Easy access and affordability for surgery and pre-natal test
- Non-compliance with medicinal integrities
- The population control policy

Declining sex ratio and Consequences in the Society:

- Dropping number of girl child in the society that may result in rise of sex related crimes against women
- Rise in the crimes like rape, abduction, bride selling and trafficking, forced polyandry, prostitution, etc.
- Rise in trade of prostitution, sexual exploitation and increase in the number's diseases like STD and HIV/AIDS
- Increase in the social crimes against women which may result in various physical, physiological and psychological disorders in females
- Ill health of women as a result of forced and repeated pregnancies and abortions

It is the basic human right of every woman to have the access to the highest quality and standard of health, safe and hygienic reproductive choices, and standard healthcare. There is an urge to give a thought on preventing unsafe abortion, improving critical care treatment and reducing adverse consequences. A step for women empowerment should be taken to increase easy access to services that enhance women reproductive and sexual health and to provide hygienic and favorable environment supported by latest technologies, skill development, research, and technical assistance. It should incorporate the following aspects:

- It should implement and support women centric reproductive health policies for the betterment of women
- It should ensure the quality and sustainability of health care services
- There should be long-term availability of reproductive health technologies
- Active involvement of women for promotion and improvement of health care services

All in all, woman empowerment is may lead to the nation's development. Backward females are privileged with dignity and respect in the society compared with upper caste females because they play decisive role and are protagonist in the family due to mother work and in society due to social and economic work. But the stereotype and ideological devaluation

of woman's contribution and bias of gender and sex has resulted in drastic change in the status of women and as a result they are facing deprivation and discrimination in enjoyment of rights and are restricted in their daily life without any logical meaning.

Water crisis is at the height in remote areas and as a result many households lack easy access to water in or near their residency so women spend on an average about forty billion hours every year for water collection. The statistics of wasted human hours involved during the carrying water signposts that women spend more period in safeguarding the basic necessity of life which are equivalent to that of one-year labor by the entire country's workforce for survival.

The data on the advert impact of environmental degradation and climate change on rural and tribal women is scaring. The women faces more burden during hard times like scarcity of rain, deluges, heavy rainfall, deforestation and during disturbances in the supply chain due to natural resources. This is due to the sole responsibility of women to ensure household food security and to do the bulk collection of water and household fuel.

Gender Bias Impact On Reproductive Health

The second most worrying global fact is that maternal mortality is dropping too slowly by just 0.4 % / year, compared to the 5.5 %required to meet the MDG to recover maternal wellbeing. The responsible factors for the vulnerable situation are more distance between health service centers and schools and high accessing cost, as well as male oriented agricultural services. The efficacy of government responsibility is seen in the service conveyance system that responds to requirement of a mother. But this is not a big issue in many parts of the world. The very meaning of answerability endures a shift when it comes to the feminine concept because women's experiences and perceptions are significantly different from those of men. So, women witness advanced stratums of manipulation done during public services.

Maternal Mortality Ratio (MMR) is the number of maternal deaths per one lakh live births. Unfortunately, there is no reliable and significant data available on these aspects for general population in India so shaping the issue of rural and tribal community is the complicated question. On an average if, we take the most conservative estimate of 500 /one lakh live births which are in the lower side even in this case too more than one lakh women decease each year in India due to adverse moments correlated to pregnancy and child birth.

Four mothers decease in contradiction of every 1000 live-births each year in our country. A woman loses her life every five minute just due to

impediment attributable to pregnancy and child birth. According to an estimate, each woman who dies at tender age and other alive women develop a chronic debilitating condition that seriously affects the quality of life.

There is the need of an hour to examine the maternal mortality rate and to analyze where India has been proved so worst and critical. India is at the highest rate of 450 at global level and limited access to quality health care is the clear evidence against it. Women in our nation expect to live healthy and longer life than a man but in rural and tribal regions, women outlive men by as much as five to seven eons and this is hardly as elevating a measurement as it may appear.

The World Economic Forum report measures the frequency of paternal versus maternal authority in India and unsurprisingly our nation is awarded with the worst possible score on that account, showcasing the orthodox and rigid pattern of an extremely patriarchal society. This is also the leading, warranted and indisputable factor in the light of our heinous activity of honor killings that still occur in our society. Even sex ratio in some richest parts are skewed too in favor of males and proves that only economic growth cannot result in better lives for women in society.

Nearly 12% of all maternal deaths are the result of complications due to unsafe abortions in India. About 20% maternal demises occurred due to Anemia.13% are the result of toxemia,14% happens due to puerperal sepsis and 25% women expire because of excess bleeding during pregnancy for of maternal deaths.

Maternal mortality is high in those societies in which fertility and multiple birth are also high. Maternal mortality is high in those communities in which children are born to tender aged women and with less interval time between child births. Lack of interest by men and their families results in poor utilization of prenatal, natal and postnatal services for the pregnant women and she suffers from various diseases and related complications. This happens for two reasons, mainly they are unaware of the importance of seeking preventive care else they are simply indifferent and do not want to care at all. In 27% cases of the maternal bereavements in our country the family members were hardly aware of the gravity of women's sensitive circumstances and took no action for any medical precaution.

Empowerment of Women

Education is the key to development and it should reach in parity to ensure gender equality and empowerment of women. But reality picture of political representation and employment is still in a blur form. Greater political representation of women empowerment and gender equality

mutes the voice of women's issues in policy making. Taking into consideration the present scenario, an assumption states that it will take nearly around forty years for women in emerging republics to reach the parity zone up to 40 to 50 % seats in state assemblages and in the parliament of the country.

The National Population Policy and Reproductive and Child Health flagship program in our country has showcased a positive shift from earlier demography-based target oriented intimidating strategy to the emphasis on progressive pieces like humanoid expansion, gender neutrality, adolescent multiplicative wellbeing and rights and growth issues for popular rheostat. The age of girl at marriage hardly meets the legal criteria of minimum 18 in comparison to that of men of 21. Age at marriage affects the significances on fertility rates, child bearing, and other health issues such as infant and maternal mortality.

The beginning of menstrual cycle and biological changes is the milestone for female to enter into the institution of matrimonial. Women are forced to have children soon after their marriage in order to prove their fertility capacity and worth of marriage and hence adolescent age wedlock becomes identical with adolescent child bearing age. Early marriage and pregnancy have adverse effects on the health of mother besides child. The high mortality rate of maternal, newborn infant and child are positively linked with early marriages and pregnancy. Girl child education, hygienic rearing and bearing environment, investment on social and economic prospects and self-esteem augmentation can add a lot for improvement in their health, nourishment and over-all development.

Impact on Nutrition

A healthy diet that provides sufficient number of calories and micronutrients are essential for a woman during prenatal period for healthy delivery of a child. Proper nutritious diet and avoiding unnecessary pregnancy related stereotypes and social taboos can reduce serious and harmful complications during pregnancy and after child birth.

Infant mortality rate is the most important index when there is the concern of showcasing the level of socio-economic growth and quality of life. The high and low of IMR states the availability, utilization and effectiveness of the healthcare services and are the best indicators for quality measurement during perinatal, natal and post-natal care. Non-availability of access to qualitative health care service and intentional undernourishment of woman and girl child due to rigid social taboos and related adverse consequences are responsible for infant mortality.

Poor maternal health of woman leads towards low birth weight of a child and premature deliveries. Infant and childhood diarrheal diseases, acute

respiratory infections, poor hygiene and malnutrition are contributing factors for high infant mortality rates in our country.

The health and hygiene are mostly affected by the habit of food intake and food and nutritional insecurity are responsible for poor life cycle and health. When a child is put into a habit of other food from mother's milk, the nutrition, protein and energy requirements are not met properly. The proper growth of a child after six months of age requires extra energy which cannot only be fulfilled by breast milk and as a result energy gap increases due to inappropriate complementary and supplementary feeding practices in a child.

Technically it is known as Protein Energy Malnutrition (PEM) which is very commonly known as malnutrition. The commencement of undernourishment flinches from the period between 7 and 8 months of age and if not handled and cared, the consequences persist for life long. Looking at the prevailing system of our society, where gender inequality and bias is at par in families, the male child may fulfill this nutritional loss but the same cannot be in the case of a female baby. In rural areas, girls are mostly get married before the mature age prescribed by the law and hence also become mothers in pre-mature age due to familial pressure.

The consistent lower nutritional status of mother results in further addition of poor nutrition by the birth of a child and both suffers the poor health consequences. This is the pathetic reality of our nation and the most vicious cycle of health which moves from generation to generation and exhibits poor status of health of women.

The food intake habit and style of particular community impacts the nutrition level and security of people. The dietary patterns of certain communities do not meet the required nutritional needs in terms of quality as well as quantity for tender ages and adult nutrients and affect the health and nutritional status of the community at large. Low dietary intake and undernourished woman has adverse effects on the health of both mother and child.

Dynamism Impact on Health and Hygiene

To manage over population is not in actual sense the progress but it is only a mean to development. The success of dynamic expansion is depended upon various factors like higher literacy rate, growing socio-economic status, woman empowerment, easy access to qualitative health care services and other quality life indicators. The vision is socio-economic enrichment and improvement the quality of life of people irrespective of community and to enhance their well-being and to provide with the opportunities to become prolific resources for the humanity. It is

much needed to make easy access to qualitative reproductive health care services at an affordable value for all, rise in education for girls, extension of basic amenities, women empowerment and increase in employment opportunities, as well as providing the transportation and communication facilities.

The narrowness of gender gap increases the country's productivity, economy and health. Major investment in health and education are essential for development of nation. The progress is impossible until we enroll girl child to school and promote education for equal with that of male child. As long as our country regards women subservient to men in a male-controlled civilization, we will find it difficult to achieve the global power and high status of woman to which we so aspire since long back.

Conclusion

Thus, the women in India have been facing the adverse impact of gender differences and are discriminated at every stage in every phase of life, irrespective of parental family or in-laws. The differences range from access to basic amenities to the nutrition level in women of all ages. There is a requirement of strict laws and policies to bring equality where it comes with the question of health and hygiene of women because it impacts larger on health of unborn and newly born child and family.

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Access to Justice and the need of High Court bench in Western Uttar Pradesh

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Abstract

Access to Justice has been recognised as a fundamental right under the Constitution of India as well as under various International instruments. In order to secure, accessibility to justice, Legal Services Authority Act, 1987 was enacted with the object of providing legal aid to litigants who suffer from economic distress. Within the legal fraternity, there has been a consensus towards the decentralisation of judicial machinery. This consensus has been reflected in the Reports of Law Commission of India and enactments like the Gram Nyayalayas Act, 2008. Further, the establishment of permanent/circuit benches of High Courts also reflects the unanimity. Present work deals with the long pending issue of establishment of a bench of High Court in the western part of Uttar Pradesh. Using the data from the report of NCRB, which shows that the crime rate in the western Uttar Pradesh is substantially high from the State average and in order to ensure that the litigants are not excessively hassled by making huge expenses and travelling long distances, it argues that there is dire need for the establishment of a bench of High Court in western Uttar Pradesh. It has suggested three methods which can be adopted by the establishment of the same. It is incumbent on the part of the decision-makers to act in good faith and with adherence to the spirit of the Constitution of India, to facilitate that the people of western Uttar Pradesh are not treated as mediocre populaces in their own State. However, a long pending demand for the establishment of a bench of High Court in the western part of State of Uttar Pradesh has not been conceded. The litigants from different part of western Uttar Pradesh are required to travel long distance to Allahabad, the principal seat of High Court in Uttar Pradesh and, thereby, forcing them to make huge expenses. The crime rate in western Uttar Pradesh is significantly high when compared to the State average and, therefore, in order to provide justice at the door steps of litigants, it is incumbent that a bench shall be established in western Uttar Pradesh as the opinion of legal fraternity, be it the Law Commission or the legislations enacted, has been towards the decentralization of justice delivery mechanism.

Key words: - *Justice, High Court Bench, Law Commission, Rights, Western Uttar Pradesh*

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Introduction

Access to justice is essential for the Rule of Law. It is recognised under Article 10 [1] of the Universal Declaration of Human Rights as well as Articles 9 [2] and 14 [3] of the International Convention on Civil and Political Rights. It is also recognised as a fundamental right under Article 21 of the

1 The Universal Declaration of Human Rights, 1948, art. 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

2 The International Convention on Civil and Political Rights, 1966, art. 9(4).
Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

3 ibid, art. 14(3). [The International Convention on Civil and Political Rights, 1966.]
In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it...

Constitution of India.[4] The Preamble to the Constitution of India provides that there shall be Justice, social, economic, and political. It provides the guiding principle for the government towards the establishment of an egalitarian society that we aspire to be. Although the preamble was not considered to be a part of the Constitution in the initial years of the history of independent India and the same was affirmed by the Supreme Court in the case of re, Berubari Union.[5] However, the opinion expressed in Berubari as to the Preamble was found to be incorrect in Kesavananda Bharti v State of Kerala[6] and S R Bommai v Union of India[7] and Preamble came to be considered as a part of the Constitution. Preamble, along with, Part III and Part IV, which respectively deals with fundamental rights and the directive principles of State policy, are considered as the trimurti (three cornerstones) of the Constitution of India. Under Part IV, Article 39 A of the Constitution of India provides as follows:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizenby reason of economic or other disabilities.

In accordance with the directive of the Constitution, the Parliament has enacted legislations like the Legal Services Authorities Act, 1987, which aims at providing free legal aid to indigent litigants in order to ensure that no one shall go unrepresented before a Court for want of money. Article 39A was inserted in the Constitution to ensure that the legal system shall deliver justice expeditiously on the basis of equal opportunity and provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reasons of economic or other disabilities.[8] However, the directive provided under Article 39A has been thought to be limited to providing a legal practitioner to a litigant who is unable to engage an Advocate for the reasons of her/his economic disability.

4 Tamil Nadu Mercantile Bank Shareholders Welfare Association v S CSekar and Others (2009) 2 SCC 784; Anita Kushwaha v Pushap Sudan, (2016) 8 SCC 509.
5 AIR 1960 SC 845.
6 AIR 1973 SC 1461.
7 AIR 1994 SC 1918.
8 M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2014) 1425.

Nevertheless, the condition of legal aid is intimidating given the fact that India has about five legal aid lawyers per 100,000 population; the per capita public spending on legal aid is only Rs. 0.75 per annum.[9]

The Vision Statement of the National Mission for Justice Delivery and Legal Reforms (June 2011)[10] states it to be the duty of the state to secure a social order in which the legal system of the nation promotes justice, on the basis of equal opportunity and shall, in particular ensure that opportunities for securing justice are not denied to any citizen because of economic or other disability.

Report of the Department of Justice on Access to Justice for Marginalised People (Ministry of Law and Justice 2008-12)[11] on one hand seeks to improve the operational ability of key justice service providers so that they can better serve the poor and the disadvantaged. On the other hand, it seeks to encourage the poor and disadvantaged men and women specifically to try and claim the provision of justice.

Any denial of access to justice undermines public confidence in the judicial system and induces them to adopt short cuts thereby posing threat to the rule of law. Access to justice must not be considered from quantitative dimension alone rather qualitative perspective shall also be measured. It includes improving individual's access to courts, or guaranteeing representation. [12]

The inability to access justice, both through the courts and outside, would undoubtedly diminish the quality of life. Key aspects of access to justice are the need for adjudication mechanisms, public awareness of their rights and role as adjudication mechanisms, public access to such adjudication mechanisms in terms of physical distance, speedy adjudication process and affordability of the adjudicatory process. The

9 Vidhi Centre for Legal Research, India Justice Report (2019) p. 108, available on <https://vidhilegalpolicy.in/wp-content/uploads/2019/11/overall-report-single.pdf> accessed 20 March 2020
10 Vision Statement of the National Mission of Justice Delivery and Legal Reforms, <https://doj.gov.in/sites/default/files/Vision-Statement_0_0.pdf> accessed 03 April 2020
11 <https://doj.gov.in/sites/default/files/A2J1%20%201_0_0.pdf>accessed 10 April 2020
12 Imtiyaz Ahmad v State of Uttar Pradesh (2012) 2 SCC 688.

President of India, Shri Ram NathKovind, in his address of November 25, 2017 observed:

India has acquired a reputation for an expensive legal system. In part this is because of delays, but there is also the question of affordability of fees. The idea that a relatively poor person cannot reach the doors of justice for a fair hearing only because of financial or similar constraints violates our constitutional values and our republican ethic. It is a burden on our collective conscience.[13]

In order to provide access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities, the Gram Nyayalayas Act 2008 was enacted. It necessitates the establishment of Gram Nyayalayas for every Panchayat or a group of contiguous Panchayat[14] to conduct trail or proceedings in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause of action had arisen.[15] In spite of the lapse of a decade, the Act still awaits implementation on part of States and the established Gram Nyayalayas are not functioning, except in the States of Kerala, Maharashtra and Rajasthan, forcing the Supreme Court to direct States to notify the establishment of same.[16]

Law Commission on decentralization of administration of justice

The Law Commission of India in its fourth report on the 'Proposal that High Courts should sit in Benches at Different Places in a State' opined that the question whether a High Court should sit in benches at different places apart from the original seat shall be determined on the basis of administration of justice and without having regard to sentimental and political considerations.[17] The Commission itself believed that justice

13 Address By The Hon'ble President Of India Shri Ram NathKovind On The Occasion Of Inauguration Of The National Law Day Conference <https://presidentofindia.nic.in/speeches-detail.htm?435>accessed 30 March 2020

14 The Gram Nyayalayas Act 2008, s 3.

15 The Gram Nyayalayas Act 2008, s 9.

16 National Federation of Societies For Fast Justice &Anr. v Union of India &Ors WP© No. 1067/2019.

17 Law Commission of India, On the Proposal that High Courts Should sit in Benches at Different Places in a State (Law Com No 4, 1956) para 2

should be brought to the doorstep of litigant and litigant shall not be forced to travel long distance in search of justice. However, it did not favor the establishment of circuit or permanent benches citing, inter alia, following reasons:

a. requirement of best legal talent and accessibility to best equipped law library for the Judges and legal practitioners;

b. difficulty for the Chief Justice to have administrative control over the working of Judges sitting in circuit or permanent benches;

c. difficulty of coordination among the Judges about the decisions rendered by various benches located at different geographical locations;

d. the tradition of High Court bar is incomparable to the tradition of District bar and, therefore, the litigants will have to satisfy themselves with incompetent advocates.

As has been mentioned aforesaid that these reasons might have been significant in 1954 but with the passage of time and technological advancements, these reasons have become insignificant. Now, with the launch of digital India by the Government of India, almost all the judgments of the Supreme Court, High Courts and even the District Courts can be accessed through open access databases like Judgment Information System and e-courts. Further, most of the legal research can now be more conveniently done through online legal databases like scconline, manupatra, jstor, heinonline, AIR, etc. The Law Commission appeared to had a predisposed view when it observed that the Advocates at High Court Bar are well-qualified and those at the District Bar are incompetent. And when the Commission said that the tradition of High Court Bar and District Bar differs to a large extent then why not to favor number of Benches so as to ensure that this culture and tradition can be inculcated at different geographical locationsthereby encouraging the smooth dissemination and transmission of the culture of High Court Bar to District Bar.

The 14th report of the Law Commission recommended that there shall be decentralization of judicial work at the level of subordinate judiciary. It observed that the litigants face challenges in accessing the courts on account of long distances, they are to incur considerable cost and face inconvenience. 'The concentration of courts results in the concentration of work in the hands of few lawyers with consequent adjournments and

delays.'[18] The 125thReport of the Law Commission relating to 'The Supreme Court-A Fresh Look,' made certain observations regarding the accessibility of the Supreme Court. It recommended that the Court shall sit at benches in North, South, East, West and Central India as it will help the litigants by extensively sinking the costs of travel to longer distances which gets intensified by recurrent adjournments. It further indorsed that "it is time to annihilate a myth that expenditure on administration of justice is non-plan expenditure."[19] The adverse consequences of not having benches of Court in different geographical locations were highlighted by Justice Ruma Pal (Ret.) of the Supreme Court. It precludes the excellent lawyers to appear before the Courts, "conceivably because it casts too large a monetary burden on their clients, many of whom are impoverished." It sanctions the lawyers of a particular place to 'establish their monopoly, and, as a result, charge unconscionable fees.' [20] These observations, albeit, made with reference to the benches of Supreme Court, applies to the benches of High Court which need to be made more approachable, for being the highest Court of appeal in States.

The issue of establishing different benches of High Courts was again considered by the Law Commission in its 230th Report on the 'Reforms in Judiciary.' It advocated that the work of High Courts shall be decentralized and new benches shall be created with a view that the litigants are not required to travel long distances. The Commission also highlighted that there have been opposition from Advocates against the creation of benches of High Courts but those opposition were found by the Commission to be motivated by their personal and limited interests.[21]

Whether a bench of the High Court of Judicature at Allahabad can be established under the provisions of State Re-organization Act, 1956?

18 Law Commission of India, Reform of Judicial Administration (Law Com No 14, 1958) 1179
19 Law Commission of India, The Supreme Court- A Fresh Look (Law Com No 125, 1988) 21, 23
20 Ruma Pal, 'Ensuring Access to Justice' The Hindu (Delhi, April 02, 2019)
21 Law Commission of India, Reforms in Judiciary: Some Suggestions (Law Com No 230, 2009) 11-12

The provisions of State Re-organization Act, 1956 have been quoted by the Advocates[22] and people demanding for the establishment of High Court bench. However, the author prefers to disagree with the view offered by the Advocates. Section 51 of the Act of 1956 provides for the principal seat and other places of sitting of High Courts for new States. It reads as:

> (1) The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint.
>
> (2) The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith.
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint.

Section 2(I) of the said Act defines a new State as a State formed under the provisions of Part II of that Act. Since, under the provisions of Part II, Uttar Pradesh was not a newly constituted State, and in effect it was just the alteration of name from United Provinces to Uttar Pradesh that was made under the Act of 1956, hence it would not be apposite to say that the authority to establish a bench of High Court of Judicature at Allahabad can be derived from section 51. Therefore, the authority to establish a bench of the High Court of Allahabad must be derived and exercised under some other legislation or proclamation.

The High Court of Allahabad came into existence under the Letters Patent

22 Why Lawless West UP has no High Court Bench, Rajendra Singh Jani, AIR 2018 (Online); West UP deserves Statehood but has not even a Bench, Rajendra Singh Jani, AIR 2018 (Online).

of March 17, 1866 at Agra. Later on, the permanent seat of High Court was shifted to Allahabad in 1869.[23] In 1925, Chief Court of Oudh was established at Lucknow. The Chief Court of Oudh was afterward amalgamated with the High Court of Judicature at Allahabad under the provisions of the United Provinces' High Courts (Amalgamation) Order, 1948. Clause 14 of the said Order reads as:

> The new High Court, and the Judges and Division Courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appointed:
>
> Provided that unless Governor of the United Provinces with the concurrence of the Chief Justice, otherwise directs such Judges of the new High Court, not less than two in number, as the Chief Justice, may, from time to time, nominate, shall sit at Lucknow in order to exercise in respect of cases arising in Such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court : Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at Allahabad. [24]

Hence, under the provisions of the Order of 1948, the Chief Justice is authorized, with the approval of the Governor, to establish a seat of the High Court at any other place.

A look at the High Courts in India and their bench [25]

Table 1 shows that permanent and/or circuit benches of various High Courts have been established at distances ranging from 200 Km to 900 Km. The geographical distance of more than 10 districts of Western Uttar

23 Letters Patent Of His Majesty <www.allahabadhighcourt.in/history.htm#LETTERS%20PATENT%20OF%20HIS%20MAJESTY> accessed 25 March 2020

24 United Provinces' High Courts (Amalgamation) Order 1948, clause 14.

25 Information regarding the bench of High Courts has been retrieved from the websites of concerned High Courts. The geographical distance is an approximate measure from the Principal Bench of High Court as is likely to differ based on the measure used.

Pradesh from the Principal seat (which exercises jurisdiction with respect to those districts) of the High Court of Judicature at Allahabad ranges between 700 to 850 Kms. It is ironical that the High Courts of various other States like Delhi, Punjab & Haryana, Uttarakhand, Himachal Pradesh, Gwalior bench of the High Court at Jabalpur, Jaipur bench of Rajasthan High Court and even the Supreme Court of India are more accessible to the people of Western Uttar Pradesh than the High Court exercising jurisdiction over them. What is more cynical is the fact that even the Lahore High Court of Pakistan is located at a much lesser distance than the High Court of Allahabad.

Court Name	Established	Number of Bench	Location of Permanent/Circuit Bench	Distance of Benches from Principal Seat
Andhra Pradesh	1954 (bifurcated in 2019)	Nil	Nil	Nil
Allahabad	17 March 1866	1	Lucknow (1948)	200 Km
Bombay	14 August 1862	3	Nagpur (1 November 1956) Aurangabad (1982) Panaji (30 October 1982)	930 Km 350 Km 570 Km
Calcutta	1 July 1862	2	Port Blair Jalpaiguri	1300 Km 600 Km
Chattisgarh	1 November 2000	Nil	Nil	Nil
Delhi	31 October 1966	Nil	Nil	Nil
Gujarat	1 May 1960	Nil	Nil	Nil
Gauhati	5 April 1948	3	Kohima (10 February 1990) Aizwal (5 July 1990) Itanagar (12 August 2000)	350 Km 450 Km 320 Km
Himachal Pradesh	1971	Nil	Nil	Nil

Court Name	Established	Number of Bench	Location of Permanent/Circuit Bench	Distance of Benches from Principal Seat
Jammu & Kashmir	26 March 1928	Nil	Nil	Nil
Jharkhand	15 November 2000	Nil	Nil	Nil
Karnataka	1884	2	Dharwad (25 August 2013) Gulbarga (31 August 2013)	430 Km 550 Km
Kerala	1 November 1956	Nil	Nil	Nil
Madras	15 August 1862	1	Madurai (24 July 2004)	450 Km
Madhya Pradesh	2 January 1936	2	Indore (28 November 1968) Gwalior (28 November 1968)	500 Km 470 Km
Meghalaya	23 March 2013	Nil	Nil	Nil
Manipur	23 March 2013	Nil	Nil	Nil
Orissa	26 July 1948	Nil	Nil	Nil
Patna	9 February 1916			
Punjab & Haryana	5 April 1948	Nil	Nil	Nil
Rajasthan	1 November 1956	1	Jaipur (1 November 1956)	330 Km
Sikkim	16 May 1975	Nil	Nil	Nil
Telangana	1 January 2019	Nil	Nil	Nil
Uttarakhand	9 November 2000	Nil	Nil	Nil

Legal Efforts for establishment of a bench of Allahabad High Court

To address the issue of permanent/circuit benches of High Courts, Jaswant Singh Commission was constituted by the Government of India which submitted its report on 30th April, 1985. It recommended that a permanent bench of the High Court of Judicature at Allahabad shall be established at Agra by means of a Parliamentary legislation. Similarly, it recommended that two circuit benches shall be established at Dehradun

and Nainital. The Commission further recommended that a bench of respective High Courts shall be established both at Raipur and Madurai by issue of notification under section 51(3) of the State Re-organization Act, 1956.[26] The question of High Court bench at Nainital[27] and Raipur[28] became infructuous after the creation of State of Uttarakhand and Chattisgarh respectively as the parent legislations under which the respective States were established also provided for the creation of separate High Courts for each of the States. A bench of Madras High Court was, however, established as per the recommendations of the Commission. Nonetheless, to the disappointment of the people of West Uttar Pradesh, the issue of a bench at Agra was never addressed.

A private member Bill was introduced in Lok Sabha demanding the establishment of a permanent bench of High Court at Meerut to cater the requirements of the seventeen districts of Western Uttar Pradesh,[29] however, like most of the private member Bills, it also failed to be enacted as an Act.

In reply to a question regarding the establishment of a permanent bench of High Court in Western Uttar Pradesh, the Minister of State for Law & Justice, as he then was, Shri H R Bhardwaj informed that 'there is great difference of opinion among the lawyers and Judges of Eastern Uttar Pradesh regarding the place of seat of permanent bench of High Court.' Secondly, there is opposition from the people of Allahabad.[30] Now, the question arises as to why there is opposition from the people at Allahabad and why the Government is concerned about the opposition from a party which is deriving undue benefit out of the plight and sufferings of the people of Western Uttar Pradesh.

To mention, a writ petition for establishment of a permanent bench of Karnataka High Court at Dharwad came for the consideration of Supreme

26 Reply of Shri Arun Jaitley, Minister of State for Law, Justice and Company Affairs to Question no. 425 in Lok Sabha on 24 August 2000.
27 Uttar Pradesh Reorganisation Act 2000, s 26.
28 Madhya Pradesh Reorganisation Act 2000, s 21.
29 High Court at Allahabad (Establishment of a Permanent Bench at Meerut) Bill 2010 [1 of 2010]
30 Reply of Shri H R Bhardwaj, Minister of State for Law, Justice and Company Affairs to Question raised by Shri Jagat Vir Singh Drona on 25 November 1992.

Court in Federation of Bar Associations in Karnataka v Union of India.[31] The petition was dismissed by the Supreme Court citing firstly that the petitioner does not have any locus in the case and further holding that 'distance factor (to the seat of the High Court) may be a relevant consideration but not the sole consideration nor even the decisive consideration in determining the question of establishing other benches of the High Court away from the principal seat.' What was surprising was the fact that even after the dismissal of such a petition, two permanent benches of Karnataka High Court were established at Dharwad and Gulbarg in the year 2013.

Certain observation from the 229th Report of the Law Commission of India, which though were made in regard of the need of establishing the benches of Supreme Court, are relevant here as well. It observed that the agonies of litigants coming from distant places shall be addressed, 'they are required to spend huge amount of money and time on travel, bringing one's advocate who has handled the matter add to the cost, adjournments becomes prohibitive and costs get multiplied.' [32]

A Public Interest Litigation was filed in the Supreme Court seeking the establishment of a bench of High Court in Western Uttar Pradesh but the Court declined to entertain it saying that the issue raised was justified but the choice of forum was wrong. It remarked that the issue raised cannot be the subject-matter of judicial determination. [33]

Case for High Court bench in Western Uttar Pradesh

In the foregoing discussion, it has been shown that the High Court at Allahabad is difficult to access for the litigants from Western Uttar Pradesh owing to the geographical distance and undue expenses being made. There has been consensus within the legal fraternity that justice

31 (2000) 6 SCC 715.

32 Law Commission of India, Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai(Law Com No 229, 2009) 11

33 SC refuses to entertain PIL seeking Allahabad HC bench in western UP <https://www.business-standard.com/article/pti-stories/sc-refuses-to-entertain-pil-seeking-allahabad-hc-bench-in-western-up-118111301459_1.html> accessed 4 March 2020

shall be made accessible to all and one measure can be the decentralization of administration of justice. Further, the data from National Crime Records Bureau[34], which has been presented in Table 3 and Table 4 reveals that the rate of murder, culpable homicide, attempt to murder, kidnapping and abduction, rape, rioting, robbery, and total offences affecting human body is considerably higher in the twenty-six districts of western Uttar Pradesh in contrast to the State average. The findings from the analysis of data provided in Table 3 and Table 4 are shown in Table 2.

Kind of Offence	Average rate in 26 districts of Western Uttar Pradesh	Average rate of the State of Uttar Pradesh
Murder	70.4	53.3
Culpable Homicide	18.8	17.9
Attempt to Murder	101.3	64.3
Kidnapping and Abduction	309.8	288.6
Rape	60.3	52.4
Rioting	90.6	71.9
Robbery	61.6	40.8
Total Offences affecting human body	1856.8	1703.9

Due to proliferation of criminal cases from west, most of the cases heard in Allahabad relates to western Uttar Pradesh, thereby, calling for the people to travel long distances and incur heavy expenses for matters of bail and quashing of FIR, etc. This creates undue burden on government exchequer as the documentation and officials relating to particular case also needs to be made available at Allahabad, as and when required.

In a survey conducted by DAKSH , it was found that 26.8 percent people opted for non-court mechanism because the cost of litigation including lawyer's fee and travel charges were too high in case of formal court

34 National Crime Records Bureau, Report on Crime in India(2018) <https://ncrb.gov.in/crime-india-2018> accessed 22 May 2020

mechanism of resolution of dispute. It further revealed that 70 percent of the litigants have annual family income of less than one lac rupees. In accessing justice, 42.9 percent litigants have to spend between rupees 500 to more than 5000 per day excluding the fees charged by the lawyer and more than 41 percent of the litigants are required to travel a distance ranging between 26 km to more than 300 km in the quest for justice through the formal process of law.[35] Such expenses and travels cause undue hardship and sometimes even result in loss of job and business, which adds up to their miseries.

The Access to Justice Survey [36]

35 Daksh India, Access to Justice Survey (2017) <http://dakshindia.org/access-to-justice-2017/index.html#> accessed 15 May 2020

36 The Access to Justice Survey, designed to understand the functioning of the judiciary and profile of litigants, was conducted by Daksh between November 2015 and February 2016 across 305 locations in 24 states where 9329 litigants were interviewed. Available at https://dakshindia.org/wp-content/uploads/2016/05/Daksh-access-to-justice-survey.pdf

Way Forward

It is suggested that a separate bench of the High Court is indispensable for western Uttar Pradesh. This may be done by the enactment of a law by the Legislative Assembly of Uttar Pradesh in an analogous fashion as 'the Chief Court of Oudh' was established under the Oudh Courts Act, 1925' [37] and its consequent adaptations.

Alternatively, under para 14 of the Amalgamation Order, the Chief Justice can establish a bench with the approval of the Governor as even after coming into force of the Constitution of India, Amalgamation Order would constitute Laws in force within the orbit of Article 225 of the Constitution.[38] In Sri Nasiruddin v. State Transport Appellate Tribunal,[39] Supreme Court held that the use of the word "or" in Para 14 of the Order of 1948 signifies that there is no permanence attached to 'Allahabad' and other places may be determined by the Chief Justice in consultation with the Governor. As per the provisions of the Order, even both the places, Allahabad and Lucknow, may be changed. The seat of High Court at Allahabad is just the "Principal Seat" [40] and not the permanent seat. Hence, the Chief Justice may determine that the High Court shall sit in permanent/circuit bench in some part of western Uttar Pradesh.

Another option can be the enactment of legislation by the Parliament authorising for the establishment of a bench in western Uttar Pradesh.

Dr. B R Ambedkar once remarked:

> Justice has always evoked ideas of equality, of proportion, of compensation. Equity signifies equality. Rules and regulations, right and righteousness are concerned with equality in value. If all men are equal, then all men are of the same essence, and the common essence entitles them of the same fundamental rights and equal liberty….In short justice is another name of liberty, equality and fraternity. [41]

37 U PRashtriya Chini Mill AdhikarParishad, Lucknow v State of U P (1995) 4 SCC 738, p. 741.

38 K Sridhar Kumar v The Union of India (2002) 1 LW 742.

39 (1975) 2 SCC 671.

40 Universal Insulator and Ceramics Ltd. v Official Liquidator High Court 2019 SCC OnLine All 3789.

41 Arora ND and Awasthy SS, Political Theory And Political Thought (Har-Anand Publications Pvt. Ltd., 2007) 401.

Hence, there should be a level playing field for all people within the State to seek redressal of their grievances having regard to the amount of litigation and also for economic factors. Therefore, the people of western Uttar Pradesh may have the privilege of having a High Court bench at their door step.

Isaiah Berlin stated that freedom for the wolves has often meant death to the sheep. State must ensure that the people of western Uttar Pradesh shall not be the sheep for the wolves. The democratic rights of citizens encompass the right to access to justice which is the duty of the State to provide.[42] The 14th report of Law Commission of India observed, 'Insofar a person is unable to obtain access to a court of law for having his wrongs redressed…Justice becomes unequal and laws which are meant for his protection fail in their purpose.' An audit conducted by the Comptroller and Auditor General of India revealed that between 2012 to 2016 the State of Uttar Pradesh has utilized only 33 percent of the budget allocated for construction of courtrooms and buildings for judiciary.[43] Therefore, the State of Uttar Pradesh cannot even assert the dearth of financial resources for its failure to constitute and establish a bench in the west of Uttar Pradesh.

With due respect, may I urge The Lordships of High Court at Allahabad to act in good faith and in the interest of public as in the words of Cicero, the foundation of justice is good faith.

Table 3[44]

District	Murder	Culpable Homicide not amounting to Murder	Attempt to Murder	Kidnapping and Abduction	Rape	Total offences affecting human body	Other Rioting	Robbery
Agra	124	30	184	527	89	2437	472	183
Aligarh	113	29	167	451	92	2011	173	140
Prayagraj	117	47	135	982	72	3012	45	114
Ambedkar Nagar	35	12	19	157	32	828	110	28
Amethi	34	9	41	263	26	1884	0	29

42 Law Commission of India, Report on Manpower Planning in the Judiciary (Law Com No 120,1987)

43 Vidhi Centre For Legal Research, India Justice Report(2019) 107 <https://vidhilegalpolicy.in/wp-content/uploads/2019/11/overall-report-single.pdf> accessed 20 May 2020

44 National Crime Records Bureau, Report on Crime in India (2018) <https://ncrb.gov.in/crime-india-2018> accessed 22 May 2020

Amroha	45	13	46	225	49	714	17	20
Auraiya	43	17	47	177	35	959	31	37
Azamgarh	40	24	104	239	47	1495	320	33
Badaun	61	34	104	275	52	1926	0	34
Baghpat	63	7	79	145	31	695	71	40
Bahraich	34	23	71	326	29	1884	147	10
Balrampur	21	11	8	47	18	461	13	11
Banda	34	13	26	130	43	847	9	12
Barabanki	48	26	28	330	63	1509	0	19
Bareilly	96	37	175	957	72	3617	132	70
Basti	21	11	14	170	47	783	0	10
Bijnor	71	24	89	207	66	1614	53	45
Bulandshahar	102	20	121	270	81	4154	17	58
Chandoli	14	16	20	100	25	703	100	6
Chitrakoot	21	5	11	77	28	611	0	2
Deoria	44	13	8	386	32	1773	0	19
Etah	49	10	106	160	45	2160	142	37
Etawah	39	8	64	162	23	904	29	39
Ayodhya	33	13	36	302	65	1318	29	43
Fatehgarh	50	8	41	394	18	1164	31	45
Fatehpur	37	19	33	194	40	1456	24	20
Firozabad	78	44	128	372	51	1613	0	70
Gautambudh Nagar	84	26	133	340	63	1094	180	130
Ghaziabad	119	17	118	708	117	4864	58	112
Ghazipur	46	11	43	387	51	1564	44	31
Gonda	30	15	36	344	46	1711	213	24
Gorakhpur	81	36	126	412	119	2300	78	163
Hamirpur	35	10	41	127	42	973	0	8
Hapur	46	6	43	162	41	837	40	37
Hardoi	61	28	66	312	75	1894	96	39
Hathras	44	22	46	249	32	1004	114	28

Jalaun	39	14	18	171	23	896	50	8
Jaunpur	68	20	94	386	74	1452	234	50
Jhansi	46	21	36	178	33	1444	112	28
Kannauj	37	12	82	144	36	757	100	45
Kanpur Dehat	38	18	37	253	25	1555	0	15
Kanpur Nagar	87	35	76	726	88	2400	99	70
Kasganj	43	9	65	145	34	788	60	12
Kaushambi	24	16	23	188	19	944	34	16
Khiri	88	25	97	424	57	2942	96	22
Kushi Nagar	40	33	23	315	43	2466	0	13
Lalitpur	16	8	17	84	38	683	88	3
Lucknow	114	40	143	1074	148	5943	0	45
Maharajganj	22	23	9	36	3	489	2	4
Mahoba	24	6	22	114	36	644	36	11
Mainpuri	72	8	109	377	34	1453	184	43
Mathura	93	32	159	364	88	2539	352	130
Mau	24	16	47	97	11	624	213	8
Meerut	139	14	200	403	111	3252	196	106
Mirzapur	37	9	2	18	34	761	6	3
Moradabad	56	18	103	355	98	2589	18	53
Muzaffarnagar	72	11	126	266	61	1802	2	62
Pilibhit	38	17	46	225	48	1707	4	25
Pratapgarh	56	25	83	298	54	2739	58	65
Raibareilly	47	19	100	469	62	4209	226	36
Rampur	39	10	46	222	52	987	0	25
Saharanpur	55	11	48	148	46	1497	30	52
Sambhal	57	18	56	207	50	1429	0	30
SantKabirnagar	15	15	27	126	37	568	17	11
Shahjahanpur	59	8	63	187	42	1779	13	26
Shamli	33	15	74	133	44	592	12	23
Shrawasti	13	11	6	72	21	359	3	1

Sidharthnagar	18	9	5	141	37	469	0	4
Sitapur	112	15	69	427	190	4258	230	87
Sonbhadra	36	20	8	134	54	782	0	9
Bhadohi	19	9	4	86	14	515	20	5
Sultanpur	55	6	56	292	44	1452	0	47
Unnao	83	15	37	561	76	2080	95	52
Varanasi	47	18	18	452	86	5921	0	42
Total	**4000**	**1343**	**4829**	**21649**	**3937**	**127797**	**5397**	**3063**
Average	**53.3**	**17.9**	**64.3**	**288.6**	**52.4**	**1703.9**	**71.9**	**40.8**

Table 4 [45]

District	Murder	Culpable Homicide not amounting to Murder	Attempt to Murder	Kidnapping and Abduction	Rape	Total offences affecting human body	Other Rioting	Robbery
Agra	124	30	184	527	89	2437	472	183
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Badaun	61	34	104	275	52	1926	0	34
Baghpat	63	7	79	145	31	695	71	40
Bareilly	96	37	175	957	72	3617	132	70
Bijnor	71	24	89	207	66	1614	53	45
Bulandshahar	102	20	121	270	81	4154	17	58
Etah	49	10	106	160	45	2160	142	37
Etawah	39	8	64	162	23	904	29	39
Firozabad	78	44	128	372	51	1613	0	70
Gautambudh Nagar	84	26	133	340	63	1094	180	130
Ghaziabad	119	17	118	708	117	4864	58	112
Hapur	46	6	43	162	41	837	40	37

45 National Crime Records Bureau, Report on Crime in India(2018) <https://ncrb.gov.in/crime-india-2018> accessed May 22 2020

Hathras	44	22	46	249	32	1004	114	28
Kasganj	43	9	65	145	34	788	60	12
Mainpuri	72	8	109	377	34	1453	184	43
Mathura	93	32	159	364	88	2539	352	130
Meerut	139	14	200	403	111	3252	196	106
Moradabad	56	18	103	355	98	2589	18	53
Muzaffarnagar	72	11	126	266	61	1802	2	62
Pilibhit	38	17	46	225	48	1707	4	25
Rampur	39	10	46	222	52	987	0	25
Saharanpur	55	11	48	148	46	1497	30	52
Sambhal	57	18	56	207	50	1429	0	30
Shamli	33	15	74	133	44	592	12	23
Total	1831	490	2635	8055	1570	48279	2356	1604
Average	70.4	18.8	101.3	309.8	60.3	1856.8	90.6	61.6

Understanding Social Transformation Through The Eyes Of Local People: A Study On South West Coastal Village Of Bangladesh

Farhana Zaman*

Abstract

Coastal communities in Bangladesh are undergoing a distinctive process of transformation over the last few decades due to gradual sea-level rise and its consequent saline water intrusion. The current study aims to understand both the positive and negative aspects of the transformation of a coastal village, Keyabunia, with the help of qualitative research tools which include focus group discussion, KII, and observation. Also, an extensive literature has been reviewed to supplement the study data. Using the assumptions of the Lewis development model, the study found that the economy of Keyabunia has been shifted from agriculture to the shrimp industry which contributes significantly to the national economy of Bangladesh. But in contrast to this model, the participants argued, shrimp farming is only beneficial to the high-income households who own land and force non-shrimp farmers into many other alternative livelihood options which make them more vulnerable. On the contrary, considering a few major indicators of the social transformation, the participants perceived that local people's access to education, information, market and health care services has increased noticeably. Finally, the findings of the study suggest that government and non-government agencies should increase coordination and cooperation to successfully assess both the positives and negatives of the social transformation of coastal communities and thereby design the policies accordingly.

Key words: - *Salinity, Coastal people, Shrimp farming, Sustainability, Social transformation.*

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Introduction

The adverse impact of climate change is vividly experienced by different parts of the world. Bangladesh is one of the worst victims of climate change for its geographically and hydrologically disadvantaged setting. The country is highly vulnerable to a number of disastrous events such as salinity, cyclones, floods, droughts and so on (Mahmuduzzaman et al., 2014; Hossain and Zaman, 2018). The multi-dimensional effects of these events crudely hit the well-being of the local coastal people. Coastal communities are, thereby, in constant flux and adapt to modifications in the environment. In this situation, taking an adaptation approach is one of the key aspects which can contribute to the country's mission towards securing the sustainable livelihood of the coastal communities (Hossain and Zaman, 2018).

International agencies and national governments have already taken many development initiatives focusing on strategically important activities related to development, which in turn facilitate the sustainable and equitable improvement of life, especially for women, children and disadvantaged populations of coastal areas (WorldFish, 2012; World Vision, 2020; Coast Trust, 2015). Besides, development organizations aim to educate coastal communities on disaster preparedness and survival, undertake humanitarian welfare services, and organise communities to work as change agents for their interests in the policy space (Muhammad, 2016; Ahmed, 2019). Because of these development initiatives, vulnerable coastal communities of Bangladesh constantly undergo processes of change and transformation.

One of the most significant transformation is observed in coastal land use pattern (Abdullah et al., 2017; Alam, 2014). Salinity has a high cost on coastal agriculture (Mahmood et al., 2010) which is a substantial part of the rural livelihoods (ADB, 2011). In Bangladesh, 40% of productive land in the southern region is projected to be lost for a 65 cm sea level rise by the 2080s (World Bank, 2012). Consequently, crop farming, which is currently non-profitable in the rapidly salinizing delta, has been gradually replaced by more profitable shrimp farming (Abdullah et al., 2017). The government of Bangladesh recognised shrimp farming as an industry under the second five-year plan (1980-85) and adopted measures necessary for increased shrimp production (Hossain et al., 2013). Currently, being the second largest foreign exchange earner, the shrimp industry is considered as the major driving force of economic development (Kabir and Eva, 2014) though there is an extensive literature showing that the impact of shrimp farming may have serious negative social and environmental implications for the sustainable development of

Bangladesh (Abdullah et al., 2017; Islam et al., 2003). In addition to the shrimp farming, a large number of economic activities have been introduced by the development agencies in the vulnerable coastal areas of Bangladesh as a part of adaptation strategies. Changes have been noticed in other sectors too such as infrastructure, health care services, access to resources and so on. Behavioral and cultural changes are also perceived among the coastal people. As a result, these communities are now more diverse in function and reflect the dynamic nature of the areas (Hussain et al., 2017; Ahmad, 2019).

Drawing on this background, the current study aims to understand the dynamic nature of social transformations of a coastal community. The study also attempts to assess the perception of local people towards those transformations. Finally, based on the perception of local people, the study initiates to examine Lewis' development model of dual economy to understand whether the basic economic transformation of non-profitable crop farming into highly profitable shrimp farming does signify a process of development of the coastal communities or not. The current study expects that understanding the nature of social transformation of coastal communities will help government and non-government agencies to increase their coordination and cooperation to design the policies accordingly. Thereby, the study intends to answer the following research questions:

a. What social changes are observed in the coastal areas?
b. How do local people perceive these changes?
c. Does the introduction of shrimp farming instead of rice farming signify development?

Literature review on the transformation of the coastal communities

The literature on the social transformation of coastal communities is very limited. Grounding on secondary sources of information, Cabral and Alino (2011) highlighted the adverse consequences of unwanted privatization, such as poorly planned tourism and housing projects, illegal usurpation of indigenous people's rights, over conversion of fishing and fish farming zones into ecotourism zones resulted into alarming displacement, deprivation, and marginalization of fishing and farming communities and caused degradation of many coastal zone areas.

Long et al. (2009) argued that the study on the process of economic and social transformation was very important for balanced rural-urban development in developing countries. Using data from statistical

yearbook' 2006, the study identified four rural development types that included farming industry type (FIT), an industry dominated rural development type (IDT), rural development type focusing on business, tourism and services industries (BTT), and balanced rural development type (BDT).

Based on a combination of remote sensing and geographic information systems methods, a matrix of land-use change was constructed to identify land-use changes in Sanya City, southern coastal region of Hainan Island between 1991 and 2007 by Wang and Liu (2013). The outcomes highlighted the changes from farmland to construction land and from forestland to orchard as the main transformation types.

Based on the secondary sources data, Nguyen (2014) evaluated the knowledge level about the drivers of coastal mangrove habitats changes in Southeast Asia, emphasizing on state-forest allocation policy of Kien Giang, Vietnam. The study found a large number of studies on the relation of coastal land-use changes and the dynamics of coastal mangrove forests, while only few studies that examined the effects of coastal development policy on and local participation in mangrove conservation.

Thomas and Benjamin (2018) assessed policies and mechanisms in Caribbean and Pacific's small island developing states (SIDS) where the out migration of communities from vulnerable regions was considered to be the most likely adaptation strategy due to the adverse impact of climate change. Based on the interviews with United Nations Framework Convention on Climate Change (UNFCCC) negotiators and using secondary source data, the study found the potential existed for migration and displacement and thereby argued for including in policies of national sustainable development plans.

Ahmed et al. (2016) evaluated the outcome of an initiative, called the Vulnerability to Resilience (V2R) programme implemented in two coastal communities in the Patuakhali district, Nowapara, and Pashurbunia of Bangladesh during 2013 to 2016. Based on focus group discussions and survey, the study found that the communities were more well-organised and better connected than before due to improved access to infrastructure, information and health care services and economic opportunities with better resource management mechanisms.

Alam (2014) aimed to assess the changes in climatic conditions particularly temperature, rainfall and agricultural land-use change in the past and future. By using normalized difference vegetation index (NDVI) and False Color Composite (FCC) of digital land sat images the study

found that during the last 31 years (1978 -2009) 31per cent of rice production land had converted to shrimp culture and salt farming that had affected the production of cereal crops and vegetables, trees, poultry and livestock resulting in food insecurity in the coastal region of Bangladesh. The study also highlighted the negative effects of shrimp aquaculture on biodiversity, the productivity of estuarine waters and agroecosystem.

Rahman et al. (2008) conducted a study in the south-west coastal area of Bangladesh, mainly in Satkhira and Khulna districts where the majority of shrimp farming activities were concentrated due to salinity. Based on the data collected from 160 stakeholders of different categories in the shrimp farming industry, the study showed that shrimp farming had a negative impact on the rice production, livestock, drinking water supply, and social conflict and violence had increased due to shrimp farming.

Abdullah et al. (2017) stated that shrimp aquaculture in Bangladesh had increased about tenfold since late twentieth century. Using household survey data from 264 households in six villages in Mongla, the study found that shrimp income represented 46 per cent of the total household income for the higher-income households while only 26 per cent and 8 per cent for middle- and lower-income households, respectively. This situation exacerbated existing inequities more as the authors argued.

The literature mentioned above highlighted a particular aspect of coastal community transformation. However, the current study aims to focus on the overall social transformation observed in the coastal belt and also attempts to evaluate local people's perception of those changes.

Concept of social transformation and Lewis' development model

Transformation often refers to an object that converts from one form or function to another (Andrachuk and Armitage, 2015), a process of shifting towards sustainability (Frantzeskaki et al., 2012). Social transformation refers to the process of large scale qualitative and quantitative changes of all aspects of life including socio-political, cultural, economic and structural. In fact, it is a process of restructuration from the way people think to the way people live (Rabie, 2013; Weichold and Barber, 2009). Social transformation, thus, can be synonymously used with social change which is associated with transformations in various spheres of human life (Weichold and Barber, 2009). The current study attempts to encompass overall transformations of human life that incorporates social, political, economic and cultural changes of a coastal village based on the perception of the community people.

However, to examine, particularly, the extent of economic transformation

from agricultural production to shrimp farming, the study is grounded on the Lewis model of economic development. The model concentrates on the dynamics of labour reallocation in a 'dual economy' consisting of a traditional or subsistence sector and a modern or industrial or capitalist sector (Lewis, 1954). The model argued, initially most of the labour of a society remain engaged in economic activities associated with land which is a fixed resource. But labour is a variable resource. As more labour is employed on the land there may be insufficient tasks for the marginal worker to undertake resulting in the reduced marginal product (output produced by an additional worker) and underemployment. On the contrary, workers, in the industrial sector, tend to produce surplus output resulting in higher urban wages (Lewis stated that a 30% premium was required) that might, therefore, tempt surplus agricultural workers to migrate to cities and engage in manufacturing activity (Bamikole, 2009). Thus, the modern sector is considered as an instrument for promoting economic growth and development through the surplus production and profits that are saved and reinvested (Bamikole, 2009).

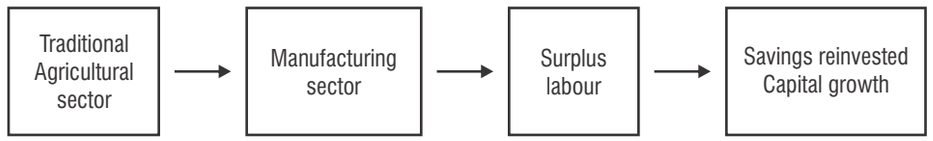


Figure 1. Flow chart of Lewis' Development Model
(Source: Made by the author based on Lewis' development model)

Unlike classical Neo-Marxian theorists' exploitative interpretation of surplus value, Lewis argued that surplus in the capitalist society may not belong to the workers but it can benefit them through rendering various services and through the provision of employment, capital accumulation and capital reinvestment (Lewis, 1979). The current study, instead of manufacturing industry, applied the model in one of the most primary categories of industry i. e. shrimp industries of the saline prone coastal areas of Bangladesh. Though these shrimp processing industries are contributing a lot to the national economy by earning huge foreign exchange, existing literature suggested that shrimp farming has its loss counterparts for the local communities. Considering the conflicting results, the current study attempts to examine the research question©-

Does the introduction of shrimp farming instead of rice farming signify development?

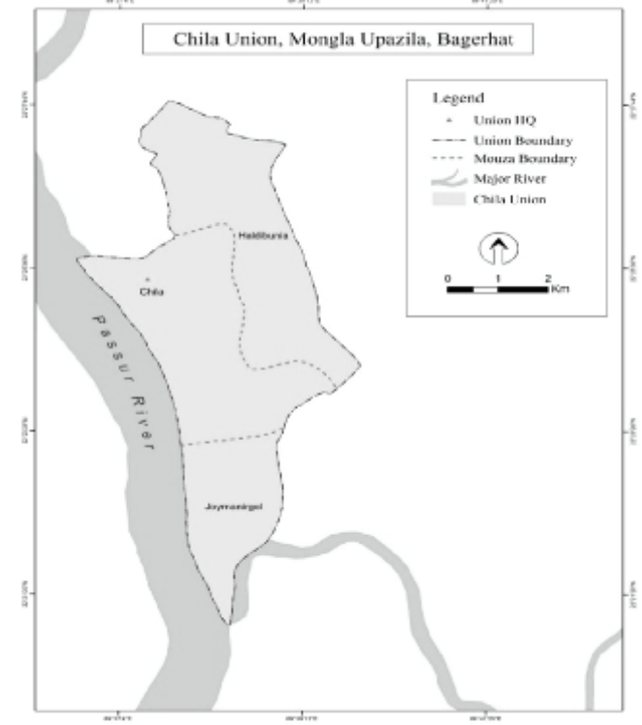
By applying the Lewis development model, the study attempts to perceive the degree of development of a coastal village through its

economic transformation from a traditional crop farming to shrimp farming.

Design and Methods

Selection of study site

Since late twentieth century, shrimp has been considered as the major driving force of economic development in the southeast coastal region of Bangladesh. The study was conducted in a village of this region, named Keyabunia within Chila Union of Mongla Upazila, under the greater Khulna division (see Figure 4.1). Poschim Chila, locally known as Keyabunia village, consists of 354 households with a population of 1411 (BBS, 2001). The village is the first hit of any natural disaster due to its geophysical location next to the coast. The village is also highly saline-prone and thereby most of its land area has been brought under the shrimp cultivation leaving traditional crop farming. For these reasons, Keyabunia has got the opportunity of being in the priority list of development agencies. It is to mention here that massive development initiatives were taken in this village especially after the cyclone Sidr in 2007 and Aila in 2009. Thereby, this village can be one of the appropriate study sites to assess the social transformation as a result of these initiatives.



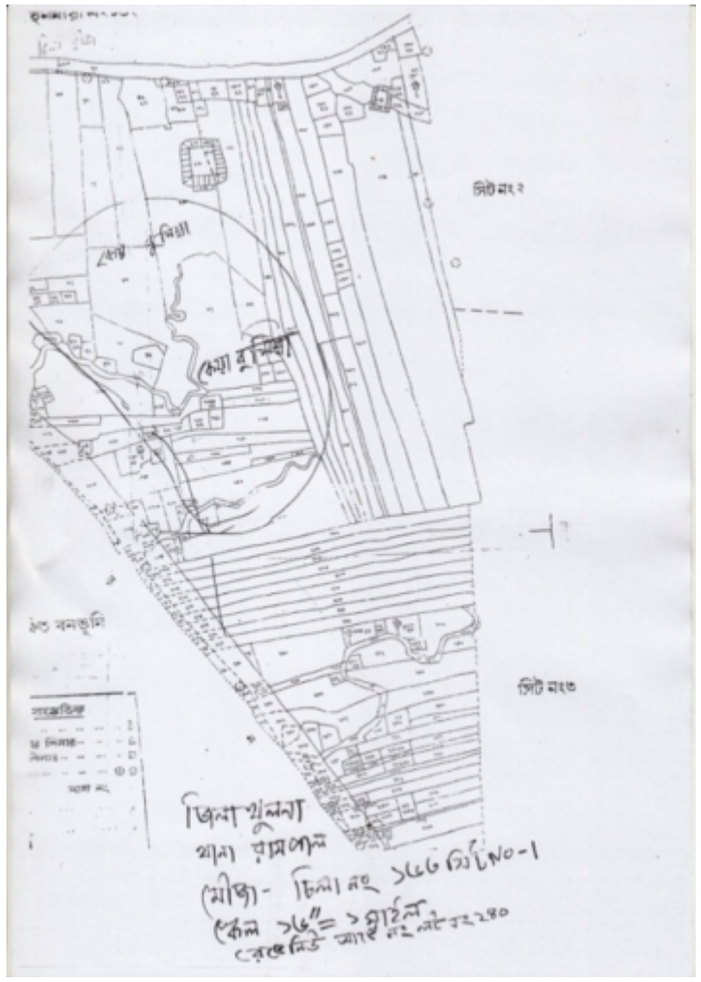


Figure 2. Maps of the study area

Data collection

Exploring some complex and intangible issues such as community peoples' values, thought processes, awareness etc. with the help of numbers may distort the actual reality. Thereby, the study has chosen a qualitative research method to discover these complex, often latent, issues which are either contributing or constraining the process of development.

To serve the purpose, the study conducted four FGDs with the local people including crop farmers, shrimp farmers, people working in the shrimp industries, wage labourers, crab fatteners, cage makers, chairmen and members of the union, local landowners and money lenders, etc. For getting a clear picture of the reality, four KIIs were also taken with two

local NGO workers and two owners of shrimp ghers (see Table 4.1). Data were based on participants' perception of changes over the last ten years or more when large scale development initiatives were undertaken after the super cyclones Sidr and Aila. As the change in basic economic structure is a long-term process, participants were asked to respond about changes over the last two or three decades, when saline water intrusion was not a major concern for the coastal people. As the research had regular physical contact with coastal communities for various purposes, the observation technique was also taken to supplement information towards the contents of the study.

Table 1. Tools of data collection and sampling technique

Tools of data collection	Sampling technique
4 FGDs Each group consists of 4 to 6 members	purposive sampling
4 KIIs	purposive sampling

For FGD, each group comprised of minimum four to maximum six participants who were selected by using purposive sampling technique. FGD Participants and shrimp gher owners had to fulfill few criteria to qualify for the interview: first of all, they had to be the permanent inhabitant of the locality who had been staying there for at least ten years or more and secondly, they experienced the impacts of various natural disasters, faced the challenges to cope, and also received the opportunities of development projects at various points of their life. For KII, NGO workers were selected purposively. They had to fulfill the criterion of having minimum ten-years working experience in the village.

Data Analysis

A thematic process has been used as an analytical tool in this current study. Since the researcher has been working in the same study area for last ten years, changes on different sectors were distinctly noticeable which helped her to identify the themes. In addition, the researcher talked to the development workers working in the study area for last ten years. The researcher also talked to few old people aged 65-80+ to know the major changes they observed in their locality. On the basis of these informal interviews and some secondary sources information, the researcher has arranged data under the themes of economic transformation, rise of alternative livelihood options, better infrastructure, access to various facilities such as education, network system and health

care facilities.

All the data collected was analysed manually. For the evaluation of community perception towards economic transformation, few major statements regarding the shift from crop farming to shrimp farming were extracted from FGDs that directed to draw tidy conclusions about local people's perception towards economic transformation. For evaluating community's perception towards other aspects of changes, participants were asked to give their opinions (either increased or decreased) on some selected sectors. A value of +1 for the response 'increased', and value of -1 for the response 'decreased' had been set. The greater score for increased indicated the positive perception of people towards mentioned transformational sectors and vice versa.

Fieldwork

The researcher used pen and paper for documenting the data. Sometimes voice was taped using voice recording option of the cell phone. Sometimes data were collected haphazardly which were put under the particular theme at the leisure time. As poor people always remained busy in earning their livelihood, it was a challenge for the researcher to make them convinced for the interview. In that case, participants' cell numbers were collected for further clarification. Moreover, the vulnerable poor people thought that the researcher was an agent of a development agency. Thereby, they were busy in giving entry of their name and projecting their poor vulnerable condition rather than talking about the changes observed.

Findings

From traditional non-profitable rice farming to profitable shrimp farming

The Keyabunia village of Mongla Upazila was severely affected by seawater intrusion. Due to salinity, most of the lands of Keyabunia had been largely unproductive. The modern technology in agriculture was of limited use due to severe saline water stagnation. Though farmers tried to grow vegetables on artificial seedbeds on their very small homestead, this practice failed to meet households' food demands. Consequently, the land use pattern of this village had been changing. Gradually shrimp farming replaced traditional crop farming at a large scale. Based on the perception of the FGD participants, it was found that in 1990, their economy was based on crop production. People used to get three harvests in a year and most of the people were involved in rice production during that period. After the terrible tidal surge of Sidr and Aila, most of the area became inundated by saline water that affected rice production severely. Consequently, most of the land owners adopted saltwater shrimp farming

as their basic mode of economic production in 2019.

Figure 3. Shrimp farming as the basic mode economic production

(Source: Field survey, 2019)

Participants mentioned that salt water shrimp farming was highly profitable for the landowners only. For more profit, many influential landowners opened the sluice gates for allowing saline water to enter into their lands though shrimp gher owners denied the fact in their interview. This water while flowing through the artificially created channel most often used to overflow both sides and submerged huge agricultural lands that ultimately became unproductive. One of NGO workers mentioned that shrimp farming did not keep any positive impact on the well-being of the households. He mentioned,

"Local people, who are hired in shrimp gher, can earn money by this farming, but the rest of people are mostly unemployed. They are recruited neither in the shrimp gher nor in the shrimp industries. These people are mostly involved in many unsustainable livelihood options. Many male farmers, who earn a handsome amount of money by working in shrimp gher, spend their money in an unplanned way, e.g. buying a smartphone, buying cigarettes, etc. Thus, increased income ultimately fails to ensure food security for the households, let alone the ecological problems."

Rise of alternative livelihood options

Most of the participants of FGDs were landless as they sold their lands to

private companies or to the rich farmers due to the infertility of lands. But they were still living in the that locality unduly until they were forced to leave by the owners. These landless people recognised the fact that large-scale agricultural production was not possible in that locality. They were growing a few vegetables like red leaf, spinach, guard, etc. on their very small homesteads. Raising animals as a means of livelihood was not much of a common practice in Keyabunia. Livestock except poultry and duck was gradually reducing in number due to a shortage of fodder. Females in this village said they faced many difficulties with their cows and goats when their shelters were flooded during regular inundation by seawater. Traditionally people of this village were dependent on natural resources for their livelihood. They regularly went to Sundarbans for collecting food, honey, fuelwood, etc. But recently their movement was restricted in the Sundarbans by the local administration to stop unethical and over-exploitation of natural resources. Moreover, going deep into the jungle for collecting food and fuel was a risky economic activity. Many coastal people were killed by tigers every year. One of the participants said,

'Every year many of us lost their lives by the attack of Royal Bengal Tigers. Despite that, we were bound to go deep into the jungle for earning our livelihood. But now, NGO workers have introduced a large number of income-generating activities. Most of us are also working in many development projects such as construction and reconstruction of sluice gates, embankments, etc.'

Native fish species were disappearing gradually due to salinity and thereby, people often went to deep-sea for fishing with their small boats which they made by themselves. These small boats were not suitable for deep-sea fishing and sometimes caused substantial loss of life at sea. Besides these traditional livelihood options, a number of newly emerging livelihood options including working as a wage labourer in development projects, crab fattening, shrimp farming, cage making, flower making, running a small business, boat making, etc. were introduced. It was found that almost all the villagers were involved in multiple occupations. As a large number of development projects such as construction and reconstruction of embankments, sluice gates, etc. was undertaken in the coastal belt, almost all the participants of FGDs were involved in those development projects. They used to earn 400 taka per day as a day labourer. In Keyabunia, a smaller number of people were involved in shrimp farming and crab fattening. A study conducted by Ferdoushi (2013) found that only 18 per cent of farmers in southeast region had more than ten years of experience in crab fattening indicating that

involvement in mud crab fattening was a recent development and innovation in those areas.

Therefore, cage making for crab fattening was not a popular economic activity. Moreover, land ownership and capital are important for investment in shrimp farming. Poor farmers usually used leased lands with a high risk of loan repayment in case of loss. Many small farmers did not want to take the risk. After Sidr and Aila, government and non-government organizations gave the highest priority on the female headed households and provided a few grocery shops to them which they could operate from home with limited efforts. Many of them sold their shops to their neighbors for the loss while few of them were earning their livelihood from those small businesses. Most of the people of this village were Hindu by religion, the use of flowers for various purposes was very common. They usually used the fresh flowers for their rituals but few females were found to take training on paper flower making which was considered as a supplementary economic activity to the basic income of the household. One female participant mentioned,

'I took training on how to make flowers. As most of the people of this Upazila are Hindu by religion, many people buy flowers from me for decorating their statue of Gods and Goddesses at home.'

Children's access to education

After Sidr and Aila, most of the schools were damaged. Moreover, many homeless people were still using schools as temporary shelters resulting into limiting the scope of education. Besides, Parents were very much busy to arrange food for family members. Adult children used to take care of younger children and daughters were sent to collect pure drinking water (Zaman, 2016). But now due to a large number of adaptation projects, the problems of food insecurity and drinking water crisis had been minimized. In addition, many non-government organizations (NGOs) were found working in the coastal belt to make people aware of the importance of education. NGOs were running school feeding programmes that were successful to draw the attention of poor vulnerable parents and to bring children of school-going age to the school. Besides, increased access to electricity and a better communication system also contributed a lot to promote coastal children's education. Based on the findings of FGD and KII, a list of factors influencing the education of coastal children has been shown in Table 5.1:

Table 2. List of factors positively influencing the education of coastal children

Factors positively influencing the education of coastal children		Source
1.	School feeding programme	KII
2.	Increased awareness of the people	KII
3.	Increased number of schools	Observation
4.	Better communication system	FGD
5.	Attracting good grooms for daughters	FGD
6.	Access to electricity	FGD

Source: Fieldwork, 2019

Though primary school enrolment of coastal children was very high, most of the children did not continue after class seven or eight and many of them did not sit for Secondary School Certificate (SSC) exam. Hindu participants were more serious about their daughters' education for the reason stated as-

'Our daughters should be educated for attracting rich bridegrooms. Nobody wants to marry illiterate girls. So, they will continue their study until we can manage a good bridegroom for them.'

Increased network system and access to information

It was found that all the participants of FGD had a solar panel in their house except a very few highly vulnerable female-headed households. It was observed that approximately 90 percent of houses was enjoying the solar energy facility (see the Figure 5.2). Many of them bought solar panels on installment. Solar energy facilitated local people's access to electricity which was very important for children's study at night. Besides, solar energy also facilitated the operation of TV and mobile phone which helped them to get connected with the rest of the world. One KII mentioned,

'Local people now realised the importance of electricity which they use for various purposes such as mobile phone charging, irrigation, radio operation, etc. Even the most vulnerable households used solar pannel for getting weather information.'

Figure 4. Solar energy coverage in Keyabunia (Source: Fieldwork, 2019)

People now got adequate information which helped them to take important decisions about their life. They now knew what sort of opportunities were available for them. In the case of migration, they could decide when and where to move. Most of the participants of FGD mentioned,

'we now get information about various opportunities which are available for us in cities. Many of us have decided to migrate to Dhaka city by getting valuable information through social media.'

Improved health care facilities

There was only one Upazila Health Complex consisting of 50 seats, 6 Union Health and Family Welfare Centres and 10 community clinics. As this village was only 7 km away from the Upazila and due to infrastructural development, people could easily visit this health complex at any emergency. Recently one private clinic consisting of 10 beds were providing health care services to the local people but poor people had limited access to this clinic due to limited seats and high treatment cost. According to Upazila Health and Family Planning Officer, the Government sanctioned one maternal health care centre which would start working since 2020. It was expected that poor coastal people would get a greater access to this centre at a limited cost. Despite gradual development, participants mostly visited quack, kabiraj, and unspecialized doctors. However, NGOs were working to make people aware of the importance of proper health care.

After the super cyclones Sidr and Aila, GO and NGOs provided new houses with good sanitation facilities to the vulnerable people. All the participants of FGD had ring slab latrines attached to their households though many of them complained that these latrines were badly in need of repair.

Improved infrastructure

Community infrastructure refers to public places that accommodate community facilities and services and enhance community wellbeing by meeting their social needs (City of Melbourne, 2014). In that sense, it was found that massive infrastructural development took place in the coastal belt. Coastal housing could be included within community infrastructure. After Sidr and Aila, NGOs provided cyclone resistant houses to most vulnerable people especially women of this village. Most of the houses, which were mostly made up of mud with a shed of golpata, were destroyed after those super cyclones and community people could not even identify their living places after coming back from cyclone shelters. NGOs provided tins and loans for constructing cyclone-resilient houses. A brick made road was constructed onto an embankment which now saves the village from massive saline water intrusion. People could easily visit this village by a van or rickshaw or by a motorcycle. This village is connected to the Upazila by a big bridge on the Poshur river. One of the KIIs mentioned that,

'This bridge serves as a lifeline for the villagers. Local people have got easy access to a big kacha bazaar close to this bridge. They can sell their

products such as vegetables, fish fries, small fishes, crabs, etc. in this bazaar and can buy necessary items for their households. Besides, local people's access to Upazila school, Upazila health complex, factories located at Mongla have been increased as a greater number of schools, markets, clinics, and factories were established.'

In a study conducted in 2016, it was found that most people used to go to the Upazila by boat for collecting pure drinking water. But now in 2019, people were found collecting drinking water from the pipeline water supply covering a short distance by rickshaw.

Evaluation of economic transformation

Based on FGDs, the following statements were identified as stated by the participants about their perception towards shrimp farming.

Table 3. Evaluation of economic transformation based on the perception of participants of shrimp farming

Sl. No.	Negative Perception of participants towards shrimp farming	Sl. No.	Negative Perception of participants towards shrimp farming
1.	Shrimp industry is profitable for the national economy	1.	Shrimp farming, as well as industry cannot guarantee our job
2.	Shrimp farming has increased your household income	2.	Shrimp farming reduces the fertility of agricultural lands
		3.	Shrimp farming cannot fulfill the demand of rice of our households
		4.	Shrimp farming is only beneficial for the rich farmers who are land owners
		5.	Shrimp farming has negative environmental impact
		6.	Shrimp has increased water salinity problem
		7.	Shrimp farming has affected our health too
		8.	Shrimp farming has created fodder crisis for livestock

Table 5.2 showed the positive and negative perception of community people towards shrimp farming. It was evident that local people's perception towards this economic transformation was negative as more negative statements were revealed from the findings of the FGDs compared to positive statements. A shrimp gher of two to three bighas of lands needed one farmer only for cultivating shrimp resulting in increased unemployment. As it could not guarantee their jobs, it failed to attract the labourers from subsistence sector. Moreover, shrimp farming caused many health and environmental risks. Thus, local people's perception towards massive shrimp farming by artificial inundation of sea water into agricultural lands was negative (see Figure 5.3).

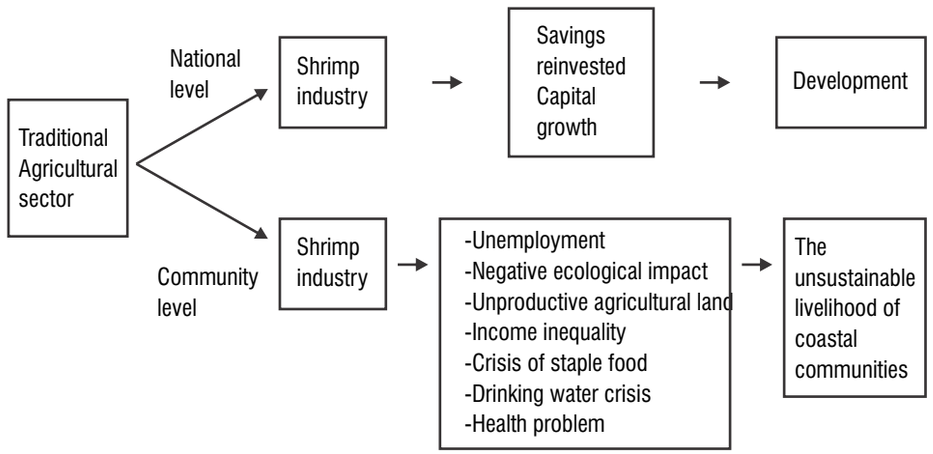


Figure 5. Lewis' Development Model applied in the current study
(Source: Made by the author)

Evaluation of social transformation in other aspects

Participants were asked to answer on the following topics and their perception was quantified by assigning a value against each opinion in Table 5.3:

Table 4. Evaluation of social transformation based on the perception of the participants

Sl. No.	Perception of participants on the following statements	Increased (+1)	Decreased (-1)
1.	Access to education	+1	
2.	Access to network and information	+1	
3.	Infrastructural development and communication	+1	
4.	Access to the health care system	+0.5	-0.5
5.	Alternative livelihood options	+0.5	-0.5

Source: Field survey, 2019
Note: For each positive perception = +1, each moderate answer= 0.5, each negative perception= -1
Scale: It is a 5-point scale where highest score is +5 or lowest score is -5.

Table 4 scores +4 and -1 which means that many positive changes were taken place in that community. Participants were divided regarding health care facilities due to the very limited number of seats in government hospitals. Participants were divided regarding alternative livelihood options. Despite the emergence of a large number of alternative livelihood options, participants stated that many of those were not sustainable and could not guarantee their livelihood.

Conclusion

Based on the above-mentioned findings, it was evident that the study village had undergone a lot of changes after Sidr and Aila. Both GO and NGOs had operated a large number of projects in this village. Consequently, over the last few years, a lot of positive changes were observed that included increased access to education, better access to local market, schools and infrastructure, increased access to network systems and information. Ahmed et al. (2016) also found that coastal communities were more well-organised and better connected.

The Rural Electrification and Renewable Energy Development (RERED) Project, supported by the World Bank, is promoting renewable energy options to provide electricity to all remote areas including coastal belt (World Bank, 2020). Increased access to electricity and awareness development programmes by NGOs increased the attendance of children to the schools.

NGOs' contribution to creating income-generating activities was significant. They gave training on fishing, pickle making, flower making, cage making, crab fattening, livestock farming, etc. which had been observed in other studies too (Zaman, 2016; Hossain and Zaman, 2018). Despite NGO initiatives on adaptation policies, adaptation strategies such as preparing organic fertilizer, artificial seedbeds, plantation on a shelf, plantation on plastic bags, floating garden were hardly noticed in this village. As most of the lands of this village were inundated by saline water, significant changes were observed in land use pattern which was found in other studies too (Alam, 2014; Abdullah et al., 2017). This had led to the disintegration of economic and social conditions of coastal rural communities (Ali, 2004, 2006; Mahmood, 2006) and contributed to increasing inequality. As shrimp farming is less labour-intensive than rice cultivation (Hossain et al., 2013; Gurung et al., 2016), this fact caused to increase the unemployment problem for the poor farmers, especially for the coastal women. This farming brought changes in gender roles and relations too. The decreased workload of women by weakening their access to agricultural products made them dependent on their husbands' income (Gurung et al., 2016; Ahmed et al., 2011). Thus, shrimp farming, though had created a substantial economic and social transformation in the coastal areas of Bangladesh (DoF, 2010; Hamid and Alauddin, 1998) and brought positive changes at the national level (DoF, 2010), could not bring positive outcomes for the coastal communities. Moreover, it damaged the local ecology by increasing the salinity of water, changing the composition of the soil and bringing rapid changes in land use pattern as found in other studies too (Hagler, 1997; Haque, 2004; Karim and Stellwagen, 1998).

Lewis development model, thereby, could not properly fit into the case of coastal communities because shrimp farming failed to absorb surplus labour force as a very few numbers of male farmers were hired in shrimp ghers. Moreover, commercial shrimp farming increased income inequality between farm owners and landless farmers. This aquaculture altered household food consumption patterns as it failed to meet the household demands of the rice and thereby increased market dependence for stable food. Besides, being the victim of rural politics coastal people were forced to sell their lands at a very cheap rate to the powerful elite people for promoting large-scale commercial shrimp farming resulting into a large scale environmental and social impacts.

The fact that the traditional sector could adopt new and improved methods and techniques of crop production with the help of NGOs, was not focused on the Lewis development model. However, the Lewis model would imply that aggregate (or median) living standards should not rise

as rapidly as productivity until surplus labour is eliminated. This requires further research in the structural transformation to see the development of coastal communities after all the surplus labourers are absorbed by shrimp farming as well as shrimp industries. Thus, government and non-government agencies should increase coordination to successfully assess the transformation of coastal communities and design the policies accordingly.

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Understanding Social Transformation Through The Eyes Of Local People: A Study On South West Coastal Village Of Bangladesh

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Plight Of Migrant Workers Amidst The Covid-19 Crisis: With Special Reference To Asia

*Naina Hasija**

Abstract

The rapid spread of the COVID-19 pandemic and the loss of life and livelihood resulting from the same has caused an unprecedented socioeconomic crisis. It has exposed the structural inefficiencies of the global economy that has resulted in mass displacement of workers across the globe-the worst-hit of which are the migrant workers. Whether they are international migrants or internal migrants, such workers are disproportionately affected given their inadequate and crowded living conditions, limited access to health care and basic services and exploitative labor systems. According to UN, approximately 800 Million people of the world are meeting their both ends by funds remitted by migrant workers. Common problems of migrant workers are being laid off or remain unpaid, made to live under unhygienic conditions as the economic impact of the virus hits. COVID-19 has also brought into lime light the economic and social inequalities and destructive practices with migrant workers throughout the world. Migrant workers constitute a significant percentage of all ASEAN workers. Their remittance to their families forms a substantial proportion of GDP in many parts of Asia. But they are the people who were among the target of hardest hit by the pandemic. Most of the countries declared lockdown to prevent spread of virus. This paper aims to study the impact of the unprecedented lockdown situation in East, South and Southeast Asia, due to COVID 19, on the most vulnerable section of poor migrants. Through this paper, I intend to explore the phenomenon of reverse migration in detail concerning the different stakeholders from marginalized backgrounds. My analysis goes a level deeper where the group of migrants is not studied as a homogenized group, but as a group consisting of women, children and the elderly among migrants. For the purpose of this study, I have used the spatial distribution of existing cases and interstate human migration.

Key words: - *Coronavirus, COVID-19, Migrant labour, Reverse migration and Lockdown.*

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Plight Of Migrant Workers Amidst The Covid-19 Crisis

When the Spanish Flu came in the year 1918 and vanished in the year 1920, no one could ever imagine that the same situation would be faced by the human race again. The same situation was faced by humans in the wake of COVID 19 which started engulfing the world in the year 2019, and by March 2020 hit the entire world, forcing all public spaces and other things to completely shut down. The Spanish Flu lasted till the year 1920, and it is to be noted that the year 2020 in which COVID 19 broke out, also marks the 100th anniversary of the outbreak of the Spanish flu, which had been widely forgotten in our memories. Despite Spanish flu being a pandemic, it could not become the news of the first page of the then newspaper as it appeared during the First World War since most of the countries at that time were more engrossed with the war situation. But in 2020, COVID 19 is all over the place and making headlines across the globe due to its rising number of deaths in first and third world countries alike. The flu spread outwards by the aid of pilgrims, soldiers and merchants across the United States and Europe, also affecting other parts of the world later. During the year 1918, more than 459 million passengers travelled towards India aiding the spread of the virus which also affected India badly. The flu was given a distinct name of Bombay influenza or the Bombay fever in India. The Indian railway and the Sanitary Commissioner of India believed that movement of people from one place to another played an important role in pandemic influenza spread.

Although the impact of the COVID 19 or the Corona Virus is similar to how the Spanish flu affected the world, how countries across the globe today are dealing with it is different: complete lockdowns, social distancing and strict travel policies are ways in which countries are attempting to curb the virus. The year 2020 has already been marked as a black year and will always remain as one of the worst years in the memory of the human race due to the pandemic situation. The virus is going to affect the GDP of all the economies. The worst hits are going to be developing countries like Bangladesh, Nepal and India. COVID 19 had its origins in China from where it spread to European countries, and, then to the United States of America. When it became difficult for European countries to control it, only then the dreadfulness of the disease was realized. As a result, on March 11 2020, WHO declared COVID 19 as a global pandemic? European countries like Czech Republic, Spain, Italy, and Denmark started

declaring lockdowns as a measure to restrict people's mobility and social gatherings in order to curb the spread. Drawing on the experience from the European countries, the Asian countries like Singapore, Malaysia, Bangladesh, India and other countries also started declaring lockdowns. The objective was to slow down the spread of the virus, but a huge price has been paid in terms of lost livelihoods, especially by millions of casual wage workers, migrant workers in these countries. Every human being wants to have his livelihood at his birth place country. But many find working in other countries as more attractive future, whether it is permanent or temporary with the hope to return one day with lot of assets.

According to "The Association of South East Asian Nations" (ASEAN) states that an estimated 10 Million migrant workers live and work in major destinations such as Malaysia, Singapore and Thailand. Migrant workers were the worst affected under COVID-19, not only financially but physically and mentally also. Most of the Asian countries had problems related to International migrants except India, Nepal and Bangladesh. A huge portion of all ASEAN migrants' remittance to their respective countries constitutes a substantial proportion of GDP in many ASEAN countries. Most of the countries were more concerned about their own nation people and gave second thought to migrant workers. Thailand, Singapore and Vietnam handled the intertwined issue of COVID-19 and migrant workers quite differently (The Disproportionate effects of COVID 19 on migrant workers in ASEAN, by Camille Bismonte, The Diplomat 22 May 2020). In Malaysia, five new jobs for Malaysians are created when ten new migrant workers join any office/project and thereby add 1.1% net increase to GDP. One thousand migrant were detained as they did not have the work permit by May 2020. Malaysia had more than two Million International migrants. When Malaysia declared lockdown, many migrant workers started facing uncertainty for their due wages along with their job security. Moreover, migrant workers were debarred from speaking about their miserable conditions to anyone. The estimated numbers of migrant workers are approximately two lakhs in Maldives.

According to a 2020 United Nations report, it has the largest proportion of migrant workers among the South Asian countries, constituting one third of the resident population. Most of them are engaged in construction and tourism industries. Migrant workers who were already facing entrenched abuses from their employers, the pandemic and the lockdown had exacerbated their condition including job loss, unpaid leave and forced work without pay. Singapore had 1.42 Million workers who generally come from Bangladesh, India and other South East Asian countries to work mainly in construction sector. Singapore was expected to have responded well to the migrant workers during pandemic. But workers who were

mainly employed in the construction industry were thrown to wolves, ["Plight of refugees, migrant workers under COVID 19 by Graham Prebles, NEWAGE Opinion, April 23, 2020]

When lockdown was declared, they were side lined. They used to spend a lot of time on moving from their place to construction sites and back. They were stacked on the back of Lorries like the way the goats are stacked in when goats are taken to a slaughter house. ["We're in prison: Singapore's migrant workers suffer as COVID-19 surges back" by Rebecca Ratcliff, 23-04 2020] Singapore was among the top ten per million Covid infected countries. Most of the COVID -19 infected cases were from International migrant workers living in dormitories. When lockdown was declared, the dormitories were locked down and no one was permitted to go in or out by the Singapore government. They were simply isolated without making proper arrangement for food and health care resources. The migrant workers were made to live in cramped dormitories, pathetic conditions, were given ill treatment, unfair payment practices.

They were even denied basic access to nutritious foods and medical leave. Almost two lakhs workers were made to live in 43 dormitories, 10 to 20 migrants were sharing each room, one toilet and shower stall. Malaysian workers, working in Singapore, crossing border every day, decided to stay in Singapore till the virus is over, were made to sleep near train station as no accommodation was provided to them by their employers during such crisis. Nearly four to five million migrant workers work in Thailand. Migrant workers there were in dilemma, either to stay in place or starve in Thailand with no job , no money, health care OR to return their home country, while government of their home countries were not interested in taking them back as it would lead to hike in COVID cases. As a result, it created a mass exodus of migrant workers from the country. Those migrants who left Thailand acted as carriers of COVID 19 and thereby subsequently countries Myanmar, Laos and Cambodia had spikes of COVID 19. Although lock downing of cross border travel was good for Thailand domestic ends but it harmed the greater ASEN region by displacing millions of migrant workers rapidly.

China's three hundred million rural migrants had been among the hardest hit during the outbreak of corona virus. Migrant workers are about one third of China's vast workforce and COVID 19 had put them in tough position.

But All Was Not So Bad

In some of the South East Asian countries, migrant workers were permitted to COVID 19 screening and treatment but this privilege was not known to many workers. Many organizations provided food and other assistance to

migrant workers in different countries during the crisis. Vietnam adopted a focused effort to address and identify the requirements of migrants. Migrants were provided rice ATMs who were out of work. Migrants were also provided ample food and supplies by a co-ordination between public and private sectors. It helped in prevention of unnecessary rise in COVID cases.

Besides these, on top of all this are the hardships of internal migrant workers who have also faced waves of job losses. Lockdown, maintaining social distance and problem of food created a chaotic and painful process of lakhs of internal migrants in India and some parts of the world. They undertook difficult walk along with their families including infants and old people. According to 'Center for Monitoring Indian Economy (CMIE), an estimated 122 Million people lost their jobs in April alone.

The number of internal migration is about two and half times that of international migrations. Most of the Asian countries had problems related to International migrants except India, Bangladesh and Nepal. Although these countries were able to control Corona virus by adopting preventive measures but these measures created inconvenience for the internal migrants.

From, Nepal thousands of workers, come to India in search of jobs. Plight of Nepali workers who come to India is same as of internal migrants, as people can move freely across border between India and Nepal. However they were denied entry to their own country, as Nepal sealed its borders to prevent entry of infected persons across the border. As such they stuck for days at Karnali borders without basic amenities. In Bangladesh, lakhs of migrant workers who are mostly employed in the readymade garments factories at Dhaka come from different parts of Bangladesh. It is the migrant workers who are the backbone of the booming readymade garments industry of Bangladesh which constitutes 80% of the total export earnings of the country. Helen Monisha (Bangladesh), the National General Secretary of YWCA, highlighted the plight of fifty million internal migrant workers within Bangladesh, such as laborers, rickshaw pullers, roadside vendors and small business owners. As the lockdown continues in the country, most of these internal migrant workers were living in hand to mouth situations and thus the biggest crisis that Bangladesh will have to grapple in the coming days is starvation. (However to some extent garment exporters are not responsible as they are incurring losses since most of the orders in Europe and USA has been cancelled.)

On 24th March 2020, India declared its first a 21 days nationwide lockdown which is also known as the biggest and strictest in the world. The lockdown affected the mobility of people which decreased to a large extent. But along with this, the lockdown situation amid a pandemic struck India

also brought forth the existing inequalities and vulnerabilities within the country. Every year a substantial number of people migrate to the metropolitan cities and to other countries all across India in search of better opportunities and lifestyle choices for their family. A majority of this belongs to internal migration which mainly comprises daily wage earners who move from villages to cities to find opportunities to work in the cities as domestic helpers, drivers and gardeners, or as daily wagers on construction sites, building malls, flyovers and homes, or as street vendors. The actual number of migrant laborers' in the country is not available, but estimates vary from 4 crore to 8 crore. Between 2001 and 2011, while the population grew by 18%, the number of migrants increased by a total of 45%. In 2011, 99% of total migration was internal and immigrants (international migrants) comprised only 1% (4).

With a lack of any kind of regulation and job security in their area of work these migrant workers suddenly not just became jobless, but their sustenance in the present as well as future became a big question mark. For a few days they carried on with their savings, assuming that things will go back to normal in a few weeks, but that did not happen as the lockdown got extended to over 100 days. When the migrant laborer's savings ran out and the panic surrounding the lockdown struck them, millions of migrants with the looming fear of hunger started fleeing the cities. Without any transportation facility available to them they started walking bare feet towards their hometowns. Sometimes, they got food on the way and other times they went on with their journey without food. Small children ageing one month to 12 years also accompanied their parents. Old people were also not left behind. They also walked and walked towards their destination. Many never made it. Many died on the road. Some of them died in road accidents while others starved to death.

Marginalized people often have to pick the best from several bad choices. When they were left with no other alternative, reverse migration started happening. The process of leaving the land of their employment and fleeing back to their native places without any preparation is called reverse migration.

The Union government estimated that more than a million individuals — migrant workers and their families — have returned to their homes in rural India since the country-wide lockdown was imposed (6). Despite repeated requests by the government, they could not stay at their place of work and started leaving for their respective villages. For a few days, the government provided food and rations to them. But there were more than 40 million migrant workers across the country, and to provide relief to all of them became a difficult task for the government. The trains and buses through which they could have gone back to their hometowns and villages were

suspended due to the lockdown. Soon the highways became overcrowded with migrants pleading the government to safely drop them home. The migration happened at a massive scale, and the impact of the same can be felt in the figure which goes up to 1.8 crore inter-state migrant laborers who lost their jobs and future prospects.

The only destination they wanted to reach was their home now as the uncertain nature of events around pandemic and lack of income made the staying back motive blurred. This was the second-largest mass migration after the Partition of India in 1947 when a huge number of people were displaced and migrated to India as well as in Pakistan where more than 14 million people were displaced. In the absence of transport facilities, during the lockdown, the panic-stricken laborers and their families including infants, pregnant women and the elderly walked thousands of kilometers barefoot without food and money. They just carried the life they had built for themselves packed into ragtag bags to reach their native places. “The destination was clear in their head — home, their sweet home". They did all it took to get there as they had their view that they would be safe at their homes and at least they would be with their families, if something happens to them.. How long could they wait? There have been instances where the police have treated them inhumanely and have even ended up injuring some of them fatally. These incidents or brutality and apathy have highlighted the plight of millions of poor Indians who migrate from villages to cities in search of livelihood, and how during any kind of calamity they are the ones at the receiving end.

On May 8 2020, a goods train ran over 16 migrants who had stopped to rest on the railway tracks at Aurangabad. Migrant workers have died almost every day between then and now. Several collapsed just hours away from their destinations while others died due to reasons ranging from starvation, suicides, exhaustion, road and police brutality and denial of timely medical care. In another incident, the callousness of the concerned authorities came to the forefront when the bodies of the dead workers were piled on to a truck alongside those who were injured as they were being ferried to their native state. It was only midway when the survivors could no longer bear the stench of the decaying bodies that separate vehicles were arranged for them. Their plight did not end here. After reaching their native places, the migrants were even sprayed by a toxic bleach disinfectant, which is used to clean vehicles. They were also made to stay in unhygienic labour camps and quarantine shelter homes. These shelter homes put migrants at the risk of Covid-19 along with the risk of various other types of infections. The situation of migrants back in their hometowns and villages was no better due to the triggering a climate of hatred against them as people believed them to be carriers of the disease. The stigma associated with them being

carriers of a fatal virus-like COVID 19 led them to people rejecting them, denying them food, ration and other basic necessities and nobody wanted to risk coming in contact with them.

Chinazzi and Wells studied the importance of travel bans and complete lockdown in China and border policies. They concluded that Human migration played a significant role in the spread of COVID-19 virus multiplying the transmission rate. Even for the spread of Spanish Flu, transportation of people from Bombay to other parts of India was considered as the main reason. The same is also one of the reasons for the spread of COVID 19 virus too. From the Tables- ‘A’ and ‘B’ (attached in the annexure), we find that in those states in which a large number of reverse migration has taken place, the positive corona cases are on the higher side and the states which have few reverse migrations have very less no of positive cases.

A generic mathematical network approach cannot be employed for disease-spread analysing for India. Hence, spatial distribution has been used for establishing the relation between migration and the spread of disease. The deadly virus has moved from cities to less active towns and villages, spreading the disease within States quickly. Table ‘A’ shows the influx of migrant workers. And Table ‘B’ depicts the effect of reverse migration in the form of an increased number of infected people along with % increase. The above effect has been because of the reverse migration of migrant workers which was a result of lack of choice available to them. The places with more migrants coming back have more numbers of COVID 19 positive cases. The blame for the same however cannot be put on poor migrants but on the lack of suitable policies to help the country amid this situation. The income loss due to 30 million migrant workers returning home is a significant hit to household finances. (Globally, it is likely to lead to a $109 billion drop in global remittances which means a significant part of wages no longer being sent back home to the 800 million people who depend on it.)

It is also expected that due to the lockdown women could be increasingly shut out of the productive economy. For minor girls, it could mean the end of education as families scramble to make ends meet. Post lockdown there has been a surge in such suicide cases committed by minors due to the inability of their parents in facilitating education through the internet. Apart from this, the dropout rate of girls will rise as parents will not be interested in continuing their education because of the economic burden, and more teenage girls will be married off. This will render the achievement of the fifth goal of gender equality set by the United Nations by 2030, difficult.

Handling the compromised mental health of the migrating workers is

another challenge. Depressed by the misery around, and lack of future employment opportunities and financial support is likely to result in suicidal tendencies. The supply chain is also going to get adversely affected. Migrations of workers have disrupted the supply chain. It has battered the supply chain in numerous ways. Shops, businesses that have shut down due to reverse migration, have disrupted the supply chain. Although construction companies have started working, they will not be able to finish their construction as was scheduled because of disruption in the supply chain. Raw material, other components, and other semi-finished products are delivered through trucks. Trucks and vehicles have started playing back on the roads, but they do not get service centers and repair shops to replace tyres or mechanics for petty repairs. It creates a huge problem in the supply chain. While some suppliers continue working during these unprecedented times while others are completely non-functional due to health and safety precautions.

The world never anticipated the emergence of such a complex challenge which the migrant workers might encounter arising following the preventive measures of lockdown to prevent COVID-19 virus. This migration is a panic reaction. No one has ever seen such a murky picture of human being and as such it calls for changes in attitudes and practices towards migrant workers whether internal or international. The countries need to adopt a humane approach towards migrant workers, especially during such abnormal conditions. They should be considered for the same benefits which are given to other workers. I feel, the countries should maintain emergency funds for migrant workers which can be used during abnormal situations. Instead of putting them into starvation, they could have been given some loan either by their employers or government which could have been recovered after general life resumes back. Humanity does not deserve this type of behavior with International or internal migrants.

Conclusion

Proper thought should have been given to the welfare and safety of migrants and other vulnerable groups by the government before declaring a complete lockdown. Transportation and arrangement of other essential services for the survival of migrants should have been more organized and delivered in a dignified way. The unplanned steps taken by the government had adverse effects on not just the migrants and their families but also affected the country as a whole, the effects of which we are going to see in our economic, social and ecological systems in years to come. Migration (both International and internal) deserve better behavior from the government and employer. They are the people who are behind the things such as buildings, food without which human being cannot survive. How

can we ignore them when they expect humanity from us? This pandemic is a lesson applicable not just India but to the entire world. It highlighted the need to invest in research and policymaking so that hazards associated with an extraordinary situation like these can be mitigated before it goes out of control. Lastly, it is also true that the plight of low-income migrant workers is generally associated with collective silence in the world.

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Implications of Coronavirus Pandemic on the Protection of Economic and Cultural Rights of Children under Human Rights Instruments in Nigeria

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Abstract

Article 45 of the African Charter makes all rights justiciable before African Commission on Human and Peoples' Rights and accorded economic, social and cultural rights the status of basic rights which marked remarkable beginning for the recognition of ESC rights as basic rights in Nigeria. Nigeria has signed, ratified and domesticated the African Charter on Human and Peoples' Rights thereby formed parts of its municipal laws. However, the rights are not constitutionally enforceable because they fall under the Fundamental Objectives and Principles of State Policy. Also, since the advent of Covid-19 pandemic in Nigeria, children are the most vulnerable set of people in Nigeria because they have been subjected to various human rights abuses. Social, economic, political and cultural rights of children have not been accorded the required protection and enforcement. This does not foreclose their enforcement because they are found in various human rights instruments which Nigeria is a signatory and have been properly domesticated them into its municipal legislations such as African Charter and other instruments relating to the protection and welfare of children by Nigerian national Assembly. The paper examines the concept economic, social and cultural rights as they affect children, legal frameworks for the protection and enforcement of ESCR, human rights abuse and implications of coronavirus pandemic on the protection of children's rights and the attending challenges. The paper argues that Nigeria should give similar interpretation to the two set of rights and that there should be human rights face in the implementation of coronavirus measures by the law enforcement agents. The government should provide for safety valve for

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the protection of children in case of future occurrences of other or similar pandemics

Key words: - *Child, Human Rights, Human right violations, Coronavirus, Legal Frameworks*

Introduction

The world leaders came together in 1989 and made historical commitment to the world's children by entered into covenant to protect and fulfil every child's rights through the adoption of international legal framework, that is, the United Nations Convention on the Rights of the Child. The convention claimed that children are not just mere substances that belong to their parents and for conception whom decisions are taken or adults in drill but they are human beings and individuals with their rights. The convention is the most widely ratified human rights instrument among various instruments. It has motivated governments to amend their laws and policies and proclaim instruments in order to provide health care and nutrition which formed part of ESCR that children require to survive and develop. However, the convention is yet to be fully implemented or widely known and understood because many children are continue suffering violations of their rights. They are starving of adequate health care, education, nutrition and protection from violence particularly during the coronavirus pandemic in Nigeria. Childhoods continue to be cut short because they are forced to leave school and engage in hazardous works, involved in early marriage, early child rearing, locked with adult in prison, object of rape, fight in war and murder.

Art 1, Universal Declaration of Human Rights laid down a basic principle that all human beings are born free and equal in rights and dignity. A class of vulnerable people like children have been specially protected by the United Nations Legal Instruments. The protection of the rights of children under international treaty has its etymology in the first Declaration of the Rights of Child adopted by the League of Nations in 1924. This was a brief document having only 15 principles through which members were invited to be guided towards child's welfare. An extended version of the Declaration was adopted by the UN General Assembly in 1948 which was followed by a revised version adopted in 1959 as the UN Declaration on the Rights of the Child. A proposal for UN Convention on children's rights which had consistently raised issues with regard to children's rights being binding were made by Poland in 1978. The proposal with minor amendments served as basis for the 1989 Convention on the Rights of Child (CRC).

It is granted that there are specific legal instruments developed that targeted at the protection of children in particular, it has to be emphasised that basic human rights instruments already recognised these rights. The international Bill of Human Rights for instance, contains package of human rights which pertinent to children and many of principles are reflected and substantiated in children-specific legislation. Children enjoy protection by way of general human rights provisions, therefore, their relevance should not be compromised. The Universal Declaration of Human Rights which is the most potent fundamental UN human rights document, provides in its Article 25 that childhood is entitled to special care and assistance.

Furthermore, the UN International Covenant on Civil and Political Rights, a legally binding document which came into force in 1978, contains provisions specifically referring to children. The Human Rights Committee has emphasised that … the rights provided for in Article 24 are not the only ones that the Convention recognises for children and that, as individuals, children benefit from all the civil rights specified in the Covenant.

Also, the International Covenant on Economic, Social and Cultural Rights contains several child-specific provisions, with a focus on the right to education and protection from economic and social exploitation which are actually truncated during covid-19. Moreover, the Convention on the Elimination of all Forms of Discrimination against Women also contains child-protective provisions. For example, Art 16 (2) encourages States Parties to specify a minimum age for marriage, and it emphasises that the interests of children are paramount.

Another important legal document applicable to children's rights is the Convention on the Rights of Persons with Disabilities which establishes the principle of respect for the evolving capacities of children with disabilities. The same applies to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee established under the latter Convention has already expressed its concern about the general vulnerability of abandoned children who are at risk of torture and other cruel, inhuman or degrading treatment or punishment as experienced during lockdown in Nigeria. After all, it can be stated that children's rights are covered by a multitude of general human rights provisions. The thrust of this paper is to examine the legal frameworks for the protection of child's rights, the effects of coronavirus pandemic on the realisation and protection of child's human rights and challenges against the realisation of child's rights protection as contain in various instruments.

Understanding Human Rights

Human rights are basically rights which inheres in every human beings by virtue of common humanity. In this perspective, human rights are both natural and universal. This connotation receives better attention when a distinction is drawn between human and legal rights.[1] Human rights have their sources in the natural law and therefore, they are not gift of any authority or government. [2] However, it may be confirmed by positive law or legal instruments. It is thus absurd to contemplate human rights as a gift of western civilization. Clearly, concepts like right to liberty, freedom of association and right to fear hearing have always been ingrained in every society, traditional or modern. It is instructive to note that the term human rights is not restricted to any particular brand of rights but an amalgamation phrase which captures both civil and political rights on one hand and economic, social and cultural rights on the other.

However, contemporary human scholarship has adopted a taxonomy of human rights[3] which labels socio-economic rights as second generation rights. Typical examples of economic, social and cultural right are rights to education, work, social security, food and adequate standard of living. These rights are protected both under the universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These second generation rights are referred to 'positive rights' because they required affirmative government action for their realisation. Some authors styled them as welfare rights,[4] rights to

1 J Hauserman 'The Realisation and Implementation of economic, Social and Cultural Rights' in R Beddard and D M Hills (eds), Economic, Social and Cultural Rights: Progress and Achievements: Houndmills, Basingsstoke, Hampshire, London, Micmillan Academic and Professional Ltd (1992), 47.

2 S I Nwatu, 'Legal Framework for the Protection of Socio-economic Rights in Nigeria' (2010-2011) 10, The Nigerian Judicial Review, 23.

3 The four broad classification of human rights regime are: civil and political rights (first generation rights); economic, social and cultural rights (second generation rights); rights to development in peace and justice 9third generation rights; and emerging or penumbra rights (fourth generation rights).

4 R Plant, 'A Defence of Welfare Rights' in R Beddard and D M Hills (eds), Economic, Social and Cultural Rights: Progress and Achievements: Houndmills, Basingsstoke, Hampshire, London, Micmillan Academic and Professional Ltd (1992), 22.

credit [5] or security oriented rights. [6]

The debates as to the nature of ESCR are older than the ICESCR. Indeed, sequel to the resolution of the United Nations General Assembly to formulate an International Bill of Rights, it was decided that the Bill should take two forms or more international instruments, namely, Declaration, a Convention (covenant) and measure of implementation.[7] The decision was later modified in favour of having two covenants instead of one, and that the measures of implementation shall be embodied in the texts of the covenants. These two covenants were to be simultaneously submitted and approved by the Gen Ass and opened for signature at the same time.[8] The reversal of the earlier decision to have one draft covenant hinged on the differences in implementation strategies. The reason stated was:

Economic and social rights are objectives to be achieved progressively. Therefore, a much longer period of time is contemplated for the fulfillment of the objectives. For civil and political rights, states ratifying the covenant will immediately be subjected to an obligation to give effects to the rights. The enactment of legislation is generally sufficient to the effect the enjoyment of civil and political rights, while legislation is not sufficient for the attainment of socio-economic rights. Very much depends on economic condition of the state. The machinery of complaint, the committee on human rights emphasised for civil and political rights is not a suitable body for dealing with economic and social rights since they can only be achieved progressively and since the obligation of members with respect to them are not as precise as those for the other set of rights. [9]

It is for these reasons and perhaps more that in the ever growing literature on human rights law and praxis, jurists and commentators have continued to query the status of economic and social rights or at best relegated them

5 R Vasak, 'For the Third Generation of Human Rights: Rights of Solidarity' in CC Nweze (ed), Education of the Concept of Socio-Economic Rights in Human Rights Jurisprudence: International and National Perspectives, (2001) 1 (1) NBJ, 79.

6 Sohn, 'The New International Law: Protection of the Rights of Individuals rather than States' in CC Nweze (ed), ibid.

7 Gen Ass Resolution 217f (III) Dec 17, 1947.

8 Ibid, 543 (VI) Feb 5, 1952.

9 See Roosevelt, Gen Ass Official Reports, 6th session 1951-52, plenary session, 505.

as second-rate rights. In a turgid critique of socio-economic rights, Prof Maurice Craston states:

I believe that a philosophically respectable concept of human rights has been meddled, obscured, and debilitated in recent years by an attempt to incorporate into its specific rights of a different logical category. The traditional human rights are political and civil such as the right to life, liberty and a fair trial. Universal rights are economic and social rights such as the right to employment, insurance, old-age pensions, medical services and holidays with pay. There is both philosophical and logical objection to this. The philosophical objection is that the new theory of human rights does not make sense. The political objection is that the circulation of a confused motion of human rights hinders the effective protection of what are correctly seen as human rights. [10]

The issues that have constituted serious challenges to the realisation of economic and social rights apart from the peculiar challenges during the coronavirus pandemic lockdown which would be discussed later include the vagueness of some of the norms, obligations imposed on state parties to the ICESCR and the monitoring mechanisms. For instance, Art 2(1) of the ICESCR provides that each state party undertake to take step individually and through international assistance and cooperation, especially economic and technical to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the covenant by all appropriate means. This is in contradiction to Art 2 (1) of the ICCPR by where each state party undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the covenant. A comparison of the two provisions will reveal that the ICCPR imposed on the state parties requires immediate obligation to maintain a defined standard while the ICESCR begs the question and makes the realisation of economic and social rights merely promotional and a matter very much in the future. Also, since the realisation of economic and social rights is dependent on availability of resources, the situation being exploited by many governments around the world with no political will to ensure respect for human rights principles.[11] These governments have instead erroneously claimed that the promotion and protection of civil and political rights is cheaper for them to attain because their obligation is to

10 M Craston, What are Human Rights? London, the Brodly Head, (1973), 63.
11 See Background Information on ESCR CCJ Review No. 55, 10.

large extent to non-interference with their citizens' rights.

Most conclusions on the non-justiciability of ESCR are based on an integrative comparison with civil and political rights.[12] This approach has proved to be inimical to the promotion and protection of ESCR as it has contributed to the existing timid and compromising attitudes to those rights. Addo's revisionism of the concept of justiciability exposes the general unsuitability of transporting domestic law conception to justiciability to international law. To him, a fuller understanding of the concept of justiciability must address the question of mechanisms of judicial process and inquisitorial justiciability which envisions on institutional review and reporting system.[13] He argues that both arms of rights are amendable to both procedures which of course my thought on the couple rights, though depending on the issues and circumstances.

Yash and Conttrell also warned against confusing two aspects of justiciability. They drew a distinction between explicit non-justiciability on the one hand and non-justiciability grounded on the aptness on the other hand. The first refers to situation where the Constitution or other legislations expressly exclude the jurisdiction of the court as is the case under the Nigerian and Indian Constitutions, where the second distinction raises great concerns of legitimacy for the court on the enforcement of ESCR because the court may not be able to apply clear standard of rules by which to resolve a disputes where the court may not be able to supervise the enforcement of its decisions or the highly technical nature of the questions or the large questions of policy involved may be thorough to present insuperable obstacles to the useful involvement of court. [14]

No matter the intentions or persuasions of any particular theorist, the truth is that because of the inter-relatedness and indivisibility of rights, both branches of rights are worth pursuing together. At a more precise level, it is not an over vulgarisation to state that some economic, social and cultural rights are justiciable like some civil and political rights.[15] The problem lies in what Katrina Toma- Sevki refers to as the prevailing

12 M Addo, 'Justiciability Re-Examined' in R Beddard and D M Hills (eds), (n. 4), 99.
13 Ibid, 197.
14 Ibid,Y Ghai and J Cottrell, Economic, Social and Cultural Rights in Practice: The Role of Judges in Implementing Economic, Social and Cultural Rights, London, Interight (2009), 69.
15 S I Nwatu, (n. 2), 27.

hostile of inter-governmental environment towards efforts to institutionalise the justiciability of economic, social and cultural rights as a category.[16] Generally, it is believed that the debates about the nature of economic and social rights are duly of philosophical interests, lack credibility and pragmatic value in the light of the constant inclusion of these rights in international instruments. International human rights jurisprudence is chockfull with instruments relating to general discrimination, environmental protection and labour rights which ensure the justiciability of some economic, social and cultural rights as affect children.

Legal Frameworks for the Protection of Child Rights

i. The Convention on the Rights of Child

The United Nations Convention on the Rights of Child is a human rights treaty consists of 54 articles which set out the civil, political, economic, social, health and cultural rights of children. It is the most prominent United Nations manifestation to advance the protection of children's rights. The convention was adopted by General Assembly Resolution 44/252 of 20 November 1989 at the 44th session of the UN Gen. Assembly and entered into force on 2nd September, 1990 in accordance with art 49 (1) of CRC. Currently, the convention has 193 state parties. It creates international foundation for the protection and promotion of human rights and fundamental freedom of all persons under the age of 18 years.[17] The convention represents wide spread recognition that children should be fully prepared to live an individual life in a society and brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

Two optional protocols to the Convention on the Rights of the child were adopted on 25th May, 2000 in New York which are as follows: Optional Protocol on the Involvement of Children in Armed conflict which resists the involvement of children in military conflicts while Optional Protocol

16 K Toma-sevski, 'Justiciability of Economic, Social and Cultural Rights' ICJ Review, No. 55, 204.

17 The definition of child as being a person under the age of 18 is contained in art 1 of the CRC. However, this principle may be inapplicable where the under the law applicable to the child, majority is attained earlier.

on the Sale of Children, Child Prostitution and Child Pornography supplements the provisions of the Convention on the rights of the child by providing detailed requirements for the criminalisation of violations of the rights of children in the context of the sale of children, child prostitution and child pornography.[18] States are required to act in the best interests of the child. This approach is different from that previously existing in many societies where children are treated like possession or chattels. Nigeria has ratified the convention and as such, is obligated under article 4 to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention. States need to consider whether to become parties to these human rights treaties because it requires changes to be made to their national laws and policies to enable them meet all of their obligations under the treaties. For example, some legislative measures need to be taken in respect of child's rights and the system of juvenile justice in line with the provisions of CRC.[19]

The concept of participation is part of culture of democracy. The rights of children to participation are grounded in the idea that, like any other human beings, they have rights to share in the decision making which affect their lives and the life of the community of which they are part. Articles 12-15 captured what have collectivity been regarded as the participatory rights of the children. Article 12 provides that child has the right to express his/her opinion freely and to have that opinion taken into consideration in any matter of procedure affecting the child. Article 14 binds state parties to respect the child's rights to freedom of thought, conscience and religion subject to the appropriate parental guidance.

The institutions responsible for monitoring compliance with and implementation of the provisions of CRC is the Committee on the Rights of the Child. Provisions for this UN treaty body is made in articles 43 and 44 of CRC. The committee is an independent body consisting of 18 international experts in the field of children's rights.

18 H O Agarwa, International Law and Human Rights, (17th edn) Central Law Publications, Allahabad, (2010), 833-834

19 T O. Ibrahim, Legal Framework for the Protection of Child Rights in Nigeria (2015) 3 Agora International Journal of Judicial Sciences, 50. <http://unigora.ro/journal/index.php/aijjs> accessed 22 Dec 2019.

The monitoring mechanism is a special reporting system as provided for in article 44 of CRC according to which state parties undertake to submit report on the measures they have adopted which gives effect to the rights recognised in the convention and on the progress made on the enjoyment of those rights. Stat parties are obliged to submit an initial report within two years after acceding to the convention and periodic reports every five years after the submission, the reports of state parties are reviewed by the committee which is entitled to request further information from its authors if necessary. In its concluding observations, the committee addresses progress that has been made by the state party concerning implementing the convention, identifies areas of concern or outright incompatibilities of national law, and makes recommendations on how to improve the implementation of the convention's provisions.[20] One major problem in the CRC reporting process as in other human rights treaties is the delay in government submitting their periodic reports.

The Child Rights Act (2003)

The Act seeks to set out the rights and responsibilities of the child in Nigeria and provides for a child justice administration system, care and supervision of children, among other things. Within the content of such mandate, the Act has been divided into 24 parts and 11 schedules. The various parts address broadly, rights and responsibilities, protection and welfare of children as well as other miscellaneous matters. In terms of contents, the Nigerian Child Rights Act borrowed a leaf from the United Nations Convention on the Rights of Child and African Union Charter in respect of the guiding principles for the protection of the rights of children. [21]

Part I (sections 1-21) provides that the best interest of the child shall be of primary and paramount consideration in all actions to be undertaken whether by individual, public or private, institutions or service, court of law, administrative or legislative authority. The Act further provides for the rights and responsibilities of a child in Nigeria. Among which are the rights to survival and development, to a name, freedom of association and

20 M Scheinin, 'International Mechanisms and procedures for Monitoring,' in Krause C AND Shheinin M (eds) International Protection of Human Rights, A Textbook. Turku/Abo: Institute for Human Rights, Abo Akademi University (2001), 601-620, 605.

21 T O. Ibrahim, (N. 19).

peaceful assembly, freedom of thought, conscience and religion, private and family life, freedom of movement, freedom from discrimination, dignity of child, leisure, recreation and cultural activities, health and care service, parental care, protection and maintenance, free, compulsory and universal primary education as well as encouragement of child to attend and complete secondary education.[22] The Act guarantees the rights to special protection measures for a child in need of such protection as is appropriate to his/her physical, social, economic, emotional and mental needs and under conditions which ensure his/her dignity, promote the child's self-reliance and active participation in the affairs of the community as well as provision to a child with such assistance and facilities necessary for the child education, training, employment, rehabilitation and recreational opportunities in a manner conducive to the child over all development. Also the right s of unborn to protection against any harm or injury caused willfully, recklessly, negligently or through neglect before, during or after the birth of that child and to benefit from the state of the deceased parent if any one of them died intestate, having survived any one of them. The duty to provide necessary guidance, discipline, education and training for the child in one's care in order to secure the necessary assimilation, appreciation and observance of the child's responsibilities lies on every parent, guardian, institution, persons and authority responsible for the care, maintenance, upbringing, education training, socialisation, employment and rehabilitation of the child. [23]

Part III (sections 21-40) provides for the protection of the child through the prohibition of child marriage, betrothal, infliction of tattoos and skin marks, exposure to use, prostitution, trafficking of drugs and psychotropic substances, use of children in any criminal activities, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, including outlawry of employment of children as domestic helps outside their own home or family environment, buying, selling, hiring or otherwise dealing in children fort the purpose of hawking, begging for alms (almajir), prostitution, unlawful sexual intercourse as many Nigerian girls witnessed during lockdown as a result of coronavirus pandemic, other forms of sexual abuse and

22 This is consistent with the provisions of Chapter ii of the Constitution of the Federal Republic of Nigeria, 1999.

23 Section 20 of the Nigerian Constitution.

exploitation prejudicial to the welfare of the child. The Act equally prohibits recruitment of children into armed forces of Nigeria and harmful publication which portray information such as the commission of crimes, acts of violence, obscene, immoral and indecent representation which tends to corrupt or deprive a child.

African Charter

The Organisation of African Unity (OAU) adopted African Charter in 1981 which marked the introduction of a third regional human rights system in the world, after the creation of the European and inter-American systems. The Charter was adopted partly because of external pressure on African governments to develop a human rights regime on the continent and as a response to the massive human rights violations committed by some African leaders like Dr. Banda of Malawi, Dada Idi Amin of Uganda, Emperor Bokassa of Central African Republic and Mengistu of Ethiopia. The African Charter is distinctive in its attempt to attach an African fingerprint on human rights treatise. Human rights intellectuals have applauded the African Charter for including economic, social and cultural rights as well as civil and political rights in one binding instrument. [24]

Its preamble affirms the cardinal principle of interdependence and indivisibility of all human rights by expressly declared that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality. The African Charter gives express recognition to the right to property, right to work, right to enjoy the best attainable state of physical and mental health, right to education and right to family protection, including special measures for the protection of the aged and disabled. The African Charter proffers the same enforcement mechanism to all categories of rights. Under Articles 47, 55, and 56, the African Commission hears complaints alleging violations of any rights recognised in the Charter and the standing requirements for bringing cases before the Commission is admirably broad. Nongovernmental Organisations (NGOs) and individuals with observer status in the Commission can institute cases against a state. The

24 D N Chirwa, 'Toward Revitalising Economic, Social and Cultural Rights in Africa,' (2002) 10 (1) Washington College of law Journals, 16.

Commission grants observer status to any organisation working in the human rights field whose aims and mandates are in compliance with the fundamental principles of the African Charter. [25]

The AU Charter on the Rights and Welfare of the Child

In addition to actions taken by the United Nations, regional instruments with specific focus on protecting the rights of children and women were adopted and ratified by countries within the African Union. Some of them are the African [Banjul] Charter on Human and Peoples' Rights Abuses which include economic and sexual exploitation, gender discrimination, leading to unequal access to education and health care and involvement in armed conflict. Other factors affecting African children include displacement and migration, child marriage and unequal disparity[26] and the AU Charter on the Rights and Welfare of the Child.[27] The African Member States of the Organisation of African Unity were parties to the adoption of the African Charter on the Rights and Welfare of the Child. In assenting to the ACRWC, the state parties noted that the condition of many African children remained critical because of unique factors of their socio-economic, cultural, traditional and developmental circumstances.[28] Children in Africa are affected by different types of urban and rural areas, child-headed households, street children and poverty. African children are trapped by poverty, disease, war and insufficient aids from international donors and nongovernmental organisations. [29]

25 Ibid, 18.

26 Adopted on 28th June 1981 by Organisation of African Unity (OAU), The African Charter on Human and Peoples' Rights entred into force on 21st October, 1986.

27 The Preamble states that: ...Recalling the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.l) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from July 17- 20, 1979 recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child..... Recognizing that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality.The child should grow up in a family environment in an atmosphere of happiness, love and understanding....

28 Such developmental circumstances include, natural disasters, armed conflicts, exploitation and hunger; and on account of the child's physical and mental immaturity, he/she needs special safeguards and care.31.

29 M Fleshman, 'A Troubled Decade for Africa's Children Trapped by Poverty, Disease, War and Insufficient Aid' (2002) 16 (1) Africa Recovery-Now called Africa Renewal, 6.

To ensure a protective environment for children in Africa, article 1 of the ACRWC enjoins state parties to recognise the rights, freedoms and duties enshrined in the Charter and to undertake and take the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

Garner [30] defines a child as a person under the age of maturity while at common law, is a person who has not reach the age of 14 years. The ACRWC defines a child as a human being below the age of 18 years. It articulates in different articles-all the rights that every African child is entitled to enjoy. The universal set of standards and principles enshrined in the CRC and the rights to be enjoyed by all children, situated in the four clusters/baskets-survival, development, protection and participation are all articulated in the ACRWC.[31] It recognises the child's unique and privileged place in the African society and that the African child entitles to protection and special care. It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion and conscience. Articles 15 and 16 protect the private life of the child and safeguard the child against all forms of economic exploitation. It protects children against work that is hazardous or that interferes with the child's education, or compromises his or her health or physical, social, mental, spiritual, and moral development. In articles14, 26, 27 and 28, children are to be protected against abuse and bad treatment, negative social and cultural practices, all forms of exploitation or sexual abuse, including commercial sexual exploitation, and illegal drug use as witnessed during covid-19 lockdown in Nigeria since March 2020 to date.

30 B A Garner, Black's Law Dictionary (8th edn), Thomson West Publishing Co, USA, (1990) 254.
31 See the ACRWC: Article 3-Non Discrimination. Article 4 -Best Interest of the Child, Article 5 –Survival and Development and Articles 7, 8, 9 and 10 as Participation rights.

Nigerian Constitution

The general framework within which human rights are protected in Nigeria is contained in the Constitution of the Federal Republic of Nigeria 1999. Chapter IV contains comprehensive Bill of Rights which include rights to life, personal liberty, fair hearing and freedom of movement. The Constitution prohibits unjustifiable discrimination on the basis of ethnic group, place of origin, sex, religion or political opinion.[32] It provides for some fundamental objectives and directive principles of the Nigerian state geared towards the promotion and protection of children's interests in Nigeria. It requires the government to provide free compulsory and universal primary education, free secondary education, free University education and free adult literacy programmes when practicable.[33] In the like manner, it imposes obligation on all arms and tiers of government to observe the fundamental objectives relating to socio-political, economic, educational and cultural matters.[34] The Constitution also contains provisions for security and welfare of the people which shall be the primary purpose of the government.[35] It further makes provision for the control of the economy to acquire maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity, harness and distribution of material resources of the community to serve the common good, provision suitable and adequate shelter and food for all Nigerians.[36] The state social order is to be founded on freedom, equality and justice and the state shall direct its policy towards ensuring that:

a. all citizen without discrimination on any ground whatsoever have opportunity for securing adequate means of employment; b. conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religions and cultural life; c. the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; d. there are adequate medical health facilities for all persons; e. there is equal pay for all work without discrimination on account of sex

32 Section 42 (2) Nigerian Constitution.
33 Section 18
34 Section 13.
35 Section 14.
36 Section 16.

or any other ground whatsoever; and f. children and young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect. [37]

There are other laws which expressly prohibit human rights child abuses and labour in Nigeria. Some of them are:

*The Labour Act which set out the minimum age for employment at 15 years except for light agricultural horticulture or domestic work for apprenticeship [38] but section 49 of the same Act provides for 13 years. It means that any person below the age of 13 years is not supposed to work as apprentice.

*The International Covenant on Economic, Social and Cultural Rights contains several child-specific provisions with a focus on the right to education and protection from economic and social exploitation. [39]

*The UN International Covenant on Civil and Political Rights, a legally binding instrument which came into force in 1978 contains provisions specifically referring to children.[40] The Human Rights Committee emphasised that: '…the right provided for in art 24 are not only ones that the convention recognises for children and that, as individuals, children benefit from all of the civil rights enunciated in the covenant.' [41]

*Another important legal document also applicable to children is the Convention on the Rights of Persons with Disabilities, which establishes the principle of respect for the evolving capacities of children with disabilities. The same applies to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

*The Convention on Elimination of all forms of Discrimination against Women (CEDAW) also contains child-protective provisions, for instance, it encourages state parties to specify a minimum age for marriage [42] and it emphasises that the interest of children are paramount. [43]

37 Section 17.
38 Section 59, Cap L1, Laws of the Federation of Nigeria, 2004.
39 Arts 10 (3) and 13 of ICESCR.
40 Articles 14 (1), 23 (4) and 24 of ICCPR.
41 Human Rights Committee, 1989.
42 Art 16 (2) of the Convention of Elimination of all Forms of Discrimination against Women
43 Arts 5 (b) and 16 (1) (g), Ibid.

*The same applies to the Convention against Torture and other Cruel, Inhuman Treatment or Degradation or Punishment. The committee established under the latter convention has already expressed its concern about the general vulnerability of abandoned children who are at risk of torture and other cruel, inhuman or degradation treatment or punishment, especially children used as combatants.[44] After all, it can stated that children's rights are covered by a multitude of general human rights provisions. However, due to the physical and mental immaturity or dependent status of children, the legal instruments to be examined has been adopted to more specifically enhance children's rights.

The Nigerian government has also evolved some institutions charged with child protection issues and protection against violence. These include child development department, National Council of Child Rights Advocates of Nigeria (NACCRAN) as the umbrella NGO involved in child Right Advocacy; Nigerian Children's Parliament and the National Agency for the Prohibition of Trafficking in Persons. [45]

Violations of Children's Human Rights and Impacts of Coronavirus Pandemic in Nigeria

There is no doubt that about eighty nine percent of children are currently out of school as result of the covid-19 closures. This percentage represents about 1.54 billion children and youth in primary, secondary and university. This includes nearly 743 million girls. While some girls will continue with their education as soon as the pandemic is over and the gates of schools reopen, other may never be opportune to return to schools as a result of effects of the global pandemic. The importance of girl child education within the context of improving governance which includes access to education, water, sanitation and hygiene is an element of developmental support that should be focused into the continuous advocacy for girl child education in Nigeria.[46] The closure of schools for long time as part of national response to the containment of Covid-19 has lead to families resorting to marrying off the girls. It might seem that

44 O C Ruppel, 'The Protection of Children's Rights under International Law from a Namibian Perspective, 4.
45 T O Tajudeen (n. 35), 49
46 United Nations Educational, Scientific and Cultural Organisations, (UNESCO) Report, 2020.

education has become an informal escape route to early marriage because schooling is one of the major reasons given for the delay in getting the girls married early. It is imperative for education authorities to consider innovative means of ensuring education continue for the girl child. [47]

The lockdown has become a major challenge because children and women who ordinarily go to work in the morning and return in the evening are now being lock down with abusers that they have been living with and have been trying as much as possible to avoid. The most common nature of human rights violations against these vulnerable people are sexual harassment, physical violence, harmful traditional practices, emotional and psychological violence, socio-economic violence and violence against non-combatant children in conflict situations. Victims of these incidents faced additional challenges with lack of structural social services with systems in place in Nigeria access to hotlines and shelters. Also, civil societies and Non-governmental Organisations specialised in providing support and legal expertise are inadequate. [48]

Based on Price report, 717 rapes incidents had been reported in the last five months during Covid_19 lockdown, with vulnerable individuals trapped with their abusers The of june announced itself with gang rape and murder of 18 years old Barakat Bello in her home,[49] Vera Uwaila Omoosuwa, a 22 years old student died two days after she was reportedly raped in a Church, in April, an 18 years girl, Jennifer was allegedly attacked and raped by a gang of five men in Kaduna city of Northern Nigeria, a 16 years old, Tina Ezekwe was shot and killed after police opened fire at a bus stop in Lagos during a night time coronavirus curfew.[50]

It must be noted that the lockdown measures have increased the risk of children as victims of domestic violence, bullying and other forms of

47 Partners West African Nigeria, Covid-19: Its Effects on Girl Child education and Women' https://www.partnersnigeria.org accessed 16 June 2020.

48 E Umukoro, 'Amidst of Covid-19 Lockdown, 'Nigeria Sees Increase Sexual and Gender Violence' Premium Times 02 June 2020 <https://pulitizer.centre.org> accessed 26 June 2020.

49 S Dark, 'Nigerians are Confronting an Underreported Rape Crisis that is Spiked during the Lockdown' Gartza Africa, June 24, 2020.

50 AlJazeera and New Agencies, June 2nd, 2020.

human rights violation. Apart from Nigeria, other countries are reporting sharp rise in domestic violence thereby making calls to domestic violence hotlines increase greatly across the globe. There has been a string of humiliating and degrading punishment meted out on children and young people at home. Children are shedding silent tears while bearing the effects of aggressive behaviour patterns from adults with whom they are lockdown at home.

The lockdown measures have created extra stress for many parents. Apart from crisis brought about by the psychological impact of confinement and fear of contracting the virus, a number of parents are disturbed by the uncertainty of the future of their financial wellbeing while some are already suffering from pain of complete loss of source of income. Children are going through crisis and possible depressive moments as a result of the lockdown. They are also restless and are in dilemma about happenings in the world. They are not spared of experiencing the psychological impact of the pandemic, even though, they may appear lively and active. They feel helpless when they notice that the adults, they look onto, are overwhelmed by the situations.

The stress and anxiety over health risks of the virus, isolation, school closures and uncertainty of the future is telling on them. There is unexpressed confusion in the heads of children from the information they are receiving from social media and television. Most parents failed to take time to explain to their children what is happening in the world? As of right, children are entitled to be acquainted of what is going on because they are the most affect set of people whose socio-cultural rights are truncated. [51]

The situation of some children has been made worse because of violence from the adults with whom they are locked down at home. Children are assaulted both physically and psychologically during this lockdown more than any other period mostly by adults who are not able to handle their own lockdown emotional stress. Adults get irritated and mad at their children at any diminutive provocation and sometimes, without justified

51 Rev. Ifeanyi Mbaegbu, 'Nigeria: Checking Domestic Violence against Children during Lockdown' Daily Trust, Abuja, 13 June 2020. <https://allafrica.com> accessed 26 June 2020.

explanations. The outcome of consistent yelling and beating on children, in addition to the confusion of the lockdown, is the feeling of insecurity. A child who is consistently under threat feels unsafe and withdrawn. Those who have access to the internet will take refuge in the net and spend their time online where they are exposed to other forms of abuse such as cyber bulling and online sexual exploitation. The covid-19 pandemic and lockdown have brought about a serious crisis in the protection and rights of children.

Neglect of children by their parents who have them hungry, ignored, unattended to, and abandoned is now seen as normal. With access to government palliative not reaching the most vulnerable and where food gangsterism has become usual practice in areas where palliatives are distributed, many children cannot compete with adults to get their shares. The school feeding programme by the Nigerian government has been blemished because there are reports demonstrating that many more children are left hungry and abuse under lockdown. [52]

Conclusion

It is obvious that covid-19 pandemic could turn into serious child rights abuses in the country because hundreds of thousands of the most vulnerable children could be exposed to a dangerous mix of extreme poverty, malnutrition and hunger as a result of the virus. The socioeconomic effect of the pandemic will push many poor households to turn to desperate measures just to survive. Children will definitely face an increased risk of child labour, sexual exploitation, or child marriage, as families struggled to feed. [53]

The Nigerian authorities must adopt a rights respecting approach and give clear instructions to security agencies not to abuse their powers as the nation tightens its effort to tame the COVID-19 pandemic, which compelled the authorities to impose lockdown and inter-state movement restrictions, Amnesty International said today. As the nation observes

52 E Umukoro, 'Broken Girls and Boys-Trapped in Covd-19 Lockdown-Part I' The Guardian Newspaper, Nigeria, 24 June 2010.

53 M Gichuhi, 'Nigeria: covid-19-Thousands of Nigerian children at Risk of Extreme Poverty' https://allafrica.com accessed 16 June 2020.

lockdown, the rights of citizens must be respected and protected, including the right to health care, security, and access to sufficient food and water.

The national response to COVID-19 must be inclusive, to ensure that prisoners, internally displaced persons and other marginalised and vulnerable communities are not left out at of any stages of the fight against the virus. [54]

While acknowledging the size of the challenge and efforts made by authorities to fight COVID-19 across Nigeria, we are also concerned by reports and videos circulating on social media showing violations of human rights which include beatings by law enforcement agencies tasked with ensuring compliance with the lockdown.[55] As the nation observes lockdown, the rights of citizens must be respected and protected, including the right to health care, security, and access to sufficient food and water. The lockdown must have a human face, enabling people to have access to vital needs and relief for those who can no longer earn a living since the majority of Nigerians are daily earners and live below poverty line.

As a matter of urgency, the Nigerians government should implement transparent income support programmes targeted at the most vulnerable population. Millions of Nigerians who live in informal settlements without access to basic services are at higher risk of COVID-19 infection. Government should ensure that the rights to health, food, water and sanitation are realised in such Settlements

At this time of crisis, the Nigerian authorities have a human rights obligation to ensure that the most vulnerable and marginalised sections of the population, such as persons living with disabilities and the homeless, have sufficient access to the services needed to give them the best chance of survival. This will include access to health services and facilities and the provision of emergency shelter, especially where needed to allow homeless people, including children in street situations to be protected.

54 Amnesty International,Nigeria: Authorities must Uphold Human Rights in Fights to Curb Covid-19, 2020 https://www.amnesty.org accessed 26 June 2020.

55 O Ojigho, Director of Amnesty International Nigeria.

For women and children who are experiencing domestic violence, the lockdown exposes them to further dangers from their abusers. Domestic violence advocates and service providers are increasingly facing difficulties in providing support for victims of abuse, having not been granted exemption in the application of the lockdown. This must be reviewed as Nigeria is obliged to implement appropriate measures to ensure the protection of women and children from all forms of violence and the government should increase support for services and protection, including shelters, hotlines, online advice platforms and criminal justice processes during the period of lockdown. The scale and deadly nature of the pandemic which has spread to over 201 countries and territories has made it necessary for governments to implement extraordinary measures. But collective efforts to curb the spread of the pandemic must be followed up with commensurate effort to ensure that timely testing and treatment are available and accessible to all Nigerians.

Report Review- Migrant Poor in South Asia: A Review of the SAAPE Poverty and Vulnerability Report, 2020

Swati Mohana Krishnan *

South Asian region has its unique and complex dimensions in all the major streams of migration, such as internal; intra-regional and international. For instance, most of the countries in South Asia have considerable stock of internal migrants – which is often much more than the quantum of international migrants from those countries. Similarly, there are close linkages between the South Asian countries, in terms of migration-flows as there are thousands of migrants from these countries, migrating within the broader South Asian region itself. When it comes to moving beyond the regional territories too South Asian countries exhibits striking similarities. The region also has some burning issues related to the presence of forced-migrants and refugees, whose concerns are closer to human rights issues. Given this, it is very important to have some interdisciplinary enquiries that approaches the South Asian migration, with a closer look at poorer segments of the migrants. In this broader background, the South Asia Alliance for Poverty Eradication (SAAPE) Report on migrations in South Asia jointly authored by Babu P. Remesh, Akhil Ranjan Dutta and Mohan Mani, assumes utmost relevance. The report was released globally on 4 September, 2020, during the COVID pandemic and lockdown and is an up to date account of the trials and tribulations of migrants from South Asia. The report covers the 8 countries from South Asia (namely Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) and has been compiled on the basis of detailed country reports from each of these nations.

The report includes seven chapters on various dimensions of migration and a set of appendices (which are the summaries of the eight country-reports, which provided the inputs for the larger regional report)

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To begin, **Chapter 1** written by Mohan Mani is the introductory chapter of the report which sets the stage for the detailed, theme based chapters that follow. In this introduction Mani centers the development debate around the figure of the migrant worker and lists a variety of reasons and social changes that contribute to the act of migration itself ranging from agrarian distress to displacement due to development projects to escaping conflict. Data from reputed sources such as the World Bank and UN Habitat is utilized to establish the broad patterns of growth and migration that are found across all 8 countries under discussion. It is also mentioned that Sri Lanka's pattern of growth is different from that of its neighbors, in the sense that economic growth is not accompanied by a huge increase in rate of urbanization unlike her neighbors but this is also because the definition of what constitutes the urban differs in Sri Lanka as compared to other countries. Here peri-urban regions are not considered urban and this influences the numbers accordingly. Apart from interesting information such as this, the author also makes frequent references to films, short stories such as Manto's acclaimed work'Toba Tek Singh' and songs from Assam's tea plantation workers to convey the impact of migration in popular memory and consciousness. He therefore sets a sound stage, composed of data and facts from a variety of sources, to unpack the details of migrants' lived experience in the South Asian region. The introduction also pays attention to the wave of neoliberalism and 'majoritarian chauvinism' that can be observed in the region which seeks to harden the differences between groups and communities along the insider-outsider discourse. The introduction marks that the report will employ a broad overview and present a critical appraisal of all forces at work that determine the migrant's life. The role of the state and its shortcomings are flagged at the outset to establish that this is a critical overview of conditions and not a procedural exercise in printing platitudes.

Chapter 2 is a detailed account of the core determinants drivers and issues of migration in South Asia and has been written by Babu P. Remesh. It is established here that the 'migration of the marginalized' will be the focus of the report and the aim is to account for the contributing factors that result in largely involuntary or distress migration. Rural distress, urbanization, climate change, development induced displacement, civil wars and social conflict are examined at length and data from reputed institutions such as the World Bank, United Nations, Amnesty International and Greenpeace, among others, is used to highlight important issues regarding peace, social justice and human

rights. Both international and intra-regional migration are discussed and it is pointed out that the citizens of these 8 nations are found across the South Asian region and also the GCC countries. Streams of migration within the South Asian region are also discussed and care is taken to give equal space and importance to the conditions prevailing in each of the 8 countries. Further use of local and regional words and sayings, such as 'Karachi gareebonki Ma' or Karachi is the mother of the poor, are incorporated into the writing which conveys the authenticity of the lived experience of migrants. The chapter also analyses conditions pre and post the migration experience and is written prosaically, without the use of much jargon, making it readable and relatable for a wide spectrum of readers.

Chapter 3 titled 'Women's migration in South Asia', again written by Babu P. Remesh explores dimensions of migration in terms of its effect on women in particular. It establishes at the outset that migration is not a gender neutral phenomenon and that women are the most vulnerable group affected by it. While admitting that that the category of women migrants is not homogenous, the chapter focuses on working class women in particular, in keeping with the larger theme of the report and charts the various obstacles that women face and experience as they undertake the arduous journey. The report highlights that most migration in South Asia falls into a pattern of men migrating and women as follower migrants as a result of marriage migration. Further the job profiles are also gendered in nature as men find work in masculine jobs like construction and services while women migrants are absorbed into the feminine care economy or feminized production system in factories marked by long hours, limited facilities and low wages. While detailing this typical picture, care is taken to point out country specific differences also and most importantly emphasize that this typical pattern is being transformed also. What might prima facie appear as a case of marriage migration is many times a contractual deal where women negotiate with a variety of agents, middlemen and even 'fake husbands' in order to comply with the 'jodi' or pair system and gain employment. The migration of single women is also replete with these dangers and the state's response has largely been to prevent migration rather than remove the impediments to migration. Age capping in Nepal, restrictions, surveillance as seen in the FBR (Family background report) in Sri Lanka reveal the patriarchal nature of the state which is restrictive and ultimately penalizes the women migrant, especially the woman migrant of limited means and education. This in turn leads to a large number of illegal routes that get taken which as the author says, further

'invisibilises' women's migration. This comprehensive chapter, replete with case studies and references to cases of trafficking, ends on a prescriptive note urging the need for concentrated efforts from all stakeholders including the government.

Chapter 4 titled 'Poverty and Inequality in South Asia: State responses' has been written by Akhil Ranjan Dutta. Dutta argues strongly that while poverty has reduced in the South Asian region in absolute terms, it exists in relative terms and this is clearly visible in the growing inequalities between various classes of people. India in particular has been home to many millionaires over the last few decades but the harsh truth is that the richest 10% of the country owns a disproportionate amount of wealth as compared to the masses. Dutta's chapter continues the honest and comprehensive style of writing that Mohan Mani and Babu P. Remesh adopt in the previous chapters. However this chapter, unlike the previous chapters, is not just about migrants but about the socio- political and economic structures that are used to maintain status quo and perpetuate inequalities in the way that they have been continuing, i.e through 'accumulation by dispossession' as termed by David Harvey. Dutta meticulously examines policies and programs initiated by the states across 8 countries to mitigate poverty and focuses on the following areas in particular: rural development, livelihood and employment, microcredit and financial inclusion, cash transfer benefits, job guarantee and skill development schemes, housing, climate change and adaptability schemes. He concludes that most of these policies are incompetent to solve the problem at the root because they are populist in nature and implemented by neoliberal governments who are constantly eyeing 'electoral benefits'. Dutta does not mince words and points out the failings of programs across nations, whether it is Ehsaas in Pakistan, MNREGA in India and micro credit in Bangladesh. The chapter ends with the same question that it began with: 'whatever happened to inequality?', reminding readers, citizens, students, practitioners and policy makers, all of whom stand to benefit from reading this report, that we must question whether any of the state's responses has been transformational in nature or just left the skewed structure intact with merely cosmetic alterations.

In **Chapter 5**, Akhil Ranjan Dutta continues his compelling arguments from the previous chapter and focuses on the state response to refugees and migration. The presence of refugees from within and outside South Asia is highlighted such as the case of Afghan refugees in Pakistan and Rohingyas in Bangladesh and India. Dutta believes that the efforts made

by states with respect to refugees and their rights is merely along the lines of relief and not resolution according to international conventions and bilateral agreements. He concludes that the approach across the states to refugees is marked by 'shortcomings and adhocism'. Further the controversial NRC in Assam is also taken up for discussion and Dutta dwells at length on the underpinnings of the identity of citizenship, highlighting that it is often 'meaningless'. In keeping with the focus of 'migration of the marginalized', Dutta also analyses the policies in the 8 countries that often tend to discriminate against semi-skilled or unskilled migrants who hail from a disadvantaged class background and reveals the biased nature of state practices.

Chapter 6 is an important and later addition to the report as it focuses on the impact of the Corona pandemic and the ensuing lockdown on migrants in particular. This has been penned by Babu P Remesh and is a comprehensive overview of the various newspaper reports across the media that highlight the plight of migrants at this time. Remesh highlights the failure of the state to provide relief to the migrants who found themselves penniless, jobless and without a social security net as a result of hasty imposition of lockdowns. Considering most migrants are employed in the informal sector, the erosion of worker's rights and lack of job guarantees are pointed out in detail. The condition of migrants as 'stranded outsiders' is also brought out well through newspaper reports and case studies that speak of the migrant's sense of alienation in the city and also being made to feel unwelcome at home. The sense of migrants being trapped in a 'no man's land', despite contributing positively to the running of cities through labour and services and the rural economy through remittances, is conveyed poignantly by the author. Further the greater impact of the lockdown on women migrants and the rising tide of Islamophobia that could be observed during the lockdown, especially in India and Sri Lanka, is also covered.

Chapter 7 titled 'Conclusion: the way forward' is written by Mohan Mani. He summarises the major concerns discussed in each of the chapters and continues in the comprehensive way of providing a holistic picture of the situation. In stating the way forward the report is extremely clear and honest about what really needs to be done. It does not shy away from calling out governments on inadequate legislation and patriarchy disguised as protectionism for women migrants. It notes the conflicts prevalent in each of the South Asian countries and reiterates that South

Asia is the second least peaceful region in the world as per the Global Peace Index (2018). It emphasizes the congenital issues that have plagued South Asian countries from the time of their emergence as nation states from colonialism and highlights the large scale migrations that have taken place across the region, by people, escaping discrimination, poverty and pogroms. The way forward from here is recognize failures at the state and interstate level, Mani points out the lack of success that SAARC has had in being an effective regional organization largely due to the political tension between India and Pakistan. The need for information sharing, building solidarities and 'keeping the spark of dissent alive' is also advocated in order to reclaim human rights and dignity.

On the whole, this report contains a rich body of information and useful analyses which throws considerable light on the migration scenarios of South Asian countries. It emphatically underlines that there is a need to have concerted social action from various countries and all relevant stakeholders in the region in order to strengthen rights-based migration of the poor in South Asia.

Where the report really leaves a lasting impression is the detailed writing style, the comprehensive accountancy of all relevant factors affecting migration and the frequent references to books, films, songs and other expressions in popular culture that are better remembered than statistics or data in people's minds and consciousness. The SAAPE report is distinctive in its writing style and critique of the prevailing conditions making this a very readable, relatable and reliable account for all sections of society.

The Force of Non-Violence: An Ethico-Political Bind. Judith Butler; 2020

Sonali Huria *

The philosopher, Judith Butler, is conceivably among the most influential scholars of our times, whose work on gender, democracy, and performativity has inspired an entire generation of scholars in fields as diverse as cultural studies, political philosophy, feminist and queer theory, and environmental humanities. In her compelling new offering The Force of Non-violence: An Ethico-Political Bind, an anthology of the several ideas that have underpinned her writings and lectures, Butler provocatively ruminates about crucial questions that confront human societies today – what makes lives worthy of grief?, how has the language surrounding 'violence' been upended?, and, what meaning does non-violence have in a temporality where human bodies and lives are emplotted within a 'force field of violence'?

At the very heart of her latest intellectual endeavour is the concern with reimagining a radically new future for human beings — a world predicated on what Butler calls a 'radical equality' — so that we may cohabit the planet 'with conflict, but without violence'. Her assertion that a "commitment to 'radical equality' of grievability" (p.58) where no lives are worth more than others, as the only plausible way forward is something worth thinking about in these times of unmitigated disarray – of heightened violence and the precarities unleashed and exacerbated by the COVID-19 pandemic.

Such a radical re-imagining of the collective human future, says Butler, will require transcending the prevalent liberal individualist framework for understanding our place in the world and the notions of violence and non-

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violence that this worldview engenders – "an ethics of nonviolence cannot be predicated on individualism, and it must take the lead in waging a critique of individualism as the basis of ethics and politics alike. An ethics and politics of nonviolence would have to account for this way that selves are implicated in each other's lives, bound by a set of relations that can be as destructive as they can be sustaining" (p.17). She argues at the very least therefore, for an acknowledgment of 'our dependencies' and "affirming (our) social and ecological interdependence" [1], and underscores the fact that it is the denial of our entangled lives and dependencies and the prevalent 'fantasies' of being 'enough' in our own narrowly construed individualisms that provide the space within which violence in its many manifestations thrives and is even justified.

Violence, argues Butler while undeniable in its manifestation of the 'physical blow' of one against another, encompasses a whole lot more. She argues that notions of violence and non-violence have been muddied and their language upended. Not only has 'violence' been made labile, but there is no steady distinction between the two – "there is no quick way to arrive at a stable semantic distinction between the two when that distinction is so often exploited for the purposes of conceding and extending violent aims and practices" (p.15). This fuzziness is seen for instance, in the attempt by states and its institutions to purposefully misrepresent nonviolent dissenting practices as 'violent' – "demonstrations, encampments, assemblies, boycotts, and strikes" – even when these seek no recourse to violent forms of resistance. Her concern regarding the two concepts stems in large part from the fact that they are grounded in a neoliberal conception of the individuated 'self', and this has meant that both, violence and non-violence have been understood as 'individual' acts, which consequently, obliterates structural, institutional, and other forms of systemic violence that do not conform to the act of the 'physical blow' of one individual against another. The 'fast' violence of the visible assault therefore, invisibilises the 'slow' violence of 'letting die' under conditions that 'guarantee loss of life'.

1 Gessen, Masha. "Judith Butler wants us to Reshape our Rage: An Interview". The New Yorker, February 9, 2020

At the heart of this necropolitical violence is the question of 'grievability' – a concept that has been among the key anchors of Butler's work, which she first developed in her writings about the AIDS crisis in the United States[2], and later, in her examination of how modern warfare frames certain lives as worthy of grief and others as dispensable. Grievability, according to Butler therefore, determines which lives are "safeguarded more tenaciously against danger, destitution, and death than others" (p.80), and which lives are allowed to wither away.

Grievability then, must form the basis of our understanding of both, equality and violence – for it is the unequal distribution of grievability across lives, populations, and demography that warrants recognition and "solidarity or protection" for some lives, even as other lives do not even register as lives – that is, their loss would evoke no grief, and it would be easy to engage in violence against such 'precarious' lives – both, the violence of brute force as well as a 'slow' and 'sanitized' death. Both these forms of violence are deeply intertwined – the brutal violence by police against communities of colour or the poor for instance, argues Butler in a more recent lecture[3], cannot be separated from the disproportionate effects that the COVID pandemic has on them – both these forms of violence – which Butler describes as 'fast' and 'slow' forms of 'letting die', are intricately linked and determined by the metric of 'grievability' – that is, lives that are considered valuable and those that aren't.

The concept of grievability also makes for a powerful provocation to think about why is it that despite a formidable web of legal protections for human rights, unparalleled in human history, are human rights violations so rampant? Butler argues that the humanist framework, on which the present-day human rights regime is predicated, obliterates the radical inequalities that abound and which make clear whose lives will be

2 Conrad, Ryan. "Revisiting AIDS and Its Metaphors". Drain Magazine. Available http://drainmag.com/revisiting-aids-and-its-metaphors/

3 Butler, Judith. "COVID-19, the politics of non-violence, necropolitics, and social inequality", hosted by Verso Books, Whitechapel Gallery and British Library, July 23, 2020. https://www.youtube.com/watch?v=6Bnj7H7M_Ek

vigorously protected and whose lives will be allowed to perish – "we might prefer to adopt a humanist framework and assert that everyone, regardless of race, religion, or origin, has a life that is grievable…But, if we let that be the full extent of our description, we badly misrepresent present reality, in which radical inequalities abound. So, we should perhaps make a move that is, frankly, normative: to claim instead that every life ought to be grievable (original emphasis), thus positing a utopic horizon…" (p.106).

The force of nonviolence then according to Butler, can not only help us reflect more deeply on our entangled interdependencies, crucial to the future of cohabitation on the planet, but can also help expose the "ruse by which state violence defends itself against black and brown people, queer people, the migrant, the homeless, the dissenters – as if they were, taken together, so many vessels of destruction who must, for 'security reasons' be detained, incarcerated, or expelled" (p.138). For lives deemed un-grievable, the assertion that these lives matter and that they are equally grievable, has immense political potential – the potential to rupture the hideous schemas that distinguish between lives worth preserving and those that do not matter.

While Butler's optimism may seem an anachronism in our present times, perhaps the quiet rage, grief, and indignation of precarious, un-grievable lives – demonstrated in the unprecedented #Black Lives Matter protests in the US, the intrepid protests by Muslim women in Delhi's Shaheen Bagh even in the face of gross intimidation, and the defiant migrant workers resisting a feckless lockdown – are in fact, the 'aggressive' and 'sustained' forms of non-violent resistance Butler deems vital in this time of unmitigated strife – a non-violent resistance to demand that all lives ought to be equally grievable, and that grievability must re-structure our very understanding of equality.

Study Of Bride Trafficking In India With Special Reference To State Of Haryana

***Niteesh Kumar Upadhyay* ***

Abstract

Trafficking is such a crime which has affected everyone and the impact of the same is on global level. There are various kinds of trafficking done for various purposes. Bride trafficking is an age old practice in India and there can be various modus operandi to traffic brides. Few of the traffickers come directly into the family's contact, others do it by alluring victims and promising them jobs and happy life after marriage. The main problem as to why the substantial number of cases of bride trafficking go unreported is because the brides are not willing to speak up and share their story because there is a constant fear of being manhandled by her husband and his family members and this also makes difficult even to gather information by police, NGOs and other organizations which are willing to help these brides. India and the legal policies have failed to provide safe heaven to the victims of the bride trafficking and re-trafficking. The trafficked brides are abused by the groom and his family members and there are several violations of the human rights of these brides. The human rights violations of these brides happens in three phases i.e. one at the source form where these victims are trafficked, second at the harbour during transit, and third and lastly at destination and the life of these brides is nothing less than that of a slave and she has to undergo physical, sexual and mental abuse. The research paper will particularly deal with Trafficking of Brides with special reference to the state of Haryana. The paper will deal with Definition of Trafficking, Push and Pull factors and root cause of bride trafficking in Haryana, human rights violations faced by these brides, Legal Regime available for

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combatting Bride Trafficking and suggestions of the author to combat Bride Trafficking.

Key words: - *Bride Trafficking, Human Rights, Haryana, Marriage, Domestic Violence*

Introduction

Trafficking is one of the most indiscriminate crimes happening around the globe affecting all types of people whether rich or poor, boy or girl, black or white, educated or uneducated, married or unmarried, minor or major, disabled or suffering from diseases[1]. Trafficking of young girls and children for begging, organ transplant, child labor, forced or bonded labor, commercial sex work, marriage and surrogacy is common not just in India but all around the globe.[2]

Trafficking in person report July, 2019, issued by the U.S department annually, places India under Tier-2 country list which means that the Indian Government is making significant efforts and contribution to stop Human Trafficking but does not yet meet significantly positive results. Even being a Tier-2 country, India has no policy to curb bride trafficking[3]. Indian Government and legal machinery fail to provide a safe haven to Human Trafficking victims and stop their re-trafficking, especially in the case of Trafficked Brides where the victims are re-trafficked frequently until they do not finally settle down with one person[4]. A common saying about the trafficked Brides in Haryana is that 'one will never find a Paro or Molki's grave in Haryana 'as she must have been passed through several men of different regions[5]. Human rights violation of trafficked women can be seen evidently during the research and it needs an

1 UNODC, 'Human Trafficking: People for Sale' <https://www.unodc.org/toc/en/crimes/human-trafficking.html> accessed 22 November 2017
2 US Department of States, Trafficking in Persons Report<https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> accessed 01 November 2019
3 Ibid 2
4 OCHR,'Human Rights and Human Trafficking' <http://www.ohchr.org/Documents/Publications/FS36_en.pdf . > accessed on 11 September 2016
5 Danish Raza, 'When women come cheaper than cattle', <http://www.hindustantimes.com/india/when-women-come-cheaper-than-cattle/story EJD38cJ4kaTGVn03LJzUkJ.html> accessed on 2 March 2014

analytical and reflective thinking to save and rehabilitate these women from such abuses[6]. Trafficked Brides in India have never got significant attention even though it is an age-old practice [7].

Traffickers have various modus operandi to traffic the brides. Few of them directly come into the family's contact; a few of them do it by alluring victims, promising them jobs and happy life after marriage[8]. The groom lures not just the bride but also her family and in some cases also accompanies the trafficker and goes to the victim's village to marry her and deceive her family with the promise of providing the victim a prosperous and happy life. Involvement of family always keeps the victim under pressure so that the victim does not run away, due to which bride trafficking has become rampant. Some of the trafficking victims are sold by their own family members.

In one such case, a 10-year old girl who was led into the trap by her elder sister who was herself married in Haryana[9]. The victim was thus pushed into the practice by her own sister who asked them to marry a man in the same place as herself so that they can be nearby and close to each other after marriage. The victim was instead terribly exploited and tried to run away but, unfortunately, was caught by a villager and was returned to the purchaser family. A villager tipped police about the trafficked bride and it was only then that the police came to her rescue along with the help of an NGO. The child was then handed over to the Faridabad Child Welfare Committee, and lastly to the Child Welfare Committee, Morigoan was given the custody of the child[10].

In many trafficking cases, if one of the sisters of a family is anyhow married in Haryana through a trafficker, her husband becomes the trafficker next and asks her to bring her other sisters, neighbours and friends also in Haryana for the purpose of exploitative marriage. Husband lures the trafficked wife by telling her that she will not feel lonely and

6 ibid 5
7 Navtika Singh, 'Trafficked Bride: Whether a Dream from Hell to Heaven or a Reality of Sexual Exploitation: A Study' [2017] IJIRAH 2(1), 283
8 Priyali Sur, 'Silent slaves: Stories of Human Trafficking in India' (WMC, 30 December 2013)<http://www.womensmediacenter.com/women-under-siege/silent-slaves-stories-of-human-trafficking-in-india.> accessed on 5 August 2018
9 Pankaj Sharma, 'Woman girl rescued from Haryana' (Shakti Vahini, 28 December 2013)< https://shaktivahini.org/woman-girl-rescued-from-haryana/ > accessed on 1 April 2016
10 ibid

aloof if her sisters or relatives or friends also get married in the same area as her and the trafficked victim agrees to help him this way.[11]

Another problem which makes it unstoppable is that these Trafficked Brides are always unwilling to talk and express their problems as they fear being manhandled by their husband and his family[12]. This makes the process of gathering information about bride trafficking tough for the police, NGOs and other organizations who want to help trafficked Brides.

A documentary by BBC titled "The story of India's slave brides' 'emphasizes the various problems and instances of violation of human rights of Trafficked Brides by their husbands and members of the husband's family[13]. This documentary analyses in details the modus operandi of trafficking brides to Haryana. It mentions that some of the traffickers operate in the name of match-making bureaus and say that their job is to arrange weddings. Some job agencies are also in the business of procuring trafficked brides for different purposes. These people are hardly caught because these poor illiterate women, who are away from their natural habitats hardly ever file a complaint [14].

The documentary further states that the business of Trafficked Brides is becoming more and more lucrative due to which more and more number of people have started working as dealers, brokers, marriage agents etc, who offer brides to the families seeking partners for their unmarried, undeserving, handicapped or divorced sons.[15] The reality of such marriages is constant physical and mental violation and discrimination to its greatest extent. These purchased wives end up as sex objects in bed and cheap labourers in the household and fields. Their life is nothing more than that of a slave, who faces various kinds of sexual, physical and mental abuse.[16]

11 ibid
12 Nilanjana Ray, 'Wither Childhood? Child Trafficking in India', [2007] Social Development Issues 29(2), 74
13 BBC, 'The story of India's slave brides' (BBC, 25 November 2014) <https://www.bbc.com/news/world-asia-india-30189014> accessed on 21 November 2017
14 Alena Del Estal, 'I was bought for 50,000 rupees': India's trafficked brides' (The Guardian, 7 March 2018)< https://www.theguardian.com/global-development/2018/mar/07/india-girls-women-trafficked-brides-sexual-domestic-slavery> accessed on 2 June 2017
15 supra 11
16 Empower People, 'Focusing on Empowerment of Trafficking Survivors nor on the Number of Victimhood' <http://www.empowerpeople.org.in/bride-trafficking.html> accessed on 2 June 2017

Trafficked women face several kind of human rights abuses in their day-to-day life. Their human rights violation take place in three phases (One, source form where these victims are trafficked, second, harbour during transit, and Third, at destination) of trafficking[17]. Many of them face gross violation of human rights and crimes like wrongful confinement, wrongful restrain, kidnapping and abduction, grievous hurt, rape[18]. Often these women face problems because they are married to men much older than themselves[19]. Trafficked brides when married to an elder person face problems like early death of husband, illness etc. Many of these brides are living their lives as widows at an early age of 30 or even lesser. Many of these young widow brides are sold again to a new buyer after the death of their first buyer husband[20]. People in Haryana are ready to marry divorced or widow brides because of various reasons which include death of their first wife, divorce etc[21]. Also, details of previous marriages of these men are most of the times hidden from the trafficked victim or her family.[22]

Poverty is one of the major cause also of bride trafficking like all other types of trafficking (child trafficking, trafficking for organ transplant, trafficking for forced sex work, trafficking for forced or bonded labour. Practices like dowry also forces several families of poverty-stricken areas to sell their daughters for marriage in Haryana and other states. The people at source point (parents or relatives or friends) think that they will

17 Judicial Academy Jharkhand, 'Judicial Colloquium on Human Trafficking' <http://jajharkhand.in/wp/wp-content/uploads/2017/01/05_human_trafficking.pdf> accessed on 21 September 2016
18 The Straits Times, 'Asia's gender imbalance', (The Statesman, 8 July 2015) <http://www.thestatesman.com/features/asia-s-gender-imbalance-74382.html> accessed on 16 December 2016
19 Dr. P M Niar, 'Handbook for Law enforcement Agencies in India' (UNIFEM, 2007) <https://www.unodc.org/documents/human-trafficking/India_Training_material/Handbook_for_Law_Enforcement_Agencies_in_India.pdf> accessed 22 October 2016
20 Mary Ann Jolley& Liz Gooch, 'Sold like cows and goats': India's slave brides' (14 November 2016) <http://www.aljazeera.com/indepth/features/2016/11/cows-goats-india-slave-brides-161114084933017.html> accessed on 10 October 2017
21 Anonymous, 'Northeast girls being Trafficked to Haryana for Marriage'(19 January 2012) <https://traffickingnews.wordpress.com/2012/01/19/northeast-girls-being-trafficked-to-haryana-for-marriage/ > accessed on 13 December 2014
22 Ashok Kumar, 'Trafficked brides in Haryana are reduced to sex objects and cheap labour' (The Hindu, 15 January 2014) <https://www.thehindu.com/news/national/other-states/bonded-brides/article4307384.ece> accessed on 3 November 2015

not have to pay any dowry and instead will receive certain amount of money in return. The fear of giving dowry is so pressurizing that sometimes parents sell their daughters at an age of less than 12 years, fearing that they would have to pay huge dowry for their daughter's marriage otherwise[23]. They do not want to miss the opportunity of saving money this way.

Definition of Bride Trafficking

Bride trafficking is trafficking for the purpose of marriage or under the pretext of marriage, trafficker traffics a woman or child before or after marriage with intent of exploitation. Exploitation will include forced prostitution, polyandry, rape before or after marriage, re-trafficking, abandoned, or other forced condition of life which is exploitative like slavery, servitude.

Push And Pull Factors And Root Causes Of Bride Trafficking In State Of Haryana

One of the most important factors is the inherent gender discrimination in Indian society. Bride trafficking is a symptom of social crisis, which is deeply entrenched in the dominance of patriarchal customs over women in India. Women are sold and purchased as property, which shows their vulnerability. The biggest problem due to which bride trafficking is not coming to an end is the societal acceptance of this practice. The societal acceptance of bride trafficking is so high that in some of the instances when a run-away bride is searched by the whole family and village people and ultimately found and caught, she is handed over back to the so-called husband and his family[24].

Other issues are related to female infanticide and feticide, which reduces the number of marriageable girls for marriage and therefore, people must have to buy girls from other states. There are issues both at source side and destination side which cause bride trafficking to grow in India (943

23 Haq, 'Centre for Child Rights and Campaign against Child Trafficking (CACT)' <http://haqcrc.org/wp-content/uploads/2016/06/child-trafficking-in-india-report.pdf> accessed on 13 July 2017

24 Shikha Kumari, 'Trafficked and Sold from One Man to Another, Minor Finally Returns Home' < https://www.videovolunteers.org/author/shikha-pahadin/> accessed on 29 April 2017.

females per 1000 male)[25]. On the source side, main issues are related to poverty, illiteracy and allurement whereas destination side the problem is because of female feticide, female infanticide and requirement of cheap labor etc. The other issue, which paves way for bride trafficking, is abduction of young girls and women by traffickers.[26]

The other reason that accounts for increase in bride trafficking cases is that the nature of this trade is such that women can be resold to anyone on higher prices and therefore, one has almost negligible chances of loss, losing profit or initial money[27]. Trafficked Brides are seen as very good investment for such people with no chance of loss and furthermore, one can also sexually exploit the trafficked girls, be it for some time. If someone wants kids or needs someone to take care of his old parents etc., buying bride is the best option. He also says that these women do everything they are asked to do out of fear of being killed and have very less demands in comparison to the local girls of Haryana which makes it a good deal.[28]

Poverty and female feticide as the main factors of bride trafficking and discussed the profitability of this business under which a woman can be trafficked and re-trafficked many times and the trafficker can make money at each count of the trafficking. He also emphasized that people in Haryana treat women like a commodity and never feel bad to buy or sell women for the purpose of marriage. According to him the biggest problem in curbing bride trafficking is the attitude of the society and police towards this type of crime. He also discussed various instances when police discriminated the bride trafficking victims and created hurdles in their rescue.[29]

It is also observed that the girls are married at a very young age (sometimes even less than 14 years) whereas the boys are married at a higher age of minimum 23-24 years, because of which, the availability of

25 Census report <https://www.census2011.co.in/sexratio.php> accessed on 10 September 2018

26 Deebashree Mohanty, 'Slave brides' <https://www.dailypioneer.com/2015/sunday-edition/slave-brides.html> accessed on 28 July 2017

27 ibid 26

28 Supra note 24

29 Halabol, 'TBI Heroes: An amazing Indian who aspires to Empower People' (27 March 2013)<https://www.thebetterindia.com/6993/tbi-heroes-an-amazing-indian-who-aspires-to-empower-people/> accessed on 29 December 2018 see also Empower people Annual report <http://www.empowerpeople.org.in/uploads/3/7/2/4/3724202/annual_report_2016-17.pdf> assessed on 13 March 2018

women in the village for local boys is less. Many a time's boys study outside the village in different cities and places and when they come back to their village after studies, they are already above marriageable age according to the village standards. In this situation, the families of the boys are left with no other option than to purchase a Paro or Molki (in their terms) to marry their boys [30].

These trafficked brides are often called as Paro and Molki "and when imported in Haryana, they work as cheap labourers. They are sent to do the daily farm work while the local brides seldom go to the fields. One head of a family, Ram Singh (name changed) said, "they (Paro) do all types of work and all of the work, they run very fast to and fro in the fields, home, for cattle of water, rearing, management night duties, etc"[31]. A local daily labourer costs about Rs.12,000 for a season whereas a trafficked girl cost only Rs.10,000-12,000 for a life time. These women complete both household as well as agriculture work and they can be also be resold. Therefore, it is a kind of investment for these local people to buy these trafficked women.[32]

At the time of buying, two things play very important role, one is the age of the bride and other is the beauty and virginity. Also young girls (as mentioned above) work for longer hours, they are physically more active while doing household chores as well as work in the fields and therefore, if one wants to buy young woman, he has to pay more. Young women or child brides also have very less chances of running away, which makes them more in demand as in the past; there have been several cases in which trafficked brides have run away from their husband's homes in Haryana.[33]

Trafficked birdies often stay in polyandry and the system of polyandry affects the land division among offspring's in a positive way. In Haryana, having multiple husbands of a purchased wife is very common.[34]

30 supra note 14
31 supra note 5
32 supra note 15
33 Ravinder Kaur , Surjit S. Bhalla , Manoj K. Agarwal , Prasanthi Ramakrishnan, 'United Nation population fund Sex Ratio Imbalances and Marriage Squeeze in India: 2000-2050' (UNFPA, April 2016) <https://india.unfpa.org/sites/default/files/pub-pdf/Sex%20Ratio%20Imbalances%20and%20Marriage%20Squeeze.pdf> accessed on 15 March 2017
34 Interview with Late Dr Krishna Pal Malik on Topic related to Bride trafficking In Haryana on 13, March 2013.

Polyandry promotes single women available for many brothers who will give birth to less children while staying with all the brothers combined as compared to the number of children born if each brother is married. The number of such children will obviously be less than the number of kids if all the brothers would have been married to their respective wives. In case of each marrying a different woman would lead to division of property, which is mainly the land. So, this system somewhere restricts the division of the land in the offspring of all the brothers. The people of Haryana are left with very small land holdings as at a number of places, their lands have been acquired by Government under various land acquisition schemes. So, whatever part of land these people are left with, they do not want to further divide it.[35]

Dowry and crimes related to dowry are also the cause of female feticide in India and female feticide is the reason for bride trafficking in Haryana. Parents of girls are always worried about the problem of exorbitant amount of dowry they will have to give. To add to it, there is always the fear of facing dowry related harassment and various kinds of cruelties being inflicted on girls by their husbands and their families. Number of crimes registered against the husbands and their families/relatives is also very high in India. National Crime Records Bureau statistics reveals that during the year 2014, there were 1,22,877 number of cases registered against the husbands and their families for cruelty and 1,13,403 numbers in the year 2015[36]. It is beyond doubt that there is a direct relationship of these crimes with the status and desirability of girl child in India. These crimes increase the discrimination against girls or women and make them more unacceptable in the society. Discrimination between girl and boy starts right at the time of the birth of the girl child because the parents know that they will have to pay a huge dowry for her marriage. The whole societal attitude towards women changes because of such crimes. Not only crimes related to dowry but overall crimes against women are also very high according to NCRB data of 2017 [37]. The large number of these crimes puts a question mark on the safety and security of a girls in the country and which ultimately leads to large number of female feticides, infanticide etc.

35 supra note 5
36 super note 25
37 National Crime Records Bureau, Crime in India 2017 Compendium, <http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf> accessed on 2 November 2019

There are various other factors, which also create a demand and supply phenomenon of trafficked brides. Unemployment affects the marriage choices at both at the source and destination side of bride trafficking. If the trafficked bride's parents/guardian or the bride herself is unemployed, the chances of bride trafficking increases. During one of the interview Mohammad Ismail who is around 25 years, told that when the boy is unemployed, no parent in Haryana will give their daughter to him for marriage which forces the boys to buy girls from Jharkhand, Bihar, Bengal or Orissa etc. Mohammad Ismail also told that some of his friends who are staying in nearby villages are married to Paro because only a Paro's parent can marry their daughter to unemployed men in Haryana. He further stated that these men do not ask any dowry and because of which girl's family makes no exploration regarding employment and character of the groom. Sometimes the family and groom also lie to the parents that they are employed and working in some good company or government department. He said that no doubt it is a fraud in marriage but what to do when no one is available for marriage in the community.

As per Census 2011 it was 14.43 Crore landless agricultural workers are in India [38]. The number is alarmingly very high and due to which large number of people live below poverty and have nothing to sell at the time of marriage of their girls and fall prey to the trafficker and marriage agents. Landless workers because of their poor economic condition sometimes marry their daughters to far off villages in Haryana to the grooms who ask for no dowry in return without thinking of what might befall their daughters and what could be the hazards of such marriage alliances [39].

Social vulnerability caused because of religion, caste, colour and creed also create hurdles in marriage and due to which people sometimes are forced to buy women for marriage[40]. There are various other factors which increase the bride trafficking and some of them are natural

38 Dr. K. Hanumantha Rao (Centre for Wage Employment and Poverty Alleviation), National Institute of Rural Development, Rural Development Statistics 2011-12, <http://www.indiaenvironmentportal.org.in/files/file/rural%20development%20statistics%202011-2012.pdf> accessed on 27 May 2016

39 Krishnaji,'Poverty and Sex Ratio: Some Data and Speculations.' [1987] Economic and Political Weekly, XXII, No 23, 892- 897.

40 Aditya Parihar, 'Crime Against Women Inharyana: An Analysis' [2015] IJHSSI 4, 16-24

40 ibid

calamity, migration and livelihood conditions. Natural calamity disturbs the economic fiber of a family and parentless children are more vulnerable to bride trafficking. The ethnic clash groups in Assam are more vulnerable to the traffickers and are considered as soft targets for luring.[41]

There are many other factors like corruption of police officers and other law enforcement officers which also promote bride trafficking to a large extent. Bride trafficking is supported by the villagers and anything which goes against it is not tolerated because of which during lot of rescue operations these villagers become violent and even try to manhandle police personals and NGO workers if they try to rescue the victim. [42]

Human Rights Violation Faced By Trafficked Brides

Trafficked Brides face serious human rights violation during and after the process of trafficking. Trafficking is a continuous human rights issue and trafficked victims face this every day. In Haryana there are many cases, in which women are killed, physically and sexually abused and re-trafficked many times. Domestic violence, discriminations are some of the common woes, which trafficked brides have to face often. They are discriminated to the extent that no one wants to help them, not even the police. Furthermore not only the women, even their children face discrimination because they are sons/daughters of trafficked bride.

One of the researches done by Drishti Stree Adhyayan Prabodhan Kendra reflects that out of 315 trafficked brides, 105 women face domestic violence, which is around 33% of total bride trafficking victims. Out of these, 6 women also reported that they are forced to have sexual intercourse with multiple partners and this ratio is nearly 2% of the total trafficked victims taken for sample.[43]

During interview the researcher came across a woman named Rubina (name changed), whose one finger was broken and she narrated that it was broken by her husband Mobin. Rubina was only 14 years old when

41 Ravi Kant, 'Human Trafficking: Two Assam girls rescued from Haryana', (Shakti Vahini, 2 September 2013) <https://shaktivahini.org/human-trafficking-two-assam-girls-rescued-from-haryana/> accessed on 25 May 2016

42 ' Ibid

43 Impact of Sex Ratio on Pattern of Marriages in Haryana, (Drishti Stree Adhyayan Prabodhan Kendra, 17 November 2010) pg.39.

she was sold to Mobin of Ghaghas, Moolthan, Mewat in Haryana. Mobin paid around Rs.12000 to the trafficker to buy her. She further narrates that around 2 years back, her husband broke one of her fingers and physically harmed her after which Empower People, an NGO reported the issue to the police and the police arrested Mobin. After few hours, Rubina requested the police to leave her husband because she was ultimately dependent on him. Police released Mobin with a warning but his domestic violence did not stopped completely. Rubina works as a laborer and whatever money she earns is pocketed by Mobin and if he does not get the money, he abuses her physically and verbally. Rubina reported that after the police incident, Mobin has stopped beating her or harming her physically but he continues to abuse her verbally.

Sexual abuse of trafficked bride by trafficker, middle men, husbands and his family members is a very common practice during and after trafficking. Rape is a means for the traffickers to exert authority and power over the victims and the social stigma attached to rape pressurizes the victim to be in an even more vulnerable situation and this stops the victims from raising their voice against the ill-treatment faced by them[44].

Many of the trafficked brides are forced to prostitute by their purchaser. Men in Haryana are lazy and do not want to work. Most of them go to market, play cards and come back home in the evening in a drunken state. These men need money for alcohol and their other luxuries, which they cannot afford. So some of them have started using trafficked brides as sex workers. So these women not just satisfy sexual urges of their men but also earn money for them by being forced into prostitution. Prostitution is one of the gross violations of physical integrity of a woman and when a woman is purchased as a bride, forcing her prostitution becomes easy [45].

Trafficking promotes poverty because the children of bride trafficking victims do not get any share in property of their so called fathers[46].When no property is given to these women and their off-springs, they become more vulnerable and are abused by society. Most of these women live in

44 Conference on Prenatal Sex Selection in India, <http://www.nhrc.nic.in/disparchive.asp?fno=2129> accessed on 23 June 2017

45 UNIFEM, 'Combating Trafficking in Women and Children: A Gender and Human Rights Framework' <http://www.childtrafficking.org/pdf/user/unifem_gender_and_human_rights_framework.pdf> accessed on 14 August 2017

46 supra note 22

poor living conditions and have no means of sustenance. Some of them work as domestic help or agriculture labourers in fields to make both their ends meet.

Trafficked Brides are purchased as commodities and hence can also be sold as a commodity. These women are trafficked, re-trafficked and abandoned according to the wish of the trafficker or the purchaser. Trafficking of women is quiet profitable as unlike arms and drugs trafficking which can be trafficked once whereas a trafficked brides is source of earning for every time she is sold and she can be sold many a times which makes more money to trafficker .[47]

Legal Regime Related To Combat Bride Trafficking

Bride trafficking in India is prevalent since decades but regrettably, at hand are no significant laws to tackle the crime effectively. The Immoral Trafficking Prevention Act, 1986 (hereinafter as, "ITPA") is a special law and focuses on trafficking for commercial sex work (prostitution). ITPA is incompetent to handle human trafficking cases especially for purposes like marriage. legislations like Juvenile Justice (Care and Protection of Children) Act, 2015 and the Bonded Labour System (Abolition) Act, which are also not well equipped with legal provisions related to human trafficking or bride trafficking. There are Acts like the Goa Children's Act but even this Act is insignificant in controlling human trafficking as the application is territorial and is only in relation to trafficking of child. Some protection from trafficking of women is given under Indian Penal code but they are not sufficient to control trafficking for the purpose of marriage.

The most important section which can directly affect bride trafficking victims is Section 366 of Indian Penal Code which deals with provisions of kidnapping, abducting or inducing a woman to compel her for marriage. This provision is one of the most misused provisions and is usually evoked in cases of love marriage. Lot of arrest cases are registered under these sections which have nothing to do with forced marriage, but they deal with the aspect of elopement. If Section 366 of IPC is used properly to control bride trafficking, we do not need any other specific legislation for bride trafficking but the Section fails to understand the plight of the trafficking victims who directly fall under this particular

47 supra note 45

section. These sections are most of the times used with malafide intention of teaching someone a lesson usually victims of which are young couples who have eloped for marriage or for a love affair.

Indian penal code section 370 after the criminal law amendment Act 2013 becomes the only law of India which comprehensively defines trafficking and aspects of trafficking [48]. The definition provided by IPC section 370 is quiet comprehensive but it still does not define bride trafficking. Various provisions of IPC have been used in different cases in the past but we hardly find any case of bride trafficking decided by courts in Haryana.

India enacted Immoral Trafficking Prevention Act (ITPA) 1986 because of two major reasons. The first reason for enacting ITPA was that India signed and ratified the International Convention on Suppression of Immoral Trafficking and Exploitation of Prostitution of Others in 1995 due to which India was supposed to make domestic law in consonance of the international [49]. Constitutional Articles like Article 14, 15, 21, 23 also call for some law to curb human trafficking.

ITPA is a loosely drafted act and does not even contain the definition of human trafficking. The Act mainly deals with trafficking for the purpose of prostitution and sexual exploitation. It does not elaborately and exclusively cover bride trafficking. Furthermore, the Act does not provide any rescue and rehabilitation model or policy for the victims of trafficking.

ITPA does provide provisions related to prostitution, running prostitution rackets and socializing with the customer etc. but does not deal with the aspect of human trafficking for the purpose of forced marriage. Under section 5A it defines immoral trafficking but does not take into account, any aspect of forced marriage.

Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018

This Bill has come as a hope for many trafficking victims but it lacks clarity. The existing bill is patchy and scattered across diverse laws,

48 Definition of Trafficking <http://indiacode.nic.in/acts-in-pdf/132013.pdf> accessed to 3 June 2019

49 UNHR, 'United Nations Human Rights office of High Commissioner' <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx> accessed on 28 September 2017

which look trafficking from wide-ranging, and s, inconsistent objectives. A "comprehensive law" was expected to harmonize different approaches and integrate existing laws into one [50].

The Anti-Trafficking Bill does not define trafficking but only incorporates definition given under section 370 of Indian Penal Code. The current bill however increases the range and domain of types of trafficking by adding a new category of "Aggravated forms of Trafficking", with the increased quantum of punishment up to 10 years and life imprisonment. Gradation of offences is illogical: the new bill provides grading and according to which commercial sex work in simple trafficking whereas begging is aggravated from of trafficking. The bill does not clarify the motive of doing so.

The new bill increases institutional bureaucracy by creating multiple agencies including anti-trafficking officers, National Anti-trafficking Unit, state anti-trafficking unit etc which will result in shifting blames and burden on each other. Multiple agencies will reduce the accountability of each one of them.

The Bill presents a new law which might prove effective because of broad definitions of offences, the lack of right to anticipatory bail, presumptions of burdens of proof, stringent minimum sentences, cognizable and non-bailable offences and the creation of absolute liability offences. These features of the bill will make punishment related to trafficking more deterrent [51].

The new bill defines more elaborately what is human trafficking and includes trafficking done for the purpose of bearing child, either naturally or through assisted reproductive techniques, for the purpose of marriage or under the pretext of marriage trafficking a woman or child after marriage, by causing or exposing the person to a life-threatening illness including acquired immune deficiency syndrome or human immune deficiency virus etc. which is good for law enforcement agencies and judiciary to aptly decide on cases of human trafficking.

If the Bill is passed and becomes a law; bride trafficking problem will be taken care of as under chapter 12 of the Bill it comes as an aggravated

50 ibid

51 ibid

form of human trafficking, if bill is not passed we require change in current ITPA.

Suggestions to Curb Bride Trafficking

Bride trafficking is a multifaceted problem and the solution to this menace also needs a multifaceted approach. No single suggestion will actually suffice the purpose of curbing Bride Trafficking and thus multiple suggestive measures need to be taken into consideration.

(1) Active role of Civil Society Organization in Rescue and Rehabilitation of Trafficking Victims:

There are a lot of instances seen in the past, in which due to the active role of civil society organizations human trafficking was curbed and victims were rescued. Not all efforts of the NGOs lead to a successful raid and rescue of trafficking victims and one such story is of Reema Gosh (name changed) who was rescued by the NGO, MARG, which started investigating her case and took help of C.B.I., Delhi for her rescue. The people of the NGO first went to Tina's school to inquire about her and spoke to almost 25 of her classmates and later on discovered that she used to talk to someone called Rajan over the phone. MARG people had shown pictures of Tina to all taxi stands in the vicinity and one of the drivers recognized her and told MARG people that she used to talk to Rajan who lives in Delhi. MARG people also stayed in touched with Tina's family members and one day received a call from her grandmother who told them that Tina was in Chandigarh. With the help of CBI, MARG found that she was in Delhi and they raided the place and rescued her [52]. NGO, can play an active role in rescuing victims of trafficking particularly victims of Bride Trafficking.

52 supra note 1

(2) Police Advocacy is an important intervention that has to be fine-tuned .[53]

To curb the issue of bride trafficking in Haryana there is a need for exchange of knowledge regarding best practice to curb human trafficking or bride trafficking. All the stakeholders including NGOs, ministries, police and anti-human trafficking units should work in collaboration and then only the problem of bride trafficking can be curbed. Police and anti-trafficking units may set up help lines and special desks to control bride trafficking in Haryana.[54]

(3) Child Welfare Committee should have members of Civil Society.

The child welfare committee is managed by the civil society in most of the places but is different in case of Gurgoan, where it is run by the administration that leads to hampering its function. Such designing of the system leads to chaos and the simplest of works takes inordinate time to get completed. Because of the members being subordinate to the deputy commissioner in the administrative set-up, no child welfare official may raise any question. It is suggested not to have bureaucrats in the system as it somehow shows lack of sensitivity in child handling cases. [55]

(4) Programs at a large scale should be conducted especially by SP/DCP to sensitize police officers about probable cases of Bride Trafficking.

53 'Economic Review of India', National Portal <http://www.india.gov.in/allimpfrms/alldocs/12262.pdf> accessed on 2 November 2013

54 NCW, Advisory on Preventing and Combating Human Trafficking during Commonwealth Games, <http://ncw.nic.in/pdfFiles/Advisory-HT-CWG-2010.pdf visited on 20/09/2011> accessed on 4 November 2013

55 Ravi Kant, 'Child welfare committee should have members of civil society' (Shakti Vahini, 23 July 2012) <https://shaktivahini.org/child-welfare-committee-should-have-members-of-civil-society/> accessed on 18 November 2018

(5) Repatriation and Reintegration of the Survivor into the Community

To help trafficked brides from re trafficking a long term sustainable rehabilitation plan is needed and repatriation may not be a very vice option. Government should develop long term impactful rehabilitation mechanism which helps these trafficked brides with special needs. for example 44 trafficking survivors are trained by an Ngo to work as Guard and around all of them are placed in Kasturba Gandhi Balika Vidyalaya (KGBV) schools in Andhra Pradesh[56]. More such jobs can be created for trafficked brides whose repatriation is not possible.

(6) Strict Laws to Punish Traffickers

It is a need of time to have strict laws to punish persons who abuse and exploit the Trafficking Victims. Law should also ensure that these trafficking victims are treated properly and are not maltreated by police or any other government agencies.

(7) Campaigns to Raise Trafficking Awareness

More and more Campaigns for raising trafficking awareness are needed and distributing leaflets and other informational material can do this. Legal aid societies of different law schools can also contribute through their legal awareness programs about trafficked brides especially in source and destination area. Involvement of law students and law colleges/university will assure that these women not just get awareness about trafficking but also get knowledge of the legal remedies available and free legal aid by legal aid society. These legal aid societies will be very useful as most of them will be familiar with the local language and local situations. People in states such as Bihar, Odisha and Bengal, which show high numbers of trafficked women, should be taught about human

56 GOI, 'Ujjawala: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation, <https://wcd.nic.in/sites/default/files/Ujjawala%20New%20Scheme.pdf> accessed on 1 November 2019

rights violation of their daughters and sisters, awareness campaigns can also discuss in detail, the modus operandi of bride trafficking and how people can prevent them from the crime. Campaigns in the destination state (Haryana) should focus more on checking female feticide, safeguarding women rights and ensuring punishment for trafficking. These campaigns will surely put a limit on the number of trafficked brides in State of Haryana. These campaigns should be more trafficked bride centric and should also make women aware of possible remedies.

(8) Compulsory Registration of Marriages in India

The major problem that causes bride trafficking is no identity of the victim and no knowledge about the groom's marital status. There are cases in which men have multiple wives in different states and none of them have a clue about the same. A solution to this problem is that the registration of marriages should be made compulsory notwithstanding the community, caste, religion etc. of the person. Combating Human Trafficking also requires that source areas should be made aware of marriage registrations. Mandatory Marriage registration will reduce fake and fraudulent marriages happening all around the country and will keep a check on Human Trafficking for the purpose of marriage as well. Moreover, marriage registration will also help the anti- trafficking units and families to trace the address provided in the marriage documents.

Conclusion

The present study of bride trafficking in the state of State of Haryana has focused on problems and daily life challenges faced by the trafficked brides and the ways in which their problems can be resolved. Various case studies of the victims helped us understand the real nature of this crime and also about its magnitude. Trafficked Brides face various kinds of violations ranging from sexual violations, economic exploitation and social outcastes. After the study researcher has found out that female feticide, quest for cheap labor, female infanticide, dowry demands, poverty, illiteracy, land distribution and property ownership etc. are the main reasons due to which victims are trafficked from far off places to the State of Haryana.

Trafficked Brides are shared among brothers, uncles and sometimes even with father-in-law. Some trafficked brides are raped at all three places of: source, transit and destination by middlemen, brokers, traffickers and the so called husbands.

The researcher took interview of 50 victims out of which trafficking can be clearly proved in 20 cases and the rest can be taken as cases of slavery which makes all the 50 cases, cases of trafficking as trafficking can also be done for the purpose of slavery.

There are various national and international laws which may help curb bride trafficking but, due to corruption and insensitivity of the society towards trafficking victims, these laws are never properly implemented. Researcher has also found that mostly national legislations like ITPA 1956 , IPC etc. define Human Trafficking but do not define bride trafficking or trafficking for the purpose of marriage per say. So as there is no proper definition of this crime, it largely remains misunderstood. ITPA 1956 needs amendment to protect bride trafficking victims from being trafficked and should also provide rehabilitation and rescue facilities to the trafficked brides.

Trafficked Brides need a very different approach of study and rehabilitation as most of these victims have kids and do not want to leave their husbands. Some of those who wanted to move out of this forced wedlock have been rescued in past but majority of these trafficked brides are unwilling to move out of their family. In this type of trafficking, post trafficking actions and rehabilitation programs become difficult. To stop this type of crime a good preventive pre-trafficking contained action is needed. Trafficked Brides are forced to marry but forced marriage legislation in India is not very robust to curb the number of trafficked brides. The right to marry and chose an partner is a fundamental right but these women are not allowed to choose their partners [58].

In another case, a girl of 15 years of was bought to marry an old man but she did not like to stay with him and thus was sent back, in exchange of another woman. In both of the above cases, no formal marriage took place and the men think that they are free to leave these women, re-sell them etc. and hence it appears to be nothing more than sexual slavery[59]. Around 40 percent of women trafficked in Haryana are trafficked due to poverty according to the research report[60]. The biggest challenge the

58 Shakti Vahini vs Union Of India on 27 March, 2018
59 ibid
60 ibid.
61 supra note 43

trafficked brides face is the attitude of the society and the law enforcement officers. When these women approach the society or police for any kind of support, they are neglected and never taken seriously.

The declining sex ratio has far reaching social consequences. As a major consequence, women would become the targets of violence. Polyandry is slowly evolving as a reality in State of Haryana. It is also clear that because of pre-natal diagnostic techniques for sex determination, sex selective abortions are increasing and female infanticide is rapidly declining the sex ratio. Unless urgent action is taken across all sectors to reverse this trend of low sex ratio, the repercussions for future generations will be devastating and the number of trafficked brides will increase .

After going through the situational analysis of bride trafficking victims, researcher concludes that bride trafficking is because of poverty and low sex ratio

Corruption: A Violation Of Human Rights

Rajiv Verma *

Abstract

Is corruption one of the key contributors to the violation of human rights? This article argues the need for bringing this query at the centre stage of academic inquiry both for the scholars of public administration and legal studies. Many developing countries like India suffer from the problem of poor delivery of public services. It majorly affects the poor as government delivers many of their basic needs through welfare programmes. Scholars of public administration have attributed this failure to faulty policies coupled with implementation challenges. While scholars of developmental administration have identified corruption as the most important factor in poor delivery of welfare schemes, majority of the studies have only examined how corruption undermines laws and the ways delivery agents circumvent the governance process to their advantage. While these studies have examined corruption as a governance challenge, it is also imperative to perceive them from the Human Rights perspective. As the poor delivery of public services affect the poor adversely, these shortcomings must also be analysed as a gross violation of Human Rights. It will add to the ever-growing scholarship on assurance of human rights. This journal article is an attempt in this direction. It calls for focussing the problem of corruption as a hurdle in the implementation of human rights.

Key words: - *Human Rights, Corruption, State Incapacity, Government, Welfare Schemes.*

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Introduction

Human rights are inherent to all human beings and include rights assuring life with dignity. Any denial of basic amenities like food, water, health, or ability to seek justice is a violation of 'Human Rights' (Terracino, 2008). This violation is more prevalent in developing countries like India where corruption is rampant in welfare programmes of the government. Welfare programmes in these countries provide basic amenities to the poor citizens. Therefore, it calls for establishing a link between corruption and human rights (see Gathi, 2009).

The very premise of a modern state is to protect the rights of its citizens and prevalence of rampant corruption shakes this foundation. Moreover, it is the duty of a state to assure life with dignity to all its citizens. The incidences of corruption benefit only the few. It undermines the legitimacy of the state and violates human rights. Scholars have examined 'human rights' and 'corruption' as the two sides of the same legitimacy coin (Rajagopal, 1999). Therefore, corruption should also be analysed as a key factor in the violation of human rights.

Contemporary studies on corruption are largely dominated by the scholars from economics and public administration departments. Economists make an argument that market based economy will do away with corruption. Therefore, rolling back of state is the best way to reduce corruption. This argument does not hold ground in developing countries. In fact, a well-functioning market economy is missing in these countries. Hence, state alone takes the responsibilities of supporting the poor citizens. As a result, there is massive public spending in welfare programmes offering food, healthcare, subsidies, and other services to the poor. Unfortunately, these welfare programmes fail to deliver the desired results. Studies claim that in welfare programmes of India, there is systemic siphoning of money at various levels of delivery chain, and the beneficiaries are adversely affected (Chandra, 2015; Farman and Gupta, 2013; Jenkins, 2006; Transparency International, 2005). As rolling back of public expenditure is not a viable option in the absence of a market-based economy, grounded research on how to curb corruption becomes inevitable, and linking this problem to human rights becomes desirable.

For the scholars of public administration, the problem of corruption has occupied the centre stage of governance challenges in delivering services to the people. In developing countries, state is a welfare state implementing welfare programmes but the administrative set up is yet not free from colonial legacies, which makes their structure exploitative. Mainstream writings have tried to solve this through legislating on anti-

corruption efforts and by inducing structural reforms in the administrative set up. However, these efforts have not yielded desired results. Studies have shown how these reforms aimed at curbing corruption failed to deliver at the grassroots level in India (see Verma et.al, 2018). Delivery agents circumvent anti-corruption efforts to their advantage and reforms fail to deliver.

In response to the failures of anti-corruption endeavours, scholars from developmental studies and public administration have made an argument in favour of 'rights based approach' for the delivery of welfare services. This approach advocates for the empowerment of beneficiaries and conceives that public services should become a matter of rights. It sparks 'entitlement versus rights' debate in the context of welfare services of the state. This paper intends to take this argument a little further by making it an 'entitlement versus human rights debate'. Analysing the problem of corruption as a human rights problem will certainly encourage scholars from the field of law, human rights, and administrative sciences to pursue in-depth research work on how rights based approach could be adopted for curbing corruption. These efforts will provide policy inputs to the state for corruption-free delivery of welfare services. Moreover, these efforts are more required in developing countries, as many of citizens do not get access to basic amenities because of persistent corruption.

The argument made for linking corruption to human rights is also based on the way these two concepts are defined. While corruption is an abuse of entrusted power for private gains,[1] human rights violation jeopardises private rights in the hands of public authorities. It highlights two observations. First, there is a strong link between corruption and human rights. Second, there is a gradual shift in considering corruption as an activity affecting the individuals. Both these observations make a strong claim that corruption violates human rights (Terracino, 2008). Furthermore, it is an established fact that poor deliveries of welfare schemes affect people individually. Therefore, the problem of poor delivery of services under welfare schemes should become a matter concerning human rights. This article highlights the need for investigating corruption as a bottleneck in safeguarding human rights and the way forward. The article has four sections. The first section defines corruption

1 https://www.un.org/en/sections/issues-depth/human-rights/ retrieved on 28/08/2020.

and explains how it influences the lives of the poor. Second section looks into the concept of human rights and tries to establish a relationship between corruption and human rights. The third section identifies the link between corruption with democracy and development. The fourth section gives the concluding remarks and throws light on the prospective research on this topic.

Corruption and Its Impact on Marzanalized

Scholars have classified corruption into different types and the way it affects people. Based on these classifications, it is claimed that the incidences of petty corruption[2] affects the poor directly. It refers to corruption where state plays the role of a rent seeker. Petty Corruption refers to routine corruption involving small sum of money. It makes corruption systemic in nature.[3] People pay bribes to the officials for getting their work done. Even if the work is a legitimate one, money has to be paid. It is referred to as speed money. Riley (1999) defined this type of corruption as 'Robinhood in reverse phenomena'. He claims that through this type of corruption, government officials become rich by extracting money from the poor. It is an act completely reverse of what Robinhood [4] did. In fact, this kind of corruption inflicts severe harm to the poor by making corruption systemic. A study on the impact of 'Good governance reforms' in Bihar, India showed that whenever petty corruption became systemic, anti-corruption reforms had very little impact and the poor continue to struggle for basic amenities (Verma et.al, 2017).

In contrast to petty corruption, grand corruption[5] lowers the income of the government. Fallout of this is that government gets less money to spend on the welfare services. In the case of petty corruption, there is provision for the delivery of goods but officials extract money for their selves. In grand corruption, politicians grab the lion's share right at the beginning and very less money is there at the disposable of the government for

2 Petty Corruption refers to routine corruption involving small sum of money. It makes corruption systematic in nature.
3 https://www.transparency.org/en/what-is-corruption# retrieved on 28/08/2020.
4 A character, famous for looting the rich and distributing the loot among the poor.
5 Grand Corruption refers to political corruption where the amount involved is huge. It affects the spending capacity of the state.

welfare activities. Both these kinds of corruption affect the lives of the poor and deny them a dignified life. Therefore, both grand and petty corruption affects the delivery of welfare goods and violates human rights.

By looking at the impact of corruption on the lives of the poor citizens, it would be imperative to proclaim it as a bottleneck in the development process. Even when governments in developing countries allocate huge sum of money for the welfare programmes, the problem of corruption does no good for the poor. It is imperative to consider corruption as one of the major causes for the perpetuation of poverty. Civil society in India has rallied people against corruption. They consider corruption as hampering the rights of the citizens. As every individual has a right to demand whatever is due, mobilisation against corruption witnessed grand success. It took the form of organised resistance.[6] It was because of these kinds of organised resistance and advocacy that led to the enactment of 'Right to Information Act. Ever since the enactment of this Act, the thrust on a transparent and accountable public service has occupied the attention of government and academic. Various other reforms have been initiated in around this legislation for curbing corruption (Verma, et al, 2017). Right to Information Act 2005 mandates timely response to citizens.

Moving ahead, few of the states in India have also enacted a landmark 'Right to Service Delivery' Act for guaranteeing timely delivery of public services. In spite of these legislations, efforts of the governments and support of international organisations, things have not improved for the poor. For these reforms to succeed, emphasis needs to be laid on prompt service delivery as a human right of the people. Some scholars argue that no efforts are yielding results because anti-corruption reforms are not consistent with the rights of the poor. Their only concern is with the promotion of market led growth (Gathi, 2009). Therefore, the need for the hour is to adopt a 'Human Rights based approach' for the better delivery of welfare schemes.

The Connection between Corruption and Human Rights

The purpose of Human Rights is to protect people from abuse and oppression (Ignatieff, 2011). It is to ensure that every individual enjoys

6 SSEVK in Meshi, East Champaran, Bihar have rallied for the cause of Mushars.

equal opportunity for development. In the previous section, we concluded that corruption adversely affects the lives of the poor. Taking things forward on an analytical level, Akhil Gupta (2012) perceived the incidences of corruption, red tape, and inaction of the government as an act of 'structural violence'. He claims that structural violence kills nearly two to three billion people in India (ibid). As right to life forms the core of human rights, it is high time for branding any acts of corruption as the key element in the violation of human rights. It was back in 2017, when the Human Rights Council also outlined a framework defining the negative impact of corruption on human rights.[7] Since then, the literature on how human rights mechanism is ensuring services to the people and getting rid of corruption is ever growing.[8]

Scholars have advocated for rigorous research on exploring how candid the link is between corruption and human rights (Gathi, 2009). As narrated in the previous sections, we find that state has a very important role in ameliorating poverty by having various programmes and schemes for delivery of basic amenities. In developing countries, healthcare, education, subsidies in farm and housing are some of the most basic services offered by the state. Anthropological works have shown how some of the world's largest welfare programmes (like the 'Integrated Child Development Services' [9] in India) plagued with corruption fail to deliver essential services like nutrition (Verma et. al, 2018).The beneficiaries health i.e. health of small children and lactating mothers, in this case, is compromised. Systemic nature of corruption when it comes to the delivery of services under the welfare programme is very much evident (ibid). Citizens have to bribe the officials to get access to basic services including justice (Terracino, 2008). As bribery has a liner effect, the officials who receive bribe pass it on to higher authorities and make them corrupt too. By doing this, they circumvent the system and adversely affect the plight and rights of beneficiaries. Further, it also

7 United Nations. The negative impact of corruption on the enjoyment of human rights. 2017 Jun. (A/HRC/ RES/35/25 23). Vol. 11925.

8 Brems E, De Beco G, Wouter V, editors, The role of national human rights institutions in the protection of economic, social and cultural rights. In: National human rights institutions and economic, social and cultural rights [Internet]. Cambridge: Intersentia Publishing; 2013. p. 7 –29. Available from: https://biblio.ugent.be/publication/3177684/file/6788291.pdf

9 It is a government programme in India providing food, preschool education, primary healthcare, immunization, health check-up and referral services to children under 6 years of age and their mothers.

creates undue delay in the judicial process and the corrupt officials save themselves from the charges of corruption (Gathi, 2009).

Another facet of the link between human rights and corruption indicate the protection of rights of the corrupt officials. Corrupt officials take rescue under the umbrella of human rights and save themselves. In fact, in this situation, the very violators of human rights are conscious of their own human rights. Further, the nexus between the political masters and bureaucracy undermines the rights of ordinary citizens due to prevalence of corruption. It is an important area of inquiry as it compromises nearly all the rights guaranteed under the rubric of human rights. The following section will explore the impact of corruption on democratic process and the ways it undermines human rights.

Human rights, development, and democracy

After the end of Second World War, many countries got independence from their colonial masters. Their immediate goal was establishment of democracy and development of the country through democratic set up/institutions. The state was meant to be a welfare state ensuring participation of all in the political process, protection of social and economic rights and empowerment of the marginalised sections of the society. The idea behind the welfare schemes was noble and just but the implementation aspect was challenging especially the administrative structure of the country. The contradiction was that countries like India inherited a drained state with an administrative set, which was exploitative in nature. In other words, their administrative set up was more suited to serve the colonial masters rather than delivering welfare to the citizens. In these circumstances, with the increase in investment in development/welfare schemes, the scope for corruption grew. Bureaucracy made itself indispensible with all the flaws of 'sala prismatic society' [10] model of Riggs. As a result, corruption got entrenched and it was convenient for the people to bribe the officials than being stuck into red tape. Therefore, corruption got administration in action. Many scholars perceived this as grease in the delivery of public goods in otherwise red-taped bureaucracy (Aidt, 2009; Meon and Sekkat, 2005),

10 Riggs Prismatic Sala model represents an administrative set up in the traditional or developing society. Nepotism, heterogeneity, formalism are some of the characteristic of this administrative set-up.

and in obtaining licences and permits (Shleifer and Vishny, 1993). As a result, corruption thrived well, as it benefitted both the payee and the payer, and in no time, it became a normal way of life (Bardhan, 1997). It posed a greater challenge as corruption became a way of life.

The challenge is that systemic corruption refutes the possibilities of any one-time anticorruption campaign for eliminating corruption as witnessed in India. [11] It gradually encompasses all the three organs of the state. It has been argued that one can get rid of systemic corruption only through 'human rights' based approach (Gathi, 2009). This approach has to be implemented at all the three organs of the state. First, the legislature has to enact rights based laws, which comply with the goals of guaranteeing human rights. Second, the executive has to implement the laws in a non-partisan manner to ensure equality, which is one of the most cherished rights among all other human rights. Third, the people must enjoy right to be heard and seek justice. The judiciary has to be free from corruption to give impartial judgements. We also find that the countries where all these organs are corrupt, there is gross violation of human rights. The corollary is also true. As the delivery of human rights gets better, the incidence of corruption goes down.

Conclusion

We started with the premise that the link between corruption and human rights is very crucial for the delivery of developmental goals to the citizens. As corruption became an inevitable reality of development process, it grappled all the three organs of the state. State's developmental responsibilities led to the enactment of big welfare programmes in developing countries. As the money involved was massive, it witnessed corresponding increase in the incidences of corruption. Many of the studies have concluded that anti-corruption reforms aimed at streamlining the delivery of services under the welfare programmes failed to deliver at the grassroots level. There is need for 'rights based' approach for better delivery of public services. Cognizance of basic and fundamental rights i.e. right to life, liberty, equality, freedom of expression etc along with

11 In 2011, there was a series of anti-corruption demonstrations and protests across India. There was demand for a strong anti-corruption legislation and enforcement.

social and economic rights like dignified standard of living along with effective delivery of services by the state which is accountable and transparent need to be emphasized upon. Human Rights based approach would envisage cognizance of its violation and entail corrective measures to curb corruption for better delivery of services to entitled beneficiaries. This link will also work wonders for giving voices to the affected and will witness empowered citizens who are very well aware of corruption. To conclude, it can be stated that analysing corruption as a violation of human rights will not only bring new perspective but also infuse confidence among people who are raising their voices against corruption.

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Human Rights as a Component in Indian Media Education Curricula: Current Status and Future Directions

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Abstract

Media can play an important role in the promotion and protection of human rights, especially in democracies. It is also their responsibility. But to do this, it is necessary that media persons themselves are sensitive to the importance of human rights. They should have enough knowledge of different aspects of human rights. Therefore, adequate inclusion of human rights in the curricula of media programmes is necessary.The purpose of this exploratory research was to study this issue. This study was focused to explore the level of human rights inclusion as a component in the curricula of media programmes offered by central universities in India. It also aimed to get the opinion of media educators and working journalists on this issue. Document analysis and in-depth interview were employed as research tools. The curricula of the media programmes offered by the Indian central universities were analysed and the selected mass communication teachers of these universities were interviewed. This study could not be complete without the opinion of working journalists. Therefore, in-depth interviews of working journalists from all three major media - print, television and online were also conducted. In this way,this research included all the three major components of this issue – curricula of media programmes, media teachersand the industry professionals. The findings of this study indicate that the share of human rights as a component in the curricula of Indian media programmes is not sufficient and needs to be increased. Both media educators and working journalists acknowledge that adequate knowledge of human rights is necessary for media persons and this objective can be achieved by giving it adequate space in the syllabi of media programmes.Various valuable suggestions also emerged from this study in this regard.The need for model curricula for courses on human rights in the context of media at the undergraduate and postgraduate levels was strongly felt. The idea of developing MOOCs on human rights and media for both the UG and PG levels and offering them through the SWAYAM platform also emerged as one of the possible solutions to this issue.

Key words: - *Human Rights, Media Education, Media Education Curricula, Elective Course, MOOCs (Massive Open Online Courses)*

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Introduction

Human rights are the foundation of freedom, justice and peace in the world and in a democratic society, the media is considered as a promoter and indirect protector of human rights (Ray, 2007). Media can promote human rights in all its forms. Whether it is news media or infotainment media or entertainment media. No doubt, the role of news media is significant, but films, short films, documentaries or web series that raise human rights issues also play an important role in spreading awareness about human rights in society. As far as the news media is concerned, its role is definitely more active and crucial.

By giving due importance to the cases of human rights violation, the news media pressurize the violators and government agencies to stop these incidents. At times the reporting of such incidents also attracts the attention of the international community, so the governments take more swift action on these incidents to save their image. In this way, news media play their role as indirect protector of the human rights.

In addition to reporting human rights abuses, news media can also play an important role in spreading awareness about human rights. This work can be done by giving proper place to the activities of different human rights related organizations. These organizations may be related to governments, United Nations (UN)or NGOs. The news media can cover their activities such as seminars, conferences, training, workshop and human rights literacy campaigns. But for doing this it is necessary that journalists themselves are sensitive to the importance of human rights.They should have sufficient knowledge of every aspect of human rights. There can be many ways to make media persons sensitive enough about human rights, but the best way is to give them adequate education of human rights while studying journalism. In such a situation, it is necessary that human rights get adequate space in the curricula of media related academic

programmes.That is why the need of this study was felt. This study mapped that how much human rights related components are being included in the syllabi of Indian media education.

As far as media education is concerned, it is a well-established discipline in the Indian higher education world. The media departments can be found by various names like department of media studies or journalism & mass communication or communication studies.In this study, the term 'Media Education' has been used for all popular synonyms like Journalism and Mass Communication, Communication Studies etc.This subject has completed 79 years of its academic journey in India. For the first time, the University of Punjab started a one-year PG Diploma in Journalism in 1941, even before independence. Punjab University's School of Communication Studies is the oldest media department in the country. Currently this subject is very popular and many government and private universities are offering programmes at different levels from certificate to PhD. A large number of universities have schools or autonomous centres or departments of media studies.Few state government universities are completely dedicated to this discipline, for example - Makhanlal Chaturvedi RashtriyaPatrakarita Evam Sanchar Vishwavidyalay (Bhopal), Kushabhau Thakre Patrakarita Evam JansancharVihwavidyalaya (Raipur) and Haridev Joshi University of Journalism and Mass Communication (Jaipur). The central government is also planning to convert the Indian Institute of Mass Communication (IIMC) into a national media university.

As an academic discipline, media studies shows an interdisciplinary nature. Since media or communication is involved in almost all the areas of our life, media studies cover various components of various disciplines such as sociology, political science, cultural studies, law, economics, and more. The purpose of media education is to prepare human resources for a variety of media industries and research. These industries include news, advertising, public relations, business communications, science communication, educational media, entertainment, infotainment and development communication.As far as media research or communication research is concerned, it has great value. It examines the impact of communication on various fields as well as the interrelationship between media and other areas of human life.

In the context of human rights, both the areas of media education (industry and research) are important. If a media industry professional has in-depth knowledge on human rights, he/she can utilise his/her abilities for the protection and promotion of human rights.Be it a journalist or a filmmaker or a documentary maker or a development communicator. We

have already discussed earlier that media can play an important role in the promotion of human rights in all its forms. Yes, of course, the role of news media is relatively more important.Another area of media education (media research) is also significant for human rights.A media or communications researcher who is equipped with sound knowledge of human rights can promote more research activities on human rights in the context of media. These activities will ultimately strengthen the human rights. Therefore, adequate inclusion of human rights as a component in media curricula will help in promotion of human rights.Therefore this study focuses on measuring the current share of human rights in the curricula of media programmesand then analysing the opinions of two main stakeholders (media educators and working journalists) in this context.

The literature suggests that the role of the media as promoter and protector of human rights is well accepted. While addressing the inaugural session of a workshop in 2017, Justice Shri H.L. Dattu, chairperson of National Human Rights Commission, India recognized the media as a valuable partner in addressing the human rights violations in the country. However, he said that in order to become a real protector of human rights, the media would have to end sensational and provocative journalism which causes great harm to the society.

Justice G.N. Ray (2007), the former chairperson of the Press Council of India highlighted the significant role of media in promotion and protection of human rights. According to him, the news media can play a key role in protecting and promoting human rights in the whole world. It can make people aware of the requirement to encourage certain values in the cause of human rights which are of everlasting value to the humanity. It can make peopleaware of their human rights and expose its violations. News media can also provide proper publicity to the organisations and even individuals who are involved in securing human rights. It'll motivate others to do the similar work.

UNESCO (2008) also recognized the important role of journalists in monitoring and creating awareness about human rights. They felt the need to train journalists to cover human rights stories in a more appropriate and comprehensive manner. UNESCO developed a training manual titled, 'The Human Rights-Based Approach to Journalism: Training Manual'. In this manual, UNESCO states that journalists should use their abilities topromotethehuman rights. They should make people aware of their rights to create a strong civil society and active population.

Nwankwo (2011) also found the role of media in the promotion of human rights quite vital. He suggested that the media should realise this social

responsibility and producesuch programmes on human rights that could attract the attention and interest of the audience.

Criticizing the role of media in human rights, Pinto (2007) acknowledges the important role of the news media as promoter and protector of human rights but he also complains that media only gives proper coverage to human rights violations against the middle class. The rights of dalits, workers of unorganized sectors, rural and urban poor and women remained outside the purview of the mainstream media.Other scholars have also highlighted the media's greater coverage of selected human rights issues and the neglect of the others. While studying the comparative coverage of human rights issues in the two leading newspapers of India (the Hindu and the Times of India), Sahu and Ahmad (2018) found that many human rights issues such as violence against tribal communities, reproductive rights of women, bonded labour, rights of elderly people, etc., could not get enough space in newspapers. They further found that most of the human rights stories were sourced from police reports and court trials. Families, communities, and social workers and psychologists were not used adequately to explain these issues.

Prabhash (2005) also questioned the seriousness and intent of the media to cover the human rights issues of the weaker sections. According to him, the media does not look to be very serious and sensitive about the human rights of the marginalised sections of the society like women. As far as coverage of these issues is concerned, media activism is sometimes seen, but the consistency is missing. Generally it is episodic. The media seems to take advantage of the sensationalism of these issues to increase its viewership/readership. It is not interested for careful investigation of structural deficiencies in the system.

Some scholars have also raised the issue of lack of knowledge related to human rights among journalists due to which media coverage of human rights is negatively affected. In the report of a research project on 'Journalism, Media and the Challenge of Human Rights Reporting'sponsored by the International Council on Human Rights Policy, Kaplan (2002) highlighted this issue. According to Kaplan (2002), there is a serious lack of knowledge on human rights among many journalists. They are not adequately familiar with the Universal Declaration of Human Rights, the international human rights treaties and human rights related mechanism at national and international level. The proper knowledge of human rights will make their news reports fairer.

The need for human rights education is also a well-accepted fact. It is a fundamental requirement that every individual of this world be aware and sensitive to these rights. This can be achieved by promoting human rights

education at all levels and in every field. The preamble to The Universal Declaration of Human Rights, 1948 also expressed the same by saying 'Every individual and every organ of society …..… shall strive by teaching and education to promote respect for these rights and freedoms.' The Council of Europe (2017) echoes the same, 'Teaching and education to promote respect for these rights and freedoms is the foundation of human rights education.'

United Nations Human Rights Council (2013) also felt the need to provide human rights education and training to media professionals. They decided to promote human rights education and training among media persons during the third phase of their World Programme for Human Rights Education.Following the same line, the National Human Rights Commission India (2018) also considers media persons as key stakeholders in human rights issues. They acknowledged the need to spread human rights literacy among media professionals. According to the NHRC, they are constantly making efforts to carry out this work.

In the report of a research project on human rights education sponsored by the National Human Rights Commission, India, Kumar (2019) said that the higher education regulator University Grant Commission (UGC) had understood the importance of human rights education long back. It prepared the first set of guidelines in 1985 to incorporate human rights education (teaching and research) at theundergraduateand postgraduate levels for both professional andnon-professional programmes.

The researcher could not find any study specifically on the inclusion of human rights in the curriculum of media related academic programmes. This gap in literature supports the need for this study.

The key objectives of this study were as follows:

1. To ascertain the level of inclusion of human rights as a component in the curricula of media programmes offered by the central universities in India.
2. To know the opinions of media educators and working journalists about the inclusion of human rights as a component in media education.

It was an exploratory research. Document analysis and in-depth interviews were employed to collect the relevant data. According to University Grant Commission (UGC), as on 1st June 2020, India has total 54 central universities. Out of these 54, six universities are dedicated to single disciplines. For example, three universities are Agriculture

Universities, one is dedicated to Maritime (Indian Maritime University, Chennai), one is for Aviation (Rajiv Gandhi National Aviation University, Rae Bareli, Uttar Pradesh) and one is for Sports (National Sports University, Koutruk, Manipur). Out of the remaining 48 central universities, there are 41 that offer programmes on Media (Journalism and Mass Communication) at different levels from Certificate to PhD. Syllabi of these programmes (except research programmes – M.Phil. and Ph.D.) were downloaded from their websites and studied. The data for this study were collected between May to July 2020.

Apart from document analysis, in-depth interviews were also conducted. Five media faculty members and five working journalists were interviewed. Faculty members of the five different central universities that are running media related programmes were involved as participants. Prof. Subhash Dhuliya from Central University of Rajasthan, Dr. Bijendra Kumar from University of Delhi, Dr. K.S. Arul Selvan from Indira Gandhi National Open University, Dr. Sujeet Kumar from Central University of South Bihar, and Dr. Rajesh Kumar from Central University of Jharkhand expressed their opinion in interviews. In interviews, different relevant issues like - the role of media in the promotion and protection of human rights, the need for journalists to have a good understanding of human rights, the level of understanding of human rights in journalists currently working at different levels, and need of comprehensive knowledge of various aspects of human rights for media students were discussed. They were also asked how much importance is being given to human rights in the curricula of media programmes offered by their institutions and are they satisfied with it? Their opinion was also taken on how human rights can be included in media programmes more seriously.

Since it was an exploratory study, purposive sampling method was employed and only central universities were included in the study.Purposive sampling was also applied in the selection of working journalists for in-depth interviews. A total of five working journalists were interviewed, two from television, two from online and one from print media. All the interviewed journalists had more than 10 years of experience in the media industry. The three journalists interviewed requested not to disclose their identity, so the identities of all the interviewed journalists were not disclosed while reporting the findings and were coded as Journalist Participant (1), Journalist Participant (2) and so on.

The findings of this study are divided into two sections. First, findings of the curriculum analysis and second, findings of the in-depth interviews.

Findings of Curriculum Analysis

Media Studies is a well-established and popular discipline in Indian academia. Out of total 54 central universities, 41 (76%) universities offer media related programmes at different levels from PhD to Certificate. All the regular media related programmes offered by these central universities (except research programmes - M.Phil. and Ph.D.) were included in this study. Since Indira Gandhi National Open University (IGNOU) is the only central open university, its four media related distance learning programmes were also included.In some cases, the detailed syllabi of few programmes couldn't be found. So, the syllabi of total 59 media programmes (39 Masters, 1 five years integrated BA+MA, 10 Bachelors, 8 Post Graduate Diplomas and 1 Certificate) were analysed. Apart from it, four model curricula prepared by University Grant Commission (UGC) for bachelor level degree programmes on Choice Based Credit System (CBCS) were also analysed. The UGC prepared model curricula for B.A. (Honours) Journalism, B.A. (Honours) Multi Media and Mass Communication,B.A. Development Communication and Extension, and B.A. (Honours) Hindi Journalism and Mass Communication.

The findings show that there is not enough presence of human rights as an educational component in the curricula of media programmes offered by Indian central universities. The table-1 clearly shows it.

Table 1: Presence of human rights in the curricula of media programmes offered by Indian central universities

Presence of Human Rights in the Curricula of Media Programmes	Number of Programmes	Percentage
As core and compulsory course/paper	00	00
As optional or elective course/paper	08	13
As topic/s in a course/paper	27	46
No presence	24	41
Total	59	100

Out of the total 59 programmes, none of the programme had a core and compulsory course/paper on human rights. Only 13% (8) media programmes included a separate course/paper on human rights as an

optional or elective course. 46% (27) programmes included human rights just as a topic of a course/paper, and about 41% (24) media programmes did not include human rightsat all, not even as a topic in any paper/course. It is relevant to know here that many media programmes, mainly post graduate diplomas, were based on skill-based fields such as photography, audio production, television production, etc.

Before going into the details of the curricula of universities, the UGC's CBCS model curricula of media related programmes should be discussed as UGC is the regulator of higher education and sets directions for the universities and colleges. In Bachelor level programmes, UGC's model curriculum plays an important role because most of the central universities follow the same. However 30 percent deviation from this curriculum is allowed. As discussed earlier, UGC prepared model curricula for four bachelor level degree programmes following choice based credit system (CBCS). These programmes are - B.A. (Honours) Journalism, B.A. (Honours) Multi Media and Mass Communication,B.A. Development Communication and Extension, and B.A. (Honours) Hindi Journalism and Mass Communication.

In B.A. (Honours) Journalism, UGC has included a separate course/paper on human rights named 'Media, Gender and Human Rights' in the 5th semester as a discipline specific elective (DSE) course. In B.A. (Honours) Multi Media and Mass Communication, only a topic on human rightshas been included. It is a part of the core course Development Communication in 4th semester. The next programme is B.A. Development Communication and Extension. In this programme also, human rights is included as just two topics ('Human Rights and Right to Development' and 'Women and Human Rights') of a discipline specific elective course Gender and Society. The last one was B.A. (Honours) Hindi Journalism and Mass Communication. Here also human rights got space just as one topic in a discipline specific elective course.

The inclusion of human rights as an discipline specific elective course in the UGC's model curriculum of B.A. (Honours) Journalism played a positive role and improved the situation otherwise the situation would have been even more negative. Due to this, 4 out of 10 Bachelor level programmes and one five-year integrated programme (B.A.+M.A.) were found with a separate course on human rights as an elective paper. The five years integrated (B.A. + M.A.) programme of University of Delhi included 'Media and Human Rights' as generic elective course in 4thsemester. It is an optional course where students are required to choose one of two courses: 'Media and Human Rights' or 'International Relations'. Following the UGC model curriculum, B.A. (Honours)

Journalism programme offered by the different colleges of University of Delhi, included the course 'Media, Gender and Human Rights'as a discipline specific elective(DSE) course in the 5th semester. Guru GhasidasUniversity, Chhattisgarh and Dr.HarisinghGour University, Madhya Pradesh followed the same path. Maulana Azad National Urdu University, Hyderabad also included a dedicated course on human rights titled 'Human Rights and the Media' as discipline specific elective(DSE) in their bachelor degree programme in Journalism and Mass Communication.Four other undergraduate degree programmes included human rights as a topic in one course and human rights were completely absent in the remaining two.

The situation is even more unsatisfying in the case of master's level media programmes. The findings show that only 8% (3) of the total 39 master's degree programmes haddedicated elective course on human rights.Tezpur University, Assam, Guru Ghasidas University, Chhattisgarh and Aligarh Muslim University, Uttar Pradesh have included 'Human Rights and Media' as an elective or optional course in the curricula of their master's level degree programmes. Tezpur University included it in its M.A (Communication for Development) while other two universities in their M.A. in Journalism and Mass Communication.56% (22) of master's level media programmes had human rightsjust as a topic in a course. Generally it was included in courses such as International Communication, Development Communication, Media and Society or Covering Conflict and Development. The remaining 36% (14) of masters programmes did not include human rights in their curriculum.

No PG Diploma or Certificate level media programmes had a separate course on human rights even as an elective or optional course. Only one PG Diploma programme included human rights as a topic in a course.

Findings of the In-depth Interviews

In in-depth interviews, different relevant issues such as the role of media in the promotion and protection of human rights, the need for journalists to have a good understanding of human rights, the level of understanding of human rights in journalists currently working at different levels, and need of comprehensive knowledge of various aspects of human rights for media students were discussed. The key points emerged from all the 10 in-depth interviews (5 media educators and 5 working journalists) are presented here in short.

Media as promoter and protectorof human rights: All the interviewees unanimously accepted that the role of media is undoubtedly important in

the promotion and protection of human rights. Prof. Dhuliya from Central University of Rajasthan said that the news media play the role of watchdog in democracy and it is their duty to highlight the cases of human rights violations. According to Dr. Bijendra Kumar from University of Delhi, media sets the agenda for discussion in the society. Therefore, media can play a significant role in creating awareness about human rights in society by giving proper coverage to human rights related seminars, conferences, trainings, workshops, human rights literacy campaigns and other similar activities.

Interviewed journalists also accepted the important role of the media in the protection and promotion of human rights. According to them, it is also their professional duty. But some journalists pointed out the various challenges faced by media persons while covering issues of human rights violations on the ground. Participant Journalist (3) raised the issue of security of journalists. According to him, we have great expectations from journalists but it is also necessary to take care of their needs. Only then they will be able to perform their duties properly. Protection of journalists is an important issue when covering incidents of human rights violations. Because violators are always powerful and they never want their wrong things to be revealed to the world. In such a situation, the safety of journalists also comes under threat. There is a strict lack of laws providing protection to journalists while performing their duties. Maharashtra is the only state which has enacted a special law to protect journalists. It is called, Maharashtra Media Persons and Media Institutions (Prevention of Violence and Damage or Loss to Property) Act, 2017. Similar law is required throughout the country. Journalists will be able to discharge their duties in a better way if adequate protection is provided to them. It will also improve the reporting of human rights related issues especially human rights violations.

Level of sensitivity and knowledge about human rights among journalists: The interviewed media educators and journalists differed slightly on this issue. Some media educators indicated the lack of requisite knowledge and sensitivity towards human rights among working journalists. Some journalists raised the issue of commercialization of media. Participant Journalist (3) said that at times the reporter is sensitive to human rights and also understands their importance, but those news reports cannot find a place in the highly commercialised media running madly after TRPs. It becomes difficult for awareness related news stories such as human rights literacy campaigns, seminars, trainings, workshops, etc. to find a place in mainstream media especially in television news.He also pointed to the pressures coming to stop news stories of human rights violations. According to Participant Journalist (1), 'Most incidents of

human rights abuses happen in remote and rural areas. All media organizations are dependent on stringersto get news from these areas and the level of sensitivity and knowledge of human rights among these stringers is likely to be low.' Here it is necessary to explain the term 'stringer'. Stringersare not a regular employee of news organizations. They are paid on the basis of covered news stories. Media organizations have network of stringers at the sub-division or block level.

Participant Journalist (2) highlighted one more aspect. According to him, it has been observed that sometimes few journalists alsosee human rights organizations negatively. On many issues where the public is very emotional, a section of journalists also consider the demand of the accused's right to fair trial as unnecessary. In such a situation, it is important that journalists should have anin-depth understanding of human rights. It should be clear to them why the protection of the human rights of the accused is also necessary for a better and civilized society.

Need of detailed knowledge on various aspects of human rights for media students: All the intervieweeshad strong opinion that there is a need to provide detailed knowledge on different aspects of human rights to media students. Dr. K.S. Arul Selvan from Indira Gandhi National Open Universityopines that it will be very useful if future media professionals are given adequate knowledge about human rights only during their education. According to the Participant Journalist (2), the training and knowledge of human rightscan be given to media personnel evenduring their job through short term courses, but if they get this knowledge during their student life, it would be the best because there is always a shortage of time and holidays for people working in the media industry. Dr. Rajesh Kumar from Central University of Jharkhand states that if sufficient knowledge of human rights is given to the students during education, their chances of becoming sensitive to human rights in the future will be many times more, and this will also improve the coverage of human rights in the media.

Professor Dhuliya advocated a human rights course for media students that is very detailed and comprehensive. According to him, media students should be clear about what human rights are? Why are these rights necessary for a civilized and peaceful society? What can be the consequences of not protecting these rights ? What are the important national and international laws and agreements related to them? Which organizations are at national and international level and how do they work? What measures are available in the case of violation of these rights? Professor Dhuliya also said that human rights hold a very important place in international politics. For many countries, they play an

important role in determining foreign policies. On the other hand, human rights are also used extensively as propaganda to tarnish the image of opposing countries. In such a situation, media students should also have an in-depth knowledge of this political aspect of human rights. Only then they will be able to handle these issues with maturity in future.

Current share of human rights in media curricula: All media educators were of the opinion that the current share of human rights in the media curricula is inadequate and needs to be increased. Dr. Selvan suggested, '….. it is pertinent to note here that at least while in their training stage, media students should be exposed to human rights adequately, not just a passing subject, but a thorough course needs to be introduced.'

Professor Dhuliya also did not look satisfied with the current situation. He said that human rights did not get enough space even in the Bachelor's level programmes earlier but when UGC created a model curriculum for CBCS based B.A. (Honours) Journalism and included human rights related courses as an optional course, many universities followed it . If any such advice comes from the UGC for masters level programmes also it will definitely have a positive impact and human rights will get adequate share in the curricula of media programmes.

Prof. Dhuliya further suggested that degree level programmes must have at least one compulsory course on human rights. In this course, all types of rights coming under the umbrella of human rights and the other related aspects can be discussed together comprehensively. PG diploma programmes are generally skill focused and have only one year duration, so these programmes can include human rights as an elective course or as a large module of a relevant course. Dr. Sujeet Kumar also expressed the similar feelings.

Dr. Bijendra Kumar pointed out that different types of rights falling under the umbrella of human rights are being discussed in various courses, but a dedicated course on human rights is really required.

Possible ways to give due importance to human rights in the curricula of media programmes: According to Dr. Sujeet, a model curriculum of a PG level course on media and human rightsshould be prepared with the greater participation of different stakeholders and all universities should implement it as a compulsory course.Dr. Bijendra Kumar said that choice based credit system (CBCS) has provision for generic elective courses which can be offered by another disciplines. The media departments can consult the law or political science departments of their institutions to develop a generic elective course on human rights. This can happen at both UG and PG levels.

Prof. Dhuliya said that the SWAYAM can also be an option. If bachelor and master level MOOCs on media and human rights are developed and made available on the SWAYAM platform, interested universities can include them in their media curricula. Current norms also allow that you can take up to 20 percent of the total credits from the SWAYAM MOOCs.

The Participating Journalist (1) also advocated the SWAYAM course. According to him, if such a course comes on the SWAYAM platform, media organizations can also motivate their working journalists, especially stringers, to do this course because it is very flexible and almost free. But he also pointed out that these MOOCs should be offered in Indian languages in addition to English, only then they will be used properly and widely.This may improve human rights reporting at the ground level.

Conclusion

This study concludes that media can play an important role in the promotion and protection of human rights in a democratic country like India. For this, it is necessary that our media persons are sensitive to human rights and also have sufficient knowledge in this field. Adequate inclusion of human rights in the curricula of media programmes can play a significant role in creating such media personnel. This research shows that the share of human rights in the curricula of current media programmes is not enough and needs to be increased.

Media teachers believe that human rights are quite broad and touch many aspects of the society. Many of the rights under them are discussed in the other courses even if the term'Human Rights' are not attached to their nomenclature. But they also accept that the present share of human rightsin media curricula is inadequate and there is a dire need to increase it. Media teachers and journalists almost unanimously believe that degree level programmes must have at least one compulsory course on human rights. In this course, all types of rights coming under the umbrella of 'Human Rights' and the other related aspects can be discussed together comprehensively. Such course may be included as elective in PG Diploma programmes.

The important role of UGC also emerged clearly in this study. The UGC has included a separate course/paper on human rights named 'Media, Gender and Human Rights'as a discipline specific elective(DSE) coursein the model curriculum of B.A. (Honours) Journalism. This was followed by many universities. Some media educators also suggested that a model curriculum for a master's level course on media and human rightsshould be developed. The idea of using SWAYAM platform also emerged. There

are currently three MOOCs (Massive Open Online Course) on human rights available on SWAYAM - Human Rights and Humanitarian Law, International Human Rights System and Human Rights in India, but there is a need to develop a human rights course in the context of media. If such MOOCs will be developed for undergraduate and postgraduate levels, interested universities can integrate them in their media curricula as per the current rules.

This was an exploratory study but its findings suggest the need for a more detailed research on this issue which may provide a sound basis for the necessary policy changes in this context.

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Right To Political Representation and 73rd Amendment Act: The Critical Assessment of Participation of Women in Panchayati Raj Institution in Punjab

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Abstract

Enactment of 73rd Amendment Act, 1993 was itself the landmark initiative of Government of India. It ushered an era of women participation and representation in the Panchayati Raj Institutions. The women emerged as the decision makers in the democracy at the grassroots level. These institutions have proved most viable and proper mechanism of democratic decentralisation. The decenralised planning further led to the active involvement of people in the decision making process. Transparency and decentralisation are the hallmark features of the democratic governance. In order to increase the participation of women in the democratic institutions, the main requirement is the Women Reservation Bill. The democratic institutions are afflicted with some of the maladies such as corruption, muscle power, bureaucratic highhandedness and political rivalry etc. Apart from this, the women representatives of panchayat must be stronger to break the centuries old customs and traditions. This is a proven fact that earlier the politics was the domain of males, but this notion will wither away.

The contemporary studies reveal that the women are more passionate and energetic regarding the development process. The present paper highlights the issues of participation and representation of women leaders in the panchayats of Punjab.

Key words: - *Amendment, Panchayati Raj Institutions, Participation, Political Representation, Women.*

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Introduction

The trends regarding the representation of women in politics emerged in recent years throughout the world. This tendency further enhances their participation in politics. The traditional style of politics was mainly confine to male dominated framework and hence the women were notably absent in politics. Various welfare measures were adopted in the western countries in order to uplift the women, which reinforced their traditional position as wives and mothers. Consequently, the women have struggled over issues affecting them, especially their rights to property and vote in the 19th century and equal pay for equal work in the 20th century.[1] In India, various reform movements before and after independence has helped women to gain some power in politics.

After independence, they have achieved an unprecedented political break-through with the reservation of seats for them in panchayats and other public bodies.[2] It is heartening to note that Indian women were among the earliest to get their political rights (right to vote) without any political movement like United States and many Western countries.[3] The equal right of franchise was introduced in the United States as late as 1920; in Britain it was given in 1928; in France granted in 1947; and in Switzerland it was extended to all territories in 1971. [4]

The women were among the foremost to participate in politics even in pre-independence period. The Indian women have a distinction to become UNO Secretary (Vijay laxmi Pandit), Prime Minister (Indira Gandhi), Chief Minister (Sucheta Kriplani, Jayalalitha, Uma Bharati, Mayawati, Sheila Dixit, Mamta Banerjee and Vasundhara Raje) and even President (Pratibha Patil). By becoming Pradhan or a ward member in a Gram Panchayat or any other civic body, or a member of State Assembly or Parliament, it augments respect within the family as well as in the community at large besides increasing their self-esteem, confidence and decision-making ability.

If we take the women's participation in politics as one of the measurements of their emancipation, we find at present their number is

1 B. L. Shankar and Valerian Rodrigues, The Indian Parliament: A Democracy at Work, New Delhi: Oxford University Press, (2011), pp. 271-272.
2 Ramachandra Guha, India After Gandhi: The History of the World's Largest Democracy, London: Picador, (2008), p. 670.
3 Shibani Kinkar Chaube, Politics of Nation Building in India, New Delhi: Gyan Publishing House, (2012), p. 67.
4 O. P. Gauba, Western Political Thought, Delhi: Macmillan Publishers, (2011), p. 321.

very low in comparison to men in State Assemblies and Parliament. There were only 8 women ministers out of total 75 in the UPA-II government of Dr Manmohan Singh. At present, the Narendra Modi Cabinet includes only 6 women ministers, out of which 4 have previously served as Union cabinet ministers. It is interesting to note that the 17th Lok Sabha comprises of 78 women MPs in the house, which is the largest till date. In

Sweden 45 per cent seats are occupied by women in Parliament. In India, some of the prominent women leaders are Sushma Swaraj, Nirmala Sitharaman, Harsimrat Kaur Badal, and Smriti Erani. In the states, Mamta Banerjee and Mayawati are the dominant leaders. In order to enhance the participation of women into politics, the Union government has enacted the 73rd and 74th Constitutional Amendment Act in 1993. As a result, the women have been given the 33% reservation of seats in the institutions of local self government i.e. urban local bodies and panchayats.[5] It was one of the landmark initiatives in the political history of India.

It is true that the literacy rate has registered a substantial increase since independence in India, but the female literacy rate (65.5 per cent) still remains 16.6 per cent less than the male literacy rate (82.1 per cent).[6] It is found that in many states, the number of registered female voters was less than 800 or even less against 1,000 male voters.[7] There are calculated to be 1.2 million elected women representatives in the institutions of local governance in rural India.[8]

Joshi and Narwani [9] cover all the aspects of Panchayati Raj System in India for long ancient, medieval, British and modern period. Mahatma Gandhi envisioned the villages as the primary unit of self-governance and self-sufficient. Since independence, various committees were constituted by the government in order to strengthen the Panchayats like Balwant Rai Mehta Committee, Ashok Mehta Committee, Singhvi and Rao Committee etc. The final goal was achieved, when the government passed the 73rd Constitutional Amendment Act, 1993.

5 Ranabir Samaddar, "Rule, Governmental Rationality and Reorganisation of States", in Asha Sarangi and Sudha Pai (eds.), Interrogating Reorganisation of States: Culture, Identity and Politics in India, London: Routledge, (2011), p. 61.
6 S. Y. Quraishi, "Time women got 33% quota for seats in Houses", The Tribune, 9 March (2020), p. 9.
7 Ibid.
8 Prem Chowdhry, "Women's equality tool for powerful social change", The Tribune, 7 March (2020), p. 11.
9 R. P. Joshi and G. S. Narwani, Panchayat Raj in India: Emerging Trends Across the States, Jaipur: Rawat Publications, (2002).

Sundar Ram [10] in his article throws the light on the performance of panchayati raj institutions (PRIs) in India since independence. The 73rd and 74th Constitutional amendment acts proved as an important milestone, so far as the working of the grassroots level institutions is concerned. The author discusses the different welfare programmes of the government. It was necessary for the government to introduce the scheme of Community Project and National Extension Service to bring about rural upliftment. The Directive Principles of State Policy under Indian Constitution envisions the philosophy of Mahatma Gandhi through article 40.

Verma [11] in his work examines the various implications of Panchayati Raj for the upliftment of social status of Dalit community in India. In 1959, Balwantrai Mehta Committee recommended for integrated system of rural local government. Thereafter, various commissions and committees were set up by the Union government for rural credit, cooperative and agricultural administration and rural development. But, the 73rd Amendment Act (1993), proved as the foundation stone for the commitment of social justice in the country, thereby provided one-third reservation for women and also for Scheduled Castes and Scheduled Tribes (proportionate to their percentage in terms of total population. Still, majority of the population lived in rural areas. The purpose is to enhance the participation of people in the grassroots level institutions.

Raghunandan [12] in his edited work upholds the argument regarding the working of local governments in India since independence. The Indian leadership was highly inspired by these ideals of local self government. Immediately after partition, various policy measures were adopted by the government for introducing the decentralised governance. In the post 1990s phase, the 73rd and 74th Amendment Acts are the important milestones in the history of independent India. It ushered a new era for the enlightenment of the depressed classes and the womenfolk in the

10 D. Sundar Ram, "Rural Development and Dynamics of Change in Democratic Governance: Role of Panchayati Raj Institutions in India", in D. Sundar Ram (ed.), Panchayati Raj and Empowering People: New Agenda for Rural India: Essays in Honour of Shri Mani Shankar Aiyar, New Delhi: Kanishka Publishers, Distributors, (2007).
11 B. M. Verma, Social Justice and Panchayati Raj, New Delhi: MIttal Publications, (2002).
12 T. R. Raghunandan (ed.), Decentralization and Local Governments: The Indian Experience, New Delhi: Orient Blackswan, (2012).

country.

Bandyopadhyay [13] in his article provides an in-depth analysis of the working of panchayati raj structure in India. At the time of independence, there was the clash of ideology between Mahatma Gandhi and Dr. Ambedkar on the issue of panchayats. Gandhi was the supporter of decentralisation, whereas Ambedkar wants to establish the strong central authority. Along with the establishment of strong Centre, decentralised governance was too adopted. Subsequently, various committees were formed by the government in order to provide the better service delivery system. The PRIs have become an integral part of the system of governance through the constitutional recognition in 1992. These initiatives further proved to be an important milestone for enhancing the participation of women in the democracy at the grassroots level.

Defining Political Representation

In general terms, representation means that any corporate group, whether church, business concern, trade union, fraternal order of state, that is too large or too dispersed in membership to conduct its deliberations in an assembly of all its members is confronted with the problem of representation, if it purports to act in any degree in accord with the opinion of its members.[14] As stated earlier, when citizens no longer rule directly, democracy is based upon the claim that politicians serve as the people's representatives. In politics, representation suggests that an individual or group somehow stands for, or on behalf of, a larger collection of people. Therefore, political representation acknowledges a link between two otherwise separate entities; government and the governed and implies that through this link the people's views are articulated or their interests are secured.[15] As explained by Lord Acton, representation has come as 'the vital invention of modern times'.[16] Noted sociologist Dhruba Hazarika has rightly said that 'empowerment of women means equipping them to be economically independent, self-

13 D. Bandyopadhyay, "Panchayats and Democracy: Elites versus Dalits", in D. Bandyopadhyay and Amitava Mukherjee (eds.), New Issues in Panchayati Raj, New Delhi: Concept Publishing Company, (2004).
14 J. C. Johari, Principles of Modern Political Science, New Delhi: Sterling Publishers, (2007), p. 481.
15 Andrew Heywood, Political Theory: An Introduction, (Third Edition), New York: Palgrave Macmillan, (2012), pp. 232-233.
16 J. C. Johari, Comparative Politics, New Delhi: Sterling Publishers, (2000), p. 464.

reliant, in addition to providing positive self-esteem to face any difficult situation'.[17] In actual sense, the political representation is the result of participation of people in political activities.

Key Ingredients of 73rd Amendment Act

The 73rd Constitutional Amendment (1992) Act assigned the creation of local government institutions at the level of village, block and district, while the 74th did the same for towns and cities.[18] This act ordains certain basic features like certainty, continuity and strength to panchayat.[19] It was implemented by the government on 24 April 1993. Since then, 24 April is celebrated as the Panchayat Day in India.[20] Basically, the 73rd Constitutional Amendment (1993) deals with empowering PRIs, while the 74th Amendment (1994) deals with strengthening the urban local bodies.[21] The Punjab Panchayati Raj Act was passed in 1994. This Act further envisages people's participation in decision-making, implementation and delivery of services to better address issues of people at the grassroots. In order to achieve this objective, it provides for devolution of power to the panchayats.[22]

The Part IX of the Constitution lays the provisions of a three-tier system of Panchayats,[23] and Part (IX A) for the municipalities in urban areas. These provisions were inserted into the Constitution after the 73rd and 74th Constitutional Amendments.[24] The emphasis was to empower the PRIs with certain functional mandates, give them a significant degree of autonomy and impart to them an element on self-reliance and self-sufficiency through fiscal transfers, taxation powers and tax assessments[25]. For instance, it should be the responsibility of the Gram Sabha and its panchayat to ensure that no one in the village went without food, clothing, and shelter; no child went without primary education;

17 Chowdhry, n. 8, p. 11.
18 Guha, n. 2, p. 670.
19 Amal Mandal, Grassroots Governance: Gram Sabha in West Bengal, Jaipur: Rawat Publications, (2012), p. 35.
20 Punjabi Tribune (Punjabi Edition), 24 April (2013), p. 6.
21 The Tribune, 7 November (2013), p. 11.
22 LeelaVisaria and Meera Bhat, "Public Provisioning of Health and Decentralization in Gujarat", Economic and Political Weekly, Vol. XLVI, No. 49, December 3, (2011), p. 59.
23 Durga Das Basu, Introduction to the Constitution of India, Twentieth Edition, New Delhi: LexisNexis Butterworths, (2009), p. 283.
24 Subhash C. Kashyap, Our Constitution: An Introduction to India's Constitution and Constitutional Law, New Delhi: National Book Trust, (2009), p. 337.

everyone received primary medical care.[26] Under article 243A, a Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.[27]

The article 243B further provided the creation of Gram Sabha, which convened the meetings twice a year.[28] The Panchayat Secretary is an important functionary and facilitates the process of democratic decentralisation at the panchayat level. His primary duty is planning, implementation, monitoring and evaluation of plans and programmes and also provides information and guidelines to the Gram Panchayat, besides maintaining various registers and sending resolutions to the block office[29]. The Article 243J lays the provisions regarding the audit of accounts of Panchayats. In this regard, the legislature of a state may, by law, make provisions with respect to the maintenance of accounts by the panchayats and the auditing of such accounts.[30] With the declaration of 1999-2000 as the 'Year of the Gram Sabha' by the Union Ministry of Rural Development, the importance of the body in the new Panchayat set up has been publicly recognised and affirmed.[31] However, the Gram Sabha has been conceived as one primary body of village panchayat for facilitating direct participation of people. [32]

The Constitution provides for the direct election of local bodies every five years. Some of the noteworthy provisions are given below:

1. The 33 percent reservation of local legislative seats for women and for Scheduled Castes and Tribes. [33]

25 D. Sundar Ram, "Introduction: Panchayati Raj Reforms and Empowerment of Grassroots Democratic Institutions in India", in D. Sundar Ram (ed.), Panchayati Raj Reforms in India: Power to the People at the Grassroots, New Delhi: Kanishka Publishers, Distributors, (2007), p. 4.
26 Ramachandra Guha (ed.), Makers of Modern India, New Delhi: Penguin Books, (2010), p. 409.
27 G. Palanithurai and et al., A Handbook For Panchayati Raj Administration (Tamil Nadu), New Delhi: Concept Publishing Company, (2007), p. 1.
28 Rajesh K. Jha, Fundamentals of Indian Political System, New Delhi: Dorling Kindersley (India), (2012), pp. 213-214.
29 Manoj Rai and et al. (eds.), The State of Panchayats: A Participatory Perspective, New Delhi: Samskriti, (2001), p. 37.
30 D. N. Gupta, Decentralization: Need for Reforms, New Delhi: Concept Publishing Company, (2004), p. 34.
31 Y. Bhaskar Rao, "Gram Sabha: Its Problems and Prospects after 73rd Constitutional Amendment", in Ram (ed.), n. 102, p. 148.
32 Mandal, n. 19, p. 35.
33 Pamela Singla, Women's Participation in Panchayati Raj: Nature and Effectiveness, Jaipur: Rawat Publications, (2011), p. 232.

2. A State Election Commission to conduct elections after every five years. In case, the Panchayat is dissolved earlier on specific grounds in accordance with State legislation, the election will have to be completed within a period of six months from the date of its dissolution before the expiry of its duration in the normal course. [34]
3. A State Finance Commission to ensure the financial viability of these institutions.
4. Devolution of powers and responsibilities to the local bodies with respect to, (a) the preparation of plans and implementation of schemes for economic development and social justice, (b) the subjects listed in the Eleventh Schedule for the panchayats and in the Twelfth Schedule for the municipalities, (c) devolution of financial powers to the local bodies, and (d) endowment of these institutions with powers, authority and responsibility to prepare plans for economic development. Thus, these local bodies are empowered to raise revenue with which to undertake various community welfare programmes. [35]
5. While elections in respect of all members of Panchayats at all levels will be direct, elections to the post of Chairperson at the intermediate and district levels will be indirect. The mode of election of the Chairperson at the village level has been left to the State Governments. [36]
6. The Panchayati Raj officials must be trained to provide effective assistance in the field of administration, and also finances, [37] and
7. Anyone who is 21, will be eligible for membership of the panchayat. [38]

34 G. Morley Mohan Lal, Rajiv Gandhi and Panchayati Raj: Democracy and Development at the Grassroots, Delhi: Konark Publishers, (1994), p. 22.
35 Akhtar Majeed, "Republic of India", in John Kincaid and G. Alan Tarr (eds.), Constitutional Origins, Structure, and Change in Federal Countries: A Global Dialogue on Federalism, Vol. I, London: McGill-Queen's University Press, (2005), pp. 191-192.
36 Lal, n. 34, p. 22.
37 Jha, n. 28, p. 213.
38 Singla, n. 33, p. 102.

In India, the Constitutional amendment assigned the state governments with exclusive legislative authority to empower the PRIs to levy taxes. The major objective of devolving revenue raising powers to the PRIs is to enable them to function as effective institutions of self-government at local level by improving their autonomy in planning and decision-making.[39] Likewise, the reservation of SCs/STs in local bodies enabled the marginalised sections of the society to share political space with others.[40] The article 243K of the Constitution envisages the powers of State Election Commission, which consist of a State Election Commissioner, to be appointed by the Governor. It has the powers of superintendence, direction and control of elections to the Panchayats, including preparation of electoral rolls. Apart from this, the State Legislatures have the power to legislate on all matters relating to elections to Panchayats.[41] For the first time in the history of independent India, a high degree of uniformity has been conferred on panchayats, mainly in terms of structure, composition, powers and functions. [42]

Despite social and institutional constraints women's participation has had significant impact on both the way in which women see themselves in their new roles as well as the actual developmental impact they make. In this regard, the impressive efforts of women demonstrate that panchayats are beginning to play an important role in empowerment of women.[43] It provides justice to women and Dalits, represent their interest in the hope that this could transform politics, dominated by male upper castes.[44] The benefits flowing from redistributive functions are many, such as, subsidised housing, free schooling, healthcare, mid-day meals for school children, free school uniforms and books, scholarships, etc. This is justified on the ground that the local supervision will improve the

39 Pratap Ranjan Jena and Manish Gupta, "Revenue Efforts of Panchayats: Evidence from Four States", in T. R. Raghunandan (ed.), n. 12, p. 359.
40 P. D. Kaushik, "Panchayati Raj Movement in India: Retrospective and Present Status", in Bibek Debroy and P. D. Kaushik (eds.), Energizing Rural Development through Panchayats, New Delhi: Academic Foundation, (2005), p. 93.
41 Basu, n. 23, p. 285.
42 B. K. Chandrashekar, Panchayati Raj in India (Status Report 1999), New Delhi: Rajiv Gandhi Foundation, (2000), p. 8.
43 Vidya Nair, "Political Empowerment of Women Through Decentralization: Myth or Reality", ISDA Journal: Studies in Development and Administration, Vol. 21, No. 1, January-March (2011), p. 45.
44 Rai and et al. (eds.), n. 29, p. 110.

effectiveness of the delivery system and promote local welfare in a much better way.[45] These landmark initiatives provide a large number of responsibilities to local bodies such as setting of objectives of development, appraisal of ongoing programmes, formulation, implementation, monitoring' and evaluation of development schemes. [46]

The study has been conducted through the empirical-analytical approach. The documentary sources i.e. books, journals, magazines and newspapers have also been used for the critical analysis of women participation in the democratic institutions. Most particularly, it is an exploratory and micro level study of emerging women leadership in three different regions of Punjab, i.e. Majha, Malwa and Doaba. From each region, one district has been selected, i.e. Amritsar, Muktsar and Jalandhar respectively. From each district, two blocks have been identified and analysed. Each block covers the eight panchayats. As per the methodology, the two panchayats led by non-Dalit male, non-Dalit female, Dalit male and Dalit female each respectively have been selected. In this way, we have the complete analysis of forty-eight panchayats, covering all the regions. We have the sample size of approximately four hundred panchayat representatives. The study explores the realities about the emerging scenario of political participation of women representatives in the democracy at the grassroots level. In this study, the issues of women representation and their participation in the panchayats have been raised thoroughly and systematically.

Perception regarding the Women Empowerment through Reservation in Panchayat

The 91 per cent Dalit representatives and 93 per cent general category leaders are accepting the empowerment of women through reservation in panchayat. On the contrary, the 6 per cent Dalit and 3 per cent general category representatives completely rejected this notion. Only the 3 per cent Dalit and 4 per cent general category representatives do not provide any information on this issue.

45 G. Thimmaiah, "Decentralization: Is it a Danger or Virtue?", in Abdulrahim P. Vijapur (ed.), Dimensions of Federal Nation Building: Essays in Memory of Rasheeduddin Khan, New Delhi: Manak Publications, (1998), p. 121.
46 Mohinder Singh and Vijay Kumar, "Decentralized Planning: Problems and Prospects", in Mahi Pal (ed.), Decentralized Planning and Development in India, New Delhi: Mittal Publications, 2008, pp. 66-67.

Table 1

What is the perception of panchayat representatives regarding the Women Empowerment through Reservation in the PRIs?			Zone			Total
			MAJHA	MALWA	DOABA	
Dalit		Yes	54	66	62	182
		No	4	8	-----	12
		Do not know	4	2	-----	6
	Total		62	76	62	200
General		Yes	66	72	48	186
		No	-----	4	2	6
		Do not know	-----	6	2	8
	Total		66	82	52	200

This table highlights about the issues of women empowerment through reservation in the panchayat. The fifty-four, sixty-six and sixty-two Dalit representatives from Majha, Malwa and Doaba respectively accepted that through the reservation in panchayat, women are much stronger than before. Only the four representatives from Majha and eight from Malwa negated about the strong position of women through reservation in panchayat, thereby claimed that women are still dependent on husband and other dominant leaders for performing the functions and duties of panchayat. They have lack of confidence. Likewise, the four representatives from Majha and two from Malwa do not provide any information regarding the women empowerment.

Responding to the same query, the sixty-six, seventy-two and forty-eight general category representatives from Majha, Malwa and Doaba respectively admitted about the strong position of women through the reservation in panchayat. The four representatives from Malwa and two from Doaba negated about this proposition. The six representatives from Malwa and two from Doaba did not reveal anything on this issue. In the ultimate analysis, the reservation in PRIs was imperative for bringing the women in the mainstream politics.

Whether Dalit women are politically strong through the reservation in Panchayats

The data highlights that the 75 per cent Dalit and 86 per cent general category representatives upholds the argument that Dalit women are politically empowered through the reservation in the panchayat. The 18 per cent Dalit and 5 per cent general category leaders did not agree about the notion of women empowerment. Lastly, 7 per cent Dalit and 9 per cent general category representatives were hesitant to provide the information on this issue.

Table 2

Whether Dalit women are politically strong through the reservation in Panchayats?			Zone			Total
			MAJHA	MALWA	DOABA	
Dalit		Yes	48	44	58	150
		No	8	26	2	36
		Do not know	6	6	2	14
	Total		62	76	62	200
General		Yes	64	62	46	172
		No	0	8	2	10
		Do not know	2	12	4	18
	Total		66	82	52	200

Responding to the query about political empowerment of Dalit women through the reservation in panchayats, the forty-eight, forty-four and fifty-eight Dalit representatives from Majha, Malwa and Doaba respectively admitted that the Dalit women are politically strong through the reservation in panchayats. The eight, twenty-six and two representatives from Majha, Malwa and Doaba respectively claimed that there is no empowerment of Dalit women. Only the six each representative from Majha and Malwa and two from Doaba respectively did not reveal anything on this issue.

The sixty-four, sixty-two and forty-six general category representatives

from Majha, Malwa and Doaba respectively accepted about the empowerment of Dalit women through the reservation in panchayats. The eight representatives from Malwa and two from Doaba completely rejected this notion, in that way upheld the argument about the weak social and economic condition of women. The two, twelve and four representatives from Majha, Malwa and Doaba respectively expressed their reluctant attitude about any information on this issue.

Difference between the performance of Dalit women and general category women

Approximately the 75 per cent Dalit and 74 per cent general representatives claimed that Dalit as well as general category women representatives perform very well. The 24 per cent Dalit and 22 per cent general category representatives clearly denied about any type of performance of women in the local institutions. One per cent Dalit and 3 per cent upper leaders have supported the Dalit women as per the performance index. Only one per cent general representatives have discussed about the best performance of upper category.

Table 3

What is the difference between the performance of Dalit women and general category women?		Zone			Total
		MAJHA	MALWA	DOABA	
Dalit	No performance at all of both category	24	20	4	48
	Best performance of both categories	36	56	58	150
	Dalit women are best performed	2	------	------	2
	Total	62	76	62	200
General	No performance at all of both category	16	18	10	44
	Best performance of both categories	44	62	42	148
	General category women are best	2	------	------	2
	Dalit women are best performed	4	2	------	6
	Total	66	82	52	200

This table comparatively analyses the performance of Dalit as well as general category women representatives. The twenty-four, twenty and four Dalit representatives from Majha, Malwa and Doaba respectively argued that there is no performance of women representatives at all of both categories. The thirty-six, fifty-six and fifty-eight representatives from Majha, Malwa and Doaba respectively highlighted that there is best performance of both the categories. Only the two representatives from Majha have claimed that only the Dalit women best perform in the PRIs.
The sixteen, eighteen and ten general category representatives from Majha, Malwa and Doaba respectively highlighted that there is no performance at all of both categories. The forty-four, sixty-two and forty-two representatives from Majha, Malwa and Doaba has claimed that there is best performance of both the categories. Only the two representatives from Majha have said that the general category women are best performer. But the four representatives from Majha and two from Malwa claimed that the Dalit women are best in terms of performance index.

Hindrances in the way of political participation of women

This table reveals that the 21 per cent Dalit and general category representatives each consider the patriarchic nature of society as the main hindrance in the way of political participation of women. The 73 per cent Dalit and 72 per cent general category representatives claimed that women are mere vote bank for the political elites of India. According to 1 per cent Dalit and 2 per cent general category representatives, the women are not capable enough to take political decisions. The 4 per cent Dalit and 5 per cent general category representatives were quite silent on this query.

Table 4

Which are the main hindrances in the way of Political Participation of Women?		Zone			Total
		MAJHA	MALWA	DOABA	
Dalit	Patriarchic nature of society	20	18	4	42
	Women are considered as mere vote bank	39	53	55	147
	Women are not capable enough to take Decisions	1	1	------	2
	Can't Say	4	5	------	9
	Total	64	77	59	200

Which are the main hindrances in the way of Political Participation of Women?		Zone			Total
		MAJHA	MALWA	DOABA	
General	Patriarchic nature of society	19	18	5	42
	Women are considered as mere vote bank	48	59	37	144
	Women are not capable enough to take Decisions	3	1	------	4
	Can't Say	6	4	------	10
	Total	76	82	42	200

This table traces the main factors of hindrances in the way of political participation of women. Responding to this query, the twenty, eighteen and four Dalit representatives from Majha, Malwa and Doaba respectively pinpoint the patriarchic nature of society as one of main hindrance in the way of political participation of women. Furthermore, the thirty-nine, fifty-three and fifty-five Dalit representatives from the above mentioned regions respectively reveal that the women are considered as mere vote bank in all the political activities. Then, only one Dalit representatives from Majha and Malwa each highlight that the women are not capable enough to take decisions. Lastly, the four Dalit representatives from Majha and five from Malwa were hesitant to answer on this query.

When this question was asked to the general category representatives, the nineteen, eighteen and five representatives from Majha, Malwa and Doaba regions respectively argued that patriarchic nature of society is creating the hindrances in the way of political participation of women. The forty-eight, fifty-nine and thirty-seven representatives from the above mentioned areas respectively mentioned that the women are considered as mere vote bank. Moreover, the three representatives from Majha and one from Malwa assume that the women are not capable enough to take decisions. At last, the six representatives from Majha and four from Malwa were quite silent on this query.

Perception about the government's initiatives for increasing the female voter turnout

The 20 per cent Dalit and 19 per cent general category representatives are focusing on the voter education programmes for enhancing the voter turnout among the female voters. The 60 per cent Dalit and 63 per cent general category representatives are in favour of infrastructural improvements such as separate queues for women. Only 2 per cent Dalit representatives and 5 per cent general category representatives want to deploy mandatory women polling officials in order to identify female voters. Average 8 per cent Dalit and 7 per cent general category representatives support all the above mentioned factors in order to increase the female voter turnout. Lastly, 8 per cent Dalit and 6 per cent general category representatives were quite ignorant on this query.

Table 5

What type of initiatives should be taken by the government for increasing the female voter turnout?		Zone			Total
		MAJHA	MALWA	DOABA	
Dalit	Massive Voter Education Program	20	17	4	41
	Infrastructural Improvements like separate queues for women	28	49	43	120
	Mandatory women polling official to identify female voters	5	------	------	5
	All of the Above	4	7	6	17
	Don't Know	5	3	9	17
	Total	62	76	62	200
General	Massive Voter Education Program	13	16	8	37
	Infrastructural Improvements like separate queues for women	39	51	37	127
	Mandatory women polling official to identify female voters	4	4	2	10
	All of the Above	5	5	4	14
	Don't Know	5	6	1	12
	Total	66	82	52	200

This table explains the measures of government for increasing the female voter turnout. Responding to this query, the twenty, seventeen and four Dalit representatives from Majha, Malwa and Doaba areas respectively support the measures like massive voter education programme. The twenty-eight, forty-nine and forty-three Dalit representatives respectively favour the methods of infrastructural improvement like separate queues for women. Only 5 Dalit representatives from Majha want to deploy the mandatory women polling official to identify the female voters. Besides, the four, seven and six Dalit representatives respectively highlight all the above mentioned factors. At last, the five, three and nine Dalit representatives did not reveal anything on this question.

Same query was asked to general category representatives, the thirteen, sixteen and eight representatives from Majha, Malwa and Doaba zones respectively are in favour of massive voter education programme. In addition, the thirty-nine, fifty-one and thirty-seven representatives as per the above methodology favour the infrastructural improvement in the form of separate queues for women. The four, four and two representatives from Majha, Malwa and Doaba areas respectively suggest the provisions of mandatory women polling official to identify the female voters. The five, five and four representatives from Majha, Malwa and Doaba respectively want to adopt all the above mentioned measures for increasing the female voter turnout. Lastly, the five, six and one representatives from Majha, Malwa and Doaba were quite hesitant to answer on this query.

Women as a role model at the Grassroots level Politics

According to the Lokniti-CSDS poll-eve survey, the second landslide victory of Aam Aadmi Party in the Delhi assembly elections (2020) could be attributed to women's support to the party. As per the findings of the survey, 60 per cent women preferred AAP as compared to 49 per cent men.[47] According to Inter-Parliamentary Union, in 2019, India ranked 148th in the world, with only 62 women MPs in the Lower House of Parliament based on the 2014 elections. In the 17th Lok Sabha, the number witnessed a significant increase to 78, which forms a mere 14.31 per cent of the total strength of the 17th Lok Sabha.[48] An analysis by the

47 Quraishi, n. 6, p. 9.
48 Ibid.

Association of Democratic Reforms (ADR) of women candidates fielded by the national political parties' shows that only the TMC gave 43 per cent of its tickets to women and the BJD had 33 per cent of women candidates.[49] There are around 13.45 lakh elected women representatives in the PRIs, which constitute 46.14 per cent of the total elected representatives. Presently, 14 states have 50-58 per cent representation of women in the PRIs. Jharkhand leads with 58 per cent, closely followed by Rajasthan and Uttarakhand. Uttar Pradesh has the highest number of women sarpanches at 19,992, though only 34 per cent of the total sarpanches.[50]

Critical Assessment

In the seventeenth general elections (2019), out of the 8,000-plus candidates that contested the 545 seats of Lok Sabha, only 700-plus were women and out of them, only 78 were elected. In the Rajya Sabha, currently there are only 25 women out of a total of 225 members and only five women out of 64 occupy ministerial positions in the Union Council of Ministers.[51] In spite of the various path-breaking initiatives taken by the government in order to uplift the women, they continue to face the atrocities like female infanticide and sex-selective abortion, child marriage, honour killings, acid-throwing, violence that domestic in nature, rape, dowry deaths, caste inhumanities, educational inequality, workforce participation, land and property rights, and gender discrimination of various kinds in almost all fields.[52]

Suggestions & Recommendations

- In order to increase the participation of women in the democratic process of the country, the Women Reservation Bill is one of the necessary pre-condition.
- The general awareness programmes should be conducted for the newly elected women representatives of panchayat.
- The State government should provide all documents concerning Panchayati Raj and rural development to the PRIs.

49 Ibid.
50 Ibid.
51 Chowdhry, n. 8, p. 11.
52 Ibid.

- Proper mechanism should be adopted to eradicate the concept of sarpanch husband. Such type of activities has assumed the serious proportions.
- There should be the provision of recall to the non-performing panchayat representatives.
- The delegated functions to the PRIs should also be accompanied by adequate and smooth supply of finance.
- There is a need to lays the proper guidelines for panchayat representatives and officials.
- The minimum qualification standard should be fixed for panchayat representatives.
- The Government should enact the stringent legislation for the eradication of corruption.
- The use of liquor and other means of intimidation to voters by the unscrupulous elements during the panchayat elections should be dealt with an iron hand.

Conclusion

India is one of the few developing countries, which have been experimenting with the democratic decentralisation to promote development since independence. These political mechanisms provide an opportunity to uplift the hitherto marginalised sections of society. The adoption of the democratic framework and, particularly that of adult franchise, meant the opening of new opportunities of political participation to the masses. The irony of the fact is that the states demand the transfer of powers from top to bottom, but, in reality, are reluctant for the devolution of powers at the grassroots level. Apart from this, the PRIs afflicted with some of the major drawbacks in terms of corruption, muscle power, bureaucratic highhandedness and political rivalry. For improving the working of PRIs, there is an urgent requirement to ensure proper attendance in the Gram Sabha meetings. An effective campaign involving the media, students, Non-Governmental Organisations, Self-Help groups, mahila mandals, schools, colleges and NCC will help to ensure this. The Gram Sabha should meet at least for four times a year. There is the need of transparency and maximum decentralisation in the democracy at the grassroots level. Besides, the local administration should be accountable and responsible for implementing the policies of the government in an effective manner. Besides, the need for systematic

training and orientation is necessary to empower the women representatives to exercise their authority and to access the resources available to transform the existing conditions of existence to a better one. The 21st century is a symbol of advancement, progress and development in every field of life. In this type of scenario, the younger and educated women leaders are politically more positive, enthusiastic and contributing to solve the problems of the village through political representation.

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Continuum of Taliban Repression and Endangered Women's Rights in Afghanistan

Akshaya Saroha & Akshay Kumar Singh ***

Abstract

It is a discernible fact that the lawlessness in Afghan society is endemic. Equally valid is the observation in the discipline of international relations that a war-ravaged society as that of Afghanistan brings unprecedented torments to the lives of women. In Afghanistan, where the decree of the government is nearly powerless, societal norms are asphyxiating, imagining a life again under the impending rule of Taliban is quite horrendous. This fear naturally flows from the last time when the Taliban was in power, from 1996 to 2001. During their reign in Kabul, Taliban inflicted brutalities on women unparalleled in the twenty-first century. Demeaning punishments like lashings and public beatings were rampant and took a massive physical and mental toll on the women who were caged and subjected to the horrifying restrictions. The same threat looms large now when the United States has inked a deal with the Taliban to extricate itself from what has become a quagmire for the former.

The agreement with the Taliban has been brokered at the cost of the human rights, especially those of women, as there is not explicit mention of these in the text signed on the negotiating table in Doha. Further, none of the objectives of the intervention, which were outlined before going to war with the Taliban in 2001, has been realised. Democracy is still an alien concept in the Afghan state, and the societal norms often override the norms set by the state political institutions. The civil liberties are not accessible to the Afghan women. The security apparatuses are in tatters and incapable of percolating down the order amidst the chaos. Therefore, while the United States seeks an exit, what it will leave behind is a failed state. Against such a background, this paper aims to examine the impact of Taliban political rule on the lives of women in both, historical and contemporary terms.

Key words: - *Afghanistan, Human Rights, US-Taliban Deal, Women rights, Security.*

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Introduction

On February 29, 2020, the United States inked a much-awaited deal, what is officially called the "Agreement for Bringing Peace", with the Taliban. The agreement stipulates the United States' phased exit from Afghanistan over the next fourteen months. However, the peace deal could be a battlefield breakthrough for the Taliban, but prospects for women look grim in the political future of Afghanistan. The deal did away with all the modern democratic values such as gender equality and justice, human rights for women, accommodative disposition of the future structural governance. President Trump, to serve his domestic constituencies back home, necessary for the November presidential election, only showed interest in extricating his country from America's longest war. Thus, the deal might serve him an honourable exit. The only point, if breached, could halt US' exit from Afghanistan is Taliban colluding with transnational terrorist networks such as al-Qaeda and letting them operate from its soil against America.

Two decades on, ever since the Taliban was ousted from power in 2001, the civilian government could not do enough to restore the dignity and freedom of women. The failure lies partly in the hands of the weak government and partly owes to the age-old societal and cultural norms, which have robbed women of their freedom, and continues to do so. The advent of ultra-orthodox Taliban on the political scene will do nothing except aggravate the plight of Women in the society. How the reconstruction of the war-torn nation is possible while the wings of half of its society are clipped? Thus, peace comes at the cost of the women who were banished from public life and were subjected to the patriarchal norms, which curbed and floundered the freedom of women during the last reign (1996-2001) of the Taliban.

With the rising fatigue of the US in Afghanistan and thereby making efforts to struck a deal with the Taliban, gave a blank cheque to the latter to play its cards at its free will. Subsequently, the future of human, equitable and just rights for women would be in disarray, and the past is all set to repeat itself, under the same garb again, i.e., Taliban's rule. It had been a known fact that the Taliban's ideological orientation remains

bereft of modern values. We shall discuss the plight of women in the subsequent sections in a holistic manner.

Women in Afghanistan: Historical Background

It becomes pertinent to understand the social, economic and political status of women in a broader context of Afghanistan's history. After witnessing more than a century in the life of Afghanistan as a modern state, it had become conventional wisdom that it was a weak state with a strong society. There have been observations that tribalism in Afghanistan offers an alternative to state (Ahmed et al., 2001, p. 1). The cultural and social policies are more often dictated by the tribal norms than the rulers' or governmental decrees. However, several rulers of Afghanistan, intermittently, tried to adopt a reformist attitude.

Abdul Rehman, the founder of modern Afghanistan, also known as 'iron amir', sought to reform the social status of women. He went to the extent of permitting women in the political sphere, that too, without the permission of male members of their families. In her 1986 book "Women of Afghanistan," Nancy Hatch Dupree wrote that Abdur Rahman's wife influenced him, as she "was the first Afghan queen to appear in public in European dress without a veil." (Maiwandi, 2014). AbdurRehaman (1880-1901) is considered as the first ever modern ruler of Afghanistan. He "was dubbed the "Iron Amir" for his ruthless methods of consolidating disparate tribes and other groups into what we now know as Afghanistan. But he was rather progressive for the time when it came to women's rights"(ibid, 2014).

Another ruler, with a liberal outlook, Amanullah Khan, Amir of Afghanistan, from 1919-1929, tried to induct some reforms aiming at improving the social development of women. He was met with even more stringent resistance than his predecessor, which ultimately culminated into the demise of his regime. Nancy Dupree(1970), in her seminal work, A Historical Guide to Afghanistan, writes that "He struck too soon, too deep, into the traditional conservative fabric of the society when he took such measures as removing the veil from the women, introducing co-education and drastically curtailing the power of the religious establishment" (p. 68).He also made attempts to curtail polygamy, child marriage and customs of Pashtuns relating to women (Barfield, 2010, p.183). Another breakthrough was tried to be achieve in elevating the roles of women in society during the prime minister ship of General Mohammad Daud (1953-1963). During his regime, the most dramatic change was "the voluntary shedding of the veil by Afghan women since 1959" (Barfield, 2010, p.70).Also, women were serving in the cabinet

and worked in all economic spheres such as business and industry, to mention a few. By the time the government of President Daud was toppled in 1978, "the state employed thousands of women in the health service, education, civil service and in the police" (Lee, 2018, p.18).

Another example is even more recent from the days of the People's Democratic Party of Afghanistan, when it came to power in 1979. PDPA leadership or the entire communist phenomenon emerged in Afghanistan because it appealed to the intelligentsia of Afghanistan because of the pronounced reformist attitude of the party. The Communist regime failed and met with unprecedented resistance primarily because of its gender policies, among others. After the issuance of several decrees by the communist government, when the party workers and members reached the villages to collect the data on women, tribal community thought it as an attempt to turn their women into "communal property" (Saikal, 2004, p.189).A nation mired in Islamic values and a staunch theist society could never digest an atheist rule.

Therefore, it could be said with relation to Afghanistan that the policies aimed at gender issues have been subject of much controversy throughout the history of Afghanistan as a nation-state. However, due to scarcity of space, we shall evaluate the lives of women under the lurking danger of Taliban rule in Afghanistan, which is an aberration in the sense that they did not even attempt in symbolic terms, as made by their several preceding regimes, to elevate the statusof women in society.

Understanding the Taliban: Theoretical Underpinnings

The advent of the Taliban caused a reconfiguration of the public and private spheres in a " quest for pure Islamic counter modernity" (Cole, 2003, p.771). The essential feature of modernity is the distinction between these two spheres. Thus, the amalgamation of the two might become the dumping ground of the individual privacy and of the realm which is supposed to be free from the state interference. The antithetical attitude towards the liberal values also emanates from the fact that individual liberty, which is a cardinal principle of liberalism does not fit well in an autocratic regime. History of societal norms in Afghanistan also provides another explanation for the ruthless behaviour of the Taliban. Afghan society remains sandwiched between old and new forms of life. It is also a well empirically researched fact that "Afghanistan is precariously suspended between the medieval and modern world" (Chakravarty, 2002, p.66).

Modernisation brought about several changes almost in every society

ranging from ultra-orthodox, conservative to nominally liberal societies. It also empowered women across the globe to readily take on various economic roles and culminating the same into huge economic, scientific or political success. This also helped them in liberating themselves from the shackles of entrenched economic dependence on their male counterparts. However, it did extend a physiological setback to the patriarchal society and led to what Ehrenreich calls a "Masculinity crisis" (as cited in Hirschkind& Mahmood, 2002, p. 348).According to her, it is this crisis produced by modernity that gave birth to Islamic fundamentalism. This analysis also speaks volumes about the anti-modern, anti-liberal attitude espoused by the Taliban.

Further, it is also quintessential to understand that a movement could not gain traction until backed by some other group or a country in the form of a patron. In case of Taliban or we can call them ex-mujahideen, as they are the relics of the Soviet-Afghan war, the patrons were Pakistan, United Arab Emirates and Saudi Arabia. It was mainly because of Saudi Arabia saw a potential proxy in the Taliban, which could keep Iran in check. Thus it tried to bolster its regional ambitions to put its ideological competitor Iran at odds in the region. The Iranian regime, however, never allied itself with the political goals of the Taliban and kept maintaining distance from the Wahhabism that was being practised, preached and implemented in Afghanistan. Instead, when the Taliban emerged victorious in Afghanistan, Iranian Supreme Leader, Ayatollah Khomeini "denounced Taliban as a disgrace to Islam" (Magnus, 1996, p. 115).Thus, it is also Saudi Arabia, among others patrons' financial backing that further put the Taliban on the road of religious fanaticism.

Women under the Shackles of the Taliban Regime

Before the Taliban took control of Kabul, schools were co-educational, with women accounting for 70 per cent of the teaching force. Women represented about 50 per cent of the civil servant corps, and 40 per cent of the city's physicians were women. Afghan women who were once free to choose their dress, move about in public independently, were now subjected to harsh punishments (Tomar, 2002, p. 154).

Taliban came to power in 1996 and inflicted one of the most severe oppression on women. Since it got financial and other support from Saudi Arabia, it pushed an extreme form of Islam, and the imposition of Sharia rule was only first among many such steps. As Afghan Women Network rightly explained the plight of women by saying that women were forced to live in the world's largest prison, i.e., Kabul (Afghan Women Network,

1997, p. 12).Women were confined to the homes, and their disappearance from public life was appalling. Flogging of women in public became the standard form of punishment, and they were often shot in public for so-called moral crimes.

Meredith Runion(2007) aptly observed:

"The rule of the Taliban was so extreme that while a woman was walking on the road one day, she exposed her hand briefly enough to reveal nail polish on her fingertips. As punishment for her violation against the code of the Taliban and insult against Islam, several Taliban men held her down and cut off the tips of her fingers" (p. 124).

Taliban regime had a Ministry for Prevention of Vice and Promotion of Virtue, devised to oversee the implementation of the puritanical version of Islamic values (Gopal, 2014, p.14).The blue burqa became synonymous with Afghan women and perhaps nowhere in the modern world could we find such inhuman treatment meted out to the women. Notably, it has not been the same experience for women to live in Afghanistan before the emergence of the Taliban. During the mid-1970s, women made progress and achieved acceptance in the spheres of economics, politics and society. They could be seen wearing clothes or burqa out of their choice not because of compelling societal norms. It was estimated Taliban pushed its ideology through the actual exclusion of women and even they did not permit the admittance of women in the hospitals where their male counterparts were getting the treatment (Rashid, 2010, p.110).

Worse still, they could not come out from their houses without being accompanied by a male, that too, a blood relative. Even the company of another male than her blood relatives, let alone talking to them, could attract a sentence for them. The prisons of Afghanistan were filled with innocent women whose only crime was that they had left their homes alone, spoken to a male other than their relatives or loved someone whom they liked. These fell under the purview of the 'moral crimes' and landed them in jail. As a result of Taliban authoritarian regime, "by 2002, only 5% of women were literate, and 54% of girls were married before they were 18 years old. Afghanistan was then ranked as the country with the second-highest rate of maternal mortality, with upwards of 15,000 Afghan women dying in childbirth each year" (Khan, 2012, p. 1).

Taliban was literally at war with the women and did not stop at their social exclusion. To make them completely subordinate the inhuman regime also robbed women of their economic rights. Women were banned from every occupation including working in the media industry. A woman

working for the television was considered as having a polluted character. "As a part of its extremist rule one of the major undertakings by the Taliban was a widespread ban on journalism and photography" (WACC, 2016, November 16).

Dr Humera Rahi, who taught Persian at the University and had emerged as a poet of resistance shedding light on the arrival of Taliban said that "We detest Taliban, they are against all civilisation, Afghan culture and women in particular. They have given Islam and Afghan people a bad name" (as cited in Rashid, 2010, p.123). Afghan women were almost in every occupation, and they were the professors, nurses, doctors, ran small businesses and thus were making a contribution to the economy and also enjoyed the sweet fruit of self-reliance. Taliban crumbled their economic independence, and they were put literally at the mercy of the patriarchal society.

Most affected of them were the widows, who did not have any male in their family; they were left to die in isolation and hunger as they could not come out of their houses. As Taliban strictures legally banned women from shopkeepers or even to venture out of their homes, regardless of a male breadwinner in the family (Brodsky, 2003, p. 3). The implementation of the Sharia law and a desire to devise a societal pattern on the lines of Seventh century Islamic society encouraged Taliban to impose restrictions on the women. It further ensured that women were perennially at the receiving end and saw no hope. Politically, there was no question of representation of women, and they did not even have a minimal political group which would have acted as a pressure group in securing their rights. Women oppression in Afghanistan was conspicuous when there was not any representation made at the Fourth World Conference of Women in Beijing. International institutions like the United Nations also noticed the plight of women, when it dedicated 8 February 1998, a UN International Women Day, to the plight of Afghan women (Rasanayagam, 2002, p. 283).The hatred towards women followed from the belief that they were merely distractions in carrying out the tasks that God has chosen them to bestow on their fellow Muslims country men.

The Politicisation of Women in War on Terror

Samar (2019) argues that "the politicisation of Afghan women has been a phenomenon that has repeated itself throughout Afghanistan's history" (p.146). It was again proved by the United States when it underlined the

liberation of women as one of its war goals. In the wake of the 9/11 incident, the United States was in a quandary, mainly because it had deliberately chosen to maintain a reticent approach towards the Taliban regime. It is rather apparent that the economic interests of a nation often dictate its foreign policy. During the time prior to 9/11, the United States was in pursuit of several commercial interests in Afghanistan. Prominent among these was the benefit of a US company Unocal, which wanted to lay down a gas pipeline from Turkmenistan passing through the territory of Afghanistan to Pakistan (Rashid, 2011, p. 34). This heralded in a reticent US attitude towards the Taliban and its antithetical attitude towards the Western liberal-democratic values. Thus the trading of freedom of Afghan women was being done by the United States during these trying times for them. Even the pleas of several women-centric and international organisation fell on deaf years. It was to become all ears to intricacies of the brutal regime when it was struck right on its soil, and its invincibility was put in disarray.

During the Clinton presidency, the United States did not make any perceptible move that could have exerted some pressure on the Taliban to change its harsh policy measures that it had undertaken towards the Afghan women. Despite a clear indication that al-Qaeda had gained currency in Afghanistan and could pose a severe threat to the United States and its allies, President Clinton turned a blind eye towards the volatile situation in Afghanistan only partly to open them when US embassies of Tanzania and Nairobi were severely devastated by the al-Qaeda executed terrorist attacks.

A policy change occurred almost overnight in the US' corridors of power. President Bush went on to deliver his well-pronounced warnings containing that the war is in the offing. Even the First Lady, Laura Bush, in her November 16th radio address to her country, despised the Taliban regime and its repressive policies towards the Afghan Women and termed the war as "the fight against terrorism is also a fight for the rights and dignity of women" (as cited in Berry, 2003, p. 137). Therefore, it is discernible that the United States made rights of women as one of the causes only after the 9/11 incident.

It would still hold relevant that the very origin of the Taliban lay in the Afghanistan war with Soviet Russia and it was the United States which aided and abetted the Mujahideen in pursuance of its Cold War interests. It was the Mujaheddin when they were rendered jobless in the aftermath of Soviet withdrawal from Afghanistan emerged in the garb of saviours of the Society. Kim Berry(2003) aptly summarised that "while the United States did not overtly support the rise of the Taliban, it was instrumental

in nurturing the environment in which Taliban grew and thrived" (p.140).

Therefore, the oft-repeated statements underlining the plight of the Afghan women was an astute political attempt which successfully culminated into a heightened consciousness of the dangers of the Taliban regime amongst the American populace. It should be noted with caution that war requires legitimacy and the portrayal of underlying noble objectives to win popular support back home. Thus, the very sustenance of war becomes dependent on the fact of how popular it is in the domestic constituencies. Besides, it did help the United States, at least in the Western world that it was acting to preserve and promote the western values when the women cause was, though symbolically, infused in its "War on Terror".

Post-Taliban Afghanistan: A solace for Women?

The ouster of Taliban generated a great deal of happiness and hope in the minds of Women in 2001. The era unleashed a positive environment for women at least in the cities like Kabul. The newspapers lavishly wrote on the redeemed freedom for Afghan women and a popular Time Magazine ran a story "Lifting the Veil" (Time Magazine, 2001, December 3). The Bonn Conference of 2001 led to the establishment of the Ministry of Women's Affairs and Afghan Independent Human Rights Commission. In 2003, Afghanistan also voluntarily conceded to Convention on the Elimination of all Forms of Discrimination against women (Reddy, 2014, p. 130). It was meant to convey the beginning of new democratic Afghanistan, which was accommodative of women's interests. The women were about to be seen again in several professions as radical as the de-mining workers. Afghan constitution was framed in 2004, which carved out space for women like any other developed democracy. However, it is noteworthy that Burqa continued to remain firmly entrenched in the society of Afghanistan and the changes only occurred in the letter and not in the spirit.

(A) Political Participation of Women in Afghan Politics

The Afghan Constitution of 2004 reserves the 27% or 68 of the seats for women in the Wolesi Jirga (Parliament) out of 249 seats. Article 22 of the constitution while ensuring the gender equality reads as, "Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man or woman, have equal rights and duties before the law" (Afghan Constitution, 2004, p. 9). Thus, the

women have been given a constitutional mechanism to rise to any office or vocation, which is open to their male counterparts. Surprisingly, in a patriarchal society like that of Afghanistan, people overwhelmingly support the participation of women in politics. Surprisingly, Afghan society under the current civilian government exhibits the changed attitude towards women participation in politics.

According to a survey conducted by Asia Foundation (2019), "An overwhelming majority of Afghans (89.3 % up from 87.7 % in 2018) say that women should have a right to vote in the elections" (p. 214). Therefore, in this regard, alongside the mechanism given in the constitution, society also seems too ripe to see the women in politics. However, one factor needs to be underlined that shows the variation in the nation. Ethnic factor indicates that there are a different set of attitudes towards the role of women in politics in different ethnicities of Afghan society. "Pashtuns are more likely than all others to say leadership should be mostly for men (52.6%), compared to 33.3% of Tajiks, 28.6% of Uzbeks, and 17.7% of Hazaras. Hazaras are more likely than all other ethnicities to prefer leadership that is equally men and women (43.9%) or merit-based (28.0%)" (Asia Foundation, 2019, p. 213). Therefore, if we take ethnicity as a variable, then the Taliban is a Pashtuns dominated extremist movement and most likely to reverse the gains made during almost two decades of the civilian rule if it comes to occupy political power in Afghanistan.

(B) Status of Women's Education in a Post-Taliban Afghanistan

Indeed, it was a respite from the prohibition imposed on the education of girls by the Taliban, when an interim government was formed under the chairmanship of Hamid Karzai. Articles 43 and 44 extend educational rights to both man and woman, to be provided free of cost up to the B.A. level in the state-funded educational institutions (Afghan Constitution, 2004, p. 12). However, the Taliban threatening the teachers and girls students continued unabated. According to the education ministry, it is estimated that "more than 3.6 million Afghan girls are enrolled in school, and 1,00,000 women attend universities. But about 400 schools for both boys and girls have closed over the past several months for "security reasons" including armed conflict and Taliban threats or attacks" (Rahim and Zucchino, The New York Times, 2019). Therefore, it is apparent that though girls and women are bestowed upon the educational rights by the current civilian government, the unabated violence from the Taliban remained an impediment, and the educational opportunities only

remained procedural rather than substantial. The Asia Foundation (2019) published a survey on Afghanistan which shows that "Women are more likely than men to say lack of educational opportunities (women 44.9%, men 41.6%), lack of rights/participation/justice (women 36.0%, men 32.1%), violence (women 20.6%, men 15.6%), and economic concerns (women 11.3%, men 7.8%) are among the two biggest problems facing women in their area" (p. 50). Thus, they are devoid of substantial rights, and the democracy in Afghanistan has miles to go before it could develop capabilities in Afghan women required to realise their various entitlements in the Afghan state. Apart from security reasons, retrogressive social values explain the low educational opportunities for the girls in Afghanistan. A report released by the United Nations Children's Fund (UNICEF) suggests that around 34% of the Afghan girls are married before their age of 18 (UNICEF,2018, p. 20). As a result, girls become deprived of higher education and become submerged in household chores. There is also an overwhelming majority agreement that child marriage harms the health of the girls who get married at such an early age.

However, the Taliban offensive and social norms have restricted women in grabbing opportunities. Still, they have also made some progress over the last two decades and thus they just don't want to go back to the misogynist Taliban rule and therefore should have been offered role to reflect on their concerns in the peace talks. There remain some impediments to the girls' education. While laying down the budget for the fiscal year 2020, the government told the Parliament that it would only be able to construct only 800 schools against its promise of building 6,000 schools in 2018 by the spring of 2020 (TOLO News, 2020). Thus, there is also a definite lack of infrastructural support apart from the other societal and security constraints.

Critical Obstacles to Girls' Education

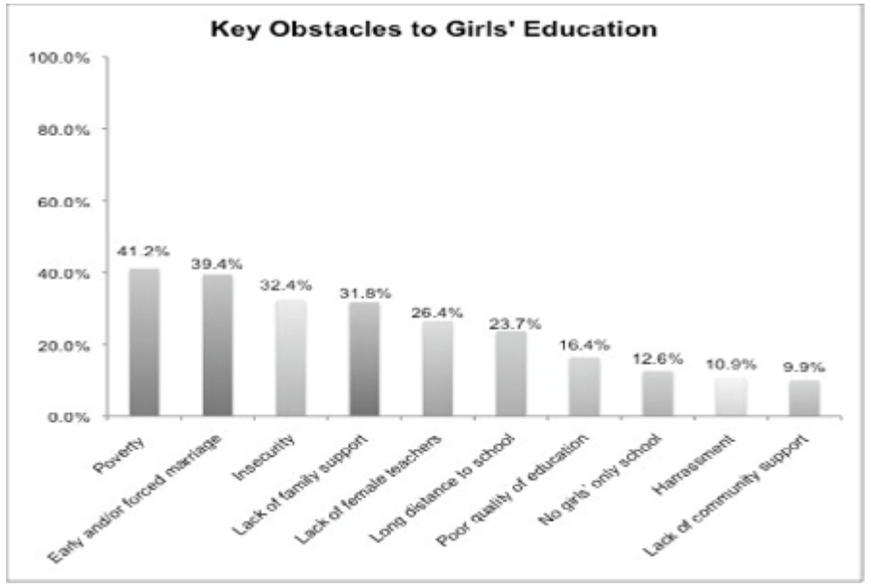

Figure: Girls' Education in Afghanistan (2011, February 24). High Stakes. https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/afghanistan-girls-education-022411_4.pdf

It is clearly discernible from the above-mentioned tabular representation that poverty, early and forced marriages and insecurity are amongst the key obstacles to girls' education. It is in these areas that the work needs to be done and the reformation in the realm of society is the most contingent requirement of the hour. Further, the government with the help of international donors should allocate more funds to the education sector so as the menace of poverty in getting the education for its citizens is tackled. Thus, it is the societal constraints, threats and attacks by Taliban on the schools and the lack of resources which have deteriorated the status of education for both girls and women in the on going conflict.

(C) What does Economics say about the Plight of Afghan women?

Article 48 of the Afghan constitution has codified the economic right by explicitly mentioning that, " work is the right of every Afghan" (Afghan Constitution, 2004, p. 13). According to Afghanistan Living Conditions Survey 2016-2017, the unemployment rate for women stood at 41.0%, compared to 18.3% for men (Central Statistical Organisation, 2018, p. 67). Therefore, women continue to remain dependent upon their male

counterparts, which likely decreases their freedom as an independent person. It is also surveyed that major problems faced by the women are "economic issues of unemployment (23.9%) and poverty (8.7%), taken together, far outweigh individual issues such domestic violence (16.9%), lack of women's rights (13.5%), and forced marriages (12.2%)" (The Asia Foundation, 2019, p. 95).This holds true when disaggregated by rural or urban place of residence, age, or gender.Therefore, these figures speak volume about the debilitating impact of the conflict on the economic status of Afghan women. In addition, it also highlights the weak structural capacity of the government which needs to be strengthened further in order to remove the obstacles like poverty, forced marriages, unemployment among others.

Challenges before the current civilian government of Afghanistan

It is estimated that at least eighty per cent of the women continue to live in the countryside, where the terminology like 'women rights', 'gender equality' still are concepts alien to rural people. The patriarchy lays active in the minds of hardened tribal population of Afghanistan and is engraved as the sacrosanct rules, which one could not think of violating them. Further, the isolation and exclusion of women remain mired in "social structure, custom and culture of warlord anarchism" (as cited in Samar, 2019, p. 153).In the far countryside, women remain devoid of humane treatment and often are treated as a means to make the lives of male comfortable through their various roles as a house maker, wife, daughter, all should be embodied in one person.

Further, it is also quintessential to understand that the Taliban was not completely neutralised in Afghanistan by the US-led NATO troops. Rather, the Taliban only made a retreat from urban Afghanistan to the mountainous region along with the al-Qaeda. They soon re-emerged in the rural areas and very often dictated terms to the inhabitants of those areas. Taliban controlled areas never saw the women moving freely on the roads. Governance also could not be trickled down to the far-flung areas and lives of the Afghan people did not witness any perceptible improvement under the changed regime. The bureaucratic corruption and the loopholes in the mechanism ensured that what was sent by Kabul reached meagre to the targeted population due to multi-layered bureaucratic corruption and a weak political will. Transparency International in its Corruption Perception Index (2019) raked Afghanistan 173 out of a total183 surveyed for this purpose (Transparency International, 2019).

Despite the above shortcomings, there is a glimmer of hope that at least the current civilian government in Afghanistan does not want to see Afghan women suffering under the barbarian asphyxiating customs and the retrogressive medieval Sharia law deciding the fate of them.

Domestic Imperatives in the US' Afghanistan Policy

The United States has abandoned the cause mainly of women along with other religious and ethnic minorities. But, securing of the women interests has never been its priority rather it was the threat of terrorism that emanated from the Afghan soil.To understand the incessant efforts of the Trump administration to seek an exit from Afghanistan could be plausibly explained by referring to the domestic imperatives of foreign policy.The United States has come in the region in order to respond to the mounting pressure in the wake of multiple terrorist attacks on her soil. Now, it wants to leave due to the reversing trend in public pressure, which wants to see an end to the Afghan war and have become increasinglywary of United States' army presence in Afghanistan (Goodson, 2015, p. 271). In literal terms, domestic constituencies are capable of exerting pressure on the government of the day, to which it must respond if it wishes for legitimation or re-election. Winding up of America's longest war has been one of the maiden promises that Trump made during his bid for the presidency. Therefore, Trump wants the troops in Afghanistan home before the elections (Neff & Barnes, The New York Times, 2020).

November Presidential election is due later in this year, it could serve him well if he is able to manage an exit for his country. Thus, the deal is not a deal but a face-saving exit as Afghanistan has become a Vietnam 2.0 for America (Bacevich, 2015). It took nearly two long decades to understand the resilience of the enemy. It is not the peace deal but the way the United States brokered it has become a source of worry. It is also the US flawed foreign policy which did not serve its interests well because it could not sever ties between Taliban and Pakistan rather funnelled millions of dollars into Pakistan in the forms of aid. Pakistan always threw its weight behind the Taliban by aiding and abetting it in materialistic as well as in spiritual terms when it trained the Taliban on its soil in fundamentalism version of Islam. With the rising fatigue and economic cost, it has become necessary to put an end to its military operations in the war-ravaged nation.

A Deal Without Substance

United States has made hasty efforts in striking a deal with the Taliban, which shows its desperation to extricate itself from the Afghanistan. It is partly because Afghanistan has witnessed a resuscitation of the Taliban, which remains strongest like never before and made the world's sophisticated military to kneel before its insurgency. The United States could not take its Afghan war to its logical conclusion despite Obama and Trump contribution of additional troops. In this peace agreement, the Taliban seemed to have been negotiating from the position of strength. Naturally, exploiting its advantageous position and the increased political fatigue of the United States, the Taliban did not promise much, except that it will not allow transnational terrorist networks to operate from the Afghan soil. Further, it also half-heartedly promised that it will initiate a dialogue with the Afghan government, which the Taliban never considered a legitimate representative of the Afghan people. In return, the United States would reciprocate by withdrawing their 14000 troops from Afghanistan in a phased manner.

The inherent flaws in the US-Taliban deal have been many. Firstly, there has not been any reference made that the Taliban would show allegiance to the Afghan constitution and the institutional structures of the country. It is yet to be seen how the Taliban would negotiate with the Afghan government when there is no impeccable presence of foreign troops. Thus, it could be a possibility in the near future that the Current Afghan government might meet the same fate at the hands of the Taliban as the Rabbani and Hekmatyargovernments met with in the 1990s (Shahrani, 2002, p. 719). Second, the very legitimacy of the Afghan government is challenged after the United States has legitimised the Taliban as a political force in the politics of Afghanistan. Thirdly, it is horrible to see through a deal which remains bereft of the commitments from the Taliban on women rights and civil liberties. Thus, the peace could not be sustainable when half of the population would be living perennially on the edge. Taliban attitude towards women remain parochial and the Puritanical Wahhabism drives this regime into which the modern notion of gender equality does not seem to fit well.

Lastly, any possible return of the Taliban into power, which is the most likely situation after the peace deal, Pakistan would pursue its policy of terror in the South Asian region and beyond. This is much capable of precipitating a crisis in the world's most nuclear region. Therefore, this deal lacked substantive measures required to attain sustainable peace.

Anticipating the Future of Women in a Post-America Afghanistan

Taliban has been making efforts to portray a comparatively liberal attitude of their organisation. Taking a cue from this, United States has also eagerly used the terminology "changed Taliban" in order to dilute the fact that they are not negotiating with militant outfits of the 90s rather a new changed version of it which believes in democratic principles and values. On the other hand, most of the Afghan women only feel that the peace deal would again unleash the Taliban rule and nothing but an easy route for their return into power.

Initially, the Taliban refused to talk with the representatives of the Afghan government while dismissing it as "puppets". Later on, under the increased pressure from Russia and Qatar, they reluctantly agreed to talk with the unofficial delegation of the government. Fawzia Koofi, who was one of the women representatives, recalls that during talks in Moscow when she said, "since our side had women delegates, She suggested to them (the Taliban) that they should also bring women to the table. They laughed immediately" (Natarajan, BBC, 2020).

Further, when she tried to ask for their views on sexual equality, they said that women could not become president and cannot be appointed as judges. This clearly shows how much the Taliban have changed over the years. This is clearly discernible that Afghan women have been abandoned by the United States. Fawzia Koofi, a senior woman politician in Afghanistan, made a statement that when she asked about the future of Afghan women, "she was told that if everything else is going well in Afghanistan, we are not going to keep letting our soldiers get killed for Afghan women (George, The Washington Post, 2020).Millions of Afghan women, girls are once again susceptible to the violence that has struck them a few years earlier. Their perspective torture at the hands of the Taliban is not a distant thing rather seems an immediate future.

Further, it should also be noted that it is not only the Taliban as a political entity, which threatens the women civil liberties. Rather, the Afghan society which remains parochial and ultra-conservative in its character also contributes to the fact that Afghanistan is one of the most dangerous places to live for women. Forced marriages of girls at a very young age has been one of the brutalities inflicted onto the women. Women remain subjected to the worst sexual abuses and torture by males of their families. What Afghan women tolerate is two-generational torture. This is because first they are subjected to their father's rule and then even to the family males younger to them. It is not a problem that American troops are leaving Afghanistan rather what is worrisome is the way with which it seeks an exit. United States civil liberties, gender equality, liberal-democratic principles and values could also help in changing the attitude

of a male-dominated society, whose views remains mired in the medieval ethos. It becomes a laughing matter and their male counterparts ridicule them when they are asked about their roles in the politics or economics of the country. In this sense, becomes quite reminiscent of the Ecclesiazusae, which was satirical work in the classical period of Greece, written by Aristophanes. It is rightly observed that "to think that once the U.S. and the coalition depart Afghanistan the Taliban will undergo some form of humanitarian metamorphosis and doctrinal epiphany is, frankly, ridiculous" (Allen, Brookings Institution, 2020).

It is highly unlikely that the Taliban even negotiating peacefully in intra-Afghan talks would have any regard and faith in Western democratic values. It is hoping again to see itself establishing Islamic Sharia law in Afghanistan. The only exception could be that it might sever its overt ties with its brethren terrorist groups such as al-Qaeda, Haqqani Network etc. However, expecting complete disruption in the relationship with the transnational terrorist network is Panglossian. Since it is the same al-Qaeda whose chief Osama bin Laden acted as a strategic and philosophic advisor to the Taliban commander Mullah Omar.

Conclusion

One of the most daunting challenges that lie ahead would be the preservation and protection of the gains that have been made ever since the ouster of the Taliban from Afghanistan. Though it is amply clear that there was no influential role of women in the peace talks and neither a strong pitch for their rights was made in the US-Taliban deal. Further, the text of the deal reads that "Islamic Emirates of Afghanistan", which is not recognised by the United States is known as Taliban, throws the light on the increased weight of Taliban in the eyes of the United States. If the Taliban is not per se recognised by the United States as a political entity than the deal has been struck with merely a metaphysical distraction, which does not hold true. In addition, it is yet to be seen that what place or role Afghan women are likely to held in upcoming the intra-Afghan talks. With America's determination to leave Afghanistan and the possible exclusion of women from social, political and economic spheres is clearly indicative of the fact that peace is not going to be a sustainable one. Rather, it is window dressing done by the United States to conceal its own wounds in Afghanistan.

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Legislative measures for the protection of interests of LGBTQ Community in India

Manu Singh and Vibha Srivastava***

Abstract

Although the Section 377 of IPC has been made unconstitutional but it is not sufficient. The term transgender means individuals of any sex whose appearance, properties, practices change from speculations about how individuals are 'expected' to be. The presence of transgender can be marked in each culture, race, and religion, cast ever since the human history is observed

The term "transgender" was first time pronounced in mid 1990s from a network of diverse individual. As per the dictionary meaning of the word 'Transgender', it means a person who cannot be identified as a conventional identities. . Acknowledgment of third Gender in Law The social significance of the term 'sexual orientation' become obvious only two or three years back when 'sex' began being seen as the normal constituent of sex character and 'sex' was perceived as socially created idea.

UNAIDS, published report in 2014 on Transgender people, mentions that persons of transgender community have gone through abuses in which 65-85% of person through verbal abuse, 25 percent and more faced physical and sexually abused. After NALSA decision, which was a significant institutional development for the rights of Trans genders, first legislative effort made in regard in 2014 and later, in 2016 finally Transgender Persons (Protection of Rights) Act, 2019 came. Global associations, nations like USA and UK have adopted a dynamic strategy towards the Trans network as far as acknowledgment as the third sex and giving them the essential human rights. By breaking down their situation in India it can clearly been seen that they are battling for their acknowledgment as the third sexual orientation, equity, training, reservation, business and so forth, so as to accomplish the general rights which individuals having a place with parallel sex enjoys. That the nation judiciary has taken a positive approach for the welfare of the board of committee however to the implementation of their rights legitimate considerable enactment is with the best possible controlling authority under the three-level of a democratic system.

Key words:- *Homosexuality, legislative measures, transgender community in India.*

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Introduction

In colonial Victorian era morality, these subjects were seen as erotically perverse and in need of the imposition. Concept of Hijras and different Transgenders in India is definitely not a new term; they have been perceived in our history also.

Religion has played one of the biggest roles in shaping Indian society. Instances of homosexuality can be seen in the shastras and sutras, manuals and treaties. In puranic and katha literatures and folk tales, stories about cross dressing and gender attraction, often play simultaneously with female-female attraction and male-male attraction.

Rekhti, a medieval period urdu poetry, we find depiction of women sexual relationships between women. Despite the fact that the greater part of the eunuchs seen today are asking at traffic signals or weddings.Transgender community have marked their significance since ancient era.

People additionally assumed a significant job in Royal courts of Islamic world, explicitly during Mughal rule in Medival India. In any case, with approach of British principle, the nearness of Transgender in the open circle was considered as abnormality in the 'pilgrim space'. In late nineteenth century Indian corrective code was established which condemned all non-penile-vaginal sexual act through segment 377. Under British organization established resolution marked transgenders as 'ongoing hoodlums' and 'sexual degenerates.' We have chronicled wellsprings of pioneer period as record, one such instance of government court where a eunuch was blamed for singing in broad daylight and dressed like a ladies. The police exposed the blamed to a clinical assessment and booked him for unnatural intercourse.

Observation made by justice Radhhakrishnan under a title named

"Gender Identity and Sexual Orientation", tried to characterize and noted that

"Gender identity is one of the most fundamental aspect of the life, it refers to each person's deeply internal and individual experience of gender, which may or may not correspond with sex assigned at birth, including personal sense of body which may involve a freely chosen, modification of bodily appearance or function by medical, surgical or other means and other expression of gender sexual orientation refers to an individual's enduring physical, romantic or emotional attraction to another person" While providing reservation the court observes: "TGs have also not been afforded special provisions envisaged under Article 15(4) for the advancement of the socially and educationally backward classes (SEBC) of citizens, which they are, and hence legally entitled and eligible to get the benefits of SEBC. State is bound to take some affirmative action for their advancement so that the injustice done to them for centuries could be remedied. TGs also entitled to reservation in the matter of appointment, as envisaged under Article 16(4) of the Constitution. State is bound to take affirmative action to give them due representation in public services. Articles 15(2) to (4) and Article 16(4) read with the Directive Principles." [1]

However, the problem arise when efforts made to bring transgenders in SEBCs criteria historically, criteria determining SEBCs was on basis of caste but Social marginalization of transgenders is purely based on gender, no other factor is relevant for their marginalization such as caste. This new criteria to determine SEBCs may create difficulty because of plurality in the forms of gender variant.

Acknowledgment of third Gender in Law The social significance of the term 'sexual orientation' become obvious only two or three years back when 'sex' began being seen as the normal constituent of sex character and 'sex' was perceived as socially created idea.

The peak of NALSA choice is the acknowledgment of transgenders as 'third sexual orientation.' The Court characterizes the word 'transgender' as an 'umbrella term' which incorporates variation into the class of 'third sex'. The inquiry, who is a transgender ? a wide undertone given in Justice Radhakrishnan's in judgment, "Transgender is commonly portrayed as an umbrella term for people whose character, sexual orientation articulation or conduct doesn't adjust with their natural sex",

1. para 60

this doesn't actually determine the term 'transgender' however it might incorporate hijras (who is neither male or female), pre-employable or post-usable transsexual individuals who experience 'sex reassignment medical procedure' "to adjust their organic sex to their sex personality so as to get male or female and transvestites who like dress in attire of inverse sex."

Journey of law relating to homosexuality in India

Section 377 of Indian Penal Code states that whoever voluntarily has carnal intercourse against the order of the nature with any man, women or animal, share the punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, pension also be liable to fine. But question arises that what is carnal intercourse against the order of nature. The answer is that-"any sexual activity which is not peno-vaginal in nature" is against the order of the nature and as such is a crime. But this section was particularly used to target the LGBT community i.e. lesbians, gays, bisexuals and transgenders and the irony was that they could be arrested on mere suspicion as well e.g. you see two boys holding hand together at a public place you could get them arrested on the ground that they are violating Section 377 of IPC because it criminalizes the homosexuality.

Steps taken by Naz Foundation

In 2001 a NGO NAZ Foundation filed a petition in the Delhi High Court and pleaded before court that section 377 should be declared as unconstitutional. Among many other arguments put forwarded by the Naz Foundation one argument was that we are working with people from MSM community (which means men having sex with men) and we can see there is a surge in the incidents of HIV AIDS among this MSM community. So if we have to provide proper medical attention and proper medical care to these individuals section 377 should not be part of India Penal Code and homo sexuality should be decriminalized because there are many people in this country who do not own up to their sexuality because they are feared of the law. Even if they are suffering from HIV AIDS they do not claim that they are homosexual because police will get them arrested and they will be prosecuted under section 377 of IPC. So the best way to provide proper medical care and attention to these individuals is to first decriminalize the homo sexuality so that these people can own up to their sexuality and treatment can be given to them.

In 2009 two judge bench of the Delhi High Court headed by A P Shah justice ruled that section 377 of IPC is unconstitutional because it violates Article 14 of the Indian Constitution which talks about the right to equality; it violates article 15 which talks about the non-discrimination; it also violates article 21 of Indian Constitution which talks about the right to life and personal liberty and this 'right to life' includes the 'right to live with dignity'. Since Article 14, Article 15 and Article 21 of Indian Constitution are being violated by Section 377 of IPC, it is unconstitutional. This judgment of the Delhi High Court was celebrated by many. Many people thought that Indian democracy is now coming to life; many people thought that it is a welcome judgment which celebrates plurality and diversity in this country.

Election Commission of India state that till date if you have to contest election or you have to be registered as a voter you had to claim either you are male or female but now we are giving you a third option and that is "others". Instead of choosing male or female you can choose your third gender and that is "others". Now for the first time transgender community can contest election under this category "others".

Kaushal Judgment

But as this movement was celebrated throughout in 2013 when this matter went to the Supreme Court in the case of Suresh Kumar Koushal v. Naz Foundation [2] the Supreme Court held that section 377 of IPC is not unconstitutional rather it is Constitutional and Section 377 of IPC shall be retained in the statute books of this country. So effectively this 2013 judgment reverse the judgment of Delhi High Court which had stated that Section 377 IPC is unconstitutional. So now in 2013 Supreme Court is saying that homosexuality is unconstitutional.

Steps taken by NALSA

In April 2014, in National Legal Services Authority (NALSA) judgment the Supreme Court recognized transgender as a 'third gender'. The Supreme Court said that recognizing the third sexual orientation isn't just a social or clinical issue rather it is a human rights issue. The Supreme Court judgment was noteworthy and memorable on the grounds that it tested the predominant perspective on the sex that we live in a general

2. Civil Appeal No. 10972 OF 2013

public that is challenged in the binary of male, female; men, women; boy, girl and upheld the diversity in this country. Supreme Court also directed to the state that the state should take affirmative action policy for the transgender community because they have been victimized. State can treat them as minorities and affirmative action policy can be directed towards them. The Supreme Court judgment is remarkable. So the binary that we had created in our society was dispelled and now we have third gender of the society. But if you look at this 2013 and 2014 judgment we will found that in 2013 judgment the homosexuality was recriminalized and it creates confusion in the mind e.g. a person is a gay his right to choose his gender is recognized in 2014 but he shall still be prosecuted for having gay sex because his gender has been recognized but not his right to love. Thus homosexuality despite of this 2014 judgment continued to be a crime. Further, directed to make provision for reservation as of backward class in matters relating to education and for public employment and also directed to come with social welfare scheme to provide separate medical facilities in hospitals and HIV Sero-surveillance centers as they are prone to sex-related issues. In addition to it directives includes separate public toilets and to encourage public awareness for social equality and to respect the dignity of the transgender community in fabric of society, which were deprived and neglected for centuries.

The supreme court of India adopted liberal judicial interpretation process through which it has come to explain the development to an extent to substantive freedom enjoyed by citizens.

Moreover, the court has conceptualized the importance of the transgenders rights while adjudicating upon other matter pertaining to lives of transgenders,

Step taken by Dr. Shashi Tharoor

Then in 2014 Dr. Shashi Tharoor took a significant step by introducing a private member bill in Lok Sabha. He wanted that Sec 377 of IPC should be struck down so that homosexuality can be decriminalized. But this bill was not allowed even to be tabled in Lok Sabha.

Navtej Singh Johar case

In 2016 Supreme Court referred this matter to the Constitutional Bench and then 5 judges of the Supreme Court in case of Navtej Singh Johar v.

Union of India [3] had to decide whether Sec 377 of IPC would continue or homosexuality would be decriminalized. Now that constitutional bench had to decide that what would be the future of homosexuality in this country. In the meanwhile the "Right to Privacy" judgment came into picture and in a landmark judgment of K. M. Puttaswamy J. v. Union of India [4] a SC unanimously agreed that right to privacy is a fundamental right under article 21 of the Indian constitution.

Chandrachud J. wrote "No matter whom you love, what you eat, what you drink, what you wear is none of the business of the state." So many people thought that this privacy judgment will have a huge role to play in decriminalizing the homosexuality because in this privacy judgment the Supreme Court has clearly stated that it is none of the business of the state to interfere in the private bedroom of two consenting adults.

Arguments regarding homosexuality

Before discussing the judgment of the Supreme Court regarding decriminalizing the homosexuality let us discuss the opposite arguments.

Culture: In opposite view people talk about the culture. As we know that the movies, paintings, books and art forms etc. are the mirrors of the society. Whatever is happening in the society writer write in his books, film maker shows in his movies, painter paint in his paintings and so on. If we look at the temple of Khajurahoo we will find that they openly depict 'gay sex', it means homosexuality was something which was prevalent at that point of time. If we look at the most widely worshipped from of lord Shiva i.e. 'Ardhanaareeshwar' shows half male and half female which means diversity. Lord Rama gave significant power to transgender community to bless important ceremonies such as child birth. So we can see that the transgenders are celebrated in Ramayana. Hazrat Bulle Bulla Shah used to dress as women and dance with the eunuchs and was performing Raks. Mir Takimir was one of the most celebrated Urdu poet in his poetry extolled his love for the fellow men. So we can say that the homosexuality was part of our culture and it was celebrated in our culture as well. This celebration of our diversity was converted into the binary by the British when they entered into the picture and created binary of our genders i.e. male and female and no other type of person. It means any argument that homosexuality was not the part of our culture

3. W. P. (Crl.) No. 76 of 2016; D. No. 14961/2016
4. Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1

does not seems correct because the history does not agree with that.

1. Against the order of the nature: Another argument against the homosexuality is that which is against the order of the nature. It is a medieval Christian concept. According to this concept the only purpose to do sex is procreation of children which means sex for recreation or sex for fun is against the order of the nature. In this 21st century in this democratic and republic country we cannot apply the medieval Christian thoughts. So this argument is also invalid.
2. Unnatural: Many persons say that this homosexuality is unnatural. Now who will decide what is natural and what is unnatural? Homosexuality can be found in more than 1000 species, so it is not something which we can termed as unnatural.
3. Disorder: Another argument is that many persons say that the homosexuality is a disorder but the American Psychiatry Association in 1973 removed homosexuality from the list of disorders. World Health Organization in 1992 also removed homosexuality form the list of disorders. Our own law Mental Health Care Act, 2017 expressly prohibits discrimination on the grounds of the sexual orientation that means those who are homosexuals cannot be doubt as suffering from mental disorders. So now we can say that the homosexuality is clearly not a disorder.

   Suppose for the sake of the argument if we assume for a while that homosexuality is a disorder, then it is mere a disorder and we cannot say that it is a crime. So if there is a disorder then in that case the people who are sufferings from those disorders should be treated as patients and not as criminals.

Thus now we can say that the homosexuality is not against our culture; it is not against the order of the nature; it is not unnatural; and it is not a disorder.

Indian scenario: findings of the the Navtej singh Johar case

Now let us discuss the judgment in this case In this case 5 judge constitutional bench, by the majority verdict of 5:0 declares that the homosexuality is not a crime. If you look at this judgment there is a strong South African flavor drawing from the South African constitutional courts vision of transformative constitutionalism. The arguments given by the judges in this case are-

Chief justice of India Deepak Mishra J. wrote in his judgment that the

constitution should be viewed as a living document and this constitution should be in a position to transform the lives of the people. The purpose of the constitution is to transform the society.

Another most important part of the judgment is the principle of non-retrogression of rights which means that as a society when it has been given a certain set of rights and because of these rights the society has reached at a certain standard we cannot take away these rights after that. When in the privacy judgment we gave a right to privacy to the people of this country we cannot now snatch this privacy from LGBT community.

In this landmark case Nariman J. said that we have to look at everything from the perspective of this chapter of Fundamental Rights. If this chapter talks about the equality, non-discrimination, and dignity then we have to provide all these features to the LGBT community also.

Nariman J. also pointed towards the presumption of the constitutionality. There is a doctrine which is followed by the Supreme Court called the presumption of constitutionality. It means whenever parliament makes a law and that law is challenged in the Supreme Court the court begins it with the assumption that this law is constitutional. Only when it is proven otherwise the court will struck this law down.. It was a prominent statement of the court because it can have the implications on the other colonial laws as well e.g. sedition etc.

Chandrachud J. writes that the "civilization has been brutal" and this civilization have been brutal for the members of the LGBT community.

Indu Malhotra J. was the only women judge on the panel sought apology from the LGBT community for the historic injustices meted out to the community.

Legislative approach

If we look at the Indian parliament recently the Lok Sabha has passed the Transgender Persons (Protection of Rights) Bill, 2016, which seeks to empower the transgender community in the country by providing them a separate identity. The bill which was introduced in parliament two years ago has been passed with 27 amendments. But it is still pending and besides this there is any legislation to protect the interests of LGBTQ community. Do we really think that there is no need of any law for the protection of interests of this community? Do we really think that the Supreme Court judgment is enough? If not, then why are we waiting, when many countries have already enacted provisions for the protection of the interests of these communities?

In a democratic country like India, one side where we have given them electoral benefits to elect the representatives and also themselves to be elected as representatives of the people but other side there is no any policy making has been done for the protection of their interests. One side they are treated as the citizen of this country but other side they have not been given equal rights for living a dignified life as are available to the rest of the citizens.

Let us discuss what should be the approach of Indian parliament towards enacting the laws for the protection of the interests of LGBTQ community. But before going into this let us have a look on the global scenario towards the protection of the interests of the LGBTQ communities. Another draconian provision contained in Act, criminalising begging may impact negatively on the life of transgenders in Indian as most of the persons their community dependent on begging by way of singing and dancing in public. Transgenders, the Indian penal code contain rape law only for protection of women and inflict 7 years of imprisonment. However, a person can be punished in case of sexual offence against them for 'sexual abuse' which inflicts punishment only 2 years of imprisonment. This is a gross discrimination for the community of transgenders. After decriminalization of consensual homosexuality under section 377 of IPC, they are prone to be used as tool to harassment. In addition to its flaws, the Act is totally silent on the provision of reservation in matters of education and employment which was given in NALSA case directives.

What Act promises that if the trasn children distress family solicitude then they will be fling to rehabilitation where they will be no less than in a detainmented position rather than being rehabilitated and it will also galvanize family as well as society to instigate the discrimination for trans community and make them feel like a part of segregate society.

As the transgender community has invariably been assumed as a non-identical part of society and they never got the decent equitable status which as compared to the binary genders, even today in current bill it can be clearly observed that they are not getting a proper legislation for their protection from the atrocities which they face somewhere or the other. The community which has always faced ill treatment & has never been provided space in framing the policies for their community and there problems of which they are well cognizant of.

Global picture

Steps taken by Judiciary

Now let us move towards global scenario. In 2002 there was a case wherein in Europe the gender that has been assigned to an individual at the hour of birth can't be changed by that individual in his introduction to the world authentication. That means once a gender has been assigned it will remain permanently his gender for his entire life.

In the case of Christine Goodwin v. The United Kingdom[5] the European court of Human Rights held that disallowing transsexual to change to their birth certificate or marrying in their own gender is a breach of the European Convention of Human Rights. And as we know that the Britain who has imposed Section 377 of IPC on the people of this country had already been decriminalized homosexuality in their own country. So, why should not we look forward regarding this?

Supreme Court of USA in 2016 in the case of Obergefell v. Hodges declares that all the 50 states in the USA should also provide for Gay Marriages in this country because not allowing the gay marriages goes against the constitutional rights of the members of the LGBT community. So it's time to adopt the verdict of USA Supreme Court in this country as well. Global associations and nations like the USA and UK have adopted a dynamic strategy towards the trans network as far as acknowledgment as the third sex and giving them the essential human rights. By breaking down their situation in India it can clearly been seen that they are battling for their acknowledgment as the third sexual orientation, equity, training, reservation, business and so forth, so as to accomplish the general rights which individuals having a place with parallel sex enjoys. In any case, here the inquiry emerges that on the off chance that they get legitimate acknowledgment will it guarantee their acknowledgment to their families of which they are part of. That the nation judiciary has taken a positive approach for the welfare of the board of committee however to the implementation of their rights legitimate considerable enactment is with the best possible controlling authority under the three-level of a democratic system

Steps taken by legislature

If we look at the democratic countries of the world in December 2000, the

5. [2002] IRLR 664.

Netherlands became the first country to legalize same-sex marriage. The legislation gave same-sex couples the right to marry, divorce, and adopt children.

If we look at the "The Economist Intelligence Unit Democracy Index for 2018" we will found that India is listed under Flawed democracy with 41st rank. (Defective majority rule governments are countries where decisions are reasonable and free and essential common freedoms are regarded however may have issues (for example media opportunity encroachment). These countries have critical flaws in other just perspectives, including immature political culture, low degrees of support in legislative issues, and issues in the working of administration).

Now let us have an overview over some of the flawed democratic countries and their approach towards protecting the interests of LGBTQ community, which are in ranking above India and which are in ranking below India.

Countries with ranking above India:

USA (25th rank) in the year 2015 legalize the same-sex marriage. Portugal (27th rank) in June 2010 became the eighth country to legalize the same-sex marriage although their law does not give married same-sex couples the right to adopt children. France (29th rank) in May, 2013 become the 14th country to grant gays and lesbians right to wed. It not only legalizes the same-sex marriage but also gives gay and lesbian couples the right to adopt children. Belgium (31st rank) in January 2003, legalize the same-sex marriage, giving gay and lesbian couples the same tax and inheritance rights as heterosexual couples. South African (40th rank) parliament legalized the same-sex marriage in November 2006.

The countries having ranking below India even they have incorporated laws for the protection of interests of LGBTQ community but Indian parliament has done nothing in this regard.

Thus Indian Parliament needs to enact law in this regard as soon as possible so that the LGBTQ community can also come into the mainstream of the society. They can also live a dignified life.

Conclusion

LGTBQ people's struggle against the stigma attached to their gender identities, sex characteristics or sexualities. The non-conformity of LGBTQ people challenges the traditional notions around family, kinship

and nation. As a result, the community often faces social exclusion, leaving them disadvantaged and living on the margins. A study by the National Human Rights Commission (NHRC) of India found that about 99 percent of transgender people have experienced social rejections on multiple occasions. Moreover, 52 percent of the community has faced harassment by their school classmates and 15 percent from their teachers, resulting in their dropping out of school. In India, significant progress has been made On 18 April 2020, the central government sought public feedback on the rules up to 18 May to implement the Act. Apart from certain provisions of the Act that may hinder the progress made for transgender rights, the public consultation process seems ill-timed considering the country-wide coronavirus lockdown. The lockdown has restricted the movement of the transgender community and made it feedback. Transgender Persons Act 2019 versus NALSA judgement 2014 Under the NALSA v. Union of India ruling, transgender people were to be treated as a "third gender" and their rights safeguarded under the Constitution. It recognised that the self-identification of one's gender is enough to provide rights to individuals. The supreme court also held that "sex" discrimination is not just limited to biological sex but also the "innate perception of one's gender", i.e. the gender that the trans individual identifies with. Although a landmark judgement and an important milestone in the transgender community's struggle for equal rights, it did not necessarily guarantee their equal treatment or provide directions for guaranteeing them a life of dignity.

In view of the 2014 judgement, the parliament introduced a series of bills addressing the rights of transgender people. The most recent one was introduced in July 2019, The Act received a negative response from the transgender community as it nullifies the NALSA judgement in their view. The new law is not only inadequate, they have claimed, but will also reverse the gains made to secure the rights of transgender people. The unequal status of the Trans community. The Act is also unclear on the Trans individuals' access to welfare benefits and civil rights. The NALSA judgement establish affirmative action "increase the presence of transgender in educational institutions and public appointments". The new rules, however, do not clearly state any provisions for affirmative action in education, healthcare and employment or civil rights related to marriage, adoption and property, etc. Supporting inclusion .The diluted Transgender Persons (Protection of Rights) Act, 2019 does not take into account transgender community's basic rights, bodily autonomy, dignity and goes against the very crux of the NALSA judgement. By subjecting them to psychological, medical and public authority's scrutiny, it nullifies the right to self-determine one's gender.

Although Supreme Court has made Section 377 of IPC unconstitutional but it is not sufficient. It does not give complete justice to the LGBTQ community. The decision has made a remarkable change in the society and it will certainly connect the LGBT community to the mainstream of the society. But the job is not done. We can see that the Supreme Court has only decriminalized the homosexuality but what about the other rights of this community? What about their rights of marriage; what about their rights related to the adoption and inheritance. If we look at the Hindu and Muslim personal laws and also Special marriage Act we will find that there is provision which recognized only marriages between male and female. Similarly other personal laws are also not suitable for the LGBT community to provide them justice.

One more important area where the legislation should also be done is that the recognition of insurable interest between lesbian and gay couples. Financial dependency is the key factor to determine whether insurable interest exists between two persons or not. There is no any direct provision in this regard for the LGBTQ community, but we can trace it. Section 125 of the Code of Criminal Procedure and also Section 2 of the Protection of women from Domestic Violence Act provide for the financial dependency for live in partners. Also in the landmark judgment of Indra Sharma v. V K V Sharma[6] court has ruled regarding the financial dependency of partners in live in relationship. Now in a judgment of Kerala High Court in the case of S. Sreeja v. The Commissioner of Police, Thiruvananthapuram & others[7] the court ruled that the lesbian couple can live together in live in relationship. So by this way we can say that there is financial dependency of both lesbian partners. So there should also be recognition of insurable interests between lesbian and gay couples.

Global associations and nations like the USA and UK have adopted a dynamic strategy towards the trans network as far as acknowledgment as the third sex and giving them the essential human rights. By breaking down their situation in India it can clearly been seen that they are battling for their acknowledgment as the third sexual orientation, equity, training, reservation, business and so forth, so as to accomplish the general rights which individuals having a place with parallel sex enjoys. In any case, here the inquiry emerges that on the off chance that they get legitimate

6. 2014 (1) RCR (Crl) 179 (SC)
7. High Court of Kerala,Writ Petition (Criminal) No. 372 of 2018 24-09-2018

acknowledgment will it guarantee their acknowledgment to their families of which they are part of. That the nation judiciary has taken a positive approach for the welfare of the board of committee however to the implementation of their rights legitimate considerable enactment is with the best possible controlling authority under the three-level of a democratic system. Managing specialists ought to give a privilege of self-character if the goal of the Act is to encourage the transgender network the assurance of the personality ought not to be limited to some other position to choose it ought to be ones possess discretional decision. The Act must guarantee equal social, economic and civil rights as well as protection against abuse and discrimination. It is also essential to consult the transgender community before formalising the rules. The public consultation process must become more inclusive and provide sufficient time to discuss the rules. The state should consider extending the consultation procedure until the individuals can safely mobilise to effectively voice their concerns. Providing the transgender community equal constitutional rights is essential to empower them, reduce social stigmas and improve their socio-economic position.

Suggestions

The Supreme Court has done its job very well and now it is the responsibility of the legislature to take initiative and go one step further to enact a separate law and give full fledge rights to the LGBT community also, as are available to the mainstream of the society. It is the duty of the parliament to enact laws for the rights related to marriages, inheritance, adoption and recognition of insurable interests for the LGBT community. In other way we can say that Indian Parliament should learn from the other flawed democratic countries like Argentina, Brazil and Colombia. Mere decriminalizing homosexuality and not giving them full fledge rights will be against the concept of equality and gender justice.

To make the Transgender Persons (Protection of Rights) Act, 2019 progressively affective, the managing specialists ought to give a privilege of self-character if the goal of the Act is to encourage the transgender network the assurance of the personality ought not to be limited to some other position to choose it ought to be ones possess discretional decision. The Act must guarantee equal social, economic and civil rights as well as protection against abuse and discrimination. It is also essential to consult the transgender community before formalising the rules.

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COVID-19 Impact on Lease Transactions: Issues and Possible Solutions

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Abstract

The outbreak of COVID -19 is an unprecedented situation, which we are witnessing and which brought all activities (be Industry, Trade, Commerce, Business and even social) to a grinding halt there by disrupting all our economic and organisational norms and at the same time, gravely affected both interpersonal and social relations. This Covid pandemic led to lockdowns and financial slowdown not only across the country but all across the Globe, in all sectors and its impact can be seen severely on businesses, be it big or small. The situation has led to inability to perform one's contractual obligations and at the same time, nobody wants to be held liable for his/her non-performance of contractual obligations. Parties are rushing to Courts seeking various reliefs pertaining to invocation of bank guarantees or extension of letter of credit or non-payment of rent by tenants/lessee. While one party is seeking a declaration to the effect that the outbreak of COVID 19 is a force majeure event, the other party is arguing to the contrary arguing that only the terms of the contract be given a strict interpretation. In this pandemic, while RBI and SEBI have definitely provided some regulatory relief by allowing moratorium on loan repayments/ asset deterioration, for other matters. This article therefore, aims at analyzing this peculiar situation from a legal point of view ie, whether COVID 19 would fall within the realm of being a "Force Majeure event" discussing majorly the impact of COVID-19 on lease transactions. Looking from the perspective of both the lessor and lessee, while one can definitely see the economic hardship mounting upon a landlord i.e. his obligations to pay taxes and Insurance, from a tenant's perspective, while his business too has come to a standstill, nevertheless his obligation to pay his lease amount keeps mounting. The, parties are therefore, left with no option but to invoke the equitable jurisdiction of Courts as one could see in case of Raman and & Ors. Dated May, 21,.2020 pronounced by the Delhi High Court which deals with this very issue of the liability of a tenant to pay rent during the lockdown period and which judgment also forms part of analysis of this paper. Further, in this paper an attempt has been made to identify the challenges that lie ahead while suggesting possible solutions to overcome deal with various issues arising amongst the landlord and tenant due to such or similar pandemic in an effective manner.

Key Words:- *COVID-19, Force majeure, Doctrine of Frustration, Liability, Tenant.*

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Introduction

In the wake of the outbreak of COVID -19 which is an unprecedented situation which has led to an inability to perform one's contractual obligations, and at the same time, nobody wants to be held liable for his/her non-performance of contractual obligations therefore, there being no other option, recourse to force majeure clause becomes the only available option. In this situation, it becomes essential to analysis whether COVID 19 falls within the realm of being a 'Force Majeure' event which in turn, makes it essential for us to dwell into the analysis of the concept of a force majeure event. It is pertinent to note that though several countries have classified this pandemic as an 'act of God', thereby, extending a legal color to contractual non-performance and extending indemnity against contractual breach, Indian Courts have not held so. The Government has only issued some notifications for invocation of force majeure in only certain sectors during the National Lockdown meaning thereby, it shall not be open for all to take recourse to the 'force majeure' clause in order to justify their non-performance of their part of contractual obligations. At this juncture, it is becomes relevant for us to refer to an Office Memorandum issued with respect to the 'Manual for Procurement of Goods, 2017', issued by the Department of Expenditure, Procurement Policy Division, Ministry of Finance on February 19th, 2020, stating inter alia "that the COVID-19 could effectively be covered under force majeure clause because it is a 'natural calamity' and force majeure clause may be invoked, wherever considered appropriate,

following the due procedure".[1] However, the instant clarification applies only with respect to disruption of the supply chains and as stated above, each case shall have to be assessed on its own merits prior to invoking the force majeure provisions. In fact, it is also learnt that over 1600 force majeure certificates have come to be issued by the China Council for the Promotion of International Trade (CCPIT) to firms spread in various 30 sectors thereby covering contracts worth over $15 billion.[2]

Speaking of 'Force majeure', in legal parlance when we use the term 'Force Majure', it is used to describe unforeseen events which may happen due to fire, flood, civil unrest, or terrorist attack etc. Thus, Force Majeure means a 'superior force' event which is beyond human control. Though force majeure has not been defined as such anywhere under any of the Indian Statutes, however, Section 32 of the Indian Contract Act, 1872 (the "Contract Act") does envisage a situation where a contract may become void when an event, on the happening of which the contract was contingent, becomes impossible to be performed. While the Indian Contract Act, 1872 (ICA) does not define force majeure, Courts often refer to Black's Law Dictionary which defines it as "an event or effect that can be neither anticipated nor controlled". Thus, a force majeure clause relieves one or other contracting party from its obligation to perform its contractual obligation owing to the happening of an unprecedented event or a circumstance beyond the control of the contracting parties. The party who invokes the clause is under an obligation to prove the same. Negligence or malfeasance of a party is however, excluded from the realm of operation of the force majeure clause sine the non-performance is caused by a usual and maybe a natural consequence of external forces which is within contemplation. Therefore, for the purposes of recognising any circumstance to be classified as a force majeure circumstance, it is very essential that the following requisites need to be fulfilled:

- these circumstances did not exist at the time of the conclusion of the agreement and its occurrence could not have been reasonably foreseen;

1. Office Memorandum with respect to the 'Manual for Procurement of Goods, 2017', issued by the Department of Expenditure, Procurement Policy Division, Ministry of Finance on February 19, 2020. Available at https://doe.gov.in/sites/default/files/Force%20Majeure%20Clause%20-FMC.pdf(Last accessed on may,27,2020).
2. http://en.ccpit.org/info/info_40288117668b3d9b017080e1f9b5072f.html (Last accessed on June, 1, 2020).

- due to such circumstances, the agreement cannot be objectively performed;
- failure to perform the agreement could not be controlled or prevented by those circumstances;
- the party has not assumed the risk of the occurrence of these circumstances or their consequences.

In view of the current situation, invocation of the force majeure clause would depend on the terms of contract and a careful analysis as to whether the force majeure clause explicitly covers such pandemics or not. If the answer to this is in the affirmative, then the failure to adhere to contractual terms would relieve the party from performance of the contract. Further, the Force majeure clause may also be structured in such a manner so as to include any 'act of Government', in which case the lockdown and restrictions on movement imposed by the Government may get covered within the ambit of Force Majeure clause.

Force Majeure and Doctrine of Frustration

It will be apposite to mention here, Force Majeure clause in a contract does not excuse non performance but only suspends it or extends the duration for the performance of the contractual obligations. Such a clause is governed by Section 32 of the Indian Contract Act, 1872.[3] In case there is no provision for Force Majeure in the contract, then the doctrine of frustration envisaged in the Section 56 of the Contract Act comes into play.[4] If performing a contractual obligation becomes impossible/ unlawful due to a supervening event, the happening of which was beyond prevention by the performing party, the contract may become void and the contract may said to have become, 'frustrated', under Section 56 of the Contract Act. To invoke the application of the Section 56 of the Indian Contract Act the required essential ingredients are as follows: –

3. Indian Contract Act, 1872, Section 32: Enforcement of Contracts contingent on an event happening - Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.
4. Indian Contract Act, 1872, Section 56: Agreement to do impossible act —An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

1. Existence of a legal and valid contract;
2. The contract remains to be performed completely at the time of invoking the clause; and,
3. The contract becomes impossible to be performed.

However, whether there exists an express clause or not, neither force majeure nor the doctrine of frustration will relieve the parties of their obligations as there are a lot many important factors which play an important role and each case shall have to be decided on the basis of its own facts and the terms and conditions of the agreement another factors. In fact, English law on this issue was quite rigid especially prior to the passing of the judgment in the matter of Taylor v. Caldwell.[5] Irrespective of the happening of an unforeseen event, a contract would have to be performed in all circumstances. This rigidity of common law holding the contractual terms to be strictly applied was relaxed to some extent by the decision in Taylor v. Caldwell wherein it was "held that if, owing to some unanticipated event, renders the contract impossible to be performed, it need not be further performed since the fundamental basis of the contract no longer remains. It was held that insistence on performing such a contract would not be just." In India, the Apex Court, in its judgment passed in the case of Satyabrata Ghosev. Mugneeram Bangar & Co.[6] observed Impossibility' under S.56 doesn't mean literal impossibility to perform the contract due to strikes or commercial hardships but impossibility to perform a contract as provided under S.56 only refers to cases where there occurs a supervening event which is beyond contemplation and control of parties, destroys the very foundation upon which the contract rests. These circumstances render the contract 'impracticable' to be performed'. The main idea upon which the doctrine of frustration of contract is based is that of the impossibility of performance of the contract; in fact, 'impossibility' and 'frustration' are often used as interchangeable expressions. It is the change in circumstances which makes the contract performance impossible and which further absolves the parties from further performance under the contract. The parties shall be excused if substantially the whole contract becomes impossible of performance or, becomes impracticable due to some reason for which neither of the parties was responsible.

5. (1861-73) All ER Rep 24.
6. 1954 SCR 310.

In fact the entire jurisprudence on the force majeure and the doctrine of frustration has been stated by Justice RF Nariman of the Apex Court in the case of Energy Watchdog v. CERC [7], The Apex Court has observed as under:

"Force majeure" is governed by the Indian Contract Act, 1872. In so far as it is relatable to an express or implied clause in a contract, such as the PPAs before us, it is governed by Chapter III dealing with the contingent contracts, and more particularly, Section 32 thereof. In so far as a force majeure event occurs de hors the contract, it is dealt with by a rule of positive law under Section 56 of the Contract"[para32].

Placing reliance upon M/s Alopi Parshad & Sons Ltd. v. Union of Indian[8], and Naihati Jute Mills Ltd. v. Hyaliram Jagannath[9], the Apex Court observed "that that the performance of a contract is never discharged merely because it may become onerous to one of the parties and that a contract is not frustrated merely because the circumstances in which it was made are altered. It further observed that Courts have no general power to absolve a party from the performance of its part of the contract merely because its performance has become onerous on account of an unforeseen turn of events" [para36].

Upon a detailed examination and analysis of the judgments of the Common Law Nations during the Great Flu/ Swine flu of 1918, one would find that in majority of cases, while interpreting a Force Majeure Clause, it was held that the epidemic did not excuse a duty to perform by the parties. Courts have interpreted it in a manner so as to bind the contracting parties rather than release them from their obligations.

COVID 19 and Lease Transactions

We all know that with the outbreak of COVID 19 and the consequential lockdown imposed by the Government, has really hassled the Country and its citizens and has led to an exponential rise in commercial litigation especially between landlord and tenants and the centre point for all such litigation has majorly been waivers/ exemptions of payment of rent during the closure of industries and commercial establishments. Tenants have been claiming that since they have not been able to use the premises,

7. (2017) 14 SCC 80.
8. 1960 (2) SCR 793.
9. 1968 (1) SCR 821.

therefore, they should be exempted from payments of rent. In fact, certain countries such as Singapore and UK have, in the wake of this pandemic, asked landlords not to initiate eviction proceedings/evict their tenants due to non-payment of rent. In India, states such as Delhi, Maharashtra and Uttar Pradesh have asked landlords to give time extensions to tenants for rental payment and to amicably settle their disputes and thereby provide some breathing time to tenants. In the author's view while this pandemic may not affect old commercial tenancies where rent is quite low and residential tenancies, the real litigation will arise in cases of commercial tenancies where the lease amounts are quite high.

The law with regard to lease agreements is well settled that rights and liability of the lessee are governed by the Transfer of Property Act, 1882 (TPA) and the doctrine of frustration is not applicable to lease deeds. For a lease of immovable property, an agreement of lease needs to be executed lawfully by the lessor and the lessee containing the terms and conditions of the lease for lawful consideration. A lawful agreement of lease of immovable property is therefore, a contract between the parties regarding the transfer of a right to enjoy the property in consideration of either premium or rent or both within the meaning of section 10 of the Contract Act. The mutual relations between the lessor and the lessee are governed by the terms settled between them and also by local usage. However, in the absence of such terms or usages, Section 108 of the Transfer of Property Act, 1882 plays an important role in as much as it provides for certain rights as well as liabilities to both, lessor and lessee, as against one another, in respect of the property leased.

Therefore, one can look into the relationship of tenant-landlord/ lessee-lessor to understand the impact of COVID-19 on lease transactions, which is a contractual relationship based the free will of the parties (except in a situation where the monthly rental happens to be below a specified amount and such a relationship being governed by the various provisions of the Rent Control/ Regulation Acts enacted by various States). The relationship between a landlord and tenant is assurance based which is generally reduced to writing and which is mainly governed by various provisions of the Contract Act, 1872 and the parties are at liberty to include and agree to all possible present and foreseeable conditions and exceptions into the agreement and which conditions are legally enforceable.

If the lease deed which has been entered into between the parties does not provide for a force majeure clause, the parties then cannot take shelter under Section 56 of the Contract Act. However, in such a case, an option available to a lessee is to invoke Section 108(B) (e)[10] and Section

108(B)(l)[11] of the T.P. Act, 1882 which provides for the doctrine of force majeure and also deals with the lessee's rights and liabilities and as per which, a lease may be rendered as void at the option of a lessee in a situation where the subject matter of the lease itself gets destroyed, either wholly or in a part, by reasons attributable to fire, tempest or flood or violence of any army or of a mob or other irresistible force. The destruction, however, must be substantial and of permanent character and the lessee's right or avoidance is subject to the proviso that the destruction or the loss is not due to his own wrongful act or neglect.

However, as is generally seen, usually the lease agreements do not favor the lessee and do not provide them with a right to seek waiver or suspension of lease rentals, even in case of a force majeure event. Generally, the typical clauses in a lease agreement favoring the lessors are:

- Once equipment is leased out, then irrespective of its usage, the lease rentals shall be duly paid as per the rental schedule till the expiry of the lease period. The lessee on being bound by Such absolute and unconditional obligation is therefore, prevented from invoking the doctrine of frustration;
- Along with delivery of equipment to lessee, all related risks also pass on to the lessee.
- The lease agreements also contain 'margin protection' provisions that may be triggered by COVID-19 related events. For instance, with an increase in the funding costs of the lessor owing to COVID-19, the same may also enhance the lessee's payment obligations. For now, the only tenable option available with the lessees may be to request the lessors to waive or suspend the lease rentals.

During the COVID-19 outbreak, the Governments, both at the Central and State level, have directed all employers in all sectors to make good, the payment of wages/salaries to all employees notwithstanding their employee status and irrespective of their salary status. This direction has

10. The Transfer of Property Act, 1882 , Section108 B(e): Rights and Liabilities of the Lessee -if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.
11. The Transfer of Property Act, 1882 , Section108 B(1)provides that a lessee is bound to pay the premium or rent to the lessor.

surely raised the expectation in the minds of the landlords/ lessors- particularly of residential premises- that they are too entitled to their rental as per the Agreement, as even though there is a pandemic/ FM event, the same has not affected the ability of the tenant/ lessee to pay the rent, as he/ she is entitled and must have got his/her entire wage/salary and therefore, why should he/she let go the rental. A landlord/ lessor can very well contend that since Banks have also deferred payment of EMIs, there is absolutely no occasion for a tenant to not to pay the rent. Unfortunately, however, this is something which does seem to have found favor with. While the banks have only deferred the recovery of the EMIs in these months, however, there has been an extension of the Loan Term and interest is also being charged by banks for the period of such deferment. The landlord/lessor has therefore, not really understood the grim situation of the tenant/lessee.

To curb the spread of COVID-19, a nationwide lockdown was imposed by the Central Government from March 25th, 2020 and in view of which, the MHA issued its order dated 29.3.2020,by taking recourse to Section 10(2)(l) of the Disaster Management Act, 2005 and thereby directed all State/Union Territory Governments and State/Union Territory Authorities to direct suspension/waiver of rent payable by workers to landlords for a period of one month, by issuing necessary orders in this regard.[12] However, no notification/ order was issued w.r.t. suspension or waiver of lease rentals for commercial lease contracts entered into by business houses. Sans any clarity/relief by the Government on this aspect, the force majeure clause came to be vigorously evaluated by commercial entities under their respective agreements. Later, in April, the Ministry of Home Affairs vide its order dated April 15, 2020, called for "strict compliance" of directions that landlords will not demand rent from migrant workers and students for a month. It required respective district magistrates to spread awareness about this directive and, in case of non-compliance, legal action to be taken.

Ramanand & ORS.V. Dr. Girish Soni &ANR[13]

In this part author attempts to analyses the application of concept of force majeure to a tenancy or lessor/lessee relationship especially in view of a

12. https://www.mha.gov.in/sites/default/files/PR_MHAOrderrestrictingmovement _2 9032020.pdf(Last accessed on June,1,2020).
13. Order dated May 21, 2020 passed in RC. REV. 447/2017C.M. No. 10847/2020 (Justice Pratibha M.Singh).

recent judgment of the High Court of Delhi in the case of Ramanand V. Dr. Girish Soni & Anr, pertaining to the payment of rent and invocation of 'force majeure'. Relevant to the issue of the liability of a tenant to discharge his liability of rent towards his landlord during the lockdown period in the wake of COVID-19 pandemic ,an application bearing C.M. No. 10847/2020 came to be filed before the High Court by the tenant seeking suspension of order dated 25.9.2017 directing payment of rent by the tenant in view of the lockdown ordered owing to outbreak of COVID-19. The said application was disposed of vide order dated 21.5.2020 thereby setting out the parameters to be considered while dealing with requests for waiver or suspension of rent in the unprecedented situation.

Factual Background

A tenant running a shoe store in Khan Market [commercial market] vide a lease deed dated 01.02.1975 at a monthly rate of Rs. 300- was proceeded against by its landlord in the year 2008 in a petition filed under Section 14(1)(e) [bona fide requirement] of the Delhi Rent Control Act, 1958. A decree for eviction was passed by the jurisdictional Rent Controller on 18.03.2017.The tenant challenged the eviction order before the Rent Control Tribunal, which was dismissed by way of the order dated 18 September 2017 and thereafter, the a petition challenging the dismissal order was filed by the tenant before the High Court [R.C. Rev. No. 447/2017] , wherein the High Court, by way of its order dated 25.09.2017, granted an interim order of stay of the eviction order, subject to the tenant paying a sum of INR 3,50,000 (Rupees three lakhs and fifty thousand) per month and in default of which the stay of the order of eviction was to be vacated.

Pursuant to the lockdown ordered owing to the outbreak of COVID-19, an application supra seeking suspension of rent was filed by the tenant before the HC with a prayer that the lockdown was a force majeure event and was beyond the control of the tenant and since there was no business activity undertaken by the tenant during the lockdown period, it was entitled to some remission or, in the alternative, it was willing to make part payment of the rent or alternatively the liability to pay rent be delayed by a month.

Findings of the High Court

The High Court observed that tenancy contracts and leases may be of different kinds, including but not limited to the following: -

i. Oral tenancies with a month to month payment of rent;

ii. Short term tenancy contracts wherein monthly rent is payable;

iii. Long terms lease contracts containing a force majeure clause;

iv. Lease contracts which are revenue sharing in nature and;

v. Lease agreements which provide for a monthly percentage payment from the sales turnover [para 11].

The High Court has dealt with the applicability of Section 32 and 56 of the Indian Contract Act, 1872 (Contract Act) and Section 108(B) (e) of the Transfer of Property Act, 1882 (Property Act), in detail to tenancy contracts and on the issue of waiver/ suspension/ remission from monthly payment of rent, the Court held that each would apply separately and in a different manner depending upon the nature of agreement.

The High Court observed that in circumstances such as the outbreak of COVID-19, a tenant/lessee could seek waiver from payment of rent under the Force Majeure clause in their contract and accordingly Section 32 of the Contract Act shall come into play. The Court referred to the definition of force majeure as contained in Black's Law Dictionary. The High Court also relied upon judgment of the Apex Court in Energy Watchdog v. CERC & Ors[14], to hold that Courts can examine contracts having a force majeure clause in the light of Section 32 of the Contract Act which permits a tenant to claim that the contract has become void and therefore, he may surrender the premises. The High Court observed that a force majeure clause can be couched in different words in different agreements there being no standard draft available. It held that the basic principle to apply would be that if the agreement contains a clause which provides for some kind of a waiver/ suspension of rent, only then a tenant could claim waiver. Sans such a clause, the monthly charges/rent would be payable.

Sans a force majeure/ remission clause, it was held by the High Court, a tenant may invoke Section 56 of the Contract Act which deals with the doctrine of frustration of contract or the impossibility of performance of obligation under the contract. The High Court, while placing reliance upon the decisions of the Apex Court in Raja Dhruv Dev Chandv.Raja Harmohinder Singh & Anr, reiterated in T. Lakshmipathi and ors. v. P. Nithyananda Reddy and ors. and Alopi Prashad v. Union of India held that the invocation of Section 56 by the tenant would not be of any help to the tenant. The High Court specifically relied upon the decision in Hotel Leela Venture Ltd.v. Airports Authority of India[15] where it was held

14. Supranote 7
15. 2016 (160) DRJ 186

that a "contract for lease is an executed contract and since the payment of rent was an integral term of the agreement, the lessee cannot claim any suspension or waiver from payment of the same merely because it becomes difficult for him to perform his obligation under the contract. Accordingly, the High Court held that Section 56 of the Contract Act would not apply to a contract of lease and other similar executed contracts which are not executory in nature".

The High Court then clarified and explained Force Majeure doctrine with reference to T.P. Act, 1882, while dwelling into Sections 108(B) (e)& 108(B)(l) of the T.P. Act which recognises this doctrine and held that provisions of the T.P. Act shall apply to tenancies and leases only in the absence of contracts or contractual stipulations. The Court referred to the judgment of the Apex Court in the case of Raja Dhruv (supra), where it was held that where due to any factor, there was a temporary non-use of the leased premises by the tenant, would not entitle the tenant to invoke Section 108 (B) (e) of the Transfer of the Property Act. In fact, in the decision of the Apex Court in Shaha Ratansi Khimji and sonsv. Kumbhar Sons Hotel Pvt. Ltd. and Ors[16], it was held that "Section 108(B)(e) of the Property Act cannot be interpreted by assuming that in a lease agreement, it is only the superstructure that is exclusively leased out, but the lease is also a lease of site". The aforesaid judgment of the Apex Court was followed in Sangeeta Batrav. M/s VND Foods and Ors.[17] where in the lessee had not opted to avoid the lease despite the leased premises having been sealed, but intended to the same as a restaurant, the sealing, therefore, could not be of any relevance. It was held that unless a lessee avoids the lease agreement, its obligation too cannot be ignored. In this view of settled legal position, the High Court finally held that in order to seek any protection under Section 108(B) (e) of the Property Act, there should be a complete and a permanent destruction of property.

In profit-sharing arrangements or where monthly payment is done on the basis of sales turnover, the High Court held that a tenant/lessee may be entitled to seek waiver/ suspension, strictly in accordance with the terms of the agreement. The High Court was of the view that in such cases, force majeure event does not governs the entitlement of the lessor but it is the consequence of the happening of the force majeure event which alone is relevant.

16. (2014) 14 SCC 1
17. (2015) 3 DLT (Cri) 422

- The High Court held the following factors as necessary for deciding the issue as to whether any relief qua waiver /suspension of rent could be extended to a tenant:
  i. Nature of the property and its location;
  ii. Financial and social status of the parties;
  iii. Amount of rent. In the case at hand, initially, as an interim measure, the High Court had directed the tenant to pay a sum of Rs. 3,50,000/-per month as a condition for grant of stay from eviction primarily on the ground that the tenant did not wish to vacate the tenanted premises during the lockdown and also the amount of rent being paid in the interregnum was on a lower side when compared to other properties situated in the same locality.
  iv. Other factors: It was also observed by the High Court that the tenants were not in authorized occupation of the leased premises owing to the decree of eviction having already been passed against them and further that the monthly rental payment had been fixed by the High Court itself in view of the Supreme Court decision in Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd[18]. The High Court was of the view that the landlord ought to be compensated properly
  v. Any other contractual condition(s): It was observed that there were no contractual obligations that permitted suspension/non-payment of rent.
  vi. Protection under any executive order(s): It was observed by the High Court that there was no executive order covering tenants thereby allowing non-payment/suspension of rent and therefore, no relief could be extended to tenants.

In view of the aforesaid findings and observations, the High Court dismissed the application filed by the tenant praying for suspension of rent. The High Court however, in view of the COVID 19 outbreak, did permit some relaxation in the rent payment schedule [para 31].

Conclusion

Therefore, one can witness how amidst the pandemic, an often forgotten

18. (2005) 1 SCC 705

'Force Majeure' provision in contracts has gained much attention and is now viewed in a new light altogether. However, as already discussed while force majeure events have not been laid down in detail under any law, the applicability of this doctrine largely depends on the language of agreements and their interpretation by Courts of Law. For its invocation as a ground for commercial tenants to seek exemption from paying rental amounts, the contracting parties must safeguard the following:

- Existence of a force majeure clause;
- The extent of coverage of COVID-19 events, declarations and restrictions as a force majeure event; and,
- The necessity of issuance of a notice of non-performance of contractual obligation by a contracting party to the party in default.

Further the landmark judgment of the High Court in Ramanand & Ors. v. Dr. Girish Soni & Anr. supra, may be the first in line of the many to follow by setting a benchmark, makes it abundantly clear that no tenant has an inherent right to seek suspension/waiver from payment of rent from the landlord. The judgment does provide clarity on the issue in these testing times of COVID 19, on the questions pertaining to the obligation of lessee to pay rent and at the same time clarifies the applicability of Section 32 and Section 56 of the Indian Contract Act and Section 108(B) (e) of the Transfer of property Act on lease agreements. Thus, the mere possibility of suspension of rent through a judicial decree is indeed to be considered as a hopeful prospect for the tenants. Though the High Court in the recent case while laying broad guidelines, talked about lease agreements in general, making it eligible for both residential as well as commercial properties granted time to tenants to pay rent, however there is still a need to bring about some a mechanism so that the rent amount of the lockdown period can be paid in a six-month installment period. As is very much pertinent that there will be a situation of recession with little or no chance of recovery in the next 1-2 years, thereby affecting the earning and the general paying capacity- including rental, of a residential premises and especially of the commercial premises, therefore , the parties (landlords & the tenants need to be more realistic and practical. Also in the times to come, to get a new tenant/ lessee that too at the rates at which Agreements have already been executed with their present tenants/ lessee, would not be easy to secure and may result in keeping the premises lying vacant in want of a tenant/ lessee despite having the premises to offer highly reduced rental. Further if property is to be let out, there may not be any availability of tenants owing to new norms of working from home. Landlords may also not get the current market rent and if landlord files a suit for recovery of rent, the satisfaction of

execution of decree will depend on a number of issues including the solvency of tenant. This pandemic, which was never ever, imagined at the time when the tenancy contracts were being executed, has caused a serious economic blow and has adversely affected the citizens, some proximately and some distantly. It has also led major legal issues between an employer-employee; master-servant; worker-management; tenant-landlord whereas the law remains the same. Therefore, as such, the need for the hour is to look at solutions from varied perspectives. An out of the box thinking is what is required in order to find out solutions for the benefit of all the stakeholders. In this regard, on thing which cannot be lost sight of is the fact that all this litigation revolving around commercial leases which will arise between a landlord and tenant, shall end up between the Commercial Courts and important, in this regard, is Section 12A of the Commercial Court Act, 2015which mandates pre institution of mediation proceeding before the Court is approached[19]. It is therefore, advisable for the parties to negotiate and agree to a rental, maybe reduced, apart from arriving at an amicable and out of Court resolution with regard to payment of rental during the lockdown period and for some time thereafter, say till December, 2020 to begin with. The parties may then take stock of the situation again and either shift to the original rental (as per the Agreement) or take a call whether to continue with this temporary arrangement or not. It is pertinent to note that a settlement under Section 12A of Commercial Courts Act has the force of an award and which is why compulsory mediation has been mandated. This is the time for a landlord and a tenant to sit together and try to find a solution which is agreeable to both and does not affect the emotions and relationships in any manner. In fact landlords and tenants should work together to explore ways to find solutions by resorting to various options such as that may provide short term relief for both landlords and tenants during this crisis such as carefully review their leases for the specific language of force majeure clauses and may consider reduction/ deferment in rent. This could provide some much needed breathing time to tenants in these COVID times. In fact, the rent amount reduced/deferred can be repaid slowly and gradually during the remaining lease period. In fact, the lease period can also be extended to make for the rent reduced/deferred.

19. The Commercial Court Act, 2015, Section 12A:Pre-Institution Mediation and Settlement. (1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of pre-institution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.

For granting such a waiver from rent or deferring the payment itself, the lessors/landlords may first reduce any such amendment/stipulation in the original rent agreement into writing so as to avoid any confusion/dispute in the future and also in return, insist upon a guarantee from the tenant in connection with a minimum lock-in duration of the lease post the lockdown period. Another possible solution to ease the pain of landlords and tenants during the current COVID-19 pandemic is to look to apply the tenant's security deposit toward upcoming rent payments with the understanding from the tenant that the security deposit will need to be replenished once this crisis is over. Insurance cover is another option which can be looked into. Landlords and tenants should review the specific terms of their policies. However, some States are considering legislation that would force insurers to pay COVID-19 business interruption claims, and it is imperative that both landlords and tenants keep themselves updated of these developments. Lastly and most importantly, henceforth, both the contracting parties must be careful enough to draft and examine their lease contracts carefully and precisely to cater to their specific needs.

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