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Ref : NAAC 2022/ Metrics Level Deviations/Cr3-3.2

Date-27/07/2022

Criteria 3.3.2	Number of research papers per teachers in the Journals notified on UGC website during the last five years 3.3.2.1. Number of research papers in the Journals notified on UGC website during the last five years.
Findings of DVV	Provide Web-link provided by institution in the template which redirects to the journal webpage published in UGC notified list for the year 2016-17, 2017-18 , 2018-19 and 2019-20.
Response / Clarification	1. Scan Copy of each research paper per teacher with highlighting the name of author, name of journal, ISBN Number year wise attached. (Appendix I)


Co-ordinator, IQAC
Late. Govindrao Wanjari College of L:
Nandanvan, Nagpur.




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Appendix I

Title of paper	Name of the author/s	Department of the teacher	Name of journal	Year of publication	ISSN number	of the Journal /Digital Object Identifier		
						Link to website of the Journal	Link to article/paper/ abstract of the article	Is it listed in UGC Care list/Scopus/Web of Science/other , mention
Nil						Nil		
Challenges and Benefits in Applications of Cloud Computing for E-Governance	Dr. Snehal Fadnavis	Law	UGC Care Listed Journal "Our Heritage"	2020-2021	ISSN-0474-9030			
E-Governance: - A New Dimensions, Challenges and Legislative measure in India	Dr. Leena Langde	Law	UGC Care Listed Journal "Our Heritage"		ISSN-0474-9030			
Relevance of Gandhian Philosophy in Modern Times	Dr. Archana Sukey	Law	UGC Sponsored Vidhyawarta (Peer Reviewed International Referred Research Journal)		ISSN-2319-9318			
E-Education : A Significant Teaching Method in Modern Education System	Mrs. Pushpa Deotale	Law	UGC Care Listed Journal "Our Heritage"		ISSN-0474-9030			
Rural Transformation through M-Governance : Strengths and Weaknesses	Dr. Rohini Fuladi	Law			ISSN-2319-9318			
Acid Attacks : Violation of Human Rights	Dr. Nandita Gaikwad	Law (LL.M)	"SCLC Law Review ", Annual Double -Blind Peer Review International Journal	2019-2020				

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E-Education : A Boon or a Bane	Mrs. Priyanka Sarda	Law	"Our Heritage" Journal	18 - 19	ISSN-0474-9030, Volume-68, Special Issue-9			
Consumer Protection in E-Commerce and Approach of Indian Jurisprudence	Mrs. Aruna Kadu	Law	"Our Heritage" Journal		ISSN-0474-9030, Volume-68, Special Issue-9			
Role of Gandhiji in Removal of Untouchability	Mrs. Vaishali Khotele(Shiwankar)	Law (LL.M)	UGC Sponsored Vidhyawarta (Peer Reviewed International Referred Research Journal)		ISSN-2319-9318			
Influence of Media and Its Impact on Constitutionalism	Mrs. Vishakha Bagdey	Law	International Peer Reviewed and Referred Scholarly Research Journal For Interdisciplinary Studies		ISSN-2319-4766			
Trafficking of Women for Prostitution : Ground Realities	Dr. Snehal Fadnavis	Law	International Multidisciplinary Quarterly Research Journal "AJANTA"		ISSN-2277-5730			
Protecting Human Rights of HIV/Aids Victims and Legislative Measures in India	Dr. Leena Langde	Law	International Multidisciplinary Quarterly Research Journal "AJANTA"		ISSN-2277-5730			

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Resolving IPR Issue through Alternative Dispute Resolution: Challenges and Issues	Dr. Archana Sukey	Law	International Multidisciplinary Peer Reviewed and UGC Listed Journal "AJANTA"	2018-2019	ISSN-2277-5730			
Human Rights of Disabled Persons	Dr. Rohini Fuladi	Law	International Multidisciplinary Peer Reviewed and UGC Listed Journal "AJANTA"		ISSN-2277-5730			
Plight of Girl Child Soldiers : An Unsettled Problem	Dr. Nandita Gaikwad	Law (LL.M)	International Multidisciplinary Peer Reviewed and UGC Listed Journal "AJANTA"		ISSN-2277-5730			
Satyagraha: Role in Indian Democracy	Mrs. Vaishali Khotale(Shiwankar)	Law (LL.M)	UGC Sponsored International Multilingual Research Journal		ISSN- 2319-9318			
International Human Rights and Sexual Harassment of Women at Workplace : Contemporary Concerns and Challlances.	Miss. Hanifa Shiekh	Law	International Multidisciplinary Peer Reviewed and UGC Listed Journal "AJANTA"		ISSN-2277-5730			
International Human Rights and Sexual Harassment of Women at Workplace : Contemporary Concerns and Challlances.	Miss. Priyanka Mardikar	Law	International Multidisciplinary Peer Reviewed and UGC Listed Journal "AJANTA"		ISSN-2277-5730			

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Role of Supreme Court in Recognizing the Rights of Transgender in India	Dr. Archana Sukey	Law	IOSR Journal of Humanities and Social Science Volume 23, Issue 5, Ver 4.	2017 - 2018	e-ISSN-2279-0837 p-ISSN-2279-0845			
Neuclear Weapons : A Threat To Human Rights	Dr. Nandita Gaikwad	Law (LL.M)	AIR 2018 (March) Online					
Global Climate Change : A Warning Call for Nation	Dr. Snehal Fadnavis	Law	S.P. Law Review, Annual Peer Reviewed Research Journal of Law and Humanities	2016-2017	2278-7815			
Fair Pricing and Fair Dealing in Copyright Laws in India	Dr. Archana Sukey	Law	S.P. Law Review, Annual Peer Reviewed Research Journal of Law and Humanities		2278-7815			

Year
2019-2020



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International Conference On E-Business, E-Management,
E-Education and E-Governance (ICE4-2020)

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7th & 8th February-2020



E- Governance: - A New Dimensions, Challenges and Legislative measures in India

Dr. Leena Langde

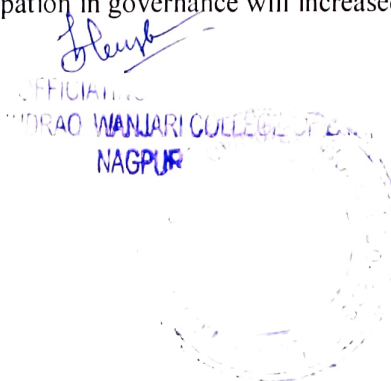
Assistant Professor, Govindrao Wanjari College of Law, Nagpur

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In recent years, the world has undergone a great transformation due to technological advancement in the society. Computer, internet and ICTs had brought tremendous changes in every part of our lives. The digital transformation in every sector makes the life easier. Today computer technology, internet are increasingly using in every field like communication, commerce, advertising, banking, education, research, entertainment and also in government sectors. It has changed the way of working, learning and communication, so as the technology enabled everything. At present the world becomes the very small and it comes under one's hand in a single click.

To facilitating good governance objectives, the every government in all over the world promoting the information and communication technologies (ICT). This phenomenon is popularly known as e- governance. It is mainly in the form of e- business which includes to provide various forms of electronic services to the citizens, so as they enables to interact with the government by way of electronic means for getting any desired services. It facilitate the application of electronic means in the interaction between Government and Citizens (G2C), Citizens and Government (C2G), Government and Business (G2B), Business and Government (B2G), and internal government operations. The main objectives of this is to make government functions simple and convenient which improves the government efficacy and productivity so that people participation in governance will increased.



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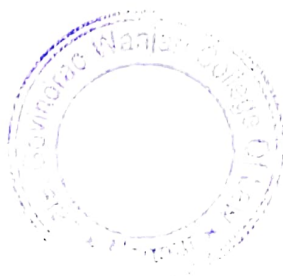
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E-Governance in India

E-governance is one of the way of transforming government which is also called as integrated governance (I-Governance) that it integrates the people in process of information and communication technology in the services of achieving the various government objectives. In India, the central government had progressively promoting the use of ICT in managing their internal processes through its organization NIC, established in the year 1976. Initially it was applicable to data intensive applications such as census, elections, tax administration, and large scale survey and also in other specialized area like defense, planning, research etc. department of Administrative Reforms and public Grievances (DARPG) formulate the 'Minimum Agenda of E- governance' to be implemented by all government departments, which includes basic IT infrastructure, training of employees and use of ICT for improving for internal and external interfaces and every ministry and departments also asked to prepare a 5 years 'IT Vision' and annual 'Action Plan'. After that government implemented the national e-governance plan in 2006, initially consist of 27 Mission Mode Projects (MMPs) and 8 support components to be implemented at the central, state and local government level.

E-governance interventions work at grassroots level to enhance the service delivery like constitution of Unique Identification Authority of India (UIDAI) which provide unique identification to residents of India popularly known as 'AADHAR' for effective monitoring effective governments programs and schemes, e-panchayat project of the ministry of panchayat Raj under Bharat Nigam these projects is providing broadband connectivity to all village panchayats. Similarly government also launched e-kranti program as a part of digital India. The Indian government implemented various E- governance projects significantly in various parts of the country like Gyandoot, Gramdoot, Bhoomi, Warana etc.





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In the recent past, E-governance playing vital role for introducing administrative reforms in the country which help to improve the quality of life of the people. It provides more accessible economic opportunities across the nation. It transforming the government services its effectiveness and accountability through application of technology. E- governance benefited in various sectors like agriculture, municipalities, education, land records, road transport, health, public distribution system etc. so that it not only reduce the paper work but improve the relationship between public authorities and civil society and also bring transparency in government functions.

Challenges in E-Governance

E-governance is the good measures to bringing convenience and transparency in government functions but there are so many challenges which the government have to face they are –

- The country like India, there is lack of means of accessing such facilities, because most of the population work just to earn a livelihood and not more than that.
- The people not want to furnish their details of bank accounts or other important documents while transacting electronically due to threat of cybercrimes.
- Sometimes people will not be comfortable, confident and trusting on the technology with which they will interact.
- Economic poverty and lack of awareness are also the main causes of effective implementation of e-governance policies.
- Cost is the important affecting factor in the path of implementation of effective e-governance.
- There is lack of clear security and privacy measures to protect sensitive personal information such as income, medical history etc.
- Accountability among the government officers is missing. There is no mechanism through which we can punish wrong doers for his violations and negligence.





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- The launching of various websites and portals will not yield great benefits unless a proper upkeep of such sites is done.

Legislative measures in India

There are certain policy initiatives had taken by the government in promotion of E-governance in India by implementation of Information Technology Act 2000 with an object to provide legal recognition for transactions carried out digitally to facilitate electronic filing of documents with the government agencies and Right to Information Act 2005, its aim to enable citizens access to information under the control of public authorities to promote transparency and accountability in the working of every public authority. Similarly second Administrative Reform Commission established in 2005 with an intention to revamping the public administration system.

According to chapter 3 of Information technology Act, 2000 sections 4 to 10A deals with the E-governance. The section 4 and 5 deals with the legal recognition of electronic records and digital signature respectively. Section 6 (1) confers validity of use of electronic records and digital signature in government offices and agencies. If any person submitted any form, application or document in government department, then it can be submitted in electronic form. On the other hand, if the government department issuing any license, permit, approval or sanction is to be issued or granted by it can be done in electronic form, money can be paid or received by such offices or agencies in electronic form. The appropriate government prescribed the rules, manner and format in which the electronic records shall filed, created and issued and also the mode of payment of fees and charges. It is the responsibility of appropriate government to set up, maintain and upgrade the computerized facilities Sec 6A (1). The government authorizes service providers to conduct these functions and collection of service charges. For that purpose the government prescribed the rules for proper governance of system of electronic service delivery. It now mandatory to the government to publish any rules, regulation, order bye-





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law, notification or any other matter in the official gazettes as well as in electronic gazettes (E-gazettes) are equal in status and validity. The section 10A confers the validity of e-contracts, means any proposal, acceptance and revocation of proposal or acceptance can be done in e-form and such contracts are valid and enforceable as per Indian Contract Act, 1872. The central government having powers to make the rules in respect of digital signature, retention of electronic records as well as control processes and procedure to ensure adequate integrity, security and confidentiality of electronic records or payments.

On the basis of information technology Act 2000 the amendments has been made in various enactments relating to electronic records such as the Indian Evidence Act, Indian Penal Code, Banker Books Act, Reserve bank of India Act, Negotiable Instrument Act etc for the proper regulation of electronic records.

Conclusion

E- Governance has offered benefits not only to the citizens but it also brought transparency in making smart governance. The use of internet and telecommunication services has increased in India which gives ray of hope to the citizens to fight against the problems of poverty, corruption, regional disparity and unemployment. It helps to empowerment of various sectors in the society which bring the greater participation of citizens in government process and also increased the legitimacy of the government. There are certain problems in implementation of e –governance such as literacy of users, ability to use computer resources, some users need assistance to read and write for eg. Senior citizens, rural people because it is technology based system. There is also a threat of piracy and misuse of data. Therefore it is necessary to maintain high security measures by the government while maintaining the websites and other confidential information for the proper implementation of e-governance.





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J. D. Jyoti
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**YEARS OF
CELEBRATING
THE MAHATMA**

Edited By

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New Arts, Commerce & Science College,
Wardha, Maharashtra (India) - 442 001

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Relevance of Gandhian Philosophy in Modern Times

Dr. Archana Sukey,
Assist. Professor, Govindrao Wanjari College of
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As the entire nation has celebrated the 150th Birth Anniversary of Father of Nation, Mahatma Gandhi in the year 2019, it is vague as Indians have to disavow viciousness and completely give ourselves to Gandhi's Principles of peacefulness. Mahatma Gandhi is the best messenger of harmony the world has seen. His idea of harmony is focused on peacefulness, independence, and soul power and pardoning. His job as "Father of the Nation" makes it much increasingly basic for us to investigate everything related with him and his standards. Born on October 2, 1869, in Porbandar, a community on the Gujarat coastline in a white-collar class Gujarati business family, he was the child of Karamchand Gandhi and Putlibai. He was hitched to a Kasturba Gandhi and had four children. He examined law in the U.K and provided legal counsel in South Africa. Be that as it may, he left his calling and came back to India to join the Indian opportunity battle. For a mind-blowing duration, he restricted any type of viciousness, rather utilizing just the worthy good standards.

Gandhi a political thinker and a social reformer :
 In the minds of people around the world, Gandhi represents two different and contradictory characters.

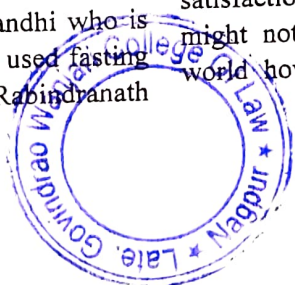
The first Gandhi is the political Gandhi who fought against British colonialism and is the father of the modern Indian nation. This is the man Albert Einstein lauded as "a leader of his people, unsupported by any outward authority, a politician whose success rests neither upon craft nor the mastery of technical devices, but simply on the convincing power of his personality."

The second Gandhi is the Ashramic Gandhi who is more of a mystic than a politician, who used fasting as a method of struggle, and who Rabinranath

Tagore considered as the "Mahatma", the "Great Soul".

Gandhi's way of thinking of peacefulness, for which he authored the term Satyagraha, has affected national and global peaceful opposition developments right up till the present time. From the time he assumed responsibility for the opportunity battle in 1918 he was affectionately called "Mahatma" by a large number of Indians. Despite the fact that Gandhi passed on inside barely any long stretches of autonomy, it is his way of thinking that guided the young-looking country during its developmental years. His way of thinking of peacefulness, moderation and basic living might not have driven us on the way of being a superpower, yet it helped us endure those turbulent years. Indian vote based system endure and got more grounded throughout the years, simply because we had something that different countries like Pakistan, Bangladesh, and China didn't. Nation had Mahatma Gandhi and his message - "that the response to savagery doesn't lie in viciousness; that disdain ought not be countered by contempt; that the ethical basic must win; that correct closures can be gotten uniquely by right methods; that annihilation of destitution and administration of the poor through training and successful strengthening should be the need objectives of monetary strategy; that there is no conflict of developments yet just a squeezing requirement for the festival of decent variety, pluralism and shared resistance.

Relevance of Gandhian Philosophy in the 21st Century : Today, the way and means utilized by Mahatma Gandhi have become increasingly pertinent in India, however somewhere else too where individuals have been smothered or bad form has been systematized. Over numerous hundreds of years, world development has seen endless occurrences of fighting, fights, and clashes. Gandhi's ideas and meanings of truth and peacefulness as absolutes are qualities are hoped for better concurrence as well as upgraded personal satisfaction for all and a conflict-free world. Gandhi might not have the entire solution to the present world, however it tends to be supplemented with



different plans to extraordinary achievement. Mahatma Gandhi's standards have gotten increasingly critical for the present society which is experiencing social shades of malice, political defilement, psychological warfare, and public viciousness. His interesting statements, "Tit for tat will just make the entire world visually impaired." truth be told, increasingly pertinent considering the unrest our general public has been experiencing as of now. The fundamental mainstays of his way of thinking were peacefulness, the resilience of others, regard for all religions and basic life. Gandhi is significant to the nation as a subject of study.

Today, harmony has commonly become political work towards settlement of issues between the countries through military inclusion, end of arms and weapons and discourse on less-rough, regular citizen matters. In numerous pieces of the world, brutality is being utilized as a way to end the settlements and political retaliation. Each time harmony is overlooked and tranquil talks been ignored, a plot for savagery is seeded. It develops endlessly to spread a bigger system of dread and viciousness lastly it enables the entire country. More talks and less activity invigorate a similar impact and get mind-boggling with it. All in all, the power of fear and brutality turns into the prevalent force, and the serene missions and systems become pointless. However, the genuine goal of the whole scene of savagery and disharmony will never be met by brutal methods.

Harmony and peacefulness are the two mainstays of any harmony procedure that maintains humankind's very employment. These two are in-detachable. Harmony must be the product of any peaceful activity or dissent to settle a question. Just such a settled condition of question will be brimming with harmony and congruity. Worldwide harmony has been ruined by numerous difficulties that incorporate both common and human-made causes. The justification behind accomplishing harmony is in the positive comprehension of "give and take", humankind, pardoning, and peacefulness. The correct understanding will take the world in the correct way. As a model figure in legislative issues,

otherworldliness, and country building, Gandhi should likewise be seen appropriately.

Conclusion : Thus Mahatma Gandhi can be viewed as perhaps the best visionary conceived. It was the one of a kind peaceful development under his initiative that earned for India opportunity from the pioneer rule. In initiating the battle against the outsider principle, Gandhiji embraced the creative technique for common noncompliance and social change, which had a few model highlights. He never depended on viciousness in his opposition. His ideas and meanings of truth and peacefulness as absolutes are qualities be yearned for better conjunction as well as improved personal satisfaction for this' infers the dismissal of war, secret activities and slanted strategy, in any event, when they are received for the purported honorable parts of the bargains nation, religion or humankind. Today we don't have regard and resistance for one another, offering to ascend to provincial, racial and strict clashes among different segments of our social orders. We have gotten so restless with one another that we are attempting to fathom our disparities by utilizing savagery as opposed to through serene exchange or rationale. We don't regard others' perspectives or sentiments; it is either "my way or the expressway". Viciousness turns into an instrument of understanding our disparities, regardless of whether racial, strict or some other kind. Thus like never before previously, Gandhiji's lessons are legitimate today.

On the off chance that separate Gandhi's lessons could discover some spot in the reasoning and arrangements of the present day of our pioneers — political, strict, and corporate and in every single other circle of life, we would see less savagery, degeneracy, and despondency all around. At the point when individuals are attempting to discover answers for the wild ravenousness, broad political debasement, public brutality and disdain are being executed today; Gandhiji's excellent intelligence of peacefulness bodes well.

Confidence in God is, as indicated by Gandhi, the establishment of every single virtue. Gandhi accepted that at their center, all religions depend on the ideas of truth, love, sympathy, peacefulness and

Golden Rule. When asked whether he was a Hindu, Gandhi replied, "Yes I am. I am additionally a Christian, a Muslim, a Buddhist and a Jew." One of the most difficult issues that he needed to look in his endeavors to liberate India from British guideline was disunity and doubt, even loathe, between the networks. Gandhi bent over backward to connect the distinctions and to make solidarity and agreement. His battles with this issue are exceptionally applicable to us today when the world is part of strict and ethnic differences. Gandhi's support of peacefulness is firmly associated with his mentality towards closures and means. He accepted that brutal techniques for accomplishing an ideal social outcome would definitely bring about a heightening of viciousness. The end accomplished would consistently be polluted by the strategies utilized. He was impacted by Leo Tolstoy with whom he traded numerous letters, and he thus affected Martin Luther King and Nelson Mandela and now Aung Saan Sun Kyi in Myanmar, which is an expressive declaration to the proceeding with the significance of Mahatma Gandhi. There are such huge numbers of social indecencies and the best approach to kill them is to head the way appeared by Mahatma - the way of non-violence, fraternity, humankind and, obviously, loves for the nation. Truth is told; in this day and age the correct route ahead is to follow his strides who said: "My life is my message".

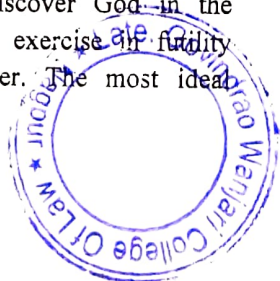
Indisputably, the obstructions of class, shading, religion, were good for nothing if one somehow happened to regard a solitary idea of mankind. We need to lessen ourselves from each race to one race – and that is mankind. For whatever length of time that we think about race past the human race, there will be bigotry. Gandhi was a searcher after the truth. Also, he sought after his looking for inside the comprehensive overlay of the immortal control, whose life and lessons rise above the imperatives of existence, and remain never-endingly significant for humanity, particularly for the Indians. Let the researcher close this article with immortal statements of Mahatma Gandhi, "On the off chance that you don't discover God in the following individual, it is an exercise in futility searching for Him any further. The most ideal

approach to wind up loses you in the administration of others. If no one but individuals could follow this straightforward guideline the world would be obviously better a spot to live".

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E- Education :- A significant teaching method in modern education system.

Assist. Prof. Pushpa Deotale

(Govindrao Wanjari College of Law, Nagpur)

Introduction

Education is the process of facilitating learning or the acquisition of knowledge, skills, values, beliefs, habits. Education frequently takes place under the guidance of educators. Learners can also educate themselves. Education can take place in formal or informal settings and any education that has a formative effect on the way one thinks, feels or acts may be considered educational.

Formal Education is commonly divided formally into such stages as preschool or kindergarden, primary school, secondary school and college, university. In most region education is compulsory up to certain age. There is a movement for education reform, and in particular for evidence based education.

*“ Education is not to mug up, but
to understand how to create the
world around us, how to sustain it
for future generations and how to
develop relations for existence.”*

The importance of education for any person is to live independently and to gain freedom. Education will protect a person both financially and help them to live their life on their feet.





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Through education, we should inculcate the past generation's values and carry them with huge current innovations. Education helps to break the social evils like racism and poverty line so each and every child must be educated.

When we saw the history of method of education, there were different from ancient time to modern time. In ancient time learning method was rich traditional and education right from the antiquity. The Gurukul system is one such profound method of education which was popular in ancient days. Under the Gurukul system, there was one superior teacher who used to educate his disciples irrespective of their caste or financial positions. It is established in the forest.

In middle age, the education system of middle ages was highly influenced by the church. Basic course of study used to contain latin language, grammar, logic, philosophy, astrology, music and mathematics. Schools, monks and bishops used ancient writing from Roman and Greek resources to teach their students, while most of the educational courses were mostly based on superstitions and beliefs. In middle age few people could read or write. It was extremely rare for peasant to be literate. Only rich families sons went to school and their teaching method is orally and traditionally.

But in modern period our educational system is totally changed. The education which is taught in school or college. Today is the modern education. Modern education teaches about the skills required today that is skills of science and technology which is depend on e-education system. E-education is unique part of today education. Therefore my research paper focus on e-education.

The meaning of E- Education:-

E-education or e-learning is the delivery of education or any type of training by electronic teaching method. This electronic methods can be a computer or a smartphone where teaching method is access by the use of the internet usually. Other than the internet CD's, DVD's television and other similar tools can also be used for e-learning. There are several E-learning portals offering online courses in





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India and abroad now. Many people avail these professional certificate courses to enhance their learning and career.

E-learning has several benefits over traditional modes of learning in India. Unlike the traditional method of classroom teaching, E-learning can prove to be a value for money option for people. By enrolling oneself in an online course, a student in India can take up a course in an American University at a fraction of cost. Therefore, it is highly cost-effective for a student.

E-learning can be achieved anywhere. A student does not need to be physically present in a class and the teachers do not need to reach to a place on a scheduled time to deliver a lecture. A person can study from the comfort of his home through E-learning. You can also access it while travelling. In this way, it is good for professionals who can't leave their job but still want to study. This is a type of distance learning that is highly functional because of its accessibility and flexibility.

Advantages of E-learning :-

1. You are able to link the various resources in several varying formats.
2. It is a very efficient way of delivering courses online.
3. Due to its convenience and flexibility the resources are available from anywhere and at anytime.
4. Everyone, who are part time students or are working full time can take advantage of web based learning.
5. It is a very convenient and flexible option, above all, you do not have to depend on anyone for anything.
6. Not only can you train yourself on a day to day basis, but also weekends or whenever you have the free time to there is no hard and fast rule.
7. Traditional classrooms have mischievous elements to disturb the class. Whereas e-learning provides expeditious delivery of lesson. There is no procrastinator in e-learning. It is a quick way of learning.





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Purpose of E-learning :-

The idea of E-learning is to empower learners to absorb personal accomplishment, basic schooling or to obtain a degree certificate without actually attending the school and university or any other academic institute.

Another idea is to apply E-learning to all levels of schooling to ensure students grasp the lessons adequately.

Types of e-learning/ E-education

1. Web based learning
2. Computer based training
3. Webinars
4. Virtual classroom
5. Mobile learning
6. Video based learning
7. CD-ROM based teaching

E-learning platforms:-

People can do an online course via a wide variety of different platforms such as:

1. MOOC's (massive online open courses)
2. Virtual learning environment
3. Video streaming services such as you tube
4. Virtual instructor led training
5. Forums
6. Podcasts

E-learning and modern education system:-

With online education courses fast mushrooming across the internet more and more childrens and adults looking for skills advancement are turning to e-learning. It is also interesting to note that the major academic institutions of the world including the Harvard, massachusetts institute of technology and Stanford to name a



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few are now offering students the options of getting an education by signing up for online courses and earning the necessary credits. These courses are available free of cost or for a charge.

This factor holds true especially in the case of students in underdeveloped and third world countries who can use the education to further their prospect of getting good jobs and living better lives.

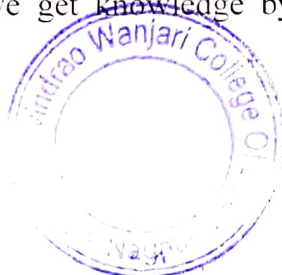
On the discussions above e-education system is too much profitable in modern education system to develop the knowledge of students as well as teachers. Along with positive aspects, each system has some drawbacks or disadvantages therefore e-education has some disadvantages also.

Disadvantages of E-education :-

1. No self discipline
2. No face to face interactions
3. Lack of flexibility
4. Lack of input from trainers
5. Slow evolution
6. Good E-learning is difficult to do
7. Lack of transformational power.

Conclusions:-

To sum up, we say that education is the process of training, man to fulfill his aim by exercising all the faculties to the fullest extent as a member of society but there are different methods used in different ages. In ancient period Gurukul method was used for learning. In this method we taught Vedas Philosophy, religious concepts, etc by orally and practical traditional method but in medieval Islamic religion used traditional method for teaching. In this period only rich family children took education traditionally and modern period along with traditional method, Online teaching method or education is established. Through E-education we get knowledge by electronic teaching methods. E-learning has





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several benefits over traditional modes of learning in India. Along with positive aspects some negative aspects is in E-education but E-education's importance and its necessity in modern educational system is not negligible its importance is unique in nature in our day to day life.

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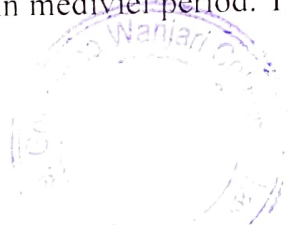
E-Education : A significant teaching method in modern education system

Assist. Prof. Pushpa Deotale
(Govindrao Wanjari College of Law, Nagpur)

Abstract

Purpose of Research paper:-

Education is the process of fecilitating learning or the acquisition of knowledge, skills, values, beliefs and habbits. There are different method used in different ages to give education to the student such as in ancient time Gurukul teaching method is used in mediviel period. Traditional teaching method which are





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depend on practical of life has been used but in modern period, e-education is used which is online teaching. It is too much significant teaching method in modern education system . How e-education method is useful among the changing scenario of Education, this is the purpose of my research paper.

The basic design of the study:-

First we see what is education its importance and changing scenario of teaching method of education that means from ancient to modern. Then focus on E-education, the meaning of E-education, purpose of E-education, advantage of E-education, types of E-education , its platform and its relation with modern education system and its disadvantages

Conclusion of the Research paper:-

Teaching method of education has been changed from ancient time to modern period. In modern period E-education teaching method is established, it is too much profitable in modern education system to develop the knowledge of students as well as teachers. Along with positive aspects each system has some drawback therefore E-education system has some disadvantages but E-education's importance and its necessity in modern education system is not negligible. Its importance is unique in nature in our day to day life.



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Dr. Rohini U. Fuladi

has been awarded Certificate of Publication for research paper titled

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This is to certify that Dr. /Mr. /Mrs. / Ms. Rohini Fuladi
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Paper entitled Rural Transformation through M-Governance :
Strengths and Weakness

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Rural Transformation through M- Governance: Strengths and Weaknesses

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"We get the Government we deserve."

"When we improve, the Government is also bound to improve"

-Mahatma Gandhi

Introduction

"M-Governance is the implementation and delivery of government services through the mobile technology to furnish transparent, effective, efficient, answerable and accountable governance to the society. New way of delivering informations and services to the citizen."

The Information Technology Act, 2000 is facilitating to promote efficient delivery of government services by means of e-governance. M-governance is ancillary to the E-governance. It assures electronic services which are available to people through the mobile technologies using devices such as mobile phones. These services provides shortcut to the need for traditional physical networks for communications and collaboration. Mobile services are cheaper than traditional physical network and easily accessible in most of the rural areas in India.

Governments are advancing use of mobile phone in delivering the e-governance services efficiently because of increasing mobile phone accessibility, adaptability and with the millions of subscription base. In recent year mobile phone widen the power of people such as interaction with each other, society at large and availing other government service easily. Mobile phones are deem to be an powerful instrument in strengthening democracy through





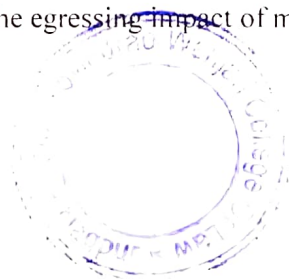
better citizen-government interaction, thus shaping the political decision making process and making governments accountable for their activities.

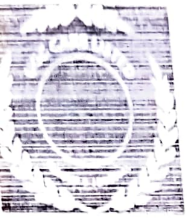
Objectives of M-Governance

Object of M- Governance is to provide speedy and easy access of public services to citizens through mobile devices. Mobile services are rapidly evident as the new frontier in transforming government and making it even more approachable and citizen-centric by extending the benefits of distant delivery of government services and information like rural India. Furnishing on time and prompt information to citizens and recognised system of two-way communication between the government and people is one of the key to strengthening democracy by facilitating intensified utilisation of public services, participation and empowerment of citizens. Mobile technologies play pivotal role in government departments such as in agriculture, health care, financial services, retail trading, utilities, communications, manufacturing, transportation and services. Businesses too have gain the popularity through mobile phones and are introducing services, specifically, in the Banking sector. Mobile banking has broad future because of its cost effectiveness and ability to reach out to customers in remote areas.

M-governance in India

India is the third largest country availing of mobile telephony and will soon take second place. With the mission of 'Digital India', launch of m-governance has been received peak priority. Mobile governance is gaining popularity very expeditiously in India. A number of mobile-based channels are being leveraged to render the services to citizens through mobile devices. The merging of mobile devices and new media applications resulting in quick access to integrated data, location-based services and empowered citizens from any place at any time, is the fundamental of the egressing impact of mobile governance.





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The Government of India is implementing the “Digital India” programme with a foresight to transform India into a digitally equipped society and a knowledge economy. Some of the goals of Government of India are, to utilize the massive reach of mobile phones and tackle the potential of mobile applications with a view, to enable easy and round-the-clock access to public services, especially in the rural region and to create distinct infrastructure and application development ecosystem for M-governance in the country.

Transformation through M-governance in Rural India

Indian IT sector has an immense potential to innovate and provide mobile applications to deliver citizen-centric services and mobile governance. It implies easy and economical governance. It ensures inclusive delivery of public services in a time-bound manner. With the recourse of nearly 1 billion telephone subscribers and 970 million mobile users, e-governance is certainly transitioning into m-governance. However, under Digital India opening move, high speed broadband connectivity at Panchayat level will be brought in via the National Optical Fibre Network (NOFN) project which is being implemented and 2.5 lakh village panchayats will be wrapped under the project. Rural India is mainly emphasis on m-governance via e-governance. In 2013, 2.4 billion e-transactions were registered across the country of which 480 million were related to e-governance projects in rural India.

“Department of Electronics and Information Technology” has introduced many digital initiatives in the country by launching a village level mobile governance system for speedy delivery of services to the rural people. The department has prepared a precise framework for m-governance to ensure comprehensive delivery of public services in a time-wrapped manner.

Through appropriate mechanism and furnishing last mile connectivity by the involvement of telecom service providers, will make rural India to become an active participant in the digital revolution. Some of the schemes are in operation via M-governance in rural India as..

- **mKisan**, a portal launch by the Agriculture ministry, is a winner story. Thus, experiments in rural areas and for farmers find success. A portal ‘**mKisan**’ bridges





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farmers to all government departments and institutions including India Meteorological Department and Krishi Vigyan Kendras. It effectively spread mobile technology in rural areas which results in increasing agriculture produce and improving the lives of farmers. It further, provides information, services and advisories to farmers through SMS in their languages in the form of text/voice messages, giving preference to the agricultural practices and locations. It endeavours to provide a one-stop-shop for farmers, is a welcoming approach towards promotion of digital welfare. More than a billion messages have been sent to farmers across the country through mKisan from its commencement in July 2013. Subsequently, up to June 2019 over 24 billion messages have been sent in 12 languages to farmers across the country through mKisan.

- After the budget announcement scheme **PM Kisan samman Nidhi Yojana**, was spread ridges of happiness among the farmers of India. Using it farmers will get monitory access (6000/-) in three instalments and can check the payment status through mobile number, aadhar number, and account number.
- **Kisan Suvidha** - Mobile App is introduced primarily for farmers as per their needs. The app is created to provide all information at a common place that a farmer or agriculture stakeholder in agriculture sector may require. On 19th March 2016, it was inaugurated during 'Krishi Unnati Mela' in New Delhi. As on today, an approximate 3 lakh active users are using it. It is available in English, Hindi, Punjabi, Gujarati and Tamil Language. The farmers can get critical and definite information on the weather forecast, dealer's details to sell to, the market price of a commodity in nearest area, information relating to protection of plants from pest, weed and diseases, and expert recourse from farm experts. Farmers can directly get in contact with "Kisan call centre" where technical experts answer their queries.¹
- **Meri Sadak** - a mobile application which empower citizens to give their critical feedback with respect to the gait of work, nature of work through the Pradhan Mantri Gram Sadak Yojana streets to Nodal Departments in the State Governments/National

¹ M. Governance in India: Issues and Initiatives, M. D. Bora, Assistant Professor Department of Commerce St. Joseph's Degree & PG College, King Kothi Hyderabad.





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Rural Roads Development Agency . In this case, citizens have to take photos of site and submit it along with feedback. On accommodation of the feedback, the citizen can screen the redressal of his/her input through this application.²

- **Janmanrega** - It is tool for information flow to and from ground level, which will connect citizens with the system. An initiative towards good governance, it is an interface to improve quality of public services. The Ministry of Rural Development launched 'Janmanrega' – a Citizen Centric Mobile Application on 19th of June 2017. It has been developed in collaboration with National Informatics Centre and National Remote Sensing Centre (NRSC, Hyderabad). Citizens will also be able to provide feedback about assets that have been created under the programme.³
- **e-taal (Electronic Transaction Aggregate & Analysis Layer)** in real-time, e-transactions between Indians and central, state organisations and departments across 29 services, including land records, agriculture, information, education, health, bill payments and agriculture. The data shows a three-fold increase in the number of farmers registering for agriculture- related advisories; from 3.7 million in 2013 the figure rose to 9.3 million in 2014. With 330 million of India's 687 million GSM mobile phones now in rural areas, according to Cellular Operators' Association of India (COAI), e-transactions with the government are likely to grow rapidly. There is small doubt that farmers are enthusiastic acceptor of technology via mobile phones.

Challenges in implementing m-governance in rural India

In rural India, being able to store a number in contacts and then call that contact is a primary phenomenon for overcoming conventional infrastructure challenges, such as learning the prices of goods at market. However, currently, numbers of mobile phones available to people in rural areas of India, have a text driven interface, making it very difficult for illiterate users to obtain and store contacts. Information in rural India isn't centralized through census information, medical and health records, or a regional phone book. Therefore, the contact

² Ibid,
³ Ibid.





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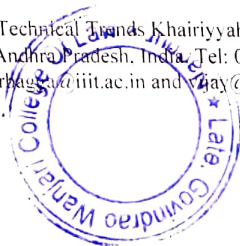
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lists on mobile phones become an extremely important mechanism for creating improvised networks that enable information sharing. For example, many research participants recorded the blood type of the contacts stored in their phone's address book. They were able to act on this information when medical emergencies happened in their village. They could promptly identify existing donors for blood transfusions and alert their network for the need. All these activities can be done through a simple piece of information stored in a mobile device. To show how data could be made visible, and how illiterate users could conveniently share contact information, Adaptive Path, a product experience and strategy pattern company created a concept called 'MobilGlyph' solving the "save a contact" difficulty for illiterate users became one of the highlight for their project.⁴

The availing of mobile technology in government sector not only provides an alternative channel of communication and public service delivery, but more significantly, it can address the mobility of government itself where m-Government can be feasible in making public information and government services available anytime and anywhere by aware services close to citizens and authorities. Therefore, it can assist in reaching rural citizen to access government services. m-Governance is an supplement to e-Government involving the utilization of all kinds of wireless and mobile technology, services, applications and devices for improving benefits to all parties involved in e-government including citizens, businesses and all government agencies. M-governance can be powerful elements of the e-Government in facilitating the delivery of efficient and effective services to citizens. With the rapid growth in mobile and wireless technologies, few applications and services of e- government are being provided via mobile devices, and yet these technologies are also opening ways to some distinct and novel applications and services. In terms of technology involved, many mobile government applications make use of SMS (short messaging service). Other technologies are Wireless Application Protocol (WAP), MMS and mobile internet. It is

⁴ m-Governance future in Indian context, Technical Trends Khairiyah Binti Mohd Noor (Malaysia), R K Bagga and K S Vijaya Sekhar IIIT, Hyderabad, Andhra Pradesh, India, Tel: 040-6653 1119
khairiyah.noor@gmail.com (Malaysia), rbagga@iiit.ac.in and vijay@iiit.ac.in (IIIT, Hyderabad)

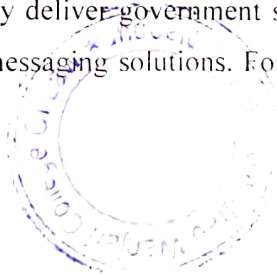




expected that mobile internet will play a more significant role in near future due to the development of 4G technologies and the capabilities to process more information faster.

Some of these 'entry hurdles' which can put it as management and technical challenges in m-Governance includes:

- i) **Heavy cost:** m-Governance leans to be yet one additional channel for e-governance; in this case it will impose additional costs. This will continue until m-governance can truly replace for other delivery channels. Such replacement will be feasible for applications within government.
- ii) **Low rate of literacy:** The less rate of literacy in India mostly found in the rural areas. Currently, many mobile phones available have a text driven interface, making it very difficult for illiterate users to obtain, read and get any information provided by the government.
- iii) **Apprehension of the English language:** 80% of Indian citizens speak and understand only the local languages while only 5% of them have knowledge and understand English language. Most of mobile devices applications are developed in English language. So, this will give challenge to the m-governance services to reach their services to the citizens especially in rural areas.
- iv) **Computer illiteracy:** The computer illiteracy levels in rural India will also create problem to m-governance application reaching the citizens. This is because some mobile devices are using technology in m-Governance having same features as computer based devices such as tablet PC, iPad, iPhone etc. Therefore, the computer illiterate users might face problems and difficulties to access government services which are offered through such mobile devices in rural region.
- v) **Mobile devices are not equipped with adequate facilities for m-Governance:** though, in India the costs of mobile devices and calls are perhaps the lowest in the world. in order to effectively deliver government services on mobile devices, need very simple and easy text messaging solutions. For example, if a person has to put





details in a form etc, he/ she cannot do it, if such facilities are not available in the current devices. Therefore, the prompt option is to appear at mobile devices that unite computing with mobility and are affordable.

- vi) **To develop application in each of local languages:** India is facing a lack of knowledge about the English language which is a big problem, the applications that can be offered in local or regional languages should be developed. But, it is very troublesome to resolve this challenge where presently, India has 22 distinguishable national languages which will give major crisis for developers.
- vii) **Lack of security:** If m-governance is to embrace m-payment systems or other transactional public services, then it must have good security system and must be trusted. Hitherto, there is still a trustworthy gap to be crossed for many mobile device users. The information in the mobile poses a significant challenge at the government level. Data no longer simply resides within the network. It exists on mobile devices and data can be accessed from virtually anywhere in the world. In addition, vulnerability of a mobile device itself can place the government at risk.
- viii) **Data overload problem:** If data clog in Mobile devices, which increase the pressures of a world in which users are permanently attached. These increase the number of messages circulating and can cause a storm of communications by spam, junk and unwanted messages. Govt of India has just restricted the number of SMS per day to 100 to restraint such contingency.

Conclusion

In India, m-governance is yet at new face and it requires more improvement to implement better scheme of m-governance. Main challenge in implementing M-governance in India is the need for advance communication and progressive IT infrastructure. For this local government has to establish innovative atmosphere to encourage/facilitate growth of IT infrastructure especially in rural India. Use of M-governance would definitely precede local governments into the new era and boost India in economic and social improvements.





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M-Governance is defiantly beyond a shadow of a doubt because, it is the cardinal to the "Good Governance" for the developing countries like India in order to provide efficient and effective or quality services to their citizens. It will help in raising the intensity of interaction between the citizen and the government, thereby, assisted in strengthening democracy.



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DATE - 13/02/2020

To,
Dr. Nandita N. Gaikwad,
Assistant Professor,
Govindrao Wanjari College of Law, Nagpur

Subject: Letter of Gratitude and Certificate of Publication

Greetings!

We are glad to inform and certify that the paper titled "Acid Attacks: Violation of Human Rights", authored by you has been published in the 'SCLC Law Review', Annual Double-Blind Peer Reviewed International Journal, Volume - I (January 2020). Kindly consider this as the certificate of publication in this regard. Thus, all the rights of the aforementioned author with regard to the publication of the aforementioned paper lie with the Journal. However, other claims as to content lie with the author. This letter confers on the author an exhaustive right to claim credits over the aforementioned work at all forums.

Any clarifications sought by any person / Institution or any other concerned party may be directed to the author.

Looking forward for the future association. Kindly, acknowledge the same.

Best Regards,

Editor-in-Chief

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ACID ATTACKS : VIOLATION OF HUMAN RIGHTS

Dr. Nandita N Galkwad*

ABSTRACT: Acid attacks are a growing phenomenon not only in particular country but all over the world. Violence against women is not limited to a particular country. Acid attacks are one of violence against women. It is gender- based violence and therefore makes it difficult to achieve gender equality. It involves intentional acts of violence which cause grievous hurt, causing extreme mental and physical suffering. It targets married women or girls. It violates fundamental right such as right to live, right to health right to dignity which are guaranteed to every individual under international human rights laws.

The paper will explore the concept of acid attacks, its reasons and consequences. It also explores how acid attacks violates human rights and positive steps can expected in the future to prevent such attacks.

KEYWORDS: Acid Attacks, Human Rights, Violence against Women, International Human Rights Law

A. INTRODUCTION

Eighteen-year-old Bina Akhter lived in the outskirts of Dhaka, Bangladesh. As an acid attack survivor, she often heard from people in the street, "Why bother going to the zoo when you can see a monkey right here?"¹

In society, human commit crimes. Crime is creation of human being and acid attacks is one such creation. Acid attacks also known as acid throwing, acid violence or vitrolage. Acid attacks involve throwing of acid such as sulphuric, nitric or hydrochloric acid onto another person. Acid attacks may be against men or women are equally unacceptable. But across the world women are first victims and therefore have gender dimension irrespective of geographical boundaries. It is an intentional act of causing grievous hurt, torture, maim and to greater extent to kill. Thus, it is a physical desecration and a very violent form of assault against women. Acid attacks are violence against women.

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¹ Lisa M Taylor, "SAVING FACE: ACID ATTACK LAWS AFTER THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN", GA. J. INT'L. & COMP. L., Vol. 29:395, 2001, <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1474&context=gjcl>, accessed on 16/07/2019.

Violence against women is defined under the United Nation's Declaration on the Elimination of Violence against Women "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."²

Acid throwing is a social phenomenon and not a natural one. When there is discussion about acid attacks against women, it is mostly done out of hatred, revenge or jealousy. Question then comes in the mind that what are the causes or factors that lead to acid throwing?

B. CAUSES OF ACID ATTACKS:

1) Male dominating society: inspite of achievements, women face considerable problems such as struggle to find their identity. Male take complete supremacy over the women which have an adverse impact on women's development and carrier. Women are generally considered as unworthy and incapable then men. They are not allowed to do anything without the permission of the men. One of the main reasons of gender discrimination is rigid culture and strict customs in the society.

2) Family Dispute: Acid attacks are extreme form of violence against women. Family conflicts such as property dispute, parenting, couple related disputes, extended family, conflicts in business and partnerships, dowry demand and so on. Results of these family discord leads to acid throwing. Khodaja and her baby daughter Sonali were sleeping in their home in Bangladesh when they were attacked with acid as the result of a land dispute with a relative. Sonali was so young at the time that the acid permanently altered the shape of her skull. Though her father, Nurul, was sleeping beside them, it was only the women of the family who were attacked.³

3) Rejecting proposal of marriage: Most of the acid attacks have been committed on women for rejecting the proposals of marriage. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the women who has dared to stand up to him.⁴

² "Declaration on the Elimination of Violence against Women", December 1993, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>

³ Acid attacks, <https://www.actionaid.org.uk/about-us/what-we-do/violence-against-women-and-girls/acid-attacks>.

⁴ "Law Commission of India Report on the Inclusion of Acid Attacks as Specific Offences in Indian Penal Code and a Law for Compensation for Victims of Crime", Report No. 226, July 2009.

4) Personal: It starts from interpersonal feeling like male shame, powerlessness, the age of the perpetrator or victim, low education, poor management skills, childhood neglect, antisocial behaviour etc.⁵ One study showed that refusal of marriage proposals accounted for 55% of acid assaults, with abuse from husband/ family member (18%), property disputes (11%) and refusal of sexual or romantic advances (2%) as other leading causes. Additionally, the use of acid attacks in dowry arguments has been reported in Bangladesh with 15% of cases studied by the Acid Survivors Foundation citing dowry disputes as the motive.⁶

For instance, in Bangladesh, 78% of reported acid violence is inflicted on women with most common reason for the refusal of romance. In 2016, the U.K. has one of the highest rates of recorded acid attacks in the world. Many of the attacks are part of gang related activities and that acid is becoming the weapon of choice.⁷ Human Rights Watch research in Cambodia between 2013 and May 2017, and on desk and telephone research through 2018, described 17 cases of intentional use of predominantly nitric or sulphuric acid in violent attacks.⁸ India had around 300 recorded attacks in 2016. Research indicates that the majority of victims are women and girls and unlike Bangladesh (where most attacks occur in the home) attacks often occur in public places such as roads, schools, colleges. The real number of attacks is likely to exceed 1000 attacks a year.⁹

Acid attacks are consequences of gender inequality which is existing with the society. It is deep rooted discrimination Acid attacks are a particular and intention violence against women. Gender based violence and acid attacks are matter of human rights concern and not just limited to an individual matter. The negatively impacts of acid attacks on women are most notable.

C. IMPACT/ EFFECTS OF ACID ATTACKS ON VICTIMS

1. Psychological Effects : Long term physical challenge is faced by the victim. Face is the part of not only body but also personality. What happen when it gets permanent damage is very critical question. Self - worth and self- esteem of the victim

⁵ Patel Mamta, "A Desire to Disfigure: Acid Attacks in India, International Journal of Criminology and Sociological Theory", Vol 7, No.2, December 2014, I-II.

⁶ Bhullar DS, "Acid Throwing: A Cause of Concern in India, Indian Journal of Clinical Practice", Vol. 24, No. 10, March 2014, <http://medind.nic.in/iaa/t14/i3/iaat14i3p989.pdf>, last access 21/7 2019.

⁷ Acid Survivors, Acid Throwing Fact Sheet, Dhaka, 2011.

⁸ What Hell Feels Like, Acid Violence in Cambodia, 2017, <http://www.hrw.org>, last access 20/07/2019.

⁹ A Worldwide Problem, Country Files, Acid Survivors Trust International, <https://www.asti.org.uk/a-worldwide-problem.html>, last access 20/7/2019.

get damage with the dismemberment of the face. Victims suffer from gruesome deformities. Acid destroys skin, clothing, and hair, and in high concentrations, it can melt bone. In some cases, victims are tricked into drinking acid and suffer from internal damage. Victims must deal with perpetual health issues, even after the attacks.¹⁰ Female were mentally disturbed and their try to reduce their stress through weeping and shouting on others.¹¹

Victims undergo sever physical trauma pre attacks as well as post acid attacks firstly, during the attack as they feel their skin burning away and after attack by disfigurement or disabilities that they have to live with for the rest of their lives. Victims suffers psychological symptoms such as depression, insomnia, nightmares, fear about another attack and/or fear about facing the outside world, weakness, tiredness, difficulty in concentrating and remembering things etc. They feel perpetually depressed, ashamed, worried and lonely.¹²

2. Physical Injuries: Acid attacks victims suffer from gruesome deformities. Acid destroys skin, clothing, and hair, and in high concentrations, it can melt bone. In some cases, victims are tricked into drinking acid and suffer from internal damage. Victims must deal with perpetual health issues, even after the attacks. Recovery is elaborate and expensive. The multitude of surgeries is often unaffordable for victims. The physical and mental suffering attached to these crimes prevents many victims from living their lives. Many end up blaming themselves.¹³ It takes couple of seconds to ruin or disfigure a person but it takes years to erase this horrific act from the mind of a person. Increased self-consciousness and lowered self-esteem are reported by women both in general and in the social sphere.¹⁴

These corrosive substances cause the skin tissue to melt. The bones of victims become exposed and sometimes the acid dissolves the bones too. The biggest immediate danger for victims is breathing failure. Inhalation of acid vapours can

¹⁰ Lasting effects of Acid Attacks, The Borgen Project, <https://borgenproject.org/lasting-effects-acid-attacks/>, last access 22/07/2019.

¹¹ Samra Azam, "Cause and Consequences of Acid Attacks on Women: A Case Study of Distrit Lahore, Pakistan", The European Conference on Cultural Studies, Intentional Academic Forum, 2014, www.afor.org, last access 20/07/2019.

¹² Law Commission of India Report on the Inclusion of Acid Attacks as Specific Offences in Indian Penal Code and a Law for Compensation for Victims of Crime, Report No. 226, July 2009.

¹³ Lasting effects of Acid Attacks, The Borgen Project, <https://borgenproject.org/lasting-effects-acid-attacks/>, last access 22/07/2019.

¹⁴ Sakshi Singh, "Vitriolage - The Brutalization of Human Body", Legal Service India, 2019, <http://www.legalserviceindia.com/2019/07/22/vitriolage-the-brutalization-of-human-body.html>

create breathing problems in two ways: i.e. by causing a poisonous reaction in the lungs or by swelling the neck, which constricts the airway and strangles the victim. When the burns from an acid attack heal, they form thick scars which pull the skin very tight and can cause disfigurements. For instance, eyelids may no longer close, the mouth may no longer open; and the chin becomes welded to the chest.¹⁵ After acid attack what is required is adequate sterile health facilities.

3. Medical Facilities: In the immediate aftermath of an attack, victims have a variety of healthcare needs. At the outset, they are at high risk of infection—particularly in places like Cambodia where adequately sterile health facilities for burn victims are nearly nonexistent—and are in need of infection and air passage treatment, eye care, and pain management.¹⁶

Asma Akhtar, a Bangladeshi girl, at age of 14 years, faced an acid attack while she was sleeping. Akhtar recalls that it was her mother who bravely grabbed the man before he could escape. “Unfortunately,” says Akhtar, “the damage had already been done.” Because there was no doctor in the village, Akhtar had to travel by road and then by boat to the nearest health centre, a four-hour journey, and when she got there no one knew how to treat the injuries. In the end a family friend put her in touch with the Acid Survivors Foundation (ASF), a nongovernmental organization (NGO) that had just been set up in the capital, Dhaka.¹⁷

Victims are needed to go through surgeries for ears which are a time consuming and costly process. Not every victim is in position to spend this much of cost. Wounds take years to heal and if no medical treatment is taken then leaves scars for lifetime. The hospital treatment is usually prolonged, need to go surgery for number of times and means the survivor cannot work. The sustained medical treatment required places an enormous burden on the under-resourced health services.¹⁸

4. Unequal Treatment: Victims are ignored by the family members and society as well. Even if they are willing to go back into society, victims are often ostracized. One mother said that her in-laws show pictures of her to her children and tell them

¹⁵ Supra 12.

¹⁶ What Hell Feels Like, Acid Violence in Cambodia, 2017, <http://www.hrw.org>, last access 20/07/2019

¹⁷ Campaigns against acid violence spur change, Bulletin of the World Health Organization, World Health Organisation, Vol 89, number: 1, January 2011, <https://www.who.int/bulletin/volumes/89/1/11-020111/en/> last access 21/07/2017.

¹⁸ Willok John, “Acid Violence in Uganda: A Situational Analysis”, Acid Survivor’s Foundation Uganda, November 2011.

she has turned into a monster. Her husband was her attacker. The combined lack of self-worth and societal support makes it difficult for these victims to find employment after their attacks. Many attacks are perpetrated by men against their wives, and when they cast them out, these women often have no source of income.¹⁹ Such attacks usually leave victims handicapped in some way, rendering them dependent on either their spouse or family for everyday activities, such as eating and running errands. These dependencies are increased by the fact that many acid survivors are not able to find suitable work, due to impaired vision and physical handicap. This negatively impacts their economic viability, causing hardships on the families/spouses that care for them.²⁰ Victims are struggling for their basic human rights. Acid attacks being the violence against women is the most heinous crime and leads to violations of basic and fundamental human rights.

D. ACID ATTACKS: VIOLATIONS OF HUMAN RIGHTS

Acid attacks which is a violence against women leaves deep and long impact on life, growth and development of victims. It is an obstacle to achieve equality, development and peace. Due to acid attacks, victim's fundamental freedoms especially of women and girls are impaired or nullified and therefore their enjoyment of rights and freedoms get discarded. Since the foundation of the United Nations, equality between men and women is basic right guaranteed under the Preamble, under the Article 1, the object of is to protect and promote respect for human rights of all without distinction. Even after the adoption of UN Charter and 70 years of the adoption of Universal Declaration of Human Rights (UDHR), acid attacks which are violence against women as well as gender-based violence throughout the world which denies the fundamental and basic rights enshrined in it are still exist.

UDHR under Article 3, provide for right to life and security of person. But this right is undermining with the acid attacks. Victims suffer from many physical abnormalities and horrific mental agony and thus make Article 3 of UDHR mere provision. The U.N. Declaration approved the freedom to all irrespective of sex. Hence women have the same freedom and right as that of men. Violence against women breaches the right of security, liberty and even right to their life. And article 5 says, nobody shall be subjected to torture. Articles 1 to 5 generally says about the rights

¹⁹ Supra 13.

²⁰ Dr. Patel Apexa, Dr. Advaita Patel and Dr. Baldev V. Patel, "Health Care Management of Acid Attack Survivors: A Review", International Journal of Medical and Pharmaceutical Research, 2016, 4(4): 231-236, https://www.researchgate.net/publication/306091010_Health_Care_Management_Of_Acid_Attack_Survivors_A_review, last access 22/07/2019.

that are inborn to individuals around the world irrespective of cast, creed, sex, language, or boundaries or continents.²¹ Article 25(1) has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Non availability treatment, expensive treatment and need of surgeries some time more than 10 to 30 times made it difficult to achieve this right. Some time they are denied to get free treatment in the hospitals. According to 'What Heel Feels Like: Acid Violence in Cambodia Report', while the number of attacks had fallen, not a single survivor received treatment free of charge at a public hospital. They face full range of problems. Everyone has right to medical treatment beside this victim are unable to get treatment either due to it unavailability or huge expenses.

Convention on the Elimination of All Forms of Discriminations against Women (CEDAW), 1979 is the Magna Carta of women's human rights. CEDAW Preamble recalls that discrimination against women is a major obstacle to women's participation in political, social, economic and cultural activities as equals to the males. Discrimination against women also violates the principles of equality of rights and respect of human dignity. Right to live without violence is upheld by CEDAW under General Recommendations 12 and 19. All these legal provisions are violated with the acid attacks and thus victims' right to live with dignity, equality and justice get denied.

Similarly, the 1993 UN Declaration on the Elimination of Violence against Women enacted legal reforms with international standards which also include the acid attacks such as need to develop new legislation to prevent the use of acid in attacks on women and to stop harmful customary practices. But the practice of throwing acid on woman/ girl is increasing and this shows the failure on the part of international community in preventing acid attacks.

The Rome Statute recognized gender-based violence as a crime under international criminal law. under Article 7(1)(g) of the Rome Statute "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization; or any other form of sexual violence of comparable gravity" committed "as part of a widespread

²¹ Nair Raveendran, "Violence Against Women, Violation Of Human Rights: An Appraisal On Indian Context", International Journal of Development Research Vol. 4, Issue, 11, pp. 2357-2363, November, 2014, <https://www.journalijdr.com/sites/default/files/issue-pdf/2253.pdf>

or systematic attack directed against any civilian population” as crimes against humanity. The above-mentioned crimes under Article 7 are classified as serious violations of the laws and customs applicable to international armed conflict and thereby classifiable as war crimes under article 8(2)(b)(xxii). The Rome Statute evokes every State to make laws or to amend existing law which will define the crimes in accordance with international law. Even though there is no direct reference of acid attacks in the Rome Statute but it can be included under the concept of violence against women.

The United Nations published a handbook on legislation to prevent violence against women in 2009²² and in 2011 UN Women again published a supplement to the handbook.²³ Various recommendations have been made in this handbook which considered the acid attacks as violence against women and made various recommendations. But these recommendations such as criminalisation of acid attacks, regulations on sale of acids, provisions for medical treatment are followed by few states such as Bangladesh, Uganda, Colombia, Cambodia and UK. Therefore, lot needed to be done by the international community as well as by each and every State. The way is long ahead.

E. CONCLUSION

Acid attacks are a harmful practice against women/ girl and a type of violence against women. It is internationally act which cause serious physical, mental and economic consequences. Although attacks against men are also increasing but still women are primary victims. Making the laws is not a solution for prevention of acid attacks but removing of gender inequality and gender discrimination is a call of nature. Attitude towards the victims should be changed. Society should create structure male free dominated society and enforce gender equality aspect. From human rights point of view the State can be held accountable on their failure to fulfil the obligations which are under international human rights law.

■ ■

²² Handbook for Legislation on Violence against Women, Division For The Advancement Of Women Now Part Of UN Women United Nations, July 2010, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, last access 1/08/2019.

²³ Supplement to the Handbook for Legislation on Violence against Women “Harmful practices” against women, Division For The Advancement Of Women Now Part Of UN Women United Nations, United Nations, March 2011, <https://www.un.org/womenwatch/daw/vaw/handbook/Supplement-to-Handbook-English.pdf>, last access 1/08/2019.

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Coming to the topic, E-education or E-learning is the delivery of education or any type of training by electronic teaching method.

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E-Education: A Boon or A Bane

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“The science of today is the technology of tomorrow”

-Edward Teller¹

Out of 26 letters of modern English alphabet, I think the vowel letter ‘E’ has taken a new place in our today’s technological world. In our day to day lives, we go through the number of words which stands with the prefix ‘E’ such as E-business, E-management, E-commerce, E-forms, E-banking, E-library, etc. And one such word is E-education. What does this E indicates? Here, everywhere E means electronic i.e via internet. Now-a-days, Internet is playing such a substantial role that we won’t be wrong if we say that apart from food, clothing and shelter, Internet has also become one of the basic necessities of human life. Coming to the topic, E-education or E-learning is the delivery of education or any type of training by electronic teaching methods. This electronic method can be a computer or a smartphone or even a tablet where teaching material is accessed by use of the internet usually.

¹ http://www.brainyquote.com/quotes/edward_teller_102595





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Meaning and Concept of E-education: A learning system based on formalised teaching but with the help of electronic resources is known as E-education. Place does not matter, this teaching process can be based in or out of the classrooms; but the use of computers and the Internet forms the essential component of E-education. E-education can also be described as a network enabled transfer of skills and knowledge, and the delivery of education is made to a large number of recipients at the same or different times. Earlier, it was not accepted wholeheartedly as it was assumed that this system lacked the human element required in learning. However, with the rapid progress in technology and the advancement in learning systems, it is now encouraged by the masses. The introduction of computers was the mother of this revolution and with the passage of time, as we get hooked to smartphones, tablets, etc, these devices now have an important place in the classrooms for learning. Now-a-days, students are seen with optical discs or pen drives in their hands. Thus, books are gradually getting replaced by electronic educational materials. The schools using E-learning technologies are a step ahead of those which still have the traditional approach towards learning. Also, It is heartening that National Assessment and Accreditation Council (NAAC) has brought in new spirit into its process of assessment and accreditation by revising it. The main focus of the revision process has been to make them more robust, objective, transparent and scalable as well as make it **ICT (Information & Computer Technology)** enabled. NAAC requires that every educational institution should provide E-education by availing the benefits of various online Apps in the form of Google Classrooms, Swayam, E-pathshaala, KYC, etc. Thus by emphasising on ICT concept, it ensures that its processes are in tune with local, regional and global changes in higher education scenario.

Merits of E-education:

- E-education strives on the use of ICTs which helps in accelerating the achievement of national educational goals by connecting together the learners and teachers scattered across the country for professional support services.





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- In E-education, knowledge is shared via the Internet, which is accessible 24/7, anywhere, anytime. So, time and place both can't play as a barrier while imparting education.
- Everyone, who are part time students or are working full time, can take advantage of web-based learning. Thus, it facilitates distance learning.
- It is a very convenient and flexible option. You don't have to depend on anyone for anything.
- A prime benefit of learning online is that it makes sure that you are in synchronisation with modern learners. This enables the learner to access updated content whenever they want it.
- Online instructions given through audio and video learning proves to have more impact on the students and can be rewound and seen and heard again and again if they do not happen to understand the topic first time around. Thus, this is very advantageous for slow-learner students.
- There is no hard and fast rule with respect to training yourself on a day to day basis, weekends or whenever you have the free time to do the same will work.
- Web-based learning promotes active and independent learning.
- As compared to traditional classroom teaching method, this mode has relatively quick delivery cycles. This indicates that the time required to learn is reduced to 25%-60% of what is required in traditional learning.
- E-education is a good cost cutter because learning through this mode happens quickly and easily. A lot of training time is reduced with respect to trainers, travel, course materials, and accommodation.
- Most important of all is that E-education is a paperless way of learning, it protects the environment to a lot of extent. As per a study done on eLearning courses, it has been found that distance-based learning programs consumed around 90% less power and generated 85% less amount of CO2 emissions as compared to traditional campus-based educational





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courses.² With E-learning, there is no need to cut trees for obtaining paper. Thus, E-learning is a highly eco-friendly way of learning.

Limitations of E-education:

Indeed, technology is a useful servant but a dangerous master. Thus, apart from the long list of above mentioned merits, E-education comes with certain demerits also as follows:

- Through this E-education concept the attendance of the students in schools and colleges has been badly affected. Students manage to get all study materials from internet and are not much concerned with the notes given by teachers in traditional classrooms. Using Google classroom and other apps, they are aware about all the assignments and other important information given in classrooms which is uploaded on these apps for updating the students who missed the lectures for some genuine reasons. But practically, we experience that all the students are missing students.
- E-education depends on technology a lot and over 60 per cent mobile users in India are facing network problems while accessing internet across locations, says a study³. Thus quality and reliability issues (like voice drops, connection breaks, inconsistent speed, no availability of 3G) is a very serious problem which a developing country like India is facing. Thus, internet connectivity which is the backbone of E-education is not so strong in the country as it should be.
- The face-to-face interaction and learning experience is missing which may matter a lot in personality development of the students.
- Proponents of e-learning claim that the main advantage of this learning method is that it is self-paced. And yes, it's true also. If one wants to watch a video again, he can. If he needs

² <https://elearningindustry.com/9-benefits-of-elearning-for-students>

³ <http://www.firstpost.com/tech/news-analysis/60-percent-of-mobile-internet-users-face-network-problems-in-india-says-study-3667269.html>





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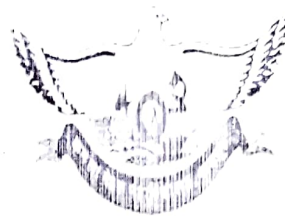
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to take a break from the material, he can stop and come back to it when he is feeling refreshed. However, because of this inherent freedom, no self-discipline is seen and e-learning may often translate to no learning.

- The feedback plays a very important role in students' progress. The students are able to improve only when they know their loopholes and weak points. While online instructors do give students feedback, they still might not have enough time to work with them properly, explaining every minute detail. This may lead to some students lacking behind, having gaps in their knowledge, and not completing the course successfully enough.

Conclusion:

Article 21A of the Indian Constitution guarantees a fundamental right to free and compulsory education to all the children between the age of six to fourteen years. And with the advent of technology, this educational right came with a new perspective of E-education. Technology is always a two-edged sword. Along with many benefits, it will also bring many disasters. No doubt, the importance and effectiveness of technology-based learning cannot be taken lightly or ignored completely but it is equally important to take forward the concept of non-electronic teaching with the help of books and lectures because many courses require physical presence, working with non-digital objects and in a different environment. Moreover, sometimes only the physical presence can help students build necessary skills, both professional and social. To my opinion, E-education can become a great addition to the traditional learning process, making it more diverse and allowing students from all over the world to gain additional knowledge about certain subjects. However, it's important to develop both types of educational technologies equally and learn how to balance them in a most effective way in order to get the best results.



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Consumer Protection in E-Commerce & Approach of

Indian Jurisprudence

Aruna Raut Kadu

GWCL, Nagpur

Abstract

The world is now witnessing a big shift from physical to virtual world. With the advent of Information technology all the fields prefer ICT based transactions. Online business is flourishing with the help of internet and people are also availing it. But the new issues have been rising with this new technology. The protection of consumers in virtual world is big concern now a day. In the present paper, researcher is trying to study Indian jurisprudence tracing the concept of consumer protection since ancient India and present scenario of e-commerce and consumer protection, with a view that it is need of hour to have strong protection to e-consumerism.

Key words: Indian jurisprudence, e-consumerism.

Introduction

"If you make consumer unhappy in the physical world, they might each tell six friends, if you make consumers unhappy on the internet, they can tell six thousand friends"

Jeff Bezos.

It is indeed a golden rule of every business that consumer is the only boss who should get satisfied of any goods or services. The entire business world revolves round the consumer. The concept of consumer protection is not new, rich history of India is evident that it had concern with consumer protection from ancient period. Indian Jurisprudence has ample of legislations which talk about consumer protection but that was limited to physical world transactions. With the advent of Information technology, business world is also transformed & given rise to e-commerce. People are also finding it easy to transact on e-commerce because plenty of options are available on a simple click, one need not have to explore galli to galli to get





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his favorite goods or services. But this shift from physical world to virtual world has brought many complications with it. All the laws available deal with the consumer in physical world. So somewhere, consumers in virtual world also need protection. The laws should be enacted so as to cope up with these needs of consumers. If proper protection is available by way of a good law then consumers will not hesitate to go for e-commerce transactions. Indian jurisprudence from ancient time can be discussed as follows.

Ancient India

The concept of consumer protection is not new. It can be traced in various ancient literatures in India, as trade & commerce was important factor of Indian economic system.

Ancient India witnessed development of medicine grammar, mathematics, astronomy, philosophy, literature etc. & there was notable development of law also. Though a very small literature is survived but it is of big value & particularly consumer protection was of utmost importance in ancient time also.

Vedas are considered as primary source of law in India Vedic age is the first literary source of civilization. It is considered as words of God. The Vedas give the idea of perfect life & rules for day to day life. For the consumer Protection, civil rights & criminal offences are elaborately described in Vedas. Four broad types of offences were mentioned in ancient period, i.e.

- i) Adulteration of food stuff
- ii) Charging of excessive prices.
- iii) Fabrication of weights & measures.
- iv) Selling of forbidden articles.

Manusmriti describes the social, political & economic conditions of ancient society. A code of conduct is given for traders, & punishment is also prescribed for crimes against buyers. Thus it dealt with various consumer matters, which are of great concern even today.





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Kautilya Arthashastra talks agriculture, cattle breeding & trade as common occupation of that time. Kautilya's work primarily deals with matters of practical administration, consumer protection etc.

The five vows of **Jainsism** i.e. *Satya, Ahimsa, Astheya, Apigraha & Brahmacharya* gives a key to ideal humane behavior, under the influence of this, trade & commerce was not under unfair practices & consumers were not exploited by traders. **Buddhism** which is named after its founder Bhagwan Gautam Buddha is the religion which also gives various principles for people to live a good life. Buddha means "enlightened". Buddha gave eight fold principles to end sorrow, buyers, traders & all people in general who follow these principles were honest & trustworthy.

Thus it was classical age of India. The strict rules of behavior were laid down & people also adhered to those rules & in case of any defraud sanction was provided.

Medieval India

Medieval India experienced **Mughal Empire**, after bright period of Gupta Empire. Mughal had tight control over Indian society & economy. The concept of consumer protection is found during Mughal period. Strict price control rules were laid down by Sultan khilji to check exploitation of consumers. It was the medieval period, when **Guru Nanakji** depicted betterment of consumers by his teachings of honesty, *daan, dharma, seva*, faith by human being, which is followed by some traders even today.

Modern India

Modern India should be considered in two parts British India & Post Independence period. During British regime a systematic attempt was started for consumer protection by enacting certain legislations, which aimed at public welfare. The first & foremost is **Indian Penal code, 1860**. Various provisions regarding consumer protection are laid down in the code





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such as (i) Section 264 provides Prohibition of fraudulent use of false instrument for weighing (2) Section 265- Fraudulent use of false weight or measure. (3) Section 266- Being in possession of false weight or measure. (4) Section 267- Making or selling false weight or Measure etc then Section 272-276 Provide punishment for Adulteration of food, drink, drug etc & sale of such adulterated food items.

Indian contract Act, 1872 is basic part of Mercantile Law. In daily life everyone enters in contract as seller & buyer. Contract Act creates rights & obligations of both the parties & in such way protect the rights of buyers as consumers. Then, **The Sale of Goods Act, 1930** provides various provisions for the settlement of seller -consumer disputes & consumer rights.

Main Occupation of India is agricultures. So **The Agriculture Products (Grading & Marking) Act, 1937** is notable legislation for grading & marking of agricultural commodities to maintain the quality agriculture horticulture & livestock products for consumers.

The Drugs & Cosmetics Act, 1940 regulate the production, trade, distribution import & export of drugs & cosmetics so that consumer would get the quality drugs.

The Capital Issues Control Act, 1947 aims to protect the innocent investors. The purpose of all these Legislations though is public welfare but somehow the provisions protect the rights of consumers as well.

Post Independence Period

The Constitution of India is the law of land. All the laws should be in tune with the Constitution. Constitution does not provide specific provisions for consumers but wide interpretation of certain fundamental rights, directive principles of state policy protect the rights of consumers.

As, Article 14, 19 & 21 of the constitution are fundamental rights. Article 14 guarantees equality before law. Article 19 (1) (a) i.e. freedom of speech & expression is interpreted widely which includes right to know & right to receive & impart information which is right of consumers that when they buy something they have all the right to receive information about the





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product. Similarly Article 19(1) (g) provides freedom of trade & profession but at the same time Article 19(2) puts reasonable restrictions on the same.

Article 21 gives right to life & personal liberty & it includes variety of rights in it. Article 32 & 226 are also related to consumer protection as Apex Court in many cases diluted the concept of *locus standi*.

Coming to Directive Principles of state Policy; Article 38(1), Article 39-A, Article 46, impose duty upon state to protect social, political & economic justice. The term 'social injustice & all forms of exploitation' interpreted to cover consumer exploitation & fraud also.

Consumer Protection Act, 1986

This is landmark legislation for the promotion & protection of consumer rights. It aims at simple, speedy & inexpensive remedy to the consumers. & give emphasis on consumer education & awareness.

Thus by studying all the above laws available in India we can say that all the laws are aimed at public welfare & this they protect consumer rights also

& exclusively consumer Protection Act is also there.

But no provision is laid down for the consumers in online shopping. i.e. the consumers who deals with e-commerce. Recently the bill has been passed regarding it.

Consumer Protection Act, 2019

This new act received assent of president of India on 8 Aug 2019 & was published in official gazette on 9th Aug. 2019. & it will come into force on such date as the central Govt. may so notify.

The New Act has broadened the definition of 'consumer', to include the persons who engage in offline or online transactions through electronic means or by tele-shopping or direct selling or multi-level selling

The definition of e-commerce has been provided as, buying or selling of goods or services including digital products over digital or electronic network. To prevent unfair trade





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practice in e-commerce Central Government has been authorized to take measures. The terms product Manufacturer, product seller & product service provider has been defined so as to include e-commerce platforms also in matter of product liability.

Conclusion

Indian jurisprudence is rich of laws for public at large. From ancient period there was a concern to the consumers also, for protection of consumers Many rules were laid down time to time, But law should not be static, it should change with changing needs of society & it is need of hour that consumers should be protected while transacting online also. As e-commerce is at hike, everyone prefers it because of all its advantages but at same time many problems have been faced by consumers also. The New CPA 2019 is a ray of hope to deal with all e-commerce transactions & protection of consumer rights thereby. Now the days have come where consumer should be treated like a king & gone are the days when they were asked to be aware.

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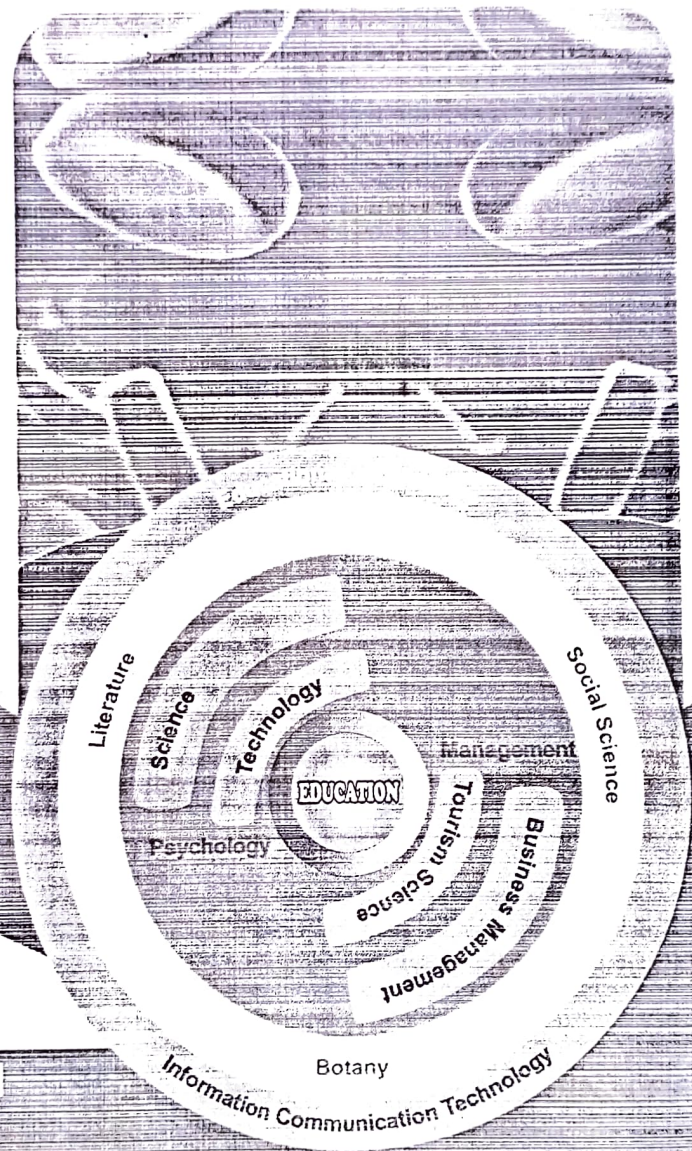


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INFLUENCE OF MEDIA AND ITS IMPACT ON CONSTITUTIONALISM

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Abstract

Media is considered as "mirror" of the modern society. In today's world, media has played a significant role in strengthening the society, nowadays social media plays a very important role in learning new information, sharing ideas, and interacting with new people and organizations. Indian constitution guarantee citizens of India rights to freedom of speech and expression, Indian constitution does not have any express provision for the freedom of press, the freedom of press include in the freedom of speech and expression, however to arrest the malpractices of interfering with the free flow information's, the Democratic Constitution of our Country impose reasonable restriction on the exercise of this right. This Paper deals with Constitutionalism and the role of media in democracy and good governance. Constitutionalism is an ideology, belief, value and principle in which the functions of government must be in accordance with the provisions of the Constitution and actions of government must reflect Constitutionality. Uniform view on broadcasting media, cannot be allowed under the monopoly of government or of an individual, body or organization.

This paper focused on regulation frame for the transparency and accountability. Whatever media show and reflect people considered as truth, but there is need to check the authenticity and uniformity covered by the media. Now in recent trends there is big drawback of fake news and paid news is increasing day by day as well as well interference of governments and influence over media for their propagandas that challenge the constitutional validity.

Keywords: Media, Constitutionalism, Democracy, Government, transparency, accountability, Constitutional validity

Introduction: "Publicity is the soul of justice. Where there is no publicity, there is no justice." The Constitution of India under Article 19(1) (a) explicitly declares that all citizens shall have the right to freedom of speech and expression. The freedom of speech and expression is one of the paramount significance. The word 'media' is derived from the word medium, signifying mode or carrier. Media is intended to reach and address a large target group or audience. The word was first used in respect of books and newspapers i.e. print media and with the advent of technology. Now media encompasses television, movies, radio and internet. In today's world, media becomes as essential as our daily needs. Media of today is playing an outstanding role in creating and shaping of public opinion and strengthening of society. In today's world, media has played a significant role in strengthening the society, nowadays social media plays a very important role in today's life to learn new information, share ideas, and interact with new people and organizations. Hence media is considered as "mirror" of the modern society.

Constitutionalism and role of media in democracy and good governance, is an ideology, belief, value and principle in which the functions of government must be in accordance with the provisions of the Constitution and actions of government must reflect Constitutionality. Uniform view on broadcasting media, cannot be allowed under the monopoly of government or of an individual, body or organization. Constitutionalism proclaims the desirability of the rule of law, as opposed to rule by the arbitrary judgment. Constitutionalism is that in political life to do anything they please in any manner they choose, they are bound to observe both the limitations of power and the procedures which are set out in the supreme, Constitutional law of the community. Constitutionalism has both descriptive and prescriptive connotations. The concept of constitutionalism is that of a polity governed by or is a political philosophy in which the functions of government of a state must be in accordance with the provisions of the constitution meaning thereby the actions of government must reflect constitutionality.

Freedom of Speech and expression means the right to express one's own sentiments and ideas freely by words of mouth, writing, printing, pictures or any other mode. It also includes the right to propagate one's views through the print media or through any other means such as radio, television, radio and the television. Therefore every citizen of India has the right to express their views through the printing and or through the electronic media subject of course to permissible restrictions imposed under Article 19(2) of the Constitution. The government can impose restriction on citizens' rights only on grounds specified in clause (2) of Article 19 of the Indian Constitution and not on any other ground. A restriction on the freedom of speech and expression can be imposed for the Security of State i.e. refers only to serious and aggravated forms of public order e.g. rebellion, waging war against the State, insurrection and not ordinary breaches of public order and public safety. Secondly, friendly relations with foreign states and thirdly, for a maintenance of public order.

The Government has no monopoly on electronic media. The media in India is mostly self-regulated. The existing body for regulation of media such as the Press Council of India, which is a statutory body and the News Broadcasting Standards Authority, is a self-regulatory organization which issue standards and guidelines. Press Council is a mechanism for the Press to regulate itself. Print media in India is governed by The Press Council Act, 1978 that establishes the Press Council of India (PCI). The PCI is statutorily empowered to take suo motu cognizance or entertain complaints against newspapers and journalists accused of violating standards of journalistic ethics or offending public taste and censure. The PrasarBharti Broadcasting Corporation of India Act 1990 is consider to be the most important and liberal legislation regarding the press and media in India. The main object of this statute is to promote the freedom of the press and to ensure a balance growth and expansion of the broadcasting of the modes of the media.

Similarly, the Indian Judiciary played a very pivotal role in interpreting Article 19 of the Indian Constitution. The Constitutional validity challenge under the Newspaper (Print and Page) Act, 1956 which empowered the government to regulate the price of paper in relation to their pages and size but the Honorable Supreme Court held that the State cannot make any law which would directly affect the circulation of a newspaper as it would amount to violation of the fundamental right as guaranteed under Article 19 of the Indian Constitution. In another case where there was challenge to the working journalist (condition of service) and miscellaneous Provisions Act, 1956 on ground that it violates Article 19 (1)(a). The Act was impugned to regulate the service conditions of the working journalist and other persons employed in the newspaper establishment. The Honorable Supreme Court concluded that the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was enacted for the amelioration of the conditions of those employed in the newspaper industry and that any impact of the legislation on the right to freedom of speech and expression as complained by the petitioners was far too remote and incidental to warrant a striking down of the legislation. Moreover, Supreme Court held that the government has no monopoly over the electronic media and an Indian citizen has the right to telecast and broadcast the viewers through media.

Besides this, the concept of "right to know" under Article 19 of the Indian Constitution was also interpreted by the Judiciary here Court observed that the people have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. So that Right to information Act which set out the rules and procedure regarding citizens' rights to the information. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of

in the case where Justice Bhagwati held that "no democracy can survive without the transparent and accountable information". Thus, it is quite evident that not only the Constitution of India makes the existence of freedom of media but in reference to the Indian context it is equally supplemented by the radical Activism which clearly establishes Right to Freedom of Press under Article 19 of the Indian Constitution.

Role of Media in a Democratic Society: In a modern democratic world the socio-political life would be impossible without the existence of mass media and as a result they are often recognized as the "fourth pillar" of democracy along with the Executive, Legislative and the Judiciary. Media law as a branch of legal science, which regulates the activities the principles of dissemination of media products. Some regulations apply only to specific types of media. For example, there are broadcasting laws that apply only to the activities of broadcast media. More general legal provisions are to be respected by all media.

A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. The Right to Information Act, 2005, especially talks about people's right to ask information from Government official, which prohibits disclosure of certain documents under section 8 of the Act. These exceptions are generally the grounds of reasonable restrictions over freedom of speech and expression under Article 19(1) of the Constitution of India. The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on social and moral issues. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavors of all sorts. Traditionally and constitutionally, the media has no defined role in governance. It doesn't have the power to change any decisions made by the various arms of a state legislature, executive and the judiciary. It is the right of the citizen to publish without any prior permission from the government or any other public authority, subject only to the legal liability for what he has chosen to publish. Freedom of press has three essential features; namely freedom of publication, freedom of access to all sources of information and freedom of circulation. Therefore, Press freedom plays a vital role in the formulation of public opinion on issues of public importance. If media is to have any meaningful role in democracy and governance it must be free and independent from the control of government. The ultimate goal of media is to serve the public interest. The media also exposes loopholes in the democratic system, which ultimately helps government in filling the vacuums of loopholes and making a system more accountable, responsive and citizen-friendly. A democracy without media is like a vehicle without wheels.

Role of media in our society: Media is the sword arm of democracy. Today when politicians are taking full advantage of their positions, an evil nexus of mafia and crime syndicate is making the life of the common man miserable, taxpayer's money is siphoned out for the personal gain of the influential and ordinary people are a mere spectator-media has a greater responsibility. It found substantial evidence of corrupt practices and collusion between the Indian media, various politicians and political parties. It ruled that newspapers should not carry articles that report "enmity or hatred between people on the ground of religion, race, caste, community or language", refrain from critical statements on "personal character and conduct of a political candidate" and refuse financial or indirect forms of compensation for political coverage among other voluntary guidelines.

The Indian media display certain defects. There is a lack of transparency and objectivity in democratic manner. One of the basic tasks of the media is to provide, track and objectively information to the people that will enable them to form rational opinions and decisions in a free democracy. Another defect concerns the issue of paid news that has become a plague in India. However, media often portray non-issues as real issues, while the real issues are ignored.

Influence of a media on society: Society is influenced by media in so many ways. It is the media that the masses that helps them to get information about a lot of things and also form opinions and reach a judgment regarding various issues. It is the media, which keep people updated and informed about what is happening around them and the world that everyone draws something from it. Media has had a bad effect on a generation, mainly because youth is strongly influenced by social media, teenagers and children are intended to follow their people, who are recognized and follow what they do to get noticed.

However, Media can be considered as "watchdog" of political democracy. It is influence by the political support. Now a day's media is only functioning for politicians and political purposes. It gave the birth of fake news and it is a big thing in the field of Social Media Journalism. Fake news can be as simple has spread misinformation or as dangerous as smearing hateful propaganda.

In today's world, the media's have the power to make the innocent guilty and to make the guilty innocent, and that's power because they control the minds of the masses. "Paid news" in India and others parts of the world essentially emanate from the fact that much of the mass media is dominated by corporate conglomerates that are primarily interested in maximization of profits. The independence of the media and its ability to bring about transparency in society by playing an adversarial role against the establishment get compromised because of corruption within the folds of the media itself. Paid news is one particularly egregious manifestation of the ills of the corporatized media that puts out information that poses as if it has been independently and objectively produced but has actually been paid. Paid news on politicians and political parties subvert one of the most fundamental of democratic ideals for the purity of the vote. The autonomy of the media is meant to facilitate greater accountability of public personalities and reduce corruption. But when the media itself indulges in corrupt practices, especially during election campaigns, it seriously undermines the processes and structures that are meant to uphold and strengthen Indian democracy.

The fundamental right to seek and disseminate information through an independent press is under attack, and part of the assault has come from an unexpected source. Elected leaders in many democracies, who should be press freedom's staunchest defenders, have made explicit attempts to silence critical media voices and strengthen outlets that serve up favorable coverage. The trend is linked to a global decline in democracy itself. The erosion of press freedom is both a symptom of and a contributor to the breakdown of other democratic institutions and principles, a fact that makes it especially alarming. However, it has shown that press freedom can rebound from even lengthy stints of repression when given the opportunity. The basic desire for democratic liberties, including access to honest and fact-based journalism, can never be extinguished, and it is never too late to renew the demand that these rights be granted in full. While the threats to global media freedom are real and concerning in their own right, their impact on the state of democracy is what makes them truly dangerous. A free and independent media sector that can keep the population informed and hold leaders to account is as crucial for a strong and sustainable democracy as free and fair elections. Without it, citizens cannot make informed decisions about how they are ruled, and abuse of power, which is all but inevitable in any society, cannot be exposed and corrected.



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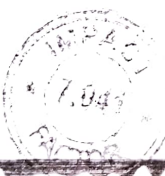
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success of this prowess depends upon love and goodwill towards opponents. Satyagraha in action is an open process, devoid of fear. In fact Satyagraha is a way of life that has to arise out of the deepest human attitudes.

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Role of Gandhiji in removal of Untouchability

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Abstract:-

Untouchability today outlines the context in which untouchability is practiced in the current Scenario. India emerges as the world's largest democracy and yet the practice of untouchability remains as it is. The issue of untouchability is one of the most pathetic and sensitive. Despite of growing domestic and international Concern, Constitutional prohibition, human rights protection the life of Dalit's still remain unchanged till date. The researcher tries to explore the concept of untouchability in Ancient period and issues and challenges faced by untouchables. The researcher also highlighted the role of Gandhiji for eradication of untouchability thought out his life.

Introduction:-

Untouchability is to be consider as a social in human institution which emerged in the remote past. It is a practice in which some lower caste people are neglected, denied of social equality, suffered isolation and disability. Other people treated them as a contaminating or polluting the higher caste people. Therefore they are the worst victims of the existing society as oppression; exploitation and injustice were done to them. The caste system has ancient roots, and became a means of social stratification in which low castes were expected to perform dirty, degrading and dangerous work for the remaining society. The caste system is deeply embedded, not only in the rural areas, but also in the fast growing urban centers as untouchability is a direct product of the cast system.

Meaning of untouchable:-

People who constitute the bottom most place or lower strata in the Indian Social stratification are regarded as untouchables. In other word, they were

subjected to exploitation, oppression, and injustice which suffer from various social and political disabilities.

Meaning & Concept of untouchability:-

Untouchability is a phenomenon of group prejudices and discriminating affecting million people. It is a shabby practice associated with the Indian caste system.

The practice of untouchability is a stigma attached to the Indian Society. Gandhiji regarded such practice as "a leper wound in the whole body of Hindu politic. According to Gandhiji it is hate fullest expression of caste. Gandhiji carried on campaign against it throughout his life people have suffered from it and still continues to suffer with less intensity.

Ancient Scenario:-

The untouchable castes were prominently seen from Ancient era. They were called by different names such as chandalas, panchamas, svapachas, antyajas, atishudras etc.

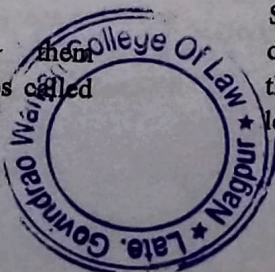
- **Vedic era :-** Vedic period, they mention it as a 'impure' groups, people born of the prohibited "pratiloma" marriage belonged to that category and were called 'chandalas', 'svapacha' and so on. According to Manu, the progeny of the most hated Pratiloma union would become chandalas or untouchable. In other words, the chandalas who were regarded as 'untouchables' were the children of the most hated union of a Brahmin female with a Shudra male.
- Patanjali, considered chandalas as a variety of Shudras. Chandalas as forming fifth category, (outside the four varnas) and called it as Panchamas. The Panchamas were untouchables and came to be known as Avarnas.
- **Alberuni :-** According to them 'Untouchables are the social groups called

Anthyaja' containing lowest position in the society.

Untouchable Caste: - Issues and Challenges.

The untouchable castes have been suffering from various types of disabilities throughout the history though untouchability is unconstitutional after independence but the practice were still prevalent in the society.

- (i) **Lowest status in the society: -** The untouchable castes ascribed the interior, lowest status in the society. They were facing exploitation and humiliation as they were doing unclean occupation such as scavenging, removing human waste and dead animals, tanning shoe-making, spinning, and washing the cloths. Untouchables were not only kept at a distance but also denied various civic facilities.
- (ii) **Educational Disabilities: -** The untouchables were forbidden from taking up to education during early days. Sanskrit education was denied to them. Even today majority of them are illiterate and ignorant.
- (iii) **Religious Disabilities: -** The untouchables also suffer from religious disabilities even today.
- (iv) **Economic Problem & Disabilities: -** The untouchables are economically backward and have been suffering from various economic disabilities such as (a) Right of landed properly ownership denied for centuries. (b) Selection of occupation limited (c) Failure to fill in the full quota of reserved posts (d) Landless laborers.
- (v) **Political Disabilities: -** Untouchables hardly participated in the political matters from centuries. Bahujana Samjavadi party (Bsp of 1980s) is no doubt mobilizing the SC's but so far they have not been able to form a Dalit lobby at national level. Their total



influence in the Indian politics is so far not very much impressive.

Effects of Untouchability on Indian Society:-

Such practice gave rise not only to different kinds of disabilities but it also caused damage to the Indian Society. Few effects are highlighted below.

- The concept of untouchability divided the Hindu Society into touchable and untouchables, and develops dislike, enmity and create wide distance between them.
- The concept of untouchability brings inequalities and affects the development and democratic system very badly.
- By giving importance to untouchability leads to religious conversions.
- Untouchability led conflicts between the upper castes and lower castes resulting in violence such as murder, rape, molestation etc.
- The concept of untouchability damages the status and self- image of SC's. As it develop the inferiority, lack of confidence and personality.
- Due to the practice of untouchability, the nation was deprived of the opportunity for making use of the talents, abilities and creative capacities of people.
- Untouchability is a black spot on Hindu Society and affects the image of nation in the eyes of foreigners.
The great reformers like Buddha, Mahaveera, Gandhiji, and Ambedkar could not attain complete success in their attempts to remove untouchability.

Gandhiji's Role for Eradication of untouchability:-

Gandhiji plays a very vital role for the development and upliftment of the untouchables. Gandhiji address the untouchables as 'Harijan' means 'the People of God'. According to Gandhiji

the practice of untouchability is "a leper wound in the whole-body of Hindu Politic. Gandhiji carried out the mission to wipe out from the society throughout his life time. All human beings are equal and therefore Harijans have right to live Social, Political, Economic dignity.

Gandhiji's Appeal to the Conscience of the people:-

He believed in four fold of varnas in Hindu Society. He considered untouchables as shudras and not the fifth varna or Avarna. He felt that by bringing change in the caste structure by uplifting the untouchables without abolishing the existing caste system.

The people must realize, by accommodating the Harijans to a right place in the Society through the conscience and changing views and hearts of people to remove their disabilities.

Gandhiji's movement against Untouchability

According to him untouchability is a blot on Hinduism without its removal 'Swaraj' is a meaningless. India was under the control and ruled by Britisher in the name of religion. They used divide and Rule policies at that time Gandhiji decided to Campaign' against untouchability for the upliftment and betterment of Harijans, He addressed various meeting for the welfare of Harijans. He believes that by giving opportunities of education and entry into the temple can reduce social inequalities between Harajins and upper caste up to some extent. He carried out some activities by cleaning Harajins residential areas, digging well etc. for their betterment.

Gandhiji wrote in his book (1925) "Young India" where Temples, public places, public schools must be open to the untouchables. He started ashrama where people of all creed comes together and live without any differences. The served the 'Harijan Sevak Sangha' started by the Takkar Bapa (1932) to promote social and religious welfare of Harijans. Numbers of schools were opened by this

organization to impart free education and scholarships facilities for Harijans children.

Political Role of Gandhiji:-

Gandhiji never ignore the tasks of removal of untouchability his struggle itself to get the independence on the one hand, and to wipe out untouchability on the other. In 1920 he declared that untouchability cannot be given a secondary place in the program.

- **Gandhiji's protest Against the proposal of separate Electorate for Harijans:-** As he was against the divide and rule policy hence he protested against the proposal of creating separate electorate for Harijans, Ambedkar is in favour of proposal. Gandhiji declared at the minorities committee of the Second Round table conference in London (1932) that untouchable should not be classified as separate class.
- **Impact of Gandhiji 'Fast unto-Death Stayagraha':** - British Prime Minister decided to grant separate seats for the depressed classes and they could elect their own representatives. He protest against this 'Communal award' and decided for Fast unto-death satyagraha. With this he opened the eyes of entire nation towards the problem of untouchabers. The Harijan movement gained strength in the country Gandhiji tries to collect huge amount of money for the program of Harijan Sevak Sangh.
- **Gandhiji commits congress for the Removal of untouchability:** - All the congress candidates who contested election in 1937 have pledged themselves for the removal of untouchability. In Karachi Session he declares "All the citizens are equal before law irrespective of caste creed or sex in 1938, the Removal of Civil Disabilities Act was passed. In the same year it also passed the Malabar Temple Entry Act. In 1939 the temple of Madurai was opened to all Harijan. With are

tremendous efforts, movement and fast leds to removal of disabilities of Harijans upto some extent.

Gandhijis personal involvement in the Harijan welfare activities:-

Gandhiji practiced what he preached. He win the hearts of millions of Harijans because his sincere efforts to solve their problems. Gandhiji lived with the Harijans and shared their distress by inculcating in them the ideas of better social adjustment with the rest of the Indian Community. He fought for various legal protections against several kinds of injustices done to them. With his sincere efforts and strong recommendation, untouchability was declared illegal under Indian constitution.

Gandhiji's Proposals for Harijan Welfare:-

1. Awareness must be created among the Harijans regarding cleanliness, Sanitation and health.
2. The practice of carrying human waste on head must be stopped.
3. They should be persuaded to drop their habit of eating carrion & dead animals.
4. Practice of untouchability must be immediately stopped by all.
5. Harijans must be provided with drinking water and facility.
6. Harijan children must be made to go to school and even adult education programme.
7. There should be bar for the entry of Harijans to temples.
8. Harijan pay should be observed by all at least one day in year.

Conclusion: -

Gandhiji who fought against the problem of untouchability and served to promote the welfare of untouchables.

Gandhiji rendering justice to the untouchables he believed that India achieving freedom without removing this stain of untouchability will make the untouchables for worse

under that swaraj. He does not believe in the mere removal of physical untouchability, but in removal of all distinction of superiority and inferiority attached to birth. He believed that the removal of untouchability from Hindu's heart will have an inevitable influence not only in India but on the whole world. He firmly believed that untouchability as an evil and took pains for removal of untouchability through movements and struggle throughout his life, as no nation can really progress by discriminating the citizens on the basis of caste and creed.

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GANDHI'S EDUCATIONAL THOUGHTS : IT'S RELEVANCE AND UNIQUENESS

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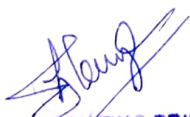
Abstract:

The system of education on the views by Gandhi called Buniyadi or basic education. He wants the education for children which may be the skilled base and also for their independent. Gandhi want to construct small and self reliant communities with its ideal citizens being all industrious, self-respecting and generous individuals living in a small community. Gandhi an educational thoughts are relevant for development and providing solutions for the problems like unemployment, poverty, corruption and many others. The thoughts of Gandhi and his vision to make India independent and developed was really unique. Through this article, we discuss the relevance of Gandhi's thoughts in various ways especially about education and other too.

Introduction

Mahatma Gandhi had multifaceted personality. His aim in the life was to achieve enlightens by serving his nation and mankind. Gandhi occupies a unique position among the philosophers. His philosophy is mainly concerned with individual who will live and die for the ideal and with the non-violent way that will lead him to it. Gandhi's thought was based on Indian religious tradition.

Gandhiansm starts with the famous line 'Simple living and high thinking.' This it is so suggestive of the fact that thoughts of an individual have a great role in Looking at the present state of affairs in India, one would probably surmise that Gandhism, whatever the term may mean, cannot have any relevance in this twenty first Century. As a matter of fact, India is not following any of Gandhi's


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6. Trafficking of Women for Prostitution: Ground Realities

Dr. Snehal Fadnavis

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Abstract

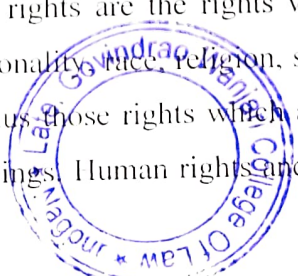
The trafficking of women describes various activities which exploit them for their commercial value such as prostitution, labour, forced marriages etc. The term implies that these women are not only sexually abused but that there is a profit arising from the transaction where they are considered as a sexual and commercial commodity. The Trafficking in women for commercial sexual exploitation (CSE) in India denies human rights to women and is gearing up due to rapid industrialization and commercialization concentrated in few metropolitan centers. Over the last decade, human trafficking has reached epidemic proportions, because of unconventional means, development in technology and so on. It is an organized crime, involving mafias, recruitment agencies, members from community/ family, peers, tourists, law enforcement officials and many others.

The Present article focuses on the actual plight of prostitute and human trafficking including its meaning, definitions and magnitude of the problem. It also deals with legislative framework to control this menace and the factors behind the mortifying crime and its impact on progress and development of women. It highlights various International Instruments and Conventions on trafficking along with the India's Apex Courts' initiative to combat trafficking.

Key Words: Human Rights, Trafficking, Prostitution, Women, Sexual Exploitation, Brothel, Prevention, Rehabilitation

Introduction

Human rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex, etc., simply because he or she is a human being. Human rights are thus those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow



us to fully develop and use our human qualities, our intelligence, our talents, and our conscience and to satisfy our physical, spiritual and other needs.

Since time immemorial, women, the half of the population of the world, the better halves of the men in the world, the mothers, sisters and daughters, by whom a house is a home of love and affection and not mere a building of cement, sand and steel, are subjugated to secondary position and are subjected to cruelty and harassment, torture for no fault of theirs, but mainly for lust, greed and to show power of masculinity. The subjugation of womanhood is since the beginning of civilization. Women are neither dolls nor bundles of passions and nerves. But in the name of social customs and traditions the women are forcefully pushed into slavery to negate her freedom. The old institutions like caste patriarch, religion and dominant social values favors male Chauvinism.

Human trafficking of women through its various aspects and manifold edges is retained in India in blatant violations of the rights of women. The constitutional validity of equality of law and equal protection of law has been categorically upheld by the Indian judiciary in numerous cases by giving wider connotations to the term equality, equal status and discrimination etc. The social, political and legal issues involved in the trafficking of women constitute it as an area of national concern.

She serves the purpose of a sheath to save others of her genus and age from being ravished physically, psychologically and emotionally in broad daylight while losing her own identity thus is born a new human in her called "prostitute".

She is more than a channel that drains the superfluous sexual energy from the society, and her attraction by no means ceases when men are married, for, a large number of men who visit prostitutes, if not majority, are married. The ulterior motive is not one of uncomplicated lust but, the crave for variety, for perverse gratification, for mysterious and provocative surroundings, for intercourse free from entangling cares and civilised pretence which play their part.

Female yearn for their purity and dignity. They always try to protect not only their body but also the dignity by all means. Any assault on their person or dignity mars the womanhood; from which she cannot take out herself easily. Molestation, rape, adultery, prostitution, human trafficking, slavery and flesh trade are some of the crimes which involve. The very basic value of life i.e. the dignity of women. The trauma, the stigma cast upon the life can never be washed

out, brushed aside and the whole society looks down upon such victim, instead of punishing the offender. Thus the psychological crimes shatters the faith of women hood from the moral values and the society at large; which way result into revolt. As women were accorded secondary status by the religion. The patriarchal male dominated society brought into fashion such rituals and customs, that are derogatory and degrading the sanctity of women. The Devdasi i.e. offering of a young girl to village deity, the Jogin, The Nagnapuja were prevalent in almost all over India since time immemorial. Thus the women were thrown into a heinous flesh trade and a vicious circle of prostitution. And this is nothing but human trafficking, i.e. displacing a person from its house, vicinity and even locality to exploit it sexually.

Human Trafficking is an age old practice and the patriarchal dominance in society has kept it always running for their rush for and frolic. After independence, India is a signatory to the various conventions for the protection of women and children from discrimination and human trafficking, torture and violence and has also formulated local law in accordance with these International connections and brought into force the policies and administrative actions in order to tackle increasing problem of human trafficking leading to prostitution. Women and young children are oppressed section of the society, forced by in human men to leave the comfort of their respective homes and love & affection of the family and throw them to a whirlpool of flesh trade, from where, it always remains impossible for them to come out or rescue themselves. Out of them majority are young girls and boys and women. These women and young children are though entitled to all the rights and fundamental rights and freedoms that are enshrined in the International Conventions & Human Rights instruments and the Constitution of India and all other local laws, still the women and young children are deprived of all these rights, freedom and privileges.

The problem of human trafficking, particularly in women and children has emerged as grave social issue which is one of the most serious affronts to the dignity and human rights of them. It is a gross commercialization and commodification of innocent human lives. Though it is a borderless crime, India among many South-Asian countries is rapidly used as a source, transit point as well as destination for the traffickers. It is just not about the violation of human rights, but it is the defeat of human rights. It is not only the human rights which are failing but the society and institutions are also to share the blame. In the context of increasing violence and deep-seated patriarchal values the traffickers' jobs becomes easy. Hence trafficking in women

and children, which is the most vulnerable group, is the sordid tale of violation of human rights and dignity.

The protection of women victims of human trafficking is to be seen differently as it affects them very drastically and differently and should be seen in the broader context of the protection of their human rights. Human trafficking is a lucrative illegal business which has, not only gained worldwide platform, because of immense monetary profit and easy availability of poor, illiterate women and children, but also perforated into the fabric of local life of people, in general. Nowadays everyday daily newspapers flash more occurrences of human trafficking leading the victims to prostitution, forced bonded labour, organ theft and transplant etc.

History of Trafficking in India

India has long history and great store is set by traditions. Therefore, it is important to trace to trace the history of prostitution in India. Prostitution is one of the oldest professions of the world practised since the birth of the organized society. The evidence of the religion and temple based prostitution can be found in the writing of the famous Sanskrit writer Mahakavi Kalidasa. In the ancient days, some women were attached to the famous temple of Mahakala of Ujjain in the name of the holy prostitution. Gradually this system of holy prostitution becomes common. In the South India girls and women who were in the religious based prostitution were popularly known as Devadasis and in North India they were called Mukhies. The women who were in the religion- based prostitution were also called as Basavis and Kalavanthulu in Karnataka and Andhra Pradesh.

During the Mughal period, all Moghul Kings (except Aurangzeb) recognized prostitution and helped the profession to flourish under royal patronage. Even in the British period, the trade continued to flourish. The conditions continued to deteriorate and in the absence of government control and regulation, prostitution continued and reaches large commercial sale. Various social conditions and economic adversities made women an easy prey to the gangsters of prostitution.

Meaning and Definitions of Human Trafficking

As the crime of Human Trafficking was spreading its tentacles world over and was engulfing millions of innocent lives of children and women of very younger and tender age, the need was felt at the International level to address the issue by defining and assimilating the gravity of the term and its connotations and boundaries.

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which entered into force in 2002 and supplements the United Nations Convention against Transnational Organized Crime, defines trafficking as follows:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of the abuse of power or of the vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Article 3 of the Protocol defines trafficking in persons as constituting three elements:

(i) an “action”, being recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a “means” by which that action is achieved (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (iii) a “purpose” (of the intended action/means): namely, exploitation. All three elements must be present to constitute “trafficking in persons” in international law. The only exception is when the victim is a child; in such cases it is not necessary to prove that one of the acts was accomplished through the use of any of the listed “means”.

This definition clarifies a number of issues that were previously unsettled or disputed: For example, it confirms that:

- The concept of trafficking does not just refer to the *process* by which an individual is moved into a situation of exploitation. It extends to include the *maintenance* of that person in a situation of exploitation;
- Trafficking can take place within as well as between countries, and for a range of exploitative purposes including, but not limited to sexual exploitation and exploitative labour;
- Women, men and children can be victims of trafficking.

‘Trafficking’ means moving, selling or buying women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.

The Constitution of India prohibits trafficking in human beings for any type of exploitation, including forced labour and any contravention is a punishable offence.

The offence of trafficking also finds an explanation in **Section 5 of ITPA** which speaks about procuring, taking and / or inducing a person for the sake of prostitution. According to this section, even an attempt to procure and take or cause a person to carry on prostitution amounts to trafficking. Therefore, 'trafficking' has been given a broad scope and meaning under ITPA.

The Goa Children's Act, 2003 defined the term keeping in view its wide angles, though it is focused on child trafficking, the definition is comprehensive. "Child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise".

Root Causes of Trafficking in Persons

The root causes of trafficking in humans are essential ingredients while studying the subject. It has two aspects, one is the Supply side and the other is the Demand side. The reasons for **supply side** could be summarized as follows:

Poverty: India is a developing country and the exploding population is creating huge pressure on the available natural resources. The dearth of opportunities of decent employment or even earning a dignified livelihood, the people have resorted to various other means of earning easy money. Thus poverty has been observed as the basic cause for people being trafficked, within and out of the country.

Ignorance and illiteracy also contributes towards the people being trafficked. Middle men and pimps entice young girls to earn easy money. Non-availability of proper and dignified jobs for skilled and un-skilled workers lead them to prostitution.

Natural disasters: Annual floods, earth quakes, internal insurgencies, successive droughts are wreaking havoc on the livelihood of the local farmers and citizens. Loan sharks take advantage of this situation and force people into indentured servitude of labour and sexual exploitation of the women and children.

Domestic Violence: Marriage is a sacred institution however in a country like India women are always given a secondary status. The subjugation of the wife, battering, adultery and

divorce throw the women into a situation of uncertainty. The traffickers take advantage of these situations and force women into trafficking and prostitution.

Gender Imbalance: The ratio of women in the human population is decreasing which leads them into forced and deceptive marriages. These fake marriages are used as a disguise for trafficking and prostitution. Women are trafficked from one part of the country to other State in disguise of marriage. After marriage, these helpless women are forced and thrown into prostitution by the husband and his family to earn their livelihood.

Statistics of Crimes of trafficking of Women

The crime against women are ever increasing. The data gathered from the National Crime Records Bureau reveals alarming scenario. The offences many a time are not reported due to various reasons such as lack of awareness, illiteracy, poverty, lack of resources, and apathy from the government agencies. The offences under the Immoral Traffic Prevention Act 1956 are reproduced here, as the researcher finds it relevant with the subject of the study.

Table: SLL Crimes Against Women in 2016

No	S L L Acts	Maharashtra			India		
		I	V	R	I	V	R
1	ITP Act (Total)	303	559	0.5	2214	3189	0.4
2	Procuring / inducing a person for prostitution (Sec 5)	99	150	0.2	1170	1653	0.2
3	Detaining a person in place where prostitution is carried out (Sec 6)	3	10	0.0	102	177	0.0
4	Prostitution in Public place (Sec 7)	36	118	0.1	134	241	0.0
5	Seducing or soliciting for Prostitution (Sec 8)	125	223	0.2	246	353	0.0
6	Other Sections of ITP Act	40	58	0.1	562	765	0.1

Source: NCRB

Note: (I) – Incidents; (V) – Victims; R - Crime Rate; SLL–Special and Local Laws

Effects and Impacts on Women Victims and Society.

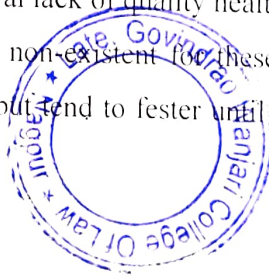
The trafficked women have a miserable life. Mostly girls of tender age of six to seven are seen as sex objects and are body-abused since then. Thus, their childhood is marred without any rights and privileges guaranteed by the Constitution. The girls and women are sold and put into horrific situations of lifelong servitude and sexual exploitation. They are prone to health hazards and incurable sexually transmitted diseases. The pimps, brokers and brothel owners earn their

livelihood from the earnings of prostitutes and these women are left with no penny for their own selves.

The women in prostitution struggle to access even their most basic needs i.e.- Food, clothing, shelter and protection from violence. These women live and die in debt bondage, whereas the pimps and brothel keepers make huge profits out of these women. As customers constantly demand "fresh meat" the women in their early thirties are thrown out from their brothels because they no more remain commercially viable, but before that they are chewed up completely and their energy is drained out. Girls of 7 to 13 years of age are pulled into prostitution, ice is used to physically break pre-pubescent girls and make them amenable to exploitation. They are put through a process known as 'seasoning', in which they are beaten, starved, drugged and made to believe that they are repaying the small loans which their fathers have taken. These girls are raped by 8 to 10 customers every night. They are made forcibly available to customers at any time, day or night. They have to stand on the streets for long hours to attract customers for themselves or for older women. They suffer from sleep deprivation, insomnia and aching legs. The ultimate resultant is the possibility of sexually transmitted dreadful diseases. Many suffer from 'Stockholm Syndrome', and remain grateful for small act of kindness shown by their kidnappers. Such physical and mental consequences of repeated body invasion that prostituted women face is so extreme that these girls and women suffer from higher rates of psycho-social trauma than even war veterans.

Women in prostitution are prone to all types of diseases, mostly the sexually transmitted venereal diseases, such as HIV/AIDS, Syphilis, Gonorrhoea etc. They are unable to take proper treatment and medical assistance. Even Government hospitals show apathy towards their treatment. They are the worst hit and most vulnerable members of the society. Trafficking victims may suffer from an array of physical and psychological health issues stemming from inhumane living conditions, poor sanitation, inadequate nutrition, and poor personal hygiene, brutal physical and emotional attacks at the hands of their traffickers, dangerous workplace conditions, occupational hazards and general lack of quality health care.

Preventive health care is virtually non-existent for these individuals. Health issues are typically not treated in their early stages, but tend to fester until they become critical, even life-endangering situations.



In many cases, health care is administered at least initially by an unqualified individual hired by the trafficker with little, if any, regard for the well-being of their 'patients' - and even less regard for disease, infection or contamination control.

Health issues seen in trafficking victims include the following:

- Pregnancy, resulting from rape or prostitution;
- Infertility from chronic untreated sexually transmitted infections or botched or unsafe abortions;
- Infections or mutilations caused by unsanitary and dangerous medical procedures performed by the trafficker's so-called 'doctor';
- Chronic back, hearing, cardiovascular or respiratory problems from endless days toiling in dangerous agriculture, sweatshop or construction conditions;
- Malnourishment and serious dental problems. These are especially acute with child trafficking victims who often suffer from retarded growth and poorly formed or rotted teeth;
- Bruises, scars and other signs of physical abuse and torture. Sex-industry victims are often beaten in areas that won't damage their outward appearance, like their lower back;
- Substance abuse problems or addictions either from being coerced into drug use by their traffickers or by turning to substance abuse to help cope with or mentally escape their desperate situations.

International Instruments Preventing Trafficking in Persons

"Over the past decade, human trafficking has moved from the margins to the mainstream of international concern... We have witnessed the rapid development of a comprehensive legal framework that comprises international and regional treaties, as well as a broad range of soft-law instruments relating to trafficking. These changes confirm that a fundamental shift has taken place in how the international community thinks about human exploitation."

Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000). Article 5 of the Protocol requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children entered on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons. The intention behind this definition is to facilitate

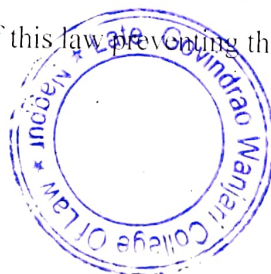
convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting cases of trafficking in persons. An additional objective of the Protocol is to protect and assist the victims of trafficking in persons with full respect for their human rights.

The Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW) requires States to take all appropriate measures to suppress all forms of trafficking in women and exploitation of prostitution of women. General recommendation No. 19 identifies trafficking as a form of violence against women because it puts women at special risk of violence and abuse. Trafficking is incompatible with the equal enjoyment of rights by women and with the respect for their rights and dignity. Some international instruments have specific provisions concerning the trafficking of children.

The United Nations Convention against Transnational Organized Crime, adopted by General Assembly on 15 November 2000, is the main international instrument in the fight against transnational organized crime. The Convention represents a major step forward in the fight against transnational organized crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance close international cooperation in order to tackle those problems. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences (participation in an organized criminal group, money laundering, corruption and obstruction of justice); the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities.

In consonance with these international efforts and to deal effectively with the ever increasing crime of human rights violations and human trafficking, India has ratified these International Convention and to keep the promise, the principles were included in the local law. Thereafter Central Government of India brought in the enactment which is discussed below. It is also necessary to explore the evolution of this law preventing the traffic in persons.



Legal Framework for Curbing Trafficking in India

Constitution of India

The most significant provision relating to trafficking in person under Indian Constitution is given under Articles 23 & 24 which deals with right against exploitation. According to Art 23(1), traffic in human beings, beggar, and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Art. 23(1) proscribes three unsocial practices, viz., (1) Beggar; (2) traffic in human beings; and (3) forced labour. A significant feature of Art 23 is that it protects the individual not only against the State but also against private citizens. Most of the Fundamental Rights operate as limitations on the power of the state and impose negative obligations on the state not to encroach on individual liberty and the rights are only enforceable against the State.

Immoral Traffic (Prevention) Act, 1956

Human trafficking is modern day slave-trade, which has gone global and is posing a serious threat to society. Young girls, boys and women in their prime age are victims of this; they have no freedom of choice, they are forced to lead a life of indignity and social stigma with health hazards. It has been taken into consideration and international conventions were ratified to wash out the flesh trade. The state members are asked to enact local laws to tackle the problem. India brought into force the Act which was corrected and amended to deter the perpetrators. The Act in force protects the victim and provides for rescue and rehabilitation by the police with the help of NGO. Punishment for the brothel keepers, kidnappers and whoever abets the crime, the pimps, and agents is prescribed; however, the law, the enforcement agencies, the efforts of Govt. and NGO fall short before the organized crime gangs and the ever-increasing lust for fresh flesh and the vicious huge financial gain out of the business.

Policies of Government for Tackling Human Trafficking

To support the legislation, the prevention, protection and rehabilitation policies are also brought into force by the Government of India and also the State Governments, which are mentioned below:

- The Ministry of Women and Child Development issued an advisory to States/UTs in the year 2011, emphasizing on gender sensitization of the police personnel, minimizing delays in investigation of crimes against women, setting up "Crime against Women's Cells" at district level, adopting a victim-centric approach in Human Trafficking cases

and conducting regular meetings of the State Advisory Committees for Preventing and combating trafficking of women and children for commercial, sexual exploitation. The Ministry of Home Affairs(MHA) also issued advisories on measures for preventing the crime of human trafficking.

- Ministry of Labour and Employment displays full-page advertisements against child labour in national newspapers at periodic intervals. A dream of better future ahead often lures the people abroad and hence trafficking cannot entirely be prevented. India ratified the 2000 UN TIP Protocol 2011.
- In 2014 the Government of India launched a web-portal on Anti Human Trafficking. The web portal is expected to serve as a vital IT tool for sharing of information across all stakeholders, States/UTs and civil society organizations for effective implementation of Anti Human Trafficking measures.
- The Indian Government set up a scheme called '*Strengthening the law enforcement response in India against Trafficking in Persons through Training and Capacity Building*'. The Scheme has two components: establishing integrated Anti-Human Trafficking Units (AHTUs) and training trainers for the police courses on trafficking.
- There are many NGOs, who help victims in many ways. For example KailashSatyarthi, the founder of the NGO BachpanBachaoAndolan (BBA) helps rescue children trafficked, brings police when they conduct raids. They immediately take the rescued children to the police station to obtain statements and certificates while they are there so that they don't have to go back and follow up with the police, which is difficult in India.
- Under the **Swadhar Scheme**, which has an annual budget of \$1 million, the government grants support to more than 13,000 women and girls in distress who are without social and economic support. They are provided with shelter, food, clothing and counselling, as well as legal and clinical support. The program also provides rehabilitation through education, awareness, and behavioural training. Among those benefiting from the program are victims of trafficking for commercial sexual exploitation, victims of sex crimes, widows, prisoners, persons who are mentally challenged, persons with HIV/AIDS, survivors of natural disaster, and victims of terrorist/extremist violence.

The government, through the Ministry of Women and Child Development's **Ujjawala comprehensive program**, has taken measures to address prevention, rescue, rehabilitation,

reintegration, and repatriation of victims trafficked for commercial sexual exploitation by providing funding for state projects that address these specific issues. The ministry allocated \$118 million for the year 2011-2012 to fund 153 projects in 17 states under the Ujjawala program. Despite these positive steps, the standard of care for victims of commercial sexual exploitation is inconsistent. Many victims simply do not receive comprehensive services. Also, there appears to be no shelter that is geared for adult victims of forced or bonded labour, and no shelters that focus on male adult trafficking victims.

Conclusion

Trafficking of women for commercial sexual exploitation is one of the heinous crime. They are largely helpless protagonists of a grim tale of trade in human misery carried out by organized crime syndicates and exploiters. The gross violations of their rights are further intensified when the prostitutes are arrested as the accused, prosecuted and even convicted. The worst scenario i.e re-victimization which continues through the very process meant to redress those criticism.

In spite of all these international efforts by way of various instruments, covenants, convention, mechanisms the women are not secure and safe. Every day they are under threat of violence, subjugation, cruelty and harassment. The sordid business of prostitution is flourishing, booming and expanding, in different forms making the life of victims nasty, helpless and short. In spite of all this plethora of rights and protection at each and every level through legislation, positive action and intention, the women are not safe in this world. Every now and then we hear the news of violence against women in vast multitudes. The crimes against women mar their progress and development and thereby the society loses the actual development of the mankind.

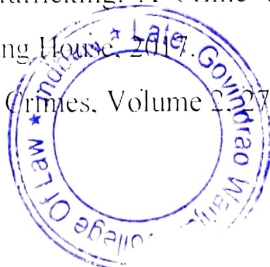
Suggestions

- To prevent and protect women from trafficking and prostitution, a comprehensive anti-human trafficking strategy enclosing human rights is essential to be formulated. All policies, programs and projects should be based on human rights perspective.
- Promotion of gender equality in the family, community and society at large, the facilitation of women's economic empowerment through various efforts are needed to curb this menace.
- Proper and effective implementation of the existing provisions of the law, sensitization of the officers, NGO members is also the need of the hour.

- At all the levels coordination, cooperation, and support from government agencies is essential for effectively preventing and rescuing trafficked children.
- A thorough research on a number of aspects connected with trafficking of children such as the detailed information regarding the number of children trafficked, factors contributing towards the trafficking, trafficking networks and impacts on individual victims have to be undertaken for the trafficking intervention strategies to work effectively. Continuous research and well informed intervention programs and implementations are, therefore, need of the hour.
- Proper arrangements should be made for adequate care and protection of the survivors so as to ensure that their basic human rights are not violated any further.
- Redressal mechanism should not stop with rescue. They should be expanded to include rehabilitation and reintegration measures to ensure that the harm suffered by the victims is not repeated.

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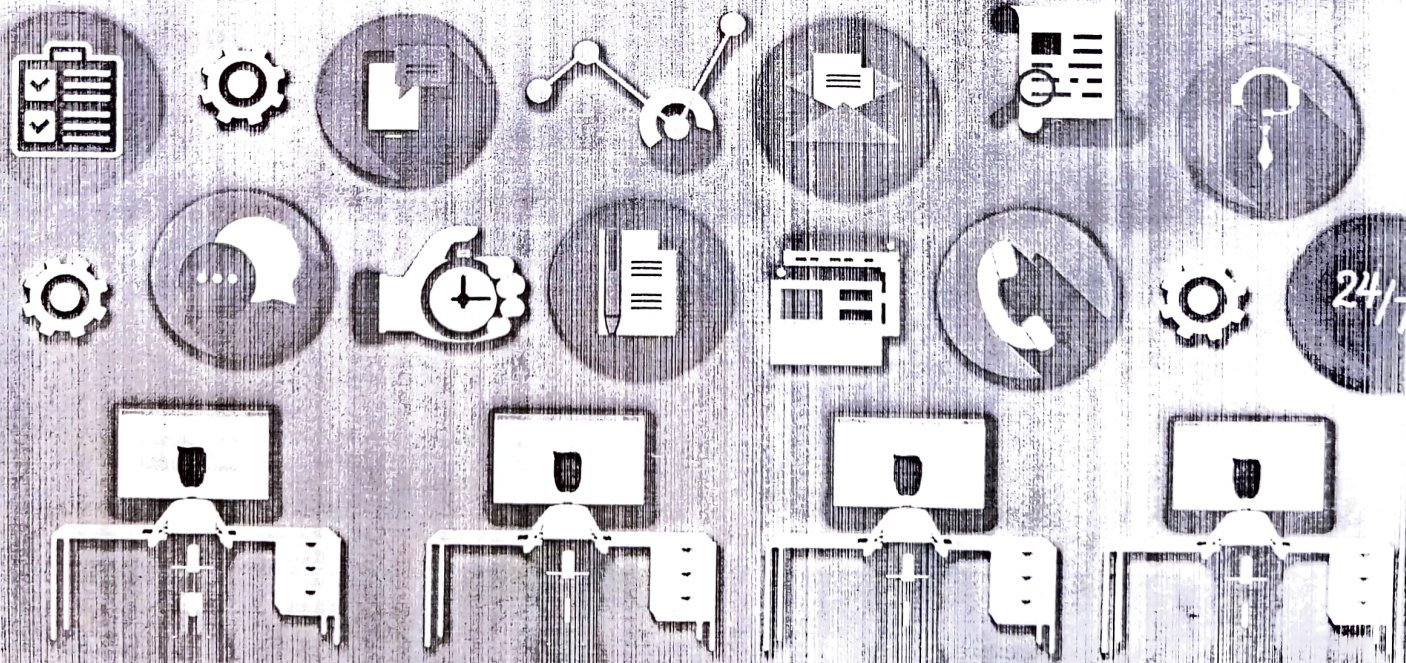


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The concept of human rights are in existence in India since the vedic period. These rights are basic inalienable rights of each and every human being and having equal importance. The civilized nations are bound to protect the human rights of all the persons by way of various international conventions at the international and national level. HIV/AIDS is one of the most significant health and social problem facing the world today. In the context of HIV/AIDS human rights are having major concern in protection and promotion of these rights in relation to people living with HIV/AIDS. Therefore human rights are as essential component in preventing transmission of HIV and reducing its impact of HIV/AIDS. Now HIV infection is common in all over the world. To reduce the impact of this deadly disease the General Assembly of United Nations recalling and reaffirm its commitment on HIV/AIDS by adopting the Declaration of commitment on HIV/AIDS, 2001 to address the problems of HIV/AIDS and related issues. The Declaration ensure the co-ordination and co-operation at the national and international level. India is the signatory of the declaration but still PLWHA subject to the violation of human rights such as discrimination, stigma etc. Recently India enacted the HIV/AIDS (Prevention and Control) Act, 2017. The Act is one of the positive attempt for prevention and control of epidemic and spread of HIV and AIDS and prohibits the discrimination in various sectors of the society. In this paper the researcher focused on human rights relating to PLWHA and existing legislative provisions deals with the protection of rights of PLWHA.

In the emerging democratic form of governance, human rights has become the ultimate norms of governance. Day by day, issues relating to human rights are increasingly assuming prominence. Moreover, democracy, development and human rights are interlinked and independent. It is now an established rule that the protection of human rights should be accepted by the state as a universal principal transcending all political, economic, social, cultural, legal.



religious and civic system. They must be implemented with full vigor and rigor. The promotion and protection of human rights must be given top priority by the international community in the wake of the apathetic attitude of the states towards this problem. If we look around us we find widespread violation of basic human rights. It must not be forgotten that human rights are based on human dignity and liberty. The term human dignity includes right to life, liberty, equality and dignity but what we find around us is deep sorrow, traumatic suffering and calamities.

The purpose of securing human rights as such are to provide protection to these rights against the abuse of power committed by the organ of state, similarly to establish institutions for the promotion of living condition of human being and for the development of their personalities and at the same time, to provide effective remedial measures for obtaining redress in the event rights are violated. Therefore it is necessary to promote human rights culture in society. Protecting, respecting and promoting human rights requires a promoting a culture of human rights which sensitize human suffering, human pains, human dignity and human pleasure.

In the context of HIV/AIDS the human rights are play significant role in protection and promotion of human rights of people living with HIV/AIDS. The right to life and the principle of non-discrimination are correct stones of international human rights law. There is strong and clear public health rationale for protecting the human rights and dignity of HIV infected persons, including people with AIDS, and member of population group is a necessity for effective public health programmes to prevent and control HIV/AIDS. It is not question of 'rights of the many' or 'right of the few' the protection of uninfected majority depends upon and is inextricably bound with the protection of rights and dignity of the infected persons.

Therefore the human rights organizations to play an active role at the international and national level to protect public health and promote the human rights and dignity of all persons, including those with HIV/AIDS.

HIV/AIDS

The term HIV is Human Immunodeficiency Virus, is used for the virus that causes AIDS i.e. Acquired immunodeficiency syndrome. It was previously known as Lymphadenopathy Associated Virus (LAV). It is retrovirus. HIV attacks and destroys selectively T- Helper Lymphocytes. It also infects B cells and causes micro phase dysfunction. As a result an Acquired Immunodeficiency state prevails.

The HIV/AIDS is now global health problem of extraordinary scale and extreme urgency. It represents an unprecedented challenges to the public health services of virtually every country in the world. At the present stage of the HIV pandemic, asymptomatic infection with HIV is far more common than AIDS. But HIV infection can progress and result in wide range of adverse clinical manifestation. Clinical classification of disease associated with HIV infection includes AIDS related complex (ARC) , including HIV neurological disease.

Human rights and HIV/AIDS

Human rights have major relevance for shaping appropriate responses to the HIV epidemic and the other global health challenges, including offering system wide public health responses and identifying deficiencies in public health research agenda. HIV/AIDS and rights are enriched in international human rights law, built upon the principles of human dignity and equality. Various international conventions, treaties and documents combine to protect health rights of positive people as a human rights and provide frameworks for realizing these rights.

The key human rights principles which are essential to effective state responses to HIV/AIDS are to be found in existing international instruments, such as universal declaration of human rights, the international covenants on economic, social and cultural rights and civil and political rights. The international convention on the Elimination of all forms of racial discrimination against women, the convention against torture and other cruel and inhuman or degrading treatment or punishment and the convention on the rights of the child, Regional instrument including the American convention of human rights. The European convention to the protection of human rights and fundamental freedoms and the African charter on human and people's rights also enshrine state obligations applicable to HIV/AIDS. In addition a number of conventions and recommendations of the International Labour Organization (ILO) are particularly relevant to the problems of HIV/AIDS such as ILO instruments concerning discrimination in employment and occupation, termination of employment, protection of workers privacy and safety and health of workers.

The relation between the Human Rights and HIV/AIDS is highlighted in three areas-

1. Increased vulnerability

There are certain groups are more vulnerable to contracting the HIV virus because they are unable to realise their civil, political, economic, social and cultural rights, for eg. Individuals who are denied the right to freedom of association and access to information may be precluded

from discussing issue related to HIV, participating in AIDS services organizations and health help group, and other preventive measures to protect themselves from HIV infection. Women are more vulnerable if they lack of access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection. The unequal status of women in community also means that their capacity to negotiate sexual activity is severely undermined. People living in poverty often are unable to access HIV care and treatment including antiretroviral and other medications for opportunistic infections.

2. Discrimination and stigma

The rights of the people living with HIV are often violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential loss of their rights. Stigmatization and discrimination may obstruct their access to treatment and may affects their employment, housing and other rights. So it contribute to the vulnerability of other to the infection, since HIV related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services.

3. Impedes an effective response

Strategies to address the epidemic are hampered in the environment where human rights are not respected for eg. Discrimination against and stigmatization of vulnerable groups such as infecting drug users, sex workers etc. this inhibits the ability to reach these populations with prevention efforts, and thus increase their vulnerability to HIV. Likewise failure to access the education and information about HIV or treatment or care and support services further fuels the AIDS epidemic. These elements are essential components of an effective response to AIDS, which is hampered if these rights are not respected.

WHO – The global health strategy-

The WHO is the directing and coordinating authority for health within the United Nations system. It is responsible for providing leadership on global health matters, shaping the health research agenda, setting norms and standards, articulating evidence based policy options, providing technical support to countries and monitoring and assessing health trends.

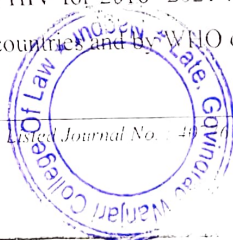
The protection of the rights and dignity of HIV infected persons and persons with AIDS is an integral part of the WHO global health strategy. When in the year 1985, the global scope and impact of HIV infection and AIDS was just discovered, WHO initiated the development of the global health strategy for the prevention and control of AIDS. This strategy was reviewed

and discussed widely in 1986 and served as the basis for initial WHO action on AIDS. The global AIDS strategy was unanimously approved and adopted as the foundation for global action by the World Health Assembly in Geneva in May 1987, the Venice Summit of the heads of the State or Government, Venice June 1987, the Economic and Social Council of the United Nations, Geneva June 1987, the United Nations General Assembly, New York, October 1987, and the World Summit of Ministers of health on programmes for AIDS prevention, London January 1988. Thus the Global AIDS strategy has been supported by every nation. It establishes the basic principles for national and international AIDS prevention and control, based firmly upon knowledge of HIV virology and epidemiology and is derived from broad and practical experience with programmes to control infectious diseases. The Global Health Strategy includes promotion and protection of human rights, especially the protection against discrimination has been stressed first by the World Health Assembly and then by the commission on Human Rights and other global, national and regional human rights bodies as the core principle in the application of human rights to HIV/AIDS and all other health issues.

The Global Health strategy having following three objectives-

- a) To prevent HIV infection
- b) To reduce the personal and social impact of HIV infection
- c) To unify national and international efforts against AIDS

The first objective is straightforward and clear, as a drugs to cure HIV infection are not available as infection with HIV is likely to be lifelong and its gives extremely serious personal and social consequences. It is essential to prevent new HIV infections. The second objectives involved support and care for those who are already HIV infected, whether they are presently healthy or have developed illness associated with the HIV infection including AIDS. Therefore support and care of HIV infected persons is not only necessary but it is vital for the success of prevention and control programme. The third objective arises directly from the special and global nature of this problem and reflects the realities of the modern world, in which AIDS cannot be controlled in any country unless it is controlled in every country. The protection of human rights is one of the main purposes of United Nations under its charter and hence directly concern WHO as a specialized agency (article 56 & 5). The sixty ninth World Health Assembly endorsed a new 'Global Health Sector Strategy on HIV for 2016- 2021'. The strategy includes 5 strategic directions that guide priority action by countries and by WHO over the next six years:-



The strategic direction are

1. The information for focus action (know your epidemic response)
2. Interventions for impact (covering the range of services needed)
3. Delivering for equity(covering the population in need of services)
4. Financing for sustainability (covering the cost of services)
5. Innovations for acceleration (looking towards the future)

WHO is a cosponsor of the Joint United Nations Programme on AIDS (UNAIDS). Within UNAIDS, WHO led activities on HIV treatment and care, HIV and tuberculosis co infections, and jointly coordinate with the UNICEF the work on the elimination of mother to child transmission of HIV.

In the realization of these objectives, human rights must be respected and discrimination must be prevented. There is need of strong public health rationale to avoid the discrimination against HIV infected persons.

The following human rights and freedoms are analyzed in respect of HIV/AIDS-

- a) The right to privacy
- b) The right to life, liberty and security
- c) The right to freedom of movement
- d) The right to marry and found a family
- e) The right to work
- f) The right to information and education
- g) The right to social security, assistance and social welfare
- h) Freedom from inhuman or torture or degrading treatment or punishment
- i) The right to equal protection of the law and non-discrimination
- j) The right in Public emergencies
- k) The right to the benefit of scientific progress
- l) The right to health care
- m) The right to seek and enjoy asylum
- n) The right to an adequate standard of living
- o) The right to participate in public and cultural rights

All these rights are important in protection of the rights of the people living with HIV/AIDS irrespective of caste, race, sex place of birth, religion etc.

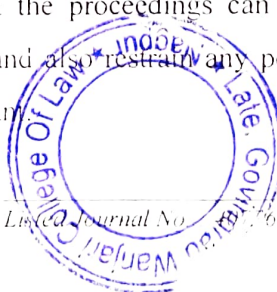
Legislative measures in India

Most of the countries around the world have enacted HIV related laws. HIV related law can be defined as the branch of the law that specifically addresses the problems, issues and challenges posed by the HIV/AIDS epidemic which includes supporting and channelizing the resources; Mandating interventions for healthier lifestyle and implement the preventive measures like education counselling, Treatment and disease management, Establishing rights and duties of HIV/AIDS persons, Regulating human conduct, Creating supportive environment for affected persons and specifying quality use of products such as blood, semen, organ, tissues, HIV test kit etc.

As regards the legislative initiative in India, the first HIV/AIDS bill was drafted in 2006 to protect the rights of the people living with HIV/AIDS and to prevent and control the spread of infection. Then it was reintroduced in 2007, 2010 and also approved the amendment in 2014. Finally on 20th April 2017 it received presidential assent and Health Ministry announced the HIV/AIDS (Prevention and Control) Act, 2017. The legislation seek to ensure equal rights to persons affected by HIV/AIDS. It prohibits discrimination against infected persons on the ground of denial, discontinuation, termination or accessing health care treatment in various sectors such as employment, educational institutions, health care services, renting accommodation, private or public offices etc.

The Act seeks to prevent and control the spread of HIV/AIDS and provides effective mechanisms for redressing the complaints of persons infected. According to the Act the union and state governments shall take the measures to prevent the spread of disease, provide Antiretroviral therapy and infection management for HIV/AIDS persons and facilitate their access to welfare schemes to them. If during testing any person found HIV positive then he will be entitled for free treatment by the central or state government. The Act also make mandatory for the state government to appoint an ombudsman to inquire in to the complaints related to the violation of the Act.

It impose responsibility on judiciary that cases relating to HIV positive persons shall be disposed off on priority basis. In legal proceeding, if an HIV infected or affected person is a party, the court may pass orders that the proceedings can be conducted by suppressing the identity of the person and in camera and also restrain any person from publishing information that discloses the identity of the applicant.



The Act also provides the imprisonment which ranging from three months to two years or maximum fine of rupees one lakh or both on violation of provisions of the Act in case by publishing information about the people living with HIV or advocating hatred them.

The Act is having certain lacunas like it is not prescribed procedure and time for disposal of complaints, the ART treatment is made free to the PLWHA as a matter of right but it is provided in India since 2004 but it is inadequate. There must be comprehensive provisions must be included for the protection of rights of PLWHA against the discrimination, stigma and denial of their basic human rights.

Conclusion

Today HIV/AIDS is not problem of section of the society or community but anyone can fall under the impact of it. In today's world of globalization and liberalization the behavioral change is an important factor in the society. It has suddenly appeared, rapidly spread and devastating impact in the various part of the world has become a matter of great concern. The epidemic is still without cure and its result to death sentence. Combating AIDS is not only confine to the circle of medical experts, scientists, government officials and health personnel but it is the everybody need to be involved in the programme to prevent and control HIV/AIDS. Though there are so many challenges are there for the prevention and control of epidemic.

The protection and promotion of human rights are essential in preventing the spread of HIV and to mitigate the social, legal, ethical and economic impact of the pandemic. The promotion and protection of human rights helps to reduces vulnerability to HIV infection by addressing its root causes. Therefore an effective international response to the epidemic must be grounded in respect of all civil, cultural, economic, political and social rights in accordance with the international human rights standards, norms and principles. There is need to accept the global health strategy universally by policy makers to combat the HIV/AIDS which requires co-ordination, co-operation, compassion and understanding response and action from all the parts of the world. India enacted the HIV/AIDS Act 2017. It's a positive step of Indian in prevention and control of epidemic but there must be proper implementation of the Act must be necessary.

Suggestions

In this context the following few suggestions are enumerated –

- The problem of HIV/AIDS is the multidimensional issue and not just a medical problem therefore there is need the timing and effective prevention programme should be focused on its prevention and control.
- HIV/AIDS information should be provided in educational institutions and workplaces also which emphasizing universal precaution, prevention care and support who are already infected.
- To ensure an effective right based human rights response for protection and promotion of human rights to those PLWHA.
- It is the responsibility of the government, legislation and all public that every person must be sensitized about the provisions of the HIV/AIDS Act 2017.
- Effective measures should be taken by the government as well as the other agencies for the proper implementation of the HIV/AIDS Act 2017.
- The role of judiciary is important in protection of the rights of PLWHA generally those people who are vulnerable, marginalized and disadvantaged group in the society and they have been deprived of justice on account of poverty, ignorance and illiteracy.
- Yet the epidemic lack the proper vaccinations for controlling and eradicating the epidemic from the earth, hence it is the responsibility of the government to promote the scientific research in this field.

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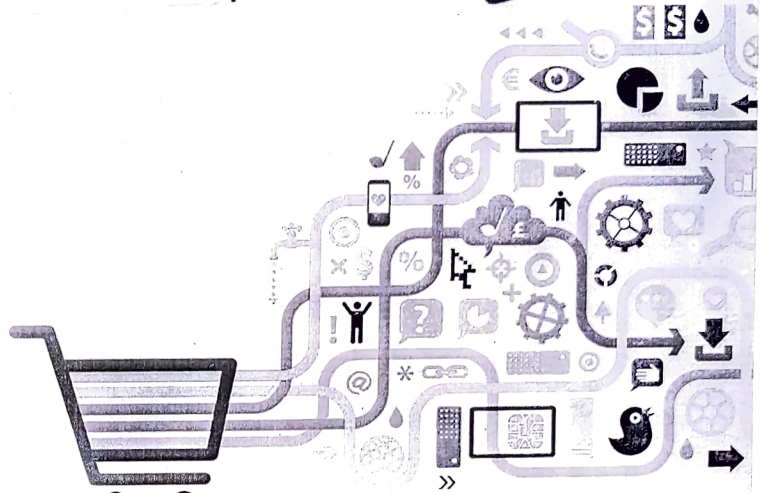


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3. Resolving IPR Issues through Alternative Dispute Resolution: Challenges and Issues

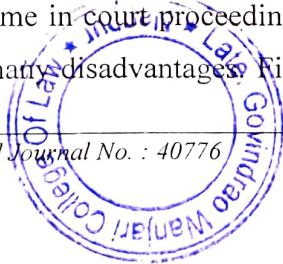
Dr. Archana Sukey

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ADR or "Alternative Dispute Resolution" is an attempt to devise machinery which should be capable of providing an alternative to the conventional methods. ADR offers to resolve matters of litigants, whether in business causes or otherwise, who are not able to start any process of negotiation and reach any settlement. It has started gaining ground as against litigation and arbitration.

The Alternative Dispute Resolution mechanisms evolved to provide complete justice to the persons in conflicts and legal disputes. It is a voluntary process gaining legal recognition over a period of time. The ADR is at present a movement all over the world to find an answer to never ending litigation and never reaching solutions, which is a global phenomenon. The society, state and the party to the dispute are equally under an obligation to resolve the dispute before it disturbs the peace in the family, business community, society or ultimately the humanity as a whole. Because in a civilized society the rule of law should prevail and principles of natural justice should apply and complete justice should result. ADR is also founded on such fundamental rights, article 14 and 21 which deals with equality before law and right to life and personal liberty respectively. ADR's motive is to provide social-economic and political justice and maintain integrity in the society enshrined in the preamble. ADR also strive to achieve equal justice and free legal aid provided under article 39-A relating to Directive Principle of State Policy.¹

Arbitration has many positive points over the judicial process, because of which people tend to go to arbitrate over their disputes rather than resolve their problems through judicial proceeding in the court. The first, positive aspect about arbitration is that the parties are the decision makers. The parties can choose any person who has technical knowledge if the dispute is related to a technical field. Through this the evidence will be more readily understood. Secondly, where it takes a long time in court proceedings, arbitration can be heard sooner with advantages, arbitration also has many disadvantages. Firstly, there is a lack of formal evidence



process. It means that in spite of depending on the judge's judgment, the parties do rely on the skills of the arbitrator to sort out the evidence. There is no interrogation or disposition and no discovery process is included in arbitration. Secondly, in arbitration one or both the parties have to pay for the arbitrator's service, while the court system provides an adjudicator who does not charge a fee.²

Growth in international transactions has multiplied the potential for cross-border intellectual property (IP) disputes. Global challenges – such as the digital environment, climate change issues, access to health care, the protection of traditional knowledge and traditional cultural expressions and the preservation of biodiversity – may create new types of IP disputes. Meanwhile, the economic downturn is providing an incentive for stakeholders to seek more efficient and affordable means of resolving such disputes than through court litigation – making alternative dispute resolution (ADR) an increasingly attractive option.³

ADR refers to neutral mechanisms allowing parties to solve their disputes outside of court in a private forum, with the assistance of a qualified neutral intermediary of their choice. ADR can only be applied if all parties agree to submit their dispute to the procedure or if it is mandated by a competent court. The benefits include time and cost efficiency, flexibility, party control, neutrality, a single procedure, confidentiality and expertise.

Relation between IPR and ADR

Resolving Intellectual Property Rights issue through alternative dispute resolution proceeding was a technique long developing. It is the arbitration of disputes especially; institutional arbitration is becoming important for the sectors that are growing in India in the context of liberalization and globalization. Intellectual Property rights are as strong as the means that exist to enforce them. In this context, arbitration, as a private and confidential procedure, is increasingly being used to resolve disputes involving intellectual property rights, especially when involving parties are from different jurisdictions.⁴ Institutional arbitration is a process that is not "ad hoc" or decided by arbitrators chosen case by case by the parties to a dispute by mutual agreement or named by the courts but by arbitrators by the panel of institution who have been chosen by their in depth knowledge of different fields, and have to follow norms, including in relation to fees, set by institution. All these sectors are increasingly characterized by international transactions, where the laws applicable vary from country to country and involve a high level of specialization in the domain concerned. Another common factor is the criticality of time,

considering that patent terms are limited, and technology could become obsolete fast, and hence the long duration taken by courts to settle dispute beyond, the scope for appeal goes against the interest of disputants. Hence arbitration offers these sectors advantages particularly valuable for them. The main obstacle to using arbitration to resolve Intellectual Property Rights disputes is the issue of its subject matter arbitrability.⁵

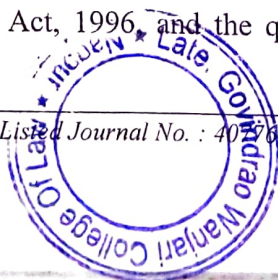
Intellectual Property rights are territorial and are primarily derived from the legal protection granted by the local sovereign power, which affords the grantee certain exclusive rights to use and exploit the rights. It is argued that disputes in relation to its agent, validity and the extent of rights granted should be determined only by the authority which granted the right or in certain situations by the courts of that country.⁶ This had an effect that the rights and entitlements to IP and the legal issues which flowed from those rights could not usefully be referred to or considered by an arbitration tribunal. Where however, the parties enter into arrangements relating to the development, use, marketing or transfer of IP rights granted, disputes arising from such commercial arrangements could be arbitrated without any controversy arising from the issue of its arbitrability. Such matters are generally regarded as inner parties 'commercial matter'.⁷

ADR in Copyright Disputes

Many times a question arises before the Courts, as to whether cases of Intellectual Property viz. those involving passing off of copyrights, are amenable to the jurisdiction of an arbitrator or the same lies exclusively in the ambit of courts. The judicial doctrine that has evolved with regard to the limit of arbitrability is that all disputes relating to rights in personam are considered to be amenable to arbitration and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals.

In this regard, the Delhi High Court in the matter of **HDFC Bank v. Satpal Singh Bakshi**⁸, observed that 'all disputes relating to "right in personam" are arbitrable and choice is given to the parties to choose this alternate forum. On the other hand, those relating to "right in rem" having inherent public interest are not arbitrable and the parties choice to choose forum of arbitration is ousted'.

In a recent landmark judgment of **Eros International Media Limited vs. Telemex Links India Pvt Ltd**⁹ an application was moved by the defendant (Telemex) under Section 8 of the Arbitration and Conciliation Act, 1996, and the question arose whether under law there is a



specific bar to arbitration or the arbitrability of such Intellectual Property disputes and whether such disputes are only amendable to jurisdiction of courts.

In brief, the background of the case was that Eros (plaintiff) had copyright in several feature films. It executed a term sheet contract with Telemax (defendant) for granting content marketing and distribution rights in respect of films. The said term sheet had an arbitration clause. Also, while the term sheet contemplated the execution of an agreement within a limited time, however, no such agreement was executed.

Disputes arose between the parties and Eros (plaintiff) filed a suit for infringement of copyright against Telemax and the subsequent licensees. Eros argued that Telemax was not entitled to exploit and deal with such content before execution of the agreement. On the other hand, to counter the suit, Telemax filed an application under Section 8 of the Arbitration Act stating that all disputes (including under the present suit) between Eros and Telemax be referred to arbitration in view of the arbitration clause in the term sheet, which aspect came to be decided as part of the decision.

Eros contended that term sheet was not binding and that Telemax had infringed its copyright and had also sub-licensed this copyright-protected material to the other defendants to the suit. Eros argued that the action against Telemax was not for breach of a contract (since the term sheet had also expired), but was a statutory action under the Copyright Act, which is inherently non-arbitrable. Eros also contended that the other defendants were not a party to the term sheet. Telemax argued that the dispute arising out of the term sheet was purely contractual and not simply an action for copyright infringement. Telemax further argued that by the suit, Eros sought to enforce a right in personam as opposed to a right in rem.

Further, the other defendants, who were not parties to the term sheet, were in the nature of persons claiming through or under Telemax (under the amended Section 8) and had also filed affidavits agreeing to submit the entire dispute to arbitration. Telemax also argued that there was no specific bar on the arbitrability of such disputes and relied on the decision of the Supreme Court of India in **Booz Allen & Hamilton Inc v. SBI Home Finance Limited & Ors.**

The Court while deciding in favour of the defendant (Telemax), observed that provisions of the Copyright Act and the (Indian) Trade Marks Act, 1999 (Trademarks Act) do not oust the jurisdiction of an arbitral panel, they only seek to ensure that such actions are not to be brought before the Registrar or the board. Further, where there are matters of commercial disputes and

parties have consciously decided to refer these disputes arising from that contract to a private forum, no question arises of those disputes being non-arbitrable. Such actions are always actions in personam, one party seeking a specific relief against a particular defined party, not against the world at large. Eros' action is in personam as it is seeking a particular relief against a particular defined party.

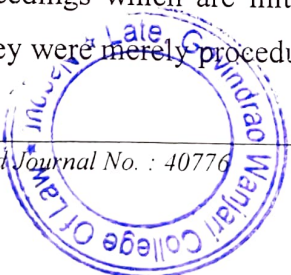
This decision makes it abundantly clear that although under trademark and copyright law, registration grants the registrant a right against the world at large and it is possible that an opposition to such an application (before the Registrar) would be an action in rem, however, an infringement or passing off action binds only the parties to it.

Challenges in Arbitration with respect to IPR Disputes

Arbitration, as a means of dispute resolution, has emerged to be a very successful attempt. This trend has not only been witnessed in India, but all over the world. Most of the cases that come up are, if possible sent for arbitration. But for our country, this is a relatively new concept. In the recent past, the laws of arbitration have evolved and garnered a lot of attention, especially in India. It is clear from the above mentioned information that Arbitration, no doubt plays an important and effective role in the problem solving and decision making. Also, it is not restricted to just a single field of law, but to many. But there are some hurdles and problems that has been causing a bit trouble in the complete implementation of Arbitration.

1. Applicability of the Amended Act

In 2015, India took a huge leap and decided to amend Arbitration and Conciliation Act, 1996. After the required amendments and changes, the Law Commission of India, in 2015, changed the arbitration law by an ordinance issued in October 2015. At the end of 2015, the Indian Parliament approved a bill which made the changes permanent, and on 31 December 2015 the Arbitration and Conciliation (Amendment) Act, 2015 (the "Amendment Act") became law. One of the major hindrances that arbitration as a field is witnessing, is the fact whether the amended Act, Arbitration and Conciliation (Amendment) Act, 2015 (the "Amendment Act"). There have been High Court judgments which are conflicting in nature. In one case, it was held that the amendment act won't be applicable to the stage post arbitral proceeding. This was held by the Madras High Court, in relation to Section 26, ¹⁰ of the Amendment Act. However, Delhi High Court held that court proceedings which are initiated post amendment would not come under the Amended Act unless they were merely procedural in nature. This example clarifies that



the applicability of the Amended Act is still not clear and this leads to different interpretations by the court, which could prove to be a problem.

2. Arbitrability of cases of oppression or mismanagement

Another problem that is faced is that in cases of oppression or mismanagement, not each and every consequential act which is a result of such cases, is restricted to the case only. Some disputes might lead to causing effect to a third party, who is not even a part of the arbitration agreement. Therefore, such disputes are rendered non-arbitral.

3. Arbitration under Foreign Law

Another one of the problems is whether Indian parties getting into an arbitration agreement, can choose a foreign law to govern such agreement. There have been many cases discussing this aspect, however, there is still no clarity. Bombay High Court, in the case of **Addhar Mercantile Private Limited V. Shree Jagdamba Agrico Exports Pvt. Ltd**¹¹, stated that Indian parties, choosing foreign law to govern their arbitration agreement, could be considered to be opposing public policy of the country. However, in the case **offseason Power Ltd. V North America Coal Corporation India Pvt..Ltd.**¹², the Madhya Pradesh High Court held that two Indian parties may conduct arbitration under foreign law.

4. Not keen on taking dispute to arbitration : One of the major problems when it comes to Arbitration in IPR disputes is that it is extremely difficult to get injunctive relief and punitive damages speedily. An IP holder may want his case to be resolved speedily and such relief is more likely to be obtained from public court rather than from an arbitration tribunal. Also, IPR disputes are usually among parties who do not know each other from before and have no pre-existing relationship and therefore they are not inclined to agree to submit their dispute to ADR. In other circumstances, even in the context of an existing relationship or prospective transaction, there still may be reasons why one party or another might not want to agree to the resolution of any IP disputes by arbitration of some other form of ADR.

Conclusion

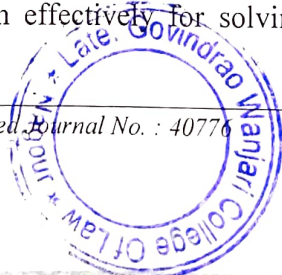
With the advent of globalization, Intellectual Property Rights have also become more internationalized and commercialized. This is evident from the increasing number of cross-border arrangements and agreements. Because of these agreements and arrangements the demand of IPR rights holders to deal with IPR disputes at an international level is also increasing. When parties seek mechanisms for dispute settlements, they consider their commercial interests as

primary concern and they wish for the dispute settlement to be personal, highly flexible and efficient, so that their cross – border disputes can be resolved without tarnishing their commercial relationship in the industry. Arbitration, in spite of the challenges it causes, is still preferred over litigation when it comes to cross-border IPR disputes. It avoids parallel litigations and has its inherent advantages in dealing with commercial disputes in respect of flexibility, confidentiality, finality.

On one hand, in the process of international economic globalization, most countries are inclined to acknowledge the IPR as private property rights. On the other hand, courts are overburdened by a large amount of commercial disputes. This has resulted in increasing debates and researches, both academically and practically, on alternative dispute resolution methods, and many countries are inclined to adopt a policy favoring and allowing arbitration and further enlarge the scope of arbitrability. With the world more and more dependent upon technology of all types, the continued and growing importance of intellectual property cannot be understated. There has been, and will continue to be, an accompanying explosion in the number and complexity of transactions in which intellectual property is a critical, if not the critical, element. Many of these transactions cross national boundaries; as do the disputes which inevitably arise from them. But international intellectual property disputes present complexities not encountered in either intellectual property disputes which are confined to one country or other international commercial disputes.

The Arbitration of International Intellectual Property Disputes will serve as a handy reference and guide for navigating through the complex maze of intellectual property and arbitration. As confirmed by the growth of IP arbitration proceedings and by recent trends, the use of arbitration for solving international intellectual property disputes is expanding. This trend can be confirmed by the choice made by policy makers to authorize and promote the use of arbitration for solving intellectual property disputes, which constitutes a clear sign that arbitration is an adequate method for solving intellectual property disputes that does not threaten in any manner, the powers of the state authorities over intellectual property as such.

In view of these developments, it is important that all the stakeholders, and particularly the parties and their counsel, shall become aware of the adequacy of arbitration for solving international intellectual property disputes and shall take time to assess in advance the implications of using arbitration effectively for solving such disputes. This requires moving



beyond the threshold issue of arbitrability of intellectual property disputes in order to address the issues which can significantly affect the success of arbitration in terms of cost, speed and efficiency, particularly the scope of the arbitration clause and the definition of the governing law.

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He/ She has presented a Research paper on Human Rights of Disabled
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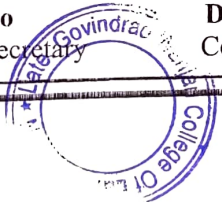
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18. Human Rights of Disabled Person

Dr. Rohini U. Fuladi

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Abstract

Person with physical or mental discrepancies in all sections of the world are considered to be of down strata, they are treated as objects of mercy, charity and welfare. While it has been observed that despite the physical, mental or sensory deficiencies, these people are the acquires of some kind of amazing miraculous talent and God Gifted qualities. There are many instances where these people have proved themselves in many areas of life by intellectual or positive attitude, such as in the field of art, fine art, cultural area etc. Due to increasing discrimination against these people, due to inferiority, inequality, human rights for their disabled persons and their enforcement have become the main area of discussion around the globe.

For the protection of the rights relating to persons with disabilities, various Acts, the Constitution of India, persons with disabilities (Equal Opportunities for Equality and Full Participation) Act, 1995, Mental Health Act, 1987, Rehabilitation Council of India Act and National Trust (for the Welfare of Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999 and the PWD Act, 2016 were enacted. Despite the many laws for the protection of various rights of person with disability, yet there is a need for strict implementation of those rights and several schemes and benefits which are framed for welfare of the disabled persons. Although the purpose of these laws are to protect the rights of people with disabilities, but these laws did not provide equality of opportunity, especially regarding employment and matters therein.

Introduction

Citizen acquires human rights from his birth, it is not announced for him as a separate rights. Disabled is also human, therefore there is no need of division (primary and secondary) at the time of the announcement of human right separately for disabled persons; so the rights that an ordinary citizen receive from his birth, likewise a disabled person also receives same rights, because he also comes in the category of citizen of a India. Therefore, the Constitution of India is equally applicable to every citizen of India, even if they are in any way (physically or mentally)



healthy or disabled. Of course, the disabled person needs some privileged rights rather than a normal person which should be given them specifically. The reason is that they are covered under special category (Special child, special person). The another reason is for giving them special attention that they are always ignored, they are kept away from their rights, taken as problems, and seen as burden and abhorrence.

The term "Disabled Person", means "any person unable to ensure for himself or herself wholly or partly the necessities of a normal individual and or social life as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities. In other words, due to the physical, mental, sensory deficiency, they come in the category of disability.

International Perspective of Disability Rights

1) International Human Rights: UN Charter

The charter of the United Nations of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. Article 55 says that with a view to the creation of conditions of stability and well being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of people's, the United Nation shall promote:

- a. Higher standard of living, full employment and conditions of economic and social progress and development.
- b. Solutions of international economic, social, health, and related problems and international, cultural and educational cooperation.
- c. Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

2) Declaration On The Rights of Disabled Persons:

The Declaration of the Rights of Disabled persons was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution of Assembly.

The disabled person shall enjoy all rights contained in this declaration without distinction or discrimination. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights. Disabled persons have the same civil and political rights as other human beings. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to economic and social security.

including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

3) The Convention On The Rights of Persons With Disabilities:

The Convention on the Rights of Disabilities is an international human rights treaty of the United Nations intended to protect the Rights and dignity of persons with disabilities. Parties to the convention are required to promote, protect and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law.

The Convention on the Rights of Persons with disabilities deals with matters such as, general principles on the basis of which the rights of the disabled persons are to be promoted and protected, the obligations that have been undertaken by the State parties to adopt measures. The protocol has been added to the present convention authorizing the Committee on the Person with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals, who claim to be victims of a violation by a State party of the provisions of the present convention.

Indian Perspectives of Disability Rights

Constitutional Rights of Disabled Persons

1. Prohibition of Discrimination: Article 15 is a manifestation of "Right to Equality" under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by State on various grounds. Under article 15 the protection extends only to citizens, unlike Article 14 which protects 'any person'. Article 15 of the Indian Constitution deals with "prohibition of discrimination" on the grounds of religion, race, caste, sex or place of birth.

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to:

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.



2. **Right to Social, Economical and Cultural Rights:** Article 25 of the CRP recognizes the right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity. State parties shall ensure an inclusive education system at all levels and lifelong learning.” They considered Constitution to grant education to children with disabilities if they explicitly guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis of disability. Globally only 28% of the countries provide some type of Constitutional guarantee of educational rights for the children with disabilities.

3. **Right to Work:** Article 27 of the CRDP instructs states to “recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

4. **Right to Liberty:** Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the Constitution explicitly guarantees the right to liberty to persons with disabilities. However 19% of the Constitution specifies that the right to liberty can be denied to persons with the mental health condition.

5. **Right to Freedom of Expression:** In Article 21, the CRPD states that to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Disability Rights Movement in India.

Disability rights movement in India is more than four decades old. In the beginning of 1970, persons with disabilities had demanded rights for themselves. However, their movement did not fulfil object because they lacked integration. In the 1980s, various organizations came together with same intention, representing the interests of incompetent people. In this decade the Disability Rights Movement got impulse and after the many protests the government passed “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”. As a result, people with disabilities have got a place in government services.

educational institutions etc. This act came to be known as the beginning of a new era for disabled persons. But due to some of its deficiencies and the lack of implementation it failed to achieve its goals.

The Persons with Disabilities Act, 1995 had come into enforcement on Feb 7, 1996. Under section 2(i) of Persons with Disabilities Act, 1995, "disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness.

The New Disability Act based on United Nations Conference 2006

In order to ensure all the rights of persons with disabilities, the United Nation convened a conference on the Rights of Persons with Disabilities in 2006, during which UNCRPD included 50 articles of different aspects of disability related issues, which was reaffirmed by the 160 member states including India in the year 2007.

UNCRPD is based on eight principles

1. Non-discriminatory treatment of persons with disabilities
2. Full participation and involvement of persons with disabilities in society
3. Freedom of persons with disabilities and disabled persons towards their inherent dignity and personal autonomy
4. Respect for the difference and acceptance of persons with disabilities as part of humanity and diversity
5. Equality of opportunity
6. Accessibility
7. Equality between man and woman
8. Respect for the rights of special children for the development and identification of children with disabilities.

An endeavour of the principles of the United Nations Conference 2006, a new Act was passed while making necessary amendments in the provisions of the Act 1995. The right of the person with disability, Act of 2016 received the assent of the President on December 27, 2016 and was published in the Official Gazette on 28 December 2016, which came into effect from 15 June 2017. Section 102 of this Act speaks about its purpose to maintain the dignity of every person in the society and prevent any kind of discrimination. Since India is the signatory of the



Conference on the rights of people with disabilities of the United Nations General Assembly, hence it was mandatory to enact a domestic law for India.

In this 2016 Act, the disability list has been widening to 7 to 21 situations. Disabilities such as chronic neurological disorders and blood disorders have been covered. Word mental retardation has been replaced by intellectual inefficiency, which is defined as "the basis of critical limitations in both intellectual functioning and adaptive behaviour, in which there is a series of social and practical skills each day, including specific learning disabilities and autism spectrum disorder." This act provides an elaborate definition of mental illness, which is a major disorder of "thinking, mood, perception, orientation, or memory that can identify the reality, or identify the ability to meet the normal demands of life, and reduces the capacity but it does not include retardation, which is due to incomplete development of a person's brain. Mental Illness has been enclosed in the Act as a disability but the special wants of mental sick persons and their families have not been properly directed. Person with disability with mental illness needs special aid and care due to various types of illnesses and often a person with mental illness is not in a place to become aware of his illness due to lack of vision and underdeveloped brain. Under these situations, support from his family plays a vital role.

In India the health care centre, mental health care centre, care worker are not yet introduced as powerful, that is why it requires family help while taking the care of mental-ill person. Hence family's active involvement and boost is necessary which provides ethical, emotional, mental and physical support to person with mental illness. But it is found that most of the time disable person left helpless in family due to mental or physical incapacity, lack of awareness, so family treated him as burden. From another point of view Section 7 of the Act Protects disable person from abuse, violence and exploitation. Sometimes such a circumstances come up, when a family or ancillary person, who is trying to hold the person mentally ill, or who treats them with harshly, then provision 7 turns contrary on such people and such people come across the culprit. So Section 7 wants to cover this problem with proper amendment.

Section 38 of the Personal with Disability Act, 2016 speaks about the Special provisions for persons with disabilities with high support by taking recourse of government but they ignored importance and role of family or non-governmental organisation while taking care of mentally ill person.

Despite some of these loopholes in PWD Act 2016, the Government has made a lot of efforts to implement these laws and has been provided the equality of opportunity in the area of human rights.

Some of the Suggestions and Recommendations:

- People must be aware of disability and disability laws. They must change their mind concerning to PWD. They have to understand that disability is not a burden; they are also human like us.
- They also have emotions because they are human being. By giving proper aid they can be achieve position in society, thereby they can also be put on their feet, they can be made independent.
- Families with disabilities should be encouraged and supported by the government, so that the family can come forward to support the disabled. Government should be provides the necessary equipments or help to the family having disable person.

Conclusion

Disability connotes to the disadvantage or restrictions of activity caused by the various incapacities and abnormalities. Disability is an unfortunate part of human life which can affect not only the natural way of a living but also despair components such as strength and power. Dignity, equality, self-reliance and liberty are four cardinal principles which act as supportive pillar of basic human rights law, which provides protection against misuse of power. It would not be an exaggeration that human rights are the power that gives a person the position to stand up proudly in the society. Therefore, a person with disabilities is an extra ordinary person who needs special attention, so he should be entitle for special human rights. The Government needs to launch more and more social security schemes for disabled sections and generate more employment opportunities for them.

Foot Note

- Article I. Declaration on the Rights of Disabled Persons.
- Rights of Disabled Persons - Legal Service India, www.legalservice.com
- Ibid, legalservice.com
- "Human Rights and Disability Laws in India" by 'Pleaders' Intelligent legal solution on 18 December 2018.
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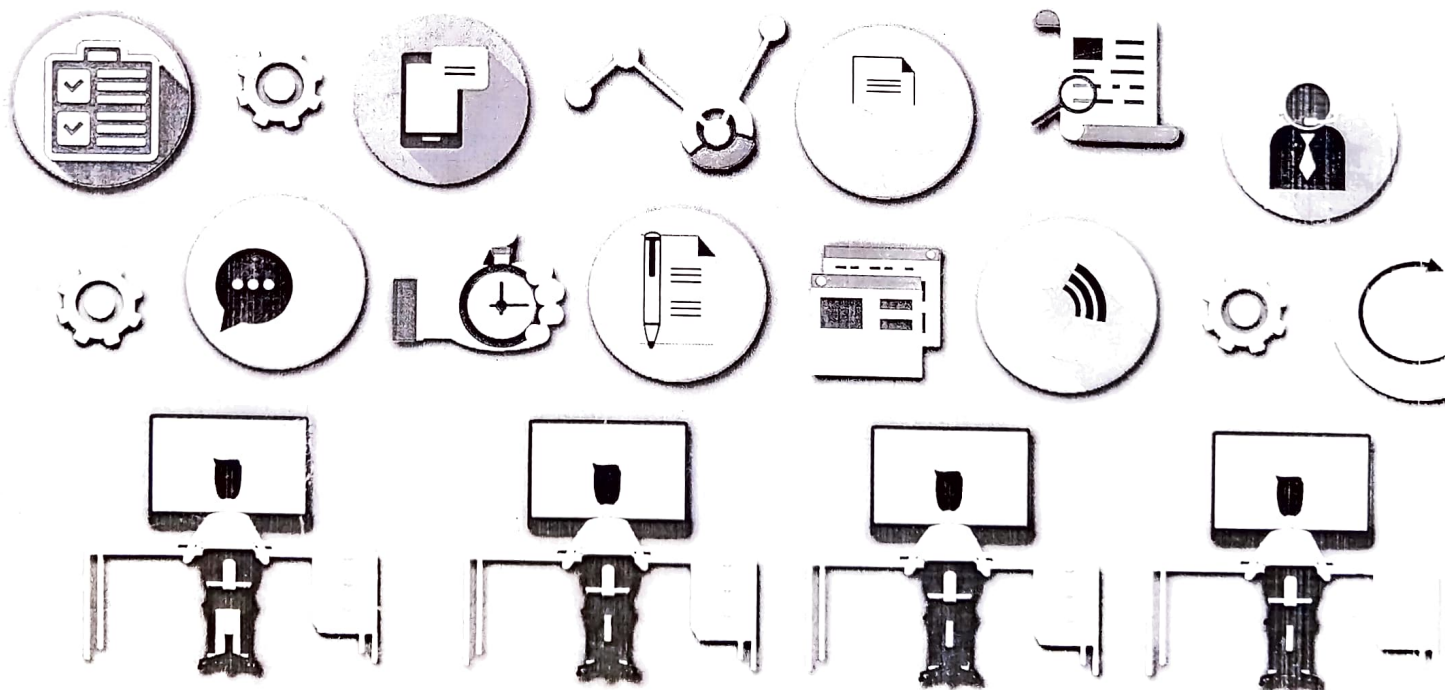


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13. Plight of Girl Child Soldiers: An Unsettled Problem

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Abstract

The use of girl child soldiers in armed conflict and non- international armed conflict is a grave violence against children. It has devastating effects on the girls, their families and community. Even though the problem of girl child soldiers has devastating effects yet this practice continues unabatedly all over the world. They are often recruited through force or deception, and exposed to horrific violence. They are recruited to serve as messengers, cook, sex slave or porter and end up on the front lines of combat. Some are forced to commit atrocities, and many girls are sexually exploited. They are denied an education and robbed of their childhood. The use of child soldiers in conflict can have long-term consequences for the children concerned, seriously harming their psychological, physical and social evolution. It can also have an adverse impact on development, stability, prosperity and democratisation.

The article deal with the question of child soldiers, reasons that lead children to become members of regular or irregular armies and effects. The article also highlighted international regulations, actions which may help to solve this problem.

Child Soldiers: Concept and Meaning

Human rights represent the seeds of natural rights which are harvested in the field of civilized world. Human rights sole object is to secure all human beings right to live with dignity. Human rights are mankind's core values of human life. These human rights help to enjoy a higher quality of human life in a new changing and advance global order without discrimination. The lack of protection and promotion of human rights connotes the absence of one or more basic fundamental rights. The lack of social security leads to widespread, serious and permanent consequences on human rights. One such consequence is of Child Soldiers.

A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The League of Nation had made first effort to address child rights at international level by adopting the Declaration of Children rights. In 1924,

the League of Nations (LON) adopted the Geneva Declaration, a historic document that recognised and affirmed for the first time the existence of rights specific to children and the responsibility of adults towards children. The United Nations (UN) was founded after World War II. It took over the Geneva Declaration in 1946. On 20 November 1959, the Declaration of the Rights of the Child was adopted by the United Nations General Assembly in Resolution 1386 (XIV). The Declaration of the Rights of the Child lays down ten principles. The Convention on the Rights of the Child (CRC) is an international treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless is attained earlier under national legislation. Article 38 of the CRC states that Governments must do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces. The Convention's Optional Protocol on the involvement of children in armed conflict further develops this right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under 18 year adopting CRC and Additional Protocol, the UN gives clear message that preserving and protecting children rights are necessary condition for ideal childhood. CRC not only gives clear vision on "What a child's" but also "What are the restrictions of using humans who are under 18 years age" in an international armed conflict or in non- international armed conflict.

There are number of international instrument which address the issue of child soldiers. In 1997 at the Symposium on the Prevention of Recruitment of Children into Armed Forces and on Demobilisation and Social Reintegration of Child Soldiers in Africa, held by the NGO Working Group on the Convention on the Rights of the Child and UNICEF in Cape Town for the first time adopted the definition of "child soldier". A child soldier is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms. The United Nation International Children's Emergency Fund adopted two more international document in 2007.

- The Paris Commitments to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups

- The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups ("the Paris Principles")

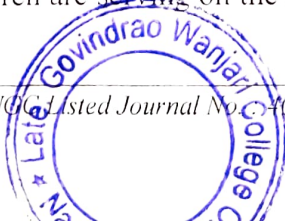
The Paris Principles also define child soldier. But instead of using child soldier, it has used the term child associated with an armed forces or armed groups. There is difference between the Cape Town Principles and Paris Principles firstly, Paris Principles used the term child associated with an armed forces or armed groups and secondly use of word "recruit" or used by armed group or forces and in Cape Town Principles it also used "any one accompanying an armed group or forces". The provision of both the Principles applies to child soldiers whether participated voluntary or by force. The term child soldier includes both boy and girl soldiers and therefore it can be said that the term is gender neutral.

Reasons for Use of Girl Child Soldiers and its Consequences

In the era of science and technology the image of armed conflicts has changed quite dramatically in recent decades. When we think about soldiers we never imagine the picture of little girl with a gun. Fortunately now a days growing participation of children especially girls are engaged in armed group or forces. They are able to carry and operate it.

Social, political and economic conditions are main reasons for the use of girl as a child soldiers in armed and non- international armed conflict, whether participating directly or indirectly. Africa has experienced the problem as an epidemic. Factor such as poverty, poor education, lack of employment, opportunities, availability of vulnerable and recruit able refugees, internal displaced people and the availability of light weight weapons are individually or jointly factors which influenced the practice of girl child soldiers. The recruitment decisions made by the armed forces or groups to target girl child soldiers simply because adult are not willing to take up arms, forcible recruitment of adolescence is cheap, effective and has a high rate of retention because children are easily diverted, terrified and disoriented than adult. Girls Child soldier, as they are told, the do not demand money and no demand for education.

Another reason for the use of girls as a soldier is to create moral dilemmas against opposite armed groups or forces whether to combat them or not? In Myanmar, parents voluntarily recruit their children in armed forces or groups. because the guerrillas provide clothes and two meals a day. According to Wounded Childhood, a new International Labour Organization report on the use of children under the Central Africa prepared for Washington Conference, more than 30,000 children are serving on the front lines in the civil strife worldwide



and have witnessed or experienced, such horrors as for assassination, pillage, sexual assault and rape. The Tatmadaw is listed by the UN as persistently committing grave violations against children, including the recruitment and use of children. Eight parties to the different conflicts in Myanmar including government forces recruit and use children. Adolescent girls are abducted and forced to serve in these same roles. However, girls are also forced to serve as sexual slaves to numerous males in forces, or, they may be given to one male for his exclusive use as a captive "wife". Adolescent girls are also forced to provide the majority of domestic and agricultural labour that sustains the fighting forces. Rates of abduction in some conflicts are extremely high. For example, a recent representative study of the three most war affected districts in Northern Uganda estimates that a sixth of all female youth and a third of all male youth between the ages of 14-30 have been abducted at one point by the rebel Lord's Resistance Army (LRA).

Children can be sent on the most difficult and dangerous missions as they rarely realize the risk or are unable to fight back. They are sent into villages as spies, put in the front lines, and sent ahead to clear land mines. Both girls and boys are used as active participants in the conflict and many (especially girls) are sexually abused.. Whether abducted or a "voluntary recruit," almost all child soldiers go through a similar induction and training process meant to sever them from their communities, desensitize them to violence and indoctrinate them. The children are generally deliberately brutalized and forced to commit atrocities against members of their family or communities. This serves to separate the children from their communities and make them entirely dependent on the army or rebels. In addition to forcing the children to participate in atrocities, child soldiers are also given drugs and alcohol to numb them and "increase their courage".

Gender based violence is always experienced by girl child soldiers. They also actively involved in all aspects of the conflict which includes cooking, fighting, killing and other activities. Girl child soldiers are frequently raped and the rate of sexually transmitted diseases is extremely high. The majority of these girls are infected with sexually transmitted diseases, often HIV/AIDS. Additionally they deal with unwanted pregnancy and childbirth. It is more severe, in terms of permanent damage, for young girls, with problems ranging from uterine deformation, infection, vaginal sores, menstrual complications, premature births, stillbirths, sterility, and sometimes death.

The abduction of young children appeared to be part of a deliberate strategy of building the labour pool that the military needed, and commanders apparently preferred young people because of their compliance. Often, old people were left behind and men were killed, whereas the children were taken. Girls appeared to be preferred because of their ability to carry heavy loads long distances without making the noise that mechanized vehicles would have made, thereby reducing the chances of being detected by the enemy. One girl described how families were forced to give their children to the JURA((Juventude UNITA Revolucionaria de Angola)): ...They had held a public meeting to say that "all those parents who had a child above nine years old, except those that were married, they could not now be with them because they had to come to, had to join with, all the JURA to help with the movement of troops." So there they became conscious that that was how it was, we have to let go of our children to help the troops. Yoka Brandt, Deputy Executive Director of the United Nations Children's Fund (UNICEF), said that 2014 was the worst year to be a child. Armed groups in Iraq, Syria, South Sudan, Nigeria, Mali and the Central African Republic were still recruiting children. Around the world, nearly 250 million children are living in countries affected by conflict and tens of thousands of them have been recruited and used as child soldiers. Despite this reality, we are making progress in ending this horrific and cruel practice, which robs children of their futures.

The participation of girl child in armed conflicts brings significant consequences to children's lives, such physical, psychological and social nature. Children may be recruited for several reasons. Countries which are already poor, have deteriorate economic and social conditions, forces families into further economic hardship. This leads to children joining armed forces or groups for survival. One of the consequences of conflict is destruction of school which likely to disrupt children's education. Therefore may be more easily diverted to join armed groups or forces. Prolonged conflict, help armed forces and groups to use children. Child soldiers, whether boy or girl is denied of their childhood and are subjected to extreme brutality. This give rise to grave violations of International Humanitarian Law (IHL) and International Human Rights Law (IHRL).

Use of Girl Child Soldiers: Grave Violations of IHL and IHRL

Recruiting or using a child as a soldier is grave violation under the age of 15/18 years is violation of IHL. Even international human rights law (IHRL) clearly states 18 years as the minimum legal age for participation in hostilities. Convention on the Rights of the Child and the

Additional Protocols to the Geneva Conventions prohibits the recruitment and use of children under the age of 15. The rule that children must not be recruited into armed forces or armed groups and that children must not be allowed to take part in hostilities is considered customary international law, applying equally in situations of international and non-international armed conflict, and to both Government armed forces and non-State armed groups. International human rights law has further strengthened the acceptable minimum age for direct participation in hostilities and raised it to 18 years. The Convention on the Rights of the Child's Optional Protocol on the Involvement of Children in Armed Conflict (2000) requires State parties to increase to 18 years the minimum age for compulsory recruitment and for direct participation in hostilities. Those countries that continue to permit voluntary recruitment of children under the age of 18 must introduce strict safeguards. In addition, the Optional Protocol prohibits non-State armed groups under any circumstances from recruiting or using children under 18 years. The International Labour Organization's Convention No. 182 on the Worst Forms of Child Labour declares that recruiting children below the age of 18 is "one of the worst forms of child labour."

The Paris Principles on Children Associated with Armed Forces or Armed Groups (2007) to protect children from unlawful recruitment suggests States to ensure that armed groups within their territory do not recruit children under the age of 18 and that the States themselves respect the international standards for recruitment. The African Charter on the Rights and Welfare of the Child (1999) prohibits "recruitment and direct participation in hostilities of any person under the age of 18 years."

In non-international armed conflicts, Additional Protocol II to the Geneva Conventions (Article 4[3c,d]), provides that children under 15 years of age must not be recruited or take part in hostilities. On March 2012, the International Criminal Court convicted Lubanga Dyilo of committing war crimes consisting of the enlisting and conscripting of children under the age of 15 into the Forces patriotiques pour la libération du Congo and their use for active participation in hostilities.

Second violation is Killing and maiming of children. As part of their training for violence, child recruits are often subject to gruelling physical tasks as well as ideological indoctrination. Children accused of the slightest infractions may be subject to extreme physical punishments including beating, whipping, caning, and being chained or tied up with rope for days at a time. In some conflicts, commanders supply child soldiers with marijuana and opiates




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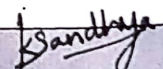
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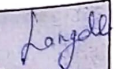
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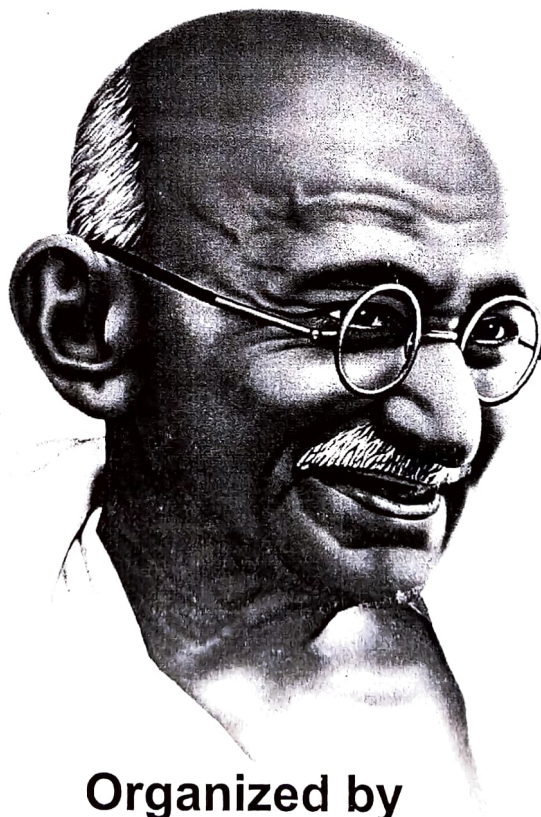
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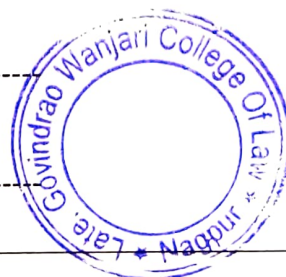


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SATYAGRAHA: ROLE IN INDIAN DEMOCRACY

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Introduction:

Satyagraha is right full weapon to resist unjust, unreasonable, unfair laws in totalitarian regimes. But there is a perspective which advocates granting scope to affirmative action by individuals and groups in democratic regimes. It is one of the ways which provide a channel to people, to articulate their political anapathy and insist for improvement where political class failed to represent their aspirations. But counterargument remains that any reform must usher from the constitutional structures and any attempt to circumscribe them would prove counterproductive as it would undermine the working of democratic structures. The analysis of various such movements in general and of Anna Hazare led movement in particular, reveals that such movements act as means for the empowerment of people if continued to maintain their non-partisan nature. However, any attempt on their part to act as alternative to existing political class defeats not only their own cause but proves to be disastrous for democratic regimes.

The Gandhian philosophy of satyagraha is a natural outcome of the supreme concept of truth. If truth is the ultimate reality, then it is imperative to safeguard the criteria and foundations of truth. A votary of God which is the highest Truth and the highest Reality must be utterly selfless and gentle. He should have an unconquerable determination to fight for the supremacy of spiritual and moral values. Thus alone can he vindicate his sense of ethical devotion. Satyagraha means the exercise of the purest soul-force against all injustice, oppression



and exploitation. Suffering and trust are attributes of soul force. The active nonviolent resistance of the 'heroic meek' makes an immediate appeal to the heart. It wants not to endanger the opponent but to overwhelm him by the over flooding power of innocence. Satyagraha or stupendous effort at conversion can be applied against the Government, the social Czars and leaders of 'orthodoxy'.

Satyagraha is an inherent birthright of a person. It is not merely a sacred right but it can also be a sacred duty. If the Government does not represent the will of the people, and if it begins to support dishonesty and terrorism, then it should be disobeyed. But one who wants to vindicate his Satyagraha as conceived by Gandhi is not a formula of social and political disintegration. A satyagrahi must have first rendered willing obedience to the laws of the state. Gandhi writes: "a satyagrahi obeys the laws of the society intelligently and of his own freewill, because he considers it to be his sacred duty to do so. It is only when a person has thus obeyed the laws of society scrupulously that he is in a position to judge as to which particular rules are good and just and which are unjust and iniquitous and only then does the right accrue to him of the civil disobedience of certain laws in well-defined circumstances." Gandhi claimed to have been by nature law-abiding. The capacity for civil resistance comes from the discipline undergone in the process of obeying the civil and moral laws of the state. A satyagrahi while resisting the laws of the government should see that the social structure is not subverted. rights should be prepared to bear all kinds of suffering.

Here, the endeavor of social activists to raise people's concerns is seen as a mean to strengthen democratic structures. Recently, social activist Anna Hazare's anti-corruption movement in India raised theoretical questions regarding the scope of such movements in a democratic society. This movement was equated with Mahatma Gandhi's Satyagraha which he used as

devise against imperialist British Government. One tends to agree with the fact that Satyagraha can be used against illegitimate regimes. But its usage as vehicle of mass agitation in/against democratically elected regimes needs to be seriously debated. There is point of view that Satyagraha holds its place in democracy as a corrective against the misuse of political power and even acts as a safeguard for the prevention of democratic spirit. It can serve as legitimate weapon of injured individuals and groups (Almust, 1998). Therefore, in the light of above arguments there is need to consider affirmative action by civil society groups as Satyagraha and then analyze its scope in democratic system.

Though civil society groups are formed within constitutional limits and they tend to follow constitutional means to get their demands accepted. But their functioning comes under serious criticism on the basis of their unrepresentative nature and thereby their right to challenge or coerce representative bodies to their point of view. It is argued that such precedents can damage the credibility of elected bodies and goes against the very logic that these bodies holds sovereign will of the people. Therefore, there is no room for Satyagraha or mass civil disobedience movement in a democratic system (Iyer, 2000). Governing elite do not grant such devise and argued that such methods are contempt against people's representation and violation of the spirit of democracy

Dr. Ambedkar was not in favor following modes of struggle which went outside the scope of constitutional framework. He was also of the view that political structures and processes available in democratic regimes offer means for social and economic justice. He urged people to abandon coercive methods such as civil disobedience, non-cooperation, coercive forms of Satyagraha and fast to force change. He argued that to use these methods under any circumstances would be charting on the course of anarchy therefore, the sooner they

are abandoned, the better for us as a nation (Naik, 2003). However, peculiar situation emerges when counterargument is forwarded that these groups are composed of people who keep their inalienable rights of free speech and to criticize government. Therefore, these sections of society are not violating the democratic spirit rather complimenting it by raising their voice through constitutional means. However, one would have to determine the scope of their activity to bring reforms in a democratic system where vested interests stonewall any attempt to bring reforms in order to improve the existing structures of state. In this regard civil society movements face toughest challenge from political class

The analysis of political history of India reveals that attempts have been made by political as well as apolitical groups to bring changes through the mode of mass agitation. When JayaprakashNaryana called for Total Revolution to fulfill the aspirations of freedom fighters, and get rid of vices inflicting Indian polity then another social activist R. K. Patil disagreed with the tactics and questioned the scope of Satyagraha and direct action in democracy (Guha, 2008). The former based its actions on the Gandhian philosophy that real Swaraj will not come by the acquisition of authority by a few but the acquisition of the capacity by all to resist authority when it is abused (Prabhu, 1961). It is argued that even Gandhi was aware of the fact that democratic institutions can misused and peoples' voice stifled by vested interests. But people can refuse to be victimized by not cooperating against vested interests. As Gandhi said nothing is more difficult in this world than to administer the unwilling citizens. One must understand that constitutional structures are mean to achieve public interests. In such attempt the citizens are granted constitutional rights and civil liberties. But merely granting rights do not solve multiple problems being faced by them. The regimes in decolonized societies such as India aspired to accomplish social and economic development in one go. But what these regimes were able to achieve was

development of a small section of society. Consequently, there was emerging demand of Inclusive development in these newly free societies. It means the fruits of development must be shared by all sections of society.

In this context, Jayaprakash Narayan's idea of Direct Action and Gandhian idea of non-violent Satyagraha seem to provide answer. It was argued that in the case of neo-liberal globalization where market and accumulation of profit predominate over the interests of people, solution is to come to the streets and peaceful mobilization against exploitative forces. Collective action and mass mobilization by the civil society could play important role in this direction.

Indian society is inflicted with daunting challenges such as increasing population, poverty, illiteracy and environment related issues coupled with many maladies such as corruption in bureaucratic and political life, elections becoming competition in elite class, increasing role of criminals in politics, political parties becoming private firms of few chosen ones, victimization of minority groups, widening economic disparities among different sections of society and deteriorating conditions of depressed classes. There has been argument suggesting that Indian society with its hierarchical structure based on caste breeds inequality and is least suitable for democratic form of government. The makers of Indian constitution were aware of this fact therefore they considered first General elections as biggest gamble of the history

Therefore, increasing disparities must be cause of concern and efforts must be made to remove contradictions otherwise those who suffer from inequality would blow up the structure of political democracy (Constituent Assembly Debates, 1949). The political class has developed vested interests and political power has become an end in itself. Political power was misused to for individual interest which resulted in lopsided economic development, environmental

degradation, polarization of society and corruption in political and bureaucratic life. Not only this, greatest threats to constitutional order have come not from civil movements but from politicians themselves. We have instances of senior leaders of political parties burning the pages of the constitution, embarking upon Yatras which resulted destruction of places of worship of minority community and bloodshed and they even presided over structure of government.

The failure of legitimate structures of state to redress the different needs of society proves *raison d'être* for genesis of many movements. Some of these movements rely on constitutional and others on extra constitutional means. Few movements also use violent means to achieve their self-proclaimed goals. But violent movements breach the basic principle that state holds monopoly over means of coercion and no other group can employ force as mean to achieve its goals when mass killings of citizens was taking place.

There are numerous examples in India's political history where state had to use force to crush insurgent movements such as in Punjab, Jammu and Kashmir, North-East and Maoism hit states in central and eastern India. Some of these movements are still posing serious challenge to the establishment. But there are attempts by sections of society which aspire to change society through peaceful means. These movements strive to resolve issues by mobilizing public opinion and bringing pressure on government. Since these movements are based on public opinion therefore the establishment has to make compromise, surrender and even have to accept defeat before such forces. Union government's recent enactment of Lokpal Act shows that it succumbed to tactics of civil society movements.

There are numerous examples where movements by civil society groups achieved considerable success in protecting the societal interests.

1) Narmada Bachao Andolan opposed construction of large dams in river valley in central India. Its support came from various sections of society like those affected with Dam projects, adivasis, farmers, human rights activists and environmentalists. The supporting circumstances came as increased awareness about liabilities of hydro projects as far as environmental and rehabilitation issues were concerned. Dams in river valley in central India.

2) Chipko Andolan was another movement which originated people's concern of rapid deforestation and awareness among different sections of society for sustainable development.

3) Mazdoor Kisan Shakti Sangathan strives hard to achieve economic and social justice for the poor sections in rural India. The means employed by these groups unarmed state and challenged the ideological base of system. The state in order to maintain its legitimacy had to apply self correctives and accommodate the just demands of these groups.

The analysis of nature of struggle by civil society movements reveals that their functioning in democracies offers certain opportunities but at the same time poses some challenges. One has to accept that political class is supposed to be the voice of the people and vehicle of security and inclusive development. But the consistent failure of the political class has pushed people to find other ways for redressal of their problems. In this regard affirmative action by civil society groups remain an option. One has to agree that peaceful movements based on political rights and civil liberties granted to citizens remain safest method to reform current dispensation without bringing harm to its foundation.

Conclusion:-

Democracy rests on the assumption that shared power is safe power and seems to resolve the debate how to reconcile authority with accountability. And the best solution which evolved over a course of history is

democracy where representatives of the people are repository of power. They remain under the consistent gaze of people, media, civil society groups and political opponents. Therefore, they act under restraint and find it difficult to use power indiscriminately. Moreover, the structures available within government create checks and balances and everyone is supposed to function within the parameters set by the constitution.

Though political parties keep their inalienable right to mobilize people on various basis but they have to pass through electoral process in order to get legitimacy. But movements by social activists need not to face elections; therefore their claim of representative of the people remains untested. Therefore, political elite agrees on their role as agency of interest articulation but did not grant these groups any scope as far as policy formulation and execution is concerned.

Finally, one can argue that the Satyagraha or Civil society movements and democracy are not anti-thesis but complement each other. This can be understood by the facts that since democratic regimes are based consent of those who are ruled therefore governments provide everyone share in power. This share is in terms of power as well as in responsibility to act with restrain.

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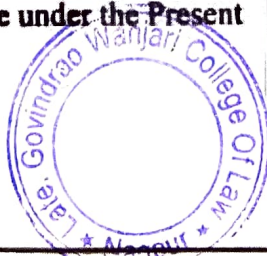
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International Human Rights And Sexual Harrasment Of Women

At Workplace :Contemporary Concerns and Challenges

Ms. Hanifa Sheikh and Ms. Priyanka Mardikar*

ABSTRACT

The principles and practices related to women's human rights are continuously evolving. The large body of international covenants, agreements and commitments to women's human rights developed over the past several decades provides women with an alternative vision and vocabulary to confront violations to their human rights. Such guidelines are important tools for political activism and a framework for developing concrete strategies for change. Women's rights are the fundamental human rights that were enshrined by the United Nations for every human being on the planet nearly 70 years ago. These rights include the right to live free from violence and discrimination; to be educated; to own property; to vote; and to earn a fair and equal wage.

The United Nations has a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing, with new manifestations of discrimination against them regularly emerging. Some groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socioeconomic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women. This publication provides an introduction to women's human rights.¹

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INTRODUCTION

Since women constitute half the world's population and are entitled to all human rights on an equal basis with men, this publication does not aim to cover every human rights issue which touches women's lives. The focus here is on: public and political life, sexual and reproductive health and rights, the right to an adequate standard of living, violence against women, migration, conflict and crisis, and access to justice. Across all of these, education and the family context are particularly pertinent and are addressed throughout.

In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offence against human dignity and calls on States to "abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women". Less than a year later a proposal for a legally binding treaty on women's rights was made. The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights with men. The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality. As with all human rights treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices and customs, and discrimination against women by private²

Across the world's cities, women and girls too often feel unsafe. Targeted simply because they are women, they are exposed to daily harassment and sexual violence in public spaces. But a growing network of organizations has successfully brought safety for women in urban environments around the world.

² Johannes Morsink, "Women's rights in the Universal Declaration", Human Rights Quarterly, vol. 13, No. 2 (May 1991)



The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), a key international agreement on women's human rights, was adopted by the United Nations General Assembly in 1979. CEDAW is often described as an international bill of rights for women. Its preamble and 30 articles aim to eliminate gender discrimination and promote gender equality. The convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex" that impedes women's "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." It sets an agenda for national action to end such discrimination, requiring all parties to the convention to take "all appropriate measures, including legislation, to ensure the full development and advancement of women" and guarantee their fundamental freedoms "on a basis of equality with men."

Empowerment of women in the workforce means allowing women to have more control over their lives. It means giving them the freedom to make their own schedules, learn new skills and gain self-reliance. Empowerment is created when the strengths that women already bring to the company are recognized and utilized. As more businesses take part in gender equality measures and see their revenue increase as a result, the case for empowering women in the workplace is likely to become a more recognized goal.

The realities of women especially in rural India are difficult to comprehend. Women, most of the time are even deprived of some of the fundamental human rights and this denial is justified often in the name of tradition. In rural areas women are generally relegated mainly to household duties and cheap labour. They are not perceived as substantial income generating source. Without the power to work and earn a good income, their voices are silenced, as they are economically dependent and have no capacity to work and earn a living for them. The question that needs to be answered is that in a society where men control the destiny of women how it is possible to protect the human rights of women and make the women empowerment a reality. The year 2001 was declared as women empowerment year by the Central government. 24th of January has been decided to be observed as National Girl Child Day. There are different steps taken by the government in India regarding women empowerment. Some of these steps are, constitutional provisions, enactment of social legislations, enactment of labour legislations, women welfare in

five years plans, reservation in representation and education, constitution of women commission and women cell, subsidized loan facilities, etc.

- **What Is Discrimination?**

Discrimination means treating a person unfairly because of who they are or because they possess certain characteristics. If you have been treated differently from other people only because of who you are or because you possess certain characteristics, you may have been discriminated against.

The Equality Act 2010 (Act in United Kingdom) highlights 9 protected characteristics:

1. Age
2. Gender
3. Race
4. Disability
5. Religion
6. Pregnancy and maternity
7. Sexual orientation
8. Gender reassignment
9. Marriage and civil partnership

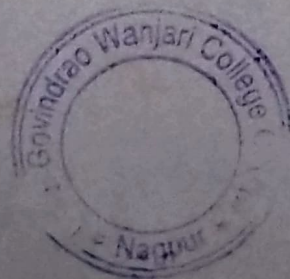
Discrimination that occurs because of one or more of the above characteristics is unlawful under the Equality Act. If you are treated unfavorably because someone thinks you belong to a particular group of people with protected characteristics, this is also unlawful discrimination.

- **Types of Discrimination**

Discrimination can occur in the following forms:

- 1) **Direct Discrimination**

Under similar circumstances, when a person with a protected characteristic is treated less favorably than others, it is direct discrimination.



2) Indirect Discrimination

If there is a rule or policy in the workplace that puts you at a disadvantage as compared to others, it may be considered indirect discrimination.

You have a right to challenge the clause if it affects you directly.

3) Discrimination by Association

If you are treated unfairly because someone you know or are associated with has a protected characteristic, this may be construed as discrimination by association. For example – you are refused service in a restaurant because you are with someone who belongs to a particular race.

4) Discrimination by Perception

Receiving unfair treatment because someone thinks you belong to a group with protected characteristics, you may be experiencing discrimination by perception.

5) Harassment

Harassment comprises of unwanted behaviour that makes another person feel offended, humiliated or intimidated. Unwanted behaviour could include physical gestures, abuse, jokes, spoken or written words or offensive emails and expressions.

6) Discrimination on the grounds of pregnancy

Discrimination can be refusal of grant of job to a woman who is pregnant or dismissal of the women from the organization subject to her disclosure of the fact of pregnancy. Safeguards against such discrimination is given under the Maternity Benefit Act, 1961.

7) Discrimination on the basis of caste

In India, one of the forms of discrimination that affects around 18 % of the workforce is discrimination on the basis of caste. Under the Protection of Civil Rights Act, 1955 if a person molests, injures, annoys, boycotts, obstructs, or insults or attempt to do such act toward a person of

Scheduled Caste, that person may be punished with imprisonment of term not less than one month and may extend up to six months and with fine not less than one hundred rupees and not more than five hundred rupees.

- **Legal Protections**

The Constitution of India has several provisions which grant certain fundamental rights to its citizen, which includes right to equality.

- 1) **Article 14** guarantees Equality before Law.
- 2) **Article 15** prohibits state from discrimination on the grounds of religion, race, caste, sex and place of birth.

Discrimination on the basis of sex can happen when an employee or a probable candidate is discriminated on the grounds of a person belonging to a particular sex. Discrimination on the basis of sex might be seen in the areas of hiring, conditions of employment, promotion, benefits, dividing work tasks based on whether staffs are male or female.

- 3) **Article 16** empowers the state to make reservations with respect to appointment for posts in favour of backward classes of citizens if in the opinion of state such classes are under-privileged.

However, these protections can only be opted when the discrimination has been made by the State or any Governmental bodies, including Government offices of both Central and State Governments. In case of discrimination on any of the grounds mentioned in Article 15, ie, religion, race, caste, sex and place of birth by the Government through its policies, or regulations, or otherwise, including recruitment, promotions, transfers, demotions and removals, the affected person can file a writ before the concerned High Court of the State or the Supreme Court. The Constitution further lays down certain fundamental duties, which though cannot be challenged before a Court of law; the duties should ideally be implemented by the Government.



- 4) **Article 39** in part IV of the constitution urges state to ensure that citizens, men and women equally have the right to an adequate means of livelihood, right to shelter ,food, education and work³.

Sexual harassment at workplace under Indian legal framework:

Sexual harassment occurs when an individual engages in unwanted behaviour of a sexual nature. It has the purpose or effect of:

- violating someone's dignity
- creating an intimidating, hostile, degrading, humiliating or offensive environment for the individual concerned

'Of a sexual nature' can cover verbal, non-verbal or physical conduct including unwelcome sexual advances, inappropriate touching, forms of sexual assault, sexual jokes, displaying pornographic photographs or drawings, or sending emails with material of a sexual nature.

Experiencing sexual harassment is one of the most difficult situations a person can face in the workplace. No workplace is immune to sexual harassment and a lack of reported cases does not necessarily mean that they have not occurred. Recent high-profile testimonies and sharing of experiences on social media have highlighted sexual harassment in a range of workplaces, and the real barriers that many experience in reporting it.

Employers are responsible for ensuring that employees do not face harassment in their workplace. They have a legal obligation to take reasonable steps to protect their employees and will be legally liable if they fail to do so.

Sexual harassment of women is global and widespread and is tolerated as a social phenomenon, in institutions and customs and to some degree in law. It is not exclusively a new phenomenon because the behaviour it describes are centuries old. Sexual harassment, no doubt is a complex social problem but in the recent decades, it has achieved new dimensions and has brought within its teeth children, youth and women. With the advance of industrialization and urbanization, this

³ Pandey, J N:Constitutional Law Of India, Central Law Agency,Allahabad,2007,pg 95,122.136,387



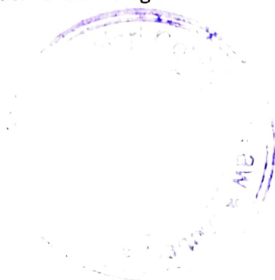
evil is gradually rearing its ugly head all over the world. It has touched new heights and dimensions in the numbers and operational patterns use of violence that even fatal attacks have become more common than they were some times ago. Sexual harassment may be homosexual as well as heterosexual. But the available data and court cases reveal that heterosexual mode is the most pervasive one. Women because of their oppressed and subjugated position in society are far more vulnerable to sexual harassment. The perpetrators of sexual harassment are males though the indulgence of females is not unheard of, but it comprises of extremely rare occasions. The available studies suggest that women are the recipients of physical and sexual abuse at least 10 times more frequently than are men.⁴

The widespread sexual harassment of women around the world is based on consideration of her sex alone. It is intense, rampant and universal occurring in all cultures, races, communities and countries. The widespread prevalence and tolerance of sexual harassment is a major human rights problem which has been largely ignored or unacknowledged as a human rights issue. Sexual harassment frequently encountered by women in all walks of her life- on the streets, roads, public transportations, farms, in educational institutions and in the workplaces and helplessness of the protecting agencies to eradicate the same, have today created an alarming situation in many countries of the world. Thus sexual harassment is endemic – an everyday, every time and everywhere occurrence. The event is not new to women, it is the law of injuries.

Sexual harassment of women has remained unrecognized and unnamed for a long time due to huge areas of disagreement about which behaviors the term legitimately covers and large scale acceptance of certain behaviors as normal socialization patterns. But it is not an aberration, rather it is a part of whole syndrome of discrimination and exploitation that women are subjected to.⁵ It is an outcome of long history of deprivation of socio-economic rights to women. It is a manifestation of historical unequal power relations between men and women which have led to domination over and discrimination against women and is a social mechanism by which the subordinate position of women is sought to be perpetuated. In order to free themselves from the

⁴ Violence Against Women, ed. by Carolyn M Samprell 4 (1992) Hemisphere Publishing Corporation, New York, Washington, Philadelphia, London.

⁵ Madhu Kishwar, Off The Beaten Track- Rethinking Gender Justice for Indian Women, p. 153(1999), Oxford University Press, New York.



clutches of male domination and exploitation due to economic dependence by making them self-reliant economically and in some cases to support the family income, women come outside the confines of home, hitherto secluded from the outside glaze. But here new kind of exploitation, victimization and subordination is encountered by them in the form of sexual harassment. Thus sexual harassment in the workplace and elsewhere has become a very important agenda for women's rights because of its widespread occurrence and its far reaching and disturbing effects.⁶

As discussed earlier that discrimination is nothing but unfair treatment against particular class of people based on peculiar characteristic. It has been observed that women at workplaces is considered as having no capabilities and only meant for household work. With the struggle of acquiring a significant position at work in such circumstances women is for the same reason treated as object, thus leading to sexual harassment workplace. Articles 232 and 243 of the Universal Declaration of Human Rights has specified and clarified The Right to Work as an imperative Human Right. Everybody has the privilege to work and can opt for working in a secure environment. Significantly, denial of equal opportunity in career development and making the work environment unfriendly as well as menacing employees are included as part of the term 'harassment'.

Sexual harassment at the workplace has always been one of the central issues of the women's movement in India since a long time. In the earlier times, women experiencing sexual harassment at workplace had to file a complaint under Section 354 of the Indian Penal Code that dealt with the charges of criminal assault of women for outraging her modesty, and Section 509 which punished for using a word, gesture or act intended to insult the modesty of a woman.

The entire scenario changed in the year 1997 with the introduction of SC guidelines, as a part of the landmark judgement in the case of Vishaka and others v. State of Rajasthan and others.⁷ The Supreme Court judgement, which came on 13th August 1997, gave the Vishaka guidelines to prevent sexual harassment of working women and this is how this case marked the first step in the

⁶ Preliminary Report submitted by UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy; para 190 (1994).

⁷ AIR 1997 SC 3011

evolution of laws for the protection of women from harassment at the workplace. The most important development after the Vishaka judgement was the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. This act was enacted in April 2013 as India's first law dealing with the protection of women against sexual harassment at workplace. This Act aimed to provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment. This Act is applied to all government bodies, private and public-sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals etc. The Act also introduced the concept of 'extended workplace' since sexual harassment is not always confined to the primary place of employment. Therefore, the Act defined 'workplace' to include any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment. The Act provided for the establishment of Internal Complaints Committee (ICC) at each and every office or branches of the organization, in order to provide a forum for filing complaints to facilitate fast redressal of the grievances pertaining to sexual harassment. It also provided for the establishment of local complaints committee (LCC) at the district level by the Government to investigate and redress complaints of sexual harassment of the unorganized sector or from those establishments where the ICC has not been constituted.

Apart from the above act, several provisions of the Indian Penal Code, 1860 were modified via the Criminal Law Amendment Act, 2013 to bring several offenses under its purview including outraging modesty of woman, assault or use of criminal force with intent to disrobe, stalking and voyeurism thus making an exclusive proviso to deal with the issue of sexual harassment.⁸ The Ministry of Women and Child Development has launched "SHe-Box" (sexual harassment

⁸<https://academy.gktoday.in/article/sexual-harassment-at-workplace-developments-post-vishaka-judgement/> access dt: 26/02/2018

electronic box), an online platform for reporting complaints of sexual harassment arising at the workplace.

Conclusion:

Discrimination is a very serious problem for the contemporary society. People do discriminate against each other whether their actions are intentional or happen due to the lack of knowledge or intricate sociological triggers as well as societal delusions and personal ignorance. The complexity of the problem overwhelms and to start fighting against discrimination, it is essential to determine how discriminating misconceptions are developed in our mind and promoted by the society. If we are sure that any kind of discrimination should be overcome, we should understand that everyone needs to do some actions irrespective of dissipated efforts as far as discrimination issues are concerned.

Though there are various enactments to curb this problem, specifically the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, the Act still suffers from some flaws. Firstly, it fails to cover those women working in the agricultural workers and armed forces, which are largely men – dominated sectors. The provision regarding the fixing of the monetary compensation according to the economic potential of the person, makes it discriminatory since the person with high rank and status will be made to pay more than the person with low status. The Act specifically provides for redressal of complaints of sexual harassment only. However, employers often receive complaints of general harassment. The Act and Rules do not contain any provision to address anonymous complaints. However, employers often find that complaints are made anonymously or that the complainant does not want to be identified.

Imposing sexual intercourse on a woman, no matter whatever her character or status in life is condemnable because even a woman of early virtue is entitled to privacy and no one can invade into her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law, therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.⁹

⁹ State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 1SCC 57: AIR 1991 SC, 207,211. 74

In order to remove defects and plugging loopholes in the existing criminal law, the Government of India enjoins the Law Commission from time to time to suggest desired measures for the same. Based upon the 84th report of the Law Commission of India¹⁰, the Criminal Law (Amendment) Act, 1983 was enacted which introduced a number of changes in the criminal law i.e. custodial sexual assault, presumption that she did not consent, trial in camera etc. However no changes are introduced in Sections 354 and 509 except two State amendments like in Andhra Pradesh, where punishment from 5 to 7 years is prescribed under Section 354 and in Orissa⁷⁸, offence is made non bailable.

To sum up, the issue of discrimination still remains unresolved. Despite the factor that our Constitution and numerous other authoritative Acts have encouraged general equality, the status of women remains low. To completely eradicate gender inequality and encourage equity in society it is vital to eliminate discrimination. and it might take some time for the contemporary society to understand its significance and negative influences it brings to the development of the mankind. However, if everyone makes a little effort to learn that all people are different and their individual peculiarities make this world more flamboyant and interesting to live in, then the humanity has good chances of developing in the right and promising direction.




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¹⁰ The Law Commission of India, 84th Report on Rape and Allied Offences, Ministry of Law and Justice, Govt. of India, (1980)

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IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE

Role of Supreme Court in Recognizing the Rights of Transgender in India

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“Gender identity... lies at the core of one’s personal identity, gender expression and presentation and therefore, it will have to be protected under Article 19(1)(a) of the Constitution. A transgender’s personality could be expressed by the transgender’s behavior and presentation. State cannot prohibit, restrict or interfere with a transgender’s expression of such personality, which reflects that inherent personality.”

Transgender is not a term limited to persons whose genitals are intermixed but it is a blanket term of people whose gender expression, identity or behavior differs from the norms expected from their birth sex. Various transgender identities fall under this category including **transgender male, transgender female, male-to-female (MTF) and female to male (FTM)**. It also includes **cross-dressers** (those who wear clothes of the other), **gender queer people** (they feel they belonged to either both genders or neither gender) and **transsexuals**.

In India, there are a wide range of transgender related identities which includes the **Hijras, Aravanis, Kothis, Jogtas/ Jogappas, Shiv Sakthis**. In the past, they were treated with great respect.

‘Hijra’ is a Persian word translated as eunuch which is used in common parlance for transgender community in India.

‘Aravani’ is a term used for male-to-female transgender who undergo genital modification through SRS (Sex Reassignment Surgery) or perform Nirwaan which is a traditional mode of castration.

Kothi is used for those who adopt a feminine role in same sex relationships, but do not live in communes as Aravanis.

Jogtas/ Jogappas found in Maharashtra and Karnataka are male to female transgender who devote themselves to the service of a particular god.

“Recognition of Transgenders as a third gender is not a social or medical issue but a human rights issue,” Justice K.S. Radhakrishnan told the Supreme Court while handing down the ruling. Shiv Shakthis found in Andhra Pradesh are males who are considered married to gods particularly Lord Shiva. They usually work as spiritual healers or astrologers.

RIGHTS GRANTED UNDER INDIAN LAWS TO TRANSGENDER

The rule of law is supreme and everyone is equal in the eyes of law in India. Yet, the transgender community is in a constant battle as they have to fight oppression, abuse and discrimination from every part of the society, whether it’s their own family and friends or society at large. The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed.

Identifying transgender as a third gender, the Supreme Court passed this unique judgment in April 2014 stating one’s sexual orientation as the integral part of personality, dignity and freedom. In the **National Legal Services Authority (NLSA) vs. Union of India** case, the apex court in 2014 declared Hijras and Eunuchs as third gender, providing them a legal identity along with seven other directions. However, the Supreme Court of India in its pioneering judgment by the division bench of Justices K.S. Radhakrishnan and A K. Sikri in **National Legal Services Authority v. Union of India & Ors.** [Writ Petition (Civil) No.400 of 2012(NALSA)] **recognized the third gender** along with the male and female. By recognizing diverse gender identities, the Court has busted the dual gender structure of ‘man’ and ‘woman’ which is recognized by the

the **right of equality before law and equal protection of law** is guaranteed under Article 14 and 21 of the Constitution.

The right to chose one’s gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21. Determining the right to personal freedom and self determination, the Court observed that “the gender to which a person belongs is to be determined by the person concerned.” The Court

has given the people of India the right to gender identity. Further, they **cannot be discriminated against on the ground of gender** as it is violative of Articles 14, 15, 16 and 21.

The Court also protects one's gender expression invoked by Article 19 (1) (a) and held that "no restriction can be placed on one's personal appearance or choice of dressing subject to the restrictions contained in article 19(2) of the Constitution".

The Court recognized the right to as to how a person choose to behave in private, personhood and the free thought process of the human being, which are necessary for the fullest development of the personality of the individual. The Court further noted that a person will not realize his dignity if he is forced to mature in a gender to which he does not belong to or he cannot relate to which will again hinder in his development. The Supreme Court has given certain directions for the protection of the rights of the transgender persons by including of a third category in documents like the election card, passport, driving license and ration card, and for admission in educational institutions, hospitals, amongst others.

In the following year, the Kerala government announced a Transgender Policy, along with the Department of Social Justice, covering all transgender categories without limiting itself to woman to man or man to woman sex conversions. The policy aimed to address the discrimination faced by the transgender, spread awareness, and sensitize and counsel parents raising them. The policy suggested various measures like constitution of a State and District Transgender Board, a helpline, setting up educational institutions, counseling centers, and providing employment opportunities, grants and housing schemes. Post the NLSA judgment, various courts passed favorable orders for the transgender community.

Citing the NLSA ruling, K Prathika Yashini, a transgender, was allowed by the Madras High Court to appear for a police recruitment examination in 2015. In 2015, the Delhi High Court allowed an Indian student to return to the US and lead a "normal girl's life", after her parents forcibly restrained her and seized her passport and green card.

In a landmark judgment, the Allahabad High Court on April 15, 2015 ruled that the application forms for the issuance of ration cards should "necessarily" include a transgender category along with other genders. The judgment also stated that transgender can also be included in Section 13 of the National Food Security Act, 2013 as head of the household.

Post Prathika ruling, on February 2016 the Madurai Bench of the Madras High Court directed the Dindigul Municipality to accept the application of a transgender who had applied for the post of a midday meal organizer. Monal was deprived of the opportunity to interview for the role as she had applied as a 'woman' in the gender section.

In 2016 the Indian Railways and Indian Railway Catering and Tourism Corporation (IRCTC) added 'transgender/third gender' to the gender category along with the other categories. Recently the Madras High Court passed another judgment which allowed a transgender — post-sex reassignment surgery — to change her name in school and college records on June 1, 2017. "Merely because the petitioner belongs to the third gender, he or she cannot be made to run from pillar to post on the ground that there are no rules available permitting such changes," observed the court.

Violation of Human Rights

Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government. It includes the right to life, liberty, equality, dignity and freedom of thought and expression.

Transgenders are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before law and equal protection of laws. It has also been noticed that the community also faces discrimination as they are not given the right to contest election, right to vote (Article 326), employment, to get licenses, etc. and in effect, they are treated as outcast and untouchable.

The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work.

Seldom does a skilled individual from this community get into formal employment due to the policy of hiring only from either the male or female gender. Even if they do, they are ridiculed and ostracized and hence forced to leave their jobs.

They are forced into sex work which puts them at the highest risk of contracting HIV as they agree to unprotected sexual intercourse because they fear rejection or they want to affirm their gender through sex. They are viewed as 'vectors' of HIV in the society. Other sexually transmitted infections such as rectal gonorrhea, syphilis, rectal Chlamydia, etc., add to the risk of HIV.

Immoral Traffic Prevention Act of 1956 which was amended in 1986 has become a gender neutral legislation. The domain of the Act now applies to both male and female sex workers along with those whose gender identity was indeterminate. With the amendment both the male and hijra sex workers became criminal subjects as this gives the police the legal basis for arrest and intimidation of the transgender sex workers.

Section 377 of IPC criminalizes same sex relations among consenting adults. This is a colonial era law which makes the Transgender community vulnerable to police harassment, extortion and abuse. In *Jayalakshmi v. State of Tamil Nadu*, Pandian, a transgender, was arrested on charges of theft by the police. He was sexually assaulted in the police station which ultimately led him to immolate himself.

DIRECTIONS TO THE CENTRAL AND STATE GOVERNMENT

The court as issued certain directions to the central and state government which are:

- Hijras, eunuchs should be treated as third gender for the purpose of safeguarding their fundamental rights,
- Recognize the persons' need to identify his own gender,
- Providing reservations in public education and employment as socially and educationally backward class of citizens,
- Making special provisions regarding HIV sero-surveillance for transgender persons and provide appropriate health facilities,
- Tackle their problems such as fear, gender dysphoria, shame, depression, suicidal tendencies, etc.
- Measures should be taken to provide health care to transgender people in hospitals such as making separate wards and also provide them separate public toilets,
- Frame social welfare schemes for their all round development,
- To create public awareness so that the transgenders feels that they are part of the society and are not to be treated as untouchables.

The judgment has marked a break from otherwise paternalistic and charitable approach of the state towards the transgender community by framing their concerns as a matter of rights.

RIGHT OF TRANSGENDER PERSONS BILL, 2014

The Bill was introduced in Rajya Sabha on 12th December, 2014 which is passed on 24th April, 2015 unanimously, with cross-party support. This was a private member's bill introduced by the MP from Tamil Nadu, Tiruchi Siva. 24th April is celebrated as Transgender day following the passage of the Bill in the Rajya Sabha.

The rights guaranteed under the Bill are mostly **substantive rights** such as the right to equality and non-discrimination, life and personal liberty, free speech, to live in a community, integrity, along with protection from torture or cruelty and abuse, violence and exploitation. There is a separate clause for transgender children.

Education, employment and social security and health are also covered under the Bill. The chapter on education makes it mandatory for the Government to provide inclusive education for transgender students and provide adult education to them.

With the employment chapter, there are two separate clauses dealing with formulation of schemes for vocational training and self-employment of transgender persons by the Government. There's a separate clause for non-discrimination against transgender persons in any establishment – public or private.

In the social security and health chapter, the Government is asked to propagate social security and health care facilities which are to be provided in the form of separate HIV clinics and free SRS. They should be given the right to leisure, culture and recreation. Basic rights like access to safe drinking water and sanitation must be provided by the government.

The Bill envisages setting up a number of authorities and forums – **National and State Commissions for Transgender Persons**. The Commissions work will be mostly in the nature of inquiry or recommendations in the inconsistencies in the application of the law or violations of right of transgender persons. The Commissions can issue summons to witnesses, receive evidence, etc. There is penalty by way of imprisonment for upto a year for hate speech against transgender people.

Based on the NLSA judgment, the Rajya Sabha passed the Rights of Transgender Bill, 2014 but not without watering down the bill. The government then passed another Bill, Rights for Transgenders Persons Bill, 2015, modifying on the 2014 bill by removing the provisions relating to Transgender Rights Court as well as the National In September 2014, the Centre expressed doubts whether gays, lesbians and bisexuals too were included under the definition of a transgender. Citing its previous judgment, the apex court ruled out the wide use of the definition under which a transgender was earlier defined. Observing how the transgenders "assumed a distinct and separate class/category" in India, the court detailed the various categories under which they are classified into. Defining each category of transgenders, the court recognized the kind of work they are forced to do and provided with such a restrictive meaning and State Commissions. The 2015 Bill underwent further

changes and another bill was introduced in the Lok Sabha in 2016 — the Transgender Persons (Protection of Rights Bill), which invited criticism from the transgenders and activists.

In 2016, the Madras High Court ruled in favour of a transgender plea directing the Tamil Nadu government to create a separate class for transgenders and provide them with three per cent reservation in employment and education. Recently the parliamentary panel too mooted the idea of extending reservations for the third gender community in places of employment and education. The 2016 Bill is likely to be passed by the end of this year.

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NUCLEAR WEAPONS: A THREAT TO HUMAN RIGHTS

BY DR.MRS NANDITA N GAIKWAD

Published In Air 2018 (March) Online

Abstract International Human Rights Law(IHRL) is one of the main branches of international law. IHRL apply to and control weapons and in particular their testing and use. Nuclear Weapons are weapons mass destruction. The nuclear weapons (NW) have destructive effect on human rights. While IHRL does not outlaw the use of NW , it at least offers a reasonable chance of accountability under international law. It s now generally accepted that IHRL applies to armed conflict situations also and international court of justice(ICJ) made it clear that there is interrelationship between IHRL & International Humanitarian Law(IHL) pertaining to the conduct of hostilities. Any stage of NW is and always in violations of IHRL and IHL. Key Words: IHRL,WMD,NW,IHL,ICJ. Introduction In early stage of human's history, man used weapons for self- protection from wild animals. Therefore the use of weapon is l

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NUCLEAR WEAPONS: A THREAT TO HUMAN RIGHTS

Dr. Mrs. Nandita N. Gaikwad

Introduction

In early stage of human's history, man used weapons for self-protection from wild animals. Therefore the use of weapon is limited. But when man became social being the use of weapons are made for daily requirement too. In course of time society developed and the need for maintenance of armed force required which resulted in increased the importance of weapons. Now weapons are tool for warriors used against rival warriors. With the spread of science and technological advances in the life science more sophisticated weapons are developed. The global spread of information technology including internet increased the availability of knowledge worldwide. Instead of use of science and technology for benefit of humanity, the wider dissemination of technology is used for developing dangerous weapons. In category of such weapons one and foremost are Nuclear Weapons. Nuclear weapons come under the category of weapons of mass destruction.

Nuclear Weapons as Weapons of Mass Destruction (WMD)

In 1946, the United Nations (UN) General Assembly in its first resolution adopted the term "weapons adaptable to mass destruction".¹ In 1948 UN Commission on Conventional Armaments (CCA) generated definition of WMD as are atomic explosive weapons, radio active material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.² This CCA definition has been accepted as a working definition.³ Nuclear weapons are the most dangerous weapons on earth. It has capacity to destroy a whole city, killing millions of people with jeopardizing the environment and lives of future generations. After the use of NW against Nagasaki and Hiroshima in August 1945, the international community had witnessed the catastrophic effects of NW through the Nagasaki and Hiroshima survivor and victims. The effects of NW on IHRL can be studied under following headings:

- Human Security (HS) & human rights (HR) cannot be achieved with the existence of NW.
- Relation between IHL & Nuclear Weapons.
- Role of ICJ in preserving and promoting IHRL & IHL

HUMAN SECURITY, HUMAN RIGHTS AND NW

The birth of nuclear age was started by two most powerful persons in the world i.e. firstly, by then U.S. President Franklin Roosevelt's, creator of NW, and secondly, President Truman's decision to use it against Japan in 1945. Human security got violated with the use of NW. Human security as providing safety for people from hunger, diseases, oppression, & other chronic threats as well as protecting them from sudden and harmful disruption in the pattern of daily life.⁴ In other words it can be said that human security refers to security of individuals & or groups, protecting against all kinds of threat and all disasters, whether human or manmade. Human security, human rights and peace have one common and important feature that all of them cannot be stopped from developing and being developed. Human rights are crystallized values that are common heritage of mankind. Human rights include all those rights without which we cannot live as a human being. They are

¹ UNGA Resolution 1/A/RES/1 (1) 24th June 1946

² Commission on Conventional Armaments (CCA), UN document S/C.3/32/Rev.1, August 1948, as quoted in UN, Office of Public Information, The United Nations and Disarmament, 1945-1965, UN Publication 67.I.8, 28.

³ UN General Assembly Resolution A/RES/51/37, December 10, 1996; UN General Assembly Resolution A/RES/54/44, December 23, 1999; UN General Assembly Resolution A/RES/57/50, December 30, 2002; UN General Assembly Resolution A/RES/60/46, January 6, 2006; UN General Assembly Resolution A/RES/63/36, January 13, 2009.

⁴ Human Development Report, UN Development Programme, 1994.



find out ways and means of eliminating NW at the earlier possible date. Encouraging States to prohibit the development, production, acquisition, testing, stockpiling, transfer, use or threat of use of NW and to provide for their destruction.

- **Relation between IHL & NW**

Humanity is at the end of juncture with the use and threat to use of NW. Rules of IHL regulate conflict in order to minimise human suffering. IHL try to maintain balance between the military necessity at time of war and the needs for humanitarian protection. There are basic principles of IHL which include the prohibition against superfluous injury and unnecessary suffering,¹³ the principle of distinction,¹⁴ the definition of military objectives¹⁵ and the protection of civilian persons and civilian objects against attacks.¹⁶ Military necessity consists of the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.¹⁷ Principle of proportionality limits the use of force by prohibiting disproportionate attacks and means and methods of warfare causing superfluous injury or unnecessary suffering. The principle of distinction defines who is a combatant and a military object that can be lawfully attacked. Any direct attack against a civilian or civilian object is not only a violation of IHL but also a grave breach. Further, any weapon which is incapable of distinguishing between civilians/civilian objects and fighters/military objects is also prohibited under IHL.

The UN General Assembly Resolution 1653 declared that use of NW is contrary to the rules of international law and to the laws of humanity. The ICJ said that the rules of international humanitarian law is "elementary considerations of humanity" and are "fundamental." Moreover, they are "intransgressible," an innovative term that must mean that the rules are not to be violated whatever the circumstance. The court further said that for a use of force in response to an armed attack to be proportionate, a requirement for the lawful exercise of the right of self-defense, it must also comply with international humanitarian law. Although the court declined to address whether the legal doctrine permitting reprisals aimed at dissuading further unlawful acts by an enemy could justify a use of nuclear weapons in response to a prior use, it stated that any reprisal must meet the requirement of proportionality. The court found that it was unable to assess the legality of use in marginal scenarios such as use of low-yield nuclear weapons in remote areas, but stated that the nuclear-weapon states had failed to make the case for legality in such circumstances.¹⁸ These IHL rules not only protect human rights but also environment. A number of rules of IHL have the effect of preventing or limiting damage to the environment.¹⁹ Thus the threat or use of NW would generally be contrary to the principles and rules of humanitarian law. However, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.

- **Role of ICJ in preserving and promoting IHRL & IHL**

The very first judgment of the ICJ on the elementary consideration of humanity and directly related to IHL is the Corfu Channel Case.²⁰ It embodied a principle with respect to the international environment law, founded in

¹³ St. Petersburg Declaration, 1868; Declaration Concerning Asphyxiating Gases, July 29, 1899; Convention on the Prohibition of the Use, Stockpiling, R Production and Transfer of Anti-Personnel Mines and on Their Destruction 1997; Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention (IV), 1907 art. 23(e); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977 art. 35(2) [hereinafter Additional Protocol I];

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¹⁶ Ibid Article 51, 52(1).

¹⁷ Article 13 of the Lieber Code, drawn up in 1863 during the American Civil War.

¹⁸ Legality of the Threat or Use of Nuclear Weapons, *I.C.J. Reports*, July 8, 1996.

¹⁹ Protocol III to the Convention on Certain Conventional Weapons, Article 2(4).

²⁰ *Corfu Channel case*, (U.K v Albania), *ICJ Reports*, 1949.

essential for to develop personality, human qualities, talent and other higher ideas. Human rights are inherent for the life and happiness. Human rights and human security goes hand in hand. Attainment of human security is contingent upon respect for human rights which is at centre of all the UN activities. The UN Secretary General considered human rights as a building block of human security.⁵

Observance of human rights is very essential and vital for every society to live in peace. Right to life is the pivotal point in the protection of condition necessary for the life & all forms of human lives. It is prerequisite for enjoyment of various rights such as right to food, environment, health, standard of living, social, economic, political and cultural right, right to peace and security and so on. The above said rights are expressly protected by various international convention and treaties such as Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, international Convnent on economic social and cultural rights, European Convention on Human Rights, convention against torture and other cruel, inhuman or degrading treatment or punishment, Stockholm Declaration, The Rio Declaration on Environment and Development and so on. From testing to use of NW, sequence of events cause different effects on human body & environment. Some of the effect of NW on human body genetic disorder, fatal cancer, skin burn, flash blindness, physiological effects, anaemia, blood loss and infections and so on.⁶ In Hiroshima and Nagasaki the fatalities attributed to the bombings had, by 1950, risen to 200,000 and 140,000 respectively.⁷

Since 1945, eight countries have conducted 2,054 nuclear test explosions in locations all around the world. 528 early tests were conducted in the atmosphere, spreading radioactive material throughout the atmosphere. Underground tests have also vented radioactive material into the atmosphere and contaminated soil.⁸ For example, Iodine-131 from US tests, especially during the 1950s, accumulated in rainfall runoff and in soil, which was taken up by grasses, then consumed by cows that produced contaminated milk, which was distributed throughout the US.⁹

Protecting human rights can be traced from international customary law, in the Barcelona Traction case the ICJ held that Such obligations (obligations erga omnes) derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law ... others are conferred by international instruments of a universal or quasi-universal character.¹⁰ In *Mc Cann & other v the UK*¹¹ it was held that Article 2 of European Convention on Human Rights, safeguards right to life together with Article 3(prohibits torture and inhuman & degrading treatment or punishment), ensures one of the basic values of the democratic socities making up the Council of Europe.

The ICJ in its 1996 Nuclear Weapons Advisory Opinion, some have contended that a leading human rights treaty, the 1966 International Covenant on Civil and Political Rights, "was directed to the protection of human rights in peacetime, but that questions relating to unlawful loss of life in hostilities were governed by the law applicable in armed conflict".¹² Having regards to consequences of NW it has become extremely important to

⁵ UN, 2012, III. 18.A/66/763.

⁶ Samuel Glasstone and Philip J. Dolan, "The Effects of Nuclear Weapons", United States Department Of Defense and The Energy Research And Development Administration, 1977.

⁷ The Committee for the Compilation of Materials on Damage Caused by the Atomic Bombs in Hiroshima and Nagasaki, Hiroshima and Nagasaki: the Physical, Medical, and Social Effects of the Atomic Bombings, p. 369.

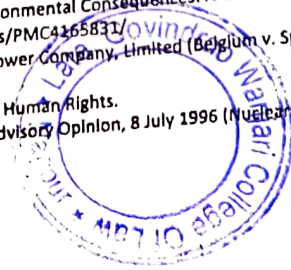
⁸ Kimball, D. (2016, Sep). The Nuclear Test Tally. Arms Control Association. Retrieved from <https://www.armscontrol.org/factsheets/nucleartesttally>

⁹ Pravalie, R. (2014, Oct). Nuclear Weapons Tests and Environmental Consequences: A Global Perspective. *Ambio*, 43(6), 729-744. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265831/>

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¹¹ Application number 18984/191, 1995, European Court of Human Rights.

¹² ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996 (Nuclear Weapons Advisory Opinion), ICJ Reports 1996 para 25.



instruments related to environment such as Stockholm Declaration 1972²¹ or International Law Commission on the International Liability of States for the Injurious of Consequences of Acts Not Prohibited by International Law.²² In its famous *North Sea Continental Shelf Cases*, the ICJ recognizes that the set of rules contained in a multilateral IHL Convention may be considered "as a norm-creating provision which has constituted the foundation of, or has generated a rule which, while only conventional or contractual in its origin, has since passed into the general corpus of international law, and is now accepted as such by the *opinio juris*, so as to have become binding even for countries which have never, and do not, become parties to the Convention."²³ In *Nicaragua case* ICJ the ICJ reaffirmed the fundamental character of Article 3 common to the four Geneva Conventions which was described by the Court as a minimum yardstick of international standards applicable to all armed conflicts, including international armed conflicts.²⁴ In the same case, the ICJ also reaffirmed the fundamental obligations resulting from Article 1 common to the four Geneva Conventions.

In *Nuclear Tests Case*²⁵ the Court for the first time gave binding effect to unilateral declarations made outside of a specific context (e.g., negotiation or litigation) as a result, ICJ failed in deciding whether France's NW test in South Pacific Ocean were consistent with international law taking into consideration French public declaration to abstain from future test. The World Health Organization asked ICJ to give advisory opinion on whether in view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?²⁶ To this question the ICJ answered in negative and refused to give advisory opinion. Again, in the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), the ICJ affirmed that it could not "conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense".²⁷ The ICJ recognized the importance of Art VI in Non Proliferation Treaty and interpreted it as containing an "obligation to achieve a precise result nuclear disarmament in all its aspects." In the *Marshall Islands cases*²⁸, the ICJ had an opportunity to effectuate its prior *dictum* and revisit its position on nuclear weapons in light of developments in international law but refused to do so. Although the ICJ's inability to hold definitively whether the threat or use of nuclear weapons would be lawful or unlawful its authoritative views on issues of international law including IHRL & IHL is significant.

Conclusion

For decades, NW poses continued dangers to international peace and security. Even a single use NW whether intentional or accidental, causes catastrophic short- and longer-term consequences for human beings, the environment.

²¹ Principle 21 of Declaration provides that, "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Available at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>, last visited 24/1/13.

²² Alan E. Boyle, "State Responsibility and International Liability of States for the Injurious of Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?", 39, *International and Complementary Law Quarterly*, 1 (1990).

²³ *North Sea Continental Shelf Cases*, [1969] I.C.J. 13

²⁴ *Case Concerning Military And Paramilitary Activities In And Against Nicaragua*, (Nicaragua v. United States of America), ICJ June 1986.

²⁵ *Nuclear Tests Cases*, ICJ Reports 1974

²⁶ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, 1993, I.C.J. 467 (Sept. 13).

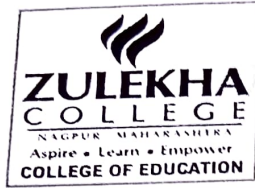
²⁷ *Legality of the Threat or Use of Nuclear Weapons*, ICJ Reports 1996, Advisory Opinion

²⁸ *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (Marshall Islands v. India), ICJ 2016.

Such a detonation will have global implications. There is no comprehensive or universal ban on nuclear weapons in international law. There is urgent need of nuclear disarmament to strengthened international peace and security, preserving IHRL& IHL. As there are no immediate and easy solutions to NW problem encouraging the states to engage seriously in parallel negotiations to facilitate nuclear disarmament is needed. the proliferation of NW will need to be curtailed if progress in nuclear disarmament is to be expected.

Blaise

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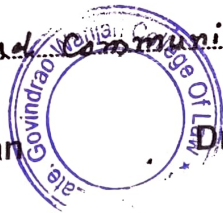
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This is to certify that Shree / Smt. / Ku. Dr. Nandita N. Gaikwad (Asst Prof)
of Govindrao Wanjari College of Law has participated in the two days interdisciplinary
Nagpur
National Conference on "Role Of Technology In Innovative Teaching" dated 15th & 16th March 2019
at Zulekha College Of Education, Nagpur (Maharashtra). He / She presented / participated paper entitled

Role of Information and Communication Technology in Legal Education

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(H.O.D.)



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(Co-Ordinator)

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NUCLEAR WEAPONS: A THREAT TO HUMAN RIGHTS

BY DR.MRS NANDITA N GAIKWAD

Published In Air 2018 (March) Online

Abstract International Human Rights Law (IHRL) is one of the main branches of international law. IHRL apply to and control weapons and in particular their testing and use. Nuclear Weapons are weapons mass destruction. The nuclear weapons (NW) have destructive effect on human rights. While IHRL does not outlaw the use of NW, it at least offers a reasonable chance of accountability under international law. It is now generally accepted that IHRL applies to armed conflict situations also and international court of justice (ICJ) made it clear that there is interrelationship between IHRL & International Humanitarian Law (IHL) pertaining to the conduct of hostilities. Any stage of NW is and always in violations of IHRL and IHL. Key Words: IHRL, WMD, NW, IHL, ICJ. Introduction In early stage of human's history, man used weapons for self-protection from wild animals. Therefore the use of weapon is l

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Introduction

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Nuclear Weapons as Weapons of Mass Destruction (WMD)

In 1946, the United Nations (UN) General Assembly in its first resolution adopted the term "weapons adaptable to mass destruction".¹ In 1948 UN Commission on Conventional Armaments (CCA) generated definition of WMD as are atomic explosive weapons, radio active material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.² This CCA definition has been accepted as a working definition.³ Nuclear weapons are the most dangerous weapons on earth. It has capacity to destroy a whole city, killing millions of people with jeopardizing the environment and lives of future generations. After the use of NW against Nagasaki and Hiroshima in August 1945, the international community had witnessed the catastrophic effects of NW through the Nagasaki and Hiroshima survivor and victims. The effects of NW on IHL can be studied under following headings:

- Human Security (HS) & human rights(HR) cannot be achieved with the existence of NW.
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HUMAN SECURITY, HUMAN RIGHTS AND NW

The birth of nuclear age was started by two most powerful persons in the world i.e. firstly, by then U.S. President Franklin Rosseelt's, creater of NW, and secondly, President Truman's decision to use it against Japan in 1945. Human security get violated with the use of NW. Human security as providing safety for people from hunger, diseases, oppression, & other chronic threats as well as protecting them from sudden and harmful disruption in the pattern of daily life.⁴ In other words it can be said that human security refers to security of individuals & or groups, protecting against all kinds of threat and all disasters, whether human or manmade. Human security, human rights and peace have one common and important feature that all of them cannot be stopped from developing and being developed. Human rights are crystallized values that are common heritage of mankind. Human rights include all those rights without which we cannot live as a human being. They are

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⁴ Human Development Report, UN Developmnet Programme, 1994



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- **Relation between IHL & NW**

Humanity is at the end of juncture with the use and threat to use of NW. Rules of IHL regulate conflict in order to minimise human suffering. IHL try to maintain balance between the military necessity at time of war and the needs for humanitarian protection. There are basic principles of IHL which include the prohibition against superfluous injury and unnecessary suffering,¹³ the principle of distinction,¹⁴ the definition of military objectives¹⁵ and the protection of civilian persons and civilian objects against attacks.¹⁶ Military necessity consists of the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.¹⁷ Principle of proportionality limits the use of force by prohibiting disproportionate attacks and means and methods of warfare causing superfluous injury or unnecessary suffering. The principle of distinction defines who is a combatant and a military object that can be lawfully attacked. Any direct attack against a civilian or civilian object is not only a violation of IHL but also a grave breach. Further, any weapon which is incapable of distinguishing between civilians/civilian objects and fighters/military objects is also prohibited under IHL.

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The very first judgment of the ICJ on the elementary consideration of humanity and directly related to IHL is the *Corfu Channel Case*.²⁰ It embodied a principle with respect to the international environment law, founds in

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⁸ Kimball, D. (2016, Sep). The Nuclear Test Tally. Arms Control Association. Retrieved from <https://www.armscontrol.org/factsheets/nucleartesttally>

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¹² ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996 (Nuclear Weapons Advisory Opinion), ICJ Reports 1996 para 25.



instruments related to environment such as Stockholm Declaration 1972²¹ or International Law Commission on the International Liability of States for the Injurious of Consequences of Acts Not Prohibited by International Law.²² In its famous North Sea Continental Shelf Cases, the ICJ recognizes that the set of rules contained in a multilateral IHL Convention may be considered "as a norm-creating provision which has constituted the foundation of, or has generated a rule which, while only conventional or contractual in its origin, has since passed into the general corpus of international law, and is now accepted as such by the *opinio juris*, so as to have become binding even for countries which have never, and do not, become parties to the Convention."²³ In Nicaragua case ICJ the ICJ reaffirmed the fundamental character of Article 3 common to the four Geneva Conventions which was described by the Court as a minimum yardstick of international standards applicable to all armed conflicts, including international armed conflicts.²⁴ In the same case, the ICJ also reaffirmed the fundamental obligations resulting from Article 1 common to the four Geneva Conventions.

In Nuclear Tests Case²⁵ the Court for the first time gave binding effect to unilateral declarations made outside of a specific context (e.g., negotiation or litigation) as a result, ICJ failed in deciding whether France's NW test in South Pacific Ocean were consistent with international law taking into consideration French public declaration to abstain from future test. The World Health Organization asked ICJ to give advisory opinion on whether in view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?²⁶ To this question the ICJ answered in negative and refused to give advisory opinion. Again, in the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (1996), the ICJ affirmed that it could not "conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense".²⁷ The ICJ recognized the importance of Art VI in Non Proliferation Treaty and interpreted it as containing an "obligation to achieve a precise result nuclear disarmament in all its aspects." In the Marshall Islands cases²⁸, the ICJ had an opportunity to effectuate its prior *dictum* and revisit its position on nuclear weapons in light of developments in international law but refused to do so. Although the ICJ's inability to hold definitively whether the threat or use of nuclear weapons would be lawful or unlawful its authoritative views on issues of international law including IHRL & IHL is significant.

Conclusion

For decades, NW poses continued dangers to international peace and security. Even a single use NW whether intentional or accidental, causes catastrophic short- and longer-term consequences for human beings, the environment.

²¹ Principle 21 of Declaration provides that, "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." Available at <http://www.unep.org/Documents/Multilingual/Default.asp?documentid=97&articleid=1503>, last visited 24/1/13.

²² Alan E. Boyle, "State Responsibility and International Liability of States for the Injurious of Consequences of Acts Not Prohibited by International Law: A Necessary Distinction?", 39, International and Complementary Law Quarterly, 1 (1990).

²³ North Sea Continental Shelf Cases, [1969] I.C.J. 13

²⁴ Case Concerning Military And Paramilitary Activities In And Against Nicaragua, (Nicaragua v. United States of America), ICJ June 1986.

²⁵ Nuclear Tests Cases, ICJ Reports 1974

²⁶ Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1993, I.C.J. 467 (Sept. 13).

²⁷ Legality of the Threat or Use of Nuclear Weapons, ICJ Reports 1996, Advisory Opinion

²⁸ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), ICJ 2016.



Such a detonation will have global implications. There is no comprehensive or universal ban on nuclear weapons in international law. There is urgent need of nuclear disarmament to strengthened international peace and security, preserving IHRL& IHL. As there are no immediate and easy solutions to NW problem encouraging the states to engage seriously in parallel negotiations to facilitate nuclear disarmament is needed. the proliferation of NW will need to be curtailed if progress in nuclear disarmament is to be expected.



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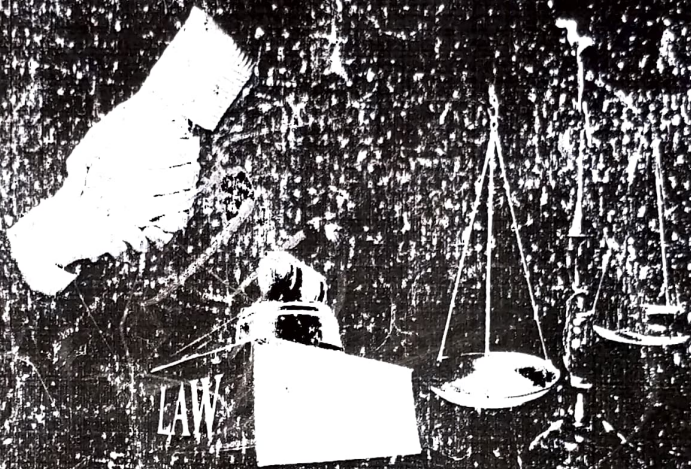
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Global Climate Change: A Warning Call for Nations

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It is disgraceful to read and notice the meltdown of glaciers in Himalayan Mountain regions which are the world famous mountain and this will soon impact the climate in the entire Asian region. It is difficult to postulate the consequent tragedies in the near future. This phenomenon can possibly be related to the deteriorating global climate thereby damaging our environment and bringing changes in the atmosphere.

Environment on the face of the earth is affected by the growth of human species. Human beings acquire excellent abilities in terms of physical sustenance, intellectual, moral, social, and spiritual growth which now has contributed in damaging the environment of mother planet. Civilization and growth of mankind from ancient times to modern times have immensely changed climate and atmosphere of the earth through the advancement of science and technologies. Modernization and industries, agriculture, housing colonies and infrastructure facilities has laid to the environment destruction ultimately resulting in jeopardizing the ecosystem. The present environment has reached a critical state in which man has entangled himself with several hurdles to his own life. Not only the human beings but the other species are also endangered due to the growth of civilization and activities of human beings causing increase in temperature and resulting in climate change bringing global warming.

Global Warming: Meaning

Global warming is an average increase in the temperature of the atmosphere near the Earth's surface and the troposphere, which can contribute to changes in global climate patterns. Global warming can occur from a variety of causes, both natural and human induced. In common usage, "Global Warming" often refers to the warming that can occur as a result of increased emission of greenhouse gases from human activities

The Earth is the only planet in our solar system that supports life. The complex process of evolution occurred on earth only because of some unique environmental conditions that were present: water an oxygen-rich atmosphere, and a suitable surface temperature. Only the earth has an atmosphere of the proper depth and chemical composition. About 30% of incoming energy from the sun is reflected back to space while the rest reaches earth, warming that air, oceans, and land, and maintaining an average surface temperature of about 15 Degree C. The chemical composition of the atmosphere is also responsible for nurturing life on our planet. Most of it nitrogen (78%); about 21% is oxygen, which all animals need to survive and only a small percentage (0.036%) is made up of carbon dioxide which plants require for photosynthesis.

The atmosphere carries out the critical function of maintaining life-sustaining conditions on



Earth, in the following way" each day, energy from the sun (largely in the visible part of the spectrum, but also some in the ultraviolet, and infrared portions) is absorbed by the land, seas, mountains, etc. If all this energy were to be absorbed completely, the earth would gradually become hotter and hotter. But actually, the earth both absorbed and, simultaneously releases it in the form of infrared waves (which cannot be seen by our a heated car engine). All this rising heat is not lost to space, but is partly absorbed by some gases present in very small (or trace) quantities in the atmosphere, called GHGs (greenhouse gases). Greenhouse gases (for example, carbon dioxide, methane, nitrous oxide, water vapour, ozone), re-emit some of this heat to the earth's surface. In simple words, these gases in the atmosphere form a blanket of gases that does not allow the solar radiation to escape back into space. This phenomenon, the greenhouse effect is essential to maintain the earth's temperature at the habitable level. Unfortunately, the human activity has been making the blanket of greenhouse gases (GHG) "thicker" or enhancing the greenhouse effect. If they did not perform this useful function, most of the heat energy would escape, leaving the earth cold (about-18 c) and unfit to support life.

However, ever since the Industrial Revolution began about 150 years ago, man-made activities have added significant quantities of GHGs to the atmosphere. An increase in the levels of GHGs could lead to greater warming, which in turn, have an impact on the world's climate to the phenomenon known as climate change.

Consequences of Climate Change

As a result of the continuous increase in levels of greenhouse gases effect, earth has been suffering from fever there is a need of an action for its cure. Climate change has become one of the prime issue threatening the sustainability of world's environment. It has an adverse effect on weather,

agriculture, sea-levels, animals and plants, human and health etc. Besides environment climate change also has impact on Livelihood, health and ultimately the economy of the global. The other effect of climate change are as follows:

- A rise in global temperature causes sea levels to rise as polar ice caps and glaciers to melt along thermal expansion of water.
- The word will become more humid as a result more water evaporating from the oceans.
- Erratic monsoon with serious effect on rain-fed agriculture, peninsular rivers, water and power supply
- Forest may disappear.
- There will be a drastic change in weather patterns bringing more droughts and floods in some areas.
- More terrible storms.
- Many more hot days.
- Biological diversity may reduce, some species could become extinct.
- Animals and plants will find it difficult to adjust to the effects of global warming.
- More diseases like malaria, yellow fever and dengue.
- Rising incidences may occur of allergies and respiratory disease as air will grow warmer.
- Impact on ecosystem would change the crop production potential.
- Billions of people will be affected by problems of drinking water supply.

It is pertinent to note here that, the most affected due to climate change are the poorest on the planet. Poor developing countries, particularly small island nation-states will be the worst hit of climate change. Life style of future generations will be compromised. Plants and animals around the world will be drastically affected due to changing weather and some may become extinct.

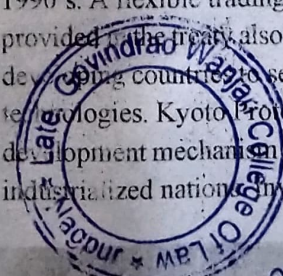
Climate Change: International Regulatory Framework

International law has responded to the problem of global warming and climate change in quite a positive manner. The bedrock of this initiative can be traced in Principal 21 of the Stockholm Declaration which captures tension between sovereignty and environment protection under international law. States have in accordance with the Charter of United Nations and the Principles of the International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibilities to ensure that activities within their Jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of National Jurisdiction.¹ The concept of state responsibility by UN International Law commission in its draft articles on State Responsibility also deserves a special mention as imposes the responsibility on state for wrongful act of negligence.² Subsequently, the ILC addressed environmental harm that is unintentional or occurs in spite of due care and diligence by establishing a parallel basis for remedies when there is no fault. The ILC called it state liability and gave it the title of draft articles on international liability for injurious consequences arising out of Acts not prohibited by international law. Thus, there are two alternative jurisprudential bases for rectifying harms to the environment law.

It is important to note here that, this Principal 21 of Stockholm Declaration and ILC's liability approach could not achieve its goal of protecting human environment as a whole. For achieving this goal, international co-operation is required. This co-operation towards protection of human environment was reflected in the UN's effort to establish a multilateral treaty to address the challenge of climate change. After years of

studies and negotiations in 1992, the UN adopted the framework Convention on Climate Change.³ This convention was the first step in addressing one of the most urgent environmental problems facing human kind. The convention has set an ultimate objective of stabilizing the atmospheric concentration of greenhouse gases at a level that would prevent the dangerous human interference with the climate system. Under the convention, the development and transfer of environmentally sound technologies is an important part of the global response to climate change, both to slow the process and enable people and societies to adapt to change that may occur. Since then, the parties have taken decisions to promote the development and transfer of technologies at each session of the conference of the parties.(CoP).

The Convention established the goal of reducing greenhouse gases emissions to 190 levels by the year 2000, but provided no concrete target or timeframe achieving that goal. Five years later in 1997, at the third conference of the Parties to the climate convention (CoP) held in Kyoto, Japan, the parties signed the Kyoto Protocol with was created as a framework for future action. The Protocol advances the implementation process envisaged in the climate conventions it included commitments by specifies developed countries to reduce greenhouse gases. It also included commitments by the developing countries and introduced flexibility mechanism for implementations. The Kyoto protocol to combat global warming became law on February 16, 2015, binding the industrialized nation to reduce by 2012 their greenhouse gases emissions to 5.2% below the 1990's. A flexible trading mechanism for emissions provided in the treaty also opens up opportunities for developing countries to secure investment in cleaner technologies. Kyoto Protocol has provision of clean development mechanism as a trading scheme, where industrialized nation's investors would capitalize on



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cheaper emission reduction technology development in the developing countries. It must be noted here that, the clean development mechanism cannot be a long term solution. However, the Kyoto Protocol has not solved the question of allocating emission rights, i.e. Nations to use more than allotted emissions space. Asking countries to reduce emissions would not work for developing countries. In 2011, parties adopted the "Durban Platform for Enhanced Action". As part of the Durban Platform, parties have agreed to "develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties". At Durban¹ and Doha, parties noted "with grave concern" that current efforts to hold global warming to below 2 or 1.5 °C relative to the pre-industrial level appear inadequate.

In 2015, all 196 parties to the convention came together for the UN Climate Change Conference in Paris 30 November - 12 December and adopted by consensus the Paris Agreement, aimed at limiting global warming to less than two degrees Celsius, and pursue efforts to limit the rise to 1.5 degrees Celsius. The Paris Agreement is to be signed in 2016 and will enter into force upon ratification by 55 countries representing over 55% of greenhouse gas emissions.

The Paris UN Climate Conference represents an historic opportunity to put the world on course to meet the climate change challenge. The world needs a new model of growth that is safe, durable and beneficial to all. COP21 seeks to deliver a clear pathway with short and long term milestones, and a system to help us measure and increase progress over time until we get the job done. The Paris Agreement is not only possible, it is necessary and urgent. We are counting on everyone's contribution.

Conclusion

Climate change poses a formidable challenge to all countries but its major impact is on developing countries especially the least developed countries as they lack the resources and capacity to fulfil the obligations and to undertake adaptation activities. The assistance of developed countries becomes imperative. International Environmental law as well as International Human Rights Law can play a robust role as appropriate mechanism in supporting the developing countries to face the adverse impacts of climate change. The matter is urgent and calls for strong political will both at national and international level to make it happen.

Not to forget, illiteracy, poverty and uncontrolled increase in population are some of the unending challenges before the 21st century. At the same time ability to reduce the chloro-fluro emissions in the atmosphere is also the greatest task for planners and scientists, to which due concern change is not just an economic or ecological issue. Above all it is a moral and ethical issue. Climate change has become global co-operative enterprise in which all big and small. Rich and poor, powerful and powerless must co-operate to achieve a global objective for global good. Since global warming is mainly caused of the energy consumption of the rich nations they owe the prime responsibility of preventing the climate change, the world has to be prevented from catching high fever.

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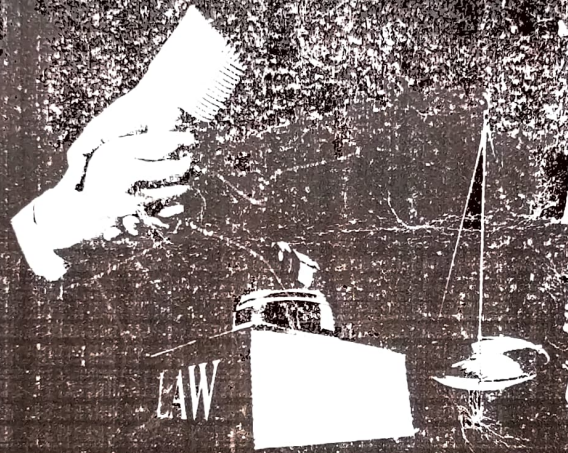
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Fair Pricing and Fair Dealing in Copyright Laws in India

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Fair dealing is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work. Fair dealing is found in many of the common law jurisdictions of the Commonwealth of Nations. Fair dealing is an enumerated set of possible defences against an action for infringement of an exclusive right of copyright. Unlike the related United States doctrine of fair use, fair dealing cannot apply to any act which does not fall within one of these categories, although common law courts in some jurisdictions are less stringent than others in this regard. In practice, however, such courts might rule that actions with a commercial character, which might be naïvely assumed to fall into one of these categories, were in fact infringements of copyright, as fair dealing is not as flexible a concept as the American concept of fair use.

India a fair dealing with any work (except computer programmes) is allowed for the purposes of -

1. private or personal use, including research criticism or review,
2. Reporting of current events and current affairs, including the reporting of a lecture delivered in public.

The term **fair dealing** has not been defined anywhere in the Copyright Act 1957. However, the concept of '**fair dealing**' has been discussed in different judgments, including the decision of the Supreme Court of India in Academy of General Education

B. Malini Mallya (2009) and the decision of the High Court of Kerala in Civic Chandran v. Ammini Amma

Civic Chandran and Ors. v. C. Ammini Amma and Ors, is a 1996 Kerala High Court judgement, that deals with the concept of fair dealing in India. In this case, a drama called "Ningal Enne Communistakki" was written by Late Thoppil Bhasi in Malayalam. It dealt with some of the burning social and political problems of those days, especially espoused by the then Communist Party of India to come to Power in Kerala during the assembly elections in 1957. The plaintiff brought a claim in this suit because the defendant, according to the plaintiff, had fabricated another drama called "Ningal Aare Communistakki", which was a counter drama to the drama written by Thoppil Bhasi and had published the same in the 1995 annual issue of India Today". It was alleged that the defendant had copied substantial portions of the original drama in his work and such reproduction was done without any bona fide intention and to take undue advantage of the creative talent and labour of Thoppil Bhasi. The defendant on the other hand, claimed that the counter drama is a new literary innovation 'where a play is counter-posed by using the very same theme and characters. The counter drama was written for the purpose to provide critical analysis of the original drama and to show how the ultimate purpose intended by Thoppil Bhasi has failed. Hence, copying of certain portions can only be treated as 'fair

dealing'. The lower court ruled in the favour of the plaintiff and said, "Copying down or extracting substantial portions of the drama, and using the same characters and dialogues of the drama with some comments here and there through two-three characters in the counter-drama cannot be treated as fair dealing for the purpose of criticism" and hence, no relief could be provided. Thus, he was not provided any protection under section 52 of the Copyright Act. An appeal was filed against this judgement in the Kerala High Court, where the Court looked at the case while referring to sections- 14, 51 and 52 of Copyright Act. Herein, the defendant claimed that since there was high probability of the defence of fair dealing being applicable in the case, irreparable injury that could have been caused, especially, looking at the current political scenario in Kerala, which would also show a lack of balance of convenience. If the counter-drama is not staged, there essence would be lost. Plaintiffs' argued that the lower court's decision should not be reversed unless the same is found to be completely illegal or perverse.

The Indian Copyright Act does not provide for a definition for 'fair dealing' but section 52(1) (a) and (b) specifically refers to fair dealing of the work and not the reproduction of the work. Hence, the court needs to take into account the following 3 aspects: a) The quantum and value of the matter taken in relation to the comments or criticism; b) The purpose for which is was taken; and c) The likelihood of competition between the two works.

Section 52(1)(i) of the Copyright Act: "in the course of instruction"

Section 52 of the Copyright Act, 1957 enumerates acts which do not amount to infringement.

"As for fair dealing, fair dealing is a stricter approach to exceptions to infringement than fair use. Under fair dealing, limited situations are

envisaged whose metes and bounds are almost clear. Therefore, use of fair use principles to broaden the scope of such limited situations may not be permissible.

Section 52 of our Copyright Act uses fair dealing for a few instances and fair use for a few other. When it comes to literary works:

A. Section 52 (a) permits "fair dealing" for private use and criticism,

B. 52(b) permits "fair dealing" for the purposes of reporting,

C. 52(c) permits reproduction in a judicial proceeding,

D. 52(d) permits reproduction or publication for Legislative purposes,

E. 52(e) permits reproduction for the purposes of a certified copy,

F. 52(f) permits only reading and recitation of a reasonable extract,

G. 52(g) permits publication in a collection of essentially non-copyright matter for use in "educational institutions"

H. 52(h) permits reproduction during the course of instruction or in examinations

I. 52(i) permits performance in the activities of an educational institution

J. 52(j) permits making sound recording of the work with the license or consent of the owner of the work

K. 52(l) permits performance in an amateur club to a non-paying audience, or in a religious institution

L. 52(o) permits making of three copies for a library if the book is not sold in India

There are a few other provisions besides the above, but none of the provisions seems broad enough to employ "fair use" principles propounded in the US. This is because "fair dealing" provisions in most jurisdictions appear

to be restrictively worded and are treated as such too."

In this research paper, researcher is specifically interested in understanding the import of Section 52(1)(i) which deals with "reproduction of any work by a teacher or a pupil in the course of instruction".

In understanding the scope of the non-infringing use envisaged in the provision, regard must be had to the other two exceptions spelt out as part of Section 52(1)(i). The provision reads as follows:

The following acts shall not constitute an infringement of copyright, namely:

- (i) *the reproduction of any work- by a teacher or a pupil in the course of instruction; or*
- (ii) *as part of the questions to be answered in an examination; or*
- (iii) *in answers to such questions;*

IS FAIR DEALING REALLY FAIR IN INDIA?

Every student in India, has become familiar with the issue of fair dealing of copyright, all thanks to the Rameshwari photocopy case. The case has emerged as one of the most-egregious abuses of copyright law. Leading publishers, Oxford University Press (OUP), Cambridge University Press (CUP) and Taylo & Francis (T&F) filed a lawsuit against Delhi University and Rameshwari Photocopy Service, the licensed photocopier for creating and distributing course packs to the students of the University. They took a clear stand that through this lawsuit that they were not trying to fall under the "fair dealing" exceptions provided for under Section 52 of the Indian Copyright Act. They were challenging the illegal duplication of copyrighted materials for commercial purposes by

the photocopying shop. But what they conveniently forgot was that their material was protected by copyright and was very essential for academic purposes. It was photocopied since the students could not buy the course books at such unaffordable prices. It is important to understand the context in which the Rameshwari Press was working. There are two aspects to it: a) One simple way to look at it is that it was involved in a commercial activity & hence the application of Section 52 in this case cannot be attracted. b) However, the other, more realistic aspect is the context in which it was operating. There was a tender taken out by the Delhi University to select a photocopier for this purpose. Hence, Rameshwari Press was acting as an agent of the University & in light of the same, its involvement in producing the course packs was not towards a commercial purpose but rather driven towards meeting the university's purpose. In this case, Rameshwari photocopy had a license from the University for being the exclusive "agent" for creating and distributing course packs. It is very pertinent to note that use of the copyrighted work for the purposes of an educational institution is an exception to copyright infringement. 2 The end purpose of these course packs is the education of the students. This purpose falls squarely within the ambit of "permissible purposes" as enshrined in Section 52 of the Indian Copyright Act. On this very point, the Canadian Supreme Court, which has a similar copyright system like 2 Section 52 (1)(i) of the Indian Copyright Act, 1957 Vol. 1 Issue 1 RGNUL Student Law Review 44 that of India, have ruled that distribution of extracts for educational purpose comes under the ambit of "permissible purpose" in the case of *Alberia (Education) v. Canadian Copyright Licensing Agency*. 3 One of the more clichéd arguments then contended by publishers is that, "Authors are not philanthropists & publishing houses not charities. While no legal jurisdiction has

overlooked the commercial aspect of this whole exercise, one needs to remember that the underlying philosophy of the TRIPS Agreement, Indian Copyright Act & similar enactments is that reproducing parts of a copyrightable work in certain situations without making payments to the copyright holder is permissible on grounds of equity or as laid down by legislature. This is the primary purpose of the concept of Fair Use or Fair Dealing. Here, raises the question of the instances wherein these course packs are sold by the Press to students not belonging to Delhi University. In such a scenario, one can take a view and propose that this does not fall under the ambit of fair dealing as the Publishers contend. The other view based on equity would be that even a non-DU student cannot possibly afford such steep prices of all of the individual books. Moreover, another view that has been advanced recently is that the objective that a whole book seeks to achieve & the objective which a course pack, made after selecting different portions of different books seeks to achieve are completely different. In such a case, the existence of cheap course packs is not affecting the sales of books at all since buyers interested in the objectives that can be fulfilled by the book will purchase books only. It is this subjectivity that is sought to be highlighted by means of this paper. The fact that real life circumstances relating to such a subjective aspect tend to get complicated when subjected to a rigid set of exceptions mentioned in a statute.

Another case that can be pointed out here is that of *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private Limited & Super Cassettes Ltd.*⁴ In this case, the TV Channel broadcasted an exclusive segment focused on singers & (and) when these singers were singing their songs live on TV, certain clips of the movies to which those songs belonged were shown. Infringement of 3 *Alberta (Education) v. Canadian Copyright Licensing Agency*, [2012] 2 SCR 345 4 *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private*

Limited & Super Cassettes Ltd, FAO (OS) 584/2011 45 Is Fair Dealing Really Fair in India? copyright was claimed by the publishers at Oxford, Cambridge, etc. and the Delhi High Court released a judgment restraining the Channel from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the producers. This is where an interesting point stems up. Would it not be unethical, even cruel, to restrain a singer from singing his song in front of an audience merely because the legal rights subsisting over it are possessed by someone else? The deficiency of Section 52 of the Indian Copyright Act in this regard thus becomes a handicap which ultimately acts to the detriment of tenets of justice & equity.

Conclusion:

While UK developed a mature licensing system, Canada & USA saw the courts intervene in order to protect the interests of the public at large & considering the overall socioeconomic status of India, it's high time for India to follow suit. To this end, while the Court can come up with guidelines in the present *Rameshwari* case but the best course of action would be to amend the law & taking cue from the other major democracy of the world by adopting a more "fair-use" biased model in India. Probably the only difference was that fair use applied to any situation and not merely to an enumerated purpose.

Since the Indian judiciary has never dealt with the "limit of permissible copying" for educational purposes in India, we would have to refer to decisions from other jurisdictions. In 2012 one of the US courts decided in *Cambridge University Press v. Becker*, that the University would not require a license for reproduction of less than 10% of the total page count of the book. Following this example, we should also permit

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copying of at least 15-20% of the total page count of the book to accommodate the needs of the Indian educational system. Permissible purpose and a permissible limit would definitely bring in some life to our fair dealing provisions. Fair dealing also needs to be defined somewhere to bring out more clarity in Section 52 of the Copyright Act. It can be concluded that, such a rigid approach to fair dealing should not be followed in India keeping in mind the technological and societal changes. Intellectual Property Laws have not fully taken their shape yet and, therefore, confining them to such strict interpretation of statutes would leave no room for fairly judging the cases and for judicial creativity. Instead of adopting the "fair use doctrine in its entirety, an alternative such as" approach or the expansion of fair dealing" should be adopted. Since we are already referring to parameters laid down in different judgements to judge fair dealing, why not incorporate them into the statute and simultaneously introduce a "such as" clause in the provision. Fair use is based on utilitarian principles and fair dealing is based on the natural law theory where author takes centre stage. It is now up to the legislators, in the present day circumstances, to approach & analyse this issue so as to best serve our interests.

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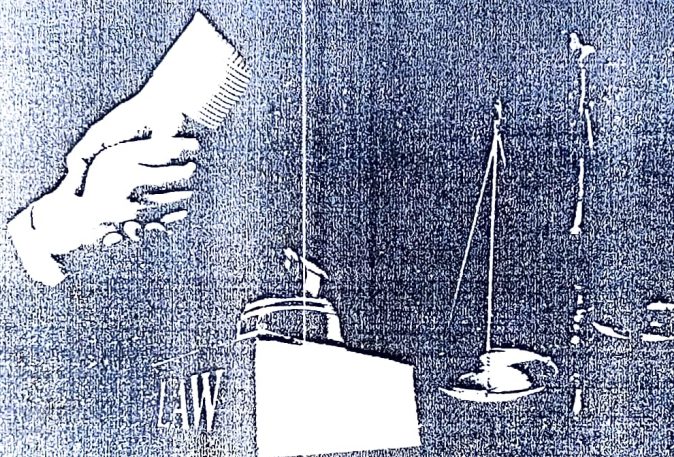
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Fair Pricing and Fair Dealing in Copyright Laws in India

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Fair dealing is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work. Fair dealing is found in many of the common law jurisdictions of the Commonwealth of Nations. Fair dealing is an enumerated set of possible defences against an action for infringement of an exclusive right of copyright. Unlike the related United States doctrine of fair use, fair dealing cannot apply to any act which does not fall within one of these categories, although common law courts in some jurisdictions are less stringent than others in this regard. In practice, however, such courts might rule that actions with a commercial character, which might be naïvely assumed to fall into one of these categories, were in fact infringements of copyright, as fair dealing is not as flexible a concept as the American concept of fair use.

India a fair dealing with any work (except computer programmes) is allowed for the purposes of -

1. private or personal use, including research criticism or review,
2. Reporting of current events and current affairs, including the reporting of a lecture delivered in public.

The term **fair dealing** has not been defined anywhere in the Copyright Act 1957. However, the concept of 'fair dealing' has been discussed in different judgments, including the decision of the Supreme Court of India in *Academy of General Education v.*

B. Malini Mallya (2009) and the decision of the High Court of Kerala in *Civic Chandran v. Ammini Amm*

Civic Chandran and Ors. v. C. Ammir Amma and Ors., is a 1996 Kerala High Court judgement, that deals with the concept of fair dealing in India. In this case, a drama called "Ningal Enn Communistakki" was written by Late Thoppil Bhasi in Malayalam. It dealt with some of the burning social and political problems of those days, especially espoused by the then Communist Party of India to come to Power in Kerala during the assembly elections in 1957. The plaintiff brought a claim in this suit because the defendant, according to the plaintiff, had fabricated another drama called "Ninga Aare Communistakki", which was a counter drama to the drama written by Thoppil Bhasi and had published the same in the 1995 annual issue of 'Indi Today'. It was alleged that the defendant had copied substantial portions of the original drama in his work and such reproduction was done without any bonafide intention and to take undue advantage of the creative talent and labour of Thoppil Bhasi. The defendant on the other hand, claimed that the counter drama is a new literary innovation 'where a play is counter-posed by using the very same theme and characters. The counter drama was written for the purpose to provide critical analysis of the original drama and to show how the ultimate purpose intended by Thoppil Bhasi has failed. Hence, copying of certain portions can only be treated as 'fair

dealing. The lower court ruled in the favour of the plaintiff and said, "Copying down or extracting substantial portions of the drama, and using the same characters and dialogues of the drama with some comments here and there through two-three characters in the counter-drama cannot be treated as fair dealing for the purpose of criticism" and hence, no relief could be provided. Thus, he was not provided any protection under section 52 of the Copyright Act. An appeal was filed against this judgement in the Kerala High Court, where the Court looked at the case while referring to sections- 14, 51 and 52 of Copyright Act. Herein, the defendant claimed that since there was high probability of the defence of fair dealing being applicable in the case, irreparable injury that could have been caused, especially, looking at the current political scenario in Kerala, which would also show a lack of balance of convenience. If the counter-drama is not staged, there essence would be lost. Plaintiffs' argued that the lower court's decision should not be reversed unless the same is found to be completely illegal or perverse.

The Indian Copyright Act does not provide for a definition for 'fair dealing' but section 52(1) (a) and (b) specifically refers to fair dealing of the work and not the reproduction of the work. Hence, the court needs to take into account the following 3 aspects: a) The quantum and value of the matter taken in relation to the comments or criticism; b) The purpose for which it was taken; and c) The likelihood of competition between the two works.

Section 52(1)(i) of the Copyright Act: "in the course of instruction"

Section 52 of the Copyright Act, 1957 enumerates acts which do not amount to infringement.

"As for fair dealing, fair dealing is a stricter approach to exceptions to infringement than fair use. Under fair dealing, limited situations are

envisaged whose metes and bounds are almost clear. Therefore, use of fair use principles to broaden the scope of such limited situations may not be permissible.

Section 52 of our Copyright Act uses fair dealing for a few instances and fair use for a few other. When it comes to literary works:

A. Section 52 (a) permits "fair dealing" for private use and criticism,

B. 52(b) permits "fair dealing" for the purposes of reporting,

C. 52(c) permits reproduction in a judicial proceeding,

D. 52(d) permits reproduction or publication for Legislative purposes,

E. 52(e) permits reproduction for the purposes of a certified copy,

F. 52(f) permits only reading and recitation of a reasonable extract,

G. 52(g) permits publication in a collection of essentially non-copyright matter for use in "educational institutions"

H. 52(h) permits reproduction during the course of instruction or in examinations

I. 52(i) permits performance in the activities of an educational institution

J. 52(j) permits making sound recording of the work with the license or consent of the owner of the work

K. 52(l) permits performance in an amateur club to a non-paying audience, or in a religious institution

L. 52(o) permits making of three copies for a library if the book is not sold in India

There are a few other provisions besides the above, but none of the provisions seems broad enough to employ "fair use" principles propounded in the US. This is because "fair dealing" provisions in most jurisdictions appear

to be restrictively worded and are treated as such too."

In this research paper, researcher is specifically interested in understanding the import of Section 52(1)(i)(i) which deals with "reproduction of any work by a teacher or a pupil in the course of instruction".

In understanding the scope of the non-infringing use envisaged in the provision, regard must be had to the other two exceptions spelt out as part of Section 52(1)(i). The provision reads as follows:

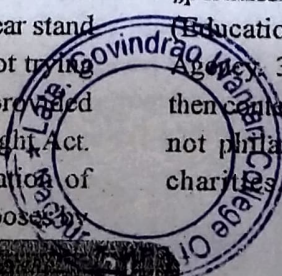
The following acts shall not constitute an infringement of copyright, namely:

- (i) the reproduction of any work- by a teacher or a pupil in the course of instruction; or
- (ii) as part of the questions to be answered in an examination; or
- (iii) in answers to such questions;

IS FAIR DEALING REALLY FAIR IN INDIA?

Every student in India, has become familiar with the issue of fair dealing of copyright, all thanks to the Rameshwari photocopy case. The case has emerged as one of the most-egregious abuses of copyright law. Leading publishers, Oxford University Press (OUP), Cambridge University Press (CUP) and Taylo & Francis (T&F) filed a lawsuit against Delhi University and Rameshwari Photocopy Service, the licensed photocopier for creating and distributing course packs to the students of the University. They took a clear stand that through this lawsuit that they were not trying to fall under the "fair dealing" exceptions provided for under Section 52 of the Indian Copyright Act. They were challenging the illegal duplication of copyrighted materials for commercial purposes by

the photocopying shop. But what they conveniently forgot was that their material was protected by copyright and was very essential for academic purposes. It was photocopied since the students could not buy the course books at such unaffordable prices. It is important to understand the context in which the Rameshwari Press was working. There are two aspects to it: a) One simple way to look at it is that it was involved in a commercial activity & hence the application of Section 52 in this case cannot be attracted. b) However, the other, more realistic aspect is the context in which it was operating. There was a tender taken out by the Delhi University to select a photocopier for this purpose. Hence, Rameshwari Press was acting as an agent of the University & in light of the same, its involvement in producing the course packs was not towards a commercial purpose but rather driven towards meeting the university's purpose. In this case, Rameshwari photocopy had a license from the University for being the exclusive "agent" for creating and distributing course packs. It is very pertinent to note that use of the copyrighted work for the purposes of an educational institution is an exception to copyright infringement. 2 The end purpose of these course packs is the education of the students. This purpose falls squarely within the ambit of "permissible purposes" as enshrined in Section 52 of the Indian Copyright Act. On this very point, the Canadian Supreme Court, which has a similar copyright system like 2 Section 52 (1)(i) of the Indian Copyright Act, 1957 Vol. 1 Issue 1 RGNUL Student Law Review 44 that of India, have ruled that distribution of extracts for educational purpose comes under the ambit of "permissible purpose" in the case of *Alberta (Education) v. Canadian Copyright Licensing Agency*. 3 One of the more clichéd arguments then contended by publishers is that, "Authors are not philanthropists & publishing houses not charities. While no legal jurisdiction has



overlooked the commercial aspect of this whole exercise, one needs to remember that the underlying philosophy of the TRIPS Agreement, Indian Copyright Act & similar enactments is that reproducing parts of a copyrightable work in certain situations without making payments to the copyright holder is permissible on grounds of equity or as laid down by legislature. This is the primary purpose of the concept of Fair Use or Fair Dealing. Here, raises the question of the instances wherein these course packs are sold by the Press to students not belonging to Delhi University. In such a scenario, one can take a view and propose that this does not fall under the ambit of fair dealing as the Publishers contend. The other view based on equity would be that even a non-DU student cannot possibly afford such steep prices of all of the individual books. Moreover, another view that has been advanced recently is that the objective that a whole book seeks to achieve & the objective which a course pack, made after selecting different portions of different books seeks to achieve are completely different. In such a case, the existence of cheap course packs is not affecting the sales of books at all since buyers interested in the objectives that can be fulfilled by the book will purchase books only. It is this subjectivity that is sought to be highlighted by means of this paper. The fact that real life circumstances relating to such a subjective aspect tend to get complicated when subjected to a rigid set of exceptions mentioned in a statute.

Another case that can be pointed out here is that of *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private Limited & Super Cassettes Ltd.* 4 In this case, the TV Channel broadcasted an exclusive segment focused on singers & (and) when these singers were singing their songs live on TV, certain clips of the movies to which those songs belonged were shown. *Infringement of 3 Alberta (Education) v. Canadian Copyright Licensing Agency*, [2012] 2 SCR 345 4 *India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private*

Limited & Super Cassettes Ltd. FAO (OS) 584, 2011 45 Is Fair Dealing Really Fair in India? copyright was claimed by the publishers at Oxford, Cambridge, etc. and the Delhi High Court released a judgment restraining the Channel from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the producers. This is where an interesting point stems up. Would it not be unethical, even cruel, to restrain a singer from singing his song in front of an audience merely because the legal rights subsisting over it are possessed by someone else? The deficiency of Section 52 of the Indian Copyright Act in this regard thus becomes a handicap which ultimately acts to the detriment of tenets of justice & equity.

Conclusion:

While UK developed a mature licensing system, Canada & USA saw the courts intervene in order to protect the interests of the public at large & considering the overall socioeconomic status of India, it's high time for India to follow suit. To this end, while the Court can come up with guidelines in the present *Rameshwari* case but the best course of action would be to amend the law & taking cue from the other major democracy of the world by adopting a more "fair-use" biased model in India. Probably the only difference was that fair use applied to any situation and not merely to an enumerated purpose.

Since the Indian judiciary has never dealt with the "limit of permissible copying" for educational purposes in India, we would have to refer to decisions from other jurisdictions. In 2012 one of the US courts decided in *Cambridge University Press v. Becker*, that the University would not require a license for reproduction of less than 10% of the total page count of the book. Following this example, we should also permit

copying of at least 15-20% of the total page count of the book to accommodate the needs of the Indian educational system. Permissible purpose and a permissible limit would definitely bring in some life to our fair dealing provisions. Fair dealing also needs to be defined somewhere to bring out more clarity in Section 52 of the Copyright Act. It can be concluded that, such a rigid approach to fair dealing should not be followed in India keeping in mind the technological and societal changes. Intellectual Property Laws have not fully taken their shape yet and, therefore, confining them to such strict interpretation of statutes would leave no room for fairly judging the cases and for judicial creativity. Instead of adopting the "fair use doctrine in its entirety, an alternative such as" approach or the expansion of fair dealing" should be adopted. Since we are already referring to parameters laid down in different judgements to judge fair dealing, why not incorporate them into the statute and simultaneously introduce a "such as" clause in the provision. Fair use is based on utilitarian principles and fair dealing is based on the natural law theory where author takes centre stage.. It is now up to the legislators, in the present day circumstances, to approach & analyse this issue so as to best serve our interests.

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