



AMAR SEWA MANDAL'S

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Ref : NAAC 2022/ Metrics Level Deviations/Cr3-3.3

Date-27/07/2022

Criteria 3.3.3	Number of books and chapters in edited volumes/books published and papers published in national/ international conference proceedings per teacher during last five years 3.3.3.1. Total number of books and chapters in edited volumes/books published and papers in national/ international conference proceedings year-wise during last five years
Findings of DVV	Provide Cover page, content page and first page of Biodiversity and Natural Resources at Global and National Level Protection of Family life: Human Rights Response Role of Mahatma Gandhi in Promoting Health Values in India Social and Ethical Responsibility of Media in Democracy of India Violation of TS : A Commercial Espionage Role of Information and Communication Technology in legal Education Human Rights of HIV/AIDS Patients : International & National Perspectives Obligations Towards Women: International and Indian Perceptions with Special Reference to Uniform Civil Code (UCC) Mahatma's Vision for Removal of Intouchability with ISBN numbers, title, author, Department/ School/ Division/ Centre/ Unit/ Cell, name and year of publication for the year 2016-17, 2017-18 , 2018-19 and 2019-20, 2020-21 .
Response / Clarification	1. Scan Copy of each research paper per teacher with highlighting the name of author, name of journal, ISSN Number year wise attached. (Appendix I)

Inukey

Co-ordinator, IQAC
Late. Govindrao Wanjari College of Law
Nandanwan, Nagpur.



Henry

OFFICIATING PRINCIPAL
Late. GOVINDRAO WANJARI COLLEGE OF LAW
NAGPUR

Appendix I

3.3.3 Number of books and chapters in edited volumes/books published and papers published in national/ international conference proceedings per teacher during last five years (10)

Sl. No.	Name of the teacher	Title of the book	Title of the paper	Title of the proceedings	Name of the conference	National / International	Year of publication	ISBN/ISSN number	Affiliating Institution	Name of the publisher
1	Dr. Snehal Fadnavis		Prevention & Security against Cyber Crimes in Internet Banking : A Pragmatic Approach	Technological Revolution for International Business and Economic sustainability (TRIBES - 2017)	International Conference on Technological Revolution for International Business and Economic sustainability (TRIBES - 2017)	International	2016-2017		Asian Business School Noida	Asian Business School Noida (Research & Development Cell)
2	Dr. Archana Sukey		Uneven Level of Preparedness for disaster management in India	Disaster Management : Social and Legal Issues in India	National Seminar on Disaster Management : Social and Legal Issues in India	National			Post Graduate Teaching Department of Law RTM Nagpur University	Post Graduate Teaching Department of Law RTM Nagpur University



3	Mrs. Deepti Khubalkar		The management of Water Resources in India	Water Security in India : Indigenous Practices, People's Participation and Sustainable Community Development	I.C.S.S.R, New Delhi Sopsored Two Days Interdisciplinary National Seminar on Water Security in India : Indigenous Practices, People's Participation and Sustainable Community Development	National
1	Dr. Leena Langde		The UN Role for Combating Global Warming : A Step Towards Peaceful Enviornment	Enviornment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Enviornment Protection and Sustainable Development : Issues and Challenges	National

	Tirpude College of Social Work	Tirpude College of Social Work
	Amar Seva Mandal's Govindrao Wanjari College of Law	Sai Jyoti Publications

Dr. Hichana Sukey

Protection of Family
Lig. A Human
Sig. A Human

One Day
Uc sponsored
National level
seminar on
human Right-a
Duties Education



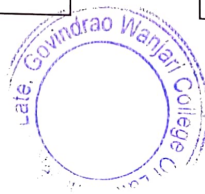
Dhanu Wate
National
college

Dhanu Wate
B.A. H.C.

ISBN
978-81-925000-1-0

2	Miss. Priyanka Mardikar		Implication of the Precautionary Principle in India : Issues and Challenges	Environment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Environment Protection and Sustainable Development : Issues and Challenges	National
3	Miss. Hanifa Shiekh		Implication of the Precautionary Principle in India : Issues and Challenges	Environment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Environment Protection and Sustainable Development : Issues and Challenges	National
4	Dr. Nandita Gaikwad		Women Empowerment and United Nations	Women Education	Two Days National Conference on Women Education	National

ISBN-978-93-86011-93-0	Amar Seva Mandal's Govindrao Wanjari College of Law	Sai Jyoti Publications
ISBN-978-93-86011-93-0	Amar Seva Mandal's Govindrao Wanjari College of Law	Sai Jyoti Publications
ISBN-978-81-933310-5-7	G.E. Scoiety's College of Education, Sangamner, Affiliated to Savitribai Phule Pune University, Pune	G.E. Scoiety's College of Education, Sangamner, Affiliated to Savitribai Phule Pune University, Pune



5	Miss. Priyanka Sarda		Female Feticide in India : Issues and Concerns	Women Education	Two Days National Conference on Women Education	National
6	Mrs. Vaishali Khotele (Shiwankar)		Role of Education in Empowerment of Women in India	Women Education	Two Days National Conference on Women Education	National
7	Dr. Rohini Fuladi		Environmental Policy and Public Health : Effects of Bio-medical Waste on Human Health	Environment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Environment Protection and Sustainable Development : Issues and Challenges	National

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8	Mrs. Aruna Kadu		E-Waste Management & Legislative Measure in India: An Overview	Environment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Environment Protection and Sustainable Development : Issues and Challenges	National
9	Dr. Deepti Khubalkar		Socio Economic Empowerment of Hindu Women Through Property Rights in Hindu Law	Women Education	Two Days National Conference on Women Education	National
10	Mrs. Vishakha Bagdey		Biodiversity and Natural Resources at Global and National Level	Environment Protection and Sustainable Development : Issues and Challenges	One Day National Seminar on Environment Protection and Sustainable Development : Issues and Challenges	National

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ISBN-978-93-86011-93-0	Amar Seva Mandal's Govindrao Wanjari College of Law	Sai Jyoti Publications

Pushpa Dandekar
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1	Dr. Snehal Fadnavis	International Humanitarian Law : A Reflection on 70 Years of Geneva Convention, 1949 (Chapter 2- Protection of Prisoners of war An International Obligation of States under the Third Geneva Convention		International Humanitarian Law. Celebrating 70th Anniversary of Geneva Convention, 1949	National Conference on "International Humanitarian Law. Celebrating 70th Anniversary of Geneva Convention, 1949"	International	2018-2019		Vivekanand Institute of Professional Studies, New Delhi In Collaboration with International Committee of the Red Cross, New Delhi	Satyam Law International
2	Dr. Leena Langde		Role of Mahatma Gandhi in Promoting Health Values in India	Mahatma @150	UGC Sponsored One Day Interdisciplinary International Conference on Mahatma @150	International		ISSN-2319-9318	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha

3	Dr. Archana Sukey		Social and Ethical Responsibility of Media in Democracy of India	Democracy, Elections and Good Governance	Two Days National Conference on Democracy, Elections and Good Governance	National
4	Dr. Rohini Fuladi		Violation of TS : A Commercial Espionage	Changing Dynamics of Intellectual Property Rights	National Seminar on Changing Dynamics of Intellectual Property Rights	National

ISSN-978-81-934270-26	Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur through its department of Political Science in Collaboration with state Election Commission, Government of Maharashtra	Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur through its department of Political Science in Collaboration with state Election Commission, Government of Maharashtra
	Maharashtra National Law University, Nagpur	Maharashtra National Law University, Nagpur

5	Dr. Nandita Gaikwad		Role of Information and Communication Technology in legal Education	Role of Technology in Innovative Teaching	Two Days Interdisciplinary National Conference on Role of Technology in Innovative Teaching	National
6	Mrs. Aruna Kadu		Human Rights of HIV/AIDS Patients : International & National Perspectives	Human Rights and Marginalized Sections: Contemporary Concerns &	Multidisciplinary International Seminar on Human Rights	International
7	Mrs. Vaishali Khotele (Shiwankar)		Obligations Towards Women: International and Indian Perceptions with Special Reference to Uniform Civil Code	Human Rights and Marginalized Sections: Contemporary Concerns & Challenges	Multidisciplinary International Seminar on Human Rights	International

ISBN-978-93-86623-61-1	Zulekha College of Education Affiliated to RTMN Universtiy, Nagpur	Aadhar Publication & Aadhar Social Research & Development Training Institute, Amravati
ISSN-2277-5730	Sarvodhya Shikshan Mandal's, Shantaram Potdukhe College of Law	Ajanta Prakashan
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8	Mrs. Vishakha Bagdey		Mahatma's Vision for Removal of Intouchability	Mahatma @150	UGC Sponsored One Day Interdisciplinary International Conference on Mahatma @150	
1	Dr. Snehal Fadnavis	Law and Behaviour Linkages (Chapter 5- Protection of Children Against Sexual Abuse in India)				
2	Dr. Leena Langde		Gandhian Philosophy on Protection of Environment and Sustainable Development	Exploration of Mahatma @150	One Day Interdisciplinary International Conference on Exploration of Mahatma @150	International

2019-2020

ISSN-2319-9318	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha
		Satyam Law International
ISSN-2319-9318	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha

3	Dr. Archana Sukey			E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International Conference on E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International
4	Mrs. Pushpa Deotale		Ethics And Methphysics	Methphysics : Indian and Western	Two Day National Conference on Methphysics : Indian and Western	National

ISSN-0474-9030, Vol-68, Special Issue-9	Kamla Nehru Mahavidhyalaya	Kamla Nehru Mahavidhyalaya
ISBN-978-93-84810-55-9	Shivaji College, Hingoli Department of Philosophy in Collaboration with Akhil Bhartiya Tattvadnyan	Shivaji College, Hingoli Department of Philosophy in Collaboration with Akhil Bhartiya Tattvadnyan

5	Dr. Rohini Fuladi		Women and Law : Rights of Women Detainee	Progressive Law & Welfatre State	SGBAU Sponsored Interdisciplin ary National Conference Nectar-2020 on the theme of Progressive Law & Welfatre State	National
6	Dr. Nandita Gaikwad		M- Governance in India Problems and Strategies	E-Business, E- Management , E- Education and E- Governance (ICE4-2020)	International Conference on E- Business, E- Management , E- Education and E- Governance (ICE4-2020)	International

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7	Mrs. Priyanka Sarda	★	Legal Framework In India for Protection of Patient : An Overview	Intellectual Property Rights in Legal Framework	NAAC Sponsored One Day Interdisciplinary National Seminar on Intellectual Property Rights in Legal	National
8	Mrs. Aruna Kadu		Gandhi's concept of health and it's relevance in today's legal system	Exploration of Mahatma @150	One Day Interdisciplinary International Conference on Exploration of Mahatma @150	International
9	Mrs. Vaishali Khotele (Shiwankar)		Role of E-Governance in Combining Corruption In India	E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International Conference on E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International

ISBN-978-81-926265-0-5	Shri Shivaji Law College, Parbhani	Shri Shivaji Law College, Parbhani
ISSN-2319-9318	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha	Mahila Vikas Sanstha's New Arts, Commerce & Science College, Wardha
ISSN-0474-9030, Vol-68, Special Issue-9	Kamla Nehru Mahavidhyalaya	Kamla Nehru Mahavidhyalaya

10	Mrs. Vishakha Bagdey		E-Commerce and Taxation	E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International Conference on E-Business, E-Management, E-Education and E-Governance (ICE4-2020)	International
11	Mrs. Aarti Banthia		A Trademark Issue : Domain Name Dispute	Intellectual Property Rights in Legal Framework	NAAC Sponsored One Day National Seminar on Intellectual Property Rights in Legal Framework	National
12	Miss. Hanifa Shiekh	*	The Role of Intellectual property Rights in protection of Biodiversity	Intellectual Property Rights in Legal Framework	NAAC Sponsored One Day National Seminar on Intellectual Property Rights in Legal Framework	National

ISSN-0474-9030, Vol-68, Special Issue-9	Kamla Nehru Mahavidhyalaya	Kamla Nehru Mahavidhyalaya
ISBN-978-81-926265-0-5	Shri Shivaji Law College, Parbhani	Shri Shivaji Law College, Parbhani
ISBN-978-81-926265-0-5	Shri Shivaji Law College, Parbhani	Shri Shivaji Law College, Parbhani

1	Dr. Archana Sukey		Conflicts in Solemnization of Marriages: An International Perspective	Constitutionalism, International Law & Public Policy: 2021 Ahead	International Conference & Bilateral Talk on Constitutionalism, International Law & Public Policy: 2021	International	2020 - 2021	ISBN-978-93-5473-047-4	Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune in Collaboration with UPC (PERU)	Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune in Collaboration with UPC (PERU)
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Technological Revolution
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CERTIFICATE OF PARTICIPATION

We certify that Prof./Dr./Mr./Ms. Snehal Fadnis
from Govindrao Wanjari College of Law, Nagpur
has contributed/presented a paper titled Prevention & Security against
Cyber Crimes in Internet Banking: A pragmatic Approach
in International Conference on "Technological Revolution for International
Business and Economic Sustainability (TRIBES - 2017)" held at Asian
Business School Noida, on 14th January 2017.


Dr. Ganjeet Kaur
Dean


Dr. Lalitha Vir Srivastava
Director

Seminar 17-18

ISBN 978-93-86011-93-0

ONE DAY NATIONAL SEMINAR ON
**ENVIRONMENT PROTECTION AND SUSTAINABLE
DEVELOPMENT: ISSUES AND CHALLENGES**

10TH MARCH 2018



ASAR SEWA MANDAL'S

GOVINDRAO WANJARI COLLEGE OF LAW

CD-2, New Nandanwan, Nagpur - 440009

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Preserving Environment for Future Generation: Role of International Court of Justice

Dr. Mrs. Snehal Fadnavis

Principal in Govindrao Wanjari College of Law,
Nagpur.

Introduction

The Mother Earth, producing immense wealth, sustaining life, having huge quantity of gold, supporting the mankind in the universe, bearing Vaishwanar Fire bless us its bounty of treasure.

Rigveda (12.1.11)

Ancient India recognized the significance of environment in the life of human being. The ancient Indian literature has many references which preach that it is our Dharma to protect our environment, conserve our natural resources and to maintain ecological balance. Indian tradition contributes to fostering greater care for earth's ecology. There is also a great emphasis on adaptation as one of the guiding principles for an interaction between human and non-human world. The fragility of the environment has also been carefully stressed in such discourses.

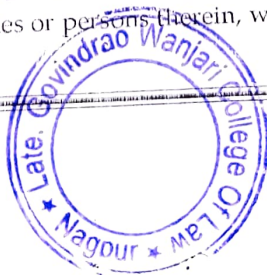
In broadest sense environment including ecosystems and their constituent parts; all natural and physical resources; the social, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment. In ancient India the importance of environment was realised however the worldwide awareness for protection of the environment and prevention of environment pollution has taken root, very slowly, only in the past 50 years. The extensive range of environment problem is now the subject of serious international concern such as depletion of the stratospheric ozone layer, transboundary movements of hazardous wastes, climate change, the loss of biological diversity, desertification, climate change, global warming and so on.

Protection of environment under International Law

The extensive range of environment problems is now the subject of serious international concern. These include atmospheric pollution marine pollution, global warming and ozone depletion, the dangers of nuclear and other extra hazardous substances threatened wildlife species. The implication of it will produce a certain effect on many things such as Antarctica's ice cap which will result to the rise in the level of the Antarctica continent, earth axes, and movements of the earth various plates.⁴⁰ The importance of environmental protection, under international law has been arising of how to protect and to prevent the environment harm and damages. The best way to protect the environment at the international forum is to sign the agreement among state to protect the environment and prevent the harm.

Customary international law does not contain any specific rule on the protection and preservation of environment. Customary international law is derived from the practice of states as international actors rather than from explicit written agreements. However the law of transboundary environmental harm is an outcome of customary international law. The origins of this conception are usually illustrated with reference to two well-known cases, firstly, the Trail Smelter Arbitration⁴¹ and the Affaire du Lac Lanoux.⁴² The tribunal held that no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the

ISBN- 978-93-86011-93-0



injury is established by clear and convincing evidence. The Trail Smelter addressed transboundary air pollution. The Lac Lanoux Arbitration involved a watercourse dispute. The Lac Lanoux tribunal added a new consideration of limit on territorial integrity with territorial sovereignty.

However the role of the United Nation (UN) is very significant in this regard. The UN under the term "human rights" has been making the promotion and protection of environment. In 1948 UN Declaration on Human Rights brought human rights into realm of international law. There is no explicit right to environment in UDHR. However, Article 28 of UDHR provides that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. This order can be seen as encompassing the environment. Treaties play a vital role in formulation of rules to regulate conduct of states. Here we can cite Principle 21⁴³ of the Stockholm Declaration which utilized norm expressed in Trail Smelter case. In the same year, the General Assembly of the United Nations followed up the achievement of the Stockholm Conference by adopting its resolution 2995 (XXVII), which enunciated the "General Principles of Cooperation between States in the Field of the Environment"

This principle again reiterated in the 1992 Rio Declaration under Principle 19.⁴⁴ Rio Declaration, Agenda 21 contains a list of do's and don'ts, the rights and obligations to protect the environment thought the next century. The United Nations Climate Change Conferences are yearly conferences held in the framework of the United Nations Framework Convention on Climate Change (UNFCCC). The first UNFCCC Conference of the Parties took place in Berlin, 1995. It voiced concerns first joint measures in international climate action for emissions cuts. Following are some international conventions adopted for protection of environment: International Convention for Prevention of Pollution of Sea by Oil, 1954; the Geneva Conventions on High Seas, 1958; International Convention Relating to Intervention on the High Seas in case of Oil Pollution Casualties, 1969; the Oslo Convention for Prevention of Marine Pollution by Dumping from Ship and Aircraft, 1972; Outer Space Treaty, 1967; Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989; Comprehensive Test Ban Treaty (CTBT), 1996 and so on.

Through the adoption of treaties, states may develop detailed substantive rules and international supervisory machinery to address particular environmental problems. The growing importance of treaties suggests a dimension role for environment protection.

Role of International Court of Justice (ICJ)

The ICJ is the principal judicial organ of the UN. It constitutes an essential part of the entire machinery for the maintenance of international public order in the UN. In the past it has been seen that many times new rules have emerged from the pronouncements of the ICJ or existing rules have been moulded or given new interpretation by it. It has also been observed that once the ICJ has given rise to a new rule in international law, it has been accepted by the international community as an authoritative norm. Indeed a rich body of international law has been developed in several areas by the pronouncements of the ICJ or its predecessor the PCIJ. The ICJ has played and will play for the future in the development of international environmental law should not be underestimated. ICJ two contentious cases the Corfu Channel case⁴⁵; the Nuclear Tests case⁴⁶ as well as an important obiter dictum in the Barcelona Traction case⁴⁷ provided jurisprudence relating to international environment law.

Corfu Channel Case

It provided a factual background allowing for the principle initially asserted in the Trail Smelter case to be confirmed and linked to general international law. The Court articulated the principle that every state is obligated not to knowingly allow its territory to be used to commit acts against the rights of any other state. The specific



language came from the *Trail Smelter* case, and ultimately was adopted into the Stockholm Declaration and Rio Declaration. It has pronounced that harmful activities, which affect others, are not permissible and generate an obligation to make reparation.

Nuclear Test Case

Principle 21 of the Stockholm Declaration goes further than the principle asserted in the *Corfu Channel* case in that it expressly refers to "damage to the environment... of areas beyond the limits of national jurisdiction. This issue could have been clarified two years later in the Nuclear Tests case. In this case, it was asserted the existence of an emerging rule of customary international law prohibiting nuclear tests by reference to Principle 21 of the Stockholm Declaration.⁴¹ However, the case was eventually settled and the ICJ did not address the matter. Thus the question of the customary status of the addition made by the Stockholm Declaration remained open.

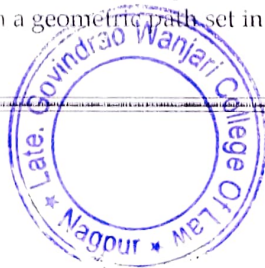
Barcelona Traction Case

The concept of *jus cogens* found its place in positive law for the first time in the Vienna Convention on the Law of Treaties of 1969 in its Article 53, while the concept of an obligation *erga omnes* received its first judicial recognition in the judgment of the ICJ in the *Barcelona Traction* case in 1970. The Court pointed out that: an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising *vis-à-vis* another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.⁴⁸ This concept of the obligation *erga omnes* could (in the future) be of relevance when global environmental problems are at issue, such as depletion of the ozone layer, the extinction of the world's biodiversity, the pollution of international waters, and the threat of climate change. The world's climate and biodiversity were identified as a 'common concern' of mankind in the 1992 Conventions on Climate Change and Biodiversity.

Legality of the Threat or Use of Nuclear Weapons⁴⁹

In this case the Court discussed the relevance of IEL and held environment law as one most directly relevant applicable law governing the question. it made the following important comment: The Court recognizes that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment.⁵⁰ Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality. Thus, the principle originally stated in the *Trail Smelter* and *Corfu Channel* cases, according to which activities within a state's jurisdiction and control should not damage other states, is re-affirmed by the Court specifically in the area of environmental protection. Moreover, the principle that activities within a state's jurisdiction and control must be respectful of the environment outside national control, that is, the environment as such is recognized as part of international law in ICJ case law for the first time.

Certain Phosphate Lands in Nauru⁵¹ and *Gabcikovo-Nagymaros Project*⁵², prompted the constitution of a Special Environmental Chamber of the ICJ. These cases are important in that it consolidated the previous case law and pointed to a number of interconnections between IEL, on the one hand, and both boundary delimitation and international humanitarian law, on the other hand. In *Kasikili/Sedudu* case, Judge Weeramantry Dissenting Opinion, stressed on the impact of environmental protection on boundary delimitation, to the extent that a Court proceeding to such delimitation should, in his opinion, take into account the interests of the ecosystem and even seek solutions deviating from a geometric path set in a boundary treaty.⁵³



In *Pulp Mills on the River Uruguay*¹ by reference to its Advisory Opinion on the Legality of the Threat Use of Nuclear Weapons and the *Gabcikovo-Nagymaros* case, the ICJ attached great importance to the protection of the environment. Aerial Herbicide Spraying (*Ecuador v. Colombia*), instituted by Ecuador on April 1, 2005, concerns the aerial spraying by Colombia of toxic herbicides at locations near, at and across Colombia's border with Ecuador. Ecuador claims, among others, that such conduct has "caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time. The Aerial Herbicide case is only starting.

Conclusion

It can safely be concluded that the role the ICJ had played in the field of international environmental law has been growing especially in recent years, parallel with the rapidly expanding fields of international law. The ICJ, through the process of settling a bilateral dispute involving environmental issues between States, can contribute to identifying and confirming the points of law that pertain to international environmental law as an important component of the public order of this community. The ICJ's contribution to the development of IEL yields the following results:

- general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states as well as the environment of areas beyond national control
- necessary to take into account environmental considerations in other fields of international law, for instance during war principle of proportionality or when evaluating whether a state can avail itself of the state of necessity defense as a circumstance precluding the wrongfulness of a given action, or, still, when a tribunal or a commission is called upon to effect an equitable delimitation of a (maritime) boundary.
- jurisprudence of the ICJ have raised hope to address several important issues such as the existence of customary duties to assess and monitor the environmental impact of large projects, the qualification of environmental rights as human rights, the limits of the right to economic development and, more fundamentally, the relations between treaty and customary law in the area of environment, or the specific contents and relative hierarchy of customary IEL.
- A balance of interests in environment disputes is probably a necessary and inevitable condition of progress in the regulation of the global environment.
- Need for absolute liability regime that state should be made liable for alleged harmful activities notwithstanding the precaution it has taken.

END NOTES

¹ "Moratorium mooted on Antarctica mineral use," *Times of India*, pp. 10, col. 1, May 17, 1984.

² *Trail Smelter Arbitration* (U.S. v. Canada.), 3 REP. INT'L ARB. AWARDS ("R.I.A.A.") 1905 (1941).

³ *Affaire du Lac Lanoux* (Spain v. France.), 12 R.I.A.A. 285 (1963)

⁴ 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.un-documents.net/unchedec.htm>

⁵ States shall provide prior and timely notification and relevant information to potentially affected States of activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.



⁶ *Corfu Channel (U.K. v. Alb.)*, 1949 I.C.J. 4 (Apr. 9).

⁷ *Nuclear Tests (Austl. v. Fr.)*, 1974 I.C.J. 253 (Dec. 20); *Nuclear Tests (N.Z. v. Fr.)*, 1974 I.C.J. 457 (Dec. 20); see also Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the *Nuclear Tests Case (N.Z. v. Fr.)*, 1995 I.C.J. 288, 319-63 (Sept. 22) (Weeramantry, J., dissenting) [hereinafter *Nuclear Tests II*].

⁸ *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, 1970 I.C.J. 3, 32 (Feb. 5).

⁹ ICJ Reports 1970, p. 32, para. 33. In the next paragraph the Court stated that such obligations may derive, for example, in contemporary international law, 'from the outlawing of acts of aggression, and of genocide, as also from principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination'. In such cases a State has obligations vis-à-vis the international community as a whole and every other State can hold it responsible and institute a so-called *actio popularis* in protection of the community's interest.

¹⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1996 I.C.J. 266 (July 8).

¹¹ The Court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment. Nonetheless, States must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives.

¹² *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, ICJ 1992.

¹³ *Gabcikovo-Nagymaros Project (Hung./Slovk.)*, 1997 I.C.J. 7 (Sept. 25). The Court referred, for instance, to the interactions between economic development and the preservation of the environment: Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind-for present and future generations-of pu rsuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

¹⁴ *Kasikili/Sedudu Island (Bots. v. Namib.)*, supra note 11, at 1184, 1 91-92 (Dec. 13) (Weeramantry, J., dissenting).

¹⁵ *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 4 (Summary of the Order of July 13, 2006).

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NAGPUR

23/09/2017



NATIONAL SEMINAR



ON

DISASTER MANAGEMENT : SOCIAL AND LEGAL ISSUES IN INDIA

Organised by

POST GRADUATE TEACHING DEPARTMENT OF LAW RTM NAGPUR UNIVERSITY

on

24th September 2016

Certificate

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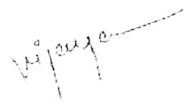
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Seminar Coordinator
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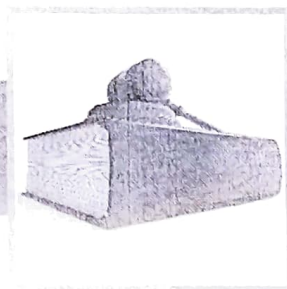
ISSN-0972-6349

R.T.M NAGPUR UNIVERSITY RESEARCH JOURNAL
SPECIAL EDITION ON

DISASTER MANAGEMENT: SOCIAL AND LEGAL ISSUES IN INDIA



POST GRADUATE TEACHING DEPARTMENT OF LAW RTM NAGPUR UNIVERSITY
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UNEVEN LEVEL OF PREPAREDNESS FOR DISASTER MANAGEMENT IN INDIA

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Disaster Management is an effort to inquire into the process of a hazard turning to disaster to identify its causes and rectify the same through public policy. Therefore disaster management is a policy issue concerned with minimizing and preventing the damaging impact of a natural or manmade hazard.

TYPES OF DISASTERS

There is no country that is immune from disaster, though vulnerability to disaster varies. There are four main types of disaster.

- Natural disasters: including floods, hurricanes, earthquakes and volcano eruptions that have immediate impacts on human health and secondary impacts causing further death and suffering from (for example) floods, landslides, fires, tsunamis.
- Environmental emergencies: including technological or industrial accidents, usually involving the production, use or transportation of hazardous material, and occur where these materials are produced, used or transported, and forest fires caused by humans.
- Complex emergencies: involving a break-down of authority, looting and attacks on strategic installations, including conflict situations and war.
- Pandemic emergencies: involving a sudden onset of contagious disease that affects health, disrupts services and businesses, and brings economic and social costs.

Any disaster can interrupt essential services, such as health care, electricity, water, sewage/garbage removal, transportation and communications. The interruption can seriously affect the health, social and economic networks of local communities and countries. Disasters have a major and long-lasting impact on people long after the immediate effect has been mitigated. Poorly planned relief activities can have a significant negative impact not only on the disaster victims but also on donors and relief agencies. So it is important that physical therapists join established programmes rather than attempting individual efforts.

Local, regional, national and international organizations are all involved in mounting a humanitarian response to disasters. Each will have a prepared disaster management plan. These plans cover prevention, preparedness, relief and recovery.¹

DISASTER PREVENTION

These are activities designed to provide permanent protection from disasters. Not all disasters, particularly natural disasters, can be prevented, but the risk of loss of life and injury can be mitigated with good evacuation plans, environmental planning and design standards. In January 2005, 168 Governments adopted a 10-year global plan for natural disaster risk reduction called the Hyogo Framework. It offers guiding principles, priorities for action, and practical means for achieving disaster resilience for vulnerable communities.

¹ Aparna Meduri (2006). E.N.Murthy, ed. *"The Disaster Management Act, 2005"*

DISASTER PREPAREDNESS

These activities are designed to minimise loss of life and damage – for example by removing people and property from a threatened location and by facilitating timely and effective rescue, relief and rehabilitation. Preparedness is the main way of reducing the impact of disasters. Community-based preparedness and management should be a high priority in physical therapy practice management.

DISASTER RELIEF

This is a coordinated multi-agency response to reduce the impact of a disaster and its long-term results. Relief activities include rescue, relocation, providing food and water, preventing disease and disability, repairing vital services such as telecommunications and transport, providing temporary shelter and emergency health care.

DISASTER RECOVERY

Once emergency needs have been met and the initial crisis is over, the people affected and the communities that support them are still vulnerable. Recovery activities include rebuilding infrastructure, health care and rehabilitation. These should blend with development activities, such as building human resources for health and developing policies and practices to avoid similar situations in future.

Disaster management is linked with sustainable development, particularly in relation to vulnerable people such as those with disabilities, elderly people, children and other marginalized groups. Health Volunteers Overseas publications address some of the common misunderstandings about disaster management.

DISASTER MANAGEMENT – A NEW APPROACH

Some of the policy and administrative factors relevant to disaster management are such as poor and weak or overcrowded buildings in earthquake prone zone, poor land use planning in flood prone areas, inadequate and faulty laws regulating various processes and facilities, general low risk perception towards among people etc.

The above description of disaster management underlines the difference between the hazard and the disaster. A hazard is a natural or manmade damaging event which is beyond the effective control of human being, whereas the disaster is the sum total of consequences of natural hazard due to vulnerability of people or regions subject to hazard.

Thus same natural hazard may produce different amount of disastrous impact on different group of people or regions. The new approach to disaster management evolved gradually in 1990s beginning with the declaration of 1990-2000 by UN General Assembly as the International Decade of Natural Disaster Reduction.

The major disasters such as tsunami in Asia in 2004, Hurricane Katrina in U.S. in 2005 and Muzaffarabad Earthquake in 2005 and underlined the importance of the new approach across the world. The United Nation Report titled “Living with risk” claims that though there has been decline in the number of losses to human lives from disaster the occurrence of disaster is raising. The Yokohama Strategy for disaster management was renewed at the world conference on Disaster Reduction held at Hyogo (Japan) in Jan. 2005. The conference laid emphasis on some crucial but neglected aspects of disaster management such as governance and policy framework.

risk identification and early warning, knowledge management, reducing risk factors and preparedness for effective response and recovery.²

The Hyogo conference adopted the framework of Action, 2005-2015 called "Building the Resilience of Nations and Communities to Disaster."³

As panic swept across India's eastern coast in the aftermath of the massive 8.6 magnitude earthquake off the Indonesian coast on 12 April, 2012, the National Disaster Management Authority (NDMA) set off the biggest disaster drill the country has seen since the body was created. The alert brought back memories of the devastating tsunami of 2004, in which 2.4 lakh people were killed worldwide. Before that, among the major quakes India has seen was the one on April 4, 1905, an 8.25 rocker that hit the Kanga region in Himachal. It had killed around 20,000 people. Then there were two very large magnitude earthquakes in Bihar (1934) and Assam (1950).

DISASTER MANAGEMENT IN INDIA : CLASSIFICATION, POLICIES

Losses due to disasters have shown growing trend in terms of lives and property throughout the world due to urbanization, increasing population and increasing degradation of environment. The global efforts to manage disasters are not matched with the frequency and magnitude of disasters.

However, for the last 15 years or so some new thinking on disaster management has emerged at global level which pleads for a proactive and preventive approach and integrates disaster management with ongoing development activities that is sustainable development.

The Indian subcontinent is among the world's most disaster prone areas. Almost 85% of India's area is vulnerable to one or multiple hazard. Of the 28 states and 7 union territories, 22 are disaster-prone. It is vulnerable to wind storms spawned in the Bay of Bengal and the Arabian Sea, earthquakes caused by active crustal movement in the Himalayan mountains, floods brought by monsoons, and droughts in the country's arid and semi-arid areas. Almost 57% of the land is vulnerable to earthquake (high seismic zones III-V), 68% to drought, 8% to cyclones and 12% to floods. India has also become much more vulnerable to tsunamis since the 2004 Indian Ocean tsunami.⁴

MAIN PROVISIONS OF NATIONAL DISASTER MANAGEMENT ACT, 2005 :

The Act provides for three tier mechanism for Disaster Management that includes National Disaster Management Authority, State Disaster Management Authority and District Disaster Management Authority.⁵

NATIONAL DISASTER MANAGEMENT AUTHORITY :

Its chairperson is the Prime Minister. Not more than nine other members can be there. Vice Chairpersons is appointed from amongst members by the Chairperson. Executive Committee is chaired by the Secretary of the Ministry entrusted with the work of the Disaster Management.

² Anderson, M. and P. Woodrow. 1989. *Rising from the Ashes: Development Strategies in Times of Disaster*. UNESCO and West view Press, Inc., Colorado

³ . Anderson M. *Vulnerability to Disaster and Sustainable Development: A General Framework for Assessing Vulnerability*

⁴ Pooja mandal, *Disaster Management in India: Classification, Policies and other Details*, 2012.

⁵ "[Disaster Management Act 2005](#)" (PDF). NDMA. Retrieved 30 May 2012.

STATE DISASTER MANAGEMENT AUTHORITY :

Its Chairperson is the Chief Minister of the concerned State. Other members not exceeding eight are there. And in addition, Chairperson of the State Executive Committee (who is Chief Secretary) is also included. Vice Chairperson is appointed by Chairpersons from amongst members. Chairperson of the State Executive Committee is the Chief Executive Officer. State Executive Committee is chaired by the State Chief Secretary.

NATIONAL DISASTER RESPONSE FUND :

To be constituted by the Central Government for emergency response, relief and rehabilitation.

NATIONAL DISASTER MANAGEMENT FUND:

To be constituted by the Central Government for the projects exclusively of mitigation.

NATIONAL POLICY ON DISASTER MANAGEMENT 2009 :

The National Policy on Disaster Management was approved by the Government in November 2009. This comprehensive policy document lays down policies on every aspect of holistic management of disasters in the country.

SALIENT FEATURES OF INDIA'S NATIONAL POLICY ON DISASTER MANAGEMENT:

India's National Policy on Disaster Management was approved by the Union Cabinet of India on 22nd October, 2009 with the aim to minimize the losses to lives, livelihoods and property, caused by natural or manmade disasters with a vision to build a safe & Disaster resilient India by developing a holistic, proactive, integrated, Multi-disaster oriented and technology driven strategy. With this national Policy in place in India, a holistic and integrated approach will be evolved towards disaster management with emphasis on building strategic partnerships at various levels. The themes underpinning the policy include Community based Disaster Management, Capacity development in all spheres, Consolidation of past initiatives and best practices and Cooperation with agencies at National and International levels with multi-sectorial synergy.

NATIONAL DISASTER MANAGEMENT PLAN 2016

The much-awaited National Disaster Management Plan was released by Prime Minister Narendra Modi .. The plan closes a critical gap in our disaster management system — while most states and districts have prepared their plans, the national plan that was supposed to guide this process at the sub-national level was missing.

Three major Landmark agreements which have significant impact on disaster management they are :

- Sendai Framework for disaster risk reduction
- Sustainable development goals
- Paris agreement on climate change under the UNFCCC

The Sendai framework has a sharper focus on preventing the creation of new risks and places enormous emphasis on improving the Government of disaster risk reduction. why is the sustainable development goals and Paris agreement notes the urgent need to take into the account the increasing frequency of extreme weather events due to global climate change.⁶

The national disaster management plan is highly ambitious it has short medium and long term goals which will be completed within the time frames of 5, 10 and 15 years. This invited criticism from the Supreme Court, the Public Accounts Committee of Parliament and the Comptroller and Auditor General. Surely the government would no longer be embarrassed for its failure to write a plan even a decade after the mandate of the Disaster Management Act. But India has miles to go if the vision of the plan to 'make India disaster resilient' has to be a reality. There are several problems in the National Disaster Management Plan--

- First, it fails to lay down a clear and practical roadmap. It is too generic in its identification of the activities to be undertaken by the central and states governments for disaster risk mitigation, preparedness, response, recovery, reconstruction, and governance.
- Second, the plan refrains from providing a time frame for undertaking these activities beyond vaguely prescribing that these must be taken up in short, medium, mid- and long-term basis
- Third, the plan does not project the requirement of funds needed for undertaking these activities, nor does it provide any clue as to how funds shall be mobilised for this purpose. The plan further does not provide any framework for monitoring and evaluation of the plan.

In short, the plan is devoid of many important elements that make a good and robust action plan. It may fulfil the formal requirement of law of having a plan but it may not be very effective in achieving its grandiose vision of building resilience. The activities listed in the plan are nothing new. These are already provided in the Act and in nearly two dozen national guidelines that were developed by the National Disaster Management Authority (NDMA) since 2007. Some of the earlier guidelines did have a timeframe for implementation, but the national plan cautiously refrains from providing any roadmap, probably due to the complexities of the tasks involved.

UNEVEN LEVEL OF PREPAREDNESS FOR DISASTER MANAGEMENT IN INDIA

In India, the level of preparedness for disaster management at the Centre and in the states is extremely uneven and requires considerable strengthening. The concept of handling disasters with appropriate programmes on disaster management based on the fundamental elements of prevention, mitigation, preparedness, response, relief and recovery is of recent origin.

However, although the responsibility for coordinating disaster response and relief operation is that of the home ministry, it is the armed forces under the defence ministry that are called out to assist and manage the situation. Generally, the armed forces respond to disasters as a part of their mandate to aid civil authorities during calamities. Their involvement, however, was meant to work on the principle of being the 'last to enter and the first to leave'. Conversely, in most post-disaster operations, the armed forces have been the first to enter and the last to leave.⁷

Since the civil administration remains ill equipped for undertaking quick response to major disasters, the armed forces has been the primary option to handle major disasters. As one

⁶ pib.nic.in/newsite/PrintRelease.aspx?relid=

⁷ <http://www.unisdr.org/eng/library/libterminology>

of the most dedicated, professional and modern armed forces in the world, the Indian forces respond to any disastrous situation with all their might.⁸

They are also located in most remote areas where natural calamities are frequent. For instance, when the tsunami hit the Indian coast on December 26, 2004, the Indian armed forces, co-coordinated by the Integrated Defense Staff (IDS), efficiently handled relief, rescue and evacuation work. Whether it was the Kashmir earthquake of 2005, the tropical cyclone in Bangladesh in 2007, the flash floods in Ladakh's capital Leh in 2010 or the Sikkim earthquake of September 2011, the armed forces have been at the forefront of disaster management.

CONCLUSION

The involvement of the armed forces in disaster response and relief operation is an important issue in civil-military relations. In the Indian context, their role is primarily in response to the immediate requirement of human resources and technical equipment for rescue and relief operations by the civil authorities of the affected area. However, in view of the fact that the disaster management system of the civilian administration is yet to become operational, the civil authorities will continue to depend on the armed forces for disaster response. Hence, a defined role for the armed forces in disaster management is required.

First, the government must set up a centre for excellence in disaster management for the Indian armed forces. Second, since the field formations are unlikely to be equipped with the state-of-the-art equipment to deal with disasters, the field formations in the disaster-prone areas need to be given brick formations (logistics) specifically for disaster response at the earliest. This would ensure that the military equipment meant for war is not used for secondary tasks.

Efforts should be made for using the expertise of the armed forces for bolstering the capacity of the civil authorities, including the disaster response forces. It would enable the latter to achieve self-reliance and thus reduce their dependence on the armed forces. Enhancing capability for risk reduction in urban as well as rural areas and having suitable legislative and regulatory mechanisms to promote safe buildings should be encouraged as part of the civil-military relations programmed.

An equally important imperative for disaster management is the need of self-restraint by the political class. In a democracy, as elected representatives that form the government, politicians no doubt must be at the forefront of handling any situation that affects the masses. They, however, should not indulge in partisan blame game and refrain from undertaking 'observation sorties' in state helicopters that can be put to better use in rescue and relief missions.

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He/She has presented research paper entitled,

The UN Role for Combating Global Warming : A Step Towards
peaceful environment

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ISBN 978-93-86011-93-0

ONE DAY NATIONAL SEMINAR ON

ENVIRONMENT PROTECTION AND SUSTAINABLE DEVELOPMENT: ISSUES AND CHALLENGES

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The UN Role for Combating Global Warming: A Step towards peaceful environment

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'Environment is protecting sheet to us from God, if we destroy it, it will uncover us.'

We live on the earth, which is the unique planet in the solar system. It is the fifth largest and third nearest planet to the sun in the solar system. It is also called as blue planet because it covers 80% of water. The uniqueness of earth lies in that of its environment favorable for the evolution and survival of various forms of life. This is because of optimum distance of the earth from sun. Therefore temperature on earth is neither too high as in mercury and nor too low as in Neptune and Pluto. But today human activities cause increasing adverse impact on the earth, which would be more harmful to environment of it, although ultimate sufferer is man.

Today in the era of globalization and industrialization similarly the unbridle use of scientific and technological advancement there is tremendously the exploitation of environment is going on which resulted in to eco imbalance and environmental degradation. Due to advanced industrialization has given rise to enormous forms of environmental pollution and health hazard activities. Today our environment is facing number of problems which includes global warming, climate change, pollution, depletion of ozone layer and population growth. Industrialization and urbanization has given birth to uncontrolled deforestation, air pollution, water pollution, acid rain, waste disposal etc. which reached in to greenhouse effect and ozone depletion and finally this converted in to global warming and climate change throughout the world.

### What is Global Warming?

Global Warming is one of the biggest issue that whole world facing today. Mainly the global warming is an increase of earth's average temperature and it is caused by increasing greenhouse gases which includes carbon dioxide, methane, nitrogen oxide and chlorofluoro carbon present in the atmosphere by use of fossil fuels and other industrial processes, due to which air pollution trap more heat in the atmosphere, rendering the earth more warmer. This effect is called 'Global Warming.'

This resulted in to Climate Change in environment. Though change is a fundamental characteristics of the environment but it adversely affects the earth, due to which caused atmosphere heating and agitation also increase the unpredictability of the weather and climate and dramatically increase the severity, scale and frequency of storms, droughts and wildfires and extreme temperature. It can eventually reach on extinction level where humanity and all life of earth will end.

### Causes and effect of Global Warming

The global warming is damaging the earth climate and physical environment. We all know that global warming causes due to emission of greenhouse gases in the atmosphere. Generally most industrialized countries have contributed significantly to global warming as they are still using the large quantities of fossil fuels energy which result in the discharge of large quantities of greenhouse gases in to the atmosphere. Deforestation also release carbon trapped in the tissues of the trees. Therefore loss of the trees reduces the earth capacity to absorb carbon dioxide through photosynthesis. The most common greenhouse gas is carbon dioxide due to which more

heat to be trapped in the lower atmosphere. The human activities can significantly affect the amount of heat trapped in the atmosphere overtime and leads for global warming which had adverse effect on climate as well as on human life the, major effects includes-

#### 1. Climate change

One of the most adverse impact of global warming is the climate change due to which the warming trend over the earth surface is varied. The precipitation pattern also changed. Some areas will become wetter and some areas become dryer. Sessional pattern also changed due to changing of temperature. Wind direction and wind stress over the sea surface will be changed due to which caused nutrient mixing zone and productivity of the ocean. The most visible effect of climate change is so far as melting of glaciers and sea ice. The Arctic is one of the worst place so effected by global warming. The Arctic ice melting rapidly; by 2040 the region is expected to have a complete ice free summer or even earlier. According to the Arctic climate impact assessment report the average temperature in Alaska, Western Canada and Russia have a less at twice the global average.<sup>1</sup>

#### 2. Effect on sea level

The global warming effects on the rise in sea level due to the thermal expansion of ocean and melting of glaciers and Greenland ice sheet. The level of has been rising by 1 to 2 mm per year during the 20<sup>th</sup> century and if there will be no efforts taken to curb the emission of greenhouse gases, the level will rise between 10 and 30 cm by the year 2030.<sup>2</sup>

#### 3. Effect on forest and species

The forest are rapidly affected by global warming. These are the new challenges that the rapid rise of temperature may cause large scale death of trees because they are sensitive to temperature stress. Similarly each plant and animal species occurs within a specific range of temperature. Many species may disappear as they are unable to migrate fast enough to track temperature change.

#### 4. Effect on food productivity

There is great impact of global warming is on food production. It reduces the crop production, increase plant diseases and pests, explosive growth of weeds and enhance the basal rate of respiration of plants. In tropical and sub-tropical regions even in small rise in temperature, will have detrimental effect on crop productivity, on the other hand in Russia and Northern Europe colder temperature resulting in the reduction of crop yield.

#### 5. Effect on Human Health

Due to global warming the earth becomes warmer so the floods and droughts become more frequent. It would increase the waterborne diseases, infectious diseases and other diseases. The temperature change causes other several kind of diseases like cardiovascular, cerebrovascular and respiratory diseases etc.

#### Role of United Nations for Combating Global Warming

To combat the global warming the worldwide initiative is necessary. There are number of International conventions take place for the protection of environment. The first United Nations Conference on the Human Environment (UNCHE) was held in Stockholm, Sweden from June 5 to 16 in 1972. It was the major international gathering focused on human activities in relationship to the environment. The conference acknowledge that the goal of reducing human impact on the environment would require extensive international cooperation, as many of the problems affecting the environment are global in nature. it contains the 21 principles. These principles provide the basis of international policy for the protection and improvement of the environment. One of the specific issue addressed in the conference was the which industrialized countries should have in the process of



protecting the environment stating that industrial countries should help to close the gap between them and under developing countries, while keeping their own priorities and the protection and improvement of the environment in mind. Since then the world community became more serious about environment problem. A convention on protection of ozone took place in Vienna (Austria) in 1985 followed by a protocol on ozone depletion at Montreal (Canada) in 1987. A United Nations Conference on environment and development (UNCED) took place at Nairobi in 1992. The outcome of all these international conferences was the Earth Summit organized by UN at Rio de Janeiro, capital of Brazil in 1992.

As a result of United Nations Conference on human environment held in Stockholm in 1972 the United Nations General Assembly was set up the United Nations Environment Programme (UNEP) in 1973. The main purpose of UNEP is 'To provide leadership and encourage partnership in carrying for the environment by inspiring, informing and enabling nations and people to improve their quality of life without compromising that of future generations.' The UNEP play a significant role in tackling global environmental issues.

The most important international step to control the global warming is the Kyoto Protocol. It was held in Kyoto, Japan in 1997. It is an international agreement related to reduce greenhouse gas emission. The protocol commits industrialized countries to reducing emission of six greenhouse gases by five percent. The protocol follows the number of steps which specifies for all the parties to the agreement such as-<sup>33</sup> Dr. S. R. Myneni, Environmental Law, Asia Law House, Hyderabad, 2008

- Design and implementation of climate change mitigation and adaptation programmes.
- Preparation of a national inventory of emission removed by carbon sink.
- Promotion of climate friendly technology transfer.
- Fostering partnership in research and observation of climate science, impact and response strategies.

The most ambitious effort to combat global warming is Paris agreement. This international treaty entered in force in November 2016. The aim of agreement was to keep warming well below 2 degree Celsius above the preindustrial level and to pursue efforts to limit the temperature increase even further to 1.5 degree Celsius.<sup>4</sup> The United Nations play very significant role in protection and preservation of environment. It addresses the environmental issues at various level. The most valuable contribution made by the UN and related international organizations has been their ability to influence the international policy making agenda and to initiate and facilitate many of the most important law making developments.

#### Conclusion

We can't change the past but we can change the future. The man is consider to be a intellectual gene on the earth. He is only creature and molder of his environment. He has acquired the power to transfer his environment in counter less ways and on an unpredicted scale. To defend and improve the environment for present and future generations has become an imperative goal for everyone, which will be achieved with harmony with established and fundamental goals of peace and of world wide economic and social development, which must be in terms of sustainability of world environment. The global warming and climate change is a big hazard and threatening to the very existence of mankind on the earth. If necessary steps not taken to combat it, the planet will reach a point of no return. Global warming and climate change is the environmental challenge not only to human being but it is global task. The role of United Nations are very important to combating this global issue. Today the world community faces number of environmental challenges, but existing environmental institutions are ill equipped for to meet the problems of increasingly globalized world and its growing socio economic integration. There must be need of greater coordination, transparency and broader participation. Unless this

critical issue of global warming does not heat every person on the earth, it will be the very difficult to prevent the world from burning due to global warming in near future.

#### Suggestions

The following are the suggested solution to combat global warming-

- Raising global consciousness by placing new issues on the global agenda and increasing the prominence of issue that are already on global agenda.
- Facilitating the negotiations and establishment of global standards by way of connecting NGO's, private firms, governments and professional associations which help to develop uniform standard for assessing the environmental impact.
- There must be in reduction in the use of fossil fuels and also minimize the use of nitrogen fertilizer in agriculture.
- Reduction of deforestation, adopting better forest management practices and undertaking afforestation to sequester carbon.
- Increasing use of energy efficient and cleaner production technologies and practices.

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#### END NOTES

<sup>1</sup>www.conserve-energy-future.com on 26/2/ 2018

<sup>2</sup>Ibid

<sup>3</sup> <http://www.livescience.com> on 26/2/2018







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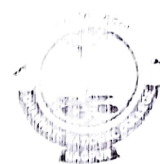
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2017-2018

# Protection of Family Life: A Human Rights' Response

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## Introduction

"What does family mean?" is both difficult to answer and highly subjective. The word has shifted its meaning considerably since it entered our language, currently contains many different senses, and in at least one of these senses may signify different things to different people. The earliest uses of family denoted "a group of persons in the service of an individual," a sense that is now archaic. Although this early meaning may seem far afield from the way that most of us use family today, it is not surprising when we consider that the word comes from the Latin familia, which meant "household," a designation that included both servants and relatives.

In modern use family may refer to one of a number of different groups of people or things collectively, such as chemical compounds, related languages, plants and animals, and people who may or may not share ancestry. Family is often encountered in legal use, but even within the jargon of the law it is not restricted to a single meaning. In many legal contexts family denotes "individuals related by blood, marriage, or adoption," but in others the definition may be somewhat broader, encompassing groups of individuals not related by these things.

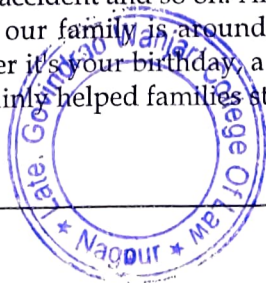
## Importance of Family Life

Not everyone out there can imagine life without a family. Barring a few unfortunate individuals, for most of us our family is an integral part of our lives. No law in this world can defy this fact. The moment you enter this merciless world, where each man is for himself, there are some near and dear ones out there who leave no stone unturned to ensure your happiness.

It doesn't require a sharp memory to recall those days, when your parents must have spent sleepless nights to ensure that you feel homely, get well or ease your burden. No one out there, except your family must have forgiven the endless number of blunders you must have committed in your life. Apart from teaching you forgive and forget lessons, they must have always been there for you, when you needed them the most. The values and coaching passed on to us from our family members will stay here guiding us for the rest of our lives, thereby ensuring our growth and survival in the society. It won't be an understatement to claim that our family is the first institute where we were taught how to cope up with the physical world. In fact, psychologists state that a child learns most of the things in life from his family. After all, we all inherit some qualities from our parents.

Right from changing the diapers when we could barely stand on our feet, to supporting us with a responsible shoulder for tear shedding, our family members stand by us like a rock solid force compelling us to face the world courageously, even during times of adversity. Goes without saying, the family is the most important force responsible for shaping our personality.

During hard times, everyone in the family including you benefit due to the extended relationship, especially during events such as death, accident and so on. Also, the joy associated with success or any other happy moment magnifies when our family is around. Everyone out there is able to reap the benefits of one person's success, whether it's your birthday, a new business venture or any other milestone in life. While technology has certainly helped families stay in close contact with each other, can it





against violence, including domestic violence CEDAW has imposed an obligation on states parties to ensure substantive equality for women and right to education.

## CONCLUSION

Right to education specially women's is a human right which is globally accepted. Education is the process by which society deliberately transmits its accumulated knowledge, skills and values from one generation to another. Education is ongoing process. Education is at the root of all human happiness. Women are entitled to the same rights to life, education and political participation as men. The development of women is of paramount importance and sets the pace for overall development. India has made provisions for the right to education in their national constitution and implemented. Protection of women right to education has indeed helped women in developing their individual identity.

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replace the feeling that one receives after hugging his/her child or can it serve as an ideal barter for a pat on the back? Whatever the case may be, the significance of family is incalculable!

### **Universal Declaration of Human Rights and Family Life**

Both Article 16 of the Universal Declaration of Human Rights and Article 23 of the International Covenant on Civil and Political Rights provide basis for the right to family life as a fundamental human right.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on 10 December 1948, clarifying universal rights held by all individuals regardless of subjective factors.[19] Arguably the UDHR now represents customary international law, and as such has legally binding force over States.

The pertinent provision relating to the right to family lies in Article 16(3) of the UDHR:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

### **International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on the 16 December 1966, and came into force on the 23 March 1976. As at May 2016 there are 168 State parties to the ICCPR, giving effect to the civil and political rights of individuals within their borders.[22] Articles 17 and 23(1) ICCPR refer to the right to family:

#### **Article 17:**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

#### **Article 23(1):**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

The Human Rights Committee has noted that the protection of the family and its members is also directly and indirectly guaranteed by other Articles within the Covenant in addition to Articles 17 and 23, such as protection of the child under Article 24.

### **Case Law**

#### **Winata v Australia**

This case was based on applications made by Hendrick Winata and So Lan Li under Articles 17, 23(1) and 24(1) of the ICCPR alleging that the removal of Winata and Li from Australia, where their adolescent son held residency, would amount a violation of their fundamental human rights, specifically that of their right to family.[25] Both Winata and Li were living illegally in Australia, and were facing deportation by the State. It was claimed that through either the separation of Winata and Li from their son through deportation, or the forced removal of the whole family unit to Indonesia, there would be interference with the fundamental family unit that was not compatible with the State's protection obligations to the right to family under the ICCPR. Australia argued that the application was inadmis-



sible and incompatible with the provisions of the ICCPR, emphasising the ICCPR provides protection "only [to] a right to family life, not a right to family life in a particular country." [26] The majority view of the Human Rights Committee found in favour of Winata and Li, holding that while individuals may not have the right to decide where they reside, States are obligated to protect all of the rights within the ICCPR. The Committee recognised the importance of State's control over immigration within their territory, however this discretion is "not unlimited". [27] It was held that deportation of Winata and Li would constitute a violation of Article 17 and 23(1) ICCPR.

Prior to this case international practice indicated that it was for States to determine who could reside in their territory, even where an infringement of Article 23 would arguably occur. [28] The Committee's decision in this instance challenges this assumption, indicating that an individual's right to family life receives precedence over States' ability to control residence within their territory.

### **International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was also adopted by the General Assembly on 16 December 1966, however it did not enter into force till nine years after it opened for signature on 3 January 1976. [29] Article 10(1) provides for the right to family:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependant children.

### **EUROUPE**

Within Europe the European Convention on Human Rights and the European Social Charter stand as foundational human rights instruments.

### **European Convention on Human Rights**

#### **Article 8 of the European Convention on Human Rights (ECHR) states:**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. [31]

The Article imposes both positive and negative obligations on States; not only is the State required to protect its constituents from arbitrary interference in family life by public authorities, [32] it must also provide within its domestic legal system safeguards that allow the development of a "normal family life". [33] It is clear that Article 8 applies to both "legitimate" and "illegitimate" family, with no distinction between the two qualifications within the Convention.

### **Case Law**

EM (Lebanon) (FC) v. Secretary of State for the Home Department [35]

This case involved a second appeal against a decision of the Secretary of State for the Home Department that EM and her son (AF) must return to Lebanon, the appellant's country of origin. EM had fled from Lebanon with AF following a violent marriage and resulting divorce. Under Lebanese Shari'a law, the physical custody of the child must be transferred to the father or a male family member once the child reaches seven years of age. AF was over the age of seven, and so would have all custodial



rights transferred to his paternal father upon return to Lebanon. EM argued that the forced removal to Lebanon by the United Kingdom would result in a direct breach of both her and AF's right to family life under Article 8 of the ECHR. The Court held that removal of the appellant and her son to Lebanon would violate both EM and AF's Article 8 rights, and granted the appeal. This decision is significant, representing the first successful Article 8 claim in a foreign case.

### **European Social Charter**

The European Social Charter (the Charter) is the counterpart to the European Convention on Human Rights, providing for fundamental social and economic rights under a Council of Europe treaty.[37] The Charter also provides for the right to family under Article 16, reaffirming European parties commitment to the right:

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

### **Other International Instruments America**

The American Convention on Human Rights is a regional human rights treaty that similarly provides for the right to family life under Article 17(1):

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

### **Africa**

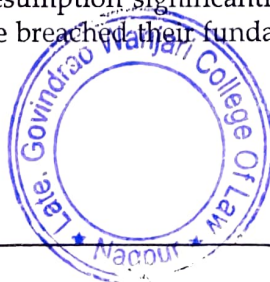
The protection of the family and vulnerable groups is specified under the African Charter on Human and People's Rights in Article 18, stating:

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

The African Charter on Human and Peoples' Rights was adopted by the Organization of African Unity in 1981 and entered into force on 21 October 1986.

### **United Kingdom**

Within the United Kingdom the right to family life is a 'qualified right' under the Human Rights Act 1998. This qualification allows a public authority to interfere with the right to family life if it is in protection of others' rights or in the interest of the wider community. On 9 July 2012 new Immigration Rules came into effect within the United Kingdom, affording greater weight to the States' ability to control entry and residence as compared to the individual right to family life. There is a presumption that decisions made under the Immigration Rules will breach Article 8 of the ECHR only in "genuinely exceptional circumstances". This presumption significantly limits individual's ability to successfully challenge decisions they believe have breached their fundamental right to family life.



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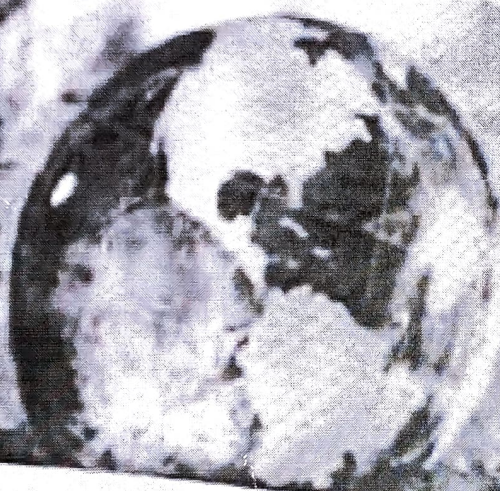
  
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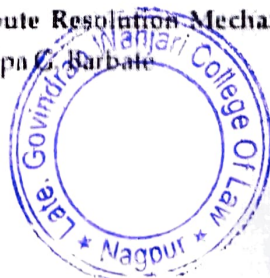
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ISBN 978-93-86011-93-0

ONE DAY NATIONAL SEMINAR ON  
**ENVIRONMENT PROTECTION AND SUSTAINABLE  
DEVELOPMENT: ISSUES AND CHALLENGES**

10<sup>TH</sup> MARCH 2018



AMAR SEWA MANDAL'S

**GOVINDRAO WANJARI COLLEGE OF LAW**

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## **Implication of the Precautionary Principle in India: Issues and Challenges**

Ms. Hanifa Sheikh and Ms. Priyanka Mardikar\*

Precautionary Principle has an important part to play when it's needed to know what developmental activity is sustainable or not. Precautionary principle is a strong starting point for sustainable development which is different from non-controlled development by the fact it's expected that the developmental processes has to be stopped and blocked if they can generate severe and permanent damage to the ecosystems and human health. The main fundamental of this concept is that the natural environment has the capability to absorb the ill-effects of the pollution, but only to a certain limit and beyond this the pollution may cause damage to the environment and so requiring efforts to repair it. Principle 6 of the Stockholm Declaration contains assimilative capacity precept stating that "Pollution must not exceed the environment's capacity to clean itself". This lays the foundation of the idea that science will be able to grant all the crucial information and mechanisms for everyone who's interested to avoid the advance beyond proper, established usual limits upon the capacity of the environment to assimilate effects of the activities. It's also presumed that with proper technical expertise there will be plentiful time for action to limit the damage if such environmental damage is predicted. The shift to the approach to environmental protection from assimilative capacity principle to precautionary principle began after 1972. Precautionary Principle is a principle which ensures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof lining that particular substance or activity to the environmental damage taking precautionary action before scientific certainty of cause and effect. This should provide an instrument of responsibility for preventing damage to the environment by imposing general duties/obligations to behave in a determined way even there is an absence of explicit law<sup>1</sup>.

Precautionary Principle is defined as follows:

When human activities may lead to morally unacceptable harm that is scientifically plausible

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but uncertain, actions shall be taken to avoid or diminish that harm. Morally unacceptable harm refers to harm to humans or the environment that is

1. threatening to human life or health, or
2. serious and effectively irreversible, or
3. inequitable to present or future generations, or
4. imposed without adequate consideration of the human rights of those affected.

"The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" in the context of the municipal law means:

- (i) Environment measures by the State Government and the statutory Authorities must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental degradation.
- (iii) The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign<sup>2</sup>.

Apart from being a part of the environmental protection instruments, Precautionary Principle has also become a crucial part of the Public International Law. With the law gaining significant momentum in the sphere of sustainable development, it is only inevitable that concept such as these is accepted by all the nations. Precautionary Principle, a fundamental element of sustainable development has been discussed much in the legal context, but improvements are still needed in implementation. Many countries still do not follow such principles because they believe that it'll add to unnecessary expenditures and cost, to react proactively, without any concrete data. They believe in relying upon conclusive data to formulate plans and policies. This is done with the view that when plans and policies are made on the basis of conclusive data, they are at their optimal level.

Judiciary plays an immense role in linking the law with the concept of sustainable development. So, it is vital that the judiciary also supports this kind of approaches. Though

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<sup>2</sup> Vellore Citizens' Welfare Forum vs Union of India and Others [1996 (5) SCC 647]



Supreme Court of India in A.P Pollution Control Board (I) v. Prof. M.V Nayudu 1999 2 SCC 718, specifically stated “The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior Court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters.” referring to two other judgments given in Vellore Citizens' Welfare Forum vs. Union of India and Others [1996 (5) SCC 647] and M.C.Mehta vs. Union of India and Shriram Foods & Fertilizers Case [ 1986 (2) SCC 176 ] the Court not only contemplated a combination of a Judge and Technical Experts but also an appeal to the Supreme Court from the Environmental Court<sup>3</sup>; there is still a long way to go for the Precautionary Principle to gain its rightful place in the field of environmental law. And till it does not get its rightful place, it will be very difficult to implement it because of the lack of explanation as to what level of harm to the environment will lead to application of precautionary principle, how will the experts assess the loss to ecology and determine the compensation to be recovered from as cost of reversing the damaged environment.

We have more than 200 Central and State legislations which deal with environmental issues. More legislation means more difficulties in enforcement<sup>4</sup>. There is a need to have a comprehensive and an integrated law on environmental protection for meaningful enforcement. A positive attitude on the part of everyone in society is essential for effective and efficient enforcement of these legislations. The powers vested to the Pollution Control Boards are not enough to prevent pollution. The Boards do not have power to punish the violators but can launch prosecution against them in the Courts which ultimately defeat the purpose and object of the Environmental Laws due to long delays in deciding the cases. Thus, it is imperatively necessary to give more powers to the Boards. The Environment Protection Laws have failed to bring about the desired results. Consequently, for the purpose of efficient and effective enforcement of these laws, it is necessary to set up the Environment Courts; with one Judge and two technical experts from the field of Environmental Science and Ecology. These Courts should be allowed to adopt summary proceedings for speedy disposal of the cases. To begin

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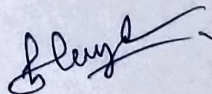
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ISSN 2277 - 5730  
AN INTERNATIONAL MULTIDISCIPLINARY  
QUARTERLY RESEARCH JOURNAL

# AJANTA

Volume-VIII, Issue-I  
January - March - 2019  
Part - III  
Impact Factor / Indexing  
2018 - 5.5  
[www.sjifactor.com](http://www.sjifactor.com)

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**PROCEEDINGS**

17<sup>th</sup> & 18<sup>th</sup> January 2018

ISBN 978-81-933310-5-7

Organised by

**G.E. Society's College of Education, Sangamner**

Chief Editor : Prin. Dr. Sandhya Khedekar

Executive Editor : Mr. A.D. Pithe; Mr. A.S. Chawande

Cover page Design : Mr. A.S. Chawande

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## **WOMEN EMPOWERMENT AND UNITED NATIONS**

**Dr. Mrs. Nandita N Gaikwad**

### **Introduction**

Women are creature of the world. Life begins from mother womb. Women are considered as a basis of society. The development of a nation solely depends on social status of the women. When you meet a woman you meet a nation. Women have been victim of exploitation by male dominated society. For time immemorial women occupied a secondary place in relation to men. Widespread poverty and discriminatory cultural practices, denial of opportunity, decreased women's access to health, education and some new forms of exploitation such as displacement, tourism, sex trade and retrenchment, and women are being pushed into less productive sectors are frequently cited as prime reasons for the persistence of their gender gap and discrimination against women all over the world.

Gender-based violence is the most de-humanizing form of gender oppression. Gender discrimination exists in every society, country whether rich or poor, in every religion, and in every culture. If there was anything that was ever universal, it is gender inequality which breeds violence against women. Violence against women are committed by relatives and people that women trust, love and depend on, bringing about conflict in the lives of women. Women and girls represent half of the world's population and therefore also half of its potential. But, today gender inequality persists everywhere and stagnate social progress.

The United Nations believes that the gender inequalities and discriminatory attitudes and practices towards women must be confronted and eliminated if we are to leave no one behind. At international platform, the United Nations played significant role for empowerment of women in the area of personal, labour, health & social economical matters. Women empowerment means an active multidimensional process which enable women to realize their potential and power in all sphere of life. Women empowerment includes self esteem, self confidence, equal participation, encouraged to make personal contribution, right to control one's life & developing the ability to organize & influence the direction of socio-economic order both at national and international level. Empowerment as a concept was introduce in the United Nations International Women Conference in Mexcio in 1975, Copenhagen in 1980, Nairobi in 1985 and Bejing 1995.

United Nations support for women's right from its beginning days. With Article one of its Charter it declare promotion and encourage respect for human rights and fundamental freedoms for all without discrimination. In 1975, United Nation Economic and Social Council established the Commission on the Status of Women as the principal global policy making body dedicated exclusively to gender equality and advancement of women. The UN General Assembly declared year 1975 as "International Women Year" and subsequently declared year 1976-85 as "UN Decade for Women" and established a Voluntary Fund for Decade. In 1979, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is adopted. It is an International Bill of Right for Women. It set up an agenda for national action to end discrimination against women. It is first human right treaty to affirm the reproductive rights of women.

In 1980, 2<sup>nd</sup> World Conference on Women was held in Copenhagen. It called for stronger national measure to ensure women's ownership & control of property, employment, health and education. The 3<sup>rd</sup> World Conference was held in Nairobi in 1985 to "Review And Appraise The Achievement of UN Decade For Women And NGO Forum". The Conference represented the culmination of ten years of work on gender empowerment and aimed to evaluate the progress made during UN Decade for Women and devise a new course of action for the advancement of women. The Nairobi Conference was mandated to seek new ways of overcoming obstacles for achieving the objectives of the Decade: equality, development and peace. Three basic categories were established to measure the progress



achieved: constitutional and legal measures; equality in social participation; equality in political participation and decision-making. The Nairobi Conference recognized that gender equality was not an isolated issue, but encompassed all areas of human activity. It was necessary for women to participate in all spheres, not only in those relating to gender.

The Fourth World Conference on Women in Beijing (1995) was the largest conference the United Nations had ever organised & adopted unanimously the Beijing Platform for Action (BPFA) to ensure the improvement of all women. The BPFA outlined 12 critical issues, which constitute barriers for the advancement of women which includes: poverty of women, unequal access to education, lack and unequal access to health care systems, violence against women, vulnerabilities of women in armed conflict, inequality in economic structures, inequalities in power and decision-making, institutional mechanisms to improve the advancement of women, lack of respects and inadequate protection in human rights, under-representation of women in the media, inequalities in natural resource management and in the safeguarding of the environment, and the discrimination and violation of the girl child. Full implementation of these twelve issues would see the enhanced empowerment of women economically, socially and politically.

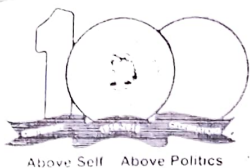
The Commission for Status for Women acted as the Ad-hoc Preparatory Committee for the 5 year review of BPFA held in 2000, 10 year review of the Beijing Platform for Action was carried in March 2005 and 15 year review of the Beijing Platform for Action 2010. In these meetings member states reaffirmed the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly and pledged to ensure their full and accelerated implementation. In July 2010, a new UN organisation for Gender Equality and Women's Empowerment – UN Women, was established to created to address such challenges and consolidated the four existing UN bodies on women; United Nations Development Fund for Women (UNIFEM), Division for the Advancement of Women (DAW), International Research and Training Institute for the Advancement of Women (INSTRAW) and Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI).

UN Women is a dynamic and strong champion for women and girls, providing them with a powerful voice at the global, regional and local levels. The UN, through these Conferences and bodies provided an opportunity for civil society to take women's right a reality. The UN ensure empowerment of women and gender equality by removing the obstacles relating to women's right in social, economical, political, civil, health and education field. To facilitate implementation of action taken by the UN every country whether developed or developing should ensure the adequacy of resources targeted towards eliminating disparities between men and women in society. Women are need to be empowered & man need to be oriented about their obligations towards women.

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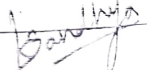
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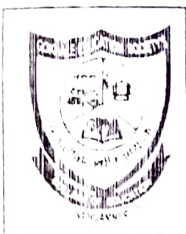
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ISBN 978-81-933310-5-7

Organised by

**G.E. Society's College of Education, Sangamner**

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## FEMALE FETICIDE IN INDIA: ISSUES AND CONCERNS

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**"The hand that rocks the cradle, the procreator, the mother of tomorrow; a woman shapes the destiny of civilization. Such is the tragic irony of fate, that a beautiful creation such as the girl child is today one of the gravest concerns facing humanity."**

I still get goose bumps when I remember the day when my neighbor couple was blessed with a baby but the scene in their family was such as if something wrong has happened. Then I came to know that the reason of such a scene was that the baby was a GIRL. It feels very shameful that in spite of over six decades of independence, in spite of India making rapid progress in science, technology and other fields, the picture that we see of India as of now is not one that can be appreciated, especially in terms of its treatment to the fairer sex. Discrimination against girl children, parents' neglect of the girl child, illegal abortion and female feticide are clear instances of this. The practice of female feticide which is illegal, is still prevalent in our country. There is one section of the Indian society which is trying its best to be liberal in their thoughts. But there is another section of the society, infact a large chunk of it, which is still in the clutches of orthodox views and thoughts and practicing this heinous crime of female feticide. The preference for a son continues to be a prevalent norm in the traditional Indian household. This is evident from the declining sex ration which has dropped to alarming levels. Also, the abuse of advanced technologies and social factors contributing to the low status of women such as dowry, concerns with family name and looking up to the son as a breadwinner has made the evil practice of female feticide to become common.

Female feticide: Female feticide is the killing of an otherwise healthy fetus, in order to get rid of female child by means of medical termination of pregnancy or abortion.

Abortion is lawful only when the doctor believes that due to medical reasons the continuance of the pregnancy may pose a threat to the health of the mother or the unborn child. But the misuse of right to abortion has emerged the social evil of female feticide.

Cause of Concern: The statement seems to be very meaningful that "Men and Women are the two wheels of the same chariot". For a healthy society, the male female sex ratio must remain at a balanced level. Otherwise, the day will not be far when Indian boys will have to **import foreign wives**. The alarming rate of female feticide is a cause of great concern as the number of girls born is declining drastically in general sections of our society. Due to this disproportionate ratio, the situation has the potential to expose females to more exploitation and violence. This state of affairs if not checked will have a disastrous impact on the future generations of our country.

Legal Framework to curb Female Feticide:

To eradicate the menace of female foeticide from the Indian society, one thing that certainly needs to be looked into is the law. There are three laws that need to be looked into – one regarding **dowry** (the major cause for female foeticide), one concerning **sex selection**, and finally, one about **abortion**.

Delving into dowry laws is not very difficult – dowry is simply illegal. **Section 4 of the Dowry Prohibition Act, 1961** states that a person shall be deemed

guilty if s/he demands any dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom. Section 3 of the same Act condemns a person if s/he gives or takes or abets the giving or taking of dowry. The Stridhan (property of the woman) is legal, however.

Sex selection is covered under **The Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2003**. Originally, there was a Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, but due to the prevalence of pre-conception diagnosis, a newer law was put in order. The main purpose of enacting the Act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion. **Offences** under this Act include conducting or helping in the conduct of prenatal diagnostic technique in the unregistered units, sex selection on a man or woman, conducting PND test for any purpose other than the one mentioned in the Act, sale, distribution, supply, renting etc. of any ultra sound machine or any other equipment capable of detecting sex of the foetus. The Mumbai High Court ruled that prenatal sex determination implied female feticide. Sex determination violated a woman's right to live and was against Indian Constitution.

And lastly, **The Medical Termination of Pregnancy (MTP) Act, 1971**, legalizes abortion – however, under certain conditions only. And the misuse of right to abortion has emerged the menace of female feticide.

Thus, the laws in India have been laid out pretty well – covering at least the bare necessities. However, more important than the law is the implementation of the law. The laws have been passed fine, but the reason sex determination and illegal abortions still take place is the improper and inadequate implementation of the law. And if female foeticide is to be stopped, it is time that our officials and those who have been presented with 'power', dig their noses into the laws and our Constitution, and begin taking severe and appropriate action. On paper, everything is fine – what is written can be criticized numerous times – but when it comes to taking action, well, action needs to be taken.

#### Conclusion:

Ironically, female feticide takes place in a country where people worship various forms of Goddesses, and where females are considered as Maa Laxmi's incarnation and where young girls are worshipped and people touch their feet for blessings. But even then, the intentional killing of the girl child continues. Such is the double standards of our society. Right to education, health and empowerment are the fundamental rights of every Indian woman. The horrible illegal practice has to be stopped by harsh laws, effective implementation and change in the mindset of the people. No doubt, our Government's campaign of "Beti Bachao, Beti Pado" and the first episode "Daughters are Precious" devoted by Aamir Khan's show Satyamev Jayate has a great impact on our 'janta janardhan' and has proved to be the eye-openers. But, more such efforts are required to curb this evil completely. Lastly, I would like to say,

**"Save the girl child for a better tomorrow!!!"**

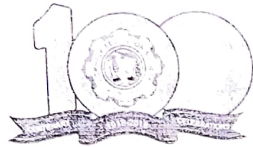


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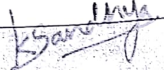


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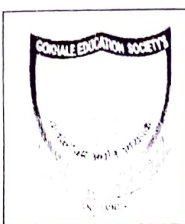
  
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## Role of Education in Empowerment of Women in India

**Mrs. Vaishali Khotale**

Asst. Prof. Govindrao Wanjari College of Law, nagpur

"If you educate a man you educate an Individual, however if you educate a woman, you educate a whole family. Women empowered means Mother India empowered."

by Pandit J. Nehru

### Introduction:-

In pre-ancient India, less was thought about women's education, however in the vedic period, women had a good access to education, but gradually lost with due time pace. Eminent women like Gorg; Maitrei; Apala etc proves that women education prevailed during the early vedic period.

In the early Vedic era, they enjoyed equivalent position and rights with men. The woman was called as Shakti", Shakti means Power. Woman is the power of a man. After foreign invasion, the position of women declined. Even the basic need of human beings are denied to her such as Education, Health, Socio-economic, Political Development which resulted in increased violence against women, Forced Abortion, Female Infanticide, Sexual Harassment, Dowry Death, Disparity in Education, Child Marriages and so on, which further deteriorated and depreciated the condition of women. Still women are facing threats in their lives. These forms of women exploitation and negligence is due to lack of education. Considering the importance of education Specifically women's education and their progress reform is like R.R.Mohan Roy., I.C. Vidyasagar, M.G.Ranade, Mahatma Fule etc raised their voice in support of women education.

### Women Empowerment:-

Women Empowerment has five components. Women's sense of self worth; their right to have and to determine choices; their right to have access to opportunities and resources; their right to have the power to control their own lives, both within and outside and their ability to influence the direction of social change to create a more just Social and Economic order, nationally and internationally.

### Women Empowerment through Education :-

Women Empowerment is National and Global issue. The concept of Women Empowerment was introduced at the international women conference at NAROI in 1995. Even India can't neglect the importance of education in reference to Women Empowerment. India is poised to becoming Superpower, a developed Country by 2020, but if come to reality only when the women of this nation become empowered. Presently largest no. of illiterates were their in India. Despite the importance of women education, unfortunately only 39% of women are literate among 64% of man, looking towards the present position, the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres.

The only way a society or nation can move forward and aspire to economic growth and development is not just through education but especially education among the women citizen. There are several reason for this

### Education Liberates:-

Education liberates the mind whatever may be the stream (science, history, literature etc.) you are gaining knowledge.



ISBN 978-81-933310-5-7

### **Education breaks down barriers :-**

Education enables us to break down all barriers- religious, linguistic, cultural, political, gender and geographical. An educated woman will not discriminate others on the basis of the barrier. She will treat everyone the same and work with them. Education allows the privilege of choice. As education opens up new worlds to women, it will enable them to make their own choices, career, life partner. Education will teach them to discriminate between wrong and right.

### **Education Mobilizes:-**

Education will galvanize women into fighting against the social evils. Women will actively fight against dowry, bride-burning, marital rape and sexual harassment. Education helps choose a career and get financial independence. Education today is enabling women to go beyond professions considered traditionally good for them.

### **Education women contributes to economy:-**

The contribution of the workforce will enhance the output and therefore, the economy will develop.

Listed above reasons women must be educated and they must be encouraged to learn much more.

### **Important Legal Provisions For Women in India:-**

**Constitutional provisions:-** The Constitution of India granted equality to women and empowered the state to take special measures of positive discrimination by eliminating the cumulative Socio-economic, education and political disadvantages faced by the women. Act 14, 15(3), 16(21), 39(a), 39(b), 39(c) and 42 of the constitution are of specific importance in this regard.

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

### **Special initiatives for women Empowerment:-**

#### **\* National commission for women Empowerment:**

It is the statutory body within a specific mandate to study and monitor all matters relating to constitution and legal safeguards provided for women.

#### **\* Reservation for women in local self government :**

73rd amendment ensures 1/3 of the total seats for women in all elected offices in local bodies whether in rural or urban areas.

#### **\* National policy for the women empowerment**

The goal of this policy is to bring about the advancement, development and empowerment of women.

### **Suggestions :-**

Women empowerment is an essential element for national development

\* Whenever policies are amended or new policy are initiated, government has to consider the interest of women

\* The educational and other policies for women empowerment should be implemented in reality.

\* More and more awareness for women Empowerment through education need to be taken through Media, Workshop and Seminars etc.

\* The government body or NGO should come forward for motivating to take education.

\* Government should give 100% focus on improving literacy rate of girl child.

\* Government should improve the quality of women's education in Rural or remote area.



## Conclusion

There is positive relationship between education and women empowerment with this and the issue of women empowerment has been facing certain Serious challenges, which is the outcome of certain evils prevailed in the security. To overcome this situation women empowerment is urgent necessity. In order to promote women empowerment, it is necessary to create an environment to participate in educational programme.

The problem of poverty, unemployment and inequality cannot be eradicated by male alone but equal and active participation is needed. Without women's education they will not be able to understand about their rights and importance. Recently The Government has launched "Beti Bachao Padhao" scheme which aims at making girls independent both socially and financially and generating awareness of education among girl child.

Such schemes, Laws policies should be implemented nationwide to bring the desired change. We should always keep in mind that women like men needed to be proactive in the process of life-long learning. That is true Empowerment. From "women for development" the time has come to shift focus to "women in development" with cooperation of men.

Though we have achieved modernisation and globalisation we must be confident to say "no marginalisation".

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## Certificate

This is to certify that Mr./Ms./Mrs./Dr. Rehini U. Fuladi has participated in the "One Day National Seminar on Environment Protection and Sustainable Development: Issues and Challenges" held on 10<sup>th</sup> March 2018 at Govindrao Wanjari College of Law, Nagpur.

He/She has presented research paper entitled,

Environmental Policy and Public Health : Effects of Bio-medical waste on Human Health

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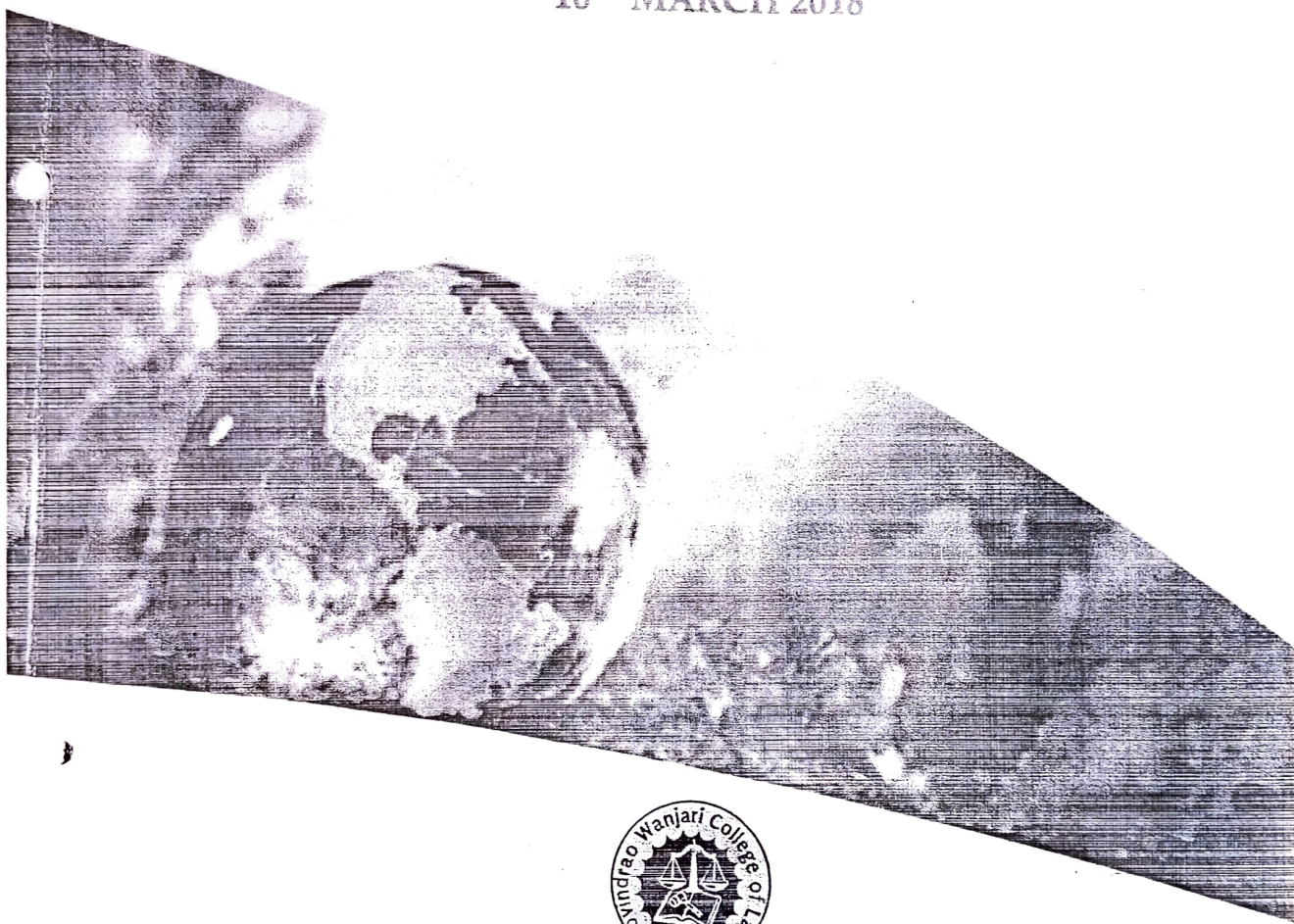
Mar. 2018 (Jan)



ISBN 978-93-86011-93-0

ONE DAY NATIONAL SEMINAR ON  
**ENVIRONMENT PROTECTION AND SUSTAINABLE  
DEVELOPMENT: ISSUES AND CHALLENGES**

10<sup>TH</sup> MARCH 2018



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# Environmental policy and public health: Effects of Bio-medical Waste on Human Health

Dr. Mrs. Rohini U. Fuladi

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~~~~~  
"Environmental Pollution is an incurable disease. It can only be prevented," it was said by a known ecologist of America, 'Barry Commoner.'¹

1. Constitutional Perspectives

In the 1980s, the Indian Constitution legal system particularly in the field of environment law, underwent a sea change in terms of discarding its moribund approach, and instead, charting of new horizons of social justice. Although, the expression 'environment' has not been expressly mentioned in the Constitution, It took a long time for apex Court to pronounce explicitly that the right to life under Art. 21 of the Constitution include the right to live in a healthy environment. The right to life is not confined to mere animal existence, but it extends to the right to live with human dignity. In modern welfare state, justice has to address social realities and meet the demands of time. Protection of the environment throws up a host of problems for a developing nation. Administrative and legislative strategies to bring harmony between environment values and developmental needs are imperative.²

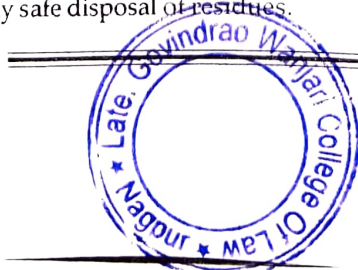
2. Impact on Health

Poor environmental quality has adversely affected human health. Environmental factors are estimated as being responsible in some cases for nearly 20 percent of the burden of disease in India, and a number of environment-health factors are closely linked with dimensions of poverty. Interventions such as reducing indoor air pollution, protecting sources of safe drinking water, protecting soil from contamination, improved sanitation measures, proper disposal of bio-medical waste and better public health governance, offer tremendous opportunities in reducing the incidence of a number of critical health problems.

National Environment Policy 2006 is a response to India's national commitment to a clean environment, mandated in the Constitution in Articles 48 A and 51 A (g), (DPSP) strengthened by judicial interpretation of Article 21. It is recognized that the maintenance of the Healthy environment is not the responsibility of the state alone. It is the responsibility of every Citizen and thus a spirit of partnership is to be realized through the environment Management of the country.

An inevitable consequence of development and industrial progress is generation of waste. Therefore, efficient waste management is a matter of international concern and countries have set up robust regulatory waste management regimes for balancing the objectives of development and environment sustainability. In India, the National Environment Policy, 2006 while suggesting measures for controlling various forms of environmental pollution lays emphasis on, the need for collection and treatment systems for recycling wastes and devising measures for environmentally safe disposal of residues.

ISBN- 978-93-86011-93-0



3. Regulatory Regime for Waste Management

Indian waste management rules are founded on the principles of "sustainable development", "precaution" and "polluter pays". These principles form an integral part of Indian environmental law jurisprudence, as observed by the Supreme Court of India in various decisions³. These principles mandate companies, health institutions and industrial units to act in an environmentally accountable and responsible manner and for restoring the balance, if the same has been disrupted by their business processes. Bearing the essence in mind and the increased levels of waste generation as a by-product of development, various sub-ordinate legislations for regulating the manner of disposal and dealing with generated waste are made by MoEF under the umbrella law of Environment Protection Act, 1986 ("EPA") in conjunct with State Pollution Control Boards of different states, administer the gamut of waste management regulations. It empowers MoEF to make rules on a wide array of issues such as standards for ensuring environmental soundness, allowable limits for emission of environmental pollutants, manner of dealing with hazardous substances and measures for prevention of environmental accidents and hazards.⁴

4. Background concepts

Most countries of the world, especially the developing countries, are facing the grim situation arising out of environmental pollution due to pathological waste arising from increasing populations and the consequent rapid growth in the number of health units. Over the past two decades, health care wastes has been identified as one of the major problems that negatively impact both human health and the environment when improperly stored, transported and disposed. The World Health Organization has advocated that medical waste be regarded as special waste and it is now commonly acknowledged that certain categories of health care waste are among the most hazardous and potentially dangerous of all waste arising in communities.

In India, the Biomedical Waste (Management and Handling) Rules 1998 (Amended in 2000 and 2003) make it mandatory for hospitals, clinics, nursing homes, dispensary, animal house, pathological laboratory, blood bank and other medical and veterinary institutes to dispose of bio-medical wastes strictly according to the rules. It applies to all the person and institution that generate, collect, receive, store, transport, treat, dispose or handle bio-medical waste in any form.

BM Waste means any waste generated in health care processes like diagnosis, treatment or immunisation of human beings or animals, research activities concerning production or testing of 'biological'. It also includes categories of BM Waste such as human anatomical, animal, microbiological and biotechnology, discarded medicines, cytotoxic drugs, incineration ash, chemical related waste.

Hospital waste is not only hazardous and pollute the environment but dangerous for human beings, animals and plants by other ways also. Every day, the countries numerous hospitals and other medical institutions churn out millions of tons of waste. An alarming percentage of the waste lies on open space creating environmental problems. Hence it is necessary to take preventive measures so that hazardous components in the waste are rendered harmless through proper treatment by technology and safe disposal methods. Most of the hospitals are dumping the waste in open place or municipal solid waste, its affect the environmental and human health.

The wastes generated are of two types i.e., infectious and non infectious. The infectious hospital wastes are considered to be potentially hazardous in nature, i.e., Human anatomical or surgical waste, Animal waste, Pathological waste including tissues, organs, blood and body fluids, microbiological cultures, Cotton, Swabs, used syringes, I.V. tubes, Blood bags and other items contaminated with blood and body fluids. Items such as plaster, casts and bandages, when contaminated by blood and pus, waste from isolation wards. This hospital waste is equally harmful to persons involved in the health care waste management i.e. segregation, storage, transport, treatment and disposal. The disposal of untreated health care wastes mixed with non infectious hospital wastes or other general municipal wastes poses an environmental threat and public health risk.⁵

In India, hospital wastes generate around 3 million tonnes every year and the amount is expected to grow at 8.00 per cent annually. It has been roughly estimated that out of the 4 kg of waste generated in a hospital at least 1 kg would be infected. From the various data relating to it show that the health care establishments in India are not giving proper attention to their waste management.

Medical Waste causes risks on health of concerned groups are i.e., doctors, medical nurses, healthcare unit workers and maintenance staff, Patients, Visitors, Workers in ancillary services, laundry, medical supplies store, those charged with collecting and transporting waste, Service workers dealing with waste treatment and disposal of health unit. Three infections are most commonly transmitted are Hepatitis B Virus (HBV), Hepatitis C Virus (HCV), and Human Immune Deficiency Virus (HIV).

5. Appropriate Measures for Disposal of Bio- Medical Waste

- dealing in BM Wastes and of a treatment facility to make an application for authorization from SPCB. The authorization granted is for 3 years after which it must be renewed.
- handled in a manner not causing any adverse effect to human health and environment and disposed off in accordance with prescribed standards.
- segregated in containers at point of generation.
- all covered institutions are mandated to either set up treatment facilities like incinerator, autoclave, microwave system, or to ensure that all BM Waste is treated at a common waste treatment facility
- An annual return has to be sent in prescribed format by January 31 to SPCB providing details of categories and quantities of BM Waste handled.
- There is no specific penalty provided and hence, non-compliance will invoke general penalty under EPA i.e. imprisonment of occupier up to 5 years and/or fine up to INR 100,000 (US\$ 1574).

Findings

- The secure system of management of hospital waste has accepted in recent years in India.
- Special importance is on the proper handling, segregation and disposal of the hospital wastes.
- Degree of waste reduction and recycling are still not well boosted.
- Due to the lack awareness in proper handling, disposal procedures, policy framework affects adversely on environment and health.



Suggestion

- No untreated bio-medical waste should be kept stored beyond a period of 48 hours.
- Untreated bio-medical waste should be transported only in such vehicle as may be authorised for the purpose by competent authority.
- Bio- medical waste should not be mixed with other wastes, but segregate into containers/ bags at the point of generation prior to storage, transportation, treatment and disposal.

Conclusion

The safe and sound hospital waste management system can help in controlling many diseases HIV/AIDS and Hepatitis transmission from dirty needles and other improperly cleaned or disposed medical items. A proper environmental atmosphere and sustainable management of bio- medical waste will help in prohibiting long term bad health effects from the environmental release of toxic substances such as mercury and many more. In recent year, awareness in the people reduces improper disposal of hospital waste, which led to government of India to regulate waste management more consistently.

END NOTES

¹Barry commoner was an American biologist, college professor and politician. He was a leading ecologist and among the founder of the modern environmental movement.

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³ MC Mehta group of cases decided in the eighties, as MC Mehta v Union of India....

⁴India: Waste Management In India: An Overview,Article by AryaTripathy PSA, legal counsellors.

⁵Hospital Waste Management and Environmental Problems in Indiaby Mohankumar & Dr.K.Kottaiveeran, International Journal of Pharmaceutical & Biological Archives 2011; 2(6):1621-1626, www.ijpba.info




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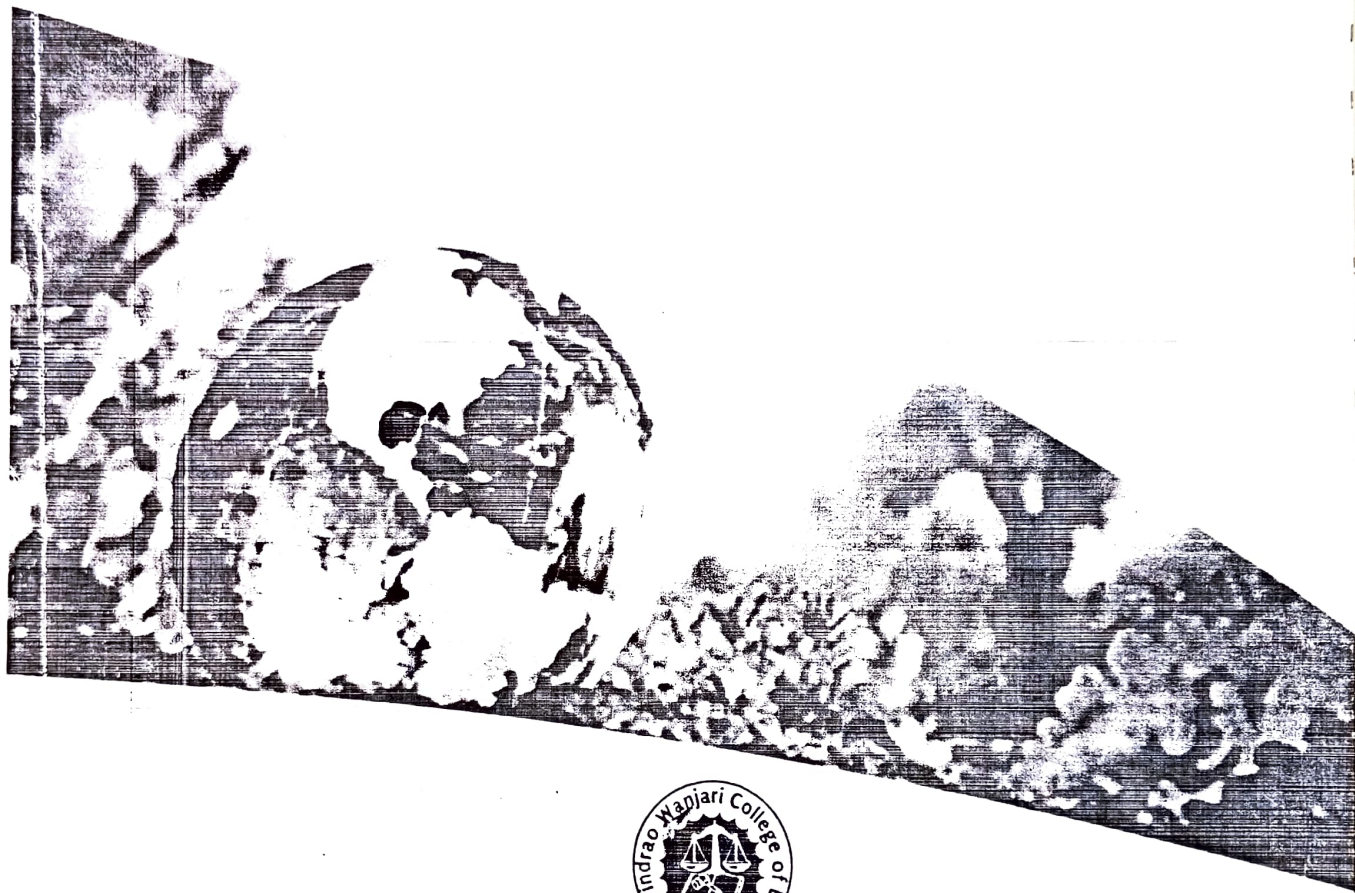
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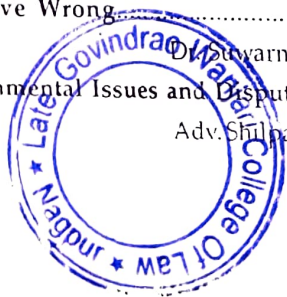


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E- Waste Management & Legislative Measures In India: An Overview

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INTRODUCTION

The electronics industry is the world's largest & fastest growing manufacturing industry.¹ It has been playing a vital role in socio-economic & technological growth of societies from last few years. We can call it as industrial revolution brought about by the advances in science & technology. The quality of life is enhanced by the developments which is the positive impact. But at the same time it resulted in certain problems i.e. large amount of hazardous waste generated from electronic products. This hazardous waste is creating threat to livelihood health & environment. The issue of proper management of these hazardous waste is of great concern as it is considered as an obstacle in achieving sustainable development.

The word 'waste' is defined in Basel Convention as, wastes are substances or objects, which are disposed or are intended to be disposed of by the provisions of national laws.² Generally 'waste' is such item which is required to be disposed or discarded, if these are hazardous then the intervention of law is required. Our daily activities give rise to various types of waste from various sources, like municipal waste is generated from households. The waste generated by hospitals & health service providers is Biomedical waste. Animal waste, human anatomical waste, agricultural waste are also the types of waste which create threat to environment & public health.

CONCEPT OF E- WASTE

E-waste which is also known as Waste Electrical & Electronic equipment (WEEE) is the serious outcome of the development of Science & technology. There is no standard definition of E-waste. Generally E-waste refers to unwanted, obsolete or unusable electronic & household appliances which are not fit for their original intended use & are in position of recovery, recycling or disposal.

E- WASTE MANAGEMENT IN INDIA.

The Information Technology Industry of India has grown rapidly during the 1990's with this growth the problem of e-waste has also intensified. India is considered the 5th largest, e-waste producer in world.³ Sixty cities in India generate more than 60% of the total E-waste generated in India. Ten states generate 70% of the E-waste generated in India of which the e-waste is illegally imported to India from US & EU.

The problem of Management of E-waste in India can be discussed as

- There is no proper mechanism for recycling of E-waste in India.
- The workers are illiterate & having little knowledge about E-waste & its hazards.
- The number of vulnerable workers i.e. women & children is more & they may have immediate hazardous effects.
- E-waste imported from developed countries is seriously high in number as it is being sold by these countries & India becoming the dumping ground for e-waste.
- E-waste is not being recycled or discarded properly & is simply put in certain area for long years.

ISBN- 978-93-86011-93-0



ENVIRONMENTAL & HEALTH EFFECTS OF E-WASTE

E-waste is seriously hazardous for environment because of its components. It is made up of such complex components that while recycling these component create the toxic fumes which are dangerous for the environment & ultimately of the health of the people. The harmful elements & their fatal effects on health can be explained as,

Lead - Released as powder & fumes while breaking CRT affect kidneys & reproductive system.

Plastics - Can be harmful for reproductive & immune system.

Chromium - Can affect liver, Kidneys & can cause bronchitis & lung cancer

Acid - affect eye & skin & such other materials like cobalt, copper, arsenic can Cause serious diseases to the affected. Cabalt-60 radiation tragedy at Mayapuri- Delhi in which one person lost life& other six were admitted to hospital draws attention to the hazardous affects of e-waste⁵

LEGISLATIVE MEASURES.

The legislature in India has been making efforts to enact such law as to include all the factors regarding e-waste management. We can discuss it as below;

The Constitution of India.

Constitution assigns solid waste management as a primary responsibility to the municipalities under Twelfth Schedule.⁶

Article 243 w empowers the state legislatures to frame legislations in respect of waste management.⁷

The Municipal Solid Wastes (Management & Handling) Rules, 2000

It was enacted by central Govt. & Came into force from 25 Sept. 2000. The guidelines for handling Municipal solid wastes from slums, hotels, restaurant, commercial areas are provided in the schedules

Batteries (Management & Handling) Rules 2001

The management & Disposal of batteries is regulated by the Rules.

The Hazardous Waste (Management & Handling) Amendment Rules, 2003.

The term hazardous waste is defined & various other definitions like e-waste is also discussed in the Rules.

The hazardous Waste (Management, Handling & Transboundary Movement) Rules, 2008.

As per the Rules, Every person desirous of recycling or reprocessing hazardous waste including e-waste is required to register with the Central Pollution Control Board (CPCB)

Guidelines for Environmentally Sound Management of E-waste, 2008.

The very object of these Guidelines is to provide guidance for identification of various sources of e-waste & approach & methodology for handling & disposal of e-waste in environmentally Sound manner.

The E-waste (Management & Handling) Rules, 2011

These rules apply to every producer, consumer or bulk consumer involved in dealing with electronic equipment & pose responsibility of e-waste management on them.

The E-waste (Management) Rules, 2016

The extended producer Responsibility (EPR) is mandated to create reverse chain. A 'buy back' policy for electronics has also been suggested that means the producers can buy the products back for safe recycling. The worker's training for handling e-waste is also discussed in the Rules.



JUDICIAL RESPONSES.

The National green tribunal (NGT) has time to time taken into consideration the ill effects of the e-waste on environment & public health. This can be gathered from the following recent orders made by NGT.

- **NagrikUpbhoktaMargdarshakManch V. State of M.P. & ors⁸**
The Hon'ble Tribunal had ordered that the producer should collect & channelize the end of life equipments for proper disposal & 10% of the advertisement should be for creating awareness in consumers about e-waste.
- **Toxic link V/s. Union of India & ors⁹**
The Hon'ble Tribunal had ordered the strict implementation of the Rules throughout the Country, & imposed duty upon state, concerned & producers to submit reports.
- **KudratSandhu V. Govt. of NCT & amp; Other¹⁰**
The order was made regarding the management of plastic waste on the basic of Report submitted by Central Pollution Control Board (CPCB)
- **MahendraPandey V.UOI & amp; others.¹¹**
The National Green Tribunal imposed an environment compensation of Rs. 10 Lakh on the Uttar Pradesh Government for failing to take action an disposing e-waste from the banks of the Ramganga river.
- **Delhi Resident Balbir Singh & General Secretary of DESU MazdoorSangh alleged violation of e-waste rules by power Distribution companies.**
NGT directed Delhi Pollution Control Committee (DPCC) & Central Pollution Control Board (CPCB) to jointly inspect regularly the areas in Power distribution company storing hazardous e-waste & submit a status report.¹²

Thus the above orders of NGT show that regarding e-waste the Tribunal is time to time taking the steps to create awareness & lesson who are liable for this by imposing fines.

CONCLUSION & SUGGESTIONS:

E-waste management in India is facing many hurdles. The problem of proper management of E-waste requires the Government authorities to enact strict legislations to curb the serious problem as it is threat to environment & public health. It is the need of hour to make strict regulatory laws & proper mechanism for implementation of the laws. As the disposal of E- waste should be a prime concern otherwise it would lead to serious health problems for generations. The Author of this paper is of view that, the awareness among producer & consumers will help to deal with the problems of e-waste & the proper implementation of the laws relating to e-waste is the need of today's information technology world.

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 - (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to
 - (i) The preparation of plan for economic development and social justice;
 - (ii) The performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
 - (b) The committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule
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ISBN- 978-93-86011-93-0



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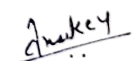
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Biodiversity and Natural Resources at Global and National Level

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Biodiversity is a term that describes the variety of living beings on earth. It is a measure of variation of life forms within a given species, ecosystem, biome, or planet. Biodiversity includes diversity within species (genetic diversity), between species (species diversity) and of ecosystems.² Biodiversity encompasses microorganism, plants, animals, natural resources and ecosystems such as coral reefs, forests, rainforests, deserts and also refers to the number, or abundance of different species living within a particular region. Natural resources include sunlight, air, fresh water, land, vegetation, crops, animal life, fish, metallic and non-metallic minerals, fossil fuels and they may exist in an alternate form that must be processed to obtain the resource such as metal ores, rare earth metals, petroleum, and most forms of energy. Biodiversity is a fascinating product of millions of years of evolution. It is not static but in continuous change.³ At present there are 1.8 million species known and documented by scientists in the world. However, scientists have estimated that the number of species of plants and animals on earth could vary from 1.5 to 20 billion. Thus the majority of species are yet to be discovered.⁴ In biodiversity, each species, no matter how big or small has an important role to play in ecosystem. A healthy and solid biodiversity can recover itself from variety of disasters. Biodiversity is simply the variety of life.⁵

Biodiversity and natural resources are unevenly distributed. They vary globally and within regions. Biodiversity has three aspects, viz. genetics, species and ecosystem. India is recognized to be uniquely rich in all these three aspects. The country has a rich heritage of biodiversity and natural resources, encompassing a wide spectrum of habitats from tropical rainforests to alpine vegetation, and from temperate forests to coastal wetlands. India contributes 8.22% of the known global biodiversity and almost all the bio-geographical regions of the world are represented here.⁶ India is one of the 17 mega-diverse countries of the world. India has diverse climate as well as topography in dissimilar parts. India occupies 10th place amongst plant rich countries of the world.⁷

Biodiversity plays an important role in maintaining ecosystem productivity, stability, sustainability and other ecosystem services that are essential for human well-being.⁸

The earth's biodiversity is in grave danger. In addition to the intrinsic natural causes, the biodiversity on Earth is increasingly challenged by human interference.⁹ There is no doubt that the biodiversity is declining globally, the reasons for which are - **Destruction of natural habitat, over-exploitation of natural resources, over-exploitation of species, invasive species together with the exotic diseases they introduce, the breakdown of ecological networks, forest fires, climate change, Industrial growth, etc.** Habitat degradation is perhaps the most obvious of these as the growing human population, and the growing demands for consumer products, place ever greater strains on the environment.^{10,11} Global Climate change also poses major threats to biodiversity and is occurring at an unprecedented rate today mainly due to an increased emission of greenhouse gases such as atmospheric CO₂. Increase in atmospheric CO₂ is predicted to become one of the major drivers of global biodiversity loss. Global average temperatures increased by 0.2°C per decade since the 1970s are predicted to further increase by 1.4°C to 5.8°C by 2100. Global mean sea level has risen by 12 to 22 cm during the last century. Extensive fires and forest

degradation could also result in a massive degradation of sustaining and regulating ecosystem services. Climate change is accelerating biodiversity loss in the future.¹² Land use and climate change can accelerate the degradation of water resources that support humans and ecosystem services on a global scale.¹³ Global change, land-use, climate changes and human population growth are ultimately responsible for affecting biodiversity. Some of the important threats to the biodiversity are deforestation, mining activities, soil erosion, pollution, illegal trade on commercially imperative elements, construction of large dams, projects and clearance for settlement as well as agriculture in addition to environment pollution from pesticides along with fertilizers.¹⁵

Our ecosystems are suffering from all these changes and their effects. The human life is directly depending on the world biodiversity and how we could manage our interactions by the other species on the earth.¹⁶

The natural and natural resources have been declining rapidly in India.¹⁷ The Indian Himalayan Range is rich in diversity of Medicinal plants. Habitat degradation and over exploitation of these medicinal plants may lead to poor regeneration and extinction of these species in near future.¹⁸ Mangroves in India account for 2% of the world's means of well-off species diversity. The country has lost about 40% of its mangroves and 10% of its wetlands. Around 19 lacs hectare forest land is under encroachment in India which is 12% of the total recorded forest area of the country. FAO (Food and Agriculture Organization) and WCS (World Conservation Strategy) establish that tropical forests which are wealthy in biodiversity are shrinking at the rate of 0.8% every year. India is facing a high rate of loss of biodiversity due to human settlements, mining activities and associated infrastructure. Biodiversity is a resource that has to be preserved for meeting our future needs.¹⁹

The use of energy derived from natural resources is indispensable to human life in modern times. However, it has a lot of threats to the existence of the planet Earth. The most serious among them are the global warming and extinction of non-renewable sources of energy. Global warming is also becoming a major cause for loss of biodiversity. The primary cause of global warming is fossil fuel consumption, which accounts for 80% of worldwide energy consumption. Thus, the use of such non-renewable sources of energy poses a serious threat to biodiversity and the existence of our planet. The natural resources such as forests and forest products are degrading and steadily due to increased human activities for the growth of agriculture, industry, urbanization, etc. Due to factors such as human modifications to the environment, overexploitation of species, habitat destruction, pollution of fresh water, sewage and organic pollutants; aquatic biodiversity is also greatly threatened and we are facing a global water crisis. There is also an urgent need to maintain the integrity of these aquatic ecosystems and the ecological processes of the natural waters.²⁰

People should be more inclined towards the utilization of natural resources rather than their conservation. The natural resources are theoretically exhaustible, which means they have a finite quantity and can be depleted and used improperly. Due to over-exploitation of natural resources and unsustainable expansion we are undergoing the extinction crisis. The Millennium Ecosystem Assessment (2005) highlighted a substantial loss of biodiversity on Earth, with some 10- 30% of mammal, bird and amphibian species threatened with extinction. It is a threat to the life of each and every species along with humans and we need to conserve biodiversity which is vital for the planet. The answer to this is Sustainable development, which is the need of the hour.

Sustainable development implies the accomplishment of quite a few conditions: preserving the on the whole balance of the environment, as well as preventing the fatigue of natural resources. In order to be

sustainable, developments have to unite three main elements: fairness, protection of the environment along with economic efficiency.²² To prevent the exhaustion of natural resources, we have to carry out a detailed analysis of the potential of renewable sources to ensure that society's energy demands are covered. The current options of renewable energy resources available are; Solar Power Stations, Wind Power Stations, Hydroelectric Power Stations, Biogas, Geothermal Power, Wastewater treatment plant.²³ Nuclear energy is also emerging as a newest source towards sustainable development.²⁴

Biodiversity regulates and affects the variation and trends of the life. Due to the great significance of Biodiversity as its multifold utilization and performance to support the species diversity it is urgent need to conserve the Biodiversity in effective manner.²⁵ Globally and nationally measures are being taken to conserve biodiversity and natural resources. Several nations including India are striving to formulate biodiversity regulations to comply with international treaties and are facing growing pains in putting rules and systems in place. The United Nations designated 2011–2020 as the United Nations Decade on Biodiversity. The Biological Diversity Act, 2002 is an Act of the Parliament of India for preservation of biological diversity in India, and provides mechanism for equitable sharing of benefits arising out of the use of traditional biological resources and knowledge.

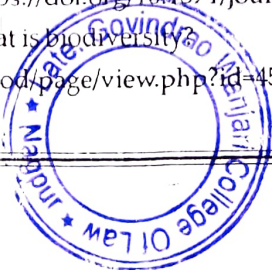
Bio diversity issues suffer from insufficient integration into broader policies, and stringent strategies and programs at international, national and local levels are mostly far from being functional. Biodiversity loss can in many cases be attributed to human exploitation of land and natural resources, human intervention can also alter this trend. It is, therefore, necessary to influence people for changing their life-styles by means of the aim to attain sustainable development. This calls for attitudinal modify of people. The problem of biodiversity conservation has turn into a global issue, it is being realized that the forest existing within a country is not a resource just for the country, but whole of the world. Conservation in addition to sustainable use of biodiversity is one of the thrust areas for public education, awareness as well as responsibility.

CONCLUSION:

Biodiversity has a wide scope in regulation of life in ecosystem and other multidirectional utilization. Healthy human environment depends wholly on biodiversity. Everything we eat, wear in addition to create on this planet earth is ultimately dependent on its biodiversity. Population control, forest development/plantation, reduction in pollution level, people's awareness for valuation of the biodiversity etc. are key steps urgently needed for maintenance, growth and for conservation of the biodiversity. There is a need to implement Sustainable development practices globally and nationally. There is an urgent need to take action globally and nationally to protect the magnificent biodiversity of our planet. We must create global and national policies in order to maintain the Earth's biodiversity and take appropriate measures to protect habitats, species and conserve the natural resources.

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वसंतराव नाईक शासकीय कला व
समाज विज्ञान संस्था, नागपूर

नेक मूल्यांकन 'अ' दर्जा प्राप्त
तत्त्वज्ञान विभाग वसरा आयोजित

समाज तत्त्वज्ञान परिषद

मुख्य संकल्पना : तत्त्वज्ञान चिंतित्वा आणि जीवनमाग

तुल्य विमर्श

संपादक :

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अधिवेशन

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गोविंदराव वज्जारी, कॉलेज ऑफ लॉ, नागपूर

प्रत्येक व्यवसायात नीतीला महत्वाचे स्थान आहे. नीतिशास्त्रात व्यवसायातील विविध व्यक्तीचे संबंध कर्मचारी, ग्राहक यांच्यामधील संबंधाचा विचार केला जातो. प्रत्येक व्यवसायात, जीवनमूल्ये, चांगल्या गोष्टीची वाढ, वाईट गोष्टीपासून दूर राहणे, सत्यवादीता न्यायपूर्ण वाटप इत्यादी गोष्टींना महत्त्व दिले जाते.

व्यावसायिकाकडे विशिष्ट क्षेत्रातील सखोल ज्ञान असते व त्याचबरोबर संयोजनक्षमता, व्यवस्थापन कौशल्य, त्यासाठी आवश्यक असणारी प्रतिभाशक्ती इत्यादी गोष्टी असाव्या लागतात. व्यावसायिकांची आपण करीत असलेल्या व्यवसायावर पूर्ण निष्ठा असते. व्यवसायाच्या माध्यमातून तो जनतेची सेवा करीत असतो व केलेल्या सेवेबद्दल मोबदला न स्वीकारता मानधन स्विकारीत असतो.

परंतु आज आपल्याला असे दिसून येते की, अनैतिकता ही केवळ व्यक्ती पुरती मर्यादीत नसते तर व्यक्तीच्या आचरणातून किंवा चारित्र्यातून तिचे स्वरूप प्रगट होत नाही, तर तिची व्याप्ती सामाजिक स्वरूपातही पाहावयास मिळते. व्यक्ती जीवनास सहाय्यक ठरणाऱ्या किंवा त्याच्या विकास साधणाऱ्या काही सामाजिक संस्थादेखील असतात. त्या संस्था आपल्या मूळ उद्देशापासून दूर गेल्या किंवा त्याचे स्वरूप विकृत झाले. तर त्यास 'सामाजिक अनैतिकता' असे म्हणता येते. शासन, वैद्यक, विधी, शिक्षण किंवा व्यापार अशा त्या संस्था म्हणून सांगता येईल. ज्या समाजात अशा संस्था योग्य रितीने कार्य करतात, त्या समाजातील व्यक्तीचा सर्वांगीण विकास होऊ शकतो वा उलट ज्या समाजात अशा संस्थांचे स्वरूप भ्रष्ट झाले असेल. तर त्या समाजाचे अधःपतन होते. अशा संस्थांचे महत्वाचे घटक असणाऱ्या ज्या व्यक्ती आहेत. उदा. शिक्षक, वैद्यक, वकील, व्यापारी यांचे आचरण भ्रष्ट झाले की सामाजिक संस्था भ्रष्ट होतात. पर्यायाने समाजही भ्रष्ट होतो. समाजाची घटी विस्कळीत होते. म्हणून अशा घटकांचा नैतिक दृष्टीकोनातून विचार करण्याची अत्यंत गरज आहे.

व्यवसायाचे स्वरूप (Nature of Profession)

'क्लार्क' हा शब्द शास्त्राच्या मते, व्यवसाय म्हणजे संघटन आहे की, ज्यात स्वतःचे विशिष्ट असे ज्ञान असते. ज्या ज्ञानात मानवी कल्याणाची तीव्र कर्तव्य भावना असते. या व्याख्येनुसार कोणत्याही व्यवसायापाठीमागे सामाजिक कल्याण हा महत्त्वपूर्ण उद्देश असतो. कोणत्याही व्यवसायात प्रामुख्याने जनतेच्या समस्या सोडविल्या जातात. समाजाची सेवा करण्याच्या दृष्टीकोनातून आपल्या कौशल्याचा उपयोग केला पाहिजे. ही भावना त्यामागे असते. आपण देत असलेल्या सेवेचे बक्षिस आपल्याला लगेच मिळाले पाहिजे ही भावना त्यामागे नसते. सेवा देताना व्यावसायिकाला एक प्रकारचा आनंद होत असतो. आपली सेवा ही गुणात्मक दृष्ट्या उच्च प्रतीची असावी असा प्रत्येक व्यावसायिकांचा प्रयत्न असतो.

व्यवसाय हा प्रामुख्याने सामाजिक जबाबदारीच्या भावनेतून केला जातो आणि ही जबाबदारी प्रत्येक व्यावसायिकास बंधनकारक असते. कोणत्याही व्यवसायात व्यावसायिकता, कारिग्य, सेवा, निष्ठा, तत्पूरता, नम्रता, औदार्य या गोष्टी महत्त्वाच्या असतात. व्यावसायिकाला समाजात एका प्रतिष्ठेचे स्थान असते व ही प्रतिष्ठा जोपासणे आणि वाढविणे ही प्रत्येक व्यावसायिकाची जबाबदारी असते. प्रत्येक व्यवसायासाठी एक विशिष्ट आचारसंहिता असते व त्या त्या व्यावसायिक लोकांनी ह्या आचारसंहितेचे पालन करणे हे त्याच्यावर बंधनकारक असते.

प्रत्येक व्यवसायात, व्यावसायिक नीतिमतेबद्दल आपल्याला काही सर्वसामान्य निकष सांगता येतील. कोणत्याही नफ्याच्या उद्देश मनात न ठेवता, अत्यंत निष्ठा व केवळ जनतेची सेवा करण्याच्या हेतूने व्यवसाय करित असतो. अशा व्यावसायिकाची व्यावसायिक नीतिमता ही उच्च दर्जाची आहे असे म्हणता येईल.

व्यवसायाचे स्वरूप पाहिल्यानंतर व्यवसाय व व्यापार यांच्यातील फरक पाहणे महत्त्वाचा आहे. तो पुढील प्रमाणे सांगता येईल.

व्यवसाय आणि व्यापार (Profession and Business)

सामाजिक संस्थांच्या माध्यमातून कार्य करणाऱ्या घटकांचे दोन प्रकारात वर्गीकरण करता येते. व्यावसायिक आणि व्यापारी. यासाठी आपल्याला व्यवसाय आणि व्यापार यात मूलभूत असा भेद कोणता हे पाहावयाचे आहे. तो पुढील विवेचनावरून लक्षात येऊ शकतो.

१. अर्थाजन करणे हा जसा व्यापाराचा उद्देश असतो तसाच तो व्यवसायाचा देखील असतो. परंतु व्यापार हा केवळ अर्थाजनाच्या हेतूने केला जातो तर व्यवसायात 'सेवा' (Service) महत्त्वाचे असते. उदा. एखादा वैद्यक जेव्हा निदान करत असतो तेव्हा ते स्वतःचा काय फायदा होईल यापेक्षा इतरांना मदत कशी होईल याचाच विचार करतो. याउलट व्यापारी क्रय-विक्रयातून किती नफा होईल याचा विचार करतो.
२. व्यापाराचा संबंध दृश्य, मूर्त, उपभोग्य, वस्तुशी येत असतो. ज्यांचा क्रय विक्रय हा प्रामुख्याने संख्यात्मक स्वरूपाचा असतो. यांचे मूल्य निश्चित पैशानी चूकवता येऊ शकते. याउलट व्यवसाय अमूर्त, अदृश्य सेवेशी निगडीत असतो. ज्याचे मूल्य पैशानी ठरविता येत नाही. सेवेचे स्वरूप गुणात्मक असते.
३. व्यापार हा प्रामुख्याने वैयक्तिक हिताला प्राधान्य देणारा असतो. उलट व्यवसाय सामाजिक हिताला प्राधान्य देणारा असतो.
४. व्यापाराची यशस्वीता आर्थिक फायदयावरून दर्शविली जाते. तर व्यवसायाची यशस्विता सेवेच्या गुणवत्तेवरून ठरविली जाते.
५. सर्वात महत्त्वाचे म्हणजे व्यापारात सामाजिक उत्तरदायित्व नसते ते व्यवसायात असते.

महाराष्ट्र, सेवा, निष्ठा,
ही जगताचा
महाराष्ट्र स्थान

पुढील मुद्यांच्या विचार केल्यास असा लक्षात येत की, व्यापारापद्धती व्यवसायात समाजिक प्रतिष्ठा असणे अलीकडील काळात काही व्यवसायिक निव्वळ जडप्राप्ती हा हेतू ठेवत आहेत त्यामुळे काही व्यवसायाचे अस्तित्व आज धोक्यात आले आहे. व्यवसायाचे व्यापारीकरण झाले आहे. विविध व्यवसायात निरनिराळ्या अनैतिकता निर्माण झाल्या आहेत. त्या अनैतिकतांचे स्वरूप कस आहे ? त्यासाठी काही उपाययोजना करता येतील का ? याचा विचार व्यावसायिक नीतिशास्त्रात केला जातो.

व्यवसाय आणि नैतिकता (Profession and Morality)

समाजात अस्तित्वात असणाऱ्या निरनिराळ्या व्यवसायांचा आणि नैतिकतेचा अनन्यसाधारण संबंध आहे. सधःस्थितीत व्यावसायिक आदर्श समाजातून हदपार होऊ लागला आहे की काय ? अशी शंका निर्माण होण्यासारखी परिस्थिती निर्माण झाली आहे. कारण आज केवळ पैसा हे मानवी जीवनाचे सर्वात महत्त्वाचे मूल्य बनले आहे. अशा परिस्थितीत दिवसेंदिवस समाजाचे अधःपतन होऊ लागले आहे. नैतिकता वरचेवर कमी होऊ लागली आहे असे नव्हे तर ती कायमची नाहीशी होऊ लागली आहे. ही चिंतनीय बाब आहे.

नैतिकता हे व्यक्तिजीवनाचे तसेच समाज जीवनाचे सर्वात महत्त्वाचे अधिष्ठान आहे. नैतिकतेविना व्यक्तीजीवन पशुतुल्य बनते. समाज हा नुसताच पशूंचा एक कळप बनून राहतो. नैतिकता हे मानवी जीवनाचे व्यावच्छेदक लक्षण आहे. म्हणून हयाच्या आधारावर समाज उभा आहे. अशा व्यवसायात नैतिकता असणे अनिवार्य ठरते. संपूर्ण मानवी जीवनाला स्पर्श करून संस्कृत बनवणारा शिक्षण व्यवसाय असेल. मानवी जीवनाचे अस्तित्व राखणारा किंवा जीवनाचा वृद्धी करणारा वैद्यकीय व्यवसाय असेल. मानवी समाजाचे आणि संस्कृतीचे रक्षण करणारा विधी व्यवसाय असेल. याचा पाया नैतिकतेवर आधारीत असला पाहिजे. संपूर्ण समाज या व्यवसायांकडे अपेक्षेने पाहत असतो असे म्हटले जाते की, 'कुंपणच शेताचे रक्षण करीत नसेल तर दाद कुणाला मागायाची ?' या उक्तीप्रमाणे अशा व्यवसायातूनच जर नैतिकता राहणार नसेल तर आदर्श समाज किंवा नैतिक समाज ही कल्पनाच कोल ठरते. कुठल्याही व्यवसायाची एक नैतिकसंहिता असते. त्या संहितेचे पालन प्रत्येक व्यवसायिकाने प्रामाणिकपणे करणे हे त्याचे कर्तव्य आहे. एखादया व्यवसायात व्यावसायिकाचे ज्ञान व कौशल्य तसेच नैतिक संहिता (Moral Code) यांचा समन्वय उच्च प्रतिची सेवा देऊ शकतो व तो प्रत्येक व्यवसायिकाने पाळला पाहिजे असे तरी मला वाटते. ज्यामुळे व्यावसायिक नैतिकता निर्माण होईल व प्रत्येकजण सेवा या भावनेतून बघेल अर्थाजण या दृष्टीकोनातून बघणार नाही.

अंतिमता असे म्हणता येईल की, जरी व्यवसायात नैतिकता जशी प्राचीन काळात दिसून यायची तशी आधुनिक काळात दिसून येत नाही. आज व्यवसायाचे स्वरूप गुंतागुंतीचे किंवा भ्रष्ट होत आहे. त्यामुळे अनेक समस्या व अनैतिकता निर्माण झालेल्या आहे व ही अनैतिकता थांबवायची असेल तर प्रत्येक व्यवसायिकाने आपल्या आपल्या व्यवसायातील आचारसंहितेनुसार वागून समाज कल्याण व सेवा हे ध्येय ठेवून व्यवसायाकडे पदार्पण करायला पाहिजे. ज्यामुळे आपल्या देशात अव्यवस्था राहणार नाही व लोकांच्या मनात व्यावसायिकांना प्रतिष्ठा असे. शिक्षक, वकील, डॉक्टर यांच्याप्रती जो आदर आहे तो

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NAGPUR

वसंतराव नाईक शासकीय कला व समाज विज्ञान संस्था नागपूर, आयोजित ३२ वे अधिवेशन ISBN No. ९७८-८१-९२५०००-२-७

तरात कायम राहील व समाज सुसज्ज होऊन नैतिकता देशात निर्माण होईल व आपणही इतर देशाप्रमाणे प्रगती पथावर राहून, आपला देश भावी काळात प्रगतीशील वनेल.

संदर्भग्रंथ :-

१. दे. द. वाडेकर - तत्त्वज्ञान महाकोश
२. प्रा. माधवी कवी - उपयोजित नीतिशास्त्र
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४. Peter Singer - Practical Ethics



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महाराष्ट्र तत्त्वज्ञान परिषद

(नोंदणी क्रमांक : महाराष्ट्र/४११२/कोल्हापूर)

सार्वजनिक न्यास नोंदणी क्रमांक : के.एफ-४१५३

संपर्क : तत्त्वज्ञान विभाग, पुणे विद्यापीठ, पुणे ४११ ००७.

पावती क्र १६००

दिनांक : ११.१०.१७

श्री./श्रीमती पुष्पा देवतळे

पत्ता गोविंदराव वंजारी कॉ. कॉलेज, नागपूर

यांचेकडून ☐ देणगी ☐ आजीव सभासद वर्गणी ☐ वार्षिक वर्गणी ☐ विद्यार्थी सभासद वर्गणी २०१७ - २०१८ या वर्षासाठी

रु. (रुपये) शंभर रुपये मात्र) रोख / म. ऑ. / चेक / डी.डी.

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कार्याध्यक्ष

खजिनदार

महाराष्ट्र तत्त्वज्ञान परिषदेकरिता

नोंदणीकृत कार्यालय : २४६, रत्नोदय को-ऑप. हाऊसिंग सोसायटी, नागाळा पार्क, कोल्हापूर ४१६ ००३.

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महाराष्ट्र शासन

वसंतराव नाईक शासकीय कला व समाज विज्ञान संस्था, नागपूर

'नैक' मूल्यांकन 'अ' दर्जा प्राप्त



तत्त्वज्ञान विभाग द्वारा आयोजित

महाराष्ट्र तत्त्वज्ञान परिषद, ३४ वे अधिवेशन

दि. ९, १०, ११ ऑक्टोबर, २०१७

प्रमाणपत्र

प्रमाणित करण्यात येते की,


प्रा./डॉ./श्रीमान/श्रीमती पुष्पा देवते, गोविंदराव वंजारी कॉलेज ऑफ डॉ, नागपूर.



यांनी


वसंतराव नाईक शासकीय कला व समाज विज्ञान संस्था, नागपूर येथे दि. ९, १०, व ११ ऑक्टोबर, २०१७ रोजी आयोजित महाराष्ट्र तत्त्वज्ञान

परिषदेच्या ३४ व्या अधिवेशनात 'व्यावसायिक नीतिशास्त्र'

चा विषयावरील शोधनिबंध सादर केला / सहभाग घेतला करिता प्रमाणपत्र देण्यात येत आहे.


डॉ. शैलजा खोरेगडे
कार्यालय, नागपूर


for 
डॉ. नागोराव कुंभार
अध्यक्ष, महाराष्ट्र तत्त्वज्ञान परिषद


डॉ. सुनेत्रा महाराज पाटील
संचालक
वसंतराव नाईक शासकीय कला व समाज विज्ञान संस्था, नागपूर

Year
2018-2019

2018-2019 (Back)

International Humanitarian Law

A Reflection on 70 Years of Geneva Conventions 1949



Editors

Rashmi Salpekar
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Garima Singh

SATYAM LAW
INTERNATIONAL

Rashmi Salpekar

International Humanitarian Law

SATYAM LAW
INTERNATIONAL

Message

Today armed conflicts dot the global landscape, and this has brought to fore not just the mammoth humanitarian needs that exist on ground but also the need to promote IHL more vigorously amongst all stakeholders. IHL seeks to limit the effects of wars and armed conflicts and also protects persons who do not participate or are no longer participating in armed conflicts. The four Geneva Conventions of 1949 that form the bedrock of International Humanitarian Laws have been universally ratified by all members states of the international community.

Against this background the International Committee of the Red Cross has the mandate to promote International Humanitarian Law at various platforms. The academic circles comprising of students and faculty have been one of the most important forums to engage in discourses on IHL.

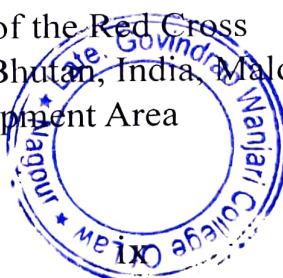
Towards this endeavour, the ICRC Regional Delegation of India, Nepal, Bhutan and Maldives in collaboration with the Vivekananda School of Law and Legal Studies, Vivekananda Institute of Professional Studies, New Delhi organised a national conference on International Humanitarian Law titled Commemorating 70 Years of the Geneva Conventions in January 2019. I witnessed the research papers presented as well as the engaging deliberations in the conference which brought together academicians, law professionals, IHL experts and scholars from pan India.

I am happy that the editors of the volume have put in efforts to address the pertinent issues of International Humanitarian Law and decided to publish them in the form of a book. This piece of work would be a good reference material for youngsters interested in IHL. I congratulate the editors for this fruitful culmination and hope that it will be well received by scholars and practitioners.

Dr Anuradha Saibaba

**Head-IHL Department, ICRC Regional Delegation for India,
Nepal, Bhutan & Maldives**

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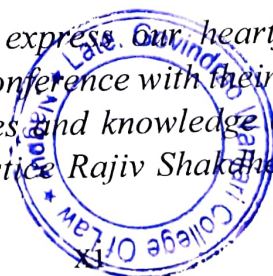
Acknowledgements

The present edited volume titled "International Humanitarian Law: A Reflection on 70 years of Geneva Conventions 1949" is the product of the national conference organised by VIPS in collaboration with International Committee of the Red Cross (ICRC), New Delhi, on January 19th 2019 on the topic "International Humanitarian Law: Celebrating 70th Anniversary of Geneva Conventions, 1949". We are grateful to our conference partner ICRC who has extended their full support and funding for the successful culmination of the conference. ICRC has been a great collaborator throughout and worked right from the very beginning to sort out significant issues and papers for engaging deliberations.

The conference which started with an aim to spread awareness and initiate discussions on contemporary challenges and prevailing scope of IHL on realities of modern warfare and its impact on protection of victims of armed conflicts would not have been possible without enthusiastic participation from the members of academia and legal professionals. We are thankful to all the participants who have been a part of the deliberation and could add relevant dimensions to the field. With an aim to bring forth the pertinent issues covered during the conference, the book brings forth the scholarly articles earnestly contributed by the participants. We thank our authors who have been vital in bringing a definite shape to the pivotal issues addressed during the conference.

Dr. S.C. Vats, Chairman VIPS, an eminent educationist philanthropist, visionary and physician was the chief patron of the conference. We extend our heartfelt gratitude for his continuous support and encouragement. Prof Anuradha Saibaba, Head-Intl. Humanitarian Law Unit, ICRC, N. Delhi, who has been the conference chair, has been pivotal in the endeavor. She has taken a keen interest since the very inception of the idea of the conference. Her focus on the serious discussions in the field of IHL and her presence throughout has been highly beneficial for the conference to achieve its said purpose.

We would also like to express our heartfelt gratitude to the luminaries for gracing the conference with their benign presence and for sharing their experiences and knowledge on the occasion. The Chief Guest, Honorable Justice Rajiv Shakher, Judge, Delhi High



Court, the Guest of Honor, Mr. P.K Malhotra, Ex –Secretary, Minister of Law and Justice, were our privileged guests. We thank them for their support and guidance.

We would like to thank our esteemed plenary speakers for presenting on topics apt to the discussion and initiating rich deliberations on relatable issues and challenges of International Humanitarian Law. Prof. Shruti Bedi, Associate Professor, UILS, Panjab University, Chandigarh, Dr. Srinivas Burra, Assistant Professor, South Asian University, New Delhi and Prof Anuradha Saibaba were the panelists for the conference and we thank them for their intellectual insights which gave a great stimulus to the participants.

The exercise of bringing likeminded intellectuals and robust ideas together from the outside world would not have been complete without the efforts and insights of the technical session chairs. Prof. Tasneem Meenai, Director, Nelson Mandela Centre for Peace & Conflict Resolution, Jamia Milia Islamia, N. Delhi, Prof. V.K. Ahuja, Prof-in-charge, Law Centre II, University of Delhi, Dr. Vinai Kumar Singh, Deputy Director, Indian Society of International Law, New Delhi and Prof. Anuradha Saibaba, Head-International Humanitarian Law Unit, ICRC, New Delhi, not only enhanced the quality of the discourse, but also their discerning interventions shaped the book further as the participants could draw useful ideas and revisit their work in light of the perceptive directions shown to them.

Behind the successful organisation of the conference was a great team work. We would like to acknowledge the work of our team members whose sincere efforts and hard work put together one of our proud achievements. The organising committee comprised of Prof. Rashmi Salpekar, Dean, Vivekananda School of Law and Legal Studies (Conference Chair), Dr. Navjeet Sidhu, (Convener), Dr. Garima Singh (Co-Convener), Mr. Aaditya Sharma, Mr. Apoorv Bhardwaj, Mr. Sarvesh Sharma, Ms. Bhavya Gupta, Ms. Nirati Gupta, Ms. Rumi Roy, Ms. Upma Shree and Mr. Narender Kumar.

We would always be grateful to our ever supportive management at the Vivekananda Institute of Professional Studies for being the guiding light in all our academic and non-academic endeavors.

We profusely thank our publisher Satyam Law International, specially Sh. Yogesh Bhardwaj, for showing curiosity in the topic and for timely publication of the title.

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Chapter 2

Protection of Prisoners of War *An International Obligation of States under the Third Geneva Convention*

Snehal Fadnavis*

Introduction

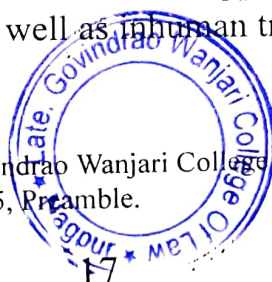
“We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind....”¹

Declares the United Nations in the preamble to its Charter. It is one of the important principles of the UN stated under Article 2(4) that, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” However since times immemorial there have been wars. In spite of the provisions of the UN Charter wars are taking place even now and they will continue to take place in future also and the plight of prisoners’ captive of war will also continue. It is a well established fact that prisoners of war (POW) are not criminals. They are merely an enemy no longer able to bear arms. As such, they are defenseless persons who are entitled to be respected and treated humanely while in captivity and to be liberated at the close of hostilities.

Historical Background of War Prisoners

In the history of war, prisoners are the relevant aspect of war and the main aim of the conquered State is to control or take the combatants of vanquished state so as to enslave them or kill. Since many years the prisoner’s conditions have not been uniform in the world. Confinement in dirty cells, no food or insufficient food supply, insufficient hygiene, no clothing, ill treatment as well as inhuman treatment are problems

* Ph.D in Law, Principal, Govindrao Wanjari College of Law, Nagpur
1 United Nations Charter, 1945, Preamble.



1907

faced by the prisoners. Therefore voice rose for the need to address prisoners' problem, to promote good practices for the development of social, emotional, physical as well as psychological needs of the prisoners. During European revolution little changes were made with respect to the treatment towards the members of armed forces of defeated States who were captured. Instead of enslavement of captives or soldiers, their ransoming was mostly accepted as a new practice and was widely practiced and continued even as late as the 17th century. While the practice still continues in the European and other countries in the world, the famous Jurist, Hugo Grotius(On the Law of War, 1625) stated that war does not mean destruction of life or property beyond necessity. He also advocated the concept of exchange of prisoners instead of ransom.

As a result, international community recognised the importance of giving special status to the combatants who are captured during and at the end of the war by the respective states. The first international peace treaty i.e. The Treaty of Westphalia (1648), which ended European War is the milestone as it stated that prisoners should be released without ransom. This ended the era of enslavement of prisoners of war.

During the 18th century a new system was developed towards protection of prisoners of war. Montesquieu, a French Philosopher, stated that the only right in war that the captor had over a prisoner was to prevent him from doing harm. The captive was no longer to be treated as a piece of property to be disposed of at the whim of the victor but was merely to be removed from the fight.² Afterwards in 1863 Lieber Code also known as General Order No.100 was issued by Abraham Lincon President of U.S. It contains 157 provisions some of which deal with Prisoners of War. Section III of the code deals with the Prisoners of War (POW) under which Articles 49 to 59 specially grant basic rights to POW irrespective of color and designated the status of POW of the government and not the captor.³

The Battle of Solferino once again forced international community to come together for protection of wounded and helpless soldiers regardless of nationality. Hague Convention of 1899 and

2 MONTESQUIEU, THE SPIRIT OF LAW, 1748.

3 Gesley Jenny, *The Lieber Code- ihe First Modern Codification of the Laws of War*, LIBRARY OF CONGRESS,2018. <https://blogs.loc.gov/law/2018/04/the-lieber-code-the-first-modern-codification-of-the-laws-of-war/>.

1907 established uniform international rules for the protection of POW. It is first international treaty which regulated the conduct of warfare based on 1863 Lieber Code. But during the World War I, all these international norms were violated and POW were treated inhumanely.

In 1919, the Treaty of Versailles ended World War I. The treaty contained many clauses on war crimes, reduction of armament, respect for territorial integrity, peaceful means for solving disputes and Prisoners of war. Articles 214 to 224 of Part VI of this treaty deals with protection as well as humanely treatment of POW.⁴ Next important step for the protection of POW was taken by adopting the Geneva Convention relative to the Treatment of POW in 1929. It contains basic rights for POW such as right to honor and respect, no use of force/ coercion against POW to get information, availability of medical facilities, allotment of work according to their health and capacity and food, clothing, and repatriation of POW.⁵

Even after adoption of 1929 Geneva Convention thousands of POW experienced horrifying treatment during and after the World War II. After the end of World War II international community revised the 1929 Geneva Convention and adopted four Geneva Conventions in 1949 out of which the Third Geneva Convention specially deals with POW named Geneva Convention Relative to The Treatment of POW (Third Geneva Convention) was enforced.

Prisoners of War: Concept and Meaning

The term Prisoner of war (POW) is defined under Article 4 of the Third Geneva Convention.⁶ If the definition of POW is strictly

4 Treaty of Versailles, (June, 28, 1919) <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>.

5 The Geneva Convention 1929.

6 Article 4, Geneva Convention Relative To The Treatment Of Prisoners Of War Of 12 August 1949 Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- 1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
- 2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organised resistance movements, fulfil the following conditions:

interpreted then it applied only to members of regular armed forces, but if wider interpretation is applied then guerrillas and civilians who take up arms against an enemy openly or non-combatant with

-
- a) that of being commanded by a person responsible for his subordinates;
 - b) that of having a fixed distinctive sign recognizable at a distance;
 - c) that of carrying arms openly;
 - d) that of conducting their operations in accordance with the laws and customs of war.

- 3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.
- 4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.
- 5) Members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.
- 6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

- 1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.
- 2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or nonbelligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties, (Aug. 4, 2019) https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf.

a military force are also included. Definition of POW under Article 4 of the Third Geneva Convention has been expanded by Additional Protocol I of 1977.⁷ Article 43⁸ and Article 44⁹ are important in this

7 Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict.

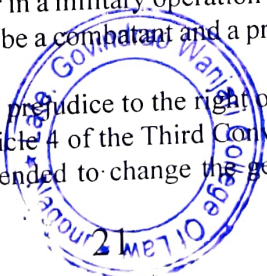
8 *Supra* note 7, Article 43.

Armed forces - The armed forces of a Party to a conflict consist of all organised armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognised by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

9 *Supra* note 7.

Article 44 — Combatants and prisoners of war.

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.
2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.
3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
 - a) during each military engagement, and
 - b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 c).
4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.
5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.
6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.
7. This Article is not intended to change the generally accepted practice of



regard.¹⁰

The Laws of War distinguished between civilians and combatant. Combatants which are captured in international armed conflict become POW and are to be treated humanely until released captured or interned by a belligerent power during war. If the definition of POW is strictly interpreted then it applies only to members of regular armed forces, but if wider interpretation is applied then guerrillas and civilians who participate in the conflict against an enemy or non-combatant with a military force are also included.

According to Article 13 of the Third Geneva Convention, "Prisoners of war shall at all times be treated humanely".¹¹ Keeping in mind this requirement the rules regarding the protection of Prisoners of War are formulated in the form of the Third Geneva Convention 1949. These rules may be discussed as follows:-

Prisoners of War: Safeguards Under the Convention

The Third Geneva Convention on POW regulates the smallest details regarding the treatment of POW in general and safeguarding them in particular. Article 12 to 16 under Part II of the Third Geneva Convention deals with the principles which are vital in nature and governs the basic treatment of POW which is applicable at all times and in all places. The Prisoners of War are entitled to following protections in general:

1. POW must be humanely treated. They should not be subjected to any physical, medical or scientific experiments. A measure of reprisal against them is prohibited.¹²
2. According to Article 14 all POW are entitled in all circumstances to respect for their person and honor.¹³ Women due to their nature and tenderness shall be treated with due

States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

10 Additional Protocol I, available at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf (August 18, 2019).

11 The Geneva Convention relative to the Prisoners of war, 1949.

12 *Ibid.*

13 *Supra* note 11 Article 14.

care and caution. They shall retain the full civil capacity which they enjoyed at the time of their capture.¹⁴

3. The POW are entitled for maintenance and medical care.¹⁵
4. All POW are entitled to equal treatment irrespective of race, nationality, belief or political opinion or on any other similar grounds.¹⁶

Protection of Prisoners of War under the Third Geneva Convention, 1949

The Third Geneva Convention explicitly states that the POW are not in the hands of individual or military units but are in the care of adverse state. Since the state is a party to the Geneva Convention, it has the responsibility of fulfilling its international obligations.¹⁷ POW are allowed to keep their legal status from the time, they are captured until they are repatriated because being the POW is not a form of punishment. They cannot lose their status during captivity either by the authority in charge or on their own. Protected persons are not allowed to renounce the rights granted to them under the Third Geneva Convention.¹⁸ This protection is extremely important which protects them against their own action or conduct which may have major consequences during war time. Third Geneva Convention on POW deals with the protection of Prisoners of War under captivity. It is divided into six sections which are as follows:

- First section deals with interrogation of prisoners, Property of the prisoners and their evacuations. It is obligatory on the part of POW, when asked, detail personal information such as name, surname, date of birth army other relevant information. They shall not be subjected to any form of torture whether physical or mental, as well to any other form of coercion on POW to get any type of information.¹⁹ POW are allowed to keep all such articles of personal use such as clothing, food and money. Articles such as arms and

14 *Supra* note 10.

15 *Supra* note 11 at Article 15.

16 *Supra* note 11 at Article 16.

17 *Supra* note 11 at Article 12.

18 *Supra* note 11 at Article 7.

19 *Supra* note 11 at Article 17.



ammunitions are to be handed over.²⁰ Further the evacuation of POW shall be made after their capture and in a humane manner.²¹

- Second section deals with leaving conditions for POW in camp or during transfer. It cover general rules which are to be observed by the states with respect to POW such as release of POW on partly or wholly on parole, if the area where the POW is kept is unhealthy or climate is injurious to them then they shall be removed from that area, quarters, food and clothing, medical attention, religious, intellectual and physically activities, transfer of POW.²²
- Third section deals with Prisoners' labour. POW, who are physically fit, may be utilized as labourer by the detaining authority such as agriculture work, domestic service, art, craft, public utility services which are not of military purpose or character and so on. They are allowed to do rest. Similarly no POW are forced to do unhealthy or dangerous work unless voluntary.²³
- Fourth section deals with financial resources of prisoners. The POW may be allowed to have cash in their possession. The maximum amount of which shall be determine by the Detaining Authority. The excess amount shall be placed to their account. Provisions have also been made for the payment of advance of pay.²⁴
- Fifth section deals with correspondence and relief shipments. Prisoners of war shall be enabled by the detaining Authority, immediately after capture within a week after arrival at a camp, to send letter to his family and to the Central Prisoners of War Agency about his capture, address and health condition. POW are allowed to receive telegraph, letters and parcel which may includes medicines, religious articles, clothes, books, musical instruments, sports stuff and all other things which are pursues to their cultural activities.²⁵

20 *Supra* note 11 at, Article 18.

21 *Supra* note 11 at Article 19.

22 *Supra* note 11, at Articles 21 to 48.

23 *Supra* note 11 at Article 49 to 57.

24 It shall be an obligation of the Detaining Powers to grant all prisoners of war a monthly advance pay at the rate mentioned in the Article 60 of the Third Geneva Convention.

25 *Supra* note 11 at Article 60 to 77.

- Lastly, sixth section deals with penal and disciplinary procedure. The Third Geneva Convention guarantees POW right to make complaints to the military authorities in whose Powers they are. Such complaints must be transmitted immediately and no punishment shall be imposed for making such complaints or even unfounded complaints.²⁶ To represent them before the military authority, ICRC or any other organisation which help them, POW are entitled to elect by secret ballot their representative.

Fundamental Rules for Protection of POW

In addition to above protection of POW, following are some of the fundamental rules to be followed by the Detaining authority. The Third Geneva Convention provides some of the basic protection to the POW which are as follows:

- i. Non bis in dem i.e. POW cannot punished for same act or on the same charge more than once;²⁷
- ii. According to Article 87 of the Third Geneva Convention POW may not be sentenced either by the military authorities or by the Detaining state to any penalties except those provided for in respect of member of the armed forces of the said Power who have committed the same acts;
- iii. POW who are undergoing a judicial or disciplinary punishment are subject to the same punishment as if given to the member armed forces of detaining power.²⁸
- iv. The Third Geneva Convention classified two types of escapes i.e. successful and unsuccessful escapes. POW which has made successful escape is not liable to punishment but unsuccessful POW is liable to punishment.²⁹ Shall be liable only to a disciplinary punishment;³⁰
- v. POW cannot be detained for an act which is not forbidden by the laws of the detaining authority or by international law. POW has the right to present his defence with the help of advocate or counsel.³¹

26 *Supra* note 11 at Article 78.

27 *Supra* note 11 at Article 86.

28 *Supra* note 11 at Article 88.

29 *Supra* note 11 at Article 91 to 93.

30 *Supra* note 11 at Article 92.

31 *Supra* note 11 at Article 99.



Repatriation of Prisoners of War

Repatriation of POW is one of the most important matter mentioned in Third Geneva Convention. Article 109 to 121 of the Third Geneva Convention deals with important provision related to POW is repatriation. There are two kinds of repatriation, repatriation and accommodation of Prisoners in neutral countries during hostilities and repatriation at the close of hostilities. POW are to be sent back to their country regardless of number or rank and if seriously wounded then as soon as get fit to travel. Cooperation with neutral state to make necessary arrangement for accommodation of POW in the neutral state is necessary requirement.

Once the hostilities end, measures are to be adopted for the release and repatriation of POW without delay.³² POW are allowed to take with them their personnel belongings, clothing and parcels which have arrived for them. If any criminal proceeding is pending against POW then he may be detained at the end of the proceedings or after the completion of punishment. The same shall apply to Prisoners of War already convicted for an indictable offence. Unjustified delay in repatriating POW is a grave breach of Protocol I.³³

An interesting case of repatriation of Pakistani Prisoner of War may be mentioned here. There took place a hostility between India and Pakistan in 1971 as the consequence, of creation of a new state Bangladesh. A large number of Pakistani prisoners of War were detained in India, the repatriation of some of them was refused by India mainly on the ground that the release and repatriation of the Pakistani Prisoners of War required the concurrence of both India and Bangladesh and to negotiate the matter with it. It may be mentioned that the Pakistani forces were surrendered to Lt. General Jagjit Singh Arora of India, on 16 December 1971. He was General Officer Commanding in Chief of the Indian and Bangladesh Forces. There were other reasons also for refusing the repatriation of the Pakistani Prisoners of War, for instance:

- i. Some of the Pakistani Prisoners of War were charged with indictable offence and thus war crime trials were contemplated against them;
- ii. Thousands of Bengali civilians were detained in West

32 *Supra* note 11 at Article 118.

33 Protocol I Article 84.4 (b).

Pakistan against their wishes. They wanted to immigrate to Bangladesh but they were not permitted to do so.

Pakistan filed a case in May 1973 before the International Court of Justice alleging violation of the 1949 Geneva Convention by India. In particular it was alleged by Pakistan that India was transferring 195 Pakistani Prisoners of War to the Government of Bangladesh for their trial for the crime of genocide. India pleaded that the court has no jurisdiction in the matter. However an agreement was reached between India and Pakistan and matter was settled amicably. Pakistan also requested the Court to drop the matter.³⁴

Death of Prisoners of War

Article 120 of the Third Geneva Convention deals with will, death certificates, burial and cremation of the POW. POW may make the Will according to the laws of the country of their origin, and transmitted without delay to the Protecting power. Death certificates are issued which shall have details such as place of death, date, cause of death, place of burial and other related information. They are buried according to their rites of religion. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. Medical examination of the POW body is done which shall confirm the death and report is prepared.


Conclusion

The adoption of the Third Geneva Convention constitutes the only international treaty designed to ensure the protection of POW. All the countries of the world ratified it and therefore agreed not only to respect them but also enforce it. Thus it has achieved universality. From the 'Hague Regulation, 1899 and 1907, devoting seventeen articles to POW, to the Geneva Convention Relative to the Treatment of Prisoners of War, 1929, incorporating 97 articles on the subject and from these to the Third Geneva Convention, 1949 containing 143 articles, relating to the POW, and Additional Protocol I to the Geneva Convention, the law of POW has taken great strides. Even after experience of the two World Wars and various adoptions of

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34 Case Concerning Trial Of Pakistani Prisoners Of War, (Pakistan V. India) ICJ 1976.

laws, war is not avoided. Therefore POW need protection from the danger of war.

In the light of the above, it is clear that the Third Geneva Convention on POW provides basic safeguards of rights of POW. The Convention plays a decisive role in preventing inhumane and degrading treatment against POW by the detainee state. The implementation of these provisions under the convention depends first and foremost on the political will of the parties to the conflict. All the bodies mentioned in the convention can play a role in accordance with their respective mandates. Compliance with the Geneva Convention and the International Humanitarian Law is essential. By respecting Geneva Conventions on POW, prisoners of war will no longer be subjected to any kind of treatment that violates their rights and will be protected from harm, even if they posed a threat to one warring party.



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ISSN 2319-9318

Impact Factor 6.021

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ISSN 2319-9318

UGC Sponsored



International Multilingual Research Journal

Printing

Special Issue

Area

March 2019

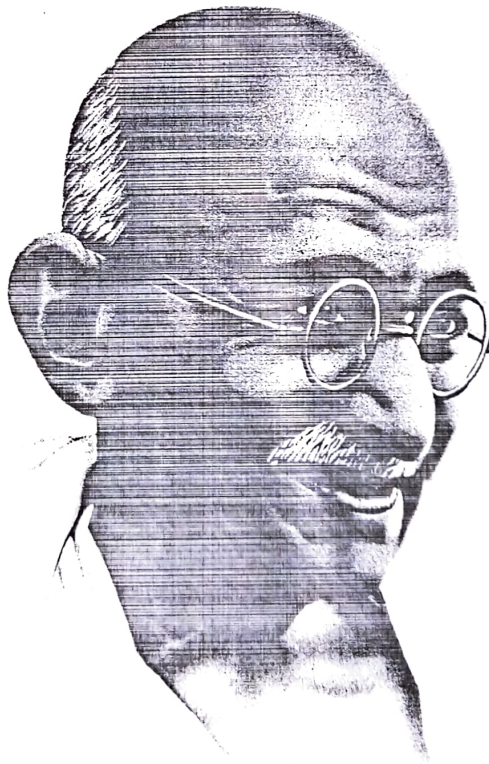
**ONE DAY INTERDISCIPLINARY
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on

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Role of Mahatma Gandhi in Promoting Health Values in India

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Mo. No. 9970106932

**'Sarvebhavantusukhinah, sarvesantu
Niramayah**

**Sarvebhadranipasyantu ma
kasciddukkhabhagbhavet.'**

Man is the most advanced animal on this planet. Religion or any national or international boundaries is entitled to certain human rights. All human rights for all should be the goal of the twenty first century and it must be ensured that human rights are universally accepted and respected. The aim has to be secure the freedom, wellbeing and dignity of all people everywhere. Now in twenty first century 'Health for all' must be an important item in the human rights agenda. Health often taken as identical with physical wellbeing or freedom from disease, But according to the modern concept of health it is a state of total physical, mental and social wellbeing. It, thus denotes a state in which a person is able to enjoy life to the fullest measure, not merely but by his physical condition, but also by being in possession of his mental faculties at the maximum level. This enables him to perform his social obligations, as also to derive the maximum benefit from living in society.

The concept of the health is multidimensional. In old days, in most cultures, health was known as the 'absence of disease'. But the health has been recognized as a fundamental human rights. The WHO (1948) defined health is the state of complete physical, mental and social wellbeing and not merely an absence of disease. The physical health implies the notion of perfect

functioning of the body it means that every organ of the body is functioning at optimum capacity and in harmony of the rest of the body. The mental health is not mere absence of mental disease. It is 'a state of balance between the individual and the surrounding world and a state of harmony between one self and others.' It is a co-existence between the realities of the self and that of other people and the environment. Social wellbeing implies harmony and integration within individual, between individual and the other members of the society. The social dimensions include the level of social skills one possesses and his ability considers himself as a member of the society he lives in.

The right to health is included as a more basic and fundamental right of every person in human rights and constitutional rights in most of the countries in world.

Mahatma Gandhi and their concept of Health

Mahatma Gandhi was connected with the saintly traditions of India. He was the product of Indian culture and civilization. He was greatly influenced by the ancient Indian culture and religion. He was a practical man of action and recognized as Karam Yogi. Gandhi had a peculiar philosophy of life and adopted certain principles and techniques to solve various problems of life as well as the nation. He only expressed his views on various subjects according to the demand of the situation. In context of health, Gandhiji always believed that good health is the most valuable assets in life rather than other property and they passed this advice to all the future generations. He opinioned that avoiding diseases is better than getting and curing it. Gandhiji always given priority to health rather than wealth.

Gandhiji's concept of natural positive health at the physical, psychological and spiritual level which goes beyond the WHO definition of health. His concept of health go up to subtle level of human existence. He mainly emphasis on nature cure therapy. He

always opinioned that the treatment should be very simple. He wrote about five important natural elements for maintaining health and in diseased condition. Natural elements like sun, air, earth, water and food available locally and apart from, they also include labour (shramdan) should be used for the treatment of acute and chronic diseases which is affordable for every person. They always given importance for spiritual values in his whole life and prayer of god which aims to purification of physical as well as mental level and enhance the spiritual level of every mankind to achieve perfect health. Morning and evening prayer is a part of their treatment and occupies significant place in daily regime in all the institute established by gandhiji. He said that 'the prayer is only for good end and not for evil end. It brings purity of heart. Nature's law is one that is law of worship'.

He always given emphasis to regular exercise and yoga which is essential for maintaining figure and stamina and also efficiency of respiratory system, heart, circulatory system, muscles and joints and increases the optimum level of health. Regular exercise and yoga acts as a great stress reliever. Apart from politics his keen interest was in health, hygiene, nutrition and health care.

Gandhiji Role in Promoting Health Values in India

The country like India the most of the people live in villages and they facing difficulties in access to doctors and hospitals. Gandhiji strongly believed that there should not be any discrimination for the health care provisions in the society. It must be accessible to every person in society. In 1942, Gandhiji wrote a book known as 'key to health' when he was confined in Aga Khan Palace. The book is translated in various Indian and European languages. Through this book he conveyed his thoughts to his people and to the whole world on vital issues relating to health. In this book he mentioned his different novel ideas which are different from the ways

adopted by the medical scientists and regular medical practitioners. In 1946, Gandhiji established nature cure ashram and also established nature cure clinic, which would be beneficial for all the persons in the society. He also wrote various articles on health matter and published it in various journals.

Gandhiji always strongly believed in his eleven famous vows in his life mainly non-violence (Ahimsa), truth, control over palate, (taste), celibacy (brahmacharya), physical work, non-stealing (asteya), non-possession, fearlessness, removal of caste barrier, equality in religion, swadeshi and self-reliance. He emphasized on vegetarianism which is inseparable from naturopathic way of treatment. In 1934-1935 gandhiji living in Sewagram in wardha the relative nutritional values of the various locally available vegetables. The fasting is the traditional Hindu technique was apart of his nature cure treatment and curing sickness. He was a man of experiment. He wrote his autobiography called it 'my experiment with truth'. He made various experiments on his own body as a part of treatment like fasting, hydropaths, sun bath etc. he often used empirical method to experiment with his diet and not only limit the role of experimenting to himself but also included others to help him gather and document his trial. He wrote a book on 'Diet and Diet Reforms'. He did vast experiment with his diet and nutrition. Gandhiji mainly follows and promote following things which are beneficial for maintenance of health and fitness in every day life of every individual these are-

- Non Violence (Ahimsa) is the true path for reducing stress and remain peaceful and calm in day to day life.
- Sleep early and waking early is good for health.
- Fasting promoted not only discipline in life but it can leads to various physical benefits. Gandhiji himself famously fasted for 21 days to promote unity between the Hindus and Muslims.

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- Walking is best activity for maintaining fitness and good health. Eg. Dandi march.
 - Gandhiji preached complete abstinence on tobacco and alcohol which lead cancer, stroke heart disease etc.
 - Practice meditation which reduce stress and anxiety and lower blood pressure.
 - Positive thoughts boost health, improve skin and work also. Gandhiji said that, 'a man is but the product his thoughts what he thinks he becomes.
 - He was a peace promoter. Forgiveness is the best for overall mental and physical health.
 - Adopting compassionate lifestyle which lead to understand the feelings of the others.
- Gandhiji always promoted these thoughts in his own life which are benifited to others also.

In those day the disease leprosy was prevalent in India. Gandhiji had a special concern for leprosy. The leprosy affected persons were victimized in the society. Gandhiji provided special care and support to such affected persons. In those day there was no specific cure for leprosy. He took keen interest in such patients.

Conclusion

Life of human being is a nature's gift for whole mankind, which is to be preserved, protected and prospered. Death is certain but every human being has to live and continue to enjoy the fruits of life till nature intervenes to end it. In the era of twenty first century the health system will continue to be confronted with wide variety of challenges, such as demographic evolution, new patterns of diseases, escalating environmental degradation, changing economic and social structure and status. Therefore health is the most important factor in national development. Gandhiji was a great visionary in true sense and a man of powerful and strong mind. He always talk and wrote about basic human issues. His ideas and views

regarding health are very beneficial for present and future generations.

Though gandhiji was a lawyer by profession but he developed his interest in healthcare and nutrition expert. Today many people in India influenced by the health and dietary reform by Mahatma Gandhi. He is the great promoter of good health.

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4. Verma J. S. , The New Universe of Human Rights, Universal Law Publication, Delhi, 2004

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Through its Department of Political Science

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Dept. of Political Science,
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SOCIAL AND ETHICAL RESPONSIBILITY OF MEDIA IN DEMOCRACY OF INDIA

Dr. Archana Sukey

Assistant Professor,
Govindrao Wanjari College of Law, Nagpur

Introduction

Democracy means --A system of government in which all the people of a country can vote to elect their representatives. Media came into existence in 1780 with the introduction of a newspaper namely -The Bengal Gazette and since then it has matured leaps and bounds. It has been playing a very important role in shaping human minds.

Media has played a significant role in establishing democracy throughout the world. Since the 18th century, the media has been instrumental in reaching the masses and equipping them with knowledge, especially during the American Independence movement and French Revolution. Media is considered as "Fourth Pillar" in democratic countries along with Legislature, Executive, and Judiciary, as without a free media democratic system cannot cease to exist. Media became a source of information for the citizens of colonial India, as they became aware of the arbitrariness of the British colonial rule. Thus, gave a newfound force to India's Independence movement, as millions of Indians joined the leaders in their fight against the British imperialism. The role of media in Indian democracy has undergone massive changes, from the days of press censorship during Emergency in 1975 to being influential in the 2014 Lok Sabha elections.

Historical background

Indian media has traveled a long way, from the days of newspaper and radio to present-day age of Television and Social Media. The liberalization of Indian economy in the 1990s saw an influx of investment in the media houses, as large corporate houses, business tycoons, political elites, and industrialists saw this as an opportunity to improve their brand image.

News that was seen as medium to educate the people on issues that were of utmost important for the society became a source of biased viewpoints. The role of media is to make the society aware of their democratic rights and fight the three institutions of democracy. It acts as the voice of millions of citizens, when government

institutions become corrupt and authoritarian or when they turn a blind-eye towards the issues concerning the society.

Role of Media in contemporary Democracy of India

Media is the "fourth estate" of democracy and it plays a pivotal role in ensuring justice and benefits of the government policies reach the interior sections of the society. They act as a chain between the government and the citizens of the country, people have faith in media as it has an impact on the audience. The changing dynamics of Indian politics has increased people's expectation from media as in this phase of transition; it is pretty easy to believe in a particular belief

The political system in India is close in spirit to the model of liberal democracy. In the constitution of India the power of the legislature, executive and judiciary have been thoroughly demarcated. Government and opposition. There is also freedom of the press, of criticism and of assembly. Indian democracy has always attracted attention worldwide and has made scholars to ponder over the secret of its success amidst considerable odds. In India diversity is almost everywhere and it is not a developed nation. The problems of poverty and inequality in distribution of income have been constant irritants. Nevertheless, till today democracy has survived in the country. The role of media in India, the largest democracy of the world is different from merely disseminating information and entertainment. Educating the masses for their social upliftment needs to be in its ambit as well. In a country where there is large scale poverty, unemployment and underdevelopment media has a responsibility towards developmental journalism. It has a role to play behind formation of public opinion which can force the political parties to address the core issues haunting the country's progress. However, public opinion can be manipulated by vested interests to serve their own goals. Media can conceal facts and project doctored ideas to influence the electorate and thereby the voting outcome. Values like objectivity and truthfulness in presentation of news and ideas can be totally done away with in India public service broadcasting was given much

importance after independence. It was used as a weapon of social change.

AIR (All India Radio) and Doordarshan, the public service broadcasters in the country had the responsibility of providing educational programs apart from information and entertainment. However, it needs to be taken note of that the public service broadcasting system in the country was closely identified with the state. A monopolistic media structure under state control has the threat of becoming the mouthpiece of the ruling elite. The scenario was bound to change with the opening up of Indian economy in a bid to integrate with the global system. It signalled the emergence of a competitive market in the field of media with public service broadcasters getting challenges from private entities. This, however, had the seeds of a new problem of ownership.

Ownership pattern of media across the globe and in India is a cause for concern. There are big corporate houses who own newspapers and television networks. A higher concentration of ownership increases the risk of captured media a independence in such a scenario gives way to safeguarding the interest of the owners who may not serve social responsibilities. It can be said that in many democratic countries media ownership has discussing the dangers associated with the developments in media it needs to be said that media in India has also undertaken roles which have strengthened democracy.

Social Responsibility of Media in Democracy of India

The media as a watchdog of the democratic system has unearthed its various shortcomings. Investigative reporting in print and television media has helped in exposing large scale corruptions which have robbed the nation. The Commonwealth Games Scam, the Adarsh Housing Society Scam, Cash for Vote Scam and the Bofors Scam are the highpoints of the Indian media. Across newspapers and television channels voices have been raised when the bureaucracy, judiciary or other public functionary have crossed the laxman rekha. There have also been initiatives to promote community media for the citizens to air their concerns. This is a significant leap towards alternative media usage which is distant from the dominant structure. Here the importance lies more in participatory communication right from the grassroots rather than communication which flows top down. Various television channels have also given the space for ordinary citizens to air their views in the form of citizen journalists thereby promoting democratic

participation.

Newspapers have educated the masses by informing them of the developments in the field of science and technology. They have also expressed strong views against prejudices which harm the society. Much developmental news has also been aired through the medium of radio. Its comparative low cost and wide acceptance among poorer sections have made it a potent tool for expressing ideas beneficial to the public. Internet, a relatively newer entrant in the field of mass media, has proved to be more democratic than newspaper and television. Internet has provided the opportunity for citizens who are conversant with the medium to express their views about a number of issues. In many cases groups have been formed by likeminded people who discuss and debate over a number of decisions on the part of the government and seek new ideas for way ahead.

Nevertheless, there is the threat of advertising revenues influencing media outputs. Those who control considerable wealth have the opportunity to sway public opinion in their favor with the help of mass media. In the 2G scam the Radia Tapes controversy brought in focus the journalist, politician and industrial conglomerate nexus. Developments like these are a threat to democracy and undermine the media fraternity. Advertisements in newspapers, television, radio and at times the internet have become a part of the present election campaigns. Candidates with better funds have the edge over others in being voted to office because they can buy newspaper space and considerable air time.

Conclusion

Media plays a crucial role in shaping a healthy democracy. It is the backbone of a democracy. Media makes us aware of various social, political and economical activities happening around the world. It is like a mirror, which shows us or strives to show us the bare truth and realities of life.

The media has undoubtedly evolved and become more active over the years. It is the media only who reminds politicians about their unfulfilled promises at the time of elections. T.V news channels excessive coverage during elections helps people, especially illiterates, in electing the right person to the power. This reminder compels politicians to be up to their promises in order to remain in power. Television and radio have made a significant achievement in educating rural illiterate masses in making them aware of all the events in their language. Coverage of exploitative malpractices

of village heads and moneylenders has helped in taking stringent actions against them by attracting government's attention.

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. In the age of information technology we are bombarded with information. We get the pulse of the world events with just a click of a mouse. The flow of information has increased manifolds. The perfect blend of technology and human resources (journalist) has not left a single stone unturned in unearthing rampant corruption in politics and society. Everyone is well aware of what tehelka did. Thanks to technology that has brought a kind of revolution in journalism.

The impact of media is really noteworthy. Excessive coverage or hype of sensitive news has led to communal riots at times. The illiterates are more prone to provocations than the literates. Constant repetition of the news, especially sensational news, breeds apathy and insensitivity. For instance, In Dhananjay Chatterjee case, the overloaded hype led to death of quite a few children who imitated the hanging procedure which was repeatedly shown in most of the T.V. news channels. There is a plethora of such negative impacts. Media should take utmost care in airing or publishing such sensational news.

Suggestions

In Indian democracy media has a responsibility which is deeply associated with the socio economic conditions. The present scenario is not quite encouraging and certain areas need to be addressed. Media organizations, whether in print, audio visual, radio or web have to be more accountable to the general public. It should be monitored that professional integrity and ethical standards are not sacrificed for sensational practices. The freedom of press in the country is a blessing for the people. However, this blessing can go terribly wrong when manipulations set in.

The self regulatory mechanism across media organizations need to be strong enough to stop anomalies

whenever they occur. Agencies like Press Council of India need to be vigilant to stem the rot. Big media conglomerates are a serious threat. To counter these problem pluralistic media organizations which are financially viable need to be encouraged. Community participation is a goal that the media should strive for in a country like India.

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Maharashtra National Law University, Nagpur

Certificate of Appreciation

THIS CERTIFICATE IS PRESENTED TO

Dr. Rohini Fuladi

for presenting the paper titled Violation of TS : A
Commercial Espionage

at the National Seminar on

CHANGING DYNAMICS OF INTELLECTUAL PROPERTY RIGHTS held on March 30, 2019

organised by Centre for Intellectual Property Rights, Maharashtra National Law

University, Nagpur.

Dr. Ragini P. Khubalkar
Conference Coordinator

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Centre for Intellectual Property Rights

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National Seminar

on

CHANGING DYNAMICS OF INTELLECTUAL PROPERTY

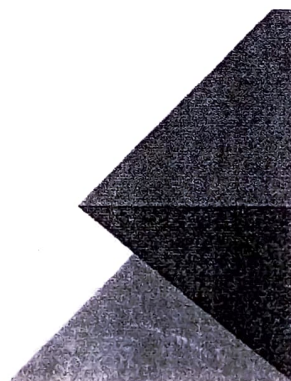
MARCH 30, 2019 (Saturday)

A different strategy for justifying Intellectual Property Rights begins with the claim that individuals are entitled to control the fruits of their intellectual labour. Subject to certain restrictions, rights are generated when individuals mix their labour with an unowned object. Intellectual Property Laws confer rights on relative intellectual labour, maintaining the balance between the interest of society and the individual. In the last three decades, controversies have arisen regarding the patenting of animals, plants, DNA, computer software and chips, artificial intelligence, copyright protection for websites, computer screen displays, trademark infringement for internet domain names, ownership of traditional knowledge and the application of International IP treaties in pharmaceutical and medical fields. The changing contours of IP law is influenced by and influencing various factors viz. globalization, liberalization, and technological advancements. The legal regime is required to be revisited in the light of changing dynamics, collective social expectations and in tune with the international treaties and conventions.

The Centre for Intellectual Property Rights, MNLU, Nagpur takes this opportunity to provide a platform for the intellectual discourse by organising National Seminar on "Changing Dynamics of Intellectual Property Rights". This Seminar poses to visit these new and upcoming challenges in the area of Intellectual Property and to discover and explore suggestions to overcome these problems. With this objective in mind, the Seminar will be divided into seven broad sub-themes. Any new issue relating to IPR but focussing on the core issue can also be considered.

Broad Sub-Themes of the Seminar

- Intellectual Property and Artificial Intelligence
- Patent and Technology Transfer
- Copyright and the Digital World
- Trade Mark and Trade Design
- Trade Secret and Traditional Knowledge
- Biodiversity and Geographical Indication
- Interface of IP with Other Laws



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view of the above, the paper will try to clarify, that exploring alternatives to protect Traditional Knowledge within Intellectual Property Rights Regime Trade Secrets takes the lead.

Keywords: *Trade Secrets, Traditional Knowledge, Legal protection, Intellectual Property Rights, TRIPS.*

59. Violation of TS: A Commercial Espionage

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Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Due to today's technological advancement, horizon of the business information has widened, it includes business strategies, proposals, client databases and information, compilations, designs, programmes, drawings, devices, formulae or compositions, as well as it covers, the ease of sharing, copying and storing information in the digital world. All this information is not covered under protective area of patent or copyright law. Thus, a big problem for the protection of such valuable data arises. The businesses face such threat is not only due to the various online and physical tools available to ease the transfer of data, but can also come from internal sources such as employees and contractors who have access to important business information. By cracking confidential information, employees switch their jobs or even set up competing businesses based on their previous employer's stolen data, including technical information, business methods and strategies. This is one of the biggest challenges that businesses face, a crucial problem of protection of their confidential information. They do not have any strong weapon to eradicate this unfair system involve in the commercial world.

Article 39 of TRIPs states concerns ensuring effective protection against unfair competition as provided in Article 10^{bis} of the Paris Convention, with respect to information which:

- 1) is a secret not generally known or readily accessible.
- 2) has commercial value by virtue of secrecy; and
- 3) has been subjected to reasonable steps for ensuring its secrecy.

Although India has no specific trade secrets law, Indian Courts have upheld trade secrets protection under various statutes, including contract law, copyright law, the principles of equity and the common law action of breach of confidence. Section 72 of the Information Technology Act 2000 also provides certain protection, although this is limited to electronic records.

At present, in India, in the absence of a specific trade secrets law, the Courts have ruled in favour of the proprietor of information as literary work as defined under copyright law. Therefore, there is strong need to enact effective and specific legal framework for the protection of trade secret.

Violation Of Trade Secret -: A Commercial Espionage.

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Introduction

In today's globalised economy, the business enterprises are protecting its intellectual property by adopting the available measures in form of patents, copyright, trademark etc. but besides these popular IP rights there are other IP rights not so popular but which are recently drawing attentions all over the world i.e., Confidential Information or Trade Secret.

Trade secret law is an offshoot of intellectual property law that addresses the protection of proprietary information against unauthorized commercial use by others. Any confidential commercial information which provides an enterprise a competitive edge may be term as trade secret. Trade secrets embrace manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is considered as an unfair practice and a violation of the trade secret.

The subject matter of business secrets is usually the methods of sales and distribution, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. While a final purpose of valued information constitutes a trade secret will depend on the circumstances of each individual case, clearly unfair practices in respect of secret information include breach of contract and breach of confidence.

Industrial espionage, economic espionage, corporate spying or corporate espionage is a modes of espionage conducted for commercial purposes and not for purely national security. The purpose of espionage is to gather knowledge about a business organization. It may include the acquisition of intellectual property, such as information on industrial manufacture, ideas, techniques and processes, recipes and formulas. It could also includes sequestration of proprietary or operational information, such as that on customer datasets, pricing, sales, marketing, research and development, policies, prospective bids, planning or marketing strategies or the changing compositions and locations of production. It may describe activities such as theft of trade secrets, bribery, blackmail and technological

surveillance. As well as orchestrating espionage on commercial organizations, governments can also be targets, for example, to determine the terms of a tender for a government contract.ⁱ

Protection Of Trade Secrets Under International Laws

Contrary to patents, trade secrets are protected without registration, that is, trade secrets are protected without any procedural formalities. Consequently, a trade secret can be protected for an unlimited period of time. Since India is a signatory to the Paris Convention, it is essential to mention that Article 1(2) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) states that intellectual property shall include protection of undisclosed information. Further, Article 39 of TRIPs states concerns ensuring effective protection against unfair competition as provided in Article 10^{bis} of the Paris Convention, with respect to information which:

- The information must be secret (i.e. it is not generally known among, or readily accessible to, circles that normally deal with the kind of information in question).
- It must have commercial value because it is a secret.
- It must have been subject to reasonable steps by the rightful holder of the information to keep it secret (e.g., through confidentiality agreements).

Beside this Misappropriation of trade secrets is forbidden by the Uniform Trade Secrets Act (UTSA) and the Economic Espionage Act of 1996 also. In 1979 several U.S. states adopted the Uniform Trade Secrets Act (UTSA), which was further amended in 1985, with approximately 47 states having adopted some variation of it as the basis for trade secret law. Another significant development is the Economic Espionage Act (EEA) of 1996, which makes the theft or misappropriation of a trade secret a federal crime.

As defined in the Economic Espionage Act of 1996, the term trade secret refers to all forms and types of financial, business, scientific, technical, economic or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if:

- The owner thereof has taken reasonable measures to keep such information secret, and;

- The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by the public.

The owner of a trade secret is the person or entity that has rightful legal or equitable title to, or license in, the trade secret.ⁱⁱ

Trade Secrets have been protected by a large number of agreements and countries throughout the world. For e.g.,

NAFTA – (North American Free Trade Agreement) Member countries must protect trade secrets from unauthorized acquisition, disclosure or use. Remedies available are injunctive relief and damages. In response to NAFTA, Mexico has amended its 1991 trade secrets law to permit private litigants to obtain injunctive relief.

GATT -On April 15, 1994, the major industrialized nations of the world, including the United States, concluded the Final Act resulting from the Uruguay Round of GATT (General Agreement on Tariffs and Trade). GATT established the World Trade Organization (WTO) and promulgated various trade-related agreements including TRIPS or the Trade-Related Aspects of IPRs.

Under GATT, "undisclosed information" must be protected against use by others without the consent of the owner if the use is contrary to honest commercial practices. Also, there is third-party liability for misappropriation if third parties knew or were grossly negligent in not knowing that such information had been obtained dishonestly.

On May 2016, President Obama signed the Defend Trade Secrets Act, 2016 (DTSA), which for the first time created a federal cause of action for misappropriating trade secrets. The DTSA provides for both a private right of action for damages and injunction and a civil action for injunction brought by the Attorney General. Technically, the DTSA extended the Economic Espionage Act of 1996, which criminalizes certain trade secret misappropriations.ⁱⁱⁱ

Protection Of Trade Secrets Under Various Laws In India

In India at present, has no specific trade secrets law; Indian Courts have upheld trade secrets protection under various statutes, which covers Contract law, Copyright law, the principles of equity and the common law action of breach of confidence (which in effect amounts to a

breach of contractual obligation). Section 72 of the Information Technology Act 2000 also provides certain protection, although this is limited to electronic records.^{iv}

Even in the absence of a unified legislation formally recognizing or defining "Trade Secrets," the protection for confidential information is extensive in India. The following statutory provisions recognize and protect different types of confidential information:

(1) Section 27 of the Indian Contract Act bars any person from disclosing any information which he acquires as a result of a contract.

(2) Section 72 of the Information Technology Act provides for criminal remedies, whereby a person may be punished with imprisonment for a term along with a fine in case, if he is found to have secured access to any electronic record, book, register, information document, or other material without the consent of the person concerned and such first person discloses such information further.

(3) In 2009, the Information Technology Act, under Section 43A provided for "Compensation for failure to protect sensitive personal data." Sensitive personal data is further defined in the rules promulgated under this Act and include passwords, financial data, biometric data etc.

(4) The Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, renders the use and disclosure of confidential information by an insider subject to prosecution under the Securities Exchange Board of India Act.

(5) The Copyright (Amendment) Act, 2012, under Section 65A has provided for criminal remedies for circumvention of technological measures implemented for the protection of works in which copyright subsists, especially if such act is done with the intention of infringing the copyright in such works. Furthermore, under Section 65B of the same Act there is a criminal penalty for unauthorized access and alteration of rights management information, usually maintained through online contracts regulating digital rights.^v

Below mentioned are the various cases in which an attempt has been made to protect the trade secrets under the heads of their respective legislations:-

American Express Bank Ltd. vs. Ms. Priya Puri,^{vi} the relief sought in this case was an order for temporary, interim injunction. The Court did not grant it. Grounds on which the

petition was dismissed were:-The Court held that the said clause restrained the defendants only from doing any activity competing with the business carried out by the plaintiff's company.

The restraint clause didn't prevent doing business to the business carried out by the plaintiff's Companies. Merely because the defendants have started similar business it cannot be said that the same amounts to competition with the business of the plaintiff's companies.

Ambiance India Pvt. Ltd. vs. Shri Naveen Jain^{vii}The relief sought here was an order of ad interim injunction till disposal of the suit and the same was not granted. The Court was of prima facie view that the Agreement between the parties prohibiting the defendant for two years from taking employment with any present, past or prospective customer of the plaintiff is void and hit by Section 27 of the Indian Contract Act. This stipulation was prima facie against public policy of India and an arm-twisting tactic adopted by an employer hence relief sought for an order of ad interim injunction till disposal of the suit and the same was not granted on these grounds.

Pepsi Foods Ltd. and Others vs. Bharat Coca-Cola Holdings Pvt. Ltd. & others^{viii}Relief sought here was an injunction restraining the defendant during the continuance of the agreement of employment and the same was not granted. The Court held that the agreement was in restraint of trade. The Court further held that the freedom to seek employment cannot be curtailed and no injunction to such an effect can be granted.

Copyright Act, 1957

Sandhya Organic Chemicals P. Ltd V. United Phosphorous Ltd^{ix}Relief sought here was an order of permanent injunction and the Court dismissed the petition on the ground that it was not open to the plaintiffs to seek injunction against the defendant, esp. when the plant manager was not in the service of the plaintiff the plant manager cannot be restrained for all times to come from using his knowledge and experience which he gained during the course of his employment with the plaintiff.

Burlington Home Shopping Pvt. Ltd. Vs Rajnish Chibber^xThe main issue in this case was whether a database consisting of compilation of mailing addresses of customers could be subject matter of a copyright and whether the defendant can be said to have committed infringement of the plaintiff's copyright? The court held that "a

database consisting of compilation of mailing addresses of customers can be subject matter of a copyright and if used by the defendant will amount to an infringement”

Mr. Dilijet Titus vs. Mr. Alfred A. Adebare and Ors^{xi}. In this case the issue was whether compilation of list of clients and their addresses amounts to a 'literary work' wherein the author has a copyright? The Court came to the conclusion that list of clients and their addresses amounts to a literary work, which falls under the purview of the copyright act.

In ***Ritika Pvt Ltd vs. Biba Apparels Pvt Ltd^{xii}** where a suit was filed for infringement of the plaintiff's clothing designs, the court took the view that if an injunction order were sought with respect to trade secrets, the specific trade secrets would have to be mentioned, as well as how the plaintiff had ownership of them; only then would the court consider granting an injunction order. A general order in respect of an unspecified trade secret could not be passed against the defendant. Further, no relief under the Copyright Act could be granted, since Section 15(2) of the act provides that once a drawing, sketch or design has been used for creation of more than 50 garments, no copyright can subsist in it.

Designs Act, 2000

Tractors and Farm Equipment Ltd. vs. Green Field Farm Equipments Pvt. Ltd. and Ors.^{xiii} The picture that emerges from the above case law is that the court shall entertain injunction only if the same is protected either through Copyright or Designs along with a non-disclosure agreement.

Control Print (India) Limited vs. Sanjay Sribastab and Ors^{xiv}
The Court held that in order to prove that the confidential information will be or is being used by the ex-employee, it has to be proved to the satisfaction of the court that the ex-employees or the defendant by virtue of their employment had access to the secret information which was not available to any outsider unless this is proved there is no scope of granting injunction.

From the above mentioned cases it was observed that in India trade secrets have been protected using common law principles like equity and fraud. In most of the cases have been refereed under Section 27 of the Indian Contract Act. Relief claimed in these cases, are enforcement of Non-Disclosure Agreements between the employee and the employer. The courts have been very reluctant to enforce covenants, which put post employment restrains on

the employee. The Courts have seen these cases as a clash of two interests, the right to livelihood of the employee and right to make profit of the employer.

On May 12, 2016 India approved the National IP Rights Policy, which has seven objectives. One of these objectives is to ensure an effective legal and legislative framework for the protection of IP rights, which balance the interests of rights owners with larger public interest. The steps to be taken towards achieving this objective include the identification of important areas of study and research for future policy development; one such area identified was the protection of trade secrets. The National Intellectual Property Rights (IPR) Policy will endeavour for a "Creative India: Innovative India."^{xv}

Suggestions For The Protection Of Trade Secrets

- Identification of company's valuable Trade Secrets, so that it can easily cover under protective umbrella.
- Frame a trade secret protection policy for company and put it in writing.
- Educate employee before their appointment about trade secret protection policy and alert them about the legal consequences for the non-compliance of it.
- Render knowledge of information to limited employees, for whom actual "need to know" for the effective performance of his duties.
- Mark documents containing trade secrets by stating the name of trade secret owner, its confidentiality and strictly prohibition of its disclosure.
- If the trade secrets is in document then kept it in physically isolate form and if it is in computer files then control its access by taking security measures.
- While dealing with the outsider and revealing trade secrets, it is essential to consider carefully and cautiously how, and to whom, trade secret information will be revealed.
- Establish due diligence with unsolicited submissions.

Conclusion

As yet, India has no specific trade secrets law. Indian Courts have upheld trade secrets protection under various statutes, including Contract law, Copyright law, the principles of equity and the common law action of breach of confidence and revolved around an employee's obligations and duties towards the employer regarding confidential information

gained during the course of employment. Section 72 of the Information Technology Act 2000 also confers certain protection, although this is limited to electronic records.

At present, in India, in the absence of a specific trade secrets law, the Courts have ruled in favour of the proprietor of information as literary work as defined under Copyright law. Although, hope of light emerged from National IP Rights Policy, 2016 having the seven objectives, one of them is protection of trade secret. Therefore, it cannot be wrong to say that there will be a specific trade secrets law in the near future which should be strong enough, to establish a legal framework for the protection of trade secret.

ⁱ From Wikipedia, the free encyclopedia.

ⁱⁱ Economic Espionage Act of 1996, file:///E:/nano/Espionage%20Law.html

ⁱⁱⁱ From Wikipedia, the free encyclopedia

^{iv} Protecting trade secrets in India, RNA Technology and IP Attorneys India May 1 2018 Ranjan Narula and Rachna Bakhru.

^v Protection of Trade Secrets Under Indian Law, By Shrivatsav N.

^{vi} (2006) III LLJ 540 Del.

^{vii} 122(2005) DLT421

^{viii} 81(1999) DLT122

^{ix} AIR 1997 Guj 177

^x 61(1995) DLT6

^{xi} 2006(32) PTC609

^{xii} Del HC DE 0784 2016).

^{xiii} 2006(32) PTC343(MAD)

^{xiv} 2006) 2CAL LT145(HC)

^{xv} Press Information Bureau Government of India Cabinet on 13 May 2016.



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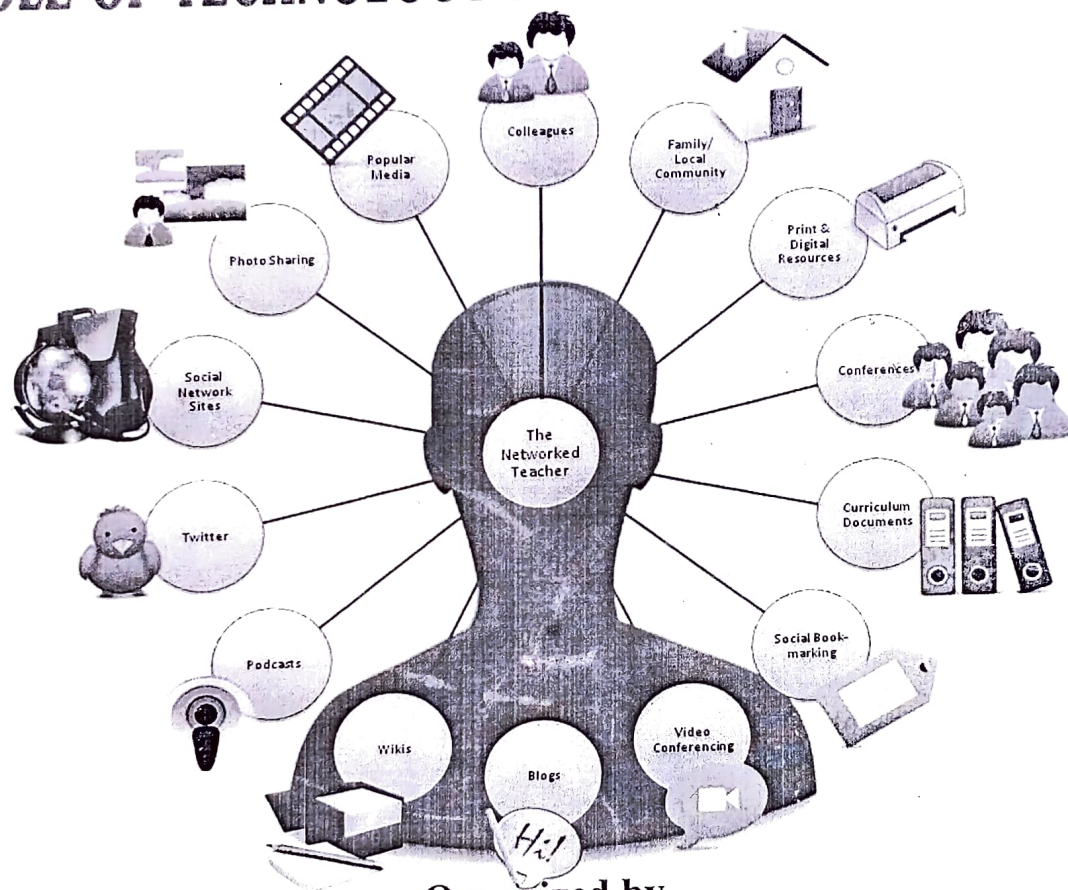
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“ROLE OF TECHNOLOGY IN INNOVATIVE TEACHING”

Edited by
Mrs. Ruchi Tripathi
Academic Head
(B.Sc., M.A., PGDHM.)
Zulekha Group of Colleges



Published By
Aadhar Publication, Amravati

Published By:

Aadhar Publication & Aadhar Social Research & Development Training Institute, Amravati.
New Hanuman Nagar, In Front of PathyapustakMandal,
Behind V.M.V. College, Amravati, 444603
E-mail: aadharpublication@gmail.com

“ROLE OF TECHNOLOGY IN INNOVATIVE TEACHING”

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First Published: 2019

ISBN : 978-93-86623-61-1

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ROLE OF INFORMATION AND COMMUNICATION TECHNOLOGY IN LEGAL EDUCATION

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ABSTRACT:

Law is the foundation of every society. It is the tool for social transformation. The law commission of India defines 'Legal education' as a science which imparts to students knowledge of certain principles and provisions of law to enable them to enter the legal profession'. Information and Communication technology has influenced and revolutionized the way people work and now transforming education field including legal education. ICT provides students as well as teachers with more opportunities in learning teaching process to individual need. This paper examines the importance of the role of ICT plays in legal education. It also placed focus on the role ICT in Judicial Reform in India.

KEYWORDS: Law, Legal education, ICT, Judiciary.

INTRODUCTION:

ICT stands for Information and Communication Technology. ICT is a diverse set of technological tools and resources used to communicate, and to create, disseminate, store, and manage information. ICT is divided into two main approaches in education such as; ICT for education and ICT in education. ICT for education implies the development of information communication technology for learning and teaching purpose while ICT in education involves the adoption of general components of information and communication technology in practical use in teaching and learning processes. Today, technology has increasingly become a vital element for firms to compete and develop. Due to globalization the world of is considered as a global village. The use of ICT in different educational, political, economic and social sectors has increased.

According to UNESCO the term "Information and Communication Technologies (ICT) refers to forms of technology that are used to transmit, process, store, create, display, share or exchange information by electronic means." This broad definition of ICT includes any communication device or application, encompassing: radio, television, cellular phones, computers, satellite systems as well as various services and applications associated with them, such as video conferencing and distance learning. ICT can be used to support the educational content, the educational process as well as the organization and Administration of education. The United Nations Educational, Scientific and Cultural Organization (UNESCO), created and used the "One Laptop Per Child" (OLPC) initiative as a means of closing the digital divide gap between developed and developing nations on the use of ICT.

SIGNIFICANCE OF ICT

ICT is a way of securing and facilitating high quality education at school and college level. ICT increases self-confidence skill among students in teaching activities and provides opportunities in the teachers' teaching style. ICT is an interactive tool makes learning and teaching process stronger. It eliminates teachers' traditional authority as an absolute source of knowledge and information. ICT expands students as well as teachers thinking skills. ICT, via communications e.g. emails, Bluetooth, Viber, What's App, SMSs and modern social networks and thus reinforces social communication anytime and anywhere based on the learner's responsibilities.

use of ICT's facilitate access for all to learning opportunities at the expense of eliminating limitations arising from gender, race, social and economic success of learners within the learning process. another benefits of ICT, is that it promote participation of people, parents, students and teachers and employers in policy making, execution supervision and evaluating of Educational activities. British Educational Communications and Technology Institute (2003) cite reasons for accounting to the question of why ICT is considered to be an impressive tool for learners and teachers:

- it enables learners to become active learners at the class rather than a reactive observant; offers opportunities for different learning styles;
- enables learners to concentrate over their activities and overcome physical pressures; increases learners' independence; brings about a means and promotes the speed of learners' progress;
- facilitates social relations and interactions and places learners in a wider field; provides teachers a tool for discerning and distinguishing learners' skills;
- provides mans for learners, so that they disseminate it for wider community; provides easy access to hardware and software for all learners;
- facilitates coherence and progress; provides different ways, such that learners are attracted, motivated and aroused;
- creates flexibility among teachers and also provides accessible content freely and electronically;
- facilitates participatory work, such that teachers can take part by means of world network and Emails;
- Provides a means for maintaining peoples' progress registration; encourages all learners to work independently, and creates opportunities for making use of human resources best Dome other benefits: increasing speed of conveying learning and teaching;
- increasing learning accuracy; reducing physical size of information domain; avoiding teachers' exercise of tastes;
- Creating full time work; creating a condition for remote co-op for teachers and students; reducing Education incurred costs.

USE OF ICT IN LEGAL EDUCATION

In India, legal education is regulated by the Bar Council of India under Advocates Act, 1961. The Act deals with legal education and ethics. The Act empowers the Bar Council of India to prescribe standards of legal education and recognition of law degree for enrolment of law graduates as advocates. Accordingly Bar Council of India in its Education Rules,

2008, emphasised the importance of ICT in law colleges and made it mandatory for every law college to provide at least 10 internet access points with desktop facilities and one online database in the library for the students. The recommendation of National Knowledge Commission (NKC) of India clearly states that the legal education should meet the needs of trade, commerce and industry in the growing internationalization of the profession. It paved the way for improvement in legal education and raised the standard of Indian legal education. I.C.T. is help full in legal system in two ways firstly, I.C.T. in Teaching-Learning purpose in Legal Education, and secondly I.C.T. in Justice Delivery System.

Legal Education is a branch of knowledge. The 21st century is an electronic era and law has to be updated to handle the challenges as well as new laws have to be drafted to find procedural and investigative tools to educate them to find solutions in the jurisprudence sea of legal education . Traditional way of teaching is no longer useful in inculcate the practical skills in students in the ear of science and technology. Some examples of application of ICTs in Legal field are as under:

- **Electronic Books:** the digital version of printed books. It consists of hyperlinks, search facilities and multimedia capabilities. It includes HTML, PDF and RTF files. an e-book are electronic text.
- **E-Journals:** An e-journal is a periodical publication which is published in electronic format, usually on the Internet. Student can search the content page of the full text of journal to find article of their choice. They can read it anywhere in their laptops or even on mobiles so they don't have to be in the library. Students can save the journal in their desktops or laptops for future reference.
- **Electronic Legal Data Bases:** Manupatra Online Legal Database provides legal, taxation, corporate and business policy database which contain primary documents and analytical content covering commentaries, digests, bare acts, judgements and articles. It provides privileged access to in single online platform. It may be useful for law students for preparing their moot court problems as well as doing legal research as a part of their curriculum. Similarly LexisNexis Database is a worldwide provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting, and academic markets. Also Westlaw is Thompson West's online legal research data base service. It provides quick, easy access to statutes, case law materials, public records, and other legal resources, journals and law reviews.
- **Websites in Legal Education:** useful for the students and teachers, such as:
www.allindiareporter.com www.supremecourtcases.com www.ebc-incia.com
www.taxman.com www.nhrc.nic.in www.nationalc, www.amnesty.org. www.hrw.org
www.indianjudiciary.in, www.un.org

With the use of ICT the student can acquainted both not with texts and also with the other ways of demonstration can help the student to acquire a sharp knowledge. Some of legal database such as MANUPATRA provides SMS Alerts and Desk top Alerts facilities in the world of Legal News and Legal Decisions.

USE OF I.C.T. IN JUDICARY

The E-Committee of Supreme Court of India under the Chairmanship of Dr. Justice G. Bharuka, a retired Judge of the High Court of Karnataka, prepared the Report on Strategic Plan for Implementation of Information and Communication Technology in Indian Judiciary which was presented to the CJI on 11.05.2005. E-Committee established "National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary-2005". Under this Plan it has created I.C.T. Infrastructure, communication infrastructure, Site preparation, and infrastructure creation for e-commerce, development of customized software application, digitisation of legal tools like statute laws and case laws, interconnection of law libraries, Laptops to Judicial Officers, Judicial Service Centre, Video Conferencing facilities in courts and jails, and all the necessary particulars were made. Further Service Delivery and National Judicial Data Grid were established. The national e-Courts portal has become operational. The portal provides online services to litigants such as details of case registration, cause list, case status, daily orders, and final judgments. ICT enablement will make the functioning of courts efficient and transparent, which will have an overall positive impact on the justice delivery system. It is envisaged that as the project progresses and technology develops, necessary additions will be made to the Charter of Services. Another step in the direction to promote greater use of ICT in the Justice System is a Mission Mode Project under the Ministry of Law and Justice under which computerization of District & Subordinate Courts in the country and for up gradation of ICT infrastructure of the Supreme Court and the High Courts under the e-Courts Mission Mode Project (MMP) has been made. With the help of ICT there is no need to carry Case File and evidences at each hearing in physical form, as they are available at click of mouse to Judge and concerned staff. It also ease the maintenance of evidences and documents. Court authorities can avoid frequent physical movement of case related files and evidences. Different courts are able to share the information online. Through e-Court concerned Police, Hospital, Forensic Officials and other stake holders can upload the required documents to the case file from their premises itself. System provides adequate security mechanism like role based user access.

The use of information and communications technology (ICT) is imperative to enhance the quality of justice, reduce congestion in courts and ensure timely disposal of cases. For a country like India, modernisation of the judiciary is likely to help overcome its problems of a burgeoning backlog, increasing arrears, and unprecedented delays in the disposal of cases. For any justice system to remain effective, efficient and relevant, it must keep up with the demands of a modern society and continually reform its apparatus and modes of functioning. Modernisation of a judiciary includes comprehensive computerisation of courts and digitisation of services.

CONCLUSIONS

The ICT has made rapid changes in today's world. The use of ICT in legal education has an potential to engage student, to improve analytical thinking and to develop problem solving skill. . Similarly use of ICT in Indian Judiciary will result in quick disposal of cases, ease of record maintenance, reliability of the evidence recorded and to bring more transparency in the functioning of the Courts.

SUGGESSTIONS

- To give detail information about ICT to teachers, students , lawyers, and judges.
- To provide training for teachers regarding the use of ICTs in classroom teachings should be conducted periodically

- To motivate students regarding benefit of use of ICT
- Provisions for computer labs, wifi, emails accounts should be emphasised in the colleges and universities for effective use of ICTs.
- I.C.T.Training and E-Courts Training should be given to Judges and Lawyers
- There should be I.C.T.topics in the syllabus of higher education.

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CONCERNS & CHALLENGES " organized by our institution on 1st March , 2019.
He/ She has presented a Research paper on Human Rights of HIV/AIDS
patients : International & National Perspectives.

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2018-2019
Journal



Peer Reviewed Referred and
UGC Listed Journal
(Journal No. 40776)



ISSN 2277 - 5730

AN INTERNATIONAL MULTIDISCIPLINARY
QUARTERLY RESEARCH JOURNAL

AJANTA

Volume-VIII, Issue-I
January - March - 2019
Part - IV / Marathi

Impact Factor / Indexing

2018 - 5.5

www.sjifactor.com

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3. Human Rights of HIV/ AIDS Patients: International & National Perspectives

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Abstract

In the present article the author is trying to explore the response of International Human Rights law & National Laws for the protection of rights of HIV/AIDS patients. Various International instruments, laws & treaties ensure & protect the rights of HIV/AIDS persons similarly at national level also the attempt has been made to deal with the vulnerable groups of this epidemic. However it is need of an hour to have a more comprehensive legislation which will guarantee the rights, freedom, privacy & public health, security, cases & most importantly the effective enforcement strategy.

Key words: HIV, AIDS, Human Right,

Introduction

"The Full realization of all Human Rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in areas of prevention, treatment, care & support."⁽¹⁾

AIDS as a disease has created a social turmoil. This hazardous epidemic which has been around for more than twenty five years has already claimed 25 million lives around the world. AIDS is caused by Human Immune Deficiency Virus (HIV) & AIDS stands for Acquired immune deficiency syndrome. It is deadly because it is transmissible.

Human rights are a set of universal entitlements that individual enjoy irrespective of their sex, nationality, religion, culture or other status, that are inherent to human beings & that are proclaimed & protected by international law.

It is now widely accepted that HIV & human rights are intricately linked together. The realization of human rights definitely can decrease the impact of this deadly epidemic. International human rights law establishes an obligation on states to respect, protect & fulfill human rights⁽²⁾ as under international human rights laws & treaties, every person has a right to health & access to HIV & other healthcare services.

International law & policy with respect to Human rights of HIV

International Human rights laws & treaties in entitle every person with the right to health and to access HIV & other healthcare services. Human rights are essential to reducing vulnerability to HIV A human rights approach provides a common framework for translating international & National human rights documentation into practical programming at National level, improving the universal access to health & HIV specific programmers. ⁽³⁾

Human rights are expressed in international & regional treaties, convents, convection & laws. If the countries sign these documents they are required to implement these laws. The international covenant on Civil & political rights (ICCPR) provides for rights such as equality, privacy & dignity which are applicable to all including people affected by HIV & AIDS ⁽⁴⁾. The Universal Declaration of Human Rights (UDHR) puts on obligation on member state that "everyone has the right to a standard of living adequate for health & wellbeing, including medical care & necessary social services" ⁽⁵⁾ the International Covenant on economic, Social & cultural Rights (ICESCR) have recognized the right of every person to enjoy "the highest attainable standard of physical & mental health: ⁽⁶⁾ WHO also provides guidelines on HIV infection & AIDS in prison which outline principles relating to (a) prisoners right to access to health care & (b) implementing HIV preventions strategies in prison ⁽⁷⁾

Along with these documents there are political declarations signed by Governments that are not legally binding but have strong political commitments. As the 2016 Political Declaration on Ending AIDS contains essential commitments by all governments to protect & promote human rights of people living with, at risk of & affected by HIV ⁽⁸⁾

The UNAIDS International Guidelines on HIV/ AIDS & Human Rights also provides 12 Guidelines for countries to fulfill their human rights commitments ⁽⁹⁾ the international HIV/AIDS Alliance & the AIDS & Rights alliance for southern Africa (ARASA) establish a set of guideline of good practice to highlight key principles for realization of human rights ⁽¹⁰⁾

Which Include –

- Equality & non discrimination
- Equal & full participation of all stakeholders
- Putting communities at the centre of programmes
- Capacity building of rights holders & decision makers

- Accountability of states if fail to uphold human rights in live with international treaties & laws.

Indian Scenario

The Law of the Land, the Constitution of India, 1950 guarantees everyone justice, liberty & equality. The right to equality of treatment to the HIV/ AIDS patients ⁽¹¹⁾ Article 15 & 16 protects them against dissemination. Article 21 of the Constitution protects their right to life & personal liberty & ensures their right to privacy.

The Directive principles of state policy also cast duty upon the state to ensure right to livelihood & prevent discrimination. Article 39 of the Constitution directs the state to ensure that all the citizens including the HIV/ AIDS patients have an adequate means of livelihood, Article 42 casts a duty upon states to make provisions for securing just & humane conditions of work. Article 47 ensures that the state have duty to improve public health.

Indian medical council Act, 1956 (Professional conduct, & ethics) regulations, 2002)

It lays down certain duties towards the HIV/ AIDS patients that have to be observed by the doctors to words the HIV/ AIDS patient. They are .

- Duty to take care & to take informed consent from the patient
- Disclosure of information & risks to the patient
- The physician should not abandon his duty for fear of contraction the disease himself.
- Provide information on options available & benefits
- Duty to warn
- To admit the patient in an emergency without consent

Legal Provisions in Immoral trafficking prevention Act, 1986

It deal with sex work in India & Conducting compulsory medical examination for detection of HIV/AIDS

HIV/ AIDS Bill 2007

It is a joined initiative of civil society & government itself. It prohibits dissemination in public as well as private sprees: in matters of employment, healthcare, travel, insurance, education, residence & property, etc

Immunodeficiency virus & Acquired Immune Deficiency syndrome (prevention & control) Bill 2010.



It contains stringent provisions to check & penalize the discrimination against HIV/AIDS

It was further introduced & approved in 2017 it contains provisions prohibiting specific acts of discrimination in education, housing & employment & mechanisms to redress grievances & investigate complaints.

NACO Guideline Against pre-screening tests conducted on prospective employees it is about right to informed consent before any testing & it should not be imposed as a precondition for employment.

Concluding Remarks

Number of International and National Documents ensure the rights of HIV/AIDS patients. These human rights include the right to life, the right to liberty and security of the person, the right to the highest attainable standard of mental and physical health, the right to non-discrimination, equal protection and equality before law, the right to freedom of movement etc.

Despite the number of human rights provided to HIV/AIDS patients their realization is not seen. It may be because lack of human rights protection creates vulnerability to HIV, then it fuels stigma, discrimination and violence against persons living with and affected by HIV, and thirdly human right protection impedes effective national responses to HIV.

Thus the effective implementation and realization of human rights is necessary to achieve universal access to prevention, treatment and care and meeting the needs of vulnerable groups, for achieving this, the state should review and reform public health legislation and practices, specifically legislation should ensure provision of comprehensive HIV prevention and treatment services, correctional systems and reforms in criminal legislations.


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1. Obligation towards Women: International and Indian Perceptions with Special Reference to Uniform Civil Code (UCC)

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Abstract

The uniform civil code is one of the most debatable, crucial sensitive matter amongst various communities in India. As we know that India is having diversity in language, religions, customs and traditions; people have different ideologies with respect to marriage, divorce, maintenance succession etc.

The concept of UCC in the context of secularism is a step towards national unity and integrity by eliminating contradictions based on various faiths and religious ideologies of all communities residing in India is revolutionary in true sense.

Various subjects in society like marriage, divorce, succession & maintenance were governed by personal laws of people residing in it. Hence to fetch the uniformity, in every section of society, UCC is a very effective mechanism aiming to protect the gender justice and equality amongst all religions.

Though India is a secular country, Article 44 of the constitution is still untouched.

The paper discusses the Indian constitution and international provisions which initiates the formation of UCC. This paper itself addresses one of the anomalous situations of the provisions of a 'UCC' that prevails in present Indian laws which are observed by the law commission of India. It briefly states the facts of the cases discussing various relevant case laws with judgment analysis followed by regarding conclusion to its applications to uniform Civil Code.

Keywords : Uniform Civil Code, Indian Constitution International Provisions, Gender Justice, Secularism Equality.

Introduction

Under international law, a state that ratifies an international instrument becomes legally bound to implement its provisions. India being a signatory has ratified the International Covenant

on Civil and Political rights, 1966 and International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, is bound to enforce the relevant provision and ensure gender justice and equalities under its municipal laws.

India is male dominated society; Indian women have been suffering pains and troubles in silence due to self-sacrifice and self-denial as nobility and fortitude leading to all inequalities, indignities and discrimination.

For centuries passed, women have been denied full Social, economic and political justice and also treated as "a weaker section of society" they have been used, abused, exploited and discarded to lead immoral, street vagrant and destitute till their death. In a tradition bound society like India, women have been socially, economically, physically, psychologically and sexually exploited; some-times in the name of religion on the pretext of writings, in the scriptures and sometimes by the social sanctions.

India is the only country having different religions with own personal laws having authority from customs, religious scriptures and deal with marriage, Divorce, Succession, Minority Adoption, Maintenance, Inheritance, and Guardianship etc. Hence gender discrimination continues till date. Gender equality and women empowerment are the call of the day and attempts are to be made to achieve satisfactory result in this regards.

Because, women in India under Hindu, Muslim and Christian law continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce, inheritance. so as to inculcate gender just code under various personal laws. It is very much needed to bring reforms not only with the compliance of Indian constitution but also as per the guidelines provided under international law.

The glimpses of international law over gender inequality in India

The International mechanism for monitoring the compliance of the legally binding provision of CEDAW by a state party is the committee on elimination of Discrimination against Women. Prevalence of discrimination against women under various personal laws of different communities in India was openly accepted by India in its periodic report before the united nations committee on the Elimination of discrimination Against women when it admitted, "the personal laws of the major religious communities had traditionally governed marital and family relations, with the government maintaining policy of non-interference in such laws in the absence of demand for change from individual communities."

India has been submitting periodic compliance report vis-à-vis the implementation of the CEDAW, to the committee. This committee accepts Indian's compliance to the provisions of the said international instrument and noted that steps have not been taken regarding the personal laws of different religious and ethnic group, in consultation with them, so as to confirm to the convention and warned that "the government's policy of non-intervention perpetuates sexual stereotype, preference and discrimination against women."

The committee also urged the government to withdraw its declaration to Article 16, para 1 of the convention and to work with and support women's groups as members of the community in reviewing and supporting these personal laws, and expected the government "to follow the Directive Principles in the Constitution and the supreme court decisions and enact uniform civil code that different cultural and religious may adopt."

The Human Rights Committee, the international mechanism for monitoring the compliance of another international instrument, the International Covenant on Civil and Political Rights, 1966, at its meeting held on 30 July 1977, after considering the third periodic report of India,

Also observed that women in India have not "been freed from discrimination," and expressed serious concern that they "are subjected to personal laws which are based on religious laws and which do not accord equality in respect of marriage, divorce and inheritance rights," and stressed that "the enforcement of personal laws based on religion violates the rights of a women to equality before the laws and non-discrimination." Therefore the human rights committee did not favor such a violation of the human rights of human in India to continue and recommended to the government of India that "efforts be strengthened towards the enjoyments of their rights by women without discrimination and that personal laws be enacted which are fully compatible with covenant."

India, no doubt is a secular country with people of different religions enjoying different personal laws. But these personal laws, at times, reflect glaring gender inequalities and discrimination against women.

The situation is further criticized when it is pointed out that the Indian state has, however, made no efforts to change these laws or introduce new legislation in conformity with constitutional mandates. In fact, the Indian government seems to have chosen to ignore these principles completely and act as they did not exist."

The only justification frequently given by the Indian government before various international monitoring committees is that it does not want to interfere in the personal affairs of any community without being requested by the members to do so. Here, some experts feel that technically serious lacuna is there as

India having ratified the Convention on the Elimination of All Form of Discrimination against Women (CEDAW) 1979, has become Legal bound under the International Law to implement the convention without any reservations. In more specific terms, while signing CEDAW, the Indian government on 30 July 1980, had made a unilateral declaration that "with regard to Articles 5(A) and 16(1).. The government of India declares that it shall abide that ...these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent". However thereafter, the Indian government ratified the women's convention on 9 July 1993 without any reservation and some experts now claimed that India, therefore, is obliged to implement the entire convention with no ifs and buts.

Concept of Uniform Civil Code

A uniform Civil Code (UCC) administers the same set of secular civil laws to govern all persons irrespective of their religion, caste and tribe; the rights of citizens to be governed uniformly. The common area covered by a civil code is Marriage, Divorce, Adoption, Maintenance etc. The need of UCC is inscribed in Article 44 in part-IV of Indian Constitution as Directive Principle of State Policy and Article 44 is not enforceable under law.

The expression is the combination of three terms uniform, civil code. Uniform means 'same in similar conditions' civil derived from Latin word civilize means 'citizen', code means 'codified laws'. But in the context of law, UCC confine to having uniform family code for every member i.e. Hindu, Muslim, Christian, and Parsi who is residing in India. The constitution of India which solemnly revolved to constitution of India which solemnly revolved to constitute India into Sovereign, Socialist, Secular, Democratic and Republic. Thus the concept has two aspects-firstly, to have uniform law for all communities, secondly, similar laws for all and thirdly similarity should be regarding equality and gender justice.

The UCC is conceived as a part of secularism of personal laws without shedding religious identities. But discriminatory customs with religious sanction evolved through age and have been left untouched except in parts, during the Colonial Rule. The situation is criticized when it is

pointed out that, "The Indian state has, however, made no efforts to change these laws or introduce new legislation with conformity of constitutional mandates.

Concept of Gender Justice

Gender Justice is often used to promote women's rights through legal changes and women's interest in social and economic policy.

Gender justice is based on specific political ideology, a set of convictions about what is "Right" and "Good" in human relationship and how desirable outcomes may be attained. It also implies, moving away from arbitrary to well-reasoned, justifiable and balance that is fair social relation

Gender justice is to redress for inequality of between women and men that result in women subordination to men.

Gender Justice And Constitution Bedrock

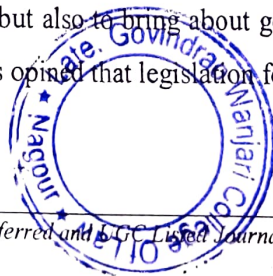
The preamble of Indian constitution assures dignity of Individuals which includes dignity of women. In this context, several important enactments have been made for protecting the status, rights and dignity of women. Constitution not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favor of women for nullifying (SP) socio-economic, educational and political disadvantages faced by them. Some of the Articles under Indian Constitution play major role in the field of women empowerment.

In Valsamma Paul, it has been ruled that Human Rights for women, gender equality can be traceable to the convention for Elimination of All Forms of Discrimination against women. Human rights for women, including girl child are inalienable, integral and an indivisible part of Universal Human Rights.

Even in Vishakha ; the court took a serious note of the increasing menace of sexual harassment at work place and held that it violates the Fundamental right of gender equality and Right to life and liberty.

Gender discrimination under Indian Personal Laws and Judicial Approach

In all personal laws, gender in justice is inbuilt. It is due to the socio-economic condition under which they evolved. Thus there is need for uniform civil code to ensure not only equality between men and women but also to bring about gender justice. The Hon'ble Supreme Court of India in few judgments has opined that legislation for common civil code as laid down in Article-



44 of India Constitution should be enacted. So that, there will be justice with fair sex and concept of gender equality could be achieved.

In ThotaManikayamma ; the court while interpreting Section 14 of Hindu Succession Act, 1956 converting the women's limited ownership of property in to full ownership has observed. As a fact, Article 15(3) as a forerunner to common code does animate to make to accord socioeconomic condition. The mother cannot be Natural guardian of her children during the life time of her husband.

In maintenance, gender and communal biasness exist; a non-Hindu wife cannot claim maintenance from her Hindu husband. Whereas Hindu Wife enjoys right to live separately from husband on his conversion without asking her right of maintenance.

The conversion of spouse furnishes ground for divorce to non-covert spouse only, thus threats the change of religion as matrimonial offence.

In SarlaMudgal And Lillymascase concerning polygamy of Hindu and Christian men respectively afterconversion to Islam raised the debate of discrimination and demanded UCC.

The Muslim personal law had incorporated more rigid and unfair usages. It permits polygamy (four wives at a time) to Muslim male but wife does not have same option. Husband can pronounce unilateral divorce but wife to remarry same husband has to go through 'Halala' process which is inhuman and discriminatory; her status is inferior in customary divorce.

There is no maintenance provision of divorced wife. But Hon'ble Supreme Court has taken progressive step in Shah Bano case entitling women for maintenance under Section 125 of Criminal procedure code beyond Iddat period but government doing justice with male community by passing Muslim Women (Protection of Rights on Divorce) Act 1986 to nullify the effect of Shan Bano Case. According to this Act, A Muslim husband is bound to maintain his wife only during iddat period unless both spouses submit to court at appropriate time that they would desire to be governed by CrPC.

In Daniel Latifi case¹⁴ MWA 1986, constitutionality was raised on grounds –

- 1) It discriminates Muslim Women on ground of religion.
- 2) Special laws made under Art. 15(3) of constitution must be beneficial for women but does not permit to make law for women of particular religion
- 3) It is violation of Article 14 as classification is arbitrary, irrational and unreasonable.
- 4) It is inconsistent with Art. 39-A.

The Apex Court upholds validity of the Act and Ruled that liability of Muslim husband to maintain his divorced wife is beyond iddat period.

A ray of hope has again shone; recently, this time through the voice of one such victim, Shayra Bano challenging this system of divorce by triple talaq has arisen out of three leg

Firstly because, it discriminates between the status of wife and husband and violates the Right to equality of women, secondly her personal and financial security is in fear of uncertainty of future in her husband's house making her dignity and thirdly, depriving her of dignified conjugal rights which transgress article 21 of our constitution.

Obstacles to Uniform Civil Code

The three objections raised for implementation of UCC in India by communities.

Firstly: Article 44 of Indian Constitution must be repeated because personal laws are sacrosanct and immutable and no legislature can amend it.

Secondly : Uniform civil code is against fundamental right guaranteed under Art.25 and 26. Both Article 25 (Right freely to profess, practice and propagate religion) and Article 26 freedom to manage religious affairsingress Article 21 of our constitution. Article 25 also protecting religious freedom, also empowers the state to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice. This introduce an important distinction between sacred and secular.

Chief Justice Khare in John Vallamattom Case. Reminded that there is no necessary connection between religious and personal law in a civilized society. Article 25 and 44 show that former guarantees religious freedom whereas the later divests religion from social relations and personal laws.

Thirdly : Uniform civil code is against fundamental right contained in Article 29. Article 44 is against Article 29 that guarantees right as to culture.

Need of Uniform Civil Code in India

After independence, India's aim was to unite India and make it a truly secular nation, which results in need of uniform civil code. But 70 years after independence, the state has not implemented the provisions of uniform civil code. The positive aspect of need of UCC for various reasons are: –

1) To promote secularism. A uniform civil code does not limit the freedom of people to follow their religions.



2) Equal rights to females. It helps in improving the condition of women by giving fair treatment and equal rights.

3) It helps to build progressive nation. Which may move away the caste and religious politics?

4) Eradicate loop holes in personal laws. The various personal laws are basically a loop hole to be exploited by those who have the power.

5) No vote bank politics. UCC will also help in reducing vote bank politics' when all religions are covered under the same law; it will not be a weapon in the hands of politics.

6) Integrate India : A UCC will also help in integrating India. It will help in bringing every Indian despite his 'Caste religion and tribe' under one national civil code of conduct.

Conclusion

Nationhood is symbolized by one constitution and common law applicable to all citizen and India's obligations under International law and requirements of various International instruments relating to human rights of women such as UDHR, 1948, and the Declaration on Elimination of Discrimination Against women, 1967, cannot evade its International obligation to make laws to remove all discrimination against women.

In alternative, parallel reform of each personal law to give effect to human Rights declared by United Nations would help the emergence of common pattern of personal law, concrete way for a uniform civil code, and could be made in that direction but it seems that the political will is lacking.

Despite of constitutional safeguards and statutory provision still, it violates rights of women and discriminates on various grounds. Social evil of gender inequality is buried deep in its grave; laws are not enough to combat the evil. The Indian Judiciary has also done a lot but there are some limitations on jurisdiction of judiciary.

The UCC a constitutional mandate is awaiting the mercy of Indian legislature to form a law, which provides equal status to men and women who are victims of diversities in personal laws.

A Secular India needs a uniform civil code but urgent need to force any UCC on an unwilling population is not necessary. Most of people are not ready to adopt truly secular laws separated from religious custom.

UCC can be successfully introduced only after achieving improved levels of literacy, awareness on various socio-political issues, enlightened discussions and increased social mobility.

If center is not willing to move forward, and then state has to initiate the same. Goa has shown the way and there is absolutely no reason for delay.

A secular India needs a uniform civil code. For strengthening the Equality, Dignity and Liberty for both the sexes especially for the women which may lead to Women Empowerment.

Thus uniform civil code plays a very crucial role for the protection of the oppressed, promotion of unity and integrity for safeguarding the human rights of women irrespective of their religion that they belong, with the conformity of binding provision of International laws which were already ratified by India.

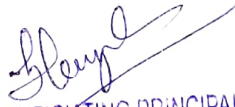
Suggestion to implement uniform Civil Code

- 1) Before implementing of uniform civil code, we must educate the citizens of India regarding the true nature of uniform civil code.
- 2) UCC must not become the tool to suppress the interest of the minority communities. The aim of UCC to bring uniform code applicable to all communities.
- 3) UCC must not erase the cultural and religious values so that once it is implemented it will gain positive impact.
- 4) Fundamental right to freedom of religion of the constitution of India needs amendments.
- 5) Reduction of the political influence over UCC.

FootNote

- United Nation, report of the committee on the Elimination of discrimination Against women , supra No 38,A/55/3
- Id at 10
- India's Declaration to CEDAW with regard to Art5(a) and 16(1) of the convention the Elimination of discrimination Against wI
- supra note 1 at 10
- India's third periodic report (CCPR/C/76/Add. 6) considered at its 1603rd to 1606th meetings on 24 and 25 July 1997 and subsequently adopted at 1612th meeting of the Human right committee

- Available at <http://www.lumn.edu/humanrts/hrcommittee/india1997.html>
- Kirti Singh, "obstacle to womens rights in India" in Rebecca J Cook
- Human Rights of Women National and International Perspectives 375 (1994)
- ibid
- Pandey- J.N. The constitution of India
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- Nyamu - Musembi and Navsharan Singh ed Gender Justice Citizenship and Development, Zubaan, New Delhi.
- 1963 SCC 545; 1996 SCC (C & 7) 772
- AIR 1997 SC 301
- (1999) 4 SCC 312
- Sec. 6 Hindu Minority and Guardianship Act 1956
- Sec 13(i)(ii) Hindu Marriage Act 1955
- Sarla Mudgal V Union of India AIR 1995 S CCC 635
- Lily Thomas V. Union of India SCC 2000 Vol.2, Page 224
- Like Khula, Talag-a-tatweez, Mobarat etc.
- Mohd. Ahmed Khan V Shah Bano Begham AIR 1985.
- J. Vallamattom V. Union of India (2003)


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Vidyawarta Refereed Peer-
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ISSN 2319-9318

Impact Factor 6.021
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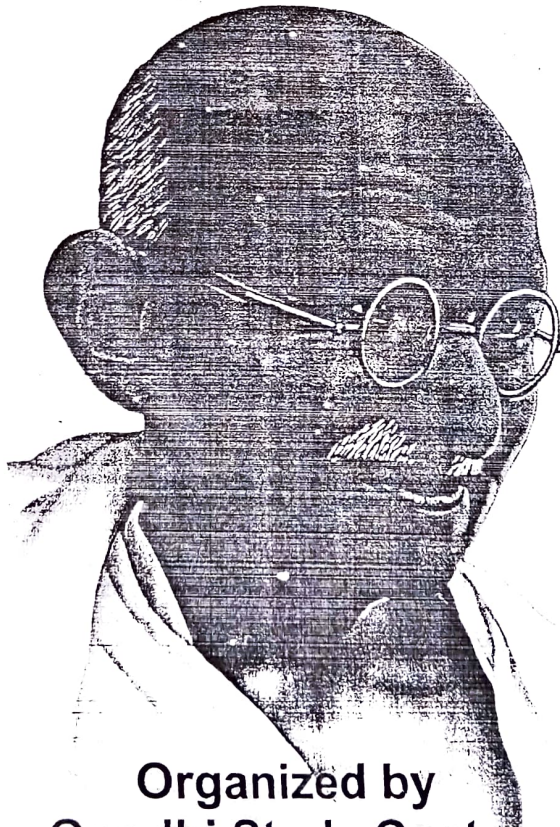
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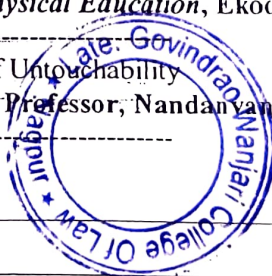
2nd March 2019



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about moderation in the hearing, touch, speech, smell, taste, thought. To seek truth and to gain the edge of life-sustaining forces i.e. air, earth, water, and Akash, one has to use of the sense organs. (V.K.Singh)

physical and mental health depends on reception received through all of the five organs. If one observes and follows all the laws of nature well, there is nothing that can prevent from maintaining health. For this, he emphasized on living it since childhood. For morality, he emphasized that overeating, indecent behavior or indulgence in bad habits is all wrong. One must abstain by practicing discipline on all the life-giving forces. [://shodhganga.inflibnet.ac.in/bitstream/1303/84470/9/09_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/1303/84470/9/09_chapter%204.pdf)

Conclusion:

cannot summarize the Gandhian philosophy in short. But the major idea of Mahatma Gandhi was that Truth, which is the most important part for the individual development, manifests as knowledge. This knowledge is fed into an individual through senses. It is the truth which needs seeking; it is imperishable, and all the other things are perishable.

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Mahatma's Vision for Removal of Untouchability

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*Caste does not connote superiority or inferiority. It simply recognizes different outlooks and corresponding modes of life. But it is no use denying the fact that a sort of hierarchy has been evolved in the caste system.*¹

The origins of the caste system in India originated more than two thousand years ago which is associated with Hinduism, people were categorized by their occupations and originally caste depended upon the person's work. Each person was born into an unalterable social status. The four primary castes are **Brahmin**, the priests; **Kshatriya**, the warriors and nobles; **Vaisya**, the farmers, traders and artisans; and **Shudra**, the tenant farmers and servants. People who were born outside of and below the caste system were called "untouchables". Untouchability refers to the humiliations imposed from generation to generation. Untouchables are the peoples of castes whose touch is enough to cause impurity and pollution. Untouchability was prescribed and practiced as part of the age-old institution of the caste system. The caste system is a very complex institution consisting of innumerable Hindu ideas rooted in pollution, purity, social units of jatis, varnas and dharmas.

Untouchables were also known as depressed classes, Harijans, etc. but today they are more frequently referred to as 'Dalit's'. In modern times, 'Dalit' refers to one's caste rather than class; it applies to members of those so called menial castes which are born

with the stigma of "Untouchability" because of the extreme impurity and pollution connected with their traditional occupations. They are considered impure and polluting and are therefore physically and socially excluded and isolated from the rest of the society. They were forbidden entry into temples, schools and were not allowed to use wells from which higher castes drew water. Their touch was seen as seriously polluting to people of higher caste, involving much remedial ritual.³

In nineteenth century and twentieth century religious and social reformers such as Jotiba Phule, Ram Mohan Roy, Mahadev Govind Ranade, Swami Vivekananda, Gopal Krishna Gokhale and Swami Dayananda fought for the social evils of the country and for the removal of oppression from the society. They had achieved the purposes for what they were fighting. Mohandas K. Gandhi and Dr. B.R. Ambedkar are among the major makers of modern India. Their work in Indian History is highly remarkable. Gandhi and Ambedkar offered specific goals and pathways for the creation of a just social order in India. They differed over objectives as well as the methods for achieving their ends. Gandhi believed that standing at the heart of the inherited Hindu tradition, including its caste system, it was possible to overcome Untouchability. According to the Mahatma, "the caste system is a hindrance, not a sin. But Untouchability is a sin, a great crime, and if Hinduism does not destroy this serpent while there is time, it will be devoured by it." He firmly believed that ultimately the removal of Untouchability depended on the change of heart of millions of caste Hindus.⁴

Mahatma Gandhi saw it as principal obstruction in reforming and uniting Hindus and by extension the whole of the Indian nation. He realized that there is urgent need for freedom from the colonial masters, who are rendering void and hollow in Indian society, if Indians continued to condone and acquiesce in the practice of Untouchability. Hence, Gandhi focused on removal of

Untouchability with an energy and zeal that was unprecedented in the history of Indian social and political movements.⁵

Mahatma Gandhi called untouchables Harijans "Children of the God Hari Vishnu," or simply "Children of God" and long worked for their emancipation. However, this name is now considered condescending and offensive. Today members of Schedule Castes and Schedule Tribes (SC/ST) are considered as 'Dalit's' and they are subjected to various forms of discrimination in the society.⁶

Gandhi's Ideology for Untouchability:

Mohandas Gandhi was born October 2, 1869 in a high caste Brahmin family and they were very religious. Gandhi even as a child did not believe in Untouchability. His main proposal for reforming Hinduism was to abolish Untouchability. He wanted all the "untouchables" to be allowed to enter temples, given access to public roads, wells etc, and his other main proposal of fusing the castes within each of four varnas. Gandhi believed that castes have saved Hinduism from disintegration. But it has presented an ugly growth. The four divisions alone are fundamental, natural and essential. He believed that Caste is an extension of the principle of the family. Both family and caste are governed by Blood and heredity. Heredity is not an illusion. Changes come very slowly in social life, and thus caste has allowed new groupings to suit the changes in lives. These changes are quiet easy. It is difficult to imagine a better harmonious human adjustment. Gandhi believed that it is because of caste system, Hindu Society could stand. A community with the caste system must be said to possess unique power of organization. Hereditary occupation or hereditary principle is an eternal principle and natural order of society. However, According to Gandhi all quarrels arising out of religion, caste and economic differences will be ended if one considers oneself as the trustee of one's property instead as the owner of the property. Gandhi said that caste as it was understood then must go if Hinduism

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to survive. He favored inter caste marriage and said that this question did not arise when all become casteless.⁷

Gandhi in South Africa had suffered much humiliation at the hands of the white ruling class. He found that Indians in South Africa were called 'coolies' and he himself became a 'coolie' barrister. Indians were 'untouchables' in South Africa and suffered all insults much the same way as the 'untouchables' in India suffered at the hands of their own brethren. This, to Gandhi, was a just punishment to Indians in South Africa for their sins in India. In his words: "It can be safely said that there is no difference between these locations and the 'untouchables' quarters in India. He staged a non-violent Satyagraha movement there and won for his Indian brother's position of self-respect. After coming back to India he studied the social, economic, political and religious circumstances in the country and fought at several fronts. Gandhi inherited the position of the Congress party on Untouchability first recorded in a resolution in 1917 which urged on the people of India, "The necessity, justice and righteousness of removing all disabilities imposed upon the depressed classes. He sympathized with the 'untouchables' because he had experienced such discrimination. When he protested he did it peacefully. He went on hunger strikes till they gave up. He spent approximately a year and a half years in prison because of his civil disobedience. He stopped wearing additional clothing and began wearing the dhoti and shawl showing that he had renounced worldly values. He worked for removal of the label 'untouchable' from the people."⁸

Gandhi erroneously believed that caste system offered protection against invaders. Nothing could be further from reality. In reality, Varna system decimated meritocracy by making everything hereditary. For Gandhi, untouchability or caste discrimination is not mentioned by Hinduism or was not part of original Varna system. Caste discrimination is an outgrowth of caste system which will be

purified when Untouchability is removed. However Gandhi wanted to maintain Varna system and at the same time he was against caste discrimination. For him, recognition of dignity of labour will eliminate the idea of higher and lower grades from caste system.⁹

Gandhi was of the opinion that the practice of Untouchability was a moral crime. He said that "if Untouchability is not wrong, then nothing in the world is wrong." He believed that a change of heart on the part of the Hindus was essential to enable the social and cultural assimilation of Harijans. He was very much moved by their social distress and started a nationwide movement to remove their disabilities.

Gandhi who regarded Untouchability as a blot on Hinduism wanted to do away with it completely. He wrote in 1920 "Without the removal of the taint of Untouchability 'Swaraj' is a meaningless term." He even felt that the foreign domination of our country was the result of our exploitation of almost one-sixth of our own people in the name of religion.

Gandhi advocated positive means for the uplift of Harijans. He addressed various public meetings reposing doctrines of Harijans welfare. He led several processions of Harijans with other upper caste people and made them participate in "poojas, bhajans, keerthans and puranas".

Gandhi believed that opportunities of education and temple entry would reduce social inequalities between Harijans and caste Hindus. He launched movements for cleaning Harijan residential areas, for digging wells for them and for similar other beneficial things.

Gandhi wrote in "Young India" in April 1925. "Temples, public wells and public schools must be open to the untouchables equally with caste Hindus." Gandhi served the "Harijan Sevak Sangha" started by the social reformer B. R. Ambedkar in the year 1932 for working out the religious and social welfare of the Harijans. The organization opened schools and dispensaries in various

places and arranged for free educational facilities and scholarships for Harijans children.¹⁰

Gandhi and Dr. Ambedkar Debates over Untouchability:

Gandhi had a great faith in class system. He did not accept the class system of Manu against upliftment of down-trodden or social equality. In his opinion, for eradicating the Untouchability, it is not essential to end the caste system as mentioned earlier. All people busy in their parent's profession are equal. This was the point where Ambedkar opposed Gandhi to a greater extent. He argued that without destroying the caste system there can be no upliftment of the untouchables. There was conflict between Gandhi and Ambedkar on the issue of the separate electorates for the untouchables and the depressed classes illustrated the two contrasting perspectives which fundamentally altered the nature of political participation by the Scheduled Castes and tribes in British India. Dr. Ambedkar views that untouchables were absolutely separate from Hinduism and hence, he tried 'to find a solution to their problem through political separatism.' Gandhi did not appreciate Ambedkar's demand, and declined to accept that the untouchables were a community separate from the Hindus. He was instead prepared to offer reserved seats for them in general constituencies. For him, the matter was highly 'religious', as he stated: 'for me the question of these classes is predominantly moral and religious. According to Gandhi Varna Vyavastha, is natural and affords greater opportunities than other arrangements for self-realization and social harmony. Gandhi believed that every man is born with certain definite limitations which he cannot overcome. From a careful observation of these limitations, the law of Varna was deduced. Thus, Gandhi considered the Varna institution as integral part of Hindu religion and even goes on to characterize it as the invention of dharma, the result of a continuous search for the truth. On the other hand, Ambedkar leveled harsh

criticism against Chaturvarnya, as a basis of social organization.

The differences between Gandhi and Ambedkar had their roots in their respective world were deeply committed and bound and which they articulated in their thinking and action. Gandhi is ideologically committed to the spiritual perspective and his ideas are dialectically constituted in the context of foreign rule and his simultaneously launched movements against the atrocious social structures, customs, norms and values in the Indian society justified in the name of India's age old traditions. Ambedkar, on the other hand is committed to the secular perspective. One of the major defining characteristic of the secular perspective is, "the absorption of divine reality within human experience" and "the secular assertion of human independence from all divine connection." This suggests that man is capable of recreating the conditions of his own existence and this is possible through the radical transformation of the society. It is in this context that for Ambedkar, as undisputed leader of the untouchables, their socio-economic emancipation was his priority.

Gandhi and Ambedkar's aim was same the abolition of Untouchability from Indian society. But they adopted different techniques for the abolition of this evil. Gandhi viewed the problem of Untouchability as basically a religious and spiritual one. He saw the movement to eradicate Untouchability as "a sacred ritual self-purification" as he considered the untouchables as an integral part of the collective Hindu.¹¹

Conclusion

Every People are born as humans and every human being has equal rights. There is need people should accept this fact and treat everyone equally. Our Indian Constitution guaranteed equal right and equal protection to all the people of county without any discrimination. Hence, it is prohibited any kind of discrimination. Untouchability is

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now abolished and Caste and class are only documentaries nobody is superior or inferior because of it. Humanity is only the solution or eradication of caste.

Gandhi's vision for caste discrimination was formative in nature. Mahatma Gandhi was every devoting person for Hinduism, he was saviors of Hinduism and he wants to save Hinduism by Hindu way of life. Gandhi uprooted ancient classification of Hindu society into four varnas, his view was that Varma prescribe only duties and obligation it does not confer any special privilege or superiority to any individual or Varna. However, Gandhi mission failed towards solving the problems of Harijans, because of exceptional believe in Hinduism was the only cause which made him an utterly failure in his mission. Moreover, Mahatma Gandhi had a very good intention to solve the problems of Harijans but there was absence of secularism. According to him Harijans are only Children of the God but Humanity is more than God and existence of God had nobody seen. Hence, he failed to succeed in his mission and attracted the hatred of Dalit's in India. He redeemed Hinduism in some extent but failed to remove castes and injustice done to the untouchables.

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Year
2019-2020

LAW AND BEHAVIOUR LINKAGES

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17-18

Book

19-20

Preface

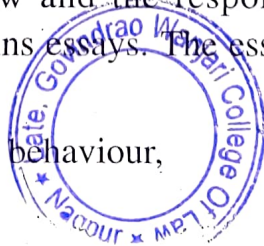
The purpose of the book is to put forward the linkage of law and behaviour. The book explores the law and behaviour and their correlation. It also explores the ways to make society better by having laws which take care the important element of behaviour.

Society constantly responds towards aspects of human behaviour. The purpose of law is to regulate the aspects of human behaviour and defines the boundaries. The acceptance and rejection of law as also its implementation and non-implementation depends on the human behaviour with respect to prescribed and proscribed law.

Human behaviour is changing rapidly. For example, the nature of crime is of becoming different from what was typically understood. Earlier, people resorted to theft used to survive. At present even persons from well settled families, person commit theft. They also commit theft and other crimes to support their lifestyle. Children used to be considered as a responsibility of parents. Educational institutes and society have always shaped up human behaviour, Now, Corporates also shape human behaviour as persons spend at least eight hours of day there. Women have formed group to deal with vulnerability arising due to variety of situations. Laws to protect women have emerged as special laws with aim to protect and empower them by changing or controlling behaviour adverse to women.

The book is an attempt to put forward various aspects of society and human behaviour and how law has responded towards it. The contemporary and relevant areas and aspects are identified to discuss the behaviour towards law and the response of law towards behaviour. The book contains essays. The essays are divided into four parts mainly:

I. Crimes and human behaviour,



- II. Behavioural aberrations and child rights,
- III. Corporate code, ethics and behavior, and
- IV. Women rights and law

The details are as follows:

Part I of the book contains three essays each advising the relationship between crimes and human behaviour, both conceptually and in practice.

In chapter one, Sandhya Kalamdhad critically analyses the effect of criminal law on attitudes. Sandhya explains the problem by dividing into two sets of questions. One set focuses on the capacity of criminal law to protect values and interests. Can criminal law change attitudes and behaviour, shaping the way the people think about objects, activities and relationships to a set of normative standards? A second set of questions focuses on the effectiveness of criminal law. What generates compliance to the standards expressed in criminal law? Does it result from external control, the fear of severe and certain punishment? Sandhya has inferred that there is no deterrent effect of criminal law in India due to various reasons such as low conviction rate. Rule formulation has a deterrent effect only in those unusual situations in which the preconditions to deterrence exist. Even there, the deterrent effects are quite minor and unpredictable.

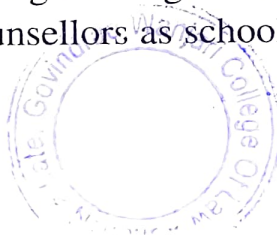
In chapter two, Priya Sepaha examines psychoanalytic approach pertaining to causation of crime. Priya argues that the causes of crime are one of the important segments of the crime problem that require more discussion, investigation and research. While discussing various theories the key learning from various theories of causation of crime indicate that psychology plays a prominent role in criminal tendency and crime committed. The psychoanalytic theory helps to analyse criminal motives and behaviour by comparing the crime rate and nature of crime committed by persons suffering from various abnormal behaviours.

Crime cannot be explained solely by the psychoanalytic theory because it has strong correlation with geographical, anthropological, economic and social factors also. Priya has attempted to analyse the pattern of crime committed in the recent past by citing criminal cases as case studies. particularly in India, and suggested that there is need to study the same in an integrated manner along with the psychoanalytic approach in order to understand the deep-rooted causes of the crime and criminal behaviour.

Sushila Sharma, in chapter three takes up drug abuse as an example to assert on the relationship between drug abuse and criminal behaviour. She spelled various reasons of substance abuse and further relates it with criminal behaviour. A step ahead, Sushila also analyses critically the response of law towards substance abuse and find out that drug addiction and abuse lead to various crimes. Law has taken note of it, however behaviour leading to drug abuse and further crimes due to drug abuse is still not addressed.

In Part II of the Book, the focus shifts to the behavioural aberrations and child rights. At present, the behaviour of children is a challenge for a society. Total well-being of a child is a responsibility of a society and thus, of law. Considering the challenge and significance of wellbeing of child three essays have been depicted various challenges, first addressing the question of emotional development of children, second crime against child and third crime committed by child.

Rashmi Salpekar's analysis in chapter four focuses on emotional development of children and response of legal regime in India. She agrees that as family structure is weakening and people have reservations and quite few are unaware of emotional challenges of children leading to need for legal intervention. She suggests that emotionally challenged children should be looked after by the schools through having services of psychologists, occupation therapists and counsellors as school is the second home for child.



In chapter- five, Snehal Fadnavis discusses the issue of sexual abuse of children. She argues that child sex abuse is a problem which involves psychological behaviour of person or perpetrator of this crime. In this type of crime, it becomes very difficult to identify and punish psychologically sick criminals. Protection of Children from Sexual Offences (POSCO) Act, 2012 is a landmark step so far as child sex abuse is concerned, because, it has given definition of child sex abuse which was never defined by any of criminal laws in India previously. On analysis, she observed that the scope of POSCO Act, 2012 is wider as it is gender neutral legislation. POSCO can successfully be used to control and prohibit sexual abuse of children and help in changing criminal behaviour due to its deterrence stringent punishments.

In chapter-six Isha Yadav examines the age of juveniles and punishment to be given considering neuropsychological development, Isha argues that the determination of the age of juvenile delinquency and the course of correction needs to be well grounded in a sound understanding of neuropsychological development of criminal behaviour. The nature of the criminal act committed by a juvenile delinquent and his/her understanding of the circumstances and consequences of the crime reveals little about the consequences of criminal behaviour. Expressing objection for the amendment to the Juvenile Justice (Care & Protection) Act, 2015 wherein Juvenile Justice Board has been made empowered to decide whether delinquents between the age of 16 to 18 years, who have committed heinous crimes should be tried as adults in criminal courts, Isha put forward an observation that rehabilitative approaches are desirable and have proven to be effective in working with children.

In Part III, the focus shifts from behaviour of an individual to behaviour of a corporate in various situations.

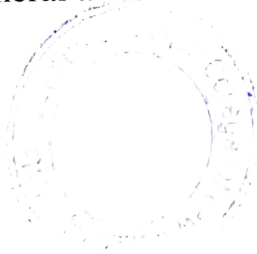
In chapter seven, Vidhi Madaan Chadha explores the Competition Laws of the United States, European Union and India with regard to dominant position. She explains dominance as the position of strength enjoyed by an enterprise in the market. She, on

examining dominant position and its abuse, has put forth three steps evaluation i.e. (i) delineation of relevant market; (ii) assessment of dominant position of an enterprise in relevant market; (iii) determining as to whether the conduct leads to an abuse. On the face of it, according to her, these three parts are discreet. However, the assessment of each step is dependent upon the outcome of the other.

Further, in chapter eight Ankita Banerjee examined the role of competition policy in regulation of pharmaceutical sector in India. Ankita argued that the relationship between intellectual property rights and competition law poses challenges especially in pharmaceutical industry. She has addressed the issues pertaining to the impact on the market entry and contestability in the pharmaceutical sector with the help of the present legal regime and in the light of judicial response.

In chapter nine, Yash Jain reminds that earlier business were working on mere the whims of board of directors whether real or shadow. In today's modern era of corporatization, a prominent need arises, to apply best management practices, due diligence and compliance of law in true ethical manner. This growing need is to nurture the true spirits of corporate governance to achieve the goal of effective management, wealth creation and mitigation of all possible financial risks and avoidance of economic crises by close cooperation of all stakeholders to achieve maximum earning and assets. Mandate behind compliance should not necessarily being law's fear of non-compliance but achievement of objectives of overall wellbeing and sustenance of businesses.

In chapter ten Aarushi Sood and Mamta Bhadu take up a study of tax heavens and its impact on Indian Taxation system. Reminding the recent leak of Panama papers by the international consortium of investigation journalist, the authors asserts on the significance of implementation of general anti avoidance rules with respect to tax heavens.



In chapter eleven Sushma Sharma explores yet another dimension of governance with the help of assertion of right to information. She has particularly explained the Right to Information Act, 2005 which mandates timely response to application by citizens seeking information as permissible under the Act.

In chapter twelve Abhishek Bera and Saumita Basu have analysed interception, monitoring and description of data. Trade and commerce are becoming essentially a global activity. At present a different world exists on the web. It has both advantages and disadvantages. The authors have primarily taken up the issue of data protection and examined the process of encryption-decryption in detail which is used for meeting data protection standards. They have also carried out a comprehensive analysis of the legislation viz. Information Technology Act, 2000 along with the IT Laws of the US and EU.

Finally, Part IV contains four chapters dealing with issues of women not only at workplace but also at their home and response of law.

In chapter thirteen, Amarita Rathi and Adhiraj Bhandari give a critical appraisal of workplace violence and relevant law, particularly Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013. The authors have examined various provisions of the Act and have come out with a finding that the said Act has failed to make a balance regarding the nature of liabilities imposed on the employer.

Further, in chapter fourteen, Aparajita Kumari and Anant Faujdar have explained the same Act, Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Appreciating various provisions of the Act Aparajita and Anant have expressed the need for improvement expressed the need for gender sensitization.

Honey Bhatia, in Chapter fifteen, put forward the sad fact that women are not safe in their own homes and how their right to

dignity, and their right to consent for sex is violated by their own husbands, called as marital rape. She expressed the need of criminalizing marital rape as this act is maligning the sacrosanct image of the institution of marriage.

In Chapter, sixteen Dr Kavita Chawla highlighted the position of domestic workers and critically analysed the applicable law for the same. She argues that women working in environment are not been generally covered under the law pertaining to Protection from sexual harassment at workplace as they worked in less number.

Editors



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Protection of Children Against Sexual Abuse in India

*Dr. Snehal Fadnavis**

Introduction

Psychology has been defined as the science of mind and human behavior. It is recognized that no human science can be discussed properly without a thorough knowledge of human mind and hence, it has a close connection with the study of law.

In the study of criminal jurisprudence, there is great scope for the study of psychological principles in order to understand the criminal mind behind the crime. Both psychology and law are meant for solving question as the motive for crime, a criminal personality, whether a criminal gets pleasure in committing a crime, why there are more crimes in one society than in another and what punishment should be given in any particular behavior. Law is concerned with man's external conduct and behavior and not his thoughts and mental process, but penology has benefited from the knowledge made available by psychological researcher. Study of negligence, intention, motive and other cognate conditions forms part of both study of law and human behavior.

Psychology (study of human behavior) can help the law- maker considerably in the approach to the problem of not only making the law but also of executing it. It is the duty of a law maker and executor to understand man and not to pass judgments and say what man ought to do or ought not to do.

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Child sex abuse is such a problem which involves psychological behavior of a person or perpetrator of this crime. Because in most of the cases of child sex abuse perpetrator is a known person, familiar to a child, may be close relation or friend. Therefore, it becomes very difficult to identify and punish such psychologically sick criminals. Protection of Children from Sexual Offences (POCSO) Act, 2012 is a landmark step so far as child sex abuse is concerned because it has given definition of child sex abuse which was never defined by any of criminal laws in India.

Rights of child

A child has rights and the family, society and state have a corresponding obligation to protect these rights in order to allow the child to develop in a healthy manner.¹ The Universal Declaration of Human Rights, 1948 also deals with the welfare and development of the child. It states:

“Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”²

Recognizing that childhood and youth are subject to many visible and invisible sufferings and disabilities and exploitations, the International Covenant of Economic, Social and Cultural Rights provide that,

“Special measures of protection and assistance should be taken on the behalf of all children and young persons without any discrimination for presence of parentage or other conditions but stop children and young person should be protected from economic and social exploitation their empowerment in work harmful to their moral for health or

¹ Judge Huber in Spanish Zone of Morocco Claims.

² Article 25(2) of the UDHR.

dangerous to life or likely to hamper their normal development should be punishable by law.”³

Being fully conscious of the fact that children require special attention & care and for the framers of the Constitution of India, 1950⁴ added some important provisions relating to children in it. Under Article 15 (3) of the Constitution, which is the fundamental right, it is permissible for the state to make special provisions in favor of children. Article 23 of the Constitution, guarantees prohibition of traffic in human being and also provides for punishment in accordance with law for any contravention of the provision. Article 24 prohibited employment of children below the age of 14 years in any factory or mine or in any hazardous work. Article 39(e) of the Constitution directs state to secure condition in the favor of children so that their tender age is not abused not coerced by economic necessity to enter a vocation which is not suited to their age or strength. Article 39 (f) of the Constitution which has been added by 42nd Amendment Act, 1976 direct the state to direct policy towards securing that children are given an opportunity is and facilities to develop in healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 of the Constitution recognizes the importance of dignity of child's personality and direct the state to provide free and compulsory education facet for all children until they attend the age of 14 years. This provision has now become the fundamental right under Article 21(A) of the Constitution. In spite, of the constitutional mandate and of penal provisions⁵ child prostitution exists in India which is the growing concern for India.

³ ARTICLE 10(3) of the ICESCR.

⁴ Hereinafter referred to as the Constitution

⁵ Vide Section 363A, 366, 366A, 366B, 372, 373, 374, 376 & 377B of the Indian Penal Code, 1860



South Asia including India has become a destination for child sex tourism so many legislations have been made for the protecting children from abuse and exploitation but unfortunately, they failed to protect the child as a result child abuse has reached an epidemic proportion in India. Employment of children in hazardous work child trafficking sexual molestation, malnutrition and underfeeding are some of the forms of child abuse.

Child sex abuse and its effects

Child sex abuse is the worst of all the abuses against children, which is normally grouped into three types; incestuous abuse, sexual assaults by strangers and child prostitution. Children become victims of sexual abuse as a result of their age and relationship with the abusive adult. Child sexual abuse is not exclusive to any particular religion, class, age educational background etc. It runs through all strata of society. The most heinous form of child sex abuse is incest meaning the sexual abuse of a child within the family by persons to whom child is closely related which also includes those who are close to family or in whom the child has trust. The impact of such incestuous abuse by the parents and relatives always results in long-term trauma, hysterical reactions depression, anxiety and deep sense of isolation. Needless to say, it has adverse effects on the child's personality and overall development and growth. A child who is born, enters into an unfamiliar world, is completely left at the mercy of adults. A responsible and sensitive adult entrusted with the responsibility of child must be loving and caring but where the adult is insensitive, the child might become object of abuses, humiliation, cruelty, molestation etc. The infantile dependence strengthens the chords of right-duty relationship between the child and adults, which develops into long time loving and caring for each other. When this takes place, the child develops the capacity to trust, an ability that is absolutely necessary for his inner growth

and for becoming an emotionally mature individual. A child is under a profound belief that those in whom he has trust and faith won't put him into trouble. On the contrary, if an adult hurts him he loses the basic trust and becomes suspicious, fearful and depressed. A child is a hapless victim of these abuses and is not in a position to voice his/her protest because the abuser is often a person the child trusts. Most of these cases are not reported due to many reasons such as ignorance, family reputation and apprehension about future life of the child. Therefore, such acts continue without any action. The abusers continue with their dirty acts. As they know that the voiceless child would not complain and even if it complains no one would believe. Similarly, they can keep a constant watch on child's activities so that it could not expose them.

Legislative framework to combat child sex abuse in India

Broadly speaking, laws to deal with Child Sexual Abuse can be sourced from the following:

The International Conventions

The Constitution of India, 1950

The Indian Penal Code, 1860

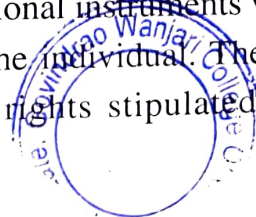
The Immoral Traffic Prevention Act, 1956

The Juvenile Justice Act, 2015

The Child Marriage Restraint Act, 1929

The Protection of Children from Sexual Offences (POCSO) Act, 2012

India is a signatory to many human rights treaties and conventions. Mere signing the International instruments would not be sufficient to protect the rights of the individual. There has to be effective implementation of the rights stipulated in these



instruments and the role of the states in the implementation is of prime importance this is because individuals are the subjects of municipal laws and the protection of their right is the responsibility of the states. These international conventions could also be considered by practicing lawyers while dealing with cases involving gross violations of human rights. Earlier, dualistic view was adopted by India in giving effect to international conventions, but now there is a clear ruling of the Supreme Court of India in this regard. In *Vishaka* case⁶ the Court held:

“...It is now accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is void in the domestic law...any international convention not inconsistent with the fundamental rights and harmony with its spirit must be read into these provisions to enlarge the meaning and content there to promote the constitutional guarantee.”

International commitments, which can be invoked, to deal with child sex abuse cases, commitments to which India is a signatory are as follows:

Universal Declaration of Human Rights (1948)

International Covenant on Civil and Political Rights (1966)

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

The Convention for Suppression of Traffic in Persons and the Exploitation of Prostitutes and other (1949)

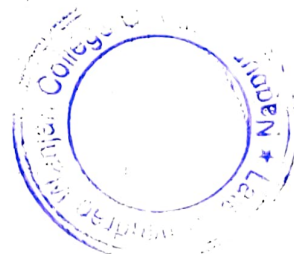
The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956)

⁶ *Vishaka v. State of Rajasthan* AIR 1977 SC 3011.

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The Convention on the Political Rights of Women (1952)

The Convention and Recommendation on consent of Marriage,
Minimum Age for marriage and Registration of Marriages (1962)

Convention on Elimination of all forms of Discrimination Against
Women (1979)

Convention Against Torture and Other Cruel Inhuman and
Degrading Treatment or Punishment (1984)

Convention of Rights of the Child (1989)

The Convention of the Rights of the Child, 1989 describes the family as the fundamental group of society and the natural environment for the growth and wellbeing of all its members and particularly children. The Convention grants children, rights, which can be used against exploitation in families, schools and residential institutions. It is the role of family to nurture, care for and protect children and the role of state to provide adequate services and resources to enable the family to perform its role. An unfortunate fact remains that the maximum number of cases of child sex abuse are from family itself. Children are not safe in their homes and within their families. The adult hands that must bear the responsibility of bringing up the child are violating each and every right of the child completely disregarding the child's own developmental immaturity and inability to understand sexual behavior. Such acts are not only the gross violation of the child's body but also of the trust implicit in a care giving relationship.

Article 34 of the Convention on the Rights of Child, 1989 states:

State Parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, states parties shall, in particular, take all appropriate national, bilateral and



multinational measures to prevent:

- (a) The inducement of coercion of a child to engage in unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices
- (c) The exploitative use of children in pornographic performances and materials.

There are provisions of substantive and procedural laws, which cover these offences. The substantive law defines what is an offence and the punishment for the said offence, whereas the procedural law prescribes the manner in which the investigation is to be done and trial is to be conducted. Another substantive law, which is the law of evidence, also prescribes the manner in which the evidence is required to be proved in the court of law. The Indian Penal Code, 1860 (Hereinafter referred to as IPC) covers the aspect of Child Sex Abuse in the following provisions:

- Section 323: Voluntary causing hurt (punishment for grievous hurt)
- Section 324: Voluntary causing hurt by dangerous weapons or means.
- Section 342: Wrongful confinement
- Section 343: Wrongful confinement for three or more than three years.
- Section 354: Assault or criminal force to any woman with intent to outrage her modesty.
- Section 361: read with section 363: Kidnapping from the lawful guardianship and its punishment.
- Section 366: Kidnapping, abducting or inducing women to compel her to marriage.

- Section 366A: Procuring of minor girl.
- Section 366B: Importation of a girl from foreign country.
- Section 372: selling minor for purpose of prostitution.
- Section 373: Buying minor for purpose of prostitution. Etc.
- Section 375: Rape
- Section 376: Punishment for rape which shall be not less than 7 years, but which may be for life or a term, which may be for life or a term, which may be extended to 10 years.
- Section 377: Unnatural offences. Generally considered in cases of sodomy. (Punishment up to 5 years.)

Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012, is in line with Article 15(3) of the Constitution of India, 1950 which permits the State to make special provisions for children. POCSO is the acronym for 'Protection of Children from Sexual Offences Act' of 2012. With its enactment, India now has one of the most comprehensive laws that not only allows justice for children who are victims of sexual offences but also takes into account the best interests and well-being of the child. It is landmark legislation in the area of child protection. In fact, before 2012, there were no specific laws in India that addressed sexual crimes against children. Sexual offences against children were booked under the IPC as mentioned earlier. Further, many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault. There were no provisions that could prosecute sexual offences against boys.

A welcome development has been the enactment of a special law POCSO, 2012, criminalizing a range of acts including child



rape, harassment, and exploitation for pornography. The passing of POCSO has been a major step forward in securing children's rights and furthering the cause of protecting children against sexual abuse in conjunction with a related legislation to clamp down on child marriages called the Prohibition of Child Marriage Act, 2006. The main objectives of the POCSO Act are:

To protect children from the offences of (a) Sexual assault
(b) Sexual harassment; and (c) Pornography.

To establish Special Courts for speedy trial of such offences.

It provides for a variety of offences under which an accused can be punished.

Penetrative sexual assault⁷; Aggravated Penetrative Sexual Assault⁸; Sexual assault⁹, Aggravated Sexual Assault¹⁰; Sexual harassment¹¹. The Act is quite distinctive in that it penalizes abetment of or attempt to commit any of the offences listed in the preceding sections¹². Another 'extraordinary clause' in the Act is the presumption of guilt of the accused, until proven innocent¹³. The provision of Special Courts¹⁴ where trial proceedings may be conducted in a more sensitive manner with the victim's testimony given either 'in camera' (i.e. privately), via video-link, or behind curtains or screens, is intended not only to reduce trauma but also protect the identity of the child.

It is a comprehensive law on sexual abuse, which expands the scope and range of forms of sexual offences, makes reporting

⁷ Section 3, The Protection of Children from Sexual Offences Act, 2012

⁸ Section 5, *Ibid*

⁹ Section 7, *Ibid*

¹⁰ Section 9, *Ibid*

¹¹ Section 11, *Ibid*

¹² Section 16, *Ibid*

¹³ Section 29, *Ibid*

¹⁴ Section 35, *Ibid*

of abuse mandatory and defines guidelines for the examination of victims. Pediatricians and health care professionals need to acquire necessary expertise for clinical evaluation of child sexual abuse, and its prevention, management and reporting.

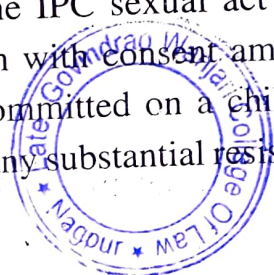
The punishments provided in the law are also stringent and are commensurate with the gravity of the offence. The law provides for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or to the local police. Immediate and adequate care and protection, such as admitting the child into a shelter home or to the nearest hospital within twenty-four hours of the report are provided. The Child Welfare Committee (CWC) is also required to be notified within 24 hours of recording the complaint. Moreover, it is a mandate of the National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCR) to monitor the implementation of the Act.

The Protection of Children from Sexual Offences Act, 2012, specifically address the issue of sexual offences committed against children, which until now had been tried under laws that did not differentiate between adult and child victims.

Analysis of judicial pronouncements

Pre POCSO

In the absence of specific laws, the Indian Judiciary has come to the rescue of children and on many occasions held the accused guilty of crime. There are no separate rape laws for the act of sexual assaults on a child, except that according to clause sixth of section 375 of the IPC sexual act with a female under sixteen years of age even with consent amounts to rape. As a matter of fact, if rape is committed on a child, who obviously is not in a position to offer any substantial resistance, the mandatory sentence



could be life imprisonment an exception in very rare cases for reasons to be recorded in the Court's order. In well proved cases of rape with murder of Guria, a six year child by the accused, who took her to the sugar-cane field, satisfied his lust and committed her murder, the trial court awarded death sentence but the sentence was modified to life imprisonment by the High Court.¹⁵

In *Satyaveer v. State of Rajasthan*, the accused had committed rape on a girl child aged nine years, the trial Court had awarded the extreme sentence provided under the law. The High Court, while holding the punishment should fit the crime and a lenient punishment in a grave crime is a serious distortion since that finds no impact on the criminal, and the undue sympathy would harm the cause of justice and would undermine the efficiency of law but looking to the age of the accused, which was twenties at the time of commission of crime, the sentence was modified to rigorous imprisonment for ten years with fine of Rs one hundred.¹⁶

In another case where two accused persons committed rape of a girl twelve years of age but FIR was lodged after one month of the commission of offence, the Trial Court as well as High Court accepted the explanation given before the Court for the delay and dismissed the appeal against the sentence holding that in a case of this type no leniency can be shown to the accused, in yet another case, involving the commission of rape with murder of a young girl of age below 18 years, the Apex Court while confirming the death sentence, treated the case as "rarest of rare" observed as under:

We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the Courts while considering the confirmation of the sentence of death but a cold blooded pre-planned brutal murder without any provocation, after

¹⁵ K.Kumar and Punam Rani, *Offences against Children*, New Delhi: Regency Publication, 73(1966)

¹⁶ *Ibid.*

committing rape on an innocent and defenseless young girl of 18 years by the security guard certainly makes the case the rarest of rare which calls for no punishment other than the capital punishment.

Where Nitma, a 7 years old girl, who felt victim of her paternal uncle's lust, who after raping the child brutally murdered her causing her serious injuries. The Supreme Court held this calculated cold-blooded and brutal murder as the rarest of rare case and awarded the death sentence.¹⁷ Recently in Nagpur the High Court confirmed the death sentence of Amit Gandhi, a 19 years old boy for rape and murder of Pratiksha, a 6-year-old girl of his neighborhood for the same reasons.

In *Vishaljeet v Union of India*,¹⁸ which has brought the miseries of young girl victims being exploited by highly organized sex industry, the Supreme Court while referring to Article 213 and 39(f) of the Constitution observed,

"the malady is not only social but also socio-economic problem and therefore, the measures that are to be taken in this regard should be more preventive than punitive."

In the same case the Supreme Court held that:

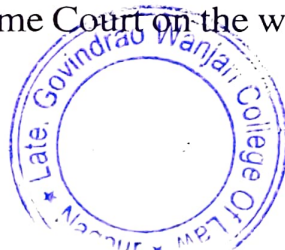
"....in order to prevent such abuse, the government departments have been directed to take measures to uproot child prostitution and to implement the social welfare programmes for the cause of protection, proper treatment, development and rehabilitation of the young victims namely, children engaged in hazardous occupations and girls recovered from brothel houses etc."

In *Bachpan Bachao Andolan v Union of India*¹⁹, a PIL was filed in the Supreme Court on the wake of serious violations of

¹⁷ *Ibid.*

¹⁸ AIR 1990 SC 1412.

¹⁹ (2011) 5 SCC 1



child rights. The petition was filed specifically to discourage child trafficking from circuses all over India. Children are very frequently sexually abused at these places, which is a violation of Juvenile Justice Act and other international treaties and covenants.

After POCSO

In *Nishu v. Commissioner of Police, Delhi and ors.*,²⁰ petitioner was a minor girl, kidnapped and repeatedly raped by a group of nine people. One among the nine people was a police constable in Haryana Police. The prosecution failed to present any medical reports or a copy of the FIR under Section 376D of the IPC and relevant provisions of the POSCO, Act. The Court in this case said that it would be inappropriate to exercise its jurisdiction under Article 32 of the Constitution as the case has been investigated by the Haryana Police.

In *Avinash v. State of Karnataka*,²¹ the appellant was kidnapped and had multiple sexual intercourses with her. A charge sheet was filed against the victim under Section 366 of the IPC and Section 4 of the POCSO, Act. The honorable High Court emphasized on the age of victim as it is the major deciding factor and the court set aside the conviction in support of getting reliable evidence and disposing the case in accordance with law. The courts have showed an inclination towards giving maximum punishment to the convicts under Section 12 of the POCSO Act, 2012 to give strong message to society because crimes of child sexual abuse are on continuous increase. However, that is possible only when reliable evidences without any distortion are presented by the Police and the medical experts. In a case before the Delhi district court where the accused was charged with Section 8, 12 and 11 of the POCSO Act and Section 506 of the IPC for misbehaving with the

²⁰ 2014 (3) ACR 2516 (SC)

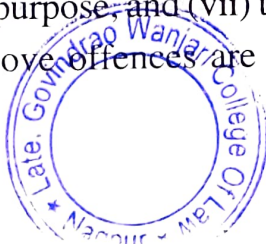
²¹ 2004 (13) SCC 375

victim, the court said though proper evidences are not disclosed by the investigative agency, the testimony of the child victim inspired trust and confidence.

Conclusion and suggestions

Children are the blooming flowers of the society. They are the most valuable assets of the society. Their contribution in nation building cannot be undermined. In fact, today's children are tomorrow's citizens. Hence, they must be taken care of to grow up to the full development of their personality. It is the right of every child to live with family in healthy environment. Article 21 of the Constitution of guarantees protection of life and personal liberty to every person, which cannot be taken away except in accordance with procedure established by law. The scope of Article 21 was expanded by the Indian Judiciary from time to time so that many more rights of individual human being could be covered under. The expanded horizons of Article 21 now include right to live with dignity, freedom from torture, protection against cruelty, physical or mental violence, injury or abuse, exploitation including sexual abuse. It covers under it right to food and shelter, education, health, clean environment and so on. All these rights are available to children as being human beings and it is duty of the state to protect these rights.

The POCSO Act, 2012 is a gender-neutral legislation. It defines a child as any individual below 18 years and provides protection to all children from sexual abuse. Definition of child sexual abuse is comprehensive and encompasses : (i) penetrative sexual assault, (ii) aggravated penetrative sexual assault, (iii) sexual assault, (iv) aggravated sexual assault, (v) sexual harassment, (vi) using child for pornographic purpose, and (vii) trafficking of children for sexual purposes. The above offences are treated as "aggravated", when



the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority *vis-à-vis* the child.

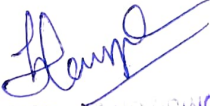
Crimes against children are increasing at an alarming rate, for which society is also responsible. Our society has slowly, knowingly or unknowingly nurtured the conditions that have allowed these problems to reach at such a higher rate. People keep mum on this issue for many reasons such as family respect, future of child etc. no one bothers about the mental trauma through which the abused child has to go throughout his lifetime. This trend has to be changed. Now at least people have started talking about this serious issue. Still more and more awareness is needed. Every member of the society should be made aware about this social problem. Police should be trained to deal with such case. Judges should also look at this aspect from different angle, which has to be in the interest of a child.

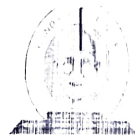
A distinction need to be made between child rape and rape of a woman. Similarly, distinction should also be made between sexual abuse of child by parents, family members and relatives and that by strangers. Child sexual abuse by parents and close relatives is a far more serious offence because of the kind and depth of emotional abuse of the child. The abuse by father, brother, maternal and paternal uncle, grandfather or by other close relative should be included in the list of greater sexual assaulter and stringent punishment should be awarded to them for such heinous crime. All the other sexual act which not only amount to outranging the modesty of a girl or a boy should be termed as unlawful sexual acts and should be made punishable.

Sexual exploitation of children by parents for money is also on the increase. It is a must to develop foster care and adoption procedure and institutional facilities for those children who are abused and exploited by the family. The abused child could be

placed in an institution in the custody of a fit person who is entrusted with the care of the child. Steps must be taken to keep the victim child in familiar surrounding rather than putting him in an institution in case of a protective parent. in case of abusive parent, the court should restrain him from entering home. Adult relatives who are identified as capable of providing safe and nurturing environment for the child should be preferred to an institution for the placement of a child.

While dealing with the case of child sex abuse, it should always be the endeavor to protect the best interest of child, which is the theme of the Convention on Rights of Child. It should always be remembered that prevention is better than cure. For prevention of child sex abuse a social awareness is very necessary. The State Human Rights Commission should take up this task as their activity to make people aware about this issue. Better law enforcement, well co-ordinated international co-operation and educated communities are needed to effectively combat child sex abuse and exploitation. POCSO Act should be implemented strictly in its true spirit to protect children and punish the abusers and exploiters.


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Title of the paper Gandhian Philosophy on Protection of Environment and sustainable
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Gandhian Philosophy on Protection of Environment and Sustainable Development

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“The earth, the air, the land and the water are not an inheritance from our fore fathers but on loan from our children so we have to handover to them at least at it was handed over to us”

--- Mohandas Karamchand Gandhi

Every living thing on the earth is depend upon the environment. The wellbeing of the all human beings affects due to various environmental factors. Development is the primary goal of every country from starting of human civilization. These activities of development, modernization, industrialization adversely affects the environment of every country. Though development is the right of every country but at the same time they obliged to prevent the pollution and also take appropriate steps to safeguard our mother earth. Today, environmental pollution has become a threat to earth due to exploitation of natural resources causing pollution and environmental degradation are inevitable. There are various national and international instruments and legislations to protect the environment worldwide but in many ways it is found ineffective to combating the environmental degradation.

Today, the country like India, is facing disheartening challenges in the matter of environment because India is rapidly developing, hence preservation and protection of environment is the major issue in the country. Mahatma Gandhi was a visionary idol of India and he had very clear perceptions about the Indian society, its development and also the sustainable use of environment, natural resources and its protection. He was greatly influenced by the Indian culture and

civilization. He adopted various principles and techniques to solve the problems of the nation as well as human life also. Environment and Sustainable Development

The sustainable development is the balancing concept between the ecology and development. Though development of human beings and pollution of environment go side by side as a interdependent phenomenon. The degree of exploitation of nature and natural resources and on the other hand the degree of economic development should be maintained in such a way which will assure sustenance both to the present generation and to the coming generation in a healthy atmosphere and this state of equilibrium is termed as ‘sustainable Development’. Human activities causes increasing impact on the integrity of ecosystem. Environmental consequences needed assessment and consequential adjustment while taking industrial or other productive activities for their socio economic development. Therefore sustainable development does not simply means development, but it means improving the living standards of the people. It is necessary that development plan must be directed towards meeting the needs of of the people as well as safeguarding and improving the environment.

Ancient Indian Philosophy on Environment and Sustainable Development

In ancient India environment was a part of ethos of mankind and environment equated with the nature. According to concept of Rig Veda, the universe consist of five elements such as, earth (pruthvi or shiti), air (vayu or pavan), water (jala), fire (agni or samira) and space (akash or gagan) which are called ‘Pancha Bhutas’ and Hindus consider that both nature and man as one and the same as they are made of these ‘Pancha Bhutas’. Rig Veda portrays the beauty of morning (usha), trees, plants, wildlife and their importance to the human beings. Atharva Veda consider trees abode of various gods and goddesses and give emphasis on protection of wildlife and domestic cattle. It state that pure water cures many ailments and it acts as a preventer of the diseases which are not yet contracted. Ancient people used to perform ‘yajna’

in vedic societies to purify the surrounding air and to keep environment healthy and it makes atmosphere free from impurities and stink. They performed a type of yajna to satisfy the god of varuna to get rain. Ancient Indians were knew that tress are friends of mankind and forest were necessary for human existence and civilization. Trees were worshipped in past. River were considered goddess and rishis warned against deforestation and cutting of trees as they thought that this would results in poor rainfall.

Manusmriti prescribed the optimum use of natural resources, maintain the quality of water and to avoid the water pollution and this is the another way of maintaining ecosystem. The ancient literature has full respect towards the nature and environment. They were nature worshippers because worship was a form of the greatest admiration for them in nature. Similar Hindu way of life with environmental protection has been followed in civilization of Aryan, Mohenjodaro, Harrappa, Buddhism, kautilya arthshastra, and during Maurayan, Medieval period and British rule.

It also preaches that one can take from the earth and nature only so much as one puts back in to them and this concept is very much resembles as the present day principle of sustainable development of natural resources. Gandhian Philosophy on Protection of Environment and Sustainable Development

Mahatma Gandhi is universally known as the most renowned theorist, philosopher and also practitioner and follower of truth, love, non-violence, tolerance, freedom and peace. He was very much concerned with nature and environment. He is not only political philosopher but he taught philosophy of life which has the great relevance in the contemporary world also. According to the gandhian philosophy sustainable development could be achieved without doing any harm to the environment on the basis of truth, nonviolence and simple lifestyle. He said that "nature has enough to satisfy every one's need but not to satisfy every one's greed. This statement is very much relevant in modern era of globalization and civilization.

The two fundamental principles of gand philosophy are truth and nonviolence. Nonviolence means non-injury (Ahimsa). The ecological scope of nonviolence is unlimited. He given emphasis on nonviolence and vegetarianism made him a votary of conservation of environment. Gandhiji believed that ancient civilization were religious in nature which would limit world ambitions. Gandhiji one of the true ecologist and conservation was a part of the day to day life like use of water, money and other resources. According to him small, local and village based technology that allowed its users to relate themselves with what they produce. His philosophy was based on human ethics for development of environment. He actually aware about the environmental pollution and its impact on human health. He had express his concern regarding the exploitation of natural resources, overconsumption and harmful effect of development and urbanization. To resolve these problems in present day gandhiji's principle of swaraj, power of decentralization and swadeshi need to be systematically inculcated in our country. In 1970, chipkao movement started by Sunderlal Bhahuguna on Gandhian ideology of satyagraha against environmental injustice.

Mahatma Gandhi idea of development based on non exploitative of nature, as it would not include most machines which we used in our daily life. As per his thought industrialization and machines have an adverse effect on the health of the people. He also said that nature is a source and force of inspiration and not for exploitation. But today, on the contrary to this view the relationship between man and nature is becomes the complex problem both at national and international level. Gandhiji's vision of upliftment of all sarvodaya implies a healthy development and safeguarding the environment. He preached and practiced corresponds to what we today call as eco-friendly measures and living in harmony with nature. He honestly translated his ideas in to action by setting up his Ashram that reflect a simple life. Today, there has been radical changes happened in regarding environment and man nature relationship. Now the situation is

different from Gandhian thoughts of protection of environment and sustainable development.

Conclusion

The environment and natural resources are a gift of our mother nature and is very much essential for every life on earth. The resources conservation is necessary to protect the ecosystem on earth for social good. In the present era the concept of sustainable development acquires the great significance in protection of environment and natural resources for better improvement of the life of the people. If necessary steps not taken to combat it, the planet will reach a point of no return. Gandhian philosophy will really help to achieving the sensible sustainability approach for achieving goals of sustainable development in the matters of protection of environment. Today, Gandhiji's thinking and his ecological inspirational thoughts has forgotten by the people in the modern era of rapid development, industrialization and globalization.

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EXPLORING MAHATMA GANDHI'S KHADI : THE DREAM OF EVERY INDIAN BEYOND A FABRIC

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Abstract

Khadi has a very profound and deep meaning in India, it is not simply a hand spun cloth, its an entire movement. Khadi movement by started by Gandhiji, the Khadi movement promoted an ideology, an idea that Indians could be self-reliant on cotton and be free from foreign cloth and clothing. British would buy cotton at cheap price from India, export them to Britain where it was woven to make clothes. These clothes were again sent back to India and sold at a hefty price . The khadi movement aimed at boycotting foreign goods including cotton and promoting Indian goods, thereby improving India's economy. Mahatma Gandhi began promoting the spinning of khadi for rural self-employment and self-reliance (instead of using cloth manufactured industrially in Britain) in 1920s India, thus making khadi an integral part and icon of the Swadeshi movement. The paper will discuss elaborately the essence of Khadi in history and present in every Indian's life following a transition and transformation retaining the heritage for it's utility and sustainability.

Keywords: movement, Indian, rural, Swadeshi, heritage.

INTRODUCTION:

Khadi means handspun and handwoven cloth. In 1918 Mahatma Gandhi started his movement for Khadi as relief programme for the poor masses living in India's villages. Spinning and weaving was elevated to an ideology for self-

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Published in Vol-68-No-9-2020 of OUR HERITAGE JOURNAL with ISSN:: 0474-9030

UGC Care Approved International Indexed and Referred Journal

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OUR HERITAGE
ISSN: 0474-9030, Vol-68, Special Issue-9
International Conference On E-Business, E-Management,
E-Education and E-Governance (ICE4-2020)

Organised by
Kamla Nehru Mahavidyalaya, Nagpur
7th & 8th February-2020



Role of Electronic Governance in Agricultural Development in India

Dr. Archana Sukey,

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ABSTRACT

E-Agriculture focus on the enhancement of agricultural and rural progress through improved information and communication processes. E-Agriculture involves the conceptualization, formulate, advancement, appraisal and function of innovative ways to use information and communication technologies (ICT) in the rural domain, with a primary focus on agriculture. Indian Agriculture contributes to 20 per cent of India's GDP, and approximately 60 per cent Indians derive their livelihood from the agricultural sector. Private sector initiatives like contract farming have commercialized the Indian agricultural sector. To enable Community members to swap over opinions, experiences, good practices and capital related to e-Agriculture, which will lead to ensure that the knowledge created is effectively shared and used worldwide. But there are some advantages and drawback which will be inherent in every technology. This research paper analyses some glances about what this technologies give and take in area of agriculture.

Introduction

E-governance means governance processes in which information and communication technologies (ICTs) play an active role in distributing governance-related products and services.

While Examining E governance in the context of agricultural sector, e-governance refers to use of ICTs in delivering governance products and services which are of use to the agricultural community, including agriculturist, livestock breeders, herders, dairy workers, agriculture extension workers, traders, scientists, middlemen, and NGOs working in the agriculture sector.

Agriculture is one of the most capable instruments for dropping poverty and securing local livelihoods. One of the serious conditions required of the agricultural sector is to ensure that





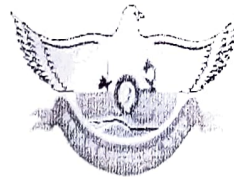
OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

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

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7th & 8th February-2020



- Empowering farmers with pertinent and well-timed information about different crop and seed variety.
- To decrease agricultural risks information on weather, production and cultivation techniques, seeds and Fertilizers, plant nutrients and water usage.
- To reduce understanding gaps and increase knowledge sharing for increasing productivity and boosting growth in rural areas.
- Funds and liability coverage through agriculture finance and agriculture insurance.
- Assistance from universities on new techniques used for increase production yield.

National e-agriculture strategy

To design a national e-agriculture strategy is an important step for any country which is planning to use ICTs for agriculture development. Such efforts help to reduce poverty, improve food security and nutrition. The subsistence of a complete national strategy can prevent e-agriculture projects from being implemented in seclusion, avoiding doubling-up of efforts and resources. It also helps to develop competence gains from intra-sector and cross-sector synergy. An e-agriculture strategy can lay concrete on the way for policy options to connect the technology divide in rural areas, and ensure equal opportunity for rural men and women, young and old, to access ICTs. This enables them for quickening the speed of innovations, increasing incomes and job opportunities. Agricultural research, education and extension systems can also greatly benefit from a national e-agriculture strategy. Establishing standards for open data and interoperability enables sharing national research outputs and global knowledge. The private sector – such as solution developers, mobile operators and the agro-industry – may profit from an increased customers, and provision of better targeted, needs approachable harvest. With a National e-agriculture strategy, India can move from pilot projects to a broader dream at a larger scale, capitalizing from past experiences, adopting and adapting what has confirmed to be effective. Various National Policies relating to Agricultural Development in India are as follow:

- National agriculture policy.
- Kisan credit card scheme.
- National seed policy
- Legislation on plant variety.
- Protection and Farmers Rights
- Seed Village Scheme
- National Horticultural Mission





OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

**International Conference On E-Business, E-Management,
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good governance structures and related policies are in place at all levels. United Nations conducted survey in 2006 by the Food and Agriculture Organization. It found that very few persons are familiar with the term “E- agriculture”. The importance of technical hardware and technological tools are also known to very few agriculturists.

Hence E-agriculture involves designing, developing and applying innovative ways to use information and communication technologies (ICTs), including digital technologies in the rural domain, with a primary focus on agriculture, including fisheries, forestry and livestock. The aim is to improve agricultural and rural progress by improving way in to valuable information that can help out people whose livelihoods depend on agriculture. It will enable them to make the best possible decisions, and use the resources available in the most productive and sustainable manner. ICTs can be harnessed for e-agriculture which may include devices, networks, services and applications, such as radio, telephones, mobile phones, television and satellites.

Need of e-Agriculture in India

There are a range of methods that are useful for the agriculturist. For example, those aimed at increasing crop output, reducing crop damage due to bad weather and pests, improved livestock management, improved admittance to credit and government schemes, better market charge for farm products, providing food security, conservation of bio-diversity, reduce in use of chemicals, and access to superior seed varieties and knowledge. These methods can be provided through several governance products and services which may include : information about the latest seed varieties and technologies; precise rainfall and weather forecast; timely access to various government schemes such as those on water resources management and subsidies on land development and soil conservation methods; information about local agriculture departments and officers, crop testing and training centers; information on milk processing, grain storage, farm animals vaccination and crop diseases; information about market prices of various crops, government procurement prices, rates for loans, and available loan facilities. Apart from these, farmers often need legal documents certifying their possession of land and farm animals, which is useful purchasing or selling land and farm animals. They also need right of entry to government offices to apply for government schemes, loans and subsidies, for getting electricity on their farms, for digging new wells, diverting canal water for irrigation, and getting compensation for farm animals hunted by wild animals.

Thus there are number of governance application and services which are specific to the agricultural community and which should be made available to them. The necessity for E-Governance in Agriculture can be summarized as follow:





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- Kissan Call Centre
- ICT Mediated Market Led Extension
- National Diary, Fishery and Animal Husbandry Policy
- National Forestry
- National E governance Plan in Agriculture(NeGP-A)
- Government E-Market
- E-CHOUPAL

The benefits of such policies are as follows:

- The program is expected to bring uniformity in governance to the stakeholders of the agricultural sector, especially the farmers.
- Farmers get way in to information and various services.
- Online agricultural services would be provided from corner to corner the states.
- Complaints of the farmers would be addressed in a faster and more efficient way.
- Provision and use of email services across the Agricultural department.
- The Governmental department would become more translucent and proficient.
- The farmers would be able to give comment to the decision-makers.
- Various Governments schemes made for farmers would be monitored in a better and more efficient way.
- Resources can be managed more effectively.
- Farmers can get in higher benefits and profitability.
- Streamlining of various Government processes and procedures, thereby increasing the efficiency of the delivery of services.
- Integrating new initiatives with existing ones using ICT to create a sustainable balance.

Major Challenges

The major challenges to Agriculture Sector in India are: (a) inadequate agricultural transportation and support facilities, (b) Insufficient institutional capacity to deliver farmers specific services, (c) Agricultural content development and its up gradations, (d) Ownership





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ISSN: 0474-9030, Vol-68, Special Issue-9
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issues of the public and government generated data, (e) Inadequate use of Public-Private Partnerships in India, (i) Lack of “Common Platforms” for the farmers in India, (j) Absence of an “Agricultural Think-Tank” in India, (k) Insufficient use of ICT for agricultural purposes,

Hence India needs new technologies, new organizational structures, new institutional responses, “collective expertise” and an “ideal public-private partnership” base. India need creative and imaginative solutions that increase agricultural productivity, increase farm incomes, increase food production etc. Any Organization building, competence building, empowering farmers through investment in their capabilities, etc are the kind of initiatives which are needed in India.

Conclusion

For transformation of India towards development it is necessary to focus on major sector of Indian economy. Agriculture is considered as a backbone of Indian economy. With the help of E-Governance and ICT tools government can connects farmer and help them to stand on one platform. With creating such platform will helps to make transparency between these two entities. It would be consider as major step of government of India towards the farmer. Although it is difficult for farmer to come in concern with online activity but using ICT tools and government’s beneficiary schemes it will give more strength to the farmer which is actual needed to the farmer from the government of India. Providing online seed market for farmer makes beneficial for both government and farmer. E-governance can play major role in it. E-governance can helps in making communication between famer and government efficiently. And this planning helps in online seed market for better communication and cost-effectively beneficial for both government and farmer.

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ISSN: 0474-9030, Vol-68, Special Issue-9
International Conference On E-Business, E-Management,
E-Education and E-Governance (ICE4-2020)

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Kamla Nehru Mahavidyalaya, Nagpur
7th & 8th February-2020



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सत्ताशास्त्र/अतिभौतिकी : भारतीय व पश्चात्य



भारतीय तत्त्वज्ञान परिषद

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• सत्ताशास्त्र / अतिभौतिकी (भारतीय व पश्चात्य)-डॉ. सुनंदा भुसारे (मुख्य संपादक)
- Sattashastra / Atibhautiki (Bharatiya va Pashchatya) - Dr. Sunanda Bhusare
(Chief Editor)

• प्रथमावृत्ती - डिसेंबर २३, २०१२.

• प्रकाशित भारतीय उत्त्वज्ञान परिषद

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महाराष्ट्र

मु. नं. वाकतापुर नं. ३०३

पिन कोड - ४१३५२०

फोन : ३४५०१४०३/४०३२३३५१६१४

• मुद्रणस्थळ : कटपल्ली ऑफसेट, औरंगाबाद.

• पृष्ठ जुळणी : डॉ. कर्णीका भोसले

• पृष्ठ संख्या : ३१२

• मूल्य : रु. ३००

• ISBN: 978-93-84610-55-4

संपादकीय :

अतिभौतिकी म्हणजे
माहेर म्हणजे अतिभौतिकी. नि
आधार अतिभौतिकी असते.
वाचक व समीक्षकांना चिंतन
आपल्या सूचना मोलाचे मार्ग
या ग्रंथातील सर्व त

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41. Ethics and Metaphysics

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Philosophy is the study of general and fundamentals guidelines about existence, knowledge, value, reason, mind and language. Such questions are often posed as problems to be studied or resolved. Philosophy also deals with different basic problems such as problem of knowing the validity of inferred knowledge problem of good, problem of beauty, problem of eternal truth. On that basis there are five branches of philosophy such as logic, ethics, epistemology, metaphysics and aesthetics. But in this research paper I will discuss the relation between ethics and metaphysics.

Ethics :

Ethics is a system of moral principles. They effect how people make decisions and lead their lives. Ethics is concerned with what is good for individuals and society. Ethics means custom, usage or habits. Ethics is also called moral philosophy. The aim of ethics has been viewed in different ways. According to some, it is the disconcernment of right from wrong actions to others: ethics separates that which is morally good from what is morally bad. Ethics purports to devise the principles by means of which conducting life worth to be lived.

Metaphysics:

Metaphysics is concerned with the fundamental nature of reality and being and that includes ontology, cosmology. The goal of metaphysics is to study beings— things in the world with special attention not to their superficial quality like colour, shape, size but to something more fundamental, their existence or the way in which

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they exist.

The relation between Ethics and Metaphysics:

Ethics has to do with moral judgements. These judgements are judgements of value. Moral judgements are judgements of absolute, not merely of relative, value. "Conduct is good or bad, not merely relatively, but absolutely, i.e., without relation to our individual views of what is desirable or not desirable in particular circumstances. This apparently is the meaning of duty and right as contrasted with pleasure or utility. In other words, morality is commonly thought to be required by the nature of things as a whole, not merely by the circumstances in which we live." What is right is right by its very nature. It is right from the stand point of the whole universe. It is absolutely right. If rightness and wrongness are considered as relative, they lose their significance. They are absolute. Thus ethics is closely connected metaphysics which investigates the nature of the highest Good and its relation to the universe.

Man is conscious of his relation to the nature and society. Thus he is conscious of himself as organically related to the reality which is a system of interconnected parts. And the nature of the ultimate reality is investigated by metaphysics. Thus ethics closely approaches metaphysics since it treats of man not only as related to his natural and social environment but as conscious of such a relationship. But natural science is not at all concerned with the whole universe. They content themselves with explanations of phenomena within a particular system of experience. Thus ethics is more closely connected with metaphysics than natural sciences are.

Ethics is a normative science of the moral ideal. But in order to investigate the nature and ultimate validity of the moral ideal, it must consider the ultimate nature, origin, and destiny, of the human personality in relation to other persons in society, to the world, and to God. As ethics is the science of the moral value, it

ld consider the true character of the moral value in relation to and the world. This metaphysical consideration is of vital importance for the proper regulation of conduct. Metaphysics thematizes the judgement of facts dealt with by natural sciences, and the judgements of values, dealt with by normative science, and coordinates them unto a unity.

The difference between Ethics and Metaphysics:

Though ethics is closely related to metaphysics, it differs from it in the following point:-

- 1) Metaphysics deals with the nature of the Reality as a whole-nature, self, and God. Ethics deals only with human conduct and character. So metaphysics is wider in scope than ethics.
- 2) Ethics investigates the good of the individual or the human good. Metaphysics investigates the cosmic good or the propose which is realized by the whole universe.
- 3) Metaphysics is a purely theoretical study. Ethics, though a theoretical study, deals with the supreme good or man, which has a bearing on our practical life.

Plato, spinoza, hegel, green and others hold that ethics is based on metaphysics. Rashdall and others hold that metaphysics is based on ethics. This is a controversial question. But no sober philosopher denies a close relation between ethics and metaphysics.

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42. A Parallel between Shankaracharya and Kierkegaard's Ontological Philosophy of Three Levels of Existence: A Possibility?

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Introduction:


"Through the company of the good, there arises non-attachment; through non-attachment there arises freedom from delusion; when there is freedom from delusion, there is the Immutable Reality; on experiencing the Immutable Reality, there comes the state of 'liberated-in-life'." -Adi Shankaracharya¹

"The function of prayer is not to influence God, but rather to change the nature of the one who prays." -Søren Kierkegaard²

Adi Shankaracharya, 8th century philosopher and theologian from South India revolutionized Indian philosophy by upholding the Buddhist methodology and argumentation (therefore called Crpto-Buddhist by some, especially by Ramanuja, *prachanna-bauddha*)³ of rationalization; and seems to be influenced by Islamic philosophy of One Real.⁴ His bhasyas (commentaries) on Upanishadic concept of *Atman* and *Brahman* as one; in fact his ideology of *Brahman Satyam, Jagat Mithya* (Brahman is the real Reality [*sat*], and the world is deception) had great impact on the lives of people. Shankara could open handedly accept the (so called) pariah as his Guru (teacher); the episode is well known in Indian philosophical history.

Søren Kierkegaard (1813-1855), a Danish philosopher,

२९२


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12. Women and Law: Rights of Women Detainee

Dr. Rohini Fuladi

Assit. Prof. Govindrao Wanjari College of Law, Nagpur.

"Get up, stand up, Stand up for your rights. Get up, stand up, Don't give up the fight."

Introduction

In today's technologically advanced world, means of communication includes the social media, mass media, television, motion pictures, serials; documentaries on crimes and hammering through the commercial advertisements encourage crimes. Other causes are society centric such as unemployment, starvation, poverty, over population, politics, illegal drug trade, depression and other mental and social disorders.

Now a days, women stand not only on equal footing with men in every field but their involvements in committing crimes are also noticeable. Social, cultural reasons women are to a great extent considered as homemakers and their involvement in violent crime is seen as a matter of astonishment and dismay. Thus, it can say that due to the socio-economic changes in the society, female behaviour drastically changes which speedily attracted towards criminality. It increases number of women prisoner in various jail in India, convicted under IPC and sentenced to imprisonment.

Lack of earning capacity in men, women in such families becomes the main bread earners by committing petty crime to feed their children. Some are intentionally forced to earn in wrong ways, then they are easily caught by police. Thus they feel ease in committing more crime on their release because outside the jail, society does not easily accept them. Family neglects, prostitution and Dowry- death are other reasons for the involvement in crime. Women are emotional and sensitive than men; therefore they are easily exploited by others. In such circumstances either they commit suicide or take the revenge by committing crime.

The most extreme form of discrimination faced by women in prison is gender-based violence; i.e., ill-treatment, heinous torture, threats of rape, molestation, insults and humiliations of a sexual nature. Women with disabilities, pregnant detainees and detained mothers accompanied by young children face a prominently high risk of abuse.

In 2016, over 3 lakh women were arrested for crimes under the IPC, Special and Laws (SLL) and under the Prohibition Act, for cruelty by relatives of husband and rioting etc. There is a relatively consistent pattern over the last 15 years, with the number of women arrested for various offences. Despite many legal frame work, rights of women prisoner violated by physical or psychological violence, abuse by staff and other inmates. So, for eradicating these vulnerabilities, need to implements strict measure for safeguarding their rights and ensure dignified life.

Protection of Rights on International Level

For safeguarding the rights of women concerning the security, equality, liberty, quality, integrity and dignity as human being, positive efforts has been made persistently at the International level. Such rights and guidelines are enshrined in various international instruments such as...

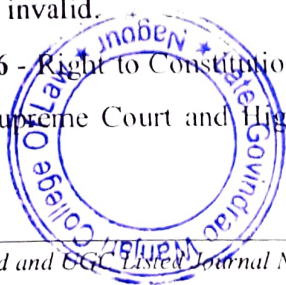
- Universal Declaration of Human Rights 1948
- The Standard Minimum Rules for the Treatment of Prisoners 1955
- International Covenant on Civil and Political Rights 1966
- International Covenant on Economic, Social and Cultural Rights 1966.
- Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1975.
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
- Body of Principles for the protection of all Persons under any forms of Detention or Imprisonment 1988.
- Convention on the Elimination of Discrimination against women 1967 & 1979.
- Declaration on the Elimination of Violence against Women 1993.

Indian Perspective under the Constitution of India

India has one of the most forward look constitutions, which has unique measures of promoting equality and development of women. But surprisingly it does not provide any specific guarantee of women prisoners' right however, certain rights which have been enumerated in Part III of the constitution are available to the prisoners too, because a prisoner remains a 'person' in the prison and she is entitled to basic rights of existence which is provided in the Constitution.

However, these rights may be restricted keeping in mind that the freedom of a prisoner needs to be curtailed though temporarily, in the larger interests of the society.

- **Article 14 Equality before Law** - The rule that like should be treated alike and the concept of reasonable classification has been ingrained in Article 14. This has been of great use and relevance for the courts to determine the category of prisoners and their basis of classification in different categories.
- **Article 15-** empowers state to make any special provision for women and children.
- **Article 19: Protection of rights regarding freedom of speech, etc.** freedoms like freedom of speech and expression, can be enjoyed by the prisoner even behind the bars and her imprisonment has nothing to do with such freedoms, of course, within the limitations of the prison.
- **Article 20 (1)** provides to protect the women prisoner from being subjected to any punishment or punishment conditions (including imprisonment) which were not authorised by law at the time when she committed the alleged act and for which she was convicted and sentenced after the trial as provided under the law.
- **Article 21: Protection of life and personal liberty-** has been the nerve centre of litigations, as far as the prisoners' rights are concerned; it embodies the principles of liberty. As "No person shall be deprived of his life or personal liberty except according to procedure established by law."
- **Article 22 : Protection against arrest and detention,** in certain cases Article 22 (4) to (7) provide certain special safeguards for the 'defences', defined under the preventive detention laws. Clause (4) provides 2 months as the maximum period for detention. Now, the detention beyond this period without obtaining the prior permission of the Advisory Board would result in the order of detention being declared void. Clause (5) of Article 22 bestows a duty and obligation on the part of the detaining authority to furnish the grounds of her detention and particulars required by the detainee to prepare her defence. Insufficient facts or particulars and the vagueness of the ground may render the detention invalid.
- **Article 32 And 226 - Right to Constitutional remedies** which means that a person has right to move to Supreme Court and High Courts for getting his fundamental rights protected.



- **Article 39-A** directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes to any citizen irrespective of economic or other disabilities.
- **The Cr.P.C contains special provisions** – the arrest of women after sunset and before sunrise (except with the prior permission of Judicial Magistrate First Class) is prohibited and a female arrestee is mandated to only be searched by a female officer with due regard to decency.
- **Section 51(2) Code of Criminal Procedure, 1973**-Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.
- **Section 53(2) of the Code of Criminal Procedure, 1973.** - Whenever a female is to be examined under this section, the examination shall be made only by, or under the supervision of a female registered as a medical practitioner.
- right to be informed as soon as may be of the grounds of arrest; 2. the right to consult and to be represented by
- a lawyer of his own choice; 3. the right to be produced before a magistrate within 24 hours; 4. the freedom from
- detention beyond the said period except by the order of the magistrate
- **Section 376(2) (c) of Indian Penal Code:-** being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such places shall be punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life and shall also be liable for fine.

Prison Acts and Prison Manual Provisions

Besides constitutional provisions, Cr.P.C., IPC and Indian Evidence Act, efforts have been made to provide and protect human rights of prisoners including the women prisoners under various Acts.

The jail manual also speaks of various rights to the women prisoners. It guarantees the right to physical, social, cultural and political protection. It includes accommodation and sanitary

additions, the care for mental and physical state of prisoners, the separation of female prisoners from the male prisoners, safety for fellow prisoners, treatment of prisoners and proper diet, meeting with family members and friends, temporarily release of the prisoners.

Rules Governing Women in Prison

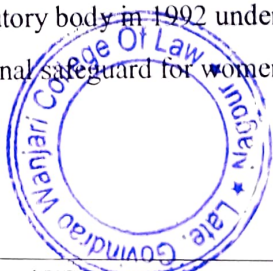
As per the State List provided in the Seventh Schedule of Indian Constitution, all issues related to prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions come under the domain of State Governments. The rules of incarceration are determined by following laws:

- Prison Act, 1894
- Prisoner's Act, 1900
- Identification of Prisoner's Act, 1920
- Transfer of Prisoner's Act, 1950
- Prisoner (Attendance in Court) Act, 1955
- Probation of Offenders Act, 1958
- Model Prison Manual, 2003 and 2016

A National Policy on Prison Reforms and Correctional Administration had also been framed in 2007, which gave a number of directives relevant to women prisoners. The key features of the updated Model Prison Manual 2016 emphasis on prison computerization, special provisions for women prisoners, focus on after-care services, prison inspections, rights of prisoners sentenced to death, repatriation of prisoners from abroad, enhanced focus on prison correctional staff.¹

Since Independence, a number of jail reform committees have been appointed by state governments. However, it has not been possible to get even list of such committees from the Central Government agencies concerned.²

In 1993, the National Commission for Women held a "Conference on Custodian Justice for women to deliberate upon the recommendation of Justice Krishna Iyer Report." The said Commission was set up a statutory body in 1992 under the National Commission for Women Act 1990 to review the Constitutional safeguard for women.³



Judiciary as Protectors of Rights of Women Prisoners

Sunil Batra vs. Delhi Administration⁴ was a watershed in the development of prison jurisprudence in India. In said case, the Constitutional provisions of Articles 14, 19 and 21 were given a practical shape and guidelines are given for regulating the prisoners term in jail within the Constitutional parameters as well as to formulate machinery for the assertion of the rights guaranteed for the benefit of prisoners.

Hussainara Khatoon vs. Home Secretary, State of Bihar⁵. The judgement quoted with essential element of 'reasonable, fair and just' procedure under Article 39-A of the Constitution makes the free legal services to the poor and the needy. The Court direction is its ruling on women who have been taken on 'protective custody'. There were a few women prisoners who were in jail without even being accused of any offence.

In **Sheela Barse vs. State of Maharashtra**⁶, a letter from a journalist, complaining of custodial violence to women prisoners while confined in the police lock-ups in the city of Mumbai, as a Writ Petition. The Court gives various directions to the State of Maharashtra conferring protection to women prisoners in police lock ups.

Upendra Baxi (I) vs. State Of Uttar Pradesh And Anr.⁷ The Court passed specific orders in individual cases of the aggrieved women, ordering the authorities to provide a specific number of toilets; water taps, fans, radio and other amenities to the detainees.

Rathinam vs. State of Gujarat 1993 (2) Scale the present case deal with compensation with the rape victim. The Court grants interim compensation of to tribal women. A tribal woman was raped in police custody allegedly in presence of her husband.

Nandini Satpathy vs. PL Dani⁸: **Right against Self Incrimination**. The Supreme Court affirmed that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence.

Vikram Deo Singh Tomar vs. State Of Bihar⁹ The Supreme Court held that the right to live with human dignity is the fundamental right of every Indian citizen including female inmates of a "Care Home" under Art. 21 of Constitution of India

Despite specific instructions of the Supreme Court of India in **RD Upadhyay vs. State of Andhra Pradesh and others**¹⁰, the conditions of child bearing mothers have not improved in general.

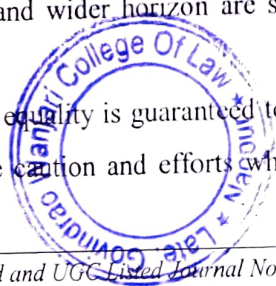
There are only 20 women's jails in India. Shortage of women jails, women inmates are forced to be lodged in the male-dominated Jails. There are number of statutes and guidelines which advocate for separate institutions for the women inmates. However, women jails have not been constructed to accommodate all the women prisoners of India.

The Prison Act and the Prison Rules speak about the segregation of the prisoners on the gender basis and certain rights to women prisoners, still requires special attention. The Supreme Court has delivered the set of guidelines to protect the rights of women prisoners and their children in jail. Important guideline is that pregnant women under trial should be taken to hospital outside the jail premises for delivery and the birth certificate of the child should not mention jail as the place of birth so that the fundamental rights of the children to education and healthy living are not violated when they are staying with their convicted mother. Another is, a child shall not be treated as an under trial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of rights.

Conclusion

Right to life under Indian Constitution has been widen enough to confers prison rights to the prisoners, still prevail a pathetic position with respect to women prisoners. The fundamental amenities of right to life in case of prison rights under Article 21 and 22 are nasal cannula for the convicts as well as victims and its seems a hollow cavity exit in the case of women prisoners. Although, India is land of divine feminine creative power, so by following this concept women prisoner deserve more concern and care. In male dominated society like India, position of women prisoners are seen as dreadful and crummy. Indeed, women prisoners in India face peculiar problems of rehabilitation during their post release period. They become vulnerable to suspicion and rejection and are stigmatized for having been in prisons. Imprisonment has more adverse impact on women than men. Their husbands no longer accept them after their release and they have no other place to go. In such a pathetic situation, many of them suffer from mental depression and require other forms of arrangement as psychiatric treatment and counselling. Therefore, broader mindset and wider horizon are still awaited to uplift the status of women offenders in India.

Although the right to equality is guaranteed to every citizen of India irrespective of sex, but legislation requires more caution and efforts while guaranteeing safeguards to the women



prisoners. Indian Constitution is in a state of flux, so general principle of right to life should be amended as per the ideology of today's the progressive world. New foresight, broad vision should be brought in the concept of women prisoners rights under the panoramic screen of right to life. Newly framed regulations helps in upgrading prison management and criminal psychology which is needed for widen the horizon of right to life for the betterment of female prison's life in India.

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2019-2020

OUR HERITAGE JOURNAL

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Dr. Nandita N Gaikwad

has been awarded Certificate of Publication for research paper titled

M-Governance in India: Problems and Strategies

Published in Vol-68-No.9-2020 of OUR HERITAGE JOURNAL with ISSN:: 0474-9030

UGC Care Approved International Indexed and Referred Journal

Impact Factor 6.6

S. S. Sharma

Editor, OUR HERITAGE JOURNAL

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OUR HERITAGE
ISSN: 0474-9030, Vol-68, Special Issue-9
International Conference On E-Business, E-Management,
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M-Governance in India: Problems and Strategies

Dr. Nandita N Galkwad

Abstract:

M-Governance is a subset of E-Governance. M-Governance is a modern tool of wireless network and technology that is designed to provide public information and services (governmental or private) to citizens at large. M-Governance make it possible to provide government information and services via mobile phones. Increasing use of mobile phone motivated government to promote using of M-Governance services as an effective tool to strengthen democracy. M-Governance is cost effective and has ability to reach out customers anytime and anywhere. The main aim of this paper is to study the role of government with respect to M-Governance framework, its importance and challenges.

Keywords: - E-Governance, M-Governance, Government

Introduction

In 1990's India took broad dimension with respect to E-Governance. E-Governance stands for electronic governance by using ICT (Information and Communication Technology). With the development of science and technology the citizens demands for better services from government bodies. ICT played a very important role in strengthening such demands of citizens. E-Governance and M-Governance is example of this. Digital India is a programme with the vision to digitally empower citizens, making digital services and resources and improving ease for doing business. Digital India programme aim is to connect rural area. M-Governance denotes to mobile governance. M-Governance in India is a paradigm shift from the traditional approach to electronic means in government departments. M-Governance brought revolutionary changes in the quality of the services delivered to the citizens. M-



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Governance helps peoples to avail government services via mobile technology. Use of M-Governance is not only cheaper but also accessible in any area including rural areas in India.

M-Governance: Meaning and Concept

M-Governance means strategy and its implementation involving the utilization of all kinds of wireless and mobile technology, services, applications and devices for improving benefits to all the parties including citizens, business and all government units. M-Governance is cheaper mode especially for poor and marginalized people. Mobiles are used by everyone and therefore can reach even those areas where wired phone service is difficult to set up. M-Governance therefore become a key to achieve exchange of communication between government and citizens. In Germany, the government has SMS service i.e. Short Messaging Service for registered bus and taxi drivers with the help of which assistance can be made available to the police in searching and tracing missing citizens and criminals.

National e-governance Plan, 2006 takes a holistic view of e-Governance initiatives across the country, integrating them into a collective vision, a shared cause. Toll free Agriculture helpline, Haryana; Bhoomi programme in Karnataka; Zero Mass Foundation in Andhra Pradesh; Railway Enquires; m- Sampark in Chandigarh are some of the example of mobile SMS based services available in India. The MSDG delivers Government services over mobile devices using mobile applications installed on the user's mobile handsets. MSDG provides different set of mobile based services to the backend departments and citizen. As MSDG is developed based on IIP/IIS (Interoperability Interface Protocol / Interoperability Interface Specifications) standards of government of India, it provides seamless integration with backend department through existing NSDG/SSDG eGov exchange infrastructure. Backend departments will be connected to MSDG for mobile based services.

Recently, Reserve Bank of India authorized commercial bank to give banking services on mobile phones whereas Government of India has approved the "Framework for delivering financial services through mobile phones by Inter- ministerial group. Government of India launched Unified Mobile Application for New Age Governance (UMANG) in 2017. It is a





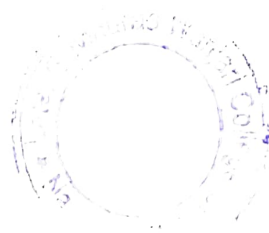
multi platform and multi service freeware mobile app. Government also providing M-Governance facilities to various government sectors such as tax, passport, agriculture etc. Government of Telangana in 2018 launched "T App Folio", a mobile governance application which can be used "anytime and anywhere" by citizens, business through one access point. Many states like Gujarat, Madhya Pradesh, Andhra Pradesh, Tamil - Nadu have taken keen interest in M-Governance. Electronic Department and Information Technology along with the Ministry of Communication and Information and Technology taking a step towards M-Governance for public services to ensure speedy delivery of services.

Benefits of M-Governance

1. Fast and easy to use.
2. Quick delivery of services.
3. Effective digital medium for development of society.
4. New and effective way of leadership, debating and deciding policy.
5. Promote new way in organizing and delivering information.
6. Low training.
7. Multiple access.
8. Increases connectivity between citizens and government.
9. Helps to reduce corruption.

M-Governance in India: Challenges Ahead

1. **Poverty** : Smartphone are expensive and therefore unaffordable for poor section of society especially in developing country like India.
2. **Technology illiteracy** : People are less aware about digital literacy and its relation with communication technology.
3. **Language barrier**: most of facilities are available in English and this makes difficult for non-English speaking population to access services.
4. **Lack of infrastructure**: Effectiveness of M-Governance totally depends upon infrastructure. Lack of infrastructure which includes electricity, tower, internet, and





OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9
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other related ways of communication affect the speed and which ultimately delays the implementation.

5. Security: Good security is utmost important requirement for protection of all transactions made via M-Governance. This is the area of major concern where exist a gap which need to be filled.
6. Smartphone only : M-Governance facilities are available in mobile having Android operating system and not to the keypad mobile phones.
7. Storage Problem: Mobile is such a device which is constantly connected to its user and therefore increase the number of messages, videos, chat, games which can cause a blizzard of communication in which communication can come to be lost.
8. Peoples' Readiness: For effective implementation of m-Government one of the pre-request is the citizens' acceptability and attitude towards it. A large number of the people in India is not aware of the meaning and impact of e-Government and m-Government.
9. High Cost: Building infrastructure for M-Governance is very costly.

Strategies to Adopt

1. SMS services are simple and can be used to provide M-Governance facilities even to keypad mobile.
2. Bluetooth facility: This facility can also be used for exchanging information.
3. Awareness Program : Awareness program should be launched at national and local level for popularizing the M-Governance service.
4. Availability of M-Governance services in local languages will definitely ensure good governance.
5. Stressing training and education requirement of the people to carry out mobile transactions via mobile technology.
6. Changing mindset of people to see mobile as fun need to be change.
7. Strategies to popularize use of mobile services.





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8. To formulate guidelines to use mobile services in the education field in India especially for rural area. Although there are m-learning app in India but still not in use in remote areas.

Conclusion

M-Governance is not substitute for E-Governance but the subset of E-Governance. It is an effective tool for providing quality services to their citizens. It plays a very important role in increasing transparency and to cut corruption. It is a tool for effective solution to public services problems and in strengthening democracy. M-Governance is bright and stresses development. Issues such as of connectivity, roaming rentals and bandwidth issues require much focus by the providers as well as government. It seems lot of need to be done by the government when trying to contact people, almost every individual in the society.

Tremendous changes can be brought with the M-Governance but for achieving it upliftment of infrastructure; consideration for privacy and security; socioeconomic acceptance; ability to reach rural area important issues needed to be address. M-Governance is two way delivery system between the government and people proving better and greater choice.

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GANDHIJI'S CONCEPT OF HEALTH AND ITS RELEVANCE IN TODAY'S LEGAL SYSTEM

Aruna Kadu

Assistant Professor

Govindrao Wanjari College of Law, Nagpur

INTRODUCTION :

"Strength does not come from physical capacity. It comes from an indomitable will"

Gandhiji a man of unbelievably great personality, an independent thinker has gifted us "Keys to Health". It is one of the greatest writings of Gandhiji in which he has laid down his ideas regarding health. He believed that for achieving a healthy personality one must be healthy from within i.e. one's mind must be healthy. This inner health can only be achieved by maintaining a good condition of components of human body, nature cure and most importantly a cleanliness of inner as well as outer body parts. His definition of healthy person was not only a physically healthy one but a person who can lead a normal life without any fatigue and has an unconquerable will power.

The laws today also reflect the precious views of Gandhiji by emphasizing mental health and giving a strong protection to environment which is part and parcel of promotion of right to health of all the people.

HEALTH : GANDHIJI'S CONCEPT :

It is implicit to know the meaning of the word health- it means body ease. We can say a person is 'healthy' when his body is free from diseases and can carry out his normal activities without fatigue. Gandhiji believed our own ancient concept about composition of human body with five elements i.e. *Earth, water, Vacancy (Aakash), Light and Air*. He states that good working of the human body depends upon the harmony of these component parts.

The first element Air which is *sine qua non* for living, thus cleanliness of human organs and also

environment is most important for the pure air to breathe.

The second element is Water, being a basic need it should also be pure and it's the municipality's responsibility to provide clean water and maintain the sewage and drainage system.

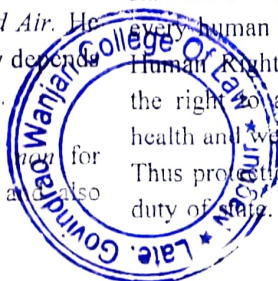
The third is element Aakash which helps to maintain and regain health. The fourth element is Light which we get from sun and lastly the Earth- it's a nature's way to treat ailments. Thus we must have a good balance of these elements for a healthy personality.

Gandhiji was of the view that health means not only physical but mental well being also, that means a strong determination and will power. This physical and mental well-being is achieved by the good healthy personality and for that the environment in the vicinity, food, habits of the person also play a vital role. Thus a clean environment leads to healthy life and it is our duty to make and keep the environment clean and that should be the foremost duty of every person.

REFLECTION OF GANDHINIAN CONCEPT IN LEGAL FRAMEWORK

In the present era, with the rise of the concept of human rights and its wide interpretation which cover almost all the aspects regarding every person, the right to health has also been noticed nationally and internationally.

Various documents which mainly cover the right to health at International level put an obligation on member states also to enact or amend the laws relating to health and observe the UN call for the protection of right to health of a person. The World Health Organization (WHO) in its Preamble puts that, "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being"². The Universal Declaration of Human Rights (UDHR) states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family"³. Thus protection of health of a person is the primary duty of state. At the same time health as defined by



Gandhiji includes mental health also, the same is adopted by the laws nationally and internationally. The World Health Organization gives the definition of health as, "Health is a state of physical, mental and social well-being and not merely absence of disease or infirmity"⁴. Similarly UN Convention on the rights of persons with disabilities (CRPD) is also a new hope for protection of rights of the persons with disabilities. In this way the concept of mental health has been recognized by WHO.

INDIAN SCENARIO :

India is having a rich literature about health and healing. Vedas, Manuscript, Ayurveda etc are the authoritative texts talking about health and enumerates various ways to protect and promote health of a person. The concept of health and healthy person is given by Ayurveda like,

॥..Samadosha Samagnishchha Samadhatu Malakriya
Prasannatmendriya Mann Swastha Ityebhidiyate..॥

It gives the definition of healthy person as all the body components of a person if are working properly and at the same time person is having a happy mind then only he is regarded as healthy person. The concept which is talked about by Gandhiji also runs the same. Thus it is of utmost importance that if a person is mentally fit then he is a healthy person. In the present day situation we need the protection of laws for preservation of health of people. The Law of Land guarantees the Right to Life to all the people in territory of India⁵. Earlier the Mental Health Act, 1987 was there relating to treatment and care of mentally ill persons, now the Mental Health Care Act, 2017 has been passed by the parliament with an object to provide for mental healthcare and services for persons with mental illness. Similarly the various Legislations which deal with the protection of environment ultimately aim at promotion of health of all the persons. The five components of human body are nothing but the nature. Thus to keep a person healthy there must be a healthy environment. Constitution of India under Part IV stipulates that the State shall try to improve and protect the environment and safeguard forests

and wildlife of the country⁶. The laws relating environmental protection in India are: The Environmental (Protection) Act, 1986 aimed protect and improve quality of environment by central Government with co-ordination of the state Government. The Air (Prevention and Control of pollution) Act, 1981 for the improvement of the quality of air and prevention, control and abatement of air pollution, air which is most important component of human body. Then The Water (Prevention and Control of pollution) Act, 1974 has been enacted for the prevention and control of water pollution and to maintain and restore the wholesomeness of water in the country. Other laws like the Forest Conservation Act, 1980 ; The Biological Diversity Act, 2002; Biomedical waste Management and Handling Rules, 1986; Hazardous waste, E waste management rules help maintain healthy environment for preservation of health of people.

JUDICIAL APPROACH FOR PROTECTION AND PROMOTION OF HEALTH

The Hon'ble Apex Court of India has time to time interpreted the provisions of existing laws as to protect and preserve public health. Being guardian of the citizens the Supreme Court has given landmark judgments to protect environment and promote public health. Some of the cases have been discussed as follows:

Municipal Council, Ratlam v. State of Madhya Pradesh and ors 1980 AIR 1622.

In this landmark case the Supreme Court recognized the impact of a deteriorating urban environment on the poor. It linked basic public health facilities to human rights and compelled the municipality to provide proper sanitation and drainage.

M.C. Mehta V. Union OF India, AIR 1987 965

This case is popularly known as Oleum gas leak case. The Apex Court applied the principle 'absolute liability' and ordered the management to pay compensation to victims of the gas leak.

C. Mehta v Union of India and ors, 1988 AIR 15

This case is popularly known as Ganga water pollution case. In its landmark judgment Supreme Court ordered the closure of number of polluting tanneries near Kanpur causing a serious pollution to Ganga water.

Indian council for Enviro Legal Action and ors v. Union of India and ors, 1996 AIR 1446

This case was regarding the water pollution caused by the effluents from an H-acid factory in Bichhri village in Rajasthan; it polluted ground water of most of the wells and destroyed crops also. Court ordered to remove the sludge from the factory.

Thus the Supreme Court has time and again played a vital role to protect and promote environment vis a vis health of the people, as clean environment leads to protection of health.

CONCLUSION : Gandhiji has bestowed on us his very pure thoughts and beliefs and he had an unshakable faith on his beliefs. His thoughts and principles of that time are very much relevant and act as guiding principles even today. His way of living a simple and natural life is a guide for many of us for achieving a healthy life. He gave immense importance to health of a person as he states,

"It is health that is real wealth

And not a pieces of gold and silver"

Thus the ideology put forth by Gandhiji is a golden rule for all of us to achieve a healthy life and that too health, which implies all aspects in it including mental health i.e. inner strength and not merely a physical health.

ENDNOTES:

Gandhi MK, Gandhi K, Surabati A, editors. Young India: A Weekly Journal. 1919; 1

Preamble to the World Health Organization (WHO) Constitution. See available at <http://www.wpro.who.int>

United Nations. Universal Declaration of Human Rights (UDHR). UN General Assembly. 1948 Dec 10

Constitution of the World Health Organization, see available at <http://www.wpro.who.int>

Article 21 of Indian constitution: Right to life and personal Liberty.

Article 48A of Indian Constitution: Directive Principles of State Policy.

[Signature]

OFFICIATING PRINCIPAL
Late GOVINDRAO Wanjari





Role of E-Governance in Combating Corruption in India

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2019-2020

ABSTRACT:

Corruption has proven to be the cancer to Indian civilization which completely affects and spoils the healthy democratic, political and economic system of the country. The self-centered mind with immoral and greedy nature gives rise to disrespect for law which leads to corruption.

This paper tries to highlight causes and consequences of corruption in India. E-governance has come forward to minimize the giant problem of corruption in the society. This paper also touches the various provisions and strategies to curb the existing corruption through E-governance to a greater extend.

This paper deals with the efficacy and enlightens the productive role of E-governance in the formation of a SMART Government which should prove as an ideal one on the Globe and not merely an unreal dream, impossible to achieve; because the Simple, Moral, Accountable, Responsive and Transparent Government is the most ideal and needful one for the Indians to prosper and progress.

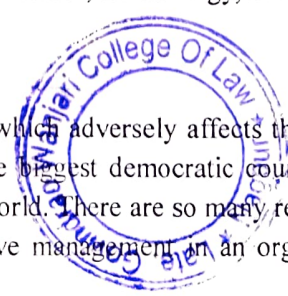
The external interactions among society members i.e. e-society, the internal government operations i.e. e-administration and the interaction between government and citizens i.e. e-services are the key-factors of E-governance which act as the machinery in the elimination of corruption from Indian society.

Keywords:

E-governance, Corruption, Governance, Technology, Public, IT.

Introduction:

Corruption is an issue which adversely affects the economy and development of the country. Ironically, India is the biggest democratic country but continues to be among the most corrupt countries in the world. There are so many reasons giving rise to corruption such as lack of honesty and effective management in an organization, weak control on various



OUR HERITAGE JOURNAL

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Role of E-Governance in Combating Corruption in India

Published in Vol-68-No.9-2020 of OUR HERITAGE JOURNAL with ISSN:: 0474-9030

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International Conference On
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OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

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Abstract

E-commerce occurs in various forms and entities in the market. E-commerce means commercial transactions taking place electronically on the internet. Policy framed for the taxation of E-commerce transactions, highlighted the principal Neutrality Efficiency Flexibility in the E-commerce regime. However, most important question faced by nations is how to tax it? The article tries to analyse the key issues in the area of E-commerce taxation and challenge to tax regimes. Existing tax regimes show different and inconsistent rules for different types of services and intangible property, such as tele-communications, broadcast, consulting, engineering, training and education, data processing, supply of information, access to databases, entertainment, and content of various types. The rapid growth of the e-commerce in digital world raises a number of problems and given new breed of crimes i.e cyber-crimes. To deal with this problems legislative measures and judiciary played important role for solving problems associated with it.

Key Word: E-commerce, Taxation, Transaction, Legislation, communication.

Introduction

Justice Holmes, while considering the validity of a taxing statute, was asked by his secretary whether he liked to pay his taxes. He answered the he liked to pay taxes as he bought his civilization with that. Countries impose taxes for development and to improve infrastructure of





OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

International Conference On E-Business, E-Management,

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our country.¹ Every industry contributes to the nation's economic growth as well the communication industry plays a significant role and promising to grow in future. E-commerce offers a new way of conducting, managing and executing business transactions by using modern information technology. It has been redesigned the traditional mode of business.²

E-commerce means commercial transactions taking place electronically on the internet. E-commerce has grown tremendously in last decade. In erstwhile regime there were no specifically dedicated laws to govern the taxation of these online-transactions in India. One of the definitions of market was "a place where buyer meets seller". But the definition of E-commerce change it and inserted some innovations, now in modern way E-commerce means the buying and selling of goods or services through internet, transfer of money and data to execute these transactions that is effected via electronic means and would include as facsimile, telex, EDI, Internet and telephone. United States along India and China are major beneficiaries of the E-Commerce Revolution. E-Commerce developed in the Industrial Revolution of the early 20th century for modification of doing business. Traditional business was based on two concepts, Physical presence and Physical delivery of goods and services. Today physical presence is no longer necessary for any business activity that has been replaced by bytes of data by using online transaction³

India has now moved to Goods and Services Tax (GST) which has been included E-commerce transactions and GST which has been replaced the indirect taxes. Electronic Commerce has been defined under the GST to mean the supply of goods or services and also include digital products over digital or electronic network. E- Commerce Operator means any person who operates or manages digital or electronic facility or platform for electronic commerce. As per the provisions E-commerce operator is required to collect Tax Collection at Source (TCS) which is calculated at the rate not exceeding one percent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator.⁴

¹ Cyber Laws Universal law Publication Written by Justice Yatindra Singh

² http://www.legalservicesindia.com/articles/tax_ec.htm

³ <http://www.forbesindia.com/blog/health/e-commerce-taxation-brick-and-mortar-storer-vs-online-stores>

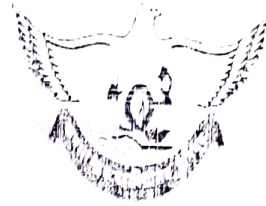
⁴ <https://www.investindia.gov.in/taxation>



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Taxation of income in India is governed by the provisions of the Income Tax Act, 1961. Taxes are broadly divided into two categories, i.e. direct taxes and indirect taxes. Income tax and wealth tax are examples of direct taxes. They are levied directly on individual. Sales tax, or excise tax, or custom duties are examples of indirect taxes. They are imposed on the goods purchased or manufactured or imported.⁵ Taxes in India are levied by the Central Government and the State Governments. Some minor taxes are also levied by the local authorities such as the Municipality and the Local Governments. While direct taxes are levied on taxable income earned by individuals and corporate entities, the burden to deposit taxes is on the assesses themselves. On the other hand, indirect taxes are levied on goods and services respectively and the burden to collect and deposit taxes is on the sellers instead of the assesses directly.

Policy framed for the taxation of E-commerce transactions committee i.e. Fiscal Affairs of the Organization for Economic Cooperation and Development ("OECD") highlighted the principal:

Neutrality - Taxation should be neutral and equitable between different forms of e-commerce and thus, avoiding double taxation or international non-taxation.

Efficiency - Compliance costs for business and administration costs for the Governments should be minimized as far as possible. Certainty and Simplicity - Tax rules should be clear and simple to understand so that tax payers know where they stand.

Effectiveness and fairness - Taxation should produce the right amount of tax at the right time, and the potential for evasion and avoidance should be minimized.

Flexibility - Taxation system should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.

These principles can be applied through existing tax rules and there should be no discriminatory tax treatment of e-commerce.⁶

⁵ Cyber Laws Universal law Publication Written by Justice Yatindra Singh



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ISSN: 0174-2030, Vol-68, Special Issue-9

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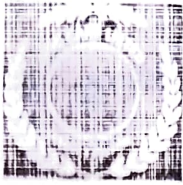
In India, the High Powered Committee ("HPC") constituted by the Central Board of Direct Taxes, submitted its report in September 2001. The report considered and contemplated upon the need for introducing a separate tax regime for E-commerce transactions. The report prepared by the HPC took into account the principles laid down by the OECD albeit with some exemptions. However, based on the principle of 'neutrality', the HPC maintained that the existing laws are sufficient to tax E-commerce transactions and no separate regime for the taxation of E-commerce transactions is required.⁷

Under Indian Income Tax Law any person who is resident or not, is chargeable to tax in respect of his income accruing, arising, or received, or deemed to accrue, arise, or to be received in India. Thus, even if the income was not actually received in India but is deemed to accrue or arise in India, it would be taxable in India. Residents are taxed on their worldwide income, whether it arises or received outside India. Nonresidents are taxed on their Indian-source income. The determination of a person's residential status becomes essential because taxability of a particular income and the rates at which it is taxed vary according to the status.

E-commerce provides challenge to tax regimes and leads to the gradual elimination of intermediaries like wholesalers or local retailers and also critical for identifying taxpayers especially associated with private consumers. Second, there will be discrepancies where foreign suppliers may be tax-exempted, whereas local suppliers would be required to charge value added tax (VAT) or sales taxes. Third, direct orders from foreign suppliers will substantially increase the number of low-value shipments of physical goods to individual customers. These low-value packages now fall under so-called de minimis relief from customs duties and taxes in many countries, the cost of collection being more than the amount of tax due. "One of the big challenges about complexities to make accurate calculation and reporting of sales

<http://www.nishithdesai.com>

RICHARD JONES and SUBHAJIT BASU INTERNATIONAL REVIEW OF LAW
COMPUTERS & TECHNOLOGY, VOLUME 16, NO. 1, PAGES 35-52, 2002 Taxation of Electronic Commerce:
A Developing Problem



OUR HERITAGE

ISSN: 0474-9030, Vol-68, Special Issue-9

International Conference On E-Business, E-Management,

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tax and value added tax (VAT) incredibly difficult. When tax calculated for online transactions shows inaccurate or disruptive and potentially very costly compliance risks.⁹

Furthermore, another complexity arising about legal issues addressed before E-commerce for authenticating the identity of person who entering into the transaction. Further, there needs some protection about that the person entering the transaction which cannot repudiate the same at a later stage. E-commerce has also given rise to a new breed of crimes called "cyber crimes," "cyber squatting," and "virus attacks," among others.¹⁰

A high power committee on electronic commerce and taxation was constituted by the central on Direct taxes on 16th December, 1999. The committee has analyzed the taxed issues namely concerning domestic E-commerce and cross borders transactions. The committee accepted that new tax evasion technics may arise due to anonymity of parties and transition. There could be problem in the matter of recovery of tax dues also.¹¹ Similarly, A Committee on Taxation of E-commerce constituted by the Central Board of Direct Taxes (CBDT) to examine the business models for E-commerce submitted its report on 21 March 2016. Provides issues related to taxation of E-commerce and recent international developments in this area.¹²

Existing tax regimes show different and inconsistent rules for different types of services and intangible property, such as tele-communications, broadcast, consulting, engineering, training and education, data processing, supply of information, access to databases, entertainment, and content of various types.¹³ The rapid pace of growth of the e-commerce industry is not only indicative of

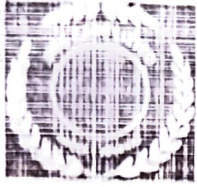
⁹<https://www.the-future-of-commerce.com/2019/05/21/e-commerce-taxation>

¹⁰http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Electronic_Commerce_Taxation

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¹¹<https://www.jagranjosh.com/current-affairs/akhilesh-ranjan-committee-on-taxation>

¹²https://www.researchgate.net/publication/228723042Taxation_of_Electronic_Commerce_A_Developing_Problem



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the increasing receptiveness of the public but has also brought to the fore the issues that the legal system of the country has been faced with.¹⁴

The digital world raises a number of problems with respect to income characterization issues. Cross-border transactions involving the transmission of digital goods or services often make it difficult to determine whether a transfer of a product has occurred, whether services have been performed, or whether an intangible product has been licensed. Continually developing technologies are causing governments and suppliers to face many challenges in the collection of consumption taxes¹⁵ similarly the growth of E-commerce, especially the sale of goods and services has fuelled a debate about the taxation regimes how to use it? Whereas states can impose a tax on residents' purchases from out-of-state vendors, they cannot impose an obligation on those vendors to collect the tax unless the vendor has a substantial presence, or nexus, in the state. These problems will be greater for developing countries.

In India there are some regulatory environment, which broadly governs comprises of the following laws to protect E-commerce, i. e. Indian Contract Act, 1872, Copyright Act, 1957, Trademark Act, 1957, Patent Act, 1970, Information Technology Act, 2000 and Indian Penal Code, 1860 etc.¹⁶ Income Tax Act, 1961. As well as the Indian judiciary play very important role for interpreting the statute and complexity arising out of different types of software and bringing order to their inherently conflicting treatment. In India, almost all states have their own taxing policies to reconcile them into a comprehensive legislation is a very difficult task.¹⁷

Conclusion

¹⁴ A Case Study Dr Dibakar Panigrahi Professor Department of MBA, Berhampur University, Bhanja Vihar Mr Susil Kumar Sarangi (Asst. Prof Dept. of MBA, KIT, Berhampur) International Journal of Scientific Engineering and Applied Science (IJSEAS) – Volume-2, Issue-1, January 2016 ISSN: 2395-3470

¹⁵ <http://www.oecd.org/tax/consumption/5594899.pdf>

¹⁶ <https://www.tandfonline.com/doi/abs/10.1080/13600860220136093?journalCode=cirl20>

¹⁷ E-commerce and Taxation Author : Mr. Dayana M. K.



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7th & 8th February-2020



Taxation is broader concept that can be calculated by different methods. In this era industrial contribution play very important role for the nation economic growth. Now traditional methods has been exhausted and new technology via electronic media takes place. E-commerce is one of them. The transaction that has been done through electronic means where seller and buyers benefited by it. By E-Commerce transaction in taxation regime has changed many of the fundamental and long standing concepts of direct and indirect taxation. However, there are various issue of taxation raised by E-commerce because of lack of comprehensive understanding. complexity of business offered through internet and communication technology made the operation of tax legislation more difficult. There is need to found way for tackle problem with this relevant issue.

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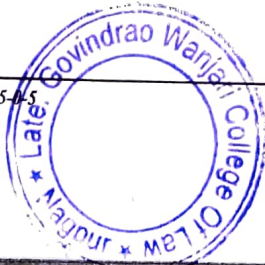
**INTELLECTUAL
PROPERTY**

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ISBN - 978-81-926265-4-5

'Intellectual Property Rights in Legal Framework'



A Trademark Issue : Domain Name Dispute

Aarti Banthia

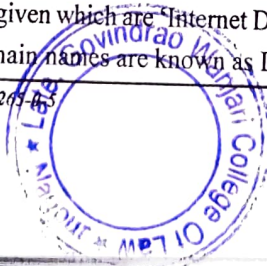
Visiting faculty at Govindrao Wanjari collage of law, Nagpur

Introduction:

Trademark is the word, symbols, or phrase of the particular manufacturer or seller's product distinguish itself from other product. For example the TM of Nike is different from other brand of the shoes such that in internet is done by Nike.com and under some circumstances the packaging and procedure also include in the trademark. Trademark is very much essential in industry and commercial business to of identify their product. This trademark secures the right of the owner of the manufacturer and avoids the infringement of the product so that no person can allow using that mark with approval of the owner. The trademark is the way by which right of both the consumer and manufacturer owner. The essential function of the trademark is to identify the origin of the consumer source and the product source. It is properly called as indicate source or serves for example, "Pepsi" coke cola", "McDonalds" etc. Trademark is an essay way to the consumer to identify the product source. Trademark just directly looks in the symbols of the product from which a consumer can easily know the quality of the product.

Today internet is not just provided a great platform to the users for educational purpose but also for business purpose. For example if the person has to buy cold drink he simply sees the symbols of Pepsi and borrows it. Such that in internet the consumer directly look into the domain name example when a person have to buy cell phone he will look into the application of flip kart which assured the safe delivery of the product. Domain names are the biggest trend in the internet world nowadays. Having a domain name is a general practice that a company undertakes so that their company can be easily identified due to their trademarks. There are a number of companies that a consumer wants to have a connection with, but such is not possible physically. The domain names make it possible for the consumer to identify and contact the company. Trademarks and domain names are interrelated

It has now provided a great economic value to the online business but at the same time it is also exposed to many ways in which it provides these online business holders at a risk. For having a distinct market in the cyberspace, just like trademarks, some alphanumeric characters are given which are 'Internet Domain Names'. Owners of and the risk associated with these domain names are known as Domain Name Disputes



Meaning of Trademark :

Definition under TRIPs Agreement:

"Any sign or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark."

Such signs, in particular words including personal names, letters, numeral, figurative elements and combinations of colours, as well as any combination of such signs, shall be eligible for registration as well as any combination of such signs shall be eligible for registration as trademarks.

Definition under the Trade Marks Act, 1999 of India:

"A mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours."

Therefore in simple term we can say that trademark is a mark which can be represented graphically and it includes a word, name symbol, number, letter, signature, ticket, brand, slogan, picture, smell, shape, logo, graphic design, moving image, produce and so on. It is distinctive of a person's goods or services and is used to identify those goods and services and distinguishes them from the goods and services of other persons.

Trademark performs main functions in identification of the goods and services, and guarantees the quality of goods and creates an image or the product in the minds of consumer.

TRIPs agreement 1995:

It is important to note that article (15-21) deals specifically with Trademark. Article 16 talks of rights of the owner of a registered trade mark and states that 'the owner of a registered trade mark shall have the exclusive rights to prevent all third parties, not having the owner's consent, from using in the course of trade, identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in likelihood of confusion.

Trademark issues in Digital Medium :

Every computer or server has its own unique address commonly known as Internet Protocol Address {IP Address}. It is generally long and it is not easy to remember and also it is not eye and ear catching. It is easy to remember a person by his name rather than his number. Instead of using number to represent a person it is preferred to use user friendly name which is eye and ear catching. However this quality is not there in IP Address and because of this drawback of IP Address there came the concept of Domain Name.

DOMAIN NAME :

Internet domain name is a combination of typographic characters used to describe the location of a specific location online. It is known as the Uniform Resource Locator or URL. It is considered the identity of a Web site. The Internet domain name is very important for the small businesses who want to establish their name on internet. The two organizations cannot have same domain names.

Example: www.google.com ; www.yahoo.com, etc.

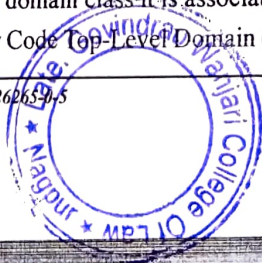
In the above example only google.com is being used shows search results from Global servers, Google.co.in is more targeted to local Indian Market. You will always see difference in search results for both cases on Google.co.in you will get results of more India related sites, who primary operate in or for India specific.

The last two or three letters of a domain name or URL (e.g.-.com,.in,.org) are known as its top-level domain. The top-level domain which are used earlier are for Example '.org' generally describes a nonprofit, charity, or cultural organization site; '.gov' indicates a governmental site; and .net, which is most often used by network-related businesses. Some other common top-level domains are country codes, like .us for United States and .au for Australia, etc.

Domain name registration system' started on the basis of the "First come First serve" basis. The registrant authority which was initially the "Internic" did not take the responsibility for checking the ownership of the name. Later when the internet became popular, large popular companies wanted to enter the internet with their own websites and often found that the domain name they were seeking had already been booked. So companies which wanted the same domain name had to pay a price, which were sometimes unimaginable. This increasing cost of buying back of domains resulted in 'Meta society' trade mark owners coming together and claiming that their intellectual property rights on a registered trade mark should be extended to "domain name". This has resulted in considering "Registration of Domain Names without the intention of using them" as cybersquatting.

Types of domain names :

1. Top-Level Domains (TLDs) – They appear in domain names as the string of letters following the last (rightmost) ".", such as "net" in "www.example.net". Most commonly used TLDs are .com, .net, .edu, .jp, .de, etc. Further, TLDs are classified into two broad categories: generic top-level domains (gTLDs) and country-code top-level domains (ccTLDs).
2. Generic Top-Level Domain (gTLDs)– It is a generic top-level domain name that identifies the domain class it is associated with (.com, .org, .edu, etc).
3. Country Code Top-Level Domain (ccTLD)– It is a two-letter domain extension, such



as .uk or .fr, assigned to a country, geographic location or territory.

4. nTLDs– It refers to new top-level domain names that are geared towards brand organizations and services, as they're more customized, flexible and relevant. Some of the Examples of nTLDs include ".voyage", ".app", ".ninja", ".cool", etc.

Relation between domain name and trademark :

In today's world Domain name serves as an on-line trademark. It also indicates quality and a repository of the goodwill of an organization. Alphabetical domain names were developed to make the addresses easier for humans to remember and use when communicating on the Internet. Such names are catchy words or well-known names of individuals or companies, for example, "nokia.com" or "samsung.com".

A Domain name serves the same purpose online, which a trademark serves in the offline business transactions. It helps the customers identify the source of goods/services provided by the owner of such goods and services. Therefore, Domain names are of utmost importance in online businesses. They are important because of the following reasons:

- Promotion of business and building up of customer base online and offline by way of advertising on the web.
- Establishment of the credibility of the website and the business on the internet.
- Easy access to customers and prospective customers.

Domain names Disputes:

It is significant to note that like NSI, ICANN and its accredited registers are also responsible for registration of 'second-level domain' name on first come, first served basis and do not evaluate or pre screen whether 'second-level domain name' is same, or deceptively similar to, a registered trademark or already registered domain name. Therefore, on one hand such distribution of domain name without pre screening has resulted in growth of e-commerce all over the world but on the other it gave the opportunity to some persons to pirate the names of others, hence has created a problem of:

1. Cyber squatting :

cybersquatting is registering various famous names or trademarks as domain names with hope of selling them at profit. Therefore, a cybersquatting is an internet user who has registered multiple 'domain names' with the hope of selling them to:

- A) The business house who own trademarks identical to registered domain names; or
- B) The famous person (celebrity) whose name is identical to registered domain names.

2. Typo squatting:

Typo squatting is registering a domain name which is minor variation or common typographical permutations of already registered domain name so as to divert internet users to their website by typing errors. Therefore A typo squatter, is a person who seeks to get

profit from controlling domain names and obtain common typographical permutations of already registered domain names.

Ex. Registering *www.rediff.com* or *www.redif.com* where *www.rediff.com*, already registered

3. Identical SLD in domain names registered by different registries in Different Countries: Yet another problem relation to domain name is that different registries all over globe are registering the domain name and may provide identical SLD. Ex *www.nokia.com* may already be registered but still in india *www.nokia.co.in* may be registered which is not affiliated to *www.nokia.com*.

4. Reserve Domain name Hijacking:

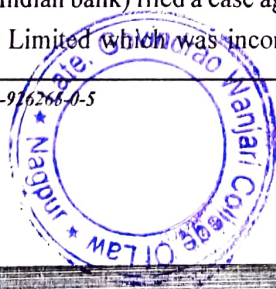
Another cause of domain name dispute is reserve domain hijacking. It means depriving a domain name owner of his domain name. Generally, a powerful company tries to force a genuine domain name user (owner) to give up his domain name which was acquired by him in good faith. However, mostly such powerful companies use coercive measures like threat of legal proceeding so as to instigate the domain name holder to relinquish his right in domain name and transfer it to such powerful companies.⁴

Disputes on Domain Names:

In Yahoo Inc. V. Aakash Arora & Anr. Where the defendant launched a website nearly identical to the plaintiff's renowned website and also provided similar services. Here the court ruled in favour of trademark rights of U.S. based Yahoo. Inc (the Plaintiff) and against the defendant, that had registered itself as *YahooIndia.com*. The Court observed, "it was an effort to trade on the fame of yahoo's trademark. A domain name registrant does not obtain any legal right to use that particular domain name simply because he has registered the domain name, he could still be liable for trademark infringement." The Bombay High Court in *Rediff Communication v. Cyberbooth & Anr 2000 PTC 209* observed that the value and importance of a domain name is like a corporate asset of a company. In this case the defendant had registered a domain name *radiff.com* which was similar to *rediff.com*. The court gave a decision in favour of the plaintiff.

In another case the defendant registered a number of domain names bearing the name Tata. It was held by the court that domain names are not only addresses but trademarks of companies and that they are equally important. **2001 PTC 432)**

In a case which was taken up by the WIPO administrative panel where In *SBI Card and Payment Services Private Limited* (a joint venture between GE Capital Services, the largest issuer of private label credit cards in the world, and the State Bank of India (SBI), the largest Indian bank) filed a case against an Australian entity on cybersquatting. Domain Active Pty Limited which was incorporated in Australia had registered a domain name



www.sbicards.com. The administrative panel held that domain name registered by Australian entity was in bad faith and it could have attracted attention from the public because of its affiliation to SBI Cards products and services.

In *Bennett Coleman & Co Ltd. v. Steven S Lalwani and Bennett Coleman & Co Ltd. v. Long Distance Telephone Company (Cases No D2000-0014 and 2000-0015, WIPO)*, the arbitration panel gave a decision in favour of the plaintiff. In this to the respondent had registered domain names www.theeconomictimes.com and the www.timesofindia.com with network solutions of the United States. These two names are similar to the names of the Plaintiff's websites www.economictimes.com and www.timesoftimes.com. Another important fact was that the respondent's websites using the domain names in contention redirect the users to a different website www.indiaheadlines.com which provided India related news.

In software company Google Inc. v. Herit Shah

In Software company Google Inc.v. Herit Shah (Shah) 2009

The Internet software company Google Inc. won a cyber squatting case against an Indian teenager who had registered a domain name googblog.com. The domain name, Google contended, was confusingly similar to its trademark. On May 15, 2009, the World Intellectual Property Organization (WIPO) ordered an Indian teenager, Herit Shah (Shah), who had been using the domain name 'googblog.com', to transfer the rights of the domain to Google Inc.(Google). Industry observers viewed this as a case of cyber squatting, and said that Google had been able to successfully defend its intellectual property rights (IPR). According to WIPO, there had been a rise in allegations of cyber squatting by trademark holders in 2005

Domain Name Disputes Resolution Policy :

In order to process the types of domain disputes discussed above, the Uniform Domain Name Dispute Resolution Policy (UDRP) was born. This policy was created by the Internet Corporation for Assigned Names and Numbers (ICANN) to resolve disputes where multiple parties claim the right to a specific domain. If you find that somebody else is using a domain that infringes on your trademark or you believe the current holder has bought the domain in bad faith, then you might be able to file a UDRP to start a dispute proceeding. While it may sound subjective, *bad faith* is an important factor in determining the outcome of a UDRP proceeding. It can include cases of cybersquatting and typosquatting or instances when the domain holder appears to have the intention of disrupting or inconveniencing the trademark holder. Bad faith can also refer to instances where the domain owner profits off the trademark. For example, if you managed to purchase the domain mcdonalds.com and used it to redirect traffic to your competing hamburger restaurant's website, that would be

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n the public

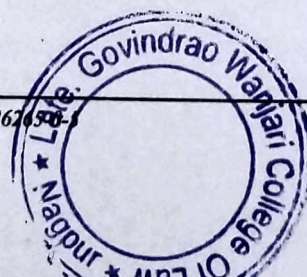
a clear case of bad faith. In contrast, there are cases where a disputed domain is found to be bought in *good faith*. This could occur if the owner has a legitimate reason for using the domain — for example, if two businesses have the same (or similar) names. It can also include cases where the domain owner is using the name non-commercially. When a domain dispute is opened, it will be looked at by an independent arbiter accredited by ICANN. It's important to note that these arbiters can only resolve disputes regarding top-level domains that are registered with ICANN. In addition, a UDRP proceeding may not be enough to settle certain disputes, and you might still need to engage in negotiation with the other party or settle the matter in court.

Conclusion :

Looking at the current situation prevailing in the world, it is certain that domain name disputes are menace. It is a menace which has no boundaries. In my opinion, it is similar to terrorism. The only difference is that in the latter human life is affected. These have robbed businesses of their fortune. Looking from the Indian perspective cybersquatting has been prevalent since internet came to the subcontinent. The courts in India have decided many cases related to cybersquatting typosquatting . It is the imperative for the parliament to enact a law which would deal with this menace. As of now there is no such law which prohibits cybersquatting like that of the United States. Cybersquatting has opened the eyes of governments across the world and has prompted them to look into this phenomenon in a serious manner.

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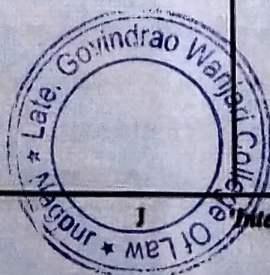
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ISBN - 978-81-926265-0-5



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
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The role of Intellectual Property Rights in protection of Biodiversity

Miss Hanifa Sheikh(Visiting Faculty at Govindrao Wanjari College of Law,Nagpur and University's Law College, Nagpur) and Miss Priyanka Mardikar(Visiting faculty at MNLU,Nagpur)

Any rights over creations of the mind or products of the intellect are known as intellectual property rights. For instance, if someone composes a piece of music, then he or she can be thought to have used their intellect and innate talent to create the art work and hence, they are entitled to have rights over their creation. Similarly, when someone codes an app or software which is similarly a work of their intellect, then the law provides for provisions wherein the individuals who have created the software or the app can have rights over its distribution, licensing, and sale. Of course, to qualify for protection under the existing intellectual property regime, the creator has to conclusively prove that the creation is his or hers and they have not lifted the idea or the process from someone else or have not copied their creation from an existing piece of intellectual property.¹

Types of Intellectual Property Rights

The intellectual property rights cover the musical, literary, artistic, inventions and discoveries, and even designs, artworks, phrases, words, and symbols. Indeed, it can be said that IPR (Intellectual Property Rights) encompass any work of the mind and hence, the ambit of the works that are covered is indeed growing by the day considering the fact that the 21st century has witnessed an explosion in the number of products that are creations of the intellect.

There are several types of IPR and some of them are trademarks, patents, copyright, trade secrets, and rights over industrial designs. Without elaborating in detail on these types of IPR since this article is intended to be an introductory primer, it needs to be mentioned that with the growing trend of IPR theft and violations wherein the chances of stealing and lifting as well as copying and imitating the works of others has become rampant, an entire industry lawyers, legal experts, and



legal firms are engaged in advising their clients about the nuances of filing for protection under IPR laws and suing imitators and violators as the need arises.²

Intellectual Property (IP) refers to the protection of creations of the mind, which have both a moral and a commercial value.

IP law typically grants the author of an intellectual creation exclusive rights for exploiting and benefiting from their creation. However, these rights, also called monopoly right of exploitation, are limited in scope, duration and geographical extent.

IP protection is intended to stimulate the creativity of the human mind for the benefit of all by ensuring that the advantages derived from exploiting a creation benefit the creator. This will encourage creative activity and allow investors in research and development a fair return on their investment.

IP confers on individuals, enterprises or other entities the right to exclude others from the use of their creations. Consequently, intellectual property rights (IPRs) may have a direct and substantial impact on industry and trade as the owner of an IPR may - through the enforcement of such a right - prevent the manufacture, use or sale of a product which incorporates the IPR.

For this reason control over the intangible asset (IPR) connotes control of the product and markets.

IP protection encourages the publication, distribution and disclosure of the creation to the public, rather than keeping it secret while at the same time encouraging commercial enterprises to select creative works for exploitation.

Intellectual property legal titles relates to the acquisition and use of a range of rights covering different type of creations. These may be industrial or literary and artistic.



Intellectual property has a dual nature, i.e. it has both a national and international dimension. For instance, patents are governed by national laws and rules of a given country, while international conventions on patents ensure minimum rights and provide certain measures for enforcement of rights by the contracting states. Within Europe, the European Union is pushing for the harmonization of both substantive and procedural laws.

General Conventions

Convention for the Protection of Industrial Property Rights signed in Paris on 20 March 1883, as last revised on 14 July 1967 (Paris Convention).

Berne Convention for the Protection of Literary and Artistic Works Paris Act of 24 July 1971. This was first drafted on 9 September 1886, completed in Paris on 4 May 1896, revised in Berlin on 13 November 1908, completed in Berne on 20 March 1914, revised: Rome 2 June 1928, Brussels 26 June 1948, Stockholm 14 July 1967, Paris 24 July 1971 and amended on 28 September 1979.³

Convention establishing the World Intellectual Property Organisation (WIPO), signed at Stockholm on 14 July 1967, amended on 28 September 1979.

Agreement on Trade-Related Aspects of Intellectual Property Rights including trade in counterfeit goods (TRIPS Agreement) part of the GATT Uruguay Round signed in April 1994. The TRIPS Agreement, negotiated during the Uruguay Round, sets minimum standards.

It has also invited the WTO to take into account relevant provisions of the Convention, their in Bio-prospecting is the systematic search for commercially valuable biochemical and genetic resources in plants, animals and micro-organisms. These resources may be used in food production, pest control and the development of new drugs and other related biotechnological applications. Often these valuable biochemical and genetic resources are part of the traditional knowledge of a community passed down through generations. Therefore, the screening of the



macrocosmic world of traditional knowledge often provides pharmaceutical companies with vital resources which can be used towards cost containment in their research and developmental efforts. As a result, bio-prospectors are always interested in obtaining patent rights for the final product - the culmination of specific biological material and the traditional knowledge surrounding it.⁴

Indiscriminate harvesting of natural resources, as led by market forces, through bio-prospecting and acquiring IP rights has a negative effect on biodiversity, as extraction far exceeds replenishment. In addition, in the absence of any benefit-sharing instrument, the biological resources of a nation and the traditional knowledge of indigenous communities are misappropriated.⁵

The CBD has two interesting provisions relating to IPRs. One (Article 16.5) states that Contracting Parties shall cooperate to ensure that IPRs are "supportive of and do not run counter to its (the CBD's) objectives". However, this is "subject to national legislation and international law". Another (Article 22) states that the CBD's provisions will not affect rights and obligations of countries to other "existing international agreements, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity". Read together and in the spirit of the CBD, many people have said there is a basis for countering the runaway march of the IPR regimes described above.⁶

But in order for this argument to hold, the actual impacts of IPRs on biodiversity need to be examined. This is a difficult subject, for direct impacts are hard to perceive. However, the following aspects must be considered (Kothari and Anuradha 1997)

Current IPR regimes have allowed industrial and commercial interests to appropriate the resources and knowledge of resource-rich but economically poor countries and communities, further 'impoverishing' them or excluding them from technological improvements;

IPRs are likely to greatly intensify the trend to homogenize agricultural production and medicinal plant use systems. In agriculture, for instance, any corporation which has spent enormous amounts of money obtaining an IPR, would want to push its varieties in as large an area as possible. The



result would be serious displacement of local diversity of crops (though of course IPRs would not be the only factor in this).⁷

Increasingly species-wide IPRs (such as those on transgenic cotton and soybean) could stifle even public sector and small-scale private sector crop variety development;

Having to pay substantial royalties to industrial countries and corporations could greatly increase the debt burdens of many countries. This could further intensify the environmental and social disruption that is caused when debt repayment measures are taken up, such as the export of natural products;

Farmers who innovate on seeds through re-use, exchange with other farmers, and other means, would be increasingly discouraged from doing so if the tighter regimes that UPOV 1991 sanctifies are imposed on their countries; these regimes would also increase the economic burden on farmers, further discouraging innovation;

The ethical aspects of IPRs are serious, and to many communities and people the most important reasons for opposing current IPR regimes:

The patenting of life forms (abhorrent to many traditional societies and modern conservationists because of its assumption that nature exists apart from, and for the interest of, humans); the privatisation of knowledge (repugnant to many societies which held knowledge to largely, though by no means only, in the public domain); and others.

Biodiversity is the variation in the living animals on the earth. It is interesting to see so many types of living beings in both plants and animals. However, all of them are interdependent for survival. We can see biodiversity in different habitats of environment like aquatic biodiversity, terrestrial biodiversity, soil biodiversity, etc. This diversity on the micro level can be attributed to chemical diversity, genetic diversity, functional diversity, etc. Also, there is diversity concerning gender (as male and female), age, size, etc. This indicates that biodiversity is present in every aspect of life.



The importance of biodiversity in the environment comes from the fact that every living being including humans is dependent on it directly.

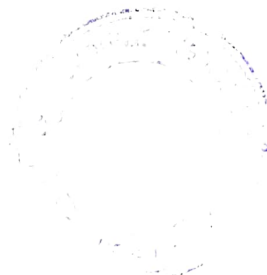
Any damage to it also affects humans at large. So we need to conserve biodiversity for our survival.

IPRs, as the term suggests, are meant to be rights to ideas and information, which are used in new inventions or processes. These rights enable the holder to exclude imitators from marketing such inventions or processes for a specified time; in exchange, the holder is required to disclose the formula or idea behind the product/process. The effect of IPRs is therefore monopoly over commercial exploitation of the idea/information, for a limited period. The stated purpose of IPRs is to stimulate innovation, by offering higher monetary returns than the market otherwise might provide.

While IPRs such as copyrights, patents, and trademarks are centuries old, the extension of IPRs to living beings and knowledge/technologies related to them is relatively recent. In 1930, the U.S. Plant Patent Act was passed, which gave IPRs to asexually reproduced plant varieties. Several other countries subsequently extended such or other forms of protection to plant varieties, until in 1961, an International Convention for the Protection of New Varieties of Plants was signed. Most signatories were industrialized countries, who had also formed a Union for the Protection of New Varieties of Plants (UPOV). This treaty came into force in 1968.⁸

Plant varieties or breeders' rights (PVRs/PBRs), give the right-holder limited regulatory powers over the marketing of 'their' varieties. Till recently, most countries allowed farmers and other breeders to be exempted from the provisions of such rights, as long as they did not indulge in branded commercial transactions of the varieties. Now, however, after an amendment in 1991, UPOV itself has tightened the monopolistic nature of PVRs/PBRs, and some countries have substantially removed the exemptions to farmers and breeders.

In addition, in many countries, patents with full monopolistic restrictions are now applicable to plant varieties, micro-organisms, and genetically modified animals. In 1972, the U.S. Supreme Court ruled that microbiologist Ananda Chakraborty's patent claim for a genetically engineered



bacterial strain, was permissible. This legitimized the view that anything made by humans and not found in nature was patentable. Genetically altered animals, such as the infamous 'onco-mouse' of Harvard University (bred for cancer research), were also soon given patents. Finally, several patent claims have been made, and some granted, on human genetic material, including on material that has hardly been altered from its natural state.

Till very recently, these trends were restricted to some countries, which could not impose them on others. However, with the signing of the TRIPs agreement, this has changed. TRIPs requires that all signatory countries accept:

Patenting of micro-organisms and "microbiological processes"; and some "effective" form of IPRs on plant varieties, either patents or some *sui generis* (new) version.

TRIPs allows countries to exclude animals and plants *per se* from patentability. However, the provisions above have serious enough implications, for no longer are countries allowed to exclude patenting of life forms altogether (micro-organisms have to be open for patenting). Nor is there likely to be a great amount of flexibility in evolving *sui generis* systems of plant variety protection, for the term "effective" may well be interpreted by industrial countries to mean a UPOV-like model. Indeed, a series of events in 1999, such as meetings in Africa (February 1999) and Asia (March 1999) hosted by UPOV, WTO or other agencies, have shown that this interpretation is already being imposed on 'developing' countries. The African Intellectual Property Organisation (OAPI), representing 15 Francophone countries, has decided to join UPOV 199.⁹

Why is maintaining biodiversity important?

1. **Provides stability.** The air we breath is always fresh with sufficient oxygen. This oxygen ration is is kept in balance due to biodiversity. The plants produce the oxygen during photosynthesis by taking carbon dioxide. While humans and other animals breath in oxygen and leave out carbon-dioxide. This mutual dependence gives stability to life. Similarly plants consume nitrogen from soil to grow. The microbes decay the plant and its materials when dead to replace back the fertility back to soil of living beings are always kept under check by nature itself due to biodiversity. In a



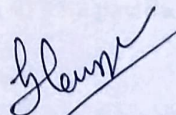
forest number of herbivorous animals like goats, buffaloes, deer which grow their numbers by reproduction. They are being killed by wild animals like tigers, lions, hyenas etc for food. These animals if not killed will rise in their population exponentially. The biodiversity as carnivores and herbivores keeps check on their population.¹⁰

2. Helps keep environment clean and healthy: Since ages there are many dead. These are decayed by bacteria to keep the environment clean. Or else this world would have been full of corpses. Similarly small animals like rats, insects, birds, pigs, dogs (stray) help to clear of waste around us. Hence we can see these living forms thriving in drainage canals, waste dumps indicating their role in environment.

3. Provides food to all the living beings: If you come across food chain in the nature, you will notice all the living beings are dependent on plants directly or indirectly. Carnivores depend on herbivores which in-turn depend on plants for survival

Conclusion

Current international regimes which have relevance to IPR and biodiversity issues need to be substantially reviewed, and attempts made both to use the spaces available within them and create new spaces and alternative regimes which can help to conserve biodiversity and protect the rights of indigenous and local communities. In particular, actions are needed in the World Trade Organization (WTO), concerning specifically the Agreement on (TRIPs), the Convention on Biological Diversity (CBD), and the other relevant international processes, including those that have been initiated by the World Intellectual Property Organization (WIPO). Besides, the search for alternative international regimes is also important.



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Dr. Archana Sukey

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has participated and presented a paper titled

Conflicts in Solemnization of Marriage -

International perspective in

International Conference & Bilateral Talk on

**“CONSTITUTIONALISM, INTERNATIONAL LAW
& PUBLIC POLICY: 2021 AHEAD”**

held virtually on 24th & 25th May, 2021

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de Govind Rao Wanjari College of Law

Por haber participado y presentado el artículo titulado

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Dr. Kranti Deshmukh
Principal,
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OFFICIATING PRINCIPAL
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ISBN 978-93-5473-047-4

Constitutionalism, International Law & Public Policy : 2021 Ahead

EDITORS

Sourabh UBALE

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PUBLISHED JOINTLY BY



“वेद्ये बहुतांशे हितं”

Marathwada Mitra Mandal's
Shankarrao Chavan Law College,
Pune (INDIA)

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Facultad de Derecho de la
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August 2021

Constitutionalism, International Law & Public Policy: 2021 Ahead

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Universidad Peruana de Ciencias Aplicadas (UPC)
Law School, Lima (Peru)

August, 2021



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First Edition, 2021

Published jointly by Marathwada Mitra Mandal's Shankarrao Chavan Law College, Pune (Affiliated to Savitribai Phule Pune University & Accredited 'A' Grade by NAAC) & Universidad Peruana de Ciencias Aplicadas (UPC) Law School, Lima (Peru)

Printed in India & Peru

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Conflicts In Solemnization of Marriages : An International Perspective

Dr. Archana Sukey

(Assistant Professor, Govindrao Wanjari College of Law, Nagpur)

In the last decade, India has started facing a new evil in the sacred institution of marriages. The ever-increasing number of scams in NRI marriages has struck the society hard. The parents of middle or High-class Indian girls are searching for NRI bridegrooms whenever they thought about performing marriage of girl, by presuming that they are earning a lot in abroad and their standard of living is much better than in India. If they perform marriage of their daughter with such NRI, their daughter will lead happy life. But it turns into hallucination and their life became frightening because of the bridegroom or his family member's greediness towards money. These NRI husbands abandon the brides after their short honeymoon. Sometimes due to their short cohabitation by then they became pregnant too. There were instances where the brides were left at airports with the intention to abandon them. Hence this chapter focuses on the Issues and Challenges in solemnization of marriages under Indian Foreign Marriage Act.

Introduction

Marriage is an important social institution. It is an association, which is socially approved. This relationship is defined and sanctioned by custom and law. Children born of marriage are considered as the legitimate offspring of the married couple. This

legitimacy is important in the matter of inheritance and succession according to the Hindu Marriage Act. Thus, marriage is not only a means of sexual Needs but it is more or less a universal social institution in India. No society gives absolute freedom to its members to select their life partners. Endogamy and exogamy are the two main rules that matrimonial choice. Both man and woman are regarded incomplete without marriage in the eyes of the Society.

Marriage can be defined as a socially recognized and approved sexual union between two adult individuals. Traditionally marriage in most societies is thought to be a sacrament. However, today marriage has taken the form of a contract and is bound by legal rules and regulations. Marriage takes various forms and the most common classification is that of monogamy and polygamy. Marital ideology across the world has been based on the principle of female subservience and male domination. Domestic violence which includes marital violence is a sad reality of the institutions marriage and family and takes various forms. Hence Divorce today is granted in almost all societies by law. However, in India the discourse on women's rights within marriage and family is a complex and controversial matter as it is closely entangled with religious and other social issues. Marriage is an institution which admits men and women to family life. It is a stable relationship in which a man and a woman are socially permitted to have children implying the right to sexual relations.

Marriages among Non-Resident Indians (NRI)

In the last decade, India has started facing a new evil in the

sacred institution of marriages. The ever-increasing number of scams in NRI marriages has struck the society hard. The parents of middle or High-class Indian girls are searching for NRI bridegrooms whenever they thought about performing marriage of girl, by presuming that they are earning a lot in abroad and their standard of living is much better than in India. If they perform marriage of their daughter with such NRI, their daughter will lead happy life. But it turns into hallucination and their life became frightening because of the bridegroom or his family member's greediness towards money. The parents of bride also offering heavy amounts as dowry since he is an NRI and earning a lot, but missing a point or logic when he is earning a lot why they are demanding more dowry, there is no point in asking more. At the time of marriages, the parents also taking it as prestigious issue, and claiming it as great deed. Neither the parents nor the bride looking it as an offence till it became an issue. When it becomes an issue, they start pillar to post, by then their life's turns miserable.

Therefore, the government constituted an expert committee in order to address this new evolving problem in NRI marriages, which submitted its report in November 2017. Based on the various suggestions of the committee, Integrated Nodal Agency (INA) was set up, headed by Ministry of Women and Child Development with senior officials from Ministries of External Affairs, Home Affairs, Law and Justice and Women and Child Development as its members. The INA has held several meetings and has taken various actions in this regard. But on considering the entire issue, what it has done is

a drop in the ocean. Ministry of External Affairs presented a bill on mandatory Registration of NRI marriages which is pending in Rajya Sabha. It has been referred to a standing committee. It also intends to amend the Passport Act, 1967, and the Code of Criminal Procedure, 1973. Since, the evils of this problem is trans-national, it requires international level agreements. For example, some of the states in United States have “no-fault divorce” policy which makes it very easier for the spouse to get divorce. In such situations where NRI husband obtains an ex-parte divorce decree in a foreign court, the Indian spouse is left remediless. Therefore, various steps are to be taken in order to address the issue in an effective manner, which should start even before marriage takes place so that the bride has sufficient accurate information about the groom before getting married. There should be stronger and more effective coordination between agencies at national and international level¹.

In India the following laws governs the NRI's in respect of marriage, divorce, maintenance and custody of the children's:

- The Hindu Marriage Act, 1955,
- The Special Marriage Act, 1954,
- **The Foreign Marriage Act, 1969**
- Quaranic Laws of Muslims
- Parsi Marriage and Divorce Act, 1936

Issues in NRI Marriages

The issues that arise out of marrying NRI bridegroom are in addition to the issues that are being faced by Indian woman.

Following are the issues that are being faced by the Indian women. These issues were gathered from the cases reported and decided by the courts.

- Their NRI husbands were abandoning the brides after their short honeymoon. Sometimes due to their short cohabitation by then they became pregnant too. There were instances where the brides were left at airports with the intention to abandon them. Even if they were taken to abroad, they were using like a maid servant arrested in a house only and subjecting them to physical and mental harassment brutally assaulting them.
- The NRI husbands providing false information in respect of their employments and social status and other particulars. The bridegroom's taking advantage of legal provisions of western countries, which are liberal in granting Divorce, obtaining ex-parte divorce, they can get divorce within days of marriage. Where as in Indian system after marriage at least one and half year's time requires to take divorce on mutual consent U/s 13 B of Hindu marriage act. If it's on contest we can imagine time requires getting divorce.
- The Indian woman who was taken on abroad facing much hardship without knowing the language and legal remedies available for them in the said country. Even they were not in possession to survive and feed their children. They have to fight for maintenance of them as well as their child on the foreign soil. They have to fight for custody of child. It is well known fact the legal services are so expensive in the western countries.

- The husbands obtaining divorce under foreign law, on that ground trying to avoid maintenance. Legal issues involved in NRI Marriages Conflict of Laws as the Indian laws are more stringent than the western countries in respect of divorceⁱⁱ.

A Critical Analysis of the Foreign Marriage Act, 1969

The main purpose of establishing this act in India was that, the people who are protected and governed by these laws can select a martial law based on their religion and community-specific marriage laws or can choose to follow the common laws of civil marriages in India which apply to the population in general. Thus, the citizens have a choice between personal laws, i.e., the people of India belong to different religions and faiths and are thus governed by different sets of personal laws in respect of matters relating to family affairs like marriage, divorce, succession, etc.

Although the act has a wide scope and explanation, it does not specifically state any provision in case of divorce, nullity or any other matrimonial remedy or relief, in marriages solemnized under this act. However, this need has been fulfilled by adding certain provisions which follow the provisions of the Special Marriage Act. It fails to answer questions such as if a remedy is given based on the provisions of the Special Marriage Act, then would the rights be given to the husband or wife as per general matrimonial laws be enforceable in such marriages solemnized under the Foreign Marriage Act, outside India.

Similarly, the prescribed penalties apply only to the citizens of India and it does not specify any penalty if any wrong is done by

solemnizing their marriage outside India or one party can be a Non-Resident of India (NRI)^v.

In this case, the marriage can be solemnized and registered in India or any other country from where the foreigner belongs or is a citizen of. The other case may be when both the parties are a citizen of India or are Non-residents of India and get their marriage solemnized under any foreign law.

2. Monogamy

A foreign marriage has to be necessarily monogamous. At the time of solemnization of marriage, neither of the party must be having a living spouse^{vi}. A foreign marriage in contravention to this rule would be null and void^{vii} when read with s. 24(1)(i) of Special Marriage Act, 1954. A marriage being null and void means that it will not be a legal marriage in the eyes of law.

Neither party to a marriage, solemnized under this act, during the subsistence of that marriage, contract any other marriage in India under any law, and either of them doing so will be guilty of offence of bigamy under the IPC.^{viii}

Either party to a foreign marriage who is an Indian Citizen may not, during its subsistence, contract any other marriage under my law, even outside India, otherwise, the party will attract the anti-bigamy provisions of the Indian Penal Code.^{ix}

3. Mental Condition

At the time of solemnization of marriage, both the parties must be having a sound mind. Neither party may be an idiot or a lunatic.

If the marriage is solemnized in contravention with this condition, it will be null and void.^x

4. Age of parties

At the time of solemnization of marriage:

- i. The bride must have completed 18 years of age
- ii. The groom must have completed 21 years of age^{xi}

A foreign marriage procured in violation to this would be termed as null and void^{xii}. If found guilty, one has to undergo 15 days of simple imprisonment or fine of Rs. 1000 or both.

5. Prohibited degrees of relationship

The marriage cannot be solemnized between two parties if they come under prohibited degrees of relationship as explained in special marriage act except where the custom governing at least one of them permit the marriage between them^{xiii}.

The special Marriage act states the category of men and women who comes under the prohibited degrees of relationship in schedule 1 and Section 2(b).

In the case of *Minoti Anand v. Subhash Anand*, the marriage between two Hindus was performed in Japan according to Japanese rites and customs and registered under the foreign marriage act. It was deemed to be a marriage solemnized under the Foreign Marriage Act, vide section 18 of the act. If in case a dispute arises, matrimonial reliefs would be available to the parties only under the provisions of Special Marriage Act and not under Hindu marriage act as the marriage was solemnized outside the territories of India^{xiv}.

6. Registration of Marriage

After the marriage is solemnized, parties can get themselves registered under the foreign marriage act, irrespective of the nationality of the other party. The pre-existing marriage must be registered under the act only when it satisfies all the conditions for a valid marriage given in section 4 of the act^{xv}.

The Marriage Officer may refuse to register a marriage under this section on the ground that in his opinion the marriage is inconsistent with international law or the comity of nations. For this, he has to give the reason in writing. If in case the Marriage Officer refuses to register a marriage under this section the party who has applied for registration can appeal to the Central Government in the prescribed manner within a period of thirty days from the date of refusal by the marriage officer; and the Marriage Officer will be binding by the decision of the Central Government on such appeal.

Registration of a marriage under this section shall come into action when the Marriage Officer issues a certificate of the marriage in the prescribed form and in the prescribed manner and make an entry in the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and by three witnesses. A marriage registered under this section is deemed to have been solemnized under this Act from the day such certificate is issued.

In the case of *Joyce Sumathi v. Robert Division Brodie*, the appellant wife was a resident of India performing Christian faith and married at Bahrain where the couple worked. The husband

deserted the wife who later on filed for divorce under the act. Although the trial court dismissed the petition stating that the marriage was not registered under section 17 of the Foreign Marriage Act but on appeal, the court held that any marriage solemnized under section 18(1) of the act or in relation to any other marriage solemnized in foreign country where at least one of the parties is an Indian will be governed by Foreign Marriage Act and the wife's petition for divorce was held maintainable^{xvi}.

7. Continuance of residence- Issue Solved

Earlier, for getting solemnized under the Foreign Marriage Act, the place in whose jurisdiction marriage used to be solemnized, the parties were required to reside in that very place for at least 3 years. Recently the Indian Government has acknowledged global realities and is trying to outreach to foreigners to relax these conditions. The Home Ministry took suggestions from the stakeholders before amending the Indian Citizenship Act, 1955. The proposal was of amending the law as per the needs of the foreigners. The target was to allow breaks for a total period not exceeding 30 days during the prescribed period of one year stay in India before he or she can make an application for Indian citizenship. Indians previously could not leave India even for a single day in the one-year prescribed period before applying for Indian Citizenship^{xvii}.

In the case of Maria Linda Rodrigues v. Ashley Joseph Rodrigues, the court said that Continuous residence for three years immediately preceding presentation of the petition is not necessary.



It is enough that petitioner wife was resident of India and had resided in India for three years prior to the presentation of the petition^{xviii}.

8. The act does not affect the validity of marriage outside its ambit

In the case of *Smt. Joyce Sumathi v. Robert Dickson Brodie*, where the marriage of a lady who was a citizen of India with a man who was a citizen of England was solemnized in the British political Agency, the marriage between the parties was considered to be a valid marriage^{xix}.

Critical Analysis of the Act

1. This Act is not an alternative but it is an additional provision. The provisions provided in this act do not supersede any alternative provision but simply acts as an additional provision.^{xx} This means that when a person is marrying a foreigner or is marrying in a foreign country, this act is available to them as an option to get their marriage solemnized under the same. This somewhere degrades the importance of this act which is formulated considering certain concerns in mind. It can be presumed that the statutes in India can work in the absence of such act as well.
2. It is not a complete act. The Foreign Marriage Act, 1969 only deals with three factors relating to foreign marriages. The first is the conditions for solemnization of marriage i.e., monogamy, age, soundness of mind and prohibited degrees of relationship. Second, includes the process of solemnization of marriage mentioned above and the third factor relates to the registration of marriage.

3. There are various other factors which are not dealt with in this act. These factors are mentioned below :

Firstly, the laws dealing with divorce. In the case of divorce between the parties whose marriage is solemnized under this act, no law pertaining to this situation is mentioned in the act.

Secondly, the laws relating to maintenance is also not dealt which can be aroused in at the time of divorce of parties that one of the parties needs to be maintained after the legal separation of the adults.

Thirdly, laws dealing with the citizenship status of the parties solemnizing under the act are not mentioned.

Fourthly, the issues related to legitimacy and citizenship of the child born out of such marriage is nowhere dealt with. The act nowhere explains the different conditions which can arise when a child is born through procreation or adoption or any other way under this act.

The Courts failed to address another issue that while Section 18 provides for matrimonial relief, for succession under Foreign Marriage Act, the parties seeking remedy cannot use any provisions of joint family status, inheritance rights of parties to a civil marriage and the succession law applicable to the parties and their minor children and their future descendants found in the Special Marriage Act, as the Foreign Marriage Act has not specified any provisions for this issue, which is silent on these matters. So, even if the marriage was solemnized and registered under the Foreign Marriage Act, the

parties, and future descendants will have to approach the Court under the laws of succession applicable in general cases.

Fifthly, the cases of nullity of marriage are not dealt with. The act although mentions the cases in which the marriage will be termed as null and void, the act fails to address the issue in detail or separately say what can be the probable consequences of entering into a marriage which is null and void.

Sixthly, the act does not provide with any provisions for matrimonial remedies. Since the grounds for relief in such cases are similar to those as covered in the Special Marriage Act, the Foreign Marriage Act has provided that, after making necessary alterations to the provisions of the Special Marriage Act, while not affecting the main point at issue, the parties will have matrimonial relief.

For all these factors relating to these kinds of marriages, the act relies upon The Special Marriage Act. This implies that this act cannot be read in isolation but will always need to be read with the Special Marriage Act.

4. When prescribing penalties, the punishments clearly apply only to Indian citizens and cannot come into action if the foreign party to the marriage is guilty of such crimes. This limits the scope of the Act as when in the case of desertion by one of the parties, if a petition is filed by the other, challenging the said matrimonial proceedings on the grounds that the marriage cannot be subjected to Indian laws. So, if the issue raised questions whether the Hindu Marriage Act would apply when

the marriage is performed abroad and registered by the Marriage Officer of the country, as per Hindu customs, the provisions of law will answer by stating that the Hindu Marriage Act applies only when both parties are domicile of India, if the respondent is not an Indian citizen but belongs to the other country, he will not be subjected to Indian jurisdiction and will thus not face any matrimonial proceedings against him. So, in such cases, the Foreign Marriage Act failed to identify the possibility of such cases due to which a wrongdoer under this Act will be able to escape untouched by the law.^{xxi}

5. The act is just an enabling law and does not make it compulsory for the parties to initially solemnize or register the marriage since the provisions dealing with them include 'may' and not 'shall' or 'must'. If the foreign marriage is solemnized otherwise than under this act and never registered under the foreign marriage act may be perfectly valid.^{xxii}
6. Under this act, the embassy is authorized to solemnize the marriage when at least one party is Indian and the parties are living in abroad. In such a case, irrespective of the fact that one or both the partners are Indians; the party needs to submit an affidavit by the court of India on a stamp paper signed by a notary and advocate including stating that the parents in India consented and do not have any objection with the marriage. This affidavit is to be produced by the Indian partner only.^{xxiii} The law asks only the Indian Party to get this affidavit. Moreover, for the solemnization of marriage, the Indian party

needs consent of parents in writing. Although being sane and adult, the consent of parents is required which considerably restricts their freedom to marry and choose a partner because in case the parents don't consent for the marriage, their fundamental right to choose a partner is infringed as per the Indian Constitution. If the parties are adult and of marriageable age i.e., 18 for girls and 21 for boys, sane and are not in prohibited degrees of relationship should be free to marry without anyone's consent except the other party and the law.

Role of Judiciary

In the case of *Neeraja Sharaph vs. Jayant V. Saraph*^{xxiv}, the court has emphasized on the need to consider legislative safeguarding of the interests of women and also suggested the following specific provisions:

1. If Marriage between an NRI and an Indian woman has solemnized in India than it may not be annulled by any foreign court.
2. Adequate alimony should be paid to the wife by the husband, in the case of divorce.
3. The decree of Indian court should be made executable in foreign courts both on the principle of comity by entering into reciprocal agreements and notify them under section 44A of the Civil Procedure Code which talks about binding nature of foreign decree i.e.; it is executable as it would have been a decree passed by that court.

Role of the Government of India

The National Commission for Women was appointed as a coordinating agency at the national level for dealing with issues pertaining to NRI marriages by Government of India vide Ministry of Overseas Indian Affairs order dated 28th April 2009. In furtherance of this, the NRI Cell was formally inaugurated on the 24th of September, 2009, to deal with the complaints received from within the country and abroad resulting from cross country marriages wherein there is any deprivation of woman rights or any issue involving injustice to women.

In a report of 2011-12, the total number of cases registered by the NRI cell was 480. Out of all the states and Union territories, maximum cases were reported by residents of Delhi followed by Uttar Pradesh, Haryana and Punjab. The maximum number of complaints were reported to India i.e., 180 followed by the U.S. with 19 complaints.

Ministry of Overseas Indian Affairs (MOIA) launched a scheme in February 2007 to provide financial assistance for obtaining legal aid/counselling through Indian Missions abroad. The scheme has been launched in the USA, UK, Canada, Australia, New Zealand, Malaysia, Singapore and Gulf countries.

A National Consultation on "Marriages to Overseas Indians" was organized by the Ministry in February, 2006 following which the Ministry of Overseas Indian Affairs jointly with the National Commission for Women (NCW), organized two regional workshops in Chandigarh and Thiruvananthapuram in 2006 with the objective

of involving the State Commissions for women as well as the women organizations of the States concerned to spread awareness.

Conclusion

The Foreign Marriage Act covers within its ambit, a marriage between an Indian and a Foreign citizen or two Indian marrying abroad. Unlike the Hindu Marriage Act, The Foreign Marriage Act is not concerned about religion. It focuses on the legal aspects governing the institution of marriage. Its features are derived from, both, The Hindu Marriage Act and The Special Marriage Act.

A marriage, which is usually considered to be a family and a religious occasion, has its own legal impacts, which is not given much importance. The Foreign Marriage Act, however, highlights these legal implications of the institution of marriage.

While the Courts need to address the flaws in this act, it must be appreciated as a protective law that wholly protects Indians outside of Indian Territory, as the law requires a wider scope and application to ensure that it effectively governs such special cases of marriages. While it was derived from the basis and provisions of the Special Marriage Act, it has successfully understood where the people need legal safeguarding in such marriages, and thus, despite a few legal fallacies, it is a piece of legislation appreciated for giving the people more rights and freedom.

ⁱ Jyotsna Gynanashekar, A Study Foreign Marriage Act, 1969, Vol. 2, 1(2017), (Apr. 15, 2021, 7:00 AM) <https://www.wisdomcrux.lawtimesjournal.in/index.php/2017/10/11/study-foreign-marriage-act-1969/>



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