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Volume 6, Issue 4 (I) : October - December 2019 Part - I

CONTENTS

Research Papers

International Journal of Advance and Innovative Research
Volume 6, Issue 4 (I): October - December, 2019 Part - I

ISSN 2394 - 7780

INPUTS FOR ORAL COMMMUNICATION BASED ON THE LEARNING NEEDS OF SPEECH 111 STUDENTS IN THE UNIVERSITY OF EASTERN PHILIPPINES

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ABSTRACT

This study aimed to find out the Inputs for Oral Communication Based on the Needs of Speech 111 students in University of Eastern Philippines, school year 2016-2017, for them to have the necessary special class remedies as to their difficulties in learning the subject based on the lessons discussed.

Specifically, it aimed at identifying the Inputs in Oral Communications based on the learning needs.

Identified as inputs in the dissertation study conducted on the learning needs of Speech 111 are pronunciation (segmentals), intonation and stress (suprasegmentals), needs and importance of oral communication, listening comprehension, vocabulary enrichment, public speaking, and the different speech activities on various situations. This implies that a lot of exercises on listening and speaking skills are to be provided in the workbook to meet the students' needs in Speech and Oral Communication course.

This descriptive-correlational research used modified questionnaire patterned after Clifford Prator and the needs analysis of the Institute of Language Teaching and Learning, University of Auckland, New Zealand is the primary source of information. It contained with the perceived needs in degree of importance, level of needs, and level of difficulty using the 5.point Likert scale scoring system.

A total of 243 students and four (4) faculty members teaching Oral communication subjects served as respondents in this study.

Frequency count, percentages, and weighted mean computation were used to analyse the data obtained from the respondents. The Spearman Ranked Order Coefficient of Correlation was used to test the hypothesis of no significant relationship between the students' learning needs and the teachers' perception of their learning needs. The T-test for two independent samples were used to test if there is a significant difference between the students' perception of their needs and those of the teachers.

The findings of the study indicates that the Inputs for Oral Communications of Speech 111 students emphasize that their learning needs as "very much important", "very much needed", and "difficult". Meanwhile, the teachers' perceived those learning needs as "very much important", and "much difficult"

In the test of difference, a significant difference was found between the students' perception of their needs and those of the teachers in terms of degree of importance. In terms of level in needs and level of difficulty, no significant difference was found. In case where the teachers and students differed in perception, the teachers are expected to focus more on the students' needs.

Identified as important lesson for the students to enhance their Oral Communication competence particularly centred on exploring the nature communication, explaining the process of communication, explaining the dimensions of communication, elaborating Influence of Gender on the Dimensions of Communication, explaining Non Verbal miscommunication, explaining Verbal miscommunication, explaining the Functions of Communication, learning the types of speech context, giving the types of speech style, learning the types of speech acts preparing and delivery of speech, understanding the types of speech, principles of speech writing and principles of speech delivery.

Keywords: learning needs; speech acts; workbook; verbal and non-verbal communication, oral communication

1. INTRODUCTION

All of us are really born with the ability to speak and we have the capacity to learn the language. However, people in our society cannot function without communication. Society exists and grows with every communication activity between and among persons within that society. We are social beings who always interact all the time. In fact, most of our active time is done in speaking

Therefore, this study clears up the misconception. Communication, seemingly natural and therefore, need not be studied, it has to be learned and mastered. Communication is an art, a science, a process, and a technique. Studying communication involving learning about elements, discussions and principles as what Ramona S. Flores emphasized in her book in oral communication.

ISSN 2394 - 7780

This study will add, level upon level, to the students' understanding of oral communication. Impart, tips for effective communication are emphasized, awhile exercises and activities provide opportunities for practice.

For the above reasons that this will be a guide for the students in navigating the intricacies of the process of communication. The goal of this paper is for the students to learn that effective oral communication is the bridge to success in the real world outside the classroom. It is hoped that this study will widen the students' world of communication, enabling them to become effective communicators. Lastly, the researcher envisions this study as a vehicle that will bring the students through to the real world armed with the realization that knowing how to communicate and communicate well are an integral part of their success.

2. OBJECTIVES OF THE STUDY

This study aimed at finding out the Oral Communication needs of Speech 111 students in the University of Eastern Philippines. Specifically, this study intended to:

1. identify the perceived learning needs of Speech 111 students in taking Oral Communication in terms of degree of importance, level of needs, and level of difficulty;
2. identify the teachers' perceptions of the learning needs in terms of degree of importance, level of needs, and level of difficulty.
3. Identify the inputs based on the learning needs of Speech 111 students.

3. METHODOLOGY

This study was conducted in the University of Eastern Philippines (UEP), the only comprehensive state university in the Eastern Visayas Region, which is located in the municipality of Catarman, Northern Samar.

The College of Arts and Communication being the University College offers the general education courses of which Oral Communication subject, the target audience of this study

This study used the descriptive-correlational research that focused on identifying the oral communication learning needs of Senior high school students as perceived by the students and the teachers. As a descriptive research it is concerned with the description of the current state and analysis of relationship between variables, the principal aim of which is to gather inputs for Oral Communication.

The variables of this study were composed of the input, process and output. The input variables were the learning needs of Oral Communication students and the teacher's perceptions on the students' learning needs. The students' learning needs were identified in terms of degree of importance, level of needs, and level of difficulty using the 5-Point Likert Scale scoring system. The degree of importance was categorized as very much important, very important, important, fairly important, and not important. The level of needs was categorized into very much needed, much needed, needed, less needed, and not needed. The level of difficulty was categorized as very much difficult, much difficult, difficult, less difficult, and not difficult. The process/throughout variable was the analysis of the learning needs of the Oral Communication students. The output variable was the study, which was organized based on the learning needs of Oral Communication students where the inputs consists of pronunciation (segmentals), intonation and stress (suprasegmentals), needs and importance of oral communication, listening comprehension, vocabulary enrichment, public speaking, and the different speech activities on various situations.

4. FINDINGS

The students' viewpoints of their learning needs showed that the items are "very much important" as reflected in the grand weighted mean of 4.26 and this implies that inasmuch as passing the course is concerned apart from the goal of oral proficiency. While the teachers' perceived the students' learning needs as "very much important" as reflected in the grand weighted mean of 4.75 and this shows that since talking was identified in almost all indicators to be very much important, these should be addressed in their course content.

Table-1: Oral Communication Learning Needs of Speech 111 Students by Degree of Importance as Perceived by Themselves and by Teachers

Perceptions	Grand Mean	Interpretation
Students	4.26	Very Much Important
Teachers	4.75	Very Much Important

The grand weighted mean of 4.25 shows that all the mentioned items in the students' learning needs by level of needs are "very much needed", which indicates that a workbook to address them could be of good help. The teachers' perceptions on the students' level of learning needs rated as "very much needs" as reflected in the

ISSN 2394 - 7780

grand weighted mean of 4.25 and this means that the teacher's innovativeness is one key to stir student interest in addressing the very much needed indicators.

The items on the level of difficulty reflected in semblance to those learning needs perceived by the students rated "very important" in Table 1 and "much needed" in Table 2 in the degree of importance and level of needs, respectively. Based on the grand weighted mean of 2.62, all items were rated "difficult" and it suggests that there is a need to focus on the students speaking skills in their communicative performance in English. And based on the grand weighted mean of 3.30, the teachers' perceived the level of difficulty of the students' learning needs from the "much difficult" to "difficult" rating and it implies that there is a need to address the students' speaking skills and proficiency in the English language.

Table-2: Learning Needs of Speech 111 Students by Level of Difficulty as Perceived by Themselves and by Teachers

Perceptions	Grand Mean	Interpretation
Students	2.62	Difficult
Teachers	3.30	Difficult

The test of relationship between the perceptions of the students of their learning needs and those of the teachers showed that the degree of importance, level of needs, and level of difficulty were significantly related, which means that the students' and teachers' perceptions are the same.

These topics, exercises, and activities were incorporated in the workbook, they would help the students become competent and responsible speakers and listeners and thereby meeting adequately the everyday problems of formal and informal communication.

Identified as inputs in the dissertation study conducted on the learning needs of Speech 111 are pronunciation (segmentals), intonation and stress (suprasegmentals), needs and importance of oral communication, listening comprehension, vocabulary enrichment, public speaking, and the different speech activities on various situations. This implies that a lot of exercises on listening and speaking skills are to be provided in the workbook to meet the students' needs in Speech and Oral Communication course.

Chapter 1 discusses on the need and importance of oral communication. This contains the overview, learning objectives, key concepts/topics, the learning tasks and exercise.

Chapter II contains the listening and speaking skills. It also contains the overview, learning objectives, the key concepts and topics, the learning tasks and exercise.

While, Chapter III discusses the public speaking and other speech events. It also contains the overview, learning objectives, the key concepts and topics, the learning tasks and exercise.

Chapter IV talks about the communication activities. It also has an overview, learning objectives, the key concepts and topics, the learning tasks and exercise.

5. CONCLUSIONS AND IMPLICATIONS

In the light of the findings of the study, the following conclusions and implications were drawn:

Using a module/workbook is more effective for Oral Communication as compared to traditional teaching method. It can be concluded that students wanted more lessons on pronunciation, intonation, stress patterns, etc. They believed that pronunciation is an important aspect of learning a language. This means that if the students are provided the opportunity of learning at their own pace, according to their ability, level and needs, it may yield a better academic performance. It also implies that based on the survey conducted, listening skill should not be neglected in the teaching-learning process for it greatly affects their communication skills.

In terms of teachers' perceptions on the learning needs of the senior high school students of Oral Communication subject, the majority of the oral communication skills are perceived to be very important, very much needed and much difficult to the students. This implies that for the learning-teaching situation to be effective, oral communication skills are needed in order for the students to perform well.

6. RECOMMENDATIONS

Based on the conclusions drawn, the following recommendations were arrived at:

1. Students should be made to actively participate in the oral communication aspects of the language to enhance their listening and speaking skills. The teacher should give more activities or exercises requiring on

ISSN 2394 - 7780

pronunciation including segmental features, vowels and consonants and the stress and intonation patterns, vocabulary, fluency, and comprehension.

2. Oral Communication teachers should provide opportunities for individual oral presentations as part of a lesson to encourage the students to develop speech habits that motivate the students to speak with the right pronunciation, intonation, stress, and comprehension. Furthermore, they should bring their teaching to the level of the students' aptitude and make classroom interactions more interesting so as to arouse the interest of the students. This would go a long way in solving the problem of poor academic performance of students in Oral Communication subject.

3. Oral Communication teachers should be masters of and competent in speech and oral communication. One venue to attain this is upgrading themselves by attending various oral communication trainings and seminars.

4. It is recommended that the Oral Communication workbook used for oral communication classes to ensure quality learning for students enrolled in the subject.

5. It is recommended that a follow-up study be conducted covering not just the University of Eastern Philippines but also the two satellite campuses, i.e., UEP Laoang and UEP PRMC Catubig Campus to confirm or disconfirm the learning needs of the Oral Communication students and teachers who participated in the research.

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ISSN 2394 - 7780

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IMPLICATION OF LAW AND POLICY ON TWO CHILD NORM AS A QUALIFICATION FOR ELECTIONS TO LOCAL SELF GOVERNMENT – AN ANALYSIS

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INTRODUCTION

To begin with words of Mahatma Gandhi,[1] "Independence must begin at the bottom. Thus, every village will be a republic or Panchayath having full powers. It follows, therefore, that every village has to be a self-sustained and capable of managing its affairs. Ultimately, it is the individual who is the unit. Such a society is necessarily highly cultured in which every man and woman knows what he or she wants and, what is more, knows that no one should want anything that others cannot have with equal labour".

On the other hand it is pertinent to mention the thought of Dr. B.R. Ambedkar,[2] who said "So long as you do not achieve Social liberty, whatever freedom provided by the law is of no avail to you".

There are diametrical opposite views in the matter of implementation of two child norm as a qualification for woman and men contesting elections at the Panchayath level.

One strong view is that men and women contesting elections at Panchayat level will be a role model for implementing two child norm as a qualification. However the members belonging to schedule caste, schedule tribe and backward classes have never been a model what so ever good they practice, preach and follow especially in the matter of elections at different levels of Panchayath. As a result the said SC/ST and OBC men and women Panchayath members are rarely accepted as role models to the members of higher class and their kith and kin. As a result prescribing two child norm as a qualification for contesting elections at Panchayat's is turning to a violation of basic human rights of woman.

The other view on the issue of prescribing two child norm for contesting elections at Panchayath levels stabilizes population growth and implementation of National Family Planning Policy.

When one looks at the data of population release by National Family Health Survey (NFHS), it leads to the assumption that the family planning programme for stabilizing population has failed due to lack of proper approach and action. However when we look at the 1991 census of population the then Planning Commission of India (Presently NITI AYOG)[3] report rightly asserted that "the problems were with quality of service and access (quality of health care service suffered and contraceptive needs of couples remained unmet). The centralized planning and target oriented family planning approach had not worked partly because it allowed little innovation or flexibility.

The Karnataka State panchayat (Gram Swaraj) Act 1993, does not contain any disqualification as an embargo such as two child norm for contesting Panchayat elections though in some districts of Karnataka, the population is at rise.

I. History Beyond Two Child Norm By States As Qualification For Contesting Elections At Panchayath Level

There is brief history for the emerging jurisprudence for prescribing two child norm as qualification for contesting elections at Panchayat Level. The three States namely Rajasthan, Andhra Pradesh and Madhya Pradesh drafted their respective State Population Policies keeping in view the recommendations of Shri. M.S. Swaminathan committee report 1992 on National Population Policy (NPP) which had set the goal of India attaining replacement level of fertility by 2010[4].

[1].Quoted in Report of the Karnataka Panchayath Raj Act Amendment Committee, Final November 2nd 2014 Pg. 41

[2] Ibid Fn 1 pg. 127

[3] Report of Planning Commission of India 1992

4 M.S. Swaminathan Committee was appointed on the recommendation of National Development Council(NDC) 2000

ISSN 2394 - 7780

The aforesaid three States drafted their respective State population Policies late 1990,[1] with assistance of an International Agency in order to achieve mandate set by the M.S. Swaminathan report on National Population Policy (which had set the goal of India attaining replacement level of fertility by 2010) in the shortest span of 10 to 15 years. In order to do so, these states, along with Haryana and Orissa passed laws to prospectively debar from holding office those elected representatives to Panchayath Raj Intuitions (PRI) or Local Self-Government bodies who do not adopt two child norms.

The States have explicitly acknowledged in their policy documents that a conducive environment for small family norm can be created by ensuring gender equality, empowering women and improving their status through education.

The population policies of Andhra Pradesh, Madhya Pradesh and Rajasthan have taken the position that in order to achieve certain demographic goals and population stabilization, measures such as incentives and disincentives, like making two child norm a precondition for elected representatives observing minimum age at marriage for availing government facilities and services, linking health insurance benefits to sterilization and even proposing denial of food rations and free education to the third child would be necessary.

The author ultimately are of the opinion that any embargo on contesting elections at any level is normally first applied and experimented against the members of SC/ST and Backward class women by the higher class in the society. However no matter with what so ever sincerity the said women follow the law but rarely they are not seen as role models in history by the higher class elected members of panchayat.

II. Issues And Challenges In The Implementation Of Two Child Norm Policy As Qualification For Contesting Elections At Panchayat Levels

1. Issues of Misconception In Applying Two Child Norm:

The 73rd and 74th Constitutional Amendments 1992 were seen as golden movements for opening the doors of decentralization of power to the grass root levels of Panchayath. The said amendments were also highly welcomed since they provided for democratic participation of women, members of scheduled caste and scheduled tribe and the members of backward class citizens through the policy of affirmative action for contesting election [including that of the post of chairperson of Panchayat's].

However on the other hand simultaneously the population policy of some states insisted for stabilization of their population through the means of introducing legislation prescribing two child norm as a precondition for contesting election by women and also the men at Panchayath levels. As a result, the concept of ensuring decentralization of power turns to be a misconception by the passing of legislation for introducing two child norm for contesting panchayat elections. Of course, nobody could have stopped such a drastic step by the states for the obvious reason that "health" an item falls in the state list mandating the state to enact laws on the item.

2. Divergent Tactics For Avoiding Application Of Law:

Many a times members who got elected and got disqualified due to proof of third child in family applied different tactics for avoiding the law, for instance out of three children in the family elected Panch, Sarpanch and Adhiyakasha gave away one child in adoption to another family and got disassociated with the child with the pretext that the child given in adoption belong to the adopted parents family as per the provisions of Hindu Adoption and Maintenance Act 1956. By this tactics they got rid of application of two child norm for sustaining their elected position as Panch or Sarpanch .

3. Issue Of Sonship Preference In Hindu Family:

Another tactics which the elected members of Panchayath raise the arguments that having a son is an exclusive right of the married couple . Therefore any law coming as an obstacle to have son as a third child or otherwise would be against the norms of Hindu jurisprudence.

4. Other Tactics For Escaping From Law:

Another dangerous tactics for avoiding the application of two child norm as an embargo for contesting election at Panchayath level by electing members are such as divorcing the wives, sending the pregnant wife to the maternal home for a long time [so that no one in the village come to know about the pregnancy and delivery], undergoing abortion, disowning the third child or claiming that the child was of some relative etc.

1 Futures Group International

ISSN 2394 - 7780

5. |Following Wrong Population Policies Of China And Some States Of India:

It is an admitted fact the population of China is higher than that of the population of India. China from long time insisted for one child norm for a family[1]. But then since recent times[2] it gave some flexibility for having a second child in a family. The said Chinese policy cannot be copied by Indian population policy makers for varied reasons mainly China had a good record of health care, sanitation, literacy, etc.,

Back home coming to the experience of low fertility rate in population the Sates of Kerala and that of Tamil Nadu National Population Policy makers also cannot take these states also as example for having low fertility rate at national level for the obvious reasons that China, Kerala and Tamil Nadu were successful in having low rate of fertility due to the educational, health, civics sense and awareness of small family benefit in the Sates. Whereas the position of education, heath, civic sense is not the same in many States when compare to Kerala and Tamilnadu as a result population explosion remain to sustain in other states of India.

Today, India's population stands at 1.31 billion people, second only to China. Experts estimate India will surpass China in just a few years[3]. India's fertility rate has dropped to 2.3 births per woman in 2016, compared to 3.2 births per woman in 2000, according to government data[4] but the booming population has been raising concerns for decades due to a rising poverty, decline in jobs and a poor literacy rate.

"No person shall procreate more than two living children after a period of one year from the commencement of this Act," stated a population control bill introduced on the Parliament floor in 2016 by Prahalad Singh Patel, a legislator from the Central Indian State of Madhya Pradesh.

The bill -- which never even came to a vote -- listed measures that the Indian government would take if they wanted to check the ever-growing population. If passed, the bill would make it mandatory for individuals to seek permission from officials if they want to have more than two children, permission that could be denied if sufficient cause was not met.

III. Problem Of Implementation And Monitoring Of Laws By Officials Involved In Enforcing Two Child Norm Embargo At Elections To Panchayats:

1. Ambiguity In The Panchayat Raj Legislations:

Amendments were introduced in the State Panchayat Raj legislations of Haryana, Madhya Pradesh, Andhra Pradesh and Rajasthan[5] for prescribing third child as disqualification for contesting elections at Panchayat levels for different positions. However the said legislations suffered with ambiguities in legislations by way of not prescribing any exception to the disqualification now. For instance, if a mother gives birth to a triplet or a twin child then the two child norm cannot be insisted and enforced against the elected members of Panchayat.

2. Though Two Child Norm Embargo Is There For All Contestants At Panchayat Level Elections, However Law Is More Enforced Upon The SC/ST And OBC Men And Women:

It is an admitted fact that laws are meant for all but implemented not equally upon all. This means the rich in society by their dominant tactics escape from the clutches of law ultimately making a poor SC/ST and OBC members of Panchayats as victims of the law of two child norm.

3. Two Child Norm Embargo for Elections At State Legislatures And At Parliament Is Not Enacted:

It is ironical to mention that only the Panchayat Raj elected members, Panchs and Sarpanchs are choosen for the application of two child norm embargo for contesting elections at Panchayat level, whereas elections to State Legislatures and that of the Parliament are outside the scope of two child norm as an embargo for contesting elections.

4. Elected Panchayat Members Popularly Known For Developmental Works Get Automatically Disqualified If They Are Born With Third Child:

It is sad for the Panchayat members elected out of lot of community and family support even after completing number of developmental works in the Panchayat area when a situation comes for their resignation to their positions in Panchayats due to birth of third child in a family.

[1] 1979

[2] 2015

[3] According to United States Census Bureau

[4] National Family Health Survey

[5] Sec 19(1) of the Panchayat Act of Rajasthan debars and disqualifies person to be a member of Panchayat, if he/she has more than two living children, one of whom is born on or after Nov. 27, 1995.

ISSN 2394 - 7780

IV. Response Of Hon'ble Supreme Court Of India On Two Child Norm

Till now at many occasions the birth of third child, the adoption of one among three children giving in an adoption, etc., have arisen before many High Courts and the Hon'ble Supreme Court of India for judicial scrutiny. In the recently decided Supreme Court case that arose between ***Minasingh Majhai Vs. Collector, Nuapada*** (State of Orissa)[1]. The facts of the case were that Minasingh Majhai, a male member of Sarpanch was disqualified as member of Pnachayat due to the implementation of two child norm. However the facts reveal that in 1999 the said Sarpanch had given the first born child in adoption to another family. As a result the said Sarpanch argued before the Hon'ble Supreme Court that the two child norm of Orissa State Panchayat Raj registration cannot be invoked against him for the simple reason that by giving one child in adoption out of his three children, he had satisfied the two child norm law and his disqualification should be removed and be allowed to continue the position of Sarpanch.

Rejecting the contention of the petitioner Majhai the Hon'ble Supreme Court interpreted the law of two child norm in favour of the government by holding that any tactics either by giving child in adoption or otherwise will not make anyone to be out of the scope of the application of two child norms and hence rejected the appeal made by the petitioner to the Supreme Court on the basis of the judgment and order of the Orissa High Court that had disqualified the petitioner.

Application of disqualification for contesting Panchayat elections in State of Karnataka:

Thanks to the Karnataka State Legislature for not having a disqualification provision as an embargo of two child norm from contesting Panchayat elections. However the afore mentioned Act has one very appreciable disqualification provision i.e., contained in section. 12, Sec. 128 and Sec. 167 for contesting elections to the Village Panchayat, Taluk Panchayat and Zilla panchayat. The disqualification is mentioned in Sub-class (j) of the aforementioned sections which reads as under: "if the member does not have a sanitary latrine for the use of the members of his family".

CONCLUSION

The author of this article conclude by respectfully submitting that the Indian Parliament and that of the National Population Policy are not in favour of invoking any law at the central level for contesting Parliament elections by way of describing disqualification on the grounds of birth of third child in the family members contesting elections. The reason is that there are different dimensions for population explosions further it would be a futile exercise to experiment two child norm disqualification for elections in a country where the aged population is more than that of the population of the youth. Though India has a high demographic dividend of youth population, but then imposing disqualifications on the birth of third child for contesting any elections is not only tenable but not so highly practicable for implementation.

Furthermore India cannot bring law for prescribing disqualification in event of birth of third child norm for contesting elections either to Parliament or Panchayat Raj Institutions for one reason, i.e., India is a signatory to International Conference on population and Development 1992 where India and other countries have given an undertaking that they would not make any attempt to reduce and lower fertility rate in the population. Further they will not apply any device to check population explosion.

[1] 2018, SCC dated 24-10-2018

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ISSN 2394 - 7780

AN ANALYSIS OF CONSTITUENT ASSEMBLY DEBATE FOR ADOPTING ARTICLE 40 FOR ORGANIZING VILLAGE PANCHAYATS THROUGH CONSTITUTION OF INDIA

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1. CONCEPT OF PANCHAYAT RAJ

Panchayats have been the backbone of the Indian villages since beginning of the recorded history. In 1946, Mahatma Gandhi, the father of nation, aptly remarked that Indian lives in villages and unless the village life is realized, the nation as a whole cannot make progress.

In India, the system of panchayats has a long history. Its structure however varied from time to time. In rural India, te concept of 'Panch Parmeswar' is very old and very prominent, we also find reference of gram Panchayat in ancient and medieval literatures.

During independence struggle, Gandhiji said that the Indian independence must begin at the bottom and every village ought to be a Republic or a Panchayat with powers. His dream got translated into reality with the introduction of the three-tier Panchayat Raj System to ensure People's participation in rural reconstruction.

The roots of Panchayat Raj can be traced in the Article 40 of the Constitution of India which declared that the state shall take steps to organize village Panchayats and to endow them with such powers and authority as may be necessary to enable them to function as the units of self-government.

The aforesaid Article 40 in part IV of our Constitution was translated into Constitutional 73rd Amendment Act, 1992[1]. The said amendment inserted Part IX relating to panchayats constituting of 16 Articles and a schedule called 11th schedule.

Though in our original draft Constitution there is no mention about organizing urban local governments, yet the 74th Constitutional amendment act was passed by the parliament in the year1992. A new part IX A consisting of 18 Articles and a schedule called 12th schedule have been inserted. Part IX A[2] gave a constitutional foundation to the local self government units in urban areas though municipal administration had been in existence all over the country.

2. DEBATES OF CONSTITUENT ASSEMBLY ON THE ISSUE OF ORGANIZING VILLAGE PANCHAYATS AS AN INSTITUTIONS OF LOCAL SELF GOVERNMENT

Originally there was no provision for organizing village Panchayats in the Draft Constitution. When the Draft was published and the absence of this was noticed, a criticism was labeled that the new Constitution should have been drafted on the ancient Hindu model of State and that instead of incorporating western theories, the new Constitution should have been raised and built upon village panchayats and district panchayats.

Dr. Rajendra Parasad, who as early as 10th May 1948, i.e., two and half months, after the publication of the draft Constitution of India, express his opinion in favour of having village republic, as the basis of the Constitution. He even suggested in a letter[3] to the Constitutional advisor that the structure of the Constitution should begun from the foundations and then go up. But Sir. B. N Rau. When he dealt with this question pointed out that it was too late to make any attempt to change the basis of the Constitution which had gone so far. He however shared the view with Dr. Rajendra Prasad that the basic structure of the Constitution should have begun from the bottom and as such it was expected that at the time of introduction of the draft omission could be regretted and suggestion made for accommodating the principle in the body of the Constitution. On the contrary, the Chairman of the drafting committee Dr. Ambedkar when he introduced the motion, draft constitution on November 4th 1948 not only did not express regrets for the omission but felt gratified that the draft had rightly discarded the village and adopted the individual as the unit.

He said[4], the love of the individual Indians for village communities of course infinity if not pathetic. It is largely due to the fulsome price best owed upon it by Metcalfe who described them as little republics having nearly everything that the way within themselves and almost independent of any foreign relations. The existence of

[1] W.e.f. 24-04-1993

[2] W.e.f. 01-06-1993

[3] President Rajendra Prasad's Collection

[4] Constituent Aessenmbly debates Vol.7, No.1, p. 39

ISSN 2394 - 7780

these village communities each one forming a separate little state in itself as according to Metclafe[1] contributed more than any other cause to the preservation of the people of India, though all the revolutions and changes which thy have suffered and is in a high degree conducing to their happiness and to the enjoyment of a great portion of the freedom and independence.

No doubt the village communities have lasted where nothing else last. But those who take pride in the village communities do not care to consider what little part they have laid in the affairs and the destiny of the country, and while? Their part in the destiny of the country has been well described by Matcalfe himself, who says,

Dynasty of the diversity tumbled down. Revolution succeeds to revolution. Hindu, Pathan, Moghul, Maratha, Sikh, English are all on masters in turn but the village communities remain the same. In times of trouble they are on and fortify themselves. A hostile army passes through the country. The villages communities collect their little cattle with in their walls and let the enemy pass unprovoked.

Such is he part of the village communities have played in the history of their country. Knowing this, what pride can one feel in them? They have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived, surely on a low and on a selfish level. I hold that these village republics have been the reuniated of India. I am, therefore, surprised that those who condemned provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, and den of ignorance, narrow minded ness and communalism? I am glad that the draft Constitution has discarded the village and adopted the individual as its unit.

3. CRITICISM BY FEW MEMBERS OF CONSTITUENT ASSEMBLY ON THE VIEWS OF DR. B.R. AMBEDKAR ABOUT VILLAGE PANCHAYATS

Some of the members of the Constituent Assembly criticized the views of Dr. B.R. Ambedkar on the organization of village Panchayats and also the view of Ambedkar that the individual should be the unit of governance in the administration of village Panchayat.

The members criticized Dr. B.R. Ambedkar for passing very harsh views on the position of village and the people concerned with the administration of the village. Further members also criticized by not accepting village as an unity of local self-government. Instead Dr. Ambedkar wanted individual as an unit of development of a village.

Maulane Azharth Mohani[2] and Prof. Shibban lal Saksena[3] pointed out that if only that Ambedkar had kept the soviet constitution in view they would not have been any difficulty in providing village panchayats in Indian Constitution.

The only two persons who criticized the village panchayat system and justified the non inclusion of the same in th draft Constituion were Begum Aizaz Rasul[4] and Dr. Monomohan Das[5] the former speaking on the 8th November 1948 agreed with Dr. Ambedkar on his views in respect of village Pancayats and said[6]

A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be autocratic.

Speaking next to her, Dr. Das said that the drafting committee had, willfully left to it the prevention legislatures to frame whatever they liked about the village panchayat system and added that unless and until the village people were educated so as to become politically conscious the village system was bound to do more harm than good. To quote his own words, he said[7]

There is nothing in our Constitution that will take from the provincial legislatures the power to pass and an Act in that direction. If our provincial legislatures think that the village panchayat system will do immense good to

[1] Governor General of India, 1822 to 1845

[2] Constituent Assembly debates, Vol. 7, No.1, p-45

[3] Constituent Assembly debates, Vol. 7, No.3, p-285

[4] Constituent Assembly debates, Vol. 7, No.4, p- 305 (UP Muslim)

[5] Constituent Assembly debates, Vol. 7, pp – 307 – 308 (West Bengal General)

[6] Constituent Assembly debates, Vol. 7, pp 305

[7] Constituent Assembly debates, Vol. 7, pp 308

ISSN 2394 - 7780

our country, they are quite at liberty to introduce it in their legislatures and pass it accordingly. So I think, Sir the criticisms sometimes amounting to abuse, which have been showered upon the Chairman of the drafting Committee, are wholly uncalled for, unjustifiable, uncharitable and if I am permitted to say so undignified.

4. ACCEPTANCE OF ARTICLE 31-A FOR INSERTION IN THE DRAFT CONSTITUTION OF INDIA

Thanks to Sri. K. Santhanam, a learned member of Constituent Assembly for moving a resolution to incorporate Article 31-A of the Constitution which contained same and similar words that are present and mentioned in Article 40 of the adopted Constitution of India.

Thanks to the Chairman of our draft Constitution Dr. B.R. Ambedkar who generously agreed and accepted the resolution moved by Sri. K. Santham for having a provision in Part IV for organizing village panchayats by endowing the power and authority to function as institutions of local self-government.

Our Constitution 7th Schedule consists of three lists mentioning items and vesting power upon the Central, State and both Central and State legislatures for enacting laws for the governance of our country.

Item number 5 i.e., list 2 (State List) contain provision for both local government and local self-government. The item number 5 reads as "local government, i.e. to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government are village administration.

The author of this article all of the view that the border line distinction between local government and local self-government is that local governments are those there is de-concentration of power where as local self-government means de centralization of power .

Pursuant to item number 5 of state list number of State governments in our country have enacted legislations for providing three tier systems of local self-government namely gram panchayat, Taluk Panchayat and Zilla Panchayat (call differently in different states). The State of Karnataka during the period of Sri Ramakrishna Hegde the then late Chief Minister of Karnataka enacted a model legislation and implemented the same for establishing Mandal panchayat, Taluk Panchayat and Zilla Panchayats as units of local self-government in the year 1983 for the first time in our country.

CONCLUSION

Dr. B.R. Ambedkar felt that unless and until there is political consciousness, civic awareness and mainly education for the citizens of the village and the urban bodies the exercise for organizing village panchayats as institutions of local self-governments will be a futile job. The authors of this article finally conclude with the words of harat Ratna Dr. B.R. Ambedkar who said that "if the system of organization of village panchayat is introduced before our village people are properly educated, then I think, Sir, the local influential classes will absorbed to themselves al the powers and privileges that will be given by the Panchayat sytem and they will utilize it for their selfish motives. This system will enable the village Zamindars, the village Talukdars, the Mahajans and the money lending classes to rob, exploit the less cultured, the less educated, poorer classes of the villages.

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ANTI-DUMPING MEASURES: A REGULATORY PERSPECTIVE

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ABSTRACT
Anti-dumping measures, as the name suggests, are taken against the practice of 'Dumping'. The concept of anti-dumping measures has lots of implications and is important weapons in the arena of international trade. Anti-dumping measure is one of the permissible trade-remedy under WTO. Most of the countries have imbibed and implemented various provisions on anti-dumping. This basically deals with the price behavior of the exporters whereby, injury is the main ingredient required to be proved. Dumping per se is not bad, as prices may vary from time-to-time in accordance with the supply-demand market fluctuations. Therefore, there is nothing inherently immoral about the practice of dumping. Every country in fact wishes to exploit the opportunities of free trade, while at the same time no nation wants to compromise on the welfare of domestic industries. Therefore, where dumping causes or threatens to cause, material injury to the domestic industry, its designated authority has the power under WTO Agreement to initiate necessary action against such exporters.

In this paper an attempt is made to explain the procedure to regulate the instances of misuse of access to markets by multinational and large manufacturers who dump their products in the markets and the power of designated authority under WTO Agreement who initiates necessary action against such exporters.

Keywords: Dumping, domestic industry, anti-dumping measures and designated authority

1. INTRODUCTION
In the course of the gradual dismantling of tariffs and increased economic integration, non-tariff barriers to trade and competition have become relatively more important. However, when a foreign company would attempt to enter in its country selling products below the usual domestic price, anti-dumping and countervailing duty actions turns into a preferred means to impose restrictions on international trade. This anti-dumping mechanism (AD) was developed by GATT/WTO, aiming to avoid unfair competition by preventing the big businesses from monopolizing the market. The concept of AD emerged as the most widespread policy impediment to trade in the last 25 years and almost all WTO member countries have adopted/amended their anti-dumping legislation largely in accordance with the GATT provisions to deal with dumped imports. In this era of globalization, anti-dumping has acquired a special significance primarily as a means of checking unfair trade practices and promoting fair competition.

2. DUMPING
A product is said to have been dumped if it is introduced into the commerce of another country at less than the normal value of the product and it causes/threatens material injury to an established industry of the country.

In the context of International Trade Law, "the act of manufacturer or firm in one country exporting a product to another country at price which is either below the price it charge in its home market or is below its cost of production".[1]

Above explanations clears that, dumping *per se* is not bad. Nevertheless, if dumping causes or threatens to cause; material injury to the domestic industry, its designated authority has the power under WTO Agreement to initiate necessary action against such exporters. Sometimes, enterprises export products at very low prices in order to capture markets abroad and to eliminate competition.[2] To determine dumping, a comparison is to be made between the 'export price' of the product and the 'normal value' of the like product in the exporting country. If the 'export price' is less than the 'normal value' then the product is considered to be dumped.[3]

3. ANTI-DUMPING MEASURES IN GATT/WTO
Rapid industrialization has resulted in large-scale production, and in this situation dumping enables the producer to establish a dominant position in the market. This is common in international commercial practice for export

[1] Available at http//www.antidumping.com visited on 12.9.2019.

[2] Bhagirath Lal Das, *The World Trade Organization: A Guide to the Framework for International Trade* (Bookwell, New Delhi, 2007) p.205.

[3] Neeraj Varshney, *Anti-dumping Measures under the WTO Regime* (Universal Law Publishing Co., New Delhi, 1st edn., 2007) p.55.

ISSN 2394 - 7780

prices to be lower than the domestic ones. Therefore, there is nothing inherently immoral about the practice of dumping. However, when dumping causes or threatens to cause, material injury to the domestic industry it is viewed gravely.[1] Accordingly, Anti-dumping measures will be adopted to correct the situation arising out of the dumping of goods and its distorting effect on domestic producers of similar goods.

According to WTO provisions most of the country's trade policy regimes have transformed from inward oriented protectionist regimes to more outward and liberal trade regimes, to correct the situation arising out of the dumping of goods.[2] *The General Agreement on Tariffs and Trade* (GATT, 1947) was the first step in the gradual reduction of tariffs among the contracting parties.[3] Article VI of the GATT stipulates that 'in order to offset or prevent dumping a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such countries'. The GATT permitted countries to take action against dumped goods only if it caused 'injury' to the domestic industry.[4]

4. LEGAL FRAMEWORK

The importance of international trading inevitably invites governments and international organizations to develop laws to manage and control it.[5]In India, anti-dumping cases are of recent origin. This may be due to prevalence of high tariffs on imports for a major part of the nineties. Quantitative restrictions[6] also played a crucial role in preventing dumping of goods into the Indian market. India included anti-dumping provisions in 1985 in its law, which was amended in accordance with the Anti-dumping Agreement in 1995. Sections 9A[7], 9AA[8], 9B[9] and 9C[1] were included in the *Customs Tariff Act, 1975* for that purpose.[2]

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[1] Available at, http//www.singhania.com, accessed on Sep.08, 2019.

[2] Available at, http//www.icrier.org, accessed on Sep. 08, 2019.

[3] K.D.Raju, *World Trade Organization, Agreement on Anti-dumping* (Kluwer Law International, Netherlands, vol.15, 2008) p.1.

[4] Neeraj Varshney, *Anti-dumping Measures under the WTO Regime* (Universal Law Publication, New Delhi, 2007) p.1.

[5] Jason C.T.Chuah, *Law of International Trade: Cross-Border Commercial Transactions*, (Sweet & Maxwell, London, 4th edn., 2009) p.1.

[6] A trade restriction placed on the amount of an item or service that can be imported into a country.

[7] As per Section 9A of the *Customs Tariff Act, 1975*, "Dumping is a practice by which products of a country are exported to India at less than its normal value. A product is considered as being exported at less than its normal value if its price,

a. is less than the comparable price for the like product in the exporting country, or:

b. in the absence of such domestic price is less than

(i) the highest comparable price for the like product for export to any 3rd country or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

[8] As per Section 9AA of the *Customs Tariff Act, 1975:* Refund of anti-dumping duty in certain cases –

(1) where upon determination by an officer authorized in this behalf by the Central Government under clause (ii) of sub-section (2) an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation, the Central Government shall as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitle to refund of such excess duty:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A

[9] As per Section 9B of the *Customs Tariff Act, 1975*: No levy under section 9 or section 9A in certain cases – (1) Notwithstanding anything contained in section 9 or section 9A, -

ISSN 2394 - 7780

5. DETERMINING THE EXISTENCE OF DUMPING

There are 3 steps to determine the existence of dumping, *viz*.

i. Determination of the "export price",

ii. Determination of the "normal value", and

iii. Comparison of the export price and the normal value.

I. Export Price

Generally, the export price as shown in the books of the exporter is taken for the consideration of dumping. But in some situations, it is likely that this price may not be available or reliable. Some reasons could be the following:

i. The exporter and the importer may be associated, or

ii. The exporter and the importer may have some mutual compensatory arrangement between them.

For such situations, there is a provision for calculating a constructed export price.

Constructed export price

The basis for calculating the constructed export price is the price at which the imported product is first sold to an independent buyer. Difficulty in this process may arise if the product is not resold to an independent buyer or is not resold in its original imported condition. In such situations, the authorities in the importing country may determine the constructed export price on some reasonable alternative basis like export from an intermediate country.[3]

(a) No article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

[1] As per Section 9AA of the *Customs Tariff Act, 1975:* Appeal –

(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Gold Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) hereinafter referred to as the Appellate Tribunal)

(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal –

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,, shall be accompanied by a fee of five hundred rupees.

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal;

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the such Bench shall consist of the President and not less than two members and shall include on Judicial member and one technical member.

[2]K.D. Raju, "Anti-dumping Protecionism in India: A Critical Study, Uses and Misuses of anti-dumping provision in World Trade" Bibek D., Debashis Chakraborty (Eds.) (Academic Foundation, New Delhi, 2008) p.26.

[3] Bhagirath Lal Das, *Supra* note 2, p.2208.

ISSN 2394 - 7780

Export from an intermediate country
If a product is not directly exported from the country of origin to the importing country, but is exported from an intermediate country, the export price is the one at which the intermediate country exports it to the importing country.

II. Normal Value
Generally, the normal value is the comparable sale price for the like product in the exporting country in the ordinary course of trade. Sometimes, it may not be possible to consider the sale price in the exporting country because:

i. There may not be any sale of the like product in the exporting country in the ordinary course of trade; or

ii. The sales do not permit proper comparison because of :

(a) a particular market situation, or

(b) low sales volume in the domestic market of the exporting country.

The sale in the exporting country will normally be considered as being of adequate quantity if it constitutes at least 5 per cent of the sale of the product to the importing country.

Alternative methods for calculating Normal Value
If the recorded sale price for the product in the exporting country cannot be taken for the purpose of calculating the normal value, the normal value will be determined as:

i. a comparable price of the like product when exported to an appropriate third country, provided this price is representative; or

ii. a constructed normal value based on the cost of production in the country of origin plus reasonable amounts for:

(a) administrative, selling and general costs, and

(b) profits.

Which of these two alternatives should be adopted will depend on the discretion of the importing country. No sequence has been prescribed in this regard. Of course, either of these methods can be employed only if it is not possible to take the normal comparable price of the like product in the exporting country as the normal value.

III. Comparison of Export Price and Normal Value
Level and Time of Sales
The general guideline is that the comparison of the export price and the normal value has to be done in a fair manner. The authorities determining the margin of dumping by such a comparison must specify to the parties the information which they should supply in order to make a fair comparison possible. The Agreement prescribes that an unreasonable burden of proof will not be imposed on the parties.

To ensure a proper comparison, two precautions have to be taken, *viz*.:

i. the comparison must be made at the same level of trade, which normally will be the ex-factory level;

ii. the comparison must be of sales made, as nearly as possible, at the same time.

Conversion of Currencies
In most cases, the comparison of the export price and the normal value will involve conversion of currencies. In this respect, the following procedure has been prescribed in the Agreement:

i. the rate of exchange on the date of sale will be considered;

ii. if the sale of foreign currency on the forward market is directly linked to the export sale, the rate of exchange in the forward sale will be used;

iii. fluctuations in the exchange rates will be ignored; and

iv. exporters will be allowed at least 60 days for the adjustment of export prices to reflect sustained in the exchange rates during investigation.

ISSN 2394 - 7780

Comparison of Prices
Normal Method
After having made all the relevant calculations, the actual comparison will normally be made according to the following methods:

i. a weighted average normal value will be compared with a weighted average of the prices of all export transactions; or

ii. the normal value will be compared with the export price on a transaction-to-transaction basis.

This parity in comparison is important as it ensures a degree of fairness. If the average normal value were to be compared with the export prices in individual transactions, it will generally result in a higher dumping margin. The export prices above the average normal value will be left out in this method, since there is no dumping in these cases and, as such, the dumping margin is zero. In averaging the export prices of various transactions, the higher export prices get balanced with the lower prices and, to that extent, the margin becomes smaller.

Exceptions
Though normally the methods mentioned above will be used, the Agreement does provide for situations when a weighted average normal value may be compared with the export prices of individual transactions. This method can be used when:

i. there is a pattern of export prices differing significantly among purchasers, regions or time periods, and

ii. an explanation is provided on why such difference cannot be appropriately accommodated by the use of either of the two normal methods.

To use this method, it must be shown that there is a "pattern" of difference in export prices. The law now seems to permit some short-term promotional price discrimination in the intermediate good market .[1]Thus, anti-dumping duties are needed only to offset the unfair advantage that foreign exporters attempt to derive by charging lower prices than would be possible under normal market conditions.[2]

6. INVESTIGATION FOR DUMPING AND INJURY

The Commission, acting in cooperation with the Member States, shall commence an investigation. An anti-dumping investigation involves the following steps: domestic producer makes a request to the relevant authority to initiate an anti-dumping investigation. Then investigation to the foreign producer is conducted to determine if the allegation is valid. It uses questionnaires completed by the interested parties to compare the foreign producer's export price to the normal value. If the foreign producer's export price is lower than the normal price and the investigating body proves a causal link between the alleged dumping and the injury suffered by the domestic industry, it comes to a conclusion that the foreign producer is dumping its products. According to Article VI of GATT, dumping investigations shall, except in special circumstances, be concluded within a year and in no case more than 18 months after initiation. Anti-dumping measures must expire five years after the date of imposition, unless a review shows that ending the measure would lead to injury.

Anti-dumping investigations are to end immediately in cases where the authorities determine that the margin of dumping is, *de minimis*, or insignificantly small (less than 2% of the export price of the product). Other conditions are also set. The agreement says member countries must inform the Committee on Anti-Dumping Practices about all preliminary and final anti-dumping actions, promptly and in detail. They must also report on all investigations twice a year. When differences arise, members are encouraged to consult each other. They can also use the WTO's dispute settlement procedure.[3]

7. DISPUTE SETTLEMENT PROCESS

Dispute settlement body was established under Article 2 of Dispute Settlement Understanding. It consists of representatives of every WTO member. The DSB has the authority to establish panels, adopt panel and appellate body reports, maintain surveillance of implementations of rulings and recommendations and authorize

[1] Bernhofen, M , "Price dumping in intermediate good markets", *Journal of International Economics*, vol 3. (1995) pp.159-173.

[2] Trebilcock M.J. and R. Howse, *The Regulation of International Trade*, (England Routledge. London, 1995) p.78.

[3] Available at, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996R0384:en:HTML, accessed on Sep. 20, 2019.

ISSN 2394 - 7780

suspension of concessions and other obligations under covered agreements. The DSB function through a system of negative consensus whereby the various panel and appellate body reports are adopted unless the DSB by consensus decides not to adopt the reports.[1]

Generally, it is stipulated in the Agreement that the Dispute Settlement Understanding will be applicable to disputes under this Agreement. There are, however, some special provisions, as discussed below, which drastically limit the role of the Dispute Settlement Body (DSB) in cases of anti-dumping. A dispute is generally anticipated when a member is not satisfied with the process followed by another member in respect of the imposition of anti-dumping duty.

A member may request a consultation with another member if it considers that

i. any benefit accruing to it, directly or indirectly, under the Agreement is being nullified or impaired, or

ii. any objective is being impeded, by the other member.

The member requesting the consultation may refer the matter to the DSB if

i. the member considers that the consultation has failed to achieve a mutually agreed solution, and

ii. final action has been taken by the other member to levy a definitive anti-dumping duty or to accept price undertakings, or

iii. in the case of a provisional measure which has a significant impact, the member considers that it was taken contrary to the provisions of the Agreement for such a measure as contained I n Article 7.1.

The DSB will establish a panel in accordance with the prescribed procedure. The panel will examine the issue based on (i) a written statement of the complaining member, and (ii) the facts which would have been made available to the authorities of the respondent importing member in accordance with its domestic procedure.

The role of the panel is very much restricted. It will only determine

i. whether the authorities of the importing member established the facts properly, and

ii. whether they evaluated the facts in an unbiased and objective manner.

If the panel makes such a determination, the evaluation of the authorities will not be overturned, even if the panel itself might have reached a different conclusion had it conducted the evaluation.

Further, if more than one interpretation is permissible and if the authorities have acted in accordance with one of these, their conclusion will be deemed to be right.

It is apparent from the description given above that the role of the dispute settlement panel is severely curtailed in the field of anti-dumping, in all other subjects in the WTO Agreements, the panel is authorized, and in fact expected, to "make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements".[2]

Further, "where a panel concludes that a measure is inconsistent with a covered agreement, it shall recommend that the member concerned bring the measure into conformity with that agreement".[3]

It is only in the field of anti-dumping that the panel is excluded from this basic role. The process of dispute settlement appears to have been very much weakened in this area. It is significant to note that the objective of the review is limited to the examination of the appropriateness of extending this provision to other areas; it does not extend to examining the propriety of continuing with the constraint.

8. CONCLUSION

The WTO facilitates liberalization of markets all over the world, encouraging free trade among its Members. However, many countries at present are taking undue advantage of the anti-dumping clause and using it as a protectionist measure. The number of anti-dumping actions has increased dramatically over the last decade. This increase has been attributed more to countries that are pampering domestic industries and this is affecting healthy import competition as well as the interests of the consumer. Therefore, each country must look into the benefits of dumping, as well as its costs to the economy and consumers before imposing restrictions on importation.

[1] Neeraj Varshey, *Anti-dumping Measures*, (Univeresal Law Publishing Co., New Delhi, 2007) p 405.

[2] Bhagirath Lal Das, *The World Trade Organization: A Guide to the Framework for International Trade* (Bookwell, New Delhi, 2007) pp.205-222.

[3] *Ibid*, p.223.

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ANALYSIS OF ENSURING SECULARISM BY COMPULSORY VOTING AT ELECTIONS FOR LOCAL - SELF GOVERNMENT - NEED FOR REFORMS IN LAW

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INTRODUCTION

One of the most interesting debates in our country from the dawn of our Indian Constitution is on the presence of the word 'Secularism' in the Constitution. This debate is quite natural for number of reasons mainly when the Constitution of USA does not find place for the word 'Secularism, while the British unwritten Constitutional text does not find the word' Secularism' in any of its parliamentary legislations. Then why the word 'Secularism' was added in our Indian Constitution?

Any concept be it be democracy, equality, social justice, etc, are to operate in a much natural way rather than piloting them with the support of legislation.

The Constitutional framers of India did not want to have a word 'Secular' either in the Preamble or in any part of the Constitution. This version was due to the reason that all the religions in India should be treated equal and on equal footing. Further there should be a clear distinction and separation between State and religion.

Madhav Godbole[1] in his famous book titled as "Secularism – Indian at Cross-Roads"[2] has rightly remarked that "Secularism was expected to bring about the integration of the diverse elements of Indian society. But it, is a travesty that the majority community as well as the minorities are dissatisfied with it. Infact, the concept of Secularism has lost all credibility".

However on the other hand, it is also true that India would not have been either a parliamentary democracy or a secular nation, to whatever degree it is, without the firm commitment of Jawaharlal Nehru and Vallabhbhai Patel to these precepts. The Indian Constitution is one of the most explicitly secular Constitutions in the world though the founding fathers of the Constitution could not agree on calling it 'secular' for fears that it would be perceived as anti-religious or irreligious in the Western sense of the term. It was felt that by calling it secular, the Constitution would be denuded of the ethical and moral underpinning of the religious precepts which are so necessary for the governance of the country.

Looking at the aspect of nexus between Secularism and compulsory voting at elections for Panchayats, it would be appropriate to place on record about the views of our first Prime Minister Jawaharlal Nehru, while he made comment on separating religion from politics.

Mr. Nehru observed that "the serious problem of communalism and communal violence was brought out earlier. It is interesting to see from the fortnightly letter of Nehru to chief ministers as far back as September 3, 1954 that the nature or the intensity of the communal problem has not changed even after passage of 62 years since then, underlining the importance once again of separation of religion from politic". Nehru had written: "there are some Muslims in some centers who might be prone to mischief. There are one or two Muslim organizations that have been carrying on objectionable activities. The Hindu communal organizations are definitely aggressive and they can play on the religious or other feelings of the majority community… Agitations like the anti-cow slaughter one are also used for this purpose. I have no doubt that many people who participate in this agitation are influenced by political or like motives and not so much by religious ones. The RSS [Rashtriya Swayam Sevak Sangh] utilises this for its own purposes."[3]

The authors of this article jointly like to discuss the ways and means as to how to link the nexus between Secularism and compulsory voting at elections to Panchayats.

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[1] Former Union Home Secretary

[2]Published by Rupa and Co., 2016, New Delhi

3Gopal S. and Iyengar Uma, ed., The Essential Writings of Jawaharlal Nehru, vol. I, Oxford University Press, New Delhi, 2003, pp. 190-1

ISSN 2394 - 7780

Further the authors also like to look at and reflect the provisions that are contained in the Karnataka State (Gram Swaraj) Act, 1993 and the subsequent amendments made to the said Act 2015.

I. Concept Of Secularism

Some words are not so easy to define, however they could be described. One such word which is not so easy to defines the word 'Secular'.

In the understanding of the common man language the word 'Secular' means "to treat all the religions equally and on equal footing". However it is worth to provide few definitions about the term 'Secular'.

1. Meaning And Definition Of Secularism

In 1976, when the word 'secular' was included in the Preamble by the Forty-second Amendment, again this question was evaded and no definition was provided. After the massive defeat of the Congress party in LokSabha elections in 1977, the question arose of reconsideration of this highly controversial amendment, which effectively had rewritten the Constitution on a number of crucial points. The Forty-fourth amendment bill introduced by the Janata government in 1978 contained definition of the word 'secular' as equal respect for all religions. However, this was objected to by the Congress party which still had a majority in the RajyaSabha (as has been the position in 2014-16) and therefore this clause was dropped. Again, an effort was made in 1993 to include the same definition in the Constitution (Eightieth) Amendment bill on separation of religion from politics but, as stated earlier, this bill itself fell through. As a result, as of now, there is no definition of this term.

The term 'Secular is defined and to mean in any language as "Dharmanirapeksha" or "panthanirapeksa" or "nidharmee". In the governmental language secularism is that it should remain equidistance from that of the government. Serious questions have been raised about the validity of these definitions. For example, Late Justice R.A. Jahagirdar has, in his erudite articles in *The Radical Humanist*[1] emphasised how these definitions are untenable.

The Supreme Court has been interpreting the word 'secular' in different ways. At one extreme was its interpretation in the *Bommai* case when it declared that there must be a wall between the state and the religion, and a political party must not be linked to any religion, as otherwise, the religion of such a party is perceived as a state religion.

Reference must also be made to the statement of H.R. Gokhale, Law minister, during the Emergency. While piloting the Forty-second Amendment Bill in the LokSabha, Gokhale was highly critical of the concept of 'basic structure' devised by the Supreme Court. He said: "First of all I do not agree, with much respect to the Supreme Court, that there is something like the basic features which could not be amended...*What is not defined cannot exist and it is incapable of defining it*."[2]If the same logic is extended to secularism, since the word 'secular' has not been defined, does it mean that India is not secular?

According to Donald Smith, "The Secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual, as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion"[3].

The Oxford English Dictionary states that, 'Secularism is the doctrine that morality should be based solely on regard to the well-being of mankind in the present life to the exclusion of all considerations drawn on belief in God or in future state'[4].

2. HISTORY OF SECULARISM

The very first attempt to insert the term Secular' was made for the first time in the year 1976 through the Constitutional amendment introduced by then congress party rule lead by iron lady Late Smt. Indira Gandhi. The words Socialist and Secular were added by the amendment in the Preamble of the Constitution.

After massive defeat of Congress Party in1977, the newly formed Janata Party came to power to rule under the abled Prime Minister Sri. Morarji Desai. The said government tried to delete it, however due to no sufficient

[1]Jahagirdhar R.A, 'Secularism Revisited', The Radical Humanist, February 2015 (p. 24) and March 2015 (pp. 3 5-6

[2]KashyapSubhash C., History of the Parliament of India, vol. 4, Shipra Publications, Delhi, 1997, p.91

[3] Smith, Donald 1963 India as a Secular State, see also Secularism & religious activism in india – Irfan A. Omar

[4]OED, vol, IX 178

ISSN 2394 - 7780

majority of the said party in the RajyaSabha the term Secular was not deleted. However an attempt was made to define the said term, but then this also could not happen.

3. SECULARISM AS A BASIC STRUCTURE/FEATURE IN INDIA AS PER CONSTITUTION:
Though the terms Basic Structure and Basic Feature are not defined either in the Constitution nor by Judicial pronouncements, yet the Hon'ble Supreme Court of India declared and held the term Secularism is the basic structure and basic feature of the Indian Constitution. The said judicial pronouncement was made by the Hon'ble Supreme Court in the case of ***S.R. Bommai v. Union of India***[1]. Therefore it would be difficult to change the philosophy of Secularism in the Constitution.

4. ISSUES FOR THE FAILURE OF SECULARISM IN INDIA:
Though India is known for having a strong foundation of idea of Secularism, however the concept of Secularism has been failing due to some unwanted occurrences and instances due to some apprehensions and mis-apprehensions.

The following are the situations were the spirit of Secularism was not felt by the citizens of India.

1. Non-implementation of the uniform civil code;
2. passage of Muslim Women's Divorce Act (Triple Talak) to appease the radical, orthodox and conservative Muslim elements,
3. totaling disregarding the liberal and reformist Muslim view,
4. propagation of religion by Muslims and Christians leading to large-scale conversions, particularly in the tribal areas and of persons below the poverty line, and
5. Unjustified protection given to minority educational institutions.

Equally disconcerting are some other signposts which raise serious doubts about how secular India is. Most important of these are non-separation of religion from politics, wanton demolition of the Babri Masjid, anti-Sikh riots in Delhi and other places in 1984, horrific riots in Mumbai in December 1992 and January 1993, and unbelievable atrocities in riots in Godhra and other cities in Gujarat 2002, continued widespread communalism and communal violence in several parts of the country which led to 8,449 communal incidents resulting in 7,229 deaths and 47,321 persons injured in a brief span of 1954 to 1985, and banning of cow slaughter leading to curtailment of freedom of persons about what to eat and restricting their freedom to carry on any profession and trade and involving in the incidents of linching and burning alive incidents of Muslim youth etc.,

II. Secularism And Nexus To Compulsory Voting In India:
Indian is known for having atleast 60% of its total population that belonged to youth population which is popularly known as "demographic dividend of India". At the same time it is highly painful for many citizens in this country, due to the youth donot cast their valuable vote in more number at the Loksabha and the State legislative elections. There is very less percentage of voting at Corporation level, Parliament level and State level elections as per the data revealed by office of Chief Election Commissioner of India and that of the States.

Compulsory voting at elections signifies the spirit of Secularism indicating the participation of all irrespective of any religion. If compulsory voting is practiced the foundation of democracy will be strong and stable. However there may be some impediments in the implementation of compulsory voting at elections, but then every new idea has one or the other starting problem. Gujarat has become the model State for introducing compulsory voting at elections to Panchayat level.

Compulsory voting at elections to local bodies in Gujarat, the Gujarat Local Authorities Laws (Amendment) Act, 2009[2] introduces an 'obligation to vote' at the municipal corporation, municipality and Panchayat at the local bodies- the Bombay Provincial Municipal Corporation Act, 1949; the Gujarat Municipalities Act, 1963 and; the Gujarat Panchayats Act, 1993. Following the amendments, it shall now be the duty of a qualified voter to cast his vote at elections to each of these bodies. This includes the right to exercise the NOTA option. The Act empowers an election officer to serve a voter notice on the grounds that he appears to have failed to vote at the election. The voter is then required to provide sufficient reasons within a period of one month, failing which he is declared as a "defaulter voter" by an order. The defaulter voter has the option of challenging this order

[1] (1994) 3 SCC 1

[2] Compulsory Voting in India by Priyanka Rao, November 17, 2014

ISSN 2394 - 7780

before a designated appellate officer, whose decision will be final. At this stage, it is unclear what the consequences for being a default voter may be, as the penalties for the same are to be prescribed in the Rules. Typically, any disadvantage or penalty to be suffered by an individual for violating a provision of law is prescribed in the parent act itself, and not left to delegated legislation.

The Act carves out exemptions for certain individuals from voting if ,

(i) he is rendered physically incapable due to illness etc.;

(ii) he is not present in the state of Gujarat on the date of election; or

(iii) or any other reasons to be laid down in the Rules.

The authors feel that other states in India too can experiment the aforesaid type of laws for oral participation of voters from all religion, caste and community groups.

Thanks to Karnataka State Legislature also for inserting amendments to the Karnataka State (Gram Swaraj) Act, 1993 in the year 2015 by way of adding provisions such as Section 9, Section 125 and Section 164 for casting compulsory voting at Village, Taluk and Zilla Panchayat levels elections.

Furthermore the afore mentioned Karnataka Act do have a provision in section 34 dealing with Promotion of enmity between classes in connection with election which reflects the spirit of Secularism at elections.

The provisions dealing with compulsory voting at elections are mentioned as under:

Sec 9 of Karnataka Gram Swaraj & Panchayat Raj Act, 1993 explains about Right to Vote in Gram panchayat

(a) Every person whose name appears in the voters list relating to a constituency shall, subject to the other provisions of the Act be entitled to vote at any election which takes place in that constituency while the voters list remains in force and no person whose name does not appear in such voters list shall vote at any such election.

(b) No person shall vote at an election under this Act in more than one constituency or more than once in the same constituency and if he does so, all his votes shall be invalid.

(c) 1It shall be the duty of every person whose name appears in the voters list of a Grama Panchayat to vote at the election of Panchayat and it shall be compulsory. However, he will be free to cast his vote in favour of none of the candidates contesting election as indicated in sub-section (4).

(d) If the Election Commissioner makes a suitable provision, the qualified voter shall cast his vote in favour of none of the candidates contesting at the election, in case where he does not want to cast his vote in favour of any candidate.

The aforementioned section 9 content of provisions are also contained in section125 and section 164 for compulsory voting at Taluk and Zilla Panchayat elections except what is contained in section 9 the word Taluk Panchyat and the word Zilla Panchayat appear in sub-section (3) of sec 125 and sub-section (3) of sec. 164 for compulsory voting.

Further section 34 of the Karnataka State Panchayat (Gram Swaraj) Act 1993, reads as under: "Any person who in connection with an election under this Act, promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred between different classes of the citizens of India shall, on conviction, be punished with imprisonment for a term which may extend to three years, or with fine or with both".

The aforesaid section 34 is important and relevant since it reflects the spirit of Secularism for participation at elections to the Panchayat level

CONCLUSION

The authors of this article respectfully conclude by reminding the observation of Napoleon Bonaparte that "Impossibility is in the dictionary of fools". The authors submit so for the reason that we have been experiencing, experimenting and enjoying the spirit of unity in diversity in this great country having a great history of civilization. All this was possible due to strong foundation of the idea of Secularism, democracy and love for ensuring socio- economic and political justice to all in India and the more needy in particular.

[1] Sub-sections (3) & (4) inserted by Act No. 17 of 2015, w.e.f. 30-4-2015

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INNOVATION AND INTELLECTUAL PROPERTY RIGHTS LAW-AN OVERVIEW OF THE INDIAN LAW

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ABSTRACT
The present paper provides an overview of the various laws dealing with innovation and intellectual property rights in India. In India, many facets of intellectual property rights are dealt with in particular legislations enacted by the Parliament. These legislations operate within the overarching guarantee of the right to property provided by the Indian Constitution. This paper also provides brief insight into the law of patents, copyrights, trademarks, designs and remedies for violation of these rights, the paper also covers questions relating to the inter-section of these rights in practice.

Keywords: Innovation, Intellectual property rights, Indian law, TRIPS, Patent law, Copyright law, moral rights, trade laws.

INTRODUCTION

The need to protect the inventions and creative works of Individuals has been recognized for centuries. Intellectual property serves as the foundation of innovation in our economy. Sufficient intellectual property protection is key to promoting innovation. The Indian constitution assures various fundamental rights such as the right to life, the right to equality and non-discrimination, right to primary education, freedom of speech, association, movement and the right to business, trade, and commerce. Property rights were deleted from the Chapter on Fundamental Rights of the constitution in 1978, they are now relegated to another place. Nevertheless, the Supreme Court in the K.T, plantation v State of Karnataka (2011) ruling holds that intellectual property enjoys a high degree of protection.

It would be also necessary to note that Indian Courts take into consideration Part IV of the Constitution, which enacts the Directive Principles of State Policy, wherever issues of legislative interpretation that impinge upon the rights of a cross- section of people arise. Articles 39(e) and (f) enact concerns relating to health which Indian legislatures have to recognize, in their laws. The courts have not un-often recognized that while it is full rights of the IPR owner, equally the law plays an important role in balancing the public interest between the property rights of the IPR owner and the public interest in permitting creativity and innovation.

It is also necessary to balance the rights of the author on the one hand and the society on the other hand certain limitations have been made a part and parcel of the IPR statutes around the globe. In the realm of copyright laws, one of the more important limitations is the doctrine of "fair use." This doctrine of Fair dealing is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work and it allows limited use of copyrighted material without acquiring permission from the rights holders."

The Indian Constitution compels national legislation, to embody the terms of a treaty, for it to be enforceable in court in India. The courts are bound to interpret and follow the law on the specific subject, in India. If it is clear and unambiguous, no question of resorting to external source arises. The qualification is that if the terms of such treaties are similar to the law applicable in India, courts may consider foreign judicial precedents in that regard. When there are national laws embodying international conventions, or treaties, the courts do take into consideration their provisions, rulings of foreign courts in the area, and so on. Further if some of the IP laws violated India's commitments under the TRIPS, the only remedy available would be the amendment or re-enactment of the law by the parliament. This would mean that responsibility of ensuring that the laws in India are compatible with the internationals under TRIPS would be on the parliament. While the courts may adopt an interpretative approach that could read the statute in harmony with the TRIPS, however where such harmonious construction would not be possible, the obligation would fall on the Parliament to suitably modify the law to make it TRIPS compliant.

COPYRIGHT LAW

copyright is a right to stop others from exploiting the work without the consent or assent of the owner of the copyright. A copyright law presents a balance between the interests and rights of the author and that of the public in protecting the public domain, or to claim the copyright and protect it under the copyright statute. One of the key requirements is that of originality which contributes, and has direct nexus, in maintaining the interests of the author as well as that of public in protecting the matters in public domain. The word "original" does not

ISSN 2394 - 7780

demand original or inventive thought, but only that the work should not be copied but should originate from the author. In deciding, therefore, whether a work the nature of a compilation is original. it is wrong to consider individual parts of it apart from the whole. For many compilations have nothing original in their parts, yet the sum total of the compilation may be original. In such cases the courts have looked to see whether the compilation of the unoriginal material called for work or skill or expense. In each case, it is a question of degree whether the labor or skill or ingenuity or expense involved in the compilation is sufficient to warrant a claim to originality in a compilation.

It is already mentioned the importance attached by international opinion, as manifested by the various international conventions and treaties, to the protection of Copyright and the gravity with which traffic in industrial, literary or artistic property is viewed, treating such traffic on par with traffic in narcotics, dangerous drugs and arms. In interpreting the word 'import' in the Copyright Act, we must take not that while the positive requirement of the Copyright conventions is to protect copyright, negatively also, the Transit Trade Convention and the bilateral Treaty make exceptions enabling the Transit State to take measures to protect copyright. If this much is borne in Mind, it becomes clear that the words 'import' in section53 of the Copyright Act cannot bear the narrow interpretation sought to be places upon it to limit it to import for commerce. It must be interpreted in a sense which will for the Copyright Act into the setting of the international conventions.

According to Indian copyright law in an old judgment of Delhi High court parallel importation, i.e. importing copyrighted products from a region or country and selling it elsewhere at a price lower than the copyright owners without its permission forbidden.

The earliest expositions of fair use (i.e., use of copyright works for research, academic and largely non-commercial purpose). Anticipated the transformative use of copyrighted works. In this, the Indian Supreme Court was prescient in that it anticipated the transformative nature of use of a copyrighted work as part of fair use. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

The idea-expression merger doctrine is followed in India. This doctrine means that when there are limited ways of expressing an idea, such as, for instance in mathematical questions, etc., cannot lead to valid copyright claims.

One of the earliest rulings on fair use was by the Madras High Court. The court's holding was that in order to constitute a fair dealing, there must be no intention on the part or the alleged infringer in dealing with the work must not be improper. Copying for the purpose of criticism or parody is not infringement, and is deemed "fair use". This was held by the Kerala High court in Civic Chandran v. Ammini Amma that when copying was for the purpose of criticism, it amounted to fair dealing. The Court said that the factors relevant for this determination were the quantum and value of the matter taken in relation to the comments or criticism, the purpose for which it is taken and the likelihood of competition between the two works.

MORAL RIGHTS

In conformity with the Berne Convection, the Indian copyright Act, 1957 protects the moral rights of authors. In Amar Nath Sehgal's case, the Court held section 57 was the basis to protect not only the moral rights of the author but also the cultural heritage of the nation. The court observed: "knowledge about authorship not only identifies the creator, it also identifies his contribution to national culture. It also makes possible to understand the course of cultural development in a country. Linked to each other. One flowing out from the other, right of integrity ultimately contributes to the overall integrity of the cultural domain of a nation. Language of section 57 does not exclude the right of integrity in relation to cultural heritage. The cultural heritage would include the artist whose creativity and ingenuity is amongst the valuable cultural resources of a nation. Through the telescope of section 57 it is possible to legally protect the cultural heritage of India through the moral rights of the artist.

COMPULSORY LICENSING: COPYRIGHT

India follows the Berne convention and Article 9 of its Paris Text. Under its copyright law, if reproduction or publication or communication of a copyrighted work is not licensed on terms that are considered by the complainant to be reasonable, and the Copyright Board (which decides the issue) holds that the terms are not reasonable, the copyright proprietor can be asked to license the work for the purpose sought, on terms deemed reasonable. Therefore, while examining matters involving grant of compulsory license for a copyright, the issue has to be determined finally and no interim orders can be passed during the pendency of the proceedings. These decisions of the courts have served to expound the law in relation to copyright in India concerning the standard

ISSN 2394 - 7780

of copyright protection, moral rights of the author, the public interest element of copyright and compulsory licensing of copyrights, etc.

INTERSECTIONS OF COPYRIGHTS WITH DESIGNS AND TRADEMARKS

In a Division Bench ruling of the Delhi High Court, the question involved was if lack of design registration led to loss of copyright in the underlying artistic work. The court held in Microfibres Inc v.Girdhar 2009 case that in the original work of art, copyright would exist and the author/holder would continue enjoying the longer protection granted under the copyright Act in respect of the original artistic work. Thus, for instance a famous painting will continue to enjoy the protection available to an artistic work under Copy right Act. A design created from such a painting for the purpose of industrial application on an article so as to produce an article which has features of shape, or configuration or pattern or ornament or composition of lines or colors and which appeals to the eye would also be entitled design protection in terms of the provisions of the Designs Act. Therefore, if the design is registered under the Designs Act, the Design would lose its copyright protection under the copyright Act but not the original painting. In a three judge Bench decision, the Delhi High court had to deal with whether the lack of, or after lapse of design protection, a trademark owner could claim exclusive trademarks right over the marks, for the reason that they fulfilled the distinctiveness criteria, in its Micro lubes (2013) judgment. The Court ruled in its majority opinion that the remedy of trademark passing off would not be precluded even if the design registration ends.

PATENT LAW

A patent is a private right that is granted by a government authority. It only has a legal effect in the country in which it is granted. So inventors or companies that want to protect their technology in foreign markets need to seek patent protection for their new technologies in those countries. India had limited patent protection in specified fields rather than product patent protection, particularly for food and pharmaceuticals, to highlight national issues such as access to drugs and food security. Based on the German example of allowing only process patents, a specially constituted Committee recommended that restricting the grant of patents to processes would significantly benefit the Indian chemical and pharmaceutical industry. Further, it was necessary to deny product patents, especially for articles of food or medicine, as they ought to be made available to the community at reasonable prices and cannot be subject to monopoly. The patents Act,1970 was enacted based on the recommendations of the committee. India was among 50 other countries, pre-TRIPS that exempted pharmaceuticals from product patent protection and an additional 10 exempted pharmaceuticals from process patents as well. The Indian Patent Act of 1970 and other measures such as drug and industrial policies were tools to achieve its national priorities. This system encouraged competitive innovation in the methods of making known products and enabled production of products patented elsewhere using different processes, incentivizing the development of more efficient production processes. This system's encouragement for process innovation was the first step to establishing India's generic drug industry, much similar to how Germany established its chemical process industries in the 1800s.The term of process protection over food, drug, and medical inventions was limited to five years. A license of right authorized any person to manufacture a patented product, without having to seek the patentee's approval. Inventions relating to food, chemicals, and pharmaceuticals, were deemed endorsed with a license of right three years after the patent issues. The patents Act was amended thrice-in 1999,2002 and 2005 after India's entry to TRIPS. The 1999 Act, given retrospective effect from 1 January 1995 allowed appetent claims for a substance itself intended for use or capable of being used, as medicine or drug and contained provisions for grant of exclusive marketing rights in respect of pharmaceutical substances for which patent was granted under section 5. The 2002 amendment redefined "invention" to include a new product, and introduced the definitions of capable of industrial application "and inventive step. Perhaps, the most crucial of these amendments was brought about in 2005, which permitted product patents for pharmaceutical products. It was again though these amendments that the existing section 3(d) of the Act was brought in. That provides for a check against the patent claims, which do not disclose any significant enhancement in efficacy of a known substance. This was the subject of discussion in the Novartis decision of the Supreme Court of India.

Further, the government could, in the public interest, compulsorily license the patent if the invention was either not reasonably priced or not worked at satisfy the reasonable requirements of the public. In 2005, India aligned her laws to TRIPS obligations; thus process and product patents are granted now; the patent period is 20 years. India's incentive step requirement requires that the feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

ISSN 2394 - 7780

In Monsanto company v. coramandal products (p) Ltd , the supreme court dealt with what is prior art and ruled that to satisfy the requirement of being publicly known as used in clauses (e) and (f) of sec 64 (1), it is not necessary that it should be widely used to the knowledge of the consumer public. It is sufficient it is known to the persons who are engaged in the pursuit of knowledge of the patented product or process wither as men of science or men of commerce or consumers. There is no statutory bar to accept a manner of manufacture as patentable even if the end product contains a living organism. Further to determine whether the process of manufacture involved in the invention ought to be patented or not, the vendibility test is applicable. A single judge of the Delhi High court held that publicity of the material is not the sole test to determine obviousness, and also recognized the distinction between "obviousness" and "anticipation".

The Madras High court stated that the general rule in regard to the construction of the validity of a patent is, that construction, which makes it valid should be preferred rather than the construction, which rendered it invalid. The patent specification should intend to be read by a person skilled in the relevant art but their construction is for the court and to do so it is necessary for the court to be informed as to the meaning of the technical words and phrases and what was the common general knowledge that is the knowledge that the notional skilled man would have.

"Efficacy means 'the ability to produce a desired or intended result'. Hence, the test of efficacy in the context of section 3(d) would be different, depending upon the result the product under consideration is desired or intended to produce. In other words, the test of efficacy would depend upon the function, utility or the purpose of the product under consideration. Therefore, in the case of a medicine that claims to cure a disease, the test of efficacy can only be 'therapeutic efficacy'. The question then arises, what would be the parameter of therapeutic efficacy and what are the advantages and benefits that may be taken into account for determining the enhancement of therapeutic efficacy? What is evident, therefore, is that not all advantageous or beneficial properties are relevant, but only such properties that directly relate to efficacy, which in case of medicine, is its therapeutic efficacy."

In the recent past, Indian courts have seen a spate of litigation involving application of issues such as FRAND. Ericsson, which holds the SEPs for 2G and 3G technologies, as set by the European Telecommunication standards Institute (ETSI), has filed suits for infringement against Indian manufactures, most notably, micromax and intex. Ericsson alleged that despite offering FRAND license agreements to them both, the companies have desisted from entering into such contracts and have instead used the SEPs in violation of the IPR rights of Ericsson. Final ruling in these cases is yet to be given; the court has however, indicated that the defendants have to pay interim amounts as license fee, subject to adjustment at the final decision stage. Thus the spate of patent litigations in the recent past has ended up in offering some clarity on important issues in patent law in India such as the test of novelty, the requirement of working of the patent, the possible remedies that can be granted for breach of patents, etc. However, some issues, especially those in relation to SEPs and their treatment in Indian law still remain open-ended and unanswered. It is expected that future judicial pronouncements will afford greater clarity on these issues.

TRADEMARKS

Indian trademarks law is well-developed and nuanced; the law grants trademark registration entitlement to its proprietor if the marks are "distinctive". The guidance given is contained in specific statutory provisions. Actions for infringement of registered trademarks have to fulfill a narrow test of proof of the complained mark being "deceptively similar". To the plaintiff's mark. The test applied by the courts is one of overall effect and not a frame-by-frame or bit-by-bit comparison. The Indian Supreme court ruled that in an passing off action, the issue which requires determination is whether the defendant's goods are so marked to be designed or calculated to lead purchasers to believe that they are the plaintiff's goods. However, in the case of infringement action, the issue required to be addressed is whether the defendant uses a mark which is the same as, or which is a colorable imitation of the plaintiff's trademark. The court also held that although the Defendant may not be using the trademark of the Plaintiff, the get up of its goods may be so much like of the plaintiffs that a clear case of passing off would prove. Conversely, even in the case of complete dissimilarity in get up, prices and nature of goods, in an infringement action, injunction would issue if it is proved that the Defendant is improperly using the Plaintiff's mark. It is the likelihood of confusion which has to be seen.

Much before the old 1958 Indian Trademarks Act was replaced with legislation in the background of India's TRIPS entry, Indian courts had recognized the concept of trademark dilution, that is use of a trademark in respect of products or services that were dissimilar to the plaintiff's goods or services. This recognition finds statutory approval under the Trademarks Act, 1999. Trademark anti-dilution rights can be used not only in respect of well-known marks but also in respect of goods and services which have acquired such a distinct

ISSN 2394 - 7780

reputation in Indian that their use for dissimilar goods and services can potentially impinge on their owner's rights. It has been held that for success in trademark dilution claims, it has to be established that there is identity or similarity with the registered trademark; the goods, in question, of course, necessarily are dissimilar to the plaintiff's goods; the plaintiff has to also prove that his mark has "a reputation in India" and the use of that mark "without due cause" takes unfair advantage, or is "detrimental to" the distinctive character or repute of the plaintiff's mark. At the heart of the claim is the duty to establish that the mark has "a reputation in India" – which is not a requirement in the normal class of infringement.

Trans-boarder reputation of trademarks and their underlying products or brands is recognized when claims of a trademark proprietor for its use are asserted. Indian

Supreme Court decisions teach that distinctive and famous trademarks need not be confined to national territorial boundaries and that trans-boarder reputation of such marks is recognized by Indian courts, for the purpose of granting injunctive relief, against dishonest attempts at their appropriation.

Corporate name trademarks are also protected. Likewise, trademark in domain names are recognized and given effect to. In comparison to the regimes of copyright and patents, the law on trademarks has not received as much judicial consideration. Resultantly, a number of crucial issues in relation to trademark protection are still somewhat in flux; the law on these issues will receive greater clarity as and when these issues come up before the court.

REMEDIES

Injections and damages are the most commonly claimed remedies for infringement or violation of intellectual property rights. Trademark or copyright infringement is also subject to penal sanction.

Since trials in IPR enforcement actions can be time consuming, more often than not ad interim relief is hotly contested. India follows the common law standards for grant of ad interim relief such as examination of prima facie case, existence of irreparable hardship and balance of convenience.

Indian courts are empowered to, by procedural laws and frequently resort to Anton pillar type orders for assistance by a court appointed commissioner to collect material for fuller adjudication. This procedure has been recognized since 1989. Quia Timet actions, based on apprehensions that the defendant would infringe the plaintiff's rights are maintainable; Indian courts recognized this form of action and have granted reliefs. For instance, the Delhi High court in yahoo Inc. granted a quiatimet relief to Yahoo, which apprehended that the defendants would release cinematographic film titled "YAHOO"-well-known trademark.

John Doe orders permit the plaintiff to enforce an injunction order against unidentified defendants, "john Doe" being a generic name for such defendants. This concept came in to force due to the peculiar nature of copyright piracy. However, it must be noted that these orders are passed against unidentified defendants only at the interim stage, and the final relief would be passé only against those defendants, which are identified and impleaded in the proceedings before the court. A troublesome application of. This concept has also been witnessed in India, wherein courts have directed Internet service Providers, which are identified defendants, to block access to websites that upload pirated content, in violation of the plaintiff's copyright.

DAMAGES

In India Courts follow the UK model of assessing and awarding damages. In departure, for the first time, the Delhi High Court awarded punitive damage though harm could not be established by any objective standard through which damages are awarded. This was in an exparte judgment in Times Incorporated v. lokeshSrivastava case. The court reasoned that while dealing actions for infringement of trademarks, copyrights, patent, etc. courts "should not only grant compensatory damages but award punitive damages also with a view to discourage and dishearten law breakers who indulge in violations with impunity. This reasoning was disapproved by a Division Bench in a trademark/product disparagement case, in Hindustan Unilever Ltd. The court relied on the UK authorities Rookes v. barnard, especially the latter, that Damages remain a civil, not a criminal, remedy ,even where an exemplary award is appropriate, and juries should not be encouraged to lose sight of the fact that in making such an award they are putting money into plaintiff's pocket.

EFFORTS BY COURTS TO ENSURE EFFICIENCY AND SPEED BY ADMINISTRATIVE AUTHORITIES AND RESOLUTION OF DISPUTES

The Delhi High Court in 2010 resolved a vexed question of what is the date when the patent is said to be granted, given that several pre-grant opposition applications are filed opposing patent claims. The Court ruled the date of grant of patent is the date on which the controller passes an order to that effect on the file. It was also

ISSN 2394 - 7780

directed that the Controller should consider all pre-grant oppositions and decide them together and ensure that the digitally signed copy is published on the website the same day.

A patent can be annulled in three ways: one by an opposition (pre or post-grant), through a revocation proceeding or by a counter-claim in an infringement suit. Section25 (2) provides a post-grant opposition mechanism whereby "any person interested" can oppose a granted patent within one year of date of publication of grant. If the opposition fails or no notice of opposition is provided within one year, the patent crystallizes. Section 64 provides two options-a revocation petition before the IPAB or a counter-claim in an infringement suit before a High Court. In 2014 Supreme Court decided that remedies available through revocation petition before the IPAB or a counter-claim in an infringement suit before the HC were not conjunctive and a choice would have to be made between the two.

CONCLUSION

The intellectual property law regime has seen rapid change in the last decade or so, in India. Today, there is greater awareness amongst the legal community and courts-in the wake of the country's accession to TRIPS that IPR is a significant driver of economic development. This awareness can be seen both in the bar and the bench .In terms of legal capacity building, more and more, younger generation lawyers are showing better and more nuanced understanding of the various issues in intellectual property law as well as the significance of India's commitments to IPR protection at the global level. This can also be seen by the growth in the number of law firms that have exclusive and dedicated focus of IPR practice.

Now court are cautions of adopting a doctrinaire approach in embracing all concepts-especially remedies in law The courts have so far attempted to balance the right of innovator and stepped into protect them from appropriation by those who have no right to do so: equally, where the protection claimed by IPR owners is too broad as to stifle innovation and progress, the courts have refused to do so. The question of remedies to be granted for infringement of IP rights of the holder and the larger interests of the public. The refusal to grant the remedy of injunctions of life saving drugs, for instance, evidences that the courts in India do not treat the protection of IP rights as absolute and such right can be made subservient to the larger public interest. However, at the same time, there is a growing trend in the Indian judiciary of recognizing that the evolution of technology also means the IP rights are increasingly susceptible to various kinds of infringement, beyond those traditionally recognized. Hence, to deal with these kinds of infringement, Indian courts have

granted a number of remedies that were hitherto unknown in the realm of civil law: the grant of exparte injunctions against unknown defendants, awarding interim royalties, etc. are examples of a changing judicial trend that seeks to align itself with global practice in case of IPR infringement. In some sense, the legal regime governing IPR in India is still a nascent stage, and the role and the potential of the Indian courts in shaping and chiseling the path of IPR law, cannot be overemphasized.

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USURPATION OF LEGISLATIVE FUNCTION BY THE EXECUTIVE AND JUDICIARY: A CRITICAL ANALYSIS

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ABSTRACT
The Legislature is a deliberative assembly with the authority to make laws for a political entity; it has the power to pass, amend and repeal laws. Statutory laws are the basic framework of the modern legal system. This very framework has become futile, since this very function is being encroached upon by its counterparts. The traditional Legislative wing has rather become lethargic. This trend of constitutional organs other than the Legislature usurping law-making functions is taking a toll on the very governance, the democratic spirits are hampered too.

This paper intends to analyze the nuances modern legal systems are facing as a result of encroachment of legislative functions and also brings out the importance of keeping the functioning of legislature intact in the present scenario.

Keywords: Law, Legislature, Executive, Judiciary, Governance, Democracy, Constitution, Deliberate, Separation of Powers.

1. INTRODUCTION
Law must answer the test of reasonableness. It must be right, just and fair and not arbitrary, fanciful or oppressive. Though India does not adhere to the doctrine of Separation of Powers *stricto sensu,* it has inculcated the very ideology, partly; the Legislature enacts laws, the Executive executes the laws and the Judiciary enforces and interprets the same[1].

The Legislature is a deliberative assembly with the authority to make laws for a political entity; it has the power to pass, amend and repeal laws. Statutory laws are the basic framework of the modern legal system. This framework has now become futile; since this very function of the legislature is being encroached upon by its counterparts.

The traditional legislative wing has rather become lethargic. Most of the legislative functions are delegated to the Executive for the want of time, flexibility, technical expertise, expediency, to meet emergency situations and the thin line dividing judicial activism and judicial overreach has vanished. This is nothing short of naked usurpation of the legislative function under the guise of interpretation.

Democratic spirits run throughout the fabric of Indian Constitution[2]. Will of the people is represented in the Legislature and the law enacted by the legislature is nothing but the mandate of people. The trend of other constitutional organs usurping legislative functions is taking a toll on the very foundation of the governing system. It is hard to believe that the world's largest democracy is no more a democracy in its true sense.

This paper intends to take the reader through the nuances Indian legal system is facing as a result of encroachment of legislative functions by the Executive and Judiciary and also suggests as to how and why the functioning of the Legislature must be kept intact.

2. SEPARATION OF POWERS
History has time and again shown that unlimited power in the hands of one person or a group in most cases means that others are suppressed or their powers curtailed. The Separation of Powers in a democracy is to prevent abuse of power and to safeguard freedom for all. This doctrine, also known as *trias politica,* was first developed in ancient Greece, Aristotle was the first person to write about Separation of Powers. In his book 'Politics', he has primitively described about the three agencies of the Government – the General Assembly, the Public Officials and the Judiciary.

John Locke, an English Jurist as early as in 1698 in his book, 'Two Treatises of Government' mentions about the organs of the government; the legislative, the executive and the federative. He however did not consider

[1] Beg.J – *Keshavananda Bharti v. Union of India,* 1973 4 SCC 225.

[2] *Indira Nehru Gandhi v. Raj Narain,* AIR 1975 SC 2299

ISSN 2394 - 7780

them as co-equals. His model moreso corresponded with the dual form of government then existing in England- the Parliament being the legislative body, the Monarchy being the executive and federative body.

Montesquieu articulated this principle systemically, accurately in his book 'Esprit des lois' (The Spirit of Laws) which was published in the year 1748. Montesquieu described the various forms of distribution of political power among a legislature, an executive and a judiciary. His approach was to present and defend a form of government which was not excessively centralized in all its powers. According to Wade and Philips, the principle of Separation of Powers meant three things:

- One person should not be made part of more than one branch of the government
- There should not be any interference and control of any organ of the government by the other
- No organ of the government should exercise the functions and powers of the other organ.

Various objectives are achieved by adherence to the doctrine of Separation of Powers; it eliminates arbitrariness, totalitarianism and tyranny. It promotes an accountable democracy. It also prevents the misuse of powers within different organs of the government, also allows all the branches to specialize themselves in their respective field with an intention to enhance and improve the efficiency of the government.

2.1. Separation of powers under different legal systems

2.1.1. The United States of America

The doctrine of Separation of Powers is the fundamental dogma of the American legal system, it is implicit in the American Constitution. It emphasizes the mutual exclusiveness of the three organs of the government. The form of government in the U.S.A is characterized as the Presidential, is based on the theory that there should be separation between the executive and the legislature[1]. But this doctrine has influenced and has itself been influenced by the growth of Administrative law in the U.S.A. The strict separation theory was dented, to some extent, when the courts conceded that the legislative power could be conferred on the executive and thus introduced the system of delegated legislation on the U.S.A.

2.1.2. United Kingdom

The United Kingdom does have a kind of Separation of Powers, but unlike the United States of America it is informal. Blackstone's theory of 'mixed government' with 'checks and balances' is more relevant to the United Kingdom. Separation of Powers is not an absolute or predominant feature of the United Kingdom. The three branches are not formally separated and continue to have significant overlap.

2.1.3. India

The doctrine of Separation of Powers has no place in strict sense in the Constitution of India. But the functions of different organs of the Government have been clearly earmarked, so that one organ of the government does not usurp the functions of another. In the absence of a specific provision for separation of powers in our Constitution such as there is under the American Constitution, some such division of powers between the legislature, the executive and the judiciary is nevertheless implicit in our Constitution.[2]

The courts have also reiterated the importance of separation of powers and exclaimed that Separation of Powers between the legislature, the executive and the judiciary is a part of the basic structure of the Constitution; this structure cannot be destroyed by any form of amendment[3].

3. FUNCTIONS- INTERCHANGED

3.1. Delegation of Legislative powers

In almost all democratic countries the trend very much in vogue is that only a small amount of legislations emanate directly from the Legislature; a relatively larger part is promulgated by the Executive as a delegate of the Legislature. Delegated Legislation is that which proceeds from any authority other than sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority.[4]

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[1] JAFFE AND NATHANSON, ADMINISTRATIVE LAW: CASES AND MATERIALS 38(1961)

[2] *Ramakrishna Dalmia v. Justice Tendolkar,* AIR 1958 SC 538: 1959 SCR 276, also in *Jayantilal Amritlal v. F.N.Rana,* AIR 1964 SC 648 at pg. 649.

[3] *Supra* note 1.

[4] Salmond, *Jurisprudence, 12th Edition,* at p.116.

ISSN 2394 - 7780

The definition of Salmond does not find place in the present scenario because delegated legislation is no more dependent on any superior or supreme authority; applaud the sweeping amount of powers that are delegated. To meet the challenges of socio-economic problems, to conserve time, to aid flexible approach, for the want of technical expertise or to meet emergency situations the legislature often finds it convenient and necessary to delegate subsidiary or ancillary powers to the Government.

This very system of delegated legislation though has become a part of almost every legal system, it is not completely blameless as it suffers from several defects, the major one being abandonment of its legislative function by the legislature and enhancement of powers of the administration. Many a times, the legislature passes Acts in 'skeleton' form containing only the barest of general principles and thus leaves to the executive the task of not only laying down 'details' but even that of formulating and determining policies and principles relating to the subject matter of legislation.[1]

The Legislature often uses wide, subjectively worded provisions giving power to the delegate to make such rules so as to make it appear as 'necessary' or 'expedient' for the purposes of the Act without laying down any standards to guide the discretion of the delegate. This amounts to giving a blank cheque to the delegate. The executive becomes powerful as it secures powers to affect the life, liberty and property of individuals without the democratic restraints of a debate in the Legislature as usually happens when a statute is enacted through the Legislature. The dangers that are inherent in its indiscriminate use cannot be waived off, hence the controls. Though there are innumerable controls over delegated legislation they are more so an eyewash to democratic sentiments. The Supreme Court of India faced a challenge pertaining to delegated legislation and its validity in the famous case of *In re Delhi Laws Act, 1912*.[2] The Constitution of India is neutral on this point as there is no provision in the Constitution which expressly prohibits or permits the Legislature to delegate its legislative power to the Executive. However owing to the exigencies, the Supreme Court-

- Legitimized delegation of legislative power by the Legislature to the administrative organs
- Imposed an outer limit on delegation, i.e., the 'essential legislative function' cannot be delegated.
- If the delegation is too broad the courts can declare the same a excessive and hence invalid.

Delegated legislation has been held to be valid because it is considered inevitable. It is unfortunate that the courts have considered various delegating provisions valid irrespective of the delegation being excessive.

A 'skeleton' legislation which vaguely had the details of policy was considered to be valid as the Apex Court argued that the ambit and the character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy.[3] Delegation of the power of Exclusion and Inclusion have also been recognized as constitutional. The delegate is also bestowed with the power to bring individuals, bodies or commodities within, or to exempt them from the purview of the Act and also amend the Schedule of the very Legislation.[4]

The Legislature is also conferring on the Executive a drastic power to modify or amend the parent statute itself in the guise of providing flexibility of approach in certain situations and alas, The Judiciary is recognizing such amount of drastic delegation as valid.[5] No wonder, even the far widely criticized Henry VIII clause may soon become valid or be termed constitutional. The present focus of the inquiry of its controls and safeguards shifts to the question of desirability of delegated legislation.

3.2. Encroachment by the Judiciary

Democracy works on the confidence of independent judiciary. No Democracy would sustain without an independent judiciary, free from all sorts of interference from its counterparts. Power of Judicial Review makes the Judiciary stand out in a legal system. Judicial review is a process under which executive or legislative actions are subject to review by the judiciary. But the very concept of judicial review does not find its basis in

[1] M.P.JAIN & S.N.JAIN, *PRINCIPLES OF ADMINISTRATIVE LAW*, SIXTH EDN, 2010, at pg. 47.

[2] AIR 1951 SC 332: 1951 SCR 747.

[3] *Bagla v. State of Madhya Pradesh*, AIR 1954 SC 465, at 468.

[4] *Banarasidas Bhanot v. State of M.P.*, AIR 1958 SC 909: AIR 1959 SCR 427.

[5] *State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd.* , AIR 1995 SC 2213.

ISSN 2394 - 7780

the Constitution expressly. Courts, through their pronouncements have claimed this power based on inferences drawn from the Constitution's identification if itself as supreme law.

Early supporters of judicial review probably did not imagine that the federal and the state courts would exercise sweeping powers they have come to exercise today. Back then judicial review was limited, but at present it has transformed into judicial overreach. The thin line dividing judicial activism and judicial overreach has almost vanished. Courts are rather usurping the functions of the Legislature. It is suggested that judicial activism is a naked usurpation of the legislative function under the thin guise of interpretation.

The guidelines laid down by the Apex Court in *Vishaka's* case became the principles of law pertaining to rights of women against sexual harassment at workplace[1]. For decades together the principles laid down in *S.R.Bommai's* case has stood like a rock unwithered and till date acts as a criteria for consideration with regard to failure of Constitutional machinery in a State and the importance of floor test in cases of apprehensions that the State Legislative Assembly has lost the mandate of people[2].

The above instances can be classified under judicial activism but there are innumerable instances that go in the direction of judicial overreach. Striking down the *99th Constitutional Amendment Act,* the Supreme Court literally legislated by laying down the procedure for appointment of Judges, the collegium system, an extra-constitutional body, thus proving the Legislators to be wrong, thereby snatching the power of appointment of judges from the hands of the executive[3].

The Constitution of India under Article 265 is categorical and lays down that no tax can be levied or collected without the authority of law. It is to be noted that 'law' here means the law made by the Legislature. The Green Court levied tax on commercial diesel vehicles passing through Delhi and the Supreme Court upheld it[4].

During Uttarakhand constitutional crisis, the Supreme Court created constitutional void for two hours by directing the Union Government to lift the President's rule for conducting floor test. For those two hours, there was no Government in the State; no State Government nor the Central rule, nobody was holding the reins of government. This act by the Apex Court almost reduced the Constitution into mere wax in the hands of Judiciary[5].

4. CONCLUSION

Usurpation of the legislative function by the Executive and the Judiciary is taking a toll o the very governance of the country.

With regard to delegated legislation, though the technique of delegated legislation has definite advantages, has become generally acceptable, the dangers are inherent. Though it is an evil, it is considered necessary. The Executive becomes powerful as it secures to affect the life and liberty of individuals without the democratic restraints of a debate in the Legislature. Discussion on a bill in the Legislature secures publicity, a legislation thus keeps in harmony with the public sentiment. But this salient and democratic safeguard is not available in the case of a delegated legislation. The very system has become **undemocratic** giving rise to the danger that the government may misuse its powers. The suspicion and apprehension that civil and personal liberties of people may be endangered never subsides. More so, the very technique of delegating legislative powers leads to Legislative lethargic – insensitive to social needs.

Judicial power can be used and has been used for both good and ill. However, in a basically just democratic republic, judicial power should never be exercised lawlessly even to meet desirable ends. Judges are not legislators . The legitimacy of their decisions, particularly those decisions that displace legislative mandate, depends entirely on the truth of the judicial claim that the Court was authorized by law to settle the matter. When this claim is false, a judicial edict is not redeemed by its good consequences, for any such edict constitutes an usurpation of the just authority of the people to govern themselves through the constitutional procedures of deliberative democracy. Decisions in which the courts usurp the authority of the people are not merely incorrect, they are, themselves unconstitutional and unjust.

[1] *Vishaka v. State of Rajasthan,* AIR 1997 SC 3011.

[2] *S.R.Bommai. v. Union of India,* AIR 1994 SC 1918.

[3] *Supreme Court Advocates on Record Association v. Union of India,* Writ Petition(Civil) No. 13 of 2015

[4] DHC WP(C) No. 7459 of 2017.

[5] Sudhanshu Ranjan, *'Increasing encroachment by the Judiciary',* an article in Deccan Herald, May 24, 2016.

ISSN 2394 - 7780

When it comes to ouster clauses, that bar the interference of the courts or the pure executive functions of the Executive; the courts as well as the Executive agencies jealously guard their jurisdiction so that the other organ does not encroach over its prime function. This attitude is lacking in the Legislature.

In the name of necessity, expediency, activism; the fundamentals of democracy are being uprooted. The Legislature, The Executive, The Judiciary, the prime organs of the Government are definitely not watertight compartments; they must be functioning hand in hand for the welfare of the people by two constitutional organs usurping the primary function of their counterpart is definitely not a healthy sign of good governance.

"…it is not important to know how millions of Jews were killed; but it is important to understand how millions of ordinary Germans were convinced that it was necessary."

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INTERFACE BETWEEN PLANT INTELLECTUAL PROPERTY PROTECTION AND AGRICULTURE BIODIVERSITY CONSERVATION: INTERNATIONAL INITIATIVES

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ABSTRACT
Biodiversity provides security to human life by providing many benefits, including food security. It also plays a very significant role in retaining ecological balance. In the modern days, profiteering motive of the mankind made the people to exploit the natural resources in an uncontrolled manner. Such activities threatened the existence of both plant and animal life and affected the eco-balance. Since, biodiversity greatly impacts human life, sustainable use, development and conservation of biodiversity are critical for continuous development of humankind. The direct consequences of loss of plant biodiversity related to food and agriculture resulted in extinction of varieties of species and the entire eco-balance has also been disturbed. Hence, to retain the biodiversity, protect, nurture and to develop the plant biodiversity, several international Conventions and Treaties were entered into with the main objective of sustainable development, sharing of plant genetic resources among the member countries and to give fair share to the conserver of such resources. Newly invented plant varieties also found protection under the intellectual property laws at the national and international level. In this background this paper focuses on the international initiatives in conserving plant genetic resources and the impact of Intellectual property protection on agricultural biodiversity.

Keywords: Plant Intellectual Property Protection, Agriculture Biodiversity and Food Security.

INTRODUCTION
Biological diversity is one of the most important aspects that contributes in retaining ecological balance, improving soil quality and promote agriculture, and on the other hand, loss of biodiversity would impact agricultural and food security. Food and agriculture biodiversity greatly contribute in the production of agricultural products and food in various ways. It encompasses the domesticated plants and animals that are part of crop, livestock, forest or aquaculture systems, harvested forest and aquatic species, the wild relatives of domesticated species, and other wild species harvested for food and other products as well as vast range of living organism (also known as 'associated biodiversity' that live in and around food and agricultural production system).[1] Associated biodiversity sustains and contributes the outcome of benefits emanating from the biodiversity of food and agriculture.

Foundation of cultivation and agriculture lies in plant genetic resources, as it provides basis for developing new and improved varieties of crop and eventually leading to food security. Farmers have been experimenting with wild plants from generation to generation by choosing, rearing and improving plants that are more suitable for human consumption and have thus contributed to the growth of agriculture biodiversity.[2] For food security and sustainable development, biodiversity for food and agriculture is absolutely necessary as it provides essential elements for the ecosystem to survive by fertilizing soil, cycling nutrients, regulating climate, purifying water, controlling pests and diseases etc. However, ever growing population became threatened the crop biodiversity and the countries started encouraging seed breeders to invent new varieties of crops, which could yield more quantity of food grains to ensure food security to their population. By conferring monopoly to the breeders at international level, t*he UPOV Convention of 1961* and *TRIPS Agreement* encouraged new plant varieties in agricultural sector; thereby ensured food security.

Later, as a result of growing commitment to sustainable development in the world community, with the objective of conservation of biological diversity, sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources, the *Convention on Biological Diversity* (CBD) was entered into in 1992. In response to diminished crop biodiversity, in 2001, the Conference of the Food and Agricultural Organization (FAO) adopted ITPGRFA, which seeks to preserve and sustain only "plant genetic resources for food and agriculture". These international developments had to be complementary to each other, but unfortunately, these initiatives turned to become contradictory to each other. In this background, this paper

[1]http://www.fao.org/3/CA3129EN/CA3129EN.pdf., accessed on 14.09.2019.

[2]Geoff Tansey and Tasmin Rajotte, *Future Control of Food: A Guide to International Negotiations and Rules on Intellectual Property, Biodiversity and Food Security* (Earthscan, London, 2008) p.82.

ISSN 2394 - 7780

examines the international initiatives in conserving the biodiversity and it further analyses the impact of the IPR protection to plant varieties on biodiversity conservation.

THE INTERNATIONAL INITIATIVES IN CONSERVING THE AGRICULTURAL BIODIVERSITY

a. *Convention on Biodiversity*

The *Convention on Biological Diversity* (CBD) was entered into in 1992. It states that 'conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential'.[1] Hence, it prompted conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. It was the first international treaty to introduce the principle of "Common concern of humankind" and to recognize sustainable development of biological resources such as animals, plants, micro-organism and traditional knowledge by providing legal framework for the protection and sustainable use of biodiversity in the general interest of the humanity.[2]

As a first step of conserving the biodiversity of the nations, this convention recognised State's sovereignty over its bio resources found within their territory.[3] It prevented unauthorized use of genetic resources, by treating it as common heritage of humanity by the foreign countries. The Convention provided an incentive to these countries to conserve their biodiversity by allowing States to control access to genetic resources and negotiate terms for benefit sharing.

With the introduction of post-study obligations in the 2000 Declaration of Helsinki, this idea of benefit sharing came to the forefront of international community and several benefit-sharing schemes have been introduced since then. One of the major accomplishments in this direction was achieved when the Sixth Ordinary Meeting of the Conference of the Parties to the *Convention on Biological Diversity,* (COP VI) held in Hague, in April 2002, which adopted Bonn Guidelines. Bonn Guidelines on access to genetic resources and the fair and equitable sharing of the benefits arising from their utilization laid out the process to implement provisions relating to access to genetic resources and benefit-sharing such as assisting parties in establishing administrative, legislative, or policy measures to access and benefit-sharing and/or when negotiating contractual arrangements for access to genetic resources and benefit-sharing. [4]

b. *The International Treaty on Plant Genetic Resources for Food and Agriculture,* 2001 (ITPGRFA)

Genetically diverse plant germplasm is required for food security and human survival. Lack of diversity in the plant germplasm, coupled with climate change, growing population threatens the existence of humans on earth. It has been estimated that, there are about 3,00,000 to 5,00,000 species of higher plants of which about 30,000 are edible and approximately 7,000 plants have been cultivated or collected for food by humans at some point in history.[5] Though, the number of species used for food and agriculture is small, they are very diverse. It has been estimated that the number of distinct varieties of the rice species, *oryza sativ*a, may range from thousands of varieties to over 1,00,000.[6] However, recent survey reports reveal that the distinct varieties of crop breeds are disappearing in a very fast pace.

In order to avoid the consequences of diminished crop biodiversity, the Food and Agricultural Organization (FAO) adopted *the International Treaty on Plant Genetic Resources for Food and Agriculture,* 2001 (ITPGRFA). Its main objectives are, conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use.[7] While the ITPGRFA was

[1] Preamble of CBD, Available at, https://www.cbd.int/convention/articles/default.shtml?a=cbd-00., accessed on 10. 09.2019.

[2] *Ibid*.

[3] Shawakat Alam, *et al* (Eds.) *International Environmental Law and the Global South* (Cambridge University Press, 2015) p.192.

[4] https://www.cbd.int/abs/bonn/. Accessed on 11.09.2019.

[5] Edward O Wilson, *The diversity of Life* (W.W. Norton and company, 1992) p. 287.

[6] State of the World's PGRFA (1998) Food and Agriculture Organization of the UN, Rome, 1997, p. 15

[7] Claudio Chiarolla, *Intellectual Property, Agriculture and Global Food Security, the Privatization of Crop Diversity* (Edward Elgar Publishing Ltd, Glos, 2011) p.111.

ISSN 2394 - 7780

designed to complement, and has similar objectives to the CBD, it has several key differences. The ITPGREA seeks to preserve and sustain only plant genetic resources for food and agriculture and it takes more drastic measures than the CBD to accomplish this goal.[1]

The ITPGRFA promotes exchange and conservation of seeds of food crops of the world among member states that motivates research towards growing crops that can withstand the harshness of adverse climatic conditions and eventually secure food security for the people of the world. The treaty also contributes fair and equitable sharing of benefits and has made tremendous progress during its implementation between 2007 and 2014 in improving the uses of plant genetic resources at global level. The Treaty has created a global gene pool for food security under the direct control of all Contracting Parties with 1.6 million samples of genetic material that facilitate research for major important crops including maize, rice, wheat and cassava, among others. [2]

For the effective sharing of benefits, this Treaty establishes a multilateral system of access and benefit -sharing that facilitates access to the plant genetic resources for food and agriculture listed in Annex 1of the ITPGRFA,[3] that are under the management and control of the contracting parties and in public domain, with facilitated access for natural or legal persons in the jurisdiction of any treaty contracting party or member country.[4] Thus, private sector plant breeders and scientific institutions engaged in breeding crops have the opportunity to collaborate and improve, their own genetic resources saved in gene banks or improve the crop they cultivate. They also get the opportunity to facilitate research, innovation and exchange of information without restrictions. The Multilateral System helps developed countries to use their technical knowledge in experimenting and growing crops in their laboratories and to improve the methods that farmers in the developing countries were using to breed crops in the fields.[5]

PLANT VARIETY PROTECTION UNDER IPR REGIME

1. *Trade-Related Aspects of Intellectual Property Rights Agreements* (TRIPS Agreement)

Since patents confer a monopoly on the inventors of new product or process, things that existed in nature including biological materials were not considered as invention and as it was a mere discovery, they were excluded from patent protection. This trend has however changed with hybridization and biotechnology, as well as the emergence of the World Trade Organization's (WTO) *Agreement on the Trade Related Aspects of Intellectual Property Rights* (TRIPS).[6] With the capacity to develop transgenic plants through biotechnology, resulting in new plant varieties, it became possible to patent plant varieties, particularly those that have been genetically modified. Therefore, TRIPS requires the member countries to extend IPR protection of plant varieties under Article 27(3) (b).[7]

This provision mandates the member countries to choose to protect new plant varieties by establishing a patent system or a *sui generis* system or a combination of both. Although the agreement is silent on specific conditions of *sui generis* system, the one which is used in most of the countries is based on the *International Convention for the Protection of New Varieties of Plants* (UPOV Convention) administered by International Union for the Protection of New Varieties of Plants (UPOV). It should however be noted that a country may choose to allow both forms of protection; this will still be TRIPS-compliant.[8] The options given to the member countries have the following features-

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[1] Mark D. Janis, Herbert H. Jervis, and Richard Peet, , *Intellectual Property Law of Plants,* (Oxford University Press, Oxford, 2014) p.499.

[2] http://www.planttreaty.org/content/recent-progress accessed on 24.01. 2019.

[3] 64 important crops and forages to ensure worldwide food security.

[4] Juliana Santilli, *Agrobiodiversity and the Law-Regulating Genetic Resources, Food Security and Cultural Diversity* (Earns can, NY, 2012) p.130.

[5] http://www.planttreaty.org/content/what-multilateral-system, accessed on 24. 01. 2019.

[6] Olaitan Oluwaseyi Olusegun and Ifeoluwa Ayokunle Olubiyi , "Implications of genetically modified crops and intellectual property rights on agriculture in developing countries" Journal of African Law (2017).

[7] Article 27(3)(b) of *TRIPs Agreement* states: *"Members may also exclude the following from patentability: ... (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof ..."*

[8] *Supra* note 15, p.5.

ISSN 2394 - 7780

i. Patent protection

The plant varieties can be protected through patents, if the invention in the plant has fulfilled the requirements for patentability according to the patent laws of the country in question. Upon grant, the patentee enjoys a monopoly over the invention for a period of 20 years. The patent grant allows the patentee to prevent others without authorization from making, using, selling, importing, exporting, storing or manufacturing the patented product, which in this case is the patented seed. Any unauthorised use including preserving and resowing the seeds by the farmer also leads to strict legal consequences like payment of high amounts of compensation, injunction orders, etc.

This situation is absurd in plant patents, since a farmer whose field is inadvertently pollinated with pollens from a GM crop or where seeds from a field planted with GM crops have blown to the farmer's land will be held liable for patent infringement. Hence, farmers who choose to raise non-GM crops can be held liable for infringement, if their crops test positive for GM, even though the patented plant or seed came into their possession unintentionally.

ii. *Sui generis* System under International Convention for the Protection of New Varieties of Plants (UPOV)

On the other hand, to protect the plant varieties, there is an already existing model known as UPOV model of *sui generis* protection. It was established in 1961 to protect the rights of plant breeders by ensuring that their effort and investment in developing new plant varieties are adequately rewarded. Currently there are two versions of the UPOV Convention in place: UPOV 1978, and the latest revised version of UPOV 1991. It grants patent-like protection to the genetic make-up of the protected plant variety. Under the Convention, plant variety rights are granted for a variety that is new, distinctive, stable and uniform. A plant variety is deemed to be new, if on the date of application filed, neither propagating nor harvested material of that variety has been sold or otherwise disposed of to others by or with the consent of the breeder for the purpose of exploiting the variety. It is distinct, if it is clearly distinguishable from any other variety, whose existence is a matter of common knowledge. It is uniform, if subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics on propagation. A plant variety is stable, if its relevant characteristics remain unchanged after repeated propagation.

Under UPOV 1978, the breeder has the right to produce the variety's propagating materials for commercial purposes, offer those materials for sale and market the materials. UPOV 1991 expands these rights to include reproducing or multiplying the protected variety, conditioning it for propagation, exporting and importing the variety, and stocking it for any of these purposes. UPOV 1978 recognises some exemptions to breeders' right by permitting the utilization of the protected variety as an initial source of variation for the purpose of creating other varieties or for the marketing of such varieties without the permission of the protected variety's owner. However, under UPOV 1991, breeders and researchers can use protected plant varieties to create new varieties, although this does not apply to new varieties that are 'essentially derived' from those protected varieties. This provision was added in order to prevent breeders from making minor, non-essential or cosmetic changes to an existing variety and subsequently applying for IP protection. Moreover, UPOV 1991 limits the farmer's privilege and the farmers may save seeds for future use 'on their own holdings', but only within reasonable limits and subject to 'safeguarding the legitimate interests of the breeder'. Hence farmers may no longer sell or exchange seeds with other farmers.

This restriction is contrary to farming practices in many developing nations where, seeds are exchanged to facilitate crop and variety rotation. The limitation on the farmer's rights is likely to exacerbate the already existing problems of hunger and malnutrition. These exemptions under the UPOV Convention were the main distinguishing factors between the UPOV *sui generis* system and patent protection, thereby making the UPOV Convention a better platform for ensuring the interests of the IP owner and of the public. By broadening the rights of the plant breeder and further restricting permissible acts, UPOV 1991 has made the UPOV system more similar to patenting plant varieties.[1]

INTERFACE BETWEEN PLANT IPR PROTECTION AND BIODIVERSITY CONSERVATION

Though the CBD and the ITPGRFA propose to conserve biodiversity through benefit sharing and protection of traditional knowledge, many of the member countries to CBD and ITPGRFA are also parties to the *TRIPS Agreement* that gives way for some conflict of interest. The conflicting provisions of *TRIPS Agreement* undermines significance of the Biodiversity conservation requirement and the effectiveness of the CBD and

[1] *Supra* note 15, p. 7.

ISSN 2394 - 7780

ITPGRFA based treaties. While the *Convention on Biodiversity* recognizes States' authority over its biological resources, *the TRIPS Agreement* recognizes rights of private individual rights on intellectual property over the State. Though, several provisions of the CBD provide guidance relating to the IPR –biodiversity relationship, the member States of the Convention do not have the right to prevent or prohibit the access to the bio-resources found in their territory to the foreigners. Moreover, a Member country has no recourse for an inventor obtaining IPR rights based on their bio resources in a foreign country. To resolve these disputed issues several attempts were made at international level. However, all these initiatives revolve round the problem of accessing the bio-resources, without acknowledging the source and the issues pertaining to benefit sharing. Significant development in this regard are-

a. Doha Declaration, 2001

While *TRIPS Agreemen*t protects private individual's intellectual property rights over innovations, whereas, treaties supporting biodiversity conservation support the idea of protecting community rights over the individual rights. When there is a conflict between private and public rights within national level, national interest would take priority; hence, in a dispute between IPR holder of a foreign country and a sovereign State, priority should be given to the State's interest and not to the IPR holder. In this direction, the office of the Director General of the WTO has considered various proposals advanced by a group of developing countries and LDS's[1] which would require disclosure of the country of origin for all genetic resources or the traditional knowledge used in the invention, evidence of prior informed consent, and evidence of fair and equitable benefit sharing described in a patent application as those terms are employed in the *Convention on Biodiversity*.[2] As a result, now it is mandatory for the people to disclose the place of origin of bio resources to obtain patent, if their invention is based on bio resources and to share their benefits with the country of origin.

b. *The Standard Material Transfer Agreement* (SMTA) 2006

The SMTA, adopted by the Governing Body of FAO in June 2006, is the principal instrument for implementing the *International Treaty on Plant Genetic Resources for Food and Agriculture* provisions relating to Multilateral System. It provides for facilitated access pursuant to a *Standard Material Transfer Agreement* (SMTA).[3] It is a private contract to ensure relevant provisions of the International Treaty are adhered by independent providers and recipients of plant genetic material. As it is a bilateral treaty, it is only binding on parties, not on the countries, however, it can be enforced within the jurisdiction of countries even though, the treaty is not been ratified by their country.

The SMTA establishes the level, form and manner of equitable benefit sharing payments to be made under the ITPGRFA. Accordingly, recipients, without obtaining the prior consent of providers, but by ensuring their subsequent buyers following standard conditions of SMTA, can transfer the plant genetic materials which they received for developing a new seed, to the third party.[4] Thus, a chain of action will be formed to make sure that each recipient who develops seeds derived from multilateral system passes on the obligations related to benefit-sharing to their recipient who further develops products[5] derived from this multilateral system.[6]

The Recipients had to undertake that the material they received will be used and conserved only for the purposes of research, breeding and training for food and agriculture.[7] They will not be able to claim any intellectual property or related rights on the genetic material or any part of it, which they received through the

[1] This group comprised of Brazil, India, Bolivia, Columbia, Cuba, Dominican Republic, Ecuador, Peru and Thailand.

[2]https://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm.accessed on 14.09.2019.

[3]http://www.fao.org/plant-treaty/areas-of-work/the-multilateral-system/the-smta/en/ accessed on 27. 01. 2019.

[4]http://www.planttreaty.org/content/what-multilateral-system accessed on 27.01.2019.

[5]"Product" means Plant Genetic Resources for Food and Agriculture that incorporate2 the Material or any of its genetic parts or components that are ready for commercialization, excluding commodities and other products used for food, feed and processing

[6] *Supra* note 22.

[7] Article 6.1 of *the Standard Material Transfer Agreement.*

ISSN 2394 - 7780

Multilateral System.[1] If they conserve the material, they are under the obligation to make the plant material and related information available to the Multilateral System.[2]

c. The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), 2010

The Nagoya Protocol on ABS, a supplementary agreement to the *Convention on Biological Diversity,* was adopted after six years of negotiations on 29th October 2010 by the tenth COP to the CBD in Nagoya, Japan with the objective of fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all the rights over those resources and technologies, and to provide funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.[3]

The Protocol mentions traditional knowledge (TK) associated with genetic resources held by indigenous and local communities and provides that prior and informed consent or approval is necessary to access these on mutually agreed terms.[4] Contracting party providing genetic resources is under the obligation to be compliant with domestic and regulatory laws and they are expected to encourage the users and providers of benefits resulting from using genetic resources for conserving and sustainably using biodiversity.[5]

CONCLUSION

Since, agriculture biodiversity, specifically, diversity of crops in agricultural fields is essential for retaining eco-balance, conserving biodiversity is the need of the day to solve food security problem in the world. Food security can only be achieved through sustainable agriculture. While addressing the problem of shortage of food grains, national and international authorities focused their attention only to grow more grains to feed the population and thereby totally neglected the significance of the diversified varieties of crops. The emergence of UPOV Convention, which was later emphasised under the *TRIPs Agreement,* paved the way for monoculture of crops and impacted the traditional ways of farming wild varieties. In some countries the farmers used only GM seeds. As a result many other varieties have become extinct. Planting GM crops reduces the incentive for farmers to experiment with informal plant breeding that is capable of creating plant varieties that can adapt to local growing conditions.

Further, increasing dependence on GMOs has another disadvantage of destroying the traditional and wild varieties. Since GM crops can be resistant to adverse environmental conditions, diseases, insects and chemicals, this may conversely increase the susceptibility of non-GM crops to these hazards, thereby leading to their extinction. Moreover, wild life on farms is also likely to reduce, since weeds are destroyed, thereby reducing the available food for birds and insects. Hence there is a fear that GMOs can destabilize the entire ecosystem.

The attempts to conserve the biodiversity under the *Convention on Biodiversity* and the specific treaty to ensure food security, i.e., *the International Treaty on Plant Genetic Resources for Food and Agriculture,* 2001 also failed to focus on the problem of diminishing crop varieties. Unfortunately, the main attention given under these initiatives was to give fair access to the bio resources and share the benefits among the countries. The problem of food security can be regulated by adopting sustainable agricultural practices such as intercropping, where two or more crops are grown in proximity with each other in the same land and crop rotation, where two or more crops are grown one after the other. Compared to monoculture, intercropping and crop rotation provides several benefits such as better control of weeds, pests and diseases. It improves soil structure and organic matter content thereby improving soil fertility. Such practices not only increase the crop yields but also help in retaining agriculture biodiversity and eco-balance. Hence, there is a need to attend the real environmental problem of diminished plant diversity due to over emphasis to IPR protection on crop seeds.

[1] *Ibid*., Article 6.2.

[2] *Ibid*., Article.6.3.

[3]https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf p.4 accessed on 23.08. 2019.

[4] *Article 3 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS), 2010.*

[5]https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf, accessed on 23.08. 2019.

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PERSONALITY PREDICTORS OF ADVERTISING AVOIDANCE ON ONLINE SOCIAL NETWORKING SITES

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ABSTRACT
Personalized advertising on social media sites improves advertising relevance for users and increases return on investment for advertisers. Because of the unprecedented growth of various social media applications with personalization features has become a top priority for marketers in creating customized ads. At the same time there is growing evidence to suggest that internet users demonstrate negative reactions and avoid clicking on ads due to numerous reasons. The main purpose of this research is to review the personality and psychological factors that influence ad avoidance towards personalized advertisements on online social media sites. The study found that individuals with neuroticism, conscientiousness experience more ad avoid towards personalized advertisements compared to agreeable individuals, openness to experience and extroverts. The study found that personality plays a key role in avoiding personalized ads. The theoretical contributions of this study are expected to extend the knowledge regarding ad avoidance in the context of consumer behavior.

Keywords: Personalized advertising, Agreeableness, Neuroticism, Personality traits, Ad avoidance.

INTRODUCTION
The technological up gradation and increased advertising clutter and media fragmentation now expose consumers to thousands of commercial ads every day on social media websites (Gritten 2007). Earlier, advertisers reach consumers' through various traditional media, such as magazines, radio, television and newspaper, later through the new marketing strategies such as guerrilla media campaigns, sub viral marketing online, brand installation, and consumer-generated media such as blogs, podcasts, and online social networking sites (Schultz 2006a). In the current market scenario, consumers are aware of marketing strategies and empowered by technology, through which results in developing the content (social ads social media) and avoid the advertisements that do not interest them (Gritten 2007). Although ad avoidance could be a well-studied topic in numerous contexts like, on-line and off-line. The dynamic trends in on- line atmosphere poses numerous challenges to the researchers to look at the thought of advertising in various ways (Cho and Cheon 2004; Grant 2005) and specifically in on-line social networking sites. Thus, our purpose is to explore personality traits and its influence toward advertising within the on-line social networking context. Reviewing the personality literature in the context of as avoidance is necessary because, every personality have a different avoidance behavior concerning personalized advertising. Consumers commonly pay little attention to ads on social networking web sites (SNSs) in parallel with the upward thrust of SNS marketing. In fact, clients' adoption of varied techniques, such as advertising avoidance, to lessen their exposure to advertising messages seems to be at the upward thrust. However, limited attention has been given to mental determinants of customers' propensity to interact in SNS ad avoidance. The phenomenon of Social networking web sites (SNS) that earnestly permeated the lives of tens of millions of net users round the sector is here to stay (Wilson, Fornasier and White 2010). This pattern of increase and popularity is evident for customers and brands alike (Knoll 2015; Jung 2017). An estimated 2.72 billion human beings are predicted to be social network users with the aid of 2019 (eMarketer 2016). SNS present advertisers with rich features and statistics that permit them to provide more and more tailored advert messages. As such, social network advertising is anchored as a regular marketing strategy. The modern marketing environment needs that advertisers expand media messages that break through the traditional adverting patterns that customers encounter numerous commercials day by day. But, in fact, customers scarcely connect to very few adverts (Jung 2017).

A growing however major frame of research has examined the effectiveness of social network advertising (see Daugherty, Djuric, Li and Leckenby 2017; Jung 2017; Wu 2016; Zeng, Huang and Dou 2009). Indeed, research studies shows that 74% of consumers' depend upon social media to make purchase selections (Barker 2017). However, commonly, SNS function on-line environments wherein customers' can have private spaces to have interaction in numerous SNS. To that stop, customers can counteract advertisers' efforts to advertisements via diverse means. One of the main way is that customers can fight advertisers' tries to attain them with commercials on SNS is through advert avoidance. Typically, ad avoidance is a motion that consumers' react to intrusive exposure to advertising (Ketelaar, Konig, Smit and Thorbjørnsen 2015). The studies on personality variables, demographic and media associated variables (Speck and Elliot 1997) and religiosity (Ketelaar et al. 2015) as predictors of ad avoidance, are sparse. In order to fill the research gaps the current study aimed on

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personality differences as viable predictors of advertising avoidance on line social networking sites. Even the studies related to personality and personalized advertisements are scarcer. Therefore the research question for the current study is to identify. **Do personalized advertising based on individual differences evoke differential responses to SNS ad avoidance?**

There are motives to accept as true with that personalized messages may additionally mitigate advert avoidance. Many earlier studies have explained in contrary as personalized ads may also influence the individuals click through intentions (Hornikx and Okeefe 2009; Kalyanaraman and Sundar 2006). More importantly, in congruent with this idea which indicates that compatibility among users' interests and messages produces effective avoidance responses. Therefore, there may be an opportunity to examine the personalized ad content and its influence on consumers' personality traits in SNS advertising avoidance. Importantly, the intention of this research is to check how the nexus of personality traits and personalized messages function to have an effect on consumers' chance of collaborating in SNS advert avoidance. Many studies on online advertising showcases that the attraction of personalization as a marketing strategy which produces fantastic effects. Theoretically, this current study hopes to contribute to the extant expertise approximately the psychological reactance towards tailor-made messages (Sundar and Marathe 2010). Further, this research seeks the loopholes in personalization strategies adapted by social media sites. Nearly, this research seeks to shed insights on the usage of personalized messaging as a manner to counter consumers' propensity to keep away from SNS advertisements. This could help in advertisers' efforts to develop customized message content that resonate with their consumers and bring about favorable responses.

LITERATURE REVIEW

Personality and motivation are closely associated epistemological standards, and advances especially inside the neurosciences are revealing that they may be frequently indistinguishable theoretical and operational constructs. The psychological literature has tended to maintain aside those fields, ought to be studied in isolation. The attitude we undertake views personality because it plays a key role in motivating an individual. If this contention is valid, we should be capable of research a lot approximately the individual differences. Many theories of personality have explained motivation as a key concept.

SOCIAL MEDIA AND PERSONALITY TRAITS

Identifying personality types as a predictor of online behavior with a view to improve the effectiveness of human computing interaction, The five-element version identifies 5 persona types as follows:

• **Extraversion:** Low stages indicate quiet and shy personality, excessive stages an Adventurous, social, talkative one.

• **Conscientiousness:** Low stages indicate a disorganized, without difficulty distracted, Persona, high stages demonstrate a strong paintings ethic, orderly and thorough.

• **Agreeableness**: Low stages suggest a far off and reserved personality, excessive stages a pleasant and sympathetic one.

• **Neuroticism**: Low stages indicate balance and emotional manage, excessive ranges imply a touchy, nervous personality.

• **Openness to experience**: Low stages indicate a persona resistant to trade and down to earth in lifestyle, high levels a progressive, novelty-searching for personality.

PERSONALIZED SOCIAL MEDIA ADVERTISING AND PERSONALITY TRAITS

While the 5 element personality model has been used to research perceptions of carrier excellent and patron pride, personality traits have now not been a popular method of marketplace segmentation regardless of their potential applicability. Personality traits had been used in off-line research to look at customer responses to advertising and marketing, and whilst a number of this studies has utilized United States of America unique personality scales, there may be a frame of studies that relies on the five-personality version to specially explore customer responses to emotional appeals in advertising. For example, advertising that suggests social rewards or exhilaration has been shown to attraction to humans with excessive levels of Extraversion (sixteen), whilst advertising that means protection and safety is much more likely to enchantment to people with higher ranges of Neuroticism. Those with low ranges of Agreeableness have been found to be more likely to enjoy combined emotions and therefore less favorable attitudes, whilst viewing commercials. It has also been speculated that clients with high degrees of Conscientiousness might react greater favorably to advertising that presents facts instead of generates feelings. But, there's additionally some evidence that the relationship between personality kind and marketing isn't simplest it's more complicated, however further studies need to conducted.

ISSN 2394 - 7780

AD AVOIDANCE IN SOCIAL NETWORKING SITES

Ad Avoidance in Social Networking sites, particularly latest but predominantly popular form of on line advertising and marketing, continues to be developing as possible alternative channel through which advertisers communicate with their consumers (Hadija, Barnes and Hair 2012) and try and pressure digital engagement (Voorveld, van Noort, Muntinga and Bronner 2018). advertising and marketing avoidance, consummate moves which clients rent to mitigate their subjection to advert content material (Speck and Elliott 1997), has been the point of interest of good sized studies inside literature (Baek and Morimoto 2012; Edwards, Li and Lee 2002; Kelly, Kerr and Drennan 2010). Cho and Cheon (2004) pioneered the exploration of advertising and marketing avoidance in a web context. Of their research, they expounded the concept of online ad avoidance into three wonderful dimensions, specifically, cognitive, affective and behavioral avoidance (Cho and Cheon 2004). Individual beliefs and opinions of on line commercials outline the cognitive size of ad avoidance. When human beings' bad ideals of an internet advert increases, its miles associated with a corresponding decrease within the favorability of the cognitive dimension leading to cognitive avoidance (e.g. calculated avoidance of an SNS ad). Inside the affective dimension, humans' responses to commercials consist of poor emotions widespread toward the ones ads. This measurement is represented in their evasion of the source in their discontent (e.g. SNS ads). The behavioral measurement includes people's lively means of evading advertisements as exemplified through scrolling all the way down to keep away from ads or clicking away from pages with advertisements (Cho and Cheon 2004). Social community advertising locations manufacturers inside a predominantly customer focused environment. Within the early years of social media use by way of manufacturers, they have been taken into consideration as unwelcome intruders (Fournier and Avery 2011).

Likewise, the personality of social network advertising and marketing seems to elicit similar sentiments approximately the proliferation of commercials which can be located on clients' SNS. However, ad avoidance offers consumers the capacity to manipulate their media consumption reports (Schultz 2006). Social network systems offer a variety of way thru which clients can enforce their preference to avoid advertisements (e.g. unlinking/unfollowing brands and hiding brands/commercials from newsfeed). No matter, social networks thru augmented person control wherein clients are capable of dynamically tempo their media consumption (Joa, Kim and Ha 2018), allow clients to decide while, how or if an ad message could be received (Kelly et al. 2010). Ad avoidance may negatively impact consumer attitudes towards brands they reencounter after they have prevented such advertisements (Duff and Faber 2011). Therefore, mitigating ad avoidance is perhaps one of the maximum priorities for advertisers. The convenience with which consumers can control their social community stories suggest the importance with which advertisers should develop their messages in a try and fall outside the box of ad avoidance on SNS. Within the advert avoidance literature, numerous antecedents of ad avoidance had been diagnosed which includes perceived intention impediment (Cho and Cheon 2004), ambivalence towards ads (Jin and Villegas 2007) and perceived relevance (Kelly et al. 2010).

Mainly, Kelly et al. (2010) determined that perceived relevance, the volume to which clients regard an advert as essential to them, lessens the chance of customers accomplishing ad avoidance on SNS. People are greater predisposed to keep away from commercials they don't forget being of no interest to them (Ingram 2006). Ad avoidance is also determined through the diploma to which people check that an advert interrupts their cognitive processes and goals, this is, perceived intrusiveness (Duff and Faber 2011; Li, Edwards and Lee 2002).

Consequently, individual differences (e.g. persona traits) may outline consumers' belief and reputation of SNS advertisements and their next behavior. Personality traits and ad avoidance on SNS. Personality traits, exceedingly persistent traits that describe preferred personality reactions to different circumstances (Hudson and Roberts 2014), are awesome traits that have an effect on consumers' offline and on-line behavior. As an instance, beyond research asserts the position of personality traits in consumers' social media use (e.g. Amichai-Hamburger and Vinitzky 2010; Correa, Hinsley and De Zuniga 2010; Gosling et al. 201; McCrae and Costa 1997; John and Srivastava 1999). In quick, extraversion pertains to the tendency to be sociable and experience tremendous emotions. Agreeableness is related to the chance of being cooperative and trusting. Neuroticism is associated with the tendency to be troubled and enjoy insecurity. Openness to enjoy is related to imaginativeness and intellectual curiosity. Conscientiousness refers to diligence, difficult work and obligation as traits (Correa et al. 2010). For example, Amichai-Hamburger and Vinitzky (2010) in their have a look at located a sturdy hyperlink among each of the big-5 personality developments and Facebook behavior. As an instance, their outcomes revealed that folks that scored higher on openness to experience had been greater expressive on Facebok. This have a look at expects that personality developments might also affect different SNS conduct inclusive of ad avoidance. Furthermore, it has been installed in the personality literature that there may be a courting among personality traits and advertising responses (e.g. Thomas 2014; Souiden, Chtourou and Korai 2017). For example, Souiden et al. (2017) located that extraversion moderated the connection among

consumers' attitudes in the direction of advertising and marketing, and attitudes closer to online marketing. In truth, the greater extroverted customers had more effect on their attitudes towards advertising and marketing. Jin and Villegas (2007) also offer a few insights into the impact of personality traits and consumer responses to advertising. They investigated how clients' processing of records various under exclusive (i.e. low and excessive) interactivity web environments. One conclusion Jin and Villegas (2007) offered changed into that attitudinal ambivalence inspired ad avoidance when consumers responded to on line ads. This bearing may be specifically suggested while messages are designed to mirror customers' precise personality traits.

Personality traits and personalized messages over the last few many years, the idea of personalization has been given a substantial amount of interest in advertising and marketing and marketing literature (Brinson, Eastin and Cicchirillo 2018; Baek and Morimoto 2012; Yu and Cude 2009). Customized advertising is defined as an advertising approach which singly goals customers by way of incorporating their particular options to design compatible messages primarily based on those alternatives (Maslowska, Smit and van den Putte 2013). The underlying mental mechanism of personalized advertising lies in congruence idea which postulates that to be able to keep harmony and symmetry, people have a tendency to be more responsive to humans and messages that are steady with their very own beliefs and attitudes (Hong and Zinkhan 1995; Aguirre-Rodriguez, Bosnjak and Sirgy 2012). In different words, when an advertisement contains a user portrayal that is congruent with the way that a viewer perceives himself/herself to be, it's far much more likely to generate more positive affective responses and more favorable product critiques (Chang 2002). Steady guide for congruence outcomes has been documented inside the advertising literature (Aguirre-Rodriguez et al. 2012). for example, Hong and Zinkhan (1995) have proven that advertising messages which can be congruent with consumers' orientations at the size of introversion and extroversion, a personality trait, generates greater favorable advert attitudes and brand reviews (see also Chang 2000; LaBarbera, Weingard and Yorkston 1998). Chang (2000) has indicated that girl customers respond greater positively to advertisements depicting woman customers than the ones depicting male customers. The matching effects of selfmonitoring, additionally a personality trait, and advert appeals on advert and product reviews have also been explored (e.g., DeBono and Packer 1991; Paek, Choi and Nelson 2010; Snyder and DeBono 1985). Personality based on his/her ideals, values, way of life, demographics or cognitive way of life, among others (Hornikx and O'Keefe 2009; Balgiu and Adir 2013; Clark and Çallı 2014; de Vries et al. 2017; Matz, Kosinski, Nave and Stillwell 2017). As an example, Hirsh, Kang and Bodenhausen (2012) determined that consumers had extra favorable responses to messages that had been altered to fit their personality trends. Hirsh et al. (2012) accelerated on present day message framing literature to determine the persuasiveness of message appeals based totally on consumers' personality traits is a powerful manner of broadening the impact of the messages. This effect of tailored messages may additionally translate into desirable attitudes and behaviors for advertisers. For example, personality-congruent messages are probably to rouse greater superb message evaluations. It's far in all likelihood that personalized ad messages may be a feasible method via which advertisers can effectively advertise through modern-day advertising applications in particular on SNS. With this in thoughts, this study proposes to further examine the concept of ad avoidance in relation with personality traits. As the avoidance attitude varies from personality to personality there is a need to further examine the influence of personality on ad avoidance in various social networking sites. For deeper insights the study propose to further comparative study on various SNS.

CONCLUSION

Through a thorough review of the writing in key predictors of ad avoidance. Expanding on the personality traits, we proposed for further studies on the concept of personality traits and ad avoidance in the context of various social media sites. We presented the research gaps and proposed a research agenda for future examination. We trust that this work adds further knowledge to study on online advertising.

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JUDICIAL RESPONSE TOWARDS PRISONER'S RIGHTS

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In the present scenario Judiciary plays very pivotal role in every country has an obligation and a constitutional role towards protection of human rights of every citizens. As per the guidelines and mandate of the Constitution of India given directions to superior Judiciary namely to Supreme Court of India and High Court. Why because human rights are basic rights, natural rights, civil or birth rights of every human being. The one and only authority to give ultimate or final decisions relating to all kinds of disputes settled by Supreme Court.[1.]

The supreme court of India plays most active role, If the matter relating to protection of Human rights Indian Judiciary system give huge protection to the sufferer's. Indian Judiciary has Independence & Credibility. The supreme court of India by Interpreting Art-21 of constitution of India is only authoritative organ to developed the Human rights.

According to Art-14 of the Indian constitution Right to equality have two concepts

a) Equality before law and

b) Equality protection of law

The Supreme court & High court commented upon the deplorable conditions bare by prisoner's in prison to prevailing inside the prison violation of prisoner's rights while prisoner's inside the jail.

PRISONER'S AND THE HUMAN RIGHTS

Art-21 of the Indian constitution enumerated "no person shall be deprived of his life & personal liberty or right to life & personal liberty with dignity is back bone of the every citizen of India". Indian constitution provides Human rights. The landmark Judgments relating to one of the best fundamental rights under Article-21 In 'A.K Gopalan's case'. In this case the supreme court held that the view that each Article deals with separate rights & there was no relation with each other. That is they were mutually exclusive view has been held to be wrong in **Maneka Gandhi** case the court held that they are not mutually exclusive but form a single scheme in the constitution of India.

The Instant case the ambit of the personal liberty by Art-21 of the constitution of India is wide & comprehensive opinion prescribed for right to life & personal liberty established by law must be fair just & responsible.

The landmark Judgement relating to Prisoner's right following namely

1) Maneka Gandhi case

2) Sunil Batra case

3) M.H Hoskot & Hussainara Khatoon

4) D.K Basu v/s State of west Bengal

The Sunil Batra case was the first case to protect the Human rights. This case was the watershed in the development of prison reforms in India.

1. Rights against solitary confinement & Bar Fetter's.

The Court have taken the view it could be impose only in exceptional cases the convict was of such a dangerous character must be segregated from the prisoner's.

The landmark case is 'Sunil Batra Case', In this case the court has considered the validity of solitary confinement the Supreme Court has also reacted strongly against putting bar fetter's to the Prisoner's. The Prisoner's suffering lots of problems they are inside the prisons the treatment was so cruel & treated like animal use of bar fetters was against the sprit of the constitution of India and it is clear violation of Art-21.

2. Rights against Inhuman treatment of Prisoner's.

Human rights basically are natural rights, basic rights of Human being. The Supreme Court explained the opinion has to taken a serious decision. Prisoner's facing so many problems in jail like, Third degree method barbaric treatment like mental & Physical torture etc.

ISSN 2394 - 7780

Raghubir Singh v/s State of Bihar
The Supreme Court expressed its anguish view against police authority torture by uploading the life sentence awarded to a police officer responsible for the death of a suspect to torture in a police lockup.

In Kishore Singh v/s State of Rajasthan
The supreme court held that the use of Third degree method by police is violated Art-21 the decision of the supreme court one more landmark Judgment of **D.K Basu v/s State of West Bengal** while dealing the case the court specifically concentrated on the problem of custodial torture & issued a number of directions to eradicate this kind evil for better protection promotion & reformation of Human rights.[1.]

3. Right to have interview with friends Relatives & Lawyers.
The new horizon of Human rights is expanding protection of human rights not only physical torture in prison to prisoners in person saves them from mental torture.

Art-21&22 of constitutional law directs that 'No person who is arrested shall be denied the right to consult & to be defended by a legal practioner of his own choice'.

In Hussainara Khatoon v/s Home Secretary Bihar
In this case the Supreme Court held that it is the constitutional right of every accused person who is unable to engage a advocate & secure legal service on account of reasons such as poverty indigence or incommunication situations to have free legal aid to him by state govt expences.

Sheela Barse v/s State of Maharastra
The court held that Prisoner's become necessary as otherwise the correct information may not collected but such accused has got to be controlled. On a complaint of custodial violence to women prisoners in jail, directed that those helpless victims of prison injustice should be provided legal assistance at the state expenses & give protection against barbaric treatment in prison.

4. Right to get speedy trial
The speedy Trial of offences is one of the basic objection of the criminal Justice system the basic principle is that until & unless case is going to prove against the accused or case has to prove beyond all reasonable doubt than only the accused become offender otherwise accused considered has innocent so accused has to be determined as quickly as possible it is mention that delay in trial by itself constitute denial of justice "Justice delayed is Justice denied", so that the right to get speedy trial has become a recognized Human rights for this purpose.

A.R Antulay v/s R.S Nayak
In this case Supreme court held that proposition which will go a long way to protect the Human rights of the prisoner's in the instant case to the apex court held that the right to speedy trial following from Art-21 of the constitutional law is available to accused at all the stages like: Investigation, Inquiry, Trial appeal, Revision, & Retrial.[1.]

Right to Legal Aid
Free legal Service is an essential fundamental right guaranteed by the constitution U/Art-39A-Sec 304 of Cr.P.C makes it clear that the state in under an obligation to provide legal assistance to person charged offence triable before the court of session.

M.H Hoskot v/s State of Maharastra
In this case the supreme court reading Art-21 & 39A along with Art-142 & 304 of Cr.P.C together declared the govt has power to provide legal service to the accused persons.[2.]

5. Right against Handcuffing
In Prem Shankar v/s Delhi
The Supreme Court have power to added yet another protection in it's perview to be used against the war for prison reform & prisoner rights. There was a question raised before supreme court whether handcuffing is constitutionally valid or not finally the court expressed its view about handcuffing is prima- facie Inhuman therefore it is barbaric & unreasonable harsh & violation Art-21 of constitution.

Judicial Mandates Relating to Prisoners
The Supreme Court of India ensures certain fundamental rights to the prisoners when they are in prison.

So the following judicial mandates may be followed.[1.]

- The jail authority has no power to impose any additional punishment to the prisoners.

ISSN 2394 - 7780

- If the court impose the capital punishment (Death penalty) that person must be kept in different cell.
- The solitary confinement can be inflicted in the extreme cases.
- Jail authority should provide basic amenities to the prisoners.
- Provide opportunity to meet their friends or relatives.
- The prison authority imposes the rigorous punishment to the prisoners to do hard & harsh labour.
- The accused person have right to sit down in trial time.
- If the prisoner whether under trial or conviction we have right to get legal assistance must be made to him in Jail.

CONCLUSION

The role of Judiciary towards to Prisoner's right by way Judicial decisions of the Indian Judiciary regarding the protection of human rights the Judiciary has been playing a role of saviour in situations where the executive & legislative have failed to address the problems of the people present days Judiciary contribution it evident that the Indian Judiciary has been very sensitive & alive to the protection of the human rights of the people the constitutional law provide constitutional remedies for the purpose to protect the Human rights, Right to Life, Personal Liberty & Dignity.[1.]

The ultimate purpose of the prison & reformatory administration is rehabilitation of offenders in the main stream of social change. After one can be the drastic change & rehabilitative process & important link in correctional programme the rehabilitation method can change the attitude behaviour & mind-set of prisoners. The offender sometime he is social handicaps & remove the stigma that darkness to his parent & future life.

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THE ROLE OF INDIAN JUDICIARY IN FRAMING ENVIRONMENTAL POLICIES

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ABSTRACT
Indian Judiciary has been always confronted with the problem of interface between Human development And Environment protections. Though the Legislature in India has made innumerable environmental policies and has passed much environmental Legislations ultimately it's the Indian Judiciary that has given a new dimension to those environmental policies and legislations and has made them to work.

As mentioned by Armin Roscencranz "the Indian Judiciary a spectator of environmental despoliation for more than two decades has recently assumed a pro active role of public educator, policy maker, super- administrator and more generally amicus environment"[1]

The Indian Judiciary has given pro environmental decisions and thereby has invoked many environmental principles, be it the "Absolute liability" principle or" Polluter pays principle" or doctrine of sustainable development it is the Indian Judiciary playing pivotal role in the protection of environment.

The Indian Judiciary has also widened the scope of Article -21 and has held that a citizen in India has right to clean air and safe environment. It has also rightly applied the language of Article – 48 A in several environmental cases. Though the environmental policies are framed by the Legislature there is immense role of Judiciary in interpreting and enforcing them.

This paper makes attempts to interpret how the Judiciary has addressed environmental problems and thereby framed environmental policies or has given new scope to already existing environmental policies and its consequent contribution to environmental Jurisprudence.

INTRODUCTION
Framing Environmental policies that includes Acts, rules and regulations, policy mechanisms for the environmental protection is the function of State Legislature whereas the implementation part remains with the executive and interpretation of those policies with the Judiciary. But when policies framed by Legislature had loopholes and ambiguity then the Judiciary had to intervene and adjudicate the Environmental issues before it and thereby contribute to the Indian Environmental Jurisprudence as stated by Prof. Leelakrishnan "We see that Indian Environmental law has emerged and evolved through Judgements rather than Legislations[2]".

1. Need for Judicial Interference
The increased growth rate in Public Interest litigation in 1970 and 1980's because the question of Locus Standi being limited in Public Interest Litigation and increased environmental awareness among the different sections of society, be it an a N.G.O., a lawyer's association or any private individuals have approached the court of law with the concern about the eco system and environmental issues.

Though administrative agencies created under the Environmental statutes have duty to implement the laws but when they fail to the reasons being lack of staff or corruption then arose a dearth for judicial interference

1.1. Role of common law principles in Judicial Legislations
The modern environmental law draws its source from common law and courts have implemented the common law principle of nuisance against environmental violations as early as 1926 in Delhi Sugar Mills v/s Tapsi Kahar[3]upon the petition from 200 people the magistrate court has prevented the two sugar mills from draining their toxic substances into the river implementing sec 133 of Cr.P.C. against public nuisance.

[1] Pg. No. 1, Environmental Law and Policy in India, Shyam Divan & Armin Roscencranz,

2nd Edition, Oxford University Press

[2] Preface by P.Leelakrishnan, Environmental Law Case Book, 2nd Edition, Lexis Nexis Publication

[3] AIR 1926 Pat 506

ISSN 2394 - 7780

Again in the year 1931 in Raghunandan v/s Emperor[1] the Allahabad High Court prevented factories from operation between 9:00 p.m. and 5:00 a.m. on the ground that they were causing disturbance to the residential through noise pollution in that locality.

In Municipal Council, Ratlam v/s Vardichand[2] the Supreme Court identified the responsibilities of local bodies towards the protection of environment and developed the law of public nuisance in Cr.P.C. as a potent instrument for enforcement of their duties when the residents of Ratlam Municipality were suffering from obnoxious smell through the open drains it made the mandatory duty to the officials to repair the drains and remove the smell within the time specified in the order.

1.2. 42nd Amendment Act and Judicial Activism

But it was only after Stockholm Declaration in 1972 the major Environmental protection laws were framed in India. In the Conference two Resolutions were made, firstly that "man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well being[3]."

Secondly, that "man bears a solemn responsibility to protect and improve the environment for present and future generations"[4].

To justify these Resolutions of Stockholm Declaration the 42nd Amendment was made to the Indian Constitution in the year 1976 and Article 48 A was added as a new directive principle dealing specifically with protection and improvement of environment. It provides that "the State shall endeavour to protect and improve the Environment and safeguard the forests and wildlife of the country"

By this positive development, the Indian Constitution has added feather of being among the handful constitutions in the world that have incorporated provisions regarding environmental protection and making the State responsible for the same.

Every citizen in the State was made responsible through 42nd Amendment Act which also added 51A (g) which reads "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures".

But Art 51 A has been rightly interpreted by the court in L.K.Koolwal v/s State[5] when Municipal authority failed in doing its primary duties of cleaning public streets and removal of filth and rubbish, the High Court rightly explained that Art 51 A as not only the duty of citizens but it in fact as the right of the citizens when the State does not perform its duties, to move the court and see that the State perform its duty faithfully thereby the additions by 42nd Amendment armed the courts to give more environmentally inclined decisions.

1.3. Strict liability substituted as Absolute Liability Principle and Polluter Pays Principle

But it was not until the Union Carbide Corporation v/s Union of India (Bhopal Gas tragedy)[6] in the year 1984 the courts in India became cautious about the hazardous activities of the industries and made efforts to regulate them and in this circumstance the doctrine of strict liability laid down in Ryland v/s Fletcher[7] case in the year 1868 was substituted as absolute liability in M.C .Mehta v/s Union of India[8] (Shriram Gas Leak case) by removing all the exceptions that were available in Fletcher's case.

As aptly put by J.Bhagawathi "An enterprise which is engaged in hazardous or inherently dangerous industry which poses a threat to the health and safety of the persons working in the factory and those relating in the surrounding areas owes an absolute and not delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which is undertaken. We should

[1] AIR 1931 All 433

[2] AIR 1980 SC 1622

[3] Stockholm Declaration Principle 1

[4] Principle 2

[5] AIR 1988 RAJ 2

[6] AIR 1990 SC 273

[7] (1868) LR 3 HL 330

[8] AIR 1987 SC 982

ISSN 2394 - 7780

therefore held that where the escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability the rule of Ryland v/s Fletcher"

This decision in Shriram gas leak case has been followed in subsequent pending litigations of Bhopal Gas Tragedy to give compensation to the victims and also has the paved way to Public Liability Insurance Act 1991 which was enacted to achieve the no fault liability upon the owner of hazardous substances and requires owner to pay compensation irrespective of any neglect or default on his part.

However this absolute liability principle was reiterated by the court as Polluter Pays Principle in Indian Council for Environ Legal Action v/s Union of India[1] when a small village called Bicchri at Rajasthan was affected because of sludge that was left out by the polluting industries that manufactured "H" acid polluted the nearby villages underground water and affected villagers made a petition before the court against it. The court laid down Polluter Pays Principle that whoever pollutes should pay for it and make it good.

Again in Vellore Citizen's Forum v/s Union of Indi[2]a the court was dealing with the extensive damage caused by untreated effluents discharged by tanneries in Tamil Nadu again the polluter pays principle was followed by the Supreme court which directed the Centre to constitute an authority under sec 3(3) of Environmental Protection Act 1986 and identify the persons who had suffered because of the pollution and re compensate them.

1.4. Precautionary Principle in Indian Context

Indian Judiciary has hit hard on polluting industries with the "precautionary principle" which was adopted in Rio Conference on Environment and Development (Rio Declaration) in 1992 and the Principle 15 states that "In order to protect the environment the precautionary approach shall he widely accepted by States according to their capabilities where there are threats for serious or irreversible damage". This 'Precautionary Principle' was applied in M.C.Mehta v/s Union of India[3] (Taz Trapezium Case) the use of coke/coal by the industries situated near the bank of river Yamuna emitted sulphur-di-oxide that combined in the atmosphere and caused Acid rain which resulted in a corroding effect on the gleaming white marble of Taj Mahal to prevent this court approached the precautionary principle and held that "the environmental measure must anticipate, prevent and attack the course of environmental degradation and thereby directed about 292 industries to change over to the natural gas and others to relocate".

The Indian Judiciary has also strengthened Article 21 of the Indian Constitution it states "No person shall be deprived of his life or personal liberty except according to procedure established by law". and has widened its scope from Right to Life to the extent of Right to clean environment,[4] Right to Livelihood[5] and in this context it's worth mentioning Rural Litigation & Entitlement Kendra v/s State of Uttar Pradesh(Dehradun Quarrying case)[6] when an a N.G.O. wrote a letter to Supreme Court regarding the limestone mining in Mussorie region of Dehradun belt , the Supreme Court treated it has a writ petition and heard the matter for eight years and directed to stop lime stone mining holding that Right to clean environment also includes Right to Life.

In M.C. Mehta V/S Union of India[7] (Ganga pollution Case) it was held by the Supreme Court that "There are today large towns and cities on the banks of the river Ganga. There are also industries on its banks, Sewage of the towns and cities on the banks of the river and the trade effluents of the factories and other industries are continuously being discharged into the river" And looked into the proposals of Ganga Action Plan to combat

[1]AIR 1996 SC 1446

[2] AIR 1996 SC 2715

[3]AIR 1997 SC 734

[4] Virender Gaur v/s State of Haryana
1995 (2) SCC 577

[5] Olga Tellis v/s Bombay Municipal Corporation
AIR1986 SC 180

[6]AIR 1988 SC 2187

[7] 1992 SUPP (2) SCC 633

ISSN 2394 - 7780

pollution of the river and to set up primary treatment plant to the tanneries and if not to stop running the tanneries.

Again in M.C. Mehta v/s Union of India[1] in a case relating to vehicular pollution in Delhi, the Supreme Court had occasion to look into the problem of air pollution and the court pointed out delay in changeover to compressed natural gas (CNG) buses affected the health of the children, while it filled the pockets of private persons and held that "Bhopal gas leak tragedy was a onetime event which, hopefully not repeated. However in the present case, with not enough concern or action being undertaken by the Union of India, far greater tragedies in the form of degradation of public health are taking place every day. Undoubtedly, the precautionary principle attains importance in such instances".

1.5. Public Trust Doctrine and its new dimension

J. Kuldip Singh relying upon the Mono Lake case [2] adopted the Public Trust Doctrine in Kamal Nath v/s Union[3] Union[3] of India when the Central Government had leased the forest land to a Motel at the bank of the River Beas. During the monsoons, the river had been threat to the motel hence it constructed barriers leading to change in its course thereby destroying the eco system in that region, in this context Public Trust Doctrine was framed and held that natural resources like sea, water, air forests are res communious (common ownership) and it should not be given to private individuals.

1.6. Concept of Sustainable Development

The concept of sustainable development formed the basis of the United Nations Conference on Environment and Development held in Rio De Janerio in 1992 and it was considered as solutions to the problems of environmental degradation discussed by the Brudtland Commission in the 1987 report Our Common Future.

In ND Jayal v/s Union of India[4]the Supreme Court considered construction of a dam as a symbol of wholesome development, and held that the right to sustainable development is a fundamental right.

The Indian Judiciary has rightly invoked the sustainable development concept in Narmada Bachao Andolan v/s Union of India.[5] The court permitted the construction of the dam up to 90 metres against the 138 metres and held that further rising of height would be only pari passu the implementation of the relief and rehabilitation measures.

In Banwasi Seva Ashram v/s state of Uttar Pradesh[6] the question in the case was whether the approval of super thermal plant of the National Thermal Power Corporation Limited (NTPC) could be valid when its location extended to a forest area the court held that "Indisputably forests are a much wanted national assets. At the same time we cannot lose sight of the fact that for industrial growth as also for provision of improved living facilities there is a great demand in this country for energy" thereby the court has upheld the concept of sustainable development by allowing thermal power station to establish and on the other hand held that NTPC to find out alternative plots, render resettlement and subsistence allowance reserve jobs to adivasis.

Even in Tehri Bandh Virodhi Sangarsh Samithi and other v/s State of Uttar Pradesh[7] court refused to intervene and allowed the construction of dam to rivers Bhagirathi and Bhilangana in Uttarkhand with the concept of sustainable development both environment and industrialization should be balanced and if the dams are not allowed to construct consequently it will affect the development of the country.

1.7 Establishment of National Green Tribunal

In the wake of suggestion from The Law Commission of India and as held by the Supreme Court repeatedly in number of cases that a green tribunal should be established to look into environmental cases and as expertise is needed in deciding environmental cases, the National Green Tribunal Act was passed in the year 2010 which

[1] AIR 2002 SC 1696

[2] National Audoben Society v/s Superior Court of Alpine County

[3] 1997 (1) SCC 388

[4] AIR 2004 SC 1 (supp) 867

[5] AIR 1999 SC 3345

[6] AIR 1992 SC 920

[7] 1992 SUPP (1) SCC 44

ISSN 2394 - 7780

has replaced National Environmental Tribunal Act 1995 and National Environment Appellate Authority Act 1997 and is working towards more greener India.

CONCLUSION

The Indian Judiciary has rendered new interpretation to old laws, has filled in the lacunas and explained the grey areas, decided environmental issues, evolved and explained doctrines. Even though the growth of environmental law was slow but it was steady, as the days passed the court went deeper in interpreting the problems of ecology and environment, but only the judicial decisions does not suffice the environmental problems as the Judiciary will look into any issue only when it is brought into its consideration.

Hence to solve ecological problems public awareness is necessary. The best example to the success of public awareness can be traced back to Silent Valley case in the year 1973 where the Kerala Government proposed for hydro electric project but the Environmentalists fought battle against it by creating public awareness and due to the pressure from N.G.O's, environmentalists and public movement the Silent Valley was declared as National Park in 1986. As mentioned in D'MONTE; STORM OVER SILENT VALLEY[1] "No other environmental issue has raised more heat and dust in the country than Silent Valley".

The relationship between Environment and poverty cannot be undermined, a poor citizen is more affected because of environmental degradation, a developing country is affected more from environmental pollution than a developed economy for example countries like China and India are exposed to more air pollution than compared to Australia.

Even the transnational pollution cannot be undermined where developed nations are dumping their hazardous wastes into under developed countries like Africa because disposing of those wastes being cheap in those countries. Hence poverty and Environment are interrelated to eradicate environmental pollution there is a urgency to address problem of poverty too.

But again to eradicate poverty there is necessity of industrialization which leads to environmental degradation. The irony is that both Human Rights and Environmental Rights derive their strength from Article 21 of Indian Constitution, while Right to livelihood supports industrialization, Right to clean environment, clean drinking water, Right to clean air again leads to Right to life in Article 21 and to balance between these two opposing concepts has been a challenge to Indian Judiciary.

[1] 9 India International centre Quarterly 288 (1982)

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LEGAL FRAMEWORK TO COMBAT WOMEN TRAFFICKING IN INDIA: AN ANALYSIS

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I. INTRODUCTION

Human trafficking is an obscene form of exploitation in the world. Women and girls are exploited for sexual purposes, and this activity is developing as one of the enormous problems of the new millennium. A woman is treated most disgracefully by way of exploiting her physically, psychologically, socially and economically. Gender inequalities are a common phenomenon in the world which has made women a product. She is trageted out first especially poor women in rural areas of under developing countries. The economic pressure on women and children has made them subject to transnational trafficking because larger number are looking after a job to support their families and for their expenses. Women were abused: always they are redirected from their shelter for immoral purposes. In the name of marriage, fake marriages are happening they are sold by way of fraud, abduction, auction, coercion etc. It has become an international obstacle. The earnings from women trafficking are considered as the third-largest source, and crores of rupees are made out of it. Women trafficking violate human rights, and it is considered to be a form of slavery at the international level.

II. CONCEPT OF TRAFFICKING

Convention for the Suppression on the Traffic in Persons and of exploitation of the prostitution of others 1949 Aricle 1 and 2 defines 'Trafficking' as all acts involving in the transport, harbouring or sale of persons within a nation or across international borders through coercion, force, kidnapping, deception or fraud for the purposes of placing persons in the situation of forced labour or services. On the other hand, in the matter of minor, the phrase trafficking means indistinct manner, that is the children even taken voluntarily and putting in servitude above comes under the purview of trafficking.[1] The wider view of trafficing is reflected in Beijing Declaration and Platform for Action, which also includes forced marriages and forced labour.[2] As per Section 370 of Indian Penal Code trafficking of person means whoever , for the purpose of exploitation recruits, transports, harbours, transfers or receives, a person or persons by using threats, or using force, or any other form of coercion or by abduction or by practicing fraud, or deception or by abuse of power or inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured,transferred or received, commits the offence of trafficking.[3] The Supreme Court in *Vishal Jeet's v. Union of India*[4] case observed that trafficking is the transport, sale and purchase of women and girls for profit, gain, and any other consideration for the purposes of prostitution, bonded labour etc.

III. INTERNATIONAL CONCERN AND INSTRUMENT TO COMBAT TRAFFICKING OF WOMEN

The International Labour organization has accepted the problem of traffic as a serious concern, particularly among the children and migrant women. Convention on the Elimination of Discrimination against Women states that parties are obliged to eliminate discrimination and must take all appropriate measures to suppress all forms of trafficking in women. India has pledged to coordinate the implementation of the SAARC convention on combating the crime of trafficking in women and children for prostitution, which was ratified by SAARC countries at the Eleventh SAARC summit held at Kathmandu in January 2002.[5]

The Universal Declaration of Human Rights was agreed in the year 1948, and two International covenants were accepted in 1966 codifying the two sets of rights outlined in the Universal Declaration. Fundamental rights and freedoms were elaborated guaranteed as human rights to every individual without discrimination. Every individual belonging to any nations can exercise these rights; there is no compulsion that aggrieved person's country must be a member of the declaration or signatory to the declaration. Article 3 of universal

[1] Sunanda Goenka, *Immoral Trafficking of women and children Transnational Crime and Legal Process* 11,57 (Deepa and Deepa Publications pvt .ltd. F-159, Rajoudri Garden, New Delhi, 2011).

[2]Beijing declaration and Platform for Action, *Available at*: www.unifem.undp.org (Last visited September 21, 2019).

[3] Prof. T.Bhattacharyya, *The Indian penal code* 609 (Central Law Agency, Allahabad, 8th edn., 2014).

[4] 1990 Air 1412, 1990 SCR (2) 861.

[5] Dr Surinder mediratta, Crimes against Women and the Law 264 (Delhi Law House, Delhi, 1st Edition, 2010).

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declaration recognises "Right to life, liberty and security of persons"[1], Article 4 states "freedom from slavery or servitude"[2], This Declaration recognizes prohibition against "torture, inhuman or degrading treatment or punishment". This declaration explicitly states trafficking is inhuman and violation of fundamental rights and freedoms of traffickers in different nations.[3]

Further UDHR[4] 1948 states "recognition as a person before law"[5], "equality before law and equal protection of law without discrimination"[6] , national tribunals provide effective remedy[7] , "freedom from arbitrary arrest, detention, and freedom from ex post facto law" are available as a protector to the women.[8]

Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 2005. States that each party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings and also to provide social and economic initiatives and training programmes for persons exposed to traffic and also to professionals belonging with trafficking in a human being. Further, this convention directs to take measures to prevent exploitation of persons, through adopting effective legislative measures, encouraging them in the fields of education, research and raising awareness about discrimination on gender in school. This convention encouraged to assist the victim by way of increase in standard of living, medical treatment, counselling them about their legal rights, access to education and also about victims safety and protection needs.[9]

IV. LEGAL FRAMEWORK IN INDIA TO COMBAT WOMEN TRAFFICKING

Constitutional provisions Article 23[10] of the constitution provides the right against exploitation. This constitutional provision prohibits traffic in human beings, and any contravention of article 23(1) shall be an offence punishable in accordance with law. Article 39(e)[11] of the constitution states that the state should, in particular, direct its policy towards securing that the tender age of children and it must not be abused. 39(f)[12] directs the state to enact such a law that it should ensure the freedom and dignity of children, and also it must protect from exploitation. Article 23 and 39, framed by our constitutional framers shows concern towards protection and promotion of women and children who are considered to be downtrodden in our country.

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[1] Dr.H.O.Agarwal *International Law and Human Rights* 736 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[2] *Ibid.*

[3] Article 5 of Universal Declaration of Human Rights 1948 cited in Dr.H.O.Agarwal *International Law and Human Rights* 736 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[4] Universal Declaration of Human Rights.

[5] Article 6 Universal Declaration of Human Rights 1948 cited in Dr.H.O.Agarwal *International Law and Human Rights* 737 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[6] Article 7 Universal Declration of Human Rights 1948 cited in Dr.H.O.Agarwal *International Law and Human Rights* 737 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[7] Article 8 Universal Declration of Human Rights 1948 cited in Dr.H.O.Agarwal *International Law and Human Rights* 737 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[8]Article 9 and 10 Universal Declration of Human Rights 1948 cited in Dr.H.O.Agarwal *International Law and Human Rights* 737 (Central Law Publications, Allahabad, Fourteenth Edition 2007).

[9] *Ibid*

[10] Article 23 Prohibition of traffic in human beings and forced labour cited in P.M.Bakshi *The Constitution of India* 61 (Universal Law Publishing co.pvt.ltd, Delhi, 9th Edn).

[11] Article 39(e) the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age to strength P.M.Bakshi *The Constitution of India 8*6 (Universal Law Publishing co.pvt.ltd, Delhi, 9th Edn).

[12] Article 39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. P.M.Bakshi *The Constitution of India* 86 (Universal Law Publishing co.pvt.ltd, Delhi, 9th Edn).

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Immoral Traffic Prevention Act Immoral Traffic Prevention Act was introduced in 1956, and specific changes were brought to the Act in 1978 and 1986. The aims and objectives of this Act are to discourage the evil practice of prostitution in women and girls and also encourage those women and girls to change themselves as a respectful and responsible citizen of our country.

Indian penal code In the Indian penal code, 1860, we can identify some of the section like 366-A[1], 366-B[2] and and 376[3] which lay down punishment for procuration of a minor girl, selling of minor girls for immoral purposes like prostitution and punishment of conviction for this kind of offence. In *Iqbal v. state of Kerala*[4] as per section 376 of the Indian penal code the case has been maintained and In *Ramanand v. State of Uttar Pradesh*,[5] the court held that conviction of the accused of offences under section 302[6], 366 and 376 are proper. proper. All these provisions of Indian penal code check the immoral trafficking of women and children.

National Commission for women About the ITPA, [7] the national commission for women has suggested that the word 'person' instead of 'commercial sex worker', while addressing those people who are engaged in prostitution. Further, commission recommended the law enforcement machinery should be more effective to save those girls in time who are likely to be forced into prostitution. The commission suggested making provision for adult education scheme, schemes for vocational training for the trafficked victim who is engaged in an immoral activity like prostitution.

SUPREME COURTS DIRECTIONS

The Supreme Court of India which is the sentinel in the qui vive is enjoined to protect equally the rights of the poor, the deprived, the degraded women and children. Supreme Court gave direction to all state government and the government of union territories to take appropriate speedy action under existing laws in eradicating child prostitution, in providing adequate and rehabilitative homes. Further, the Supreme Court directed the advisory committee to suggest government regarding prevention of devadasi sys/tem and jogin tradition which is still in practice. In *Radha V. State of Uttar Pradesh*; it was held that the prostitutes are also entitled to live a life of dignity.[8]

[1] 366-A. Procuration of minor girl- whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall be liable to fine. Cited in Tandon *Indian Penal Code* 513 (Allahabad Law Agency, Faridabad Haryana, Twenty fourth Edition 2008)

[2] 366-B Importation of girl from foreign country-whoever imports into India from any country outside India or from state of Jammu and Kashmir, any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. Cited in Tandon *Indian Penal Code* 514 (Allahabad Law Agency, Faridabad Haryana, Twenty fourth Edition 2008)

[3] 376. Punishment for Rape.-(1) whoever, expect in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or a term which may extendto ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both: provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Cited in Tandon *Indian Penal Code* 522 (Allahabad Law Agency, Faridabad Haryana, Twenty fourth Edition 2008)

[4] AIR 2008 SC 288 at 290.

[5] 2008 Cri,L.J (Noc)1000(All)

[6] Punishment for murder.- Whoever commits murder shall be punished with death, or imprisonment for life, and shall be liable to fine. Cited in Tandon *Indian Penal Code* 394 (Allahabad Law Agency, Faridabad Haryana, Twenty fourth Edition 2008)

[7] Immoral Traffic (prevention) Act, 1956.

[8] AIR 2004 (NOC) 19(All).

ISSN 2394 - 7780

The Juvenile Justice (Care and Protection of Children) Act, 2000 India is a signatory to the international convention which speaks about rights of the child, accordance to this convention we can find inclusion to the definition of child. The definition includes children who are vulnerable and likely to be inducted into trafficking. The act provides for the proper care, protection and treatment of the child developmental needs. The adjudication and disposition of matters are in the best interests of children and for their ultimate rehabilitation. Further, it Prescribes punishment for cruelty to juvenile or child.

V. CONCLUSION AND SUGGESTIONS

The legislative effort to combat trafficking in persons in India has been discussed. However, the desired result has not yet been achieved, reason being, the efforts made by the concerned departments, non-governmental organizations and the law enforcement agencies are not adequately strong and meaningful. New and ingenious ways of trafficking with the help of modern technology has become a nuisance for the police. As poverty is one of the main causes of traffic, the government must take adequate steps for implementing poverty reduction programme in rural areas. It is civil society's responsibility also to prevent trafficking and to assist women and girls who have been trafficked appropriately.

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INTERNATIONAL CRIMINAL COURT: NEED TO INCLUDE CORPORATE CRIMINAL LIABILITY

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ABSTRACT
Human Rights called as natural rights, basic rights, inalienable rights are violated from time immemorial. Human beings have been discriminated either on the bases of their sex, race, religion or language throughout the world. There was and is always need to fight and find ways to prohibit these violations and promote and enhance these rights to bring about peace and harmony among people. In this process to safeguard these rights the United Nations was formulated, which delegated the work to the Security Council, under whose guidance the UDHR, ICCPR and ICSECR were formulated. To promote Human Rights, States adopted the regional conventions and judiciary bodies were set up to provide redress for its violation.

But there was a lacuna in the area of International Criminal Justice. To make the States responsible for their gross human rights violations and grave violations on humanity, the domestic laws were insufficient to punish the perpetrators under certain circumstances. Though the Geneva Convention laid down the rules for humanitarian law, the need to punish the perpetrators was a long cry. The ad hoc trials conducted by IMT the Nuremberg Tribunals and the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia did give punishment to individuals involved in war crimes to a certain extent. But the need for holding the Corporations liable when they facilitated human rights abuses, like when they 1) made profits from State violence 2) cases in which the regimes human rights abuses are facilitated by providing necessary means 3) cases where they have directly supported in repression without direct economic benefit.

The adoption of the Rome Statute on 17th October 1998 founded the ICC (International Criminal Court) which identified- the crimes against humanity, genocide, war crimes against humanity and aggression by the state parties, to bring the states under the jurisdiction of the ICC and holding them liable for illegal using of force and also allow victim representation a feature of the ICC.

With the rapid change in the world economy and the advent of Globalization and Liberalization the gross human rights violations have seen a different group conducting these acts – the non-state actors. Transnational and Multinational Corporations has started to contribute their part of violations causing further suffering to the people, however the ICC does not provide venue to hear complaints about corporate actors nor on the corporate entities. Therefore it is important to extend the jurisdiction of the ICC to maters covering the criminal liability of the Corporations, reasons if the criminal liability of the Corporations, is made to be dealt completely in the hands of the States, the States will lack, the will to enforce the law on the Corporations.

This paper deals with 1) the violations of human right by Corporations 2) the importance of an International forum to deal with the aspects of corporate criminal accountability and responsibility 3) the need for extending the jurisdiction of the International Criminal Court.

Keywords: gross human rights violation, International Criminal Court, Transnational and Multinational Corporations, criminal liability, International Military Tribunal.

INTRODUCTION
Globalisation in the broader aspect is that which influences the regional, national and local levels by political, financial, social, economic, cultural, environmental process, thus having a multi-dimensional nature. However it treats each in a different footing- developed country, developing country and under developed country. The developed are those that can influence strongly as they along with transnational corporations exercise control on the unilateral and bilateral agreement in the global sphere. Capitalism emerged in Europe in the middle ages, due to the changes that occurred by scientific and cultural thinking (renaissance). The development of globalization dates back to the 1870's where there was great labour mobility and capital and trade flourished. But with the World War I, there was a pause and continued in a reverse process in 1930's. After the Second World War industrialization expanded especially in manufacturing, development also happened in international institutions in trade and finance, and also control on mobility of labour and capital. By the Twentieth century the concept of free trade, the transnational corporations in the international scenario working in a integrated pattern, there is a notable expansion in mobility of capital and followed a standard form of development.

The nineteenth century started the concept of international trade was the countries outsourced and also reduced the international regulations like the transport cost. This outsourcing created the integrated production system,

ISSN 2394 - 7780

which caused the increase of trade of the transnational corporations and also improved foreign direct investment. The establishment of the international banking system-The World Bank, The American Bank etc., made the financial sphere develop trade and production in the twentieth century.

The growth in international trade and finance led to the atrocities committed by the transnational and multinational corporations. The growth of international corporations led to labour mobility, and the side effects of which led to labour disparities among the national and host states. There were also other negative effects like damage to the environment- causing irregular exploitation of natural resources, causing pollution without taking the required strategies, effecting the local community by displacing them and causing gross human rights violations. These transnational and multinational corporations also conducted violations of international law, international human rights law and international humanitarian law. It has brought in major international inequalities and asymmetries of public good. There is no such global decision making mechanism especially under criminal law, where the least powerful are unrepresented and leave the local authorities to fend for them.

The next question that arises is whether the transnational corporations can be held liable under international law. Wolfgang Friedmann[1] has pointed out in his book that multinational and transnational corporations are participants in the formation of the modern International law, and therefore become bound by the international law. Antonio Cassese was of the view that they do not possess any rights and duties under international law therefore they cannot be equated on par with the states and give them the standing under the international law[2]. Initially the corporations could be held liable under civil law. The International Labour Organizations[3], the United Nations[4], the OECD[5] and the European Union's[6], have responded that Transnational and Multinational Multinational corporations do have certain responsibilities and can be held liable. However the biggest difficulty is the criminal wrongs done by these corporations.

INTERNATIONAL CRIMINAL LIABILITY FOR GENERAL WRONGS

The International Crimes are governed by the International Criminal law; they consist of Statutes and Customary International law- the International Humanitarian law to protect victims of armed conflict and other international law in the aspects of national criminal law derived from the general principles of international law. The liability of corporations under international criminal law, in the case of Sutton's hospital case, it was held "the corporations cannot commit treason, nor be out lawed, nor excommunicate, for they have no soul, neither can they appear in person, but by attorney"[7]. Lord Chief Justice of Holt[8], was of the view that only the members members of the corporation can be indicted not the corporation. The same was also highlighted by William Blackstone, in 1765, in the Commentaries of the law of England. In the 18th century the Corporations were held criminally liable and were imposed fines for inactions[9] (failure of duty to construct arches over the railways) and also in cases where the governments were vicariously liable for their inaction to maintain public conveniences. The responsibility for direct actions began in the case where Lord Denman[10] showed a "startling incongruity" by stating that corporations can be held liable for wrongful omissions but not for wrongful acts,

[1] Wolfgang Friedmann, "The Changing Structure of International Law", New York, Columbia university Press, London, 1964

[2] Antino Casses, "International Law in a Divided World', Clerendon Press, Oxford, 1986

[3] UN Global Compact, 2000, www.unglobalcompact.org.

[4] ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 1977, https://www.ilo.org .

[5] OECD Declaration on International Investment and Multinational Enterprises, 1976, https://www.oecd.org.

[6]Promoting a European Framework for Corporate Social Responsibility, European Commission Green Paper, 2001, https://www.europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf

[7]*Case of Sutton's Hospital*, 77 Eng. Rep. 960,973, K.B.1612, as cited in James M. Anderson and Ivan Waggor, *How did Criminal law Come to be Applied in Corporate, and what Lessons can We Draw from that History?,* in The Changing Role of Criminal Law in Controlling Corporate Behaviour, Rand Corporation, 2014, https://www.jstor.org/stable/10.7249/j.ctt1287mfw.9

[8]Anonymous, 88 Eng. Rep. 1518, K.B. 1701, ibid

[9] *The Queen v. Birmingham and Gloucester Ry.*, 114 Eng. Rep. 492, Q. B. 1842, as cited in ibid

[10] *Regina v. Great North of England R. Co,* 115 Eng. Rep. 1294, Q.B.1846, as cited in ibid

ISSN 2394 - 7780

they cannot be held liable vicariously, "plainly derive their character from the corrupted mind of the person committing"[1] and cannot be held liable "for acts of morality"[2]. Therefore the corporations had immunity from in in prosecution of crimes where the question of intent involved. They laid three areas where it was believed that corporation cannot be held liable-1) felonies- where death was the punishment imposed in most countries and corporation could not be subjected physical punishment, for this Bishop argued "corporations cannot be hung: yet there is no reason why it may not be fined, or suffer the loss of its franchise, for the same way as the an individual subjected to gallows"[3] 2) when acts are committed by the agent beyond the corporations intent, acts ultra-virus the corporation and 3) that it had no soul and be wicked. However the concept of vicarious criminal liability was extended in reasons to improve public welfare[4]. Therefore in the general criminal law the courts took stands as per the public good and welfare.

INTERNATIONAL CRIMINAL LIABILITY FOR VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW

The Transnational Corporations as defined by the UN are those "enterprises irrespective of their country of origin and their ownership, including private, public or mixed, comprising entities in two or more countries, regardless of the legal form and fields of activity of these entities, which operate under a system of decision making centers, in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others and in particular, to share knowledge, resources and responsibilities with others"[5]. It is from the understanding of the definition that the Transnational Corporations operate not only in the country they are incorporated but also in developing countries. These developing countries to improve their economy to attract the Foreign Direct Investment, build EPZ (Export Processing Zones), which gives the Transnational Corporations incentives like flexibility in environmental laws and labour laws. The Transnational national corporations have a free hand at violating the basic human rights of the people and that of the labour in those countries, they do not (need not) abide to standard conditions of labour like safety at work place, number of hours of work or availability of basic amenities and environmental damage like no access to clean drinking water and toxic-free neighborhood[6]. The argument of the Transnational Corporations was always that they had worked hard for the benefit of their shareholders and make profit and that they do not have any positive duty to safeguard human rights[7].The question then rose, whether the Transnational Corporations are subjects of International Law, for as per the International Law it is only the duty of the State to safeguard the human rights of its citizens as only the State is the subject of International law. However there has been a lot of literature seeking to allow Transnational Corporations be made subject of international law so that they can be made liable.

The subject to make Corporations liable for the violation of International Human Rights Law has brought forward two dimensions – direct and indirect liability. In regards direct liability, we have the UDHR (Universal

[1] ibid

[2] ibid

[3] Joel Prentiss Bishop, Commentaries on the Criminal Law, 3rd ed., 1865, p506 as citied in James M. Anderson and Ivan Waggor, James M. Anderson and Ivan Waggor, *How did Criminal law Come to be Applied in Corporate, and what Lessons can We Draw from that History?,* in The Changing Role of Criminal Law in Controlling Corporate Behaviour, Rand Corporation, 2014, https://www.jstor.org/stable/10.7249/j.ctt1287mfw.9

[4] *State v. Burnam*, 71 Wash. 1912, 200

[5] Report of UN Centre on Transnational Corporation: E/1988/39/Add. 1para, 1 a. 30, as citied in D.A.Ijalaye, The Extension Of Corporate Personality in International Law, 7, 1978, as referred in Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[6]See John R. Boatrights, "Ethics and the Conduct of Business", Pearson, Boston, 2007. Nike, the leading shoe company, was accused of using cheap labour and also made the working conditions very inhuman, however the company denied stating he had bought its goods from individual contractors, as cited in Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[7]See Peter Muchilinski, "Multinational Enterprises and the Law", the Oxford International Law Library, Oxford Universty Press, Oxford, 2007 . Ibid

ISSN 2394 - 7780

Declaration of Human Rights) whose Preamble makes it mandatory for "every individual and every organ of the society"[1], to be bound by the provisions laid in the document. The Transnational Corporations have now become big, in some states they are bigger than the State itself, reason they have taken over some traditional activities of the State. When the corporations are able to perform the (traditional activities) certain acts of the states then can also be held liable on par with the State in its obligations to safe guard the human rights which is the duty of the State, thus positive acts not to violate the human rights maybe imposed on the Corporations too. Indirect liability is imposed like CEDAW (Convention on Elimination of Discrimination against Women) under 2(e)[2], ICCPR (International Covenant on Civil and Political Rights) under Ar. 2(1)[3], where indirectly the state parties are mandated to take necessary and appropriate measures to protect the people from human rights abuses. The international treaty laws obligate the states to see that the human rights of the people are safeguarded even from private entities[4]. The responsibility is laid only upon the State and no international body under the International law is assigned the jurisdiction to deal with the violations, therefore becoming an obstacle to seek justice for the acts of the Corporations.

HUMAN RIGHTS VIOLATIONS UNDER THE DOMESTIC LAW

States being signatories to the various human rights treaties the responsibility is assigned on them to safeguard the human rights of its citizens. But the negative aspect is that in the developing countries the states become reluctant to hold the corporations liable for the fact that they might lose the corporation because of whom their economy increases. The developing States under take a lot of exercise in attracting the Corporation by wavering off certain rule and relaxing some. The Rolls Royce, in the year 1998 threatened to leave England if they applied the high labour standards that are followed in Europe and that was one of the reasons that UK did not sign the Maastricht Treaty of the European Union[5]. The Corporations conduct a lot of lobbying, and they have so much control over the political affairs and have the power to over governments that do not abide to their policies. Therefore the States are at ends unable to hold the Corporations liable.

ALIEN TORT CLAIMS ACT, 1789

One piece of legislation that allows the US District Courts to entertain under original jurisdiction, any civil suit of Tort by an alien, conducted in violation of the Law of Nations, in the United Nations. The courts of US conducted a number of cases on Torts committed by parties; however the landmark among them is the case in 1997, Doe I v. Unocal Corp[6], in this case it was held that action can be taken against private corporations.

[1] https://www.un.org/en/universal-declaration-human-rights/, viewed on 29.9.2019.

[2] CEDAW 2(e) to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. https://www.ohchr.org/documents/professionalinterest/cedaw.pdf,29.9.2019.

[3]Article 2(1) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant under takes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as maybe necessary to give effect to the rights recognized in the present Covenant. https://www.ohchr.org/documents/professionalinterest/cedaw.pdf viewed on 29.9.2019.

[4] Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[5] Joseph S., *Taming the Leviathans: Multinational Enterprises and Human Rights*, Netherlands International Law Review, 46(2), 1999, 171-203, https://doi.org/10.1017/S0165070X00002394, as citied in Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[6] *Doe I v. Unocal Corp Nat'l Coalition Gov't of the Union of Burma v. Unocal In*c., 176 F.R.D. 329 (N.D. Cal. 1997. See also *Doe I v. Unocal Coro*., D.C. No. CV-96-06959- RSWL opinion Appeal from the United States District Court for the Central District of California September 18, 2002, United States Court of Appeals For The Ninth Circuit Bench, https://earthrights.org/wp-content/uploads/legal/Unocal-Decision-0056603.pdf, visited on 25.6.2019, Judge Paez "I agree with the majority that human rights violations occurred in respect to the nature of Unocal's involvement in such human rights violations and apply the third party liability for forced labour practices of the Myanmar Military". *Doe I v. Unocal Corp*., 963 F. Supp. 880 (C.D. Cal. 1997); *Nat'l Coalition Gov't of the Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997). Judge Lew later authored the order granting Defendants' consolidated Motions for Summary Judgment. See *Doe I v. Unocal Corp*., 110 F. Supp. 2d 1294 (C.D. Cal. 2000), available at http://www.earthrights.org/doe_v_unocal_case_history.html

ISSN 2394 - 7780

Unocal a Californian energy corporation along with the Myanmar military and police force caused atrocities and gross human rights violations upon the famers like forced labour, reallocation of people, rape, murder, torture, and many more while laying gas pipe lines along the southern Myanmar. The responsibility was upon the Myanmar Gas Transmission Company (MGTC) as it had a joint venture with various parties The French Corporate Group Total, Thai Petroleum Company (PTTEP), and the US based company Unocal (holding 28% shares). The contention of the Unocal was that off shore project was the responsibility of MGTC and therefore cannot be held liable, but the Court went to hold as the Myanmar company is the alter ego, and it is a joint venture all are equally liable. Though it was a though battle where Unocal tried to get away with the liability it was when the case was in the Ninth circuit bench that Unocal opted for settlement to pay compensation to the victims in 2005. Though in this case Unocal escaped from the liability but still it was made to pay compensation to the victims the Burmese.

Again before the ATCA, is ATCA can only have jurisdiction for those cases in which violation of human rights has occurred, under the Law of Nations, that means International Law, so does it also cover matters that arising from Jus Cogan's and customary international law. In Sosa v. Alverez Machain[1], the court held, "a norm of international character accepted by the civilized world and defined with specificity comparable to the features of the 18th century paradigms we have recognized", therefore it was held that arbitrary detention is one such act that has acquired specificity, therefore it can be cause of action before ATCA.

In case of environmental damage the US courts showed reluctance in entertaining them in the US courts citing 1) doctrine of non-convenience, when it can be better addressed elsewhere 2) comity, where different country maybe given jurisdiction and finally 3) political question doctrine, that it would affect the foreign policy of US. In the case brought by the Ecuadorian against Texas in regards the pollution caused to Amazon no action was taken stating forum non convenience[2].

During the 1970's when new decolonized states, were formed they decided to set up a New International Economic Order, and a draft of the new code of conduct was prepared by the economic and Social Council for the TNC's but it failed because of the indifference between the developing and the developed countries. The Organization for Economic Corporation and Development (OECD) in 1976, adopted guidelines on human rights obligations for the Transnational Corporations. In 1977 to control the conduct of the TNC's the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy was adopted by the International Labour Organization. None of the above instruments have remedy available rather have put the burden or obligation on the State parties to conduct the activities through National Conduct Points (NCP), however this body lacks transparency and the only remedy is it can bring about negative publicity on the TNC but nothing beyond, and they become non-binding. Then in 2003 the UN Sub Commission set up the Promotion and Protection of Human Rights[3], it is also called the 2003 Norms, they were voluntary in nature and could not be imposed. Then in 2005, The Human Rights Commission appointed Prof John Ruggie[4] as a Special Representative of the Secretary General, to bring out standards for the corporations. But the Protect and respect of Human Rights the guiding principles of Ruggies is also only guiding and there is no implementing mechanism, and the Corporations are still not held Liable.

INTERNATIONAL CRIMINAL LIABILITY FOR VIOLATION OF THE INTERNATIONAL HUMANITARIAN LAW

The International Humanitarian Law laid down rules as to how war can be fought and what precautions need be taken to conduct a safe war. The need to punish the perpetrators was a long cry. The League of Nations tried to hold the defaulters liable but it failed. Under Article 227 of the treaty of Versailles[5], and also laid down that a

[1] *Sosa v. Alverez Machain*, 542 US 692, 2004, as cited in Gregory T, Euterneier, *Towards a Corporate "Law of Nations": Multinational Enterprises' Contributions to Customary International Law*, 82 TUL. L.Rev.757, 2007, in Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[2] See Debosmita Nandy and Niketa Singh, *Making Transnational Corporations Accountable for Human Rights Violations*, 2 NUJL. Rev., 2009.

[3] Resolution 2003/16 of 2003

[4] See John Ruggie, Business and Human Rights: The Evolving International Agenda, 101 AJIL, 2007, 819

[5] League of Nations Official Journal 3, 1920, 11 Martens Nouveau Recueil (3d) 323, in M Cherif Bassiouni, A Draft International Criminal Code and Draft Statute for International Tribunal, Dordrecht, 1987, pg2-3.

ISSN 2394 - 7780

under Ar. 228, the Germans were to surrender the war criminals to the International Military Tribunal but the court could not be established due to political reasons. Then again The League of Nations in 1937, tried to set up International Criminal Court to counter terrorism, but due to lack of number of signatories did not come into force. The situation after the World War II was so inhuman that International Military Tribunal[1] (IMT) was set up at Nuremberg to prosecute and punish individuals for crimes on three counts Genocide, crimes against humanity and war crimes[2]. During the same period for the Far East the Tokyo Tribunal was set up for war crimes. However in regards criminal liability of the Corporation, only the individuals working for the corporations were held liable on several counts, but not the corporations. In 1991 the International Criminal Tribunal for Former Yugoslavia (ICTY)[3] identified crimes like willful torture, killing, inhuman treatment, causing bodily injury against civilian population. The International Criminal Tribunal for Rwanda (ICTR)[4] held citizens of Rwanda liable for crimes committed on its neighbors and the atrocities committed in Rwanda as violation of Common Article 3 of the Geneva Convention, crime against humanity, rape, torture, and systematic attack on civilians causing both physical and bodily harm.

The United Nations was successful in setting up of ad hoc tribunals to confront crimes committed during the war, and armed conflict, thus paving way to set up a permanent Criminal Court. The work started in the year 1998, called the Rome Statute, it took four years and the Rome Statute came into force on July 1, 2002. The disappointment about the international Criminal Court under the Rome Statute is it holds individuals only liable and is no different to other courts. It holds individuals liable for war crime, crimes against humanity and crimes against aggression. Article 25 of the ICC holds only the corporate heads liable not the corporations. However during the initial phase of discussion France advocated to include corporate liability but was not accepted by other nations. The ICC lays emphasis that it is for the domestic courts to lay jurisdiction to try investigate and prosecute the Corporations as per the provisions given in the Rome Statute.

CONCLUSION

Atrocities and gross human rights violation have been continuously occurring from time memorable, and many a laws were formulated and they were interpreted as per the convenience of the high handed and financially strong Corporations. Corporations have had a greater say in the world politics and they are here to change the laws of both the national and International laws to their convenience. When a Corporation can have all the characteristics of a State from carrying on its activity systematically and having power and finance, and carries out certain traditional activities of the State, then it should also take upon itself the responsibility that a state has like to safeguard the human rights of the people. It is not that it is state like must also carry out tasks state like. It is for the International Community to wake up and hold the Corporations liable for the violations they cause, as the authority of the Corporations will make the World society go limp and bring about more disaster to human and environment if they are not stopped. Therefore it is important that the International Criminal Court makes an amendment to its provision and also brings the Corporations into its ambit, thus making the world a better place to line in and the object of the United Nations shall be achieved.

[1] The Nuremberg Tribunal started its proceedings on 18th October 1945. It closed on 1st October 1946 after 216 sessions. War Crimes Trials, U.S. Holocaust Memorial Museum, at http://www.ushmm.org/wlc/article.php?lang=en&Moduleld-1000514

[2] *United States v. Krauch* (The I.*G. Farben Case*), 8 Trials of War Criminals Before the Nuremberg Military Tribunals 1117 (1952)., as cited in Michael J. Kelly 'Prosecuting Corporations for Genocide Under International Law', Harvard Law & Policy Review, vol 6.,2012.

[3] S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., U.N. Doc. S/RES/827 (1993) [hereinafter Resolution 827] (establishing the ICTY). 17

[4] S.C. Res. 955, U.N. SCOR, 49th Sess., 3453d mtg., U.N. Doc. S/RES/955 (1994) [hereinafter Resolution 955] (establishing the ICTR).

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FREEDOM OF EXPRESSION AND CENSORSHIP ON SOCIAL MEDIA PLATFORMS- INDIAN AND WORLD'S PERSPECTIVE

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ABSTRACT
Social media platforms particularly have become the battlefield of views, opinions due to the rise of unaccountable and irresponsible posts. Censorship is a stumbling block in the Human Right of Free speech and expression. The original source is protected under the veil of privacy, this has provided a wider platform to disseminate unauthenticated messages with malafide intentions without responsibility and accountability.

This Article is three-fold in nature, firstly the introduction, in a nutshell enumerates the evolution, reasons of popularity and mass followers of social media along with its advantages and repercussions. The second fold deals exclusively with the Indian situation of Article 19(1)(a), where it has struck down certain orders and actions of the Country, where the state agents have misinterpreted the fundamental right of Freedom of speech and expression and how there has been an abuse by the users. The third fold deals with the international perspective of 'free speech and expression' and how censorship is dealt with internationally.

The article is concluded by stating how social media is a privately censored platform and it should not be so. It should be a platform which protects the Human rights of Freedom of Expression granted as per a universal standard, the Universal Declaration of Human Rights, and not driven by the political standard of each country.

1. INTRODUCTION
The powerful tool of the Internet has connected people, issues and matters all over the world, making it a closed community. Within the past decade, the use and reliance on social media has increased manifold, owing to platforms like Facebook, WhatsApp, Twitter, LinkedIn, Instagram etc. It has enabled a way to discover, learn, re-learn and share information. Social media has evolved from being a 'cyber geek buzz' to a massive arena for businesses, entrepreneurs, professionals and organisations that seek greater recognition and identification at a very economical price.[1] It has created a space of unprecedented voice and serves as a direct channel to the public audience. [2]

Social media serves as an area where every individual, irrespective of age, color, creed or any other factor, can express their views and unique school of thought, by way of pictures, videos, worded posts, opinions, suggestions, mere thoughts, illustrations and much more. This reinstates the basic right of free speech and expression guaranteed to individuals by their Governments. Studies reflect that on an average, a person is active on various social networks for 4-5 hours a day. [3] The number of users are ever rising on the social media sites, indicating how important it is in today's world, contributing to a conceptual change in the field of Information and Communication.[4]

Since social media has the liberty of spreading its contents without hurdles of geographical boundaries, dissemination of news and information has never been easier. The direct access without any third party's intervention makes it viable and cost effective.[5] We must acknowledge that online communities and platforms

[1] Paul Lucas, *Importance and Benefits of Social Media in Today's World*, (Mar 30, 2019) https://inspirationfeed.com/importance-and-benefits-of-social-media-in-todays-world/

[2] Christopher J.Finlay, *The Right to Profitable Speech: Olympians, Sponsorship, and Social Media Discourse,* Vol. 6(6) 655-679, 655, Communication & Sport 2018, https://journals-sagepub-com.ezproxy.library.qmul.ac.uk/doi/pdf/10.1177/2167479517739389

[3] Vidya Sagar, *Social Media – A Boon and a Bane*, (Apr 25, 2019, 13:53 IST) https://timesofindia.indiatimes.com/readersblog/socialmedia/social-media-a-boon-and-a-bane-3227/

[4] https://steemit.com/life/@king3071/social-media-in-today-s-world

[5] Paul Lucas,*Importance and Benefits of Social Media in Today's World*, (Mar 30, 2019) https://inspirationfeed.com/importance-and-benefits-of-social-media-in-todays-world/

ISSN 2394 - 7780

are facilitating discussions held in parliaments, courts, newsrooms, halls of colleges and schools, and malls and even the cafe.[1]

However, though the evolution of social media seems to be a boon to the development of nations and upliftment in the connotation of a democracy, there are certain discrepancies that have taken place which make censorship of these social intermediaries an absolute must. This article seeks to understand where the censorship fits between the lines of social media and the right of free speech and expression, both in the context of the India jurisdiction and the world, in general.

2. INDIAN SCENARIO

The Oxford Dictionary defines censorship as, "*The suppression or prohibition of any parts of books, films, news, etc. that are considered obscene, politically unacceptable, or a threat to security*."

2.1 Censorship is regarded to be a pressing issue in the public eye as it has a direct connection to the fundamental right of 'free speech and expression' enlisted in Article 19(1)(a) of the Constitution of India, 1950. This fundamental right is regarded to be the hallmark of a democratic government, the aforesaid right of liberty. [2] In the case of Maneka Gandhi *v.* Union of India[3], it was held that "*If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.*"[4]

This right under Article 19(1)(a) encompasses all mediums of speech, opinions and views, eg. by word of mouth, writing, printing, picture, film, movies etc.[5] However, in order to avoid the misuse of this right, there are are reasonable restrictions embodied in the Constitution[6] like the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency, morality, contempt of court.[7]

Paramount importance has been given to the Fundamental Rights of Indian citizens which has the power to invalidate any act, regulation, order, law of the Parliament in case of infringement.[8] Evidence of the same is, in 2012, Shaheen Dhada was arrested on account of her Facebook post, where she questioned the shutdown that took place in Mumbai due to the death of the Shiv Sena Leader, Bal Thackeray.[9] Her friend, Renu who liked and shared such a post was also arrested in this regard. This was violative of Sec 66A of the Information Technology Act, 2000 and punishable under the same. [10] The case before the Supreme Court was contemplated in great detail because of the inclusion of a basic fundamental right and the essence of a democracy. The Court struck down this section of 66A and upheld Article 19(1)(a). [11]

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[1] Layla Revis *Social Media & Censorship: Freedom of Expression and Risk*, (July 22, 2015 03:13 pm ET) https://www.huffpost.com/entry/social-media-censorship-f_b_7837398?guccounter=1

[2] MP Jain, Indian Constitutional Law, 1019, (LexisNexis, 7th Edition, 2014).

[3] AIR 1978 SC 597.

[4] Ibid.

[5] MP Jain, Supra Note 7 at 1020.

[6] Constitution of India,1950, Art 19(2).

[7] MP Jain, Supra Note 7 at 1043.

[8] Constitution of India,1950, Art 13.

[9] Shreya Singal *v.* Union of India, Writ Pet (Crim) No. 167 of 2012.

[10] "send, by means of a computer resource or a communication device,—

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,"

[11] Supra Note 14.

ISSN 2394 - 7780

Majorly, social media has benefited people and society at large. It has been instrumental in bringing about changes in legislations, environmental awareness, passing on information of lost people/animals resulting in their retrieval, spread encounters and experiences which may be helpful to someone else. To substantiate the above statement, in 2014, news broke out in Karnataka that a school teacher had sexually abused a 6-year-old girl which angered many.[1] Pavithra Shetty, the mother of a toddler believed that this was an alarm for every individual that had to be addressed without delay, and began a campaign on *Change.org* to seek remedies from the Education Minister of Karnataka to take action by issuing directives of security measures in all schools in the State.[2] With the help of online media, this campaign received over 1.5 lack responses which urged the Ministry to execute set of guidelines for the same. [3]

In the case of Rajendra Sail *v.* M. P. High Court Bar Association[4], it was held that the Fundamental Right of free speech and expression on public documents can be commented upon, critically analysed but within the limits of being in a dignified manner and not coupled with attributed motives. [5]

2.2 To give a clearer, unbiased picture, it is also imperative to look into how Article 19(1)(a) has been misinterpreted by the agents of the State. This has further created a loophole in the right to free speech and expression. Owing to this, there have been many arbitrary arrests, suppression of thoughts and resulted in the sowing of confusion in the minds of the public. Certain instances are, in April 2012, a Jadavapur University Chemistry Professor, Ambikesh Mahapatra was arrested for putting in circulation a spoof of Mamata Banerjee, the West Bengal Chief Minister and Mukul Roy, the Railway Minister.[6]

In 2013, Tumpa Kayal and Mousumi Kayal, demanded justice in the Nirbhaya case[7] for their friend who has gang-raped and murdered, were demeaned and insulted by the then Chief Minister of West Bengal, Mamata Banerjee who called the two "Maoists".[8]

In May 2019, Priyanka Sharma , a BJP Yuva Morcha Leader, was arrested for allegedly sharing a morphed meme of the West Bengal Chief Minister, Mamata Banerjee. Though let out on bail, the Supreme Court had asked Priyanka to apologize for the said act.[9]

2.3 In order to have a full blown view, though social media has positives, it is important to highlight its negatives. Since there is freedom to express viewpoints, these platforms are being abused to spread incorrect information, posting of derogatory pictures, medium of harassing individuals, tainting the reputation of another etc,. The various blogs and posts on the current affairs and the current global trends are taken at face value without verifying it. This alone has caused many posts to go viral. The action of sharing unauthentic information without verifying has made the platform a part of grapevine communication.

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[1] Pavitra Shetty, *Issue directive to all schools in Bangalore to impose security measures for the safety of children* (July 24, 2014) https://www.change.org/p/karnataka-education-minister-kimmane-ratnakar-issue-directive-to-all-schools-in-bangalore-to-impose-security-measures-for-the-safety-of-children

[2] *Ibid*

[3] Government of India, Department of Public Instruction , Circular No.C7(2)pra.shi.a/sha.ma.ly.ki/2014-15 (July 23, 2014) http://www.schooleducation.kar.nic.in/pdffiles/ChildSafetyEng260714.pdf

[4] Criminal Appeal Nos. 398-399 of 2001.

[5] *Ibid.*

[6] HT Correspondent, *Professor arrested for poking fun at Mamata* (Apr 14, 2012 02:28 IST) https://www.hindustantimes.com/india/professor-arrested-for-poking-fun-at-mamata/story-OmV4FhEop4XaRP13gZdI1H.html

[7] Criminal Appeal No. 607 of 2017.

[8] Shikha Mukerjee, M*eet Ambikesh Mahapatra, whose persecution symbolises Mamata's intolerance* (Apr 05, 2016 16:41 IST) https://www.firstpost.com/politics/meet-ambikesh-mahapatra-whose-persecution-symbolises-mamatas-intolerance-2713470.html

[9] Sumeda, *Mamata Banerjee meme: SC grants bail to BJP worker Priyanka Sharma, asks her to apologise after releas*e (May 14, 2019 14:44 IST) https://www.indiatoday.in/elections/lok-sabha-2019/story/mamata-banerjee-meme-bjp-worker-bail-west-bengal-priyanka-supreme-court-1524467-2019-05-14

ISSN 2394 - 7780

Another example being, politicians use social media platform as a gateway to voters since their presence on these portals are higher in comparison to traditional mediums like newspapers.[1] The world is growing at a very fast pace, where time is insufficient with respect to the amount of work in hand, therefore, people resort to news and updates 'on the go'. Owing to political propaganda, unauthentic information gets into circulation creating a cascading effect as it is difficult to identify the source which it originated from.

Courts across the Country are being burdened with a number of writ petitions with respect to if social media accounts, like Facebook, should be linked to Aadhar.[2] Since the question of law was the same in all cases, the Supreme Court aptly underlined, that the crux of every petition is with respect to "how and in what manner the intermediaries should provide information including the names of the originators of any message/content/information shared on the platforms run by these intermediaries". [3] Currently the Supreme Court is faced with this case[4] of implementing regulations and guidelines for the execution of the provisions of the Information Technology Act, 2000.[5] Though there is the presence of the Information Technology (Intermediaries Guidelines) Rules, 2011, there is a duty cast upon the intermediaries to store certain messages in order to have accountability and responsibility [6]. However, there exists a lacuna as messages and originators are are protected by default by end-to-end encryption, which is regarded to be "the most basic building block" for digital security.[7] This feature does not allow social media applications to find the source or originator of the messages, contributing to the difficulty in fixing accountability.

3. INTERNATIONAL SCENARIO

The recent outburst on environmental protection by Greta Thunberg, who is a 16-year-old activist has sought thousands of supporters worldwide owing to her Instagram[8] post highlighting the detrimental effects of climate change. Apart from going viral online, she motivated more than 1 million students around the world to walk out of their classrooms in pursuit of climate change.[9] Her strong speech before the Heads of Nations at the United Nations on 23rd September 2019 climate change planted a seed in their minds, urging them to act responsibly towards future generations.[10] Barack Obama, the former President of the United States of America, came out in support of this young activist by stating on record that she is "One of our planet's greatest advocates"[11]

[1]Venkatesan, *Influence of Social Media in Day-to-day Life* (May 17, 2014) http://www.ndot.in/blog/influence-social-media-day-to-day-life.html

[2] Internet Freedom Foundation, *Action-Packed Hearing in Facebook's Transfer Petition before the Supreme Court* (Sept 24, 2019) https://internetfreedom.in/action-packed-hearing-in-facebooks-transfer-petition-before-the-supreme-court/

[3] Facebook Inc v Union of India & Ors (2019) https://www.livelaw.in/pdf_upload/pdf_upload-364899.pdf

[4] Facebook Inc. v. Union of India, Civil Petition Nos. 1943-1946/2019.

[5] Information Technology Act, 2000, Sec 87.

[6] Sub-rule 4 and 7 of Rule 3.

[7] United Nations Human Rights Special Procedure, *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* (June 2018) https://www.ohchr.org/Documents/Issues/Opinion/EncryptionAnonymityFollowUpReport.pdf

[8] Amelia Tait, *Greta Thunberg: How one teenager became the voice of the planet, (June 6, 2019)*

https://www.wired.co.uk/article/greta-thunberg-climate-crisis

[9] Aylin Woodward,Ivan De Luce, *How 16-year-old Greta Thunberg became the face of climate-change activism* (Sep 20, 2019, 16:34 IST)

https://www.businessinsider.in/How-16-year-old-Greta-Thunberg-became-the-face-of-climate-change-activism/articleshow/71219009.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[10] *Ibid*

[11] *Source: The Obama Foundation* (Sept 18 2019 10.33 BST) https://www.theguardian.com/environment/video/2019/sep/18/were-a-team-greta-thunberg-visits-barack-obama-video

ISSN 2394 - 7780

Freedom of expression- a worldwide right is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation, censorship, or legal sanction.[1] As per the Universal Declaration of Human Rights (UDHR)[2] and International Covenant on Civil and Political Rights (ICCPR)[3] "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" whereas the latter includes that rights also entails duties which are subject to certain restrictions whenever necessary, like protecting the rights of others, national security, public order and morality.

A notable link between freedom of speech and democracy was deciphered by Alexander Meiklejohn, Philosopher, Educational Reformer, and Free-Speech Advocate, "*For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas*."[4] According to Meiklejohn, democracy's essence lies in the right and freedom of of expression. He believes that the voters should not be manipulated by withholding information and repressing criticism. Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal.[5]

"According to the 'Two Fold Approach' propounded by Jürgen Habermas, it enumerates that in the context of liberal regimes, the rise of millions of fragmented chat rooms across the world tend instead to lead to the fragmentation of large but politically focused mass audiences into a huge number of isolated issue publics. Within established national public spheres, the online debates of web users only promote political communication, when news groups crystallize around the focal points of the quality press, for example, national newspapers and political magazines."[6]

In November 2015, the Bangladeshi Government blocked six social media sites namely Facebook, WhatsApp, Line, Messenger, Tango and Viber. This was done for security reasons following the Bangladesh Supreme Court's decision to uphold the death sentence of two influential opposition leaders (Salauddin Quader Chowdhury and Ali Ahsan Mohammad Mojaheed) for committing war crimes during the 1971 independence struggle.[7]

Cambridge Analytica, a political consulting firm that deals with data brokerage and mining, claimed to have won the White House U.S Elections for Donald Trump by using Google, Snapchat, Twitter, Facebook and YouTube to strategically target users with political ads and produced detailed polls that allegedly helped Trump score an upset victory over Democratic hopeful Hillary Clinton.[8] Cambridge Analytica used an app to collect the private details of 87 million users without their knowledge.[9]

"On Friday 13th September 2018, radical right activist Tommy Robinson was released from prison after serving 9 weeks for contempt of court. Robinson was first jailed for this offence last year, when he livestreamed on Facebook a rape trial involving Muslim men. Robinson's prison sentence turned him from keyboard warrior to

[1] Signature Theatre (2019) https://www.sigtheatre.org/signature-in-the-schools-the-spoken-word-educational-resources/freedom-of-press-and-speech/

[2] Universal Declaration of Human Rights, Art 19.

[3] The International Covenant on Civil and Political Rights, Art 19

[4] Marlin, Randal (2002). Propaganda and the Ethics of Persuasion. Broadview Press. pp. 226–27

[5] *Ibid*

[6] Reyes, *supra*, note 6.

[7] Osman Hosain Facebook, *WhatsApp, Viber blocked 'indefinitely' in Bangladesh*(Nov 24, 2015) http://tribune.com.pk/story/997382/facebook-whatsapp-viberblocked-indefinitely-in-bangladesh/

[8]Paul Lewis and Paul Hilder, *Leaked: Cambridge Analytica's blueprint for Trump victory* (Mar 23, 2018 12.53 GMT)

https://www.theguardian.com/uk-news/2018/mar/23/leaked-cambridge-analyticas-blueprint-for-trump-victory

[9] Agence France-Presse, *Trump Campaign Firm Cambridge Analytica Pleads Guilty In Facebook Data Case* (Jan 10, 2019 08:08 IST) https://www.ndtv.com/world-news/trump-campaign-firm-cambridge-analytica-pleads-guilty-in-facebook-data-case-1975446

ISSN 2394 - 7780

poster boy for the international radical right. Robinson became the perfect embodiment of the radical right's victimisation narrative. His supporters loudly claimed that the UK had become a police state that curtailed freedom of speech and that Robinson was imprisoned for his political ideas. The same arguments were made when he was banned on Facebook and Instagram in February. What the Tommy Robinson saga ultimately shows is how difficult it is for policymakers to draw the line between hate speech and freedom of speech. At a time when the ideology of the radical right is becoming global there needs to be more recognition of how these ideas demonise ethnic and religious communities under the banner of freedom of expression".[1]

Social media platforms are private companies and can censor what people share on their pages.[2] The obvious thing in these media platforms is that once the user agrees on the terms and conditions then they should not be subject to media laws regarding freedom of speech. In contrast, as we know the free speech in social media is controlled and limited by algorithms; these algorithms are not well and clearly explained to the audience.[3] These These platforms are private companies, so the way they censor is based on their owner's beliefs and what works the most for them, in terms of profitability and reputation[4]. The manner in which these companies enforce censorship is according to the western ways which is implied all over the World. They tend to forget that the world, in general, does not follow western tradition and such standards do not hold good as traditions, culture and standards differ from country to country. Complaint about social media censorship is the lack of transparency and consistency about the content that is taken down. Facebook addressed some of these criticisms by disclosing their specific rules for taking down content after it's been referred to their content moderators.[5]

4. CONCLUSION

Censorship is something which concerns people all over the world as it can suppress the basic human rights of Freedom of expression. As debates, dialogues, and news reports increasingly take place on social media platforms like Facebook and Twitter, censorship practices on these sites have become an important part of the free speech discussion.[6] The now-retired U.S. Supreme Court Justice Anthony Kennedy, called the cyber age a revolution of historic proportions, noting that "we cannot appreciate yet its full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be."[7]

Majority of the countries in the world follow a democratic form of government and are signatories to the UDHR, which believes that the right to expression is a human right and plays a significant role in governance. Hence, it is important that every country, irrespective of its functioning, culture, traditions, background, take a united front in how the freedom of speech and expression should be curtailed when the need arises as per the UDHR.

No matter the regime, it is evident that the entire world is censoring the contents online. The online content deserves the same protection as that of offline. Though censoring any and all content is against the Human rights conferred to individuals, certain content needs to be treated with utmost strictness to avoid the deterioration of the right of free speech. However, as discussed earlier, such censorship is limited to a company policy, rather should be on the lines of the Freedom of expression granted under the Universal Declaration of Human rights.

Social media companies should base their speech policies on the protections in Article 19 of the International Covenant on Civil and Political Rights. Evelyn Aswad, a Law Professor at the University of Oklahoma argues that, "For companies to avoid infringing on international freedom of expression protections, a three-part test

[1]Cristina Ariza, *Will online takedowns defeat the offline radical right?* (Sept 25, 2019) https://www.opendemocracy.net/en/countering-radical-right/will-online-takedowns-defeat-offline-radical-right/

[2] Kafa Khalil, *Social Media: Censorship Against Freedom of Speech*, (Oct 28, 2017) https://medium.com/@khalilkafa/social-media-censorship-against-freedom-of-speech-76603634c2d9

[3] *Ibid.*

[4] *Ibid.*

[5] Thomson Reuters, *Social Media Censorship and the Law (2019)* https://civilrights.findlaw.com/enforcing-your-civil-rights/social-media-censorship-and-the-law.html

[6]*Ibid*

[7] David L. Hudson Jr, *Free speech or censorship? Social media litigation is a hot legal battleground.*(Apr 1, 2019, 12:05 AM CDT) http://www.abajournal.com/magazine/article/social-clashes-digital-free-speech

ISSN 2394 - 7780

should be met: (1) companies should make sure their speech codes are not vague and (2) companies should select the least-intrusive means of (3) achieving legitimate public interest objectives when infringing on speech."[1]

Though India has a series of legislations to protect privacy like the Information Technology Act, 2000, Cyber Laws, Data Protection Bill, the Supreme Court is currently cast with the duty to enforce rules and guidelines to uphold privacy but also make sure authenticity of information by setting forth a regime to find the originators or perpetrators of detrimental messages as and when needed.

Keeping in mind the principles adopted by the UDHR, the understanding what it entails, it is the need of the hour for the Indian Parliament to pave a way to negate the misuse and abuse of social media platforms but holding intact the right of free speech and expression. It is of utmost importance that it is properly balanced as India continues to thrive on the fact that it is a successful democracy even with its large population and diverse culture and school of thought.

[1]Ibid.

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NEED FOR LEGISLATION TO GOVERN EUTHANASIA IN INDIA

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ABSTRACT
The term Euthanasia comes from two Ancient Greek words: 'Eu' means 'Good', and 'thantos' means 'death', so Euthanasia means good death. It is an act or practice of ending the life of an individual suffering from a terminal illness or in an incurable condition by injection or by suspending extraordinary medical treatment in order to free him of intolerable pain or from terminal illness. Euthanasia is defined as an intentional killing by an act or omission of person whose life is felt is not to be worth living. It is also known as 'Mercy Killing' which is an act where the individual who is in an irremediable condition or has no chances of survival as he is suffering from painful life, ends his life in a painless manner. It is a gentle, easy and painless death. It implies the procuring of an individual's death, so as to avoid or end pain or suffering, especially of individuals suffering from incurable diseases.1

INTRODUCTION
Euthanasia is a sensitive issue because it involves debate on ethics and morality. It's important to understand the implications of Euthanasia in India, as in the rest of the world as the debate whether to legalise Euthanasia or not is still open.

RIGHT TO LIFE AND RIGHT TO CHOOSE:
The debate between 'Right to Life' and 'Right to Choose' has made the society into taking two different stands on the issue. Speaking about 'Right to Life', the issue got its origin in the 'abortion' debate that started mainly in the Christian dominated countries. In Christianity, taking life of an unborn child is viewed as sin. The point of view here is that the moment a child is conceived, it is a living being, even if it is in the mother's womb, no one has the right to take that life, not even the mother.

Contrary to this, activists who are in support of abortion say, that the mother has the 'right to choose' on whether she wants to have a child or not and therefore, it's only her decision. This debate has over time shifted across religious and national boundaries.

POSITION IN INDIA
A five-judge bench of the Supreme Court headed by the Chief Justice of India Dipak Misra and comprising Justices A.K. Sikri, A.M. Khanwilkar, D.Y. Chandrachud and Ashok Bhushan, issued guidelines in recognition of "living will" made by terminally-ill patients.

These guidelines include who can execute the living will and under what conditions can the medical board give a nod for passive euthanasia. The apex court further stated that its guidelines and directives shall remain in force till a legislation is brought to deal with the issue. The court was issuing this verdict on a PIL filed by NGO-Common Cause in 2005. Lawyer Prashant Bhushan had argued in the case that when a medical expert suggests that a patient who is suffering from a terminal disease and has reached a point of no return, that person should have the right to refuse artificial life support – medically referred to as passive euthanasia – to avoid long-standing suffering.

QUICK LOOK THROUGH THE BACKGROUND OF DECISIONS
A five-judge bench, headed by Justice J. S. Verma, in Gian Kaur v State of Punjab2 in 1994 had held that both - assisted suicide and euthanasia were unlawful. The bench stated that right to life did not include the right to die, hence overruling the two-judge bench decision in P. Rathinam vs Union of India3 which struck down section 309 of Indian Penal Code (attempt to suicide) as unconstitutional.

In Gian Kaur's case, the Supreme court held that Article 21 speaks of life with dignity, and pointed out that the right to die was inconsistent with it.

1 http://www.legalservicesindia.com/article/787/Euthanasia-in-India.

2 1996 AIR 946, 1996 SCC (2) 648

3 1994 AIR 1844, 1994 SCC (3) 394

However, later in Aruna Ramchandra Shanbaug vs Union of India4, the Supreme Court in March 2011 held that passive euthanasia could be allowed in case of exceptional circumstances and under strict monitoring of the court.

ISSN 2394 - 7780

Aruna Shanbaug had been in a vegetative state since 1973, and on her behalf, Pinki Virani, a social activist, journalist and writer, had filed a writ petition claiming that her right to life guaranteed by the constitution had been violated.

BRIEF OUTLINE OF ARUNA SHANBAUG'S CASE

Aruna Shanbaug, In 1973 was working as a nurse in Mumbai's KEM hospital. One day she was attacked by a sweeper in the same hospital, who strangled and sodomized her. He used a chain to strangle her that resulted in oxygen deprivation to her brain, leading to a coma.

However, this gave rise to the debate whether Aruna should be kept alive or should she be allowed to die. The question is WHO WOULD DECIDE? Aruna has a fundamental right to live but she cannot decide for herself whether to live or to give up on life. So who does? If Aruna was conscious, would she like to live this life? Doesn't quality of life also matter? To stay alive in medical sense and staying alive in the social sense is the debate. Aruna too has the right to live a happy and healthy life but since these were denied completely, would she want to continue living on life support? What purpose does that serve?

LEGAL POINT OF VIEW

The debate was taken forward to the Supreme Court the court rejected the plea to discontinue Aruna's life support, taking into account KEM Hospital's decision to continue supporting her but issued a set of broad guidelines legalizing 'passive euthanasia' in India. Passive euthanasia involves the withdrawing of treatment or food that would allow the patient to live. The court rejected 'active euthanasia' that involves injecting the patient with lethal compounds to end the person's life and was left to the parliament to debate and decide laws on this sensitive issue. Some countries like Switzerland, Belgium, the Netherlands and some states in the US, allow 'active euthanasia'. In early 80s, a movie called 'Whose life is it anyways' took up this issue.

It was subsequently held that, if the person is unable to decide for himself whether to continue to live on life support or to give up on life, then it must be left to the family and the doctors to take a call on withdrawal of life support. Here the 'right to choose' life or not, must be taken by the family, as they are involved with the process, the medical cost and the emotional cost of keeping the person alive.

GLOBAL EUTHANASIA AND ASSISTED SUCIDE LAWS5

Netherlands was the first country to legalise euthanasia and assisted suicide in April 2002. The country had issued strict guidelines and conditions, including that "the patient must be suffering unbearable pain, their illness must be incurable and the demand must be made in "full consciousness" by the patient."

Belgium soon followed with a law legalising euthanasia in the same year. While assisted suicide is not mentioned in the law, it has provisions that state: "doctors can help patients to end their lives when they freely express a wish to die because they are suffering intractable and unbearable pain".

While euthanasia remains illegal in the US, in five states in the country, doctors are allowed to prescribe lethal doses of medicine to terminally ill. According to a report, In 2013, roughly 300 terminally ill Americans were prescribed lethal medications, and around 230 people died as a result of taking them.

4 (2011)4 SCC 454

5 https://thewire.in/health/passive-euthanasia-now-a-legal-reality-in-india

THE LEGAL POSITION IN OTHER COUNTRIES:

Netherlands

Under the Penal code of Netherlands, killing a person at his request or assisting a person in committing suicide is punishable under law. In spite of the code the Courts of Netherlands have come to ruling of providing a defence to a charge of voluntary Euthanasia and assisted suicide. Subsequent to these judicial decisions a Bill was passed in April 2001, Netherlands charted out a new chapter for legalizing euthanasia.

Australia

In 1996 the Northern Territory of Australia was the first jurisdiction to legalize voluntary active euthanasia; and thereby pass a legislation called as the Rights of the Terminally Ill Act, 1996. Later on the Federal Parliament of Australia had to pass Euthanasia laws Act, 1997 which inter alia repealed the Northern Territory legislation.

England

The patient has the right to refuse life-sustaining treatment as part of his rights of autonomy and self-determination. The non-voluntary euthanasia in case of patients in a persistent vegetative state is legalized.

ISSN 2394 - 7780

United States of America
U.S laws prohibit active euthanasia. But the courts ruled that passive euthanasia is legalized as it says that doctors should not be punished if they withhold or withdraw a life-sustaining treatment at the request of patient. In 1991 Federal Patient Self-Determination Act, was made effective which required federally certified health-care facilities to notify adult patients of their rights to accept or refuse the medical treatment. The facilities should also inform the patients of their rights under state laws to formulate advanced directives.

Canada
In Canada Patients have similar rights as in case of U.S. to refuse life-sustaining treatment and formulate advanced directives. However, they do not possess right to active euthanasia or assisted suicide.

INDIAN LAWS
India is a country highly influenced by religion and orthodox beliefs.

Under the Constitution of India, Article-21 confers a fundamental right; Right to Life and Personal Liberty. This Right has a wide application and cannot be defined.

Human rights are those which are derived from natural laws which have evolved out of natural rights. Rights those are inherent to people by virtue of their being human and being of a moral and rational nature and having a common capacity to reason. This comprises a core base of basic guarantees, including the right to life; freedom from torture or inhuman or degrading treatment or punishment; freedom from slavery, servitude, and forced labour; the right to free movement; and, as a human right, the right to development is also considered to be a basic human right.

Human rights are the rights which a person gets from its human existence and the said human right gives the person the right to development when a person is terminally ill or is suffering from incurable disease then in such situation euthanasia should be allowed if not allowed it would violate his human right of development. In this context it could be interpreted that euthanasia should be legalized as the life of an individual becomes meaningless or useless if the person is not able to carry on functions as held in the above case it's the right of the person under the right to life and such a right is violated if a patient is forced to live when suffering from terminal illness.

LAW COMMISSION REPORT
The 17th Law Commission of India then headed by Justice M. Jagannadha Rao in its 196th Report submitted in April,2006 titled 'Medical Treatment to Terminally Ill-patients (Protection of patients and Medical Practitioners)' had supported and made recommendations for drafting legislation on the passive euthanasia.

LEGALIZATION OF EUTHANASIA
Legalization of euthanasia simply means granting an individual his natural right to die or terminate his life owing to bad quality of life due to medical reasons. Attempt to suicide under mental coercion is punishable under law, but asking for granting of death due to perpetual suffering of an individual is not punishable. In most of the cases when an individual suffers with Persistent Vegetative State (PVS), the court grants physician assisting suicide with a standing consent from the patient showing his willingness to die and there is no undue influence while deciding so. The willingness should be out of the ground fact that there is no hope in improvement in quality of life in the future.

WHY SHOULD EUTHANASIA BE LEGALISED?
Moral Objectives
It is morally incorrect to keep a person fighting for no cause when all hope is lost. The sufferer and his fraternity go through mental trauma for a long period of time. The society is obligated to acknowledge the rights of patients and to respect the decisions of those who elect euthanasia. Every individual's right to self-determination or his right of privacy needs to be respected. Interference to such rights can be justified if it is to protect values, which is not the case where patients suffering unbearably at the end of their lives request euthanasia leaving them with no alternatives. People can't suffer against their will. It is plain cruelty on them and cessation of their human rights and dignity.

Individual's right to exercise his choice
Firstly deciding if one wants to live or die is a personal decision. Every individual has his/her own rights over their body. When the birth of an individual is not questioned by anyone naturally death as well should not be a speculative debate. A painless death is better than a painful life. The increase in patients of Cancer, AIDS and other dreadful and irreparable diseases has sparked a world-wide need of euthanasia or mercy killing. Especially in the final stages of such diseases which are incurable the want of euthanasia is justified.

ISSN 2394 - 7780

Economic Factor

Economic concern in a country like India is of principal importance. The medical charges are too expensive for the needed medical care; unsure if the patient is going to improve in any possible way or remain as he is. And every severe disease attracts a big amount of risk and money which can't be ignored. Moreover, there is increasing pressure on hospital and medical facilities; it is argued that the same facilities should be used for the benefit of other patients who have a better chance of recovery and to whom these facilities provided by the hospital would be of greater value. Thus, the argument runs, when one has to choose between a patient beyond recovery and one who may be saved, the latter should be preferred as the former will die anyway.

Euthanasia, both in active and passive form, should be allowed in every society. It should be legalized owing to the amount of pain an individual goes through due to the incurable disease or disorder for a long period of time. Having a patient suffer endlessly is not giving him a better quality of life. The kind of quality of life is defined by the patient, not the doctor or government. Consequently, when the patient feels he is not getting the quality of life he wants the doctors can insist upon Physician Assisted Death (PAD). Supporters of active euthanasia contend that since society has acknowledged a patient's right to passive euthanasia (for example, by legally recognizing refusal of life-sustaining treatment), active euthanasia should similarly be permitted. Court needs to lay reasonable grounds as to why there is a refusal in the first place to grant euthanasia; be it active or passive. When arguing on behalf of legalizing active euthanasia, proponents emphasize circumstances in which a condition has become overwhelmingly burdensome for the patient, pain management for the patient is inadequate, and only death seems capable of bringing relief. In a liberal democracy like India where Fundamental Rights are given highest significance over any other substantial law, right to die should be treated at par with the fundamentals of the constitution.

CONCLUSION

Euthanasia is a way of ending a person's life who has been suffering from intolerable pain or undignified death. Various countries have legalized it. The debate regarding euthanasia has going on from very long time but only recently euthanasia gained massive importance. After the landmark judgment passed by the Indian Court in Aruna's case it's clear that passive euthanasia is now allowed in India. But still there is some ambiguity with regard to euthanasia. Hence there has been an urgent need to pass legislation on euthanasia. Law on euthanasia is the need of the hour.

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IMPACT OF AGRICULTURE TRADE AND RELATED REFORMS ON DOMESTIC FOOD SECURITY IN INDIA

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ABSTRACT
Food security and agricultural trade are the most heated and debated topic of the world . Food security means the absence of hunger or to provide sufficient amount of food at the global, national, community or house hold level. The problem to ensure food security are not the non availability of food, it is the problem of accessibility to food at all times, to all people, at affordable prices. The agriculture trade policies, marketing system both at national and international level play an important role in ensuring food security. During the negotiation for WTO agreement on agriculture, India raised concerns over food security and flexibility that developing nations most have when it comes to providing subsidies to farm inputs. The developing countries like India are still waiting for Permanent solution on food security and public stock holdings at the WTO. In this paper the authors try to examine Agricultural trade and related reforms on domestic food security in India.

1. INTRODUCTION

Food security has been the primary concern of all the countries in the world. Particularly it is the chief concern of the developing countries. These countries have been striving hard to attain this goal by achieving food self sufficiency. Hence, raising food grain production has been the basic strategy followed by these nations. India, also has given more importance to agricultural production particularly food grain production. India's strategy of agricultural development and approach to food security had proved its resilience in the wake of recent glob al food crisis, which has created political and social unrest in several countries of the developing world. India has broadly followed a trade policy that was inward looking based on import substitution strategy. This had helped India tide over the severe food crisis of the mid sixties and also proved its aptness in the wake of economic liberalizations and globalization since the early nineties. Though India's performance in terms of reducing hunger and malnutrition has not been remarkable in given political and social cultural condition, the achievement save indeed been significant.

The Indian Agriculture has seen a phenomenal transformation from last five decades. These transformation was brought by technological changes such as Green revolution, Institutional innovations in delivering from inputs and marketing of output, contract farming is pone such institutional initiatives undertaken in recent years to address the problems faced by Indian farmers. The National Agricultural Policy (2000) announced by the government of India seeks to promote contract farming by involving the private sector to accelerate technology transfer, capital inflow and assured marketing of crop production.[1] We have discussed the factors underlying these changes through all these years, the dynamics of these factors and resultant cropping pattern. In this article, the author tries to highlight certain major issues and approaches concerning the liberalization of agriculture as a part of the ongoing economic reform process in India. In this context author discuss on 3 major areas which have direct bearing on agriculture. They are: a) Impact of WTO agreement on Indian agriculture including liberalization of agricultural trade. b) Domestic reforms and c) Institutional frame work, policies and strategies towards food security.

2. WTO AGREEMENT ON AGRICULTURE:

The Agreement and Agriculture (AoA) is an international treaty of the World Trade Originations negotiated in Uruguay round General Agreement on Tariffs and Trade. It came in to force with the establishment of the WTO on January 1st 1995. India is a signatory to the Uruguay round General Agreement on Tariffs and Trade. The WTO Agreement on Agriculture contains provisions in three broad areas of agriculture and trade policy namely;

1. Market access.

2. Domestic support and

3. Export subsidies

[1] S. R. Asoka, A perspective of contract farming with special reference to India, :2005, Indian Journal of Agricultural Marketing 19(2).P 94-106

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1. Market Access

Agreement on agriculture required that the prevailing non tariff barriers such as Quotas variable levies, minimum import prices, discretionary licensing, state trading ,measures, voluntary restraints agreement etc., which were considered trade distorting were to be abolished and converted into equivalent Tariffs. And subsequently the tariffs were to be progressively reduced by a simply average of 36% by the developed countries over 6 years. Developing countries are required to reduce tariffs by 24% in 10 years.[1]

2. Domestic Support

For domestic support policies, AOA divides domestic support into two categories. a) Trade distorting and b) Non- trade distorting (or minimal trade distorting). All trade distorting domestic support is placed in "Amber Box" The Non- trade distorting or minimal trade distorting domestic support measures have been divided into three box 1) Green Box 2) Blue Box 3) Special and differential (S & D) B0x. The support under Green Box is excluded from any reduction commitments and is not subject to any upper limit. Subsidies under Blue box include direct payments to farmers under production, is also exempted from any reduction commitments but it has an upper limit. The special and differential Box measures include measures taken by developing countries, otherwise subject to reductions, such as investment subsidies and various agricultural input subsidies available to low income and resource poor producers in a developing country. Export subsidies and quantities of exports that receive subsidies, taking averages for 1986-1990 as the base level developed countries agreed to cut the value of export subsidies by 36%over the six years(., 24% over 10years for developing countries.[2]

3. Export subsidies

Export subsidies one of the pillar of the WTO Agreement and Agriculture. The 1995 Agreement and Agriculture required developed countries to reduce export subsidies by at least 36% (by value) or by 21% (by volume) over six years. For developing countries, the agreement required cuts were 14% (by volume) and 24% (by value) over ten years.[3]

3. IMPLICATIONS OF THE AGREEMENT ON AGRICULTURE FOR INDIA

1) Implications for market access

With the anticipated completion of the removal of quantities restrictions (QRs) on agricultural products by April 2001, India had to increase its productivity and improve the quantity of its products to compete effectively in the international market. Due to the issues like poor live stock, and grain, issues related to quality, infrastructural problems and SPS,[4] and technical barriers to trade (TBT) barriers of developed countries. India and other developing countries did not have equivalent opportunity for exports. The special safeguard (SSG) provision which says that import restrictions can be placed- if market access leads to an extremely low price not available to India.

2) Implications for Green Subsidy

Subsidies granted by the government of India to producers such as the governmental expenditure on agricultural research, pest control, inspection and grading of particular products marketing and promotion services, payment under environmental programmers, producer retirement programmes and income insurance and income safety net programme are exempt from reduction commitments.

3) Implications for Amber Subsidy

In India the minimum support price provided to commodities is less than the fixed external price (1986-1988) determined under AOA. Produce specific subsidies are normally provided in the form of minimum support price to specific crops and are calculated with reference to international price for the commodity. A recent study by the Indian Council for Research on International Economic Relations (ICRIER),[5] taking inflation into

[1] https://www.wto.org>res-e accessed on 5/9/2019 at 1.20P.M.

[2] Sanjeev Bhardwaj , Paraiba Misras and Deepak Jain, WTO and Indian Agriculture: task and challenges, publishers the Indian Economic association,

[3] https://en.wikipedia.org › wiki › Agreement_on_Agriculture

[4] The SPS measure is a non- tariff measure and can be invoked to refuse imports from measure and can be invoked to refuse, imports from different countries to protect human, animal or plant life or health

[5] Established in August 1981, ICRIER is an autonomous, policy-oriented non-profit economic policy think tank. ICRIER's main focus is to enhance the knowledge content of policy making by undertaking analytical research that is targeted at improving India's interface with the global economy

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account, shows that the product specific Aggregate Measure of Support (AMS) is negative for most supported products; and for cotton and sugarcane though positive it is less than 10 per cent.[1] The non product specific subsidies are estimated to be below the minimal permissible level of 10% of value of agricultural output. Even when subsidies provided to small and marginal farmers are included, non-product specific subsidies do not exceed the qualifying limits.

4) Implications for Export and Import subsidy

Export subsidies of the kind listed in AOA are not prevalent in India. The only export subsidy provided by India is the exemption of export profits under the section 80-111C of the Income tax Act and is not a listed subsidy. India is free to provide subsidies for internal and International transport, freight charges and reduction of export marketing costs. As developing countries are exempt from these reduction commitments during the period of implementation, the existing provisions can be continued for the time being. The impact of reduction in export subsidies by the developed countries should help India's export, though major benefits will be appropriated by the developed countries.[2]

5) Implications of SPS and TBT

Developments so far indicate that the developed countries will increasingly use sanitary and phytosanitary (SPS) measures and technical barriers to Trade (TBT) barriers measures to restrict import from countries like India. Considering the poor knowledge base and lack of infrastructure for harvest and post harvest operations, India may increasingly have to encounter these trade barriers. Removal; of QR,s is a major policy change that India has to make in order to comply with the AOA (Ibid)the questions that we need to address are to what extent will India be able to compete in the world agricultural commodity markets and whether India can protect its major agricultural commodity sector efficiently at the current binding tariff levels.[3]

4. INDIA'S APPROACH TO FOOD SECURITY

Ever since the Independence food security has been the focus of agricultural development strategy. To achieve this, the several policy instruments are used that influenced production potential, marketing system of agricultural commodities. In mid 1960s when country faced severe droughts continuously for 2 years, the then government and governments there after evolved certain policies and programmes for maximizing the food production and involved in building a solid foundation of food security.

I. Agricultural trade and Marketing environment

The agricultural marketing system and trade policy affect prices as received by the farmers and in turn influence the profitability of agriculture.

a) Price policy and support for farmers

The objective of the price policy is to maximize the production by providing financial incentives to the farmers for adopting new technology to increases the production. It also aims at safeguarding the interests of consumers or users of farm produce by maintaining market prices at reasonable levels, and to keep the fluctuations in prices with certain limits. The main instruments of price policy are Minimum support prices, Buffer stocking, operations of public distribution system. Commission for Agricultural costs and prices (CACP) is the advisory body of Government of India's in all the matters relating to agricultural price policies.

b) Buffer stocking of Rice and Wheat

The Government of India in order to meet the requirement of public distribution system and also for open market sales to reduce the fluctuation in prices, stocks are build up mainly through price support operation. If circumstances requires import route is also used to build up the stocks.

c) Distribution of Subsidized Cereals

This system is operated under the control of state government. The food grains are distributed to target groups through public distribution system at affordable prices.

d) Supplementary Nutrition Programme

The objective of this programme is to ensure food security particularly to, vulnerable group i.e. children pregnant women, lactating mothers by providing nutritional needs through anganwadis.

[1] Hoda. A, *WTO Agreement on Agriculture and India*, (2001), Paper presented at the seminar on WTO and Agriculture with Special Reference to Gujarat, 20-21 January DM, Ahmadabad.

[2] Supra note 303, p198-199

[3] Ibid

ISSN 2394 - 7780

e) Midday Meals for school children:
This program me was taken up as national programme of nutritional support to children undergoing primary education and it is extended to middle and higher school children also.

f) Food subsidy:
This is the amount disbursed by the government to Food Corporation of India for its procurement, handling and distribution of activities. In India food subsidies has served the multiple objectives of minimum guaranteed prices to farmers, maintenance of buffer stocks, supply of subsidized food grains, open market sales for stabilizing market prices.

g) Regulation of marketing system:
Regulation of food marketing system is one of important part of food policy instruments. Since India is a signatory of AOA several restrictions were imposed on activities of traders and processors like licensing, stocking limits, movement restriction on food grains, restrictions on bank credit for traders, canalization of imports and exports, restrictions on setting up of private market yards etc., The steps for liberalization of domestic food grain markets under taken in 2004 are as follows:-

1) Movement restrictions -lifted
2) Storage controls- lifted
3) Small scale reservation-lifted
4) Credit control- lifted
5) Ban futures trading -lifted
6) Bulk handling and storage by private trade -allowed
7) Ban on foreign investment in BHS-lifted
8) Licensing system -lifted
9) Export and Import liberalized
10) Ban on set up of private whole sale markets-Lifted
11) Contract Farming g- allowed
12) Direct purchase from farmers outside market yards- allowed
13) Minimum Support Price- continue
14) Entry of organized retail trade – allowed.[1]

5. OBJECTIVES OF WTO AND NATIONAL FOOD SECURITY ACT 2013

The Indian parliament by passing National Food Security Act 2013, demonstrates its commitment to ensure food security and to realizing the right to food as a legal right. The act ensures access to adequate quantity of food at affordable prices to 75% of rural population and 50% of the urban population. In order to achieve these goals government should provide subsidies to the farmers to increase production and to bring down the cost of production. AOA provision has been made that subsidies provided by government cannot exceed 10% of gross agricultural production. There are talks about taking actions against countries where subsidies exceed this level. The WTO is also debating the issues of Green box subsidies.(subsidy must not distort trade or at most cause minimal distortion) Blue box (exemption from the general rule that all subsidies linked to production must be reduced or kept within defined minimal levels) Amber box call domestic support measures considered to distort production and trade). It is very clear that all these rules of WTO were not to help agrarian economics, farmers and consumers. If consensus emerges against allegedly "trade distorting" subsidies at the WTO then India will be forced to reduce the quantity of agricultural products it buys from the farmers. It will definitely affect the public distribution system. And also the government cannot increase the minimum support prices in favour of farmers. This will lead to increase in the prices of the food grains that is to distributed under NFSA. To avoid this, government had to transfer a certain amount as "direct cash transfer "as per the provision of NFS Act to the beneficiaries of NFSA. This will definitely have adverse impact on women, children, and elderly

[1] Shabd S. Acharya, *Food Security and Indian Agriculture: Policies, Production Performance and Marketing Environment,* Agriculture Economic Research Review Vol.22 January-June 2009 pp1-19

ISSN 2394 - 7780

people. In addition this system will eliminate government control on prices of food grains. In India the move towards dismantling of public distribution system to reduce the subsidies provided to the farmers under food security act has already began. According to the information provided by ministry of consumer affairs food and public distribution in Lok Sabha on 25th July 2017all the ration shop replace by direct cash transfers to the beneficiaries. This will definitely have adverse affect on food security of the country and it will come under clutches of corporate interest.[1]

6. CONCLUSION

India in its subsidy account to WTO on July 13 2017 announced that it has not crossed the subsidy limit on agriculture. According to the ministry of consumer affairs Food and public distribution system, the food subsidy bill before implementation of National Food Security Act 2013 was of Rs.1.13 Lakh Crore in 2014-2015, after the implementation of NFS Act across the country the subsidy increased to Rs. 1, 35 Lakh Crores in 2015-2016. In 2016-17 the subsidy reduced to Rs. 1.05 Lakh Crores. This happened because the government decided to convert Rs. 45,000/ Crore subsidy provided to Indian Food Corporation as debt. The Food subsidy has been changed into food debt. This has led to the decrease in number of cultivators in the country. If this continues then between year 2015-2016 and 2022-2023 the number of cultivators in the country will decrease by another 1.96 Crore. So it's high time that India has to increase its domestic support basket and increase minimum support price and also to provide incentives to promote agricultural production. This will definitely help to ensure livelihood and food nutrition security. In such a scenario India has to play a major role and fight for permanent solution on public stock holding for food security purposes. A decision on this issue will signal WTOs commitment to the UN sustainable development goals and the fight against hunger and malnourishment across the Globe.

[1] https://www.down to earthiorg.in.updated by sachin kumar Jain on 12th December 2017 accessed on 6/9/2019 at 1.30 P.M.

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AGENDA 2030: A STUDY ON COHERENT AND COMPREHENSIVE STRATEGIES FOR POVERTY REDUCTION

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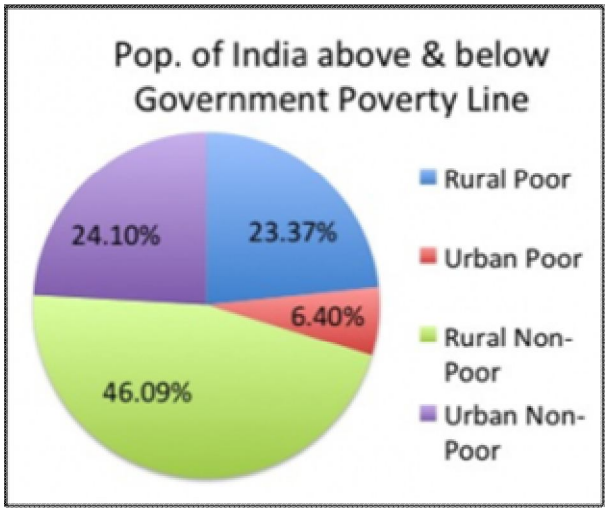
ABSTRACT:
Poverty is a pressing problem of countries all over the world. Governments, leaders, international organizations, therefore, are actively searching for solutions to contain and eliminate poverty globally. Former Vietnam President Ho Chi Minh emphasized that poverty is an "enemy", just as illiteracy and foreign invaders are considered enemies. Reduction of poverty is the basic element to ensure social justice and sustainable growth. Poverty reduction is not only a basic social policy that should be accorded special attention, but it is also an important global development objective. Reduction of poverty is not simply about redistributing income in a passive manner, but also about creating a growth dynamic - a process in which the poor takes initiative to improve their situation in order to overcome poverty. At the same time, poverty reduction is not a one-way path with economic growth generating resources to support disadvantaged people, but is itself an important factor that creates the groundwork for a relatively level playing field for development, to generate more abundant resources, and to ensure stability at all times. Agenda 2030 or Sustainable Development Goals (SDGs) are a collection of 17 global goals set by the United Nations adopted in 2015 which lists poverty reduction as the number one objective. Taking this further, the true task for the future is to boil the voluminous priority lists down to a limited number (three to five) of core actions that any government or global body such as the UN can cope with in a short period. This article makes an effort to suggest viable strategies and actions to reduce poverty keeping the present socio economic condition of India in mind in order to achieve the ultimate goal of Agenda 2030.

POVERTY IN INDIA - INTRODUCTION

"Like slavery and apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings.

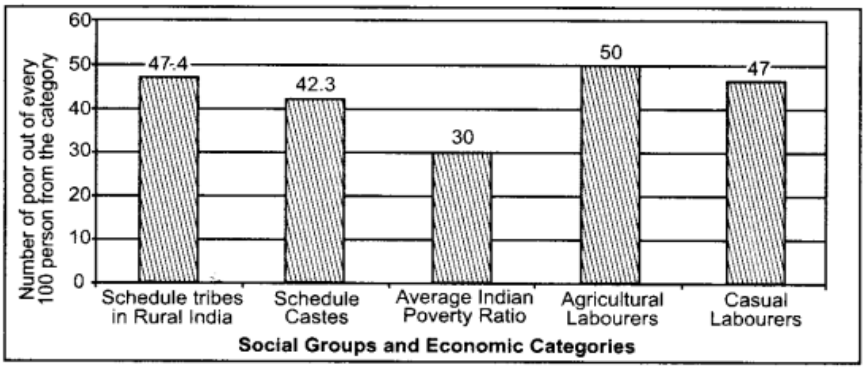
And overcoming poverty is not a gesture of charity. It is an act of justice. It is the protection of a fundamental human right, the right to dignity and a decent life."

The Asian Development Bank estimates India's population to be at 1.28 billion with an average growth rate, from 2010-2015, at 1.3%. In 2014, 49.9% of the population aged 15 years and above were employed. There are still 21.9% of the population who live below the national poverty line categorized as below poverty line or BPL. Internationally, an income of less than $1.90 per day per head of purchasing power parity is defined as extreme poverty. Poverty line has been mentioned as starvation lines because income is bare minimum to support the food requirements and does not provide much for the other basic essentials like health; education etc. 21.2% of population translates to 250 million people which is a humongous number. India is the youngest nation in the world. India is set to experience a dynamic transformation as the population burden of the past turns into a demographic dividend, but the benefits will be tempered with social and spatial inequalities. By this it is very evident that a vast majority of the youth of the nation are living in poverty striving for their basics such as food and clothing.



ISSN 2394 - 7780

Graph : Poverty in India 2000 : Most Vulnerable Groups



Source : Reports on Employment and Unemployment among Social Groups in India NSSO, Ministry of Statistics, Programme Implementation, Govt. of India

POVERTY REDUCTION STRATEGIES ADOPTED BY THE GOVERNMENT OF INDIA:

The Indian government has grouped the poverty alleviation initiatives broadly into 5 programmes:

1) Wage employment programmes

2) Self-employment programmes

3) Food security programmes

4) Social security programmes

5) Urban poverty alleviation programmes.

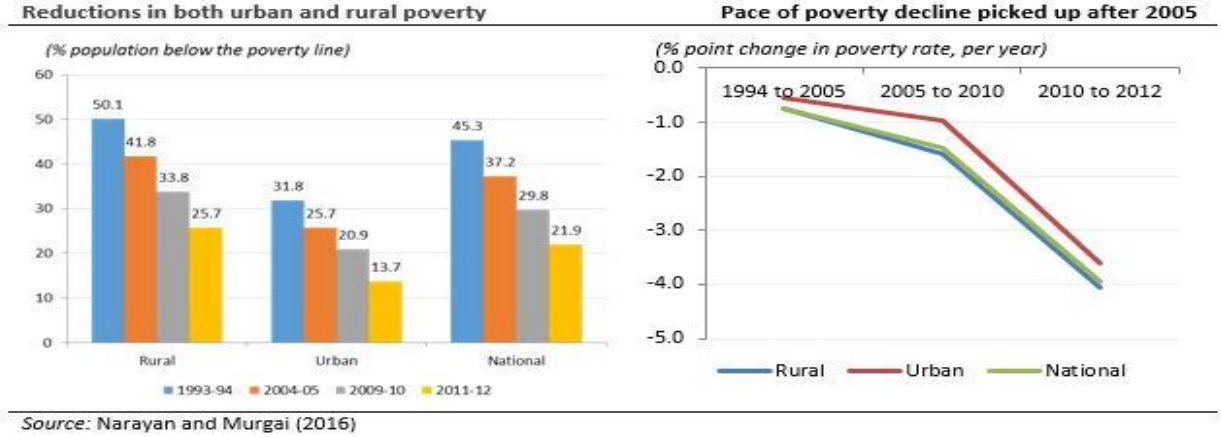
Post independence in 1947, the five year plans focused on poverty alleviation by incorporating sectoral programmes such as agricultural initiatives, massive diversified investments led by the state to generate employment,

The other initiatives taken by the government of India include:

1. Jawahar Gram Samridhi Yojana(JGSY)
2. National old age pension sceheme(NOAPS)
3. National family benefit scheme(NFBS)
4. National maternity benefit scheme(NMBS)
5. Annapurna Scheme
6. Integrated Rural Development Program(IRDP)
7. Pradhan Mantri Gramin Awaas Yojana
8. National Rural Employment Guarantee Act, 2005

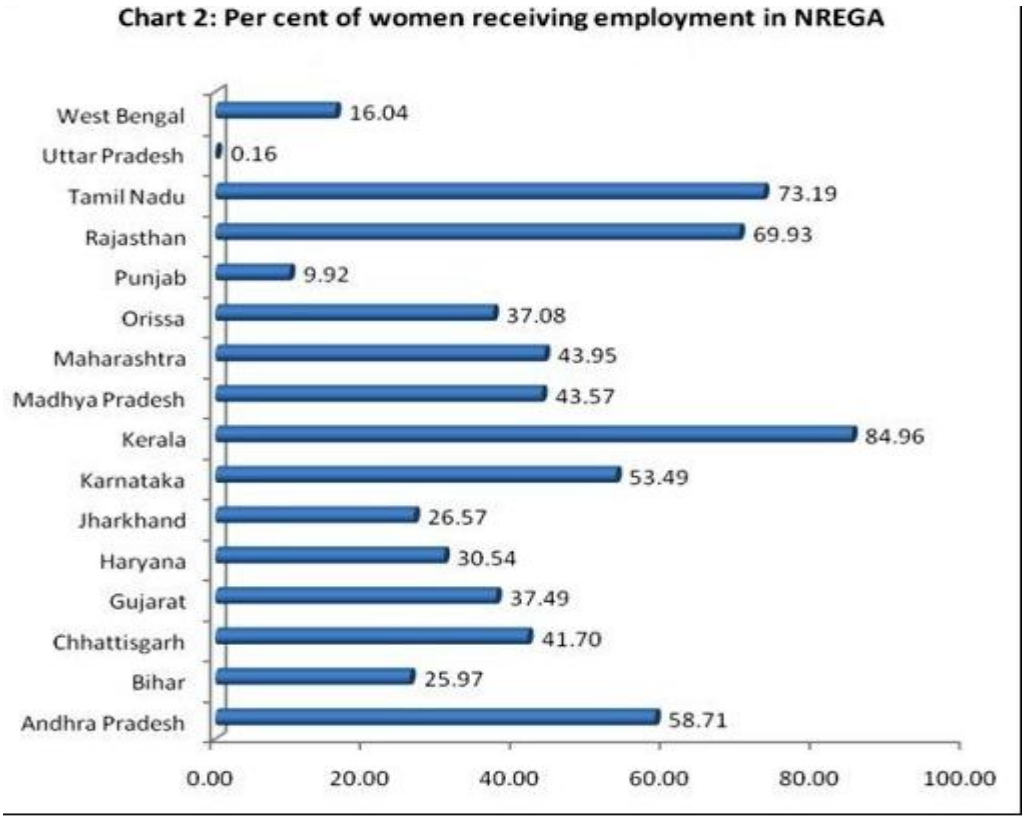
Through these programmes and initiatives the government of India has been able to alleviate poverty considerably.

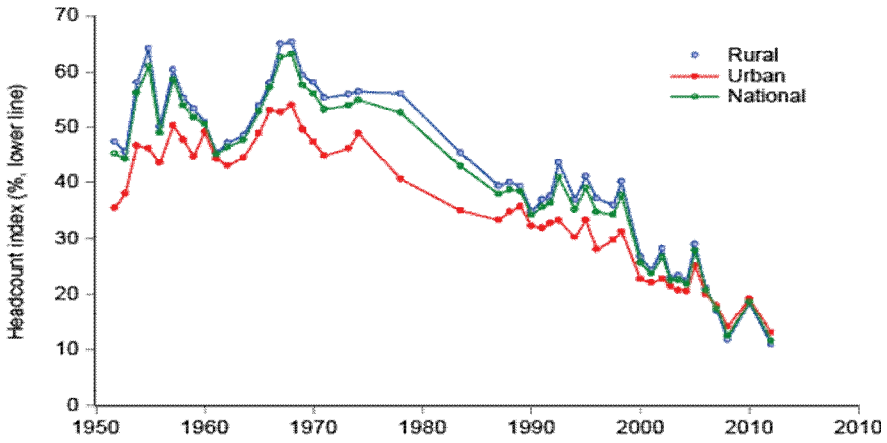
The graph below shows the impact of NREG Act, 2005 on the reduction in poverty.



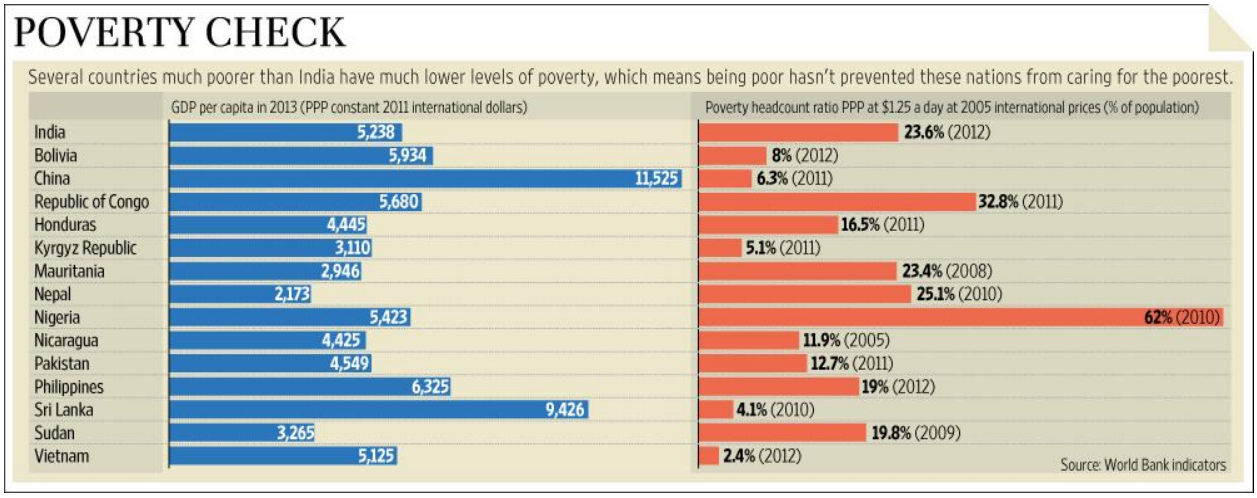
Source: Narayan and Murgai (2016)

ISSN 2394 - 7780





While these policies and initiatives did have an impact on the poverty, they did not have enough strength to have a sweeping effect. Thus, this gives rise for the need to formulate coherent and comprehensive strategies to reduce poverty. The chart below shows that monetarily poorer countries than India have been able to alleviate poverty more effectively than India.



ISSN 2394 - 7780

POVERTY REDUCTION STRATEGIES

"Overcoming poverty is not a gesture of charity; it is an act of justice"

-Nelson Mandela

Formulating strategies for reducing poverty has to be approached with the following areas of action:

1. Making Poverty Reduction Strategies sustainable as political instruments;
2. Enhancing linkages and coherence between the Poverty reduction strategies, medium-term expenditure frameworks, and budgets.
3. Alignment and harmonization of donor policies to support Poverty reduction strategies.
4. Monitoring of Poverty reduction strategies.
5. Participation in poverty reduction strategies
6. Capacity development for poverty reduction strategies.

POVERTY REDUCTION STRATEGY AS A POLITICAL INSTRUMENT

The main thrust behind making Poverty Reduction Strategies sustainable as political instruments is to make them more operational and action oriented. It is essential that poverty reduction strategies be better framed as medium-term, political planning tools, while at the same time linking them more securely to long-term poverty reduction goals, such as the MDGs or, where they exist, other long-term national plans. Better balance needs to be achieved between social and productive sectors. Poverty Reduction Strategies need to focus more tightly on the essentials of the approach to achieve clear impact, and the overabundance of priorities needs to be restructured along the lines of three to five core political actions. On the other hand, the Poverty reduction strategies should incorporate all major macro-economic and structural reforms, and should include alternative, expansionary scenarios for accommodating increases in MDG-related flows that demonstrate how these resources will be absorbed.

ENHANCING LINKAGES AND COHERENCE BETWEEN THE PRS, THE MTEF, AND ANNUAL BUDGETS

The linkage between poverty reduction strategies, medium term expenditure framework and annual budget points out the need to balance public spending between rural and urban areas, in addition to achieving more balance between the social and productive sectors. The strategy calls for improved poverty reduction strategy prioritization and precision, in order that the strategy can serve better in the roles it plays in investment planning, in directing coherence by the MTEF, and in enabling control and endorsement by national institutions, especially by parliament. The rationalization of public financial management, starting with revenues and continuing through the entire expenditure chain, and the increasing of transparency and accountability throughout the public finance system are prerequisites for making the poverty reduction strategy approach sustainable. A set of clear principles for transparent budget processes is needed that can be applied flexibly to reduce poverty.

ALIGNMENT AND HARMONIZATION OF DONOR POLICIES TO SUPPORT POVERTY REDUCTION STRATEGIES

Alignment and harmonization of donor policies to support Poverty reduction strategies, together with capacity development, represents the most pressing areas of work – for donors and partner actors alike – in order to achieve the objectives of the poverty reduction strategies approach. Repeated here is that Poverty reduction strategies typically do not provide sufficiently clear direction in the medium term for guiding the development efforts of the many actors involved, including donors. Combined with the fact that few consultations have been held on key economic reforms, this creates a vacuum – which donors all too often are ready to fill with their own agenda. The strategy also points out that all actors involved (partner governments, donors, civil society organizations, and the private sector) have their own, competing interests. In fact, none of these actors is a homogeneous entity, making harmonization and alignment that much greater of a task. A series of recommendations are made to assist with the job of harmonization and alignment, including: communicating key reform projects amongst the affected ministries and to special interest groups; making the shift to outcome-oriented conditionality's when possible to reflect a buy-in by government and donors in major policy reforms; and the conducting of negotiations between the individual actors and donors panels.

ISSN 2394 - 7780

PARTICIPATION IN POVERTY REDUCTION STRATEGIES

Monitoring of Poverty reduction strategies takes up the "4Ps", participation, and presents key principles and good practice. Participation was encouraged, and in general truly blossomed, during the poverty reduction strategies formulation phase in many countries. Since then, it has tended to fall dormant. One of the reasons for this is that it simply is not possible to carry out consultations ad infinitum with several hundred societal groups and organizations that exhibit varying levels of cohesion and capacity. Nor is it a viable solution to consign participation to the sole realm of monitoring, as has been the trend in many countries. Participation should be legitimized and formalized throughout the stages of the strategy, explicitly including implementation. A critical issue is the negotiations with donors that usually take place behind closed doors. Obviously there are tradeoffs and limits to participation, but open public debate should be held on macro-economic issues and policy to reach broad-based consensus. One main message is that participation must be institutionalized, meaning that it must be based on rights, be integrated into the political structures of the country, be legitimate, and have capable stakeholders. The other main message is that parliaments must be enabled to play a central role in poverty reduction strategy processes. While participation is hindered by corruption, it is strengthened by decentralization and the shift from the national to the local levels. And although participation should not be consigned solely to the sphere of monitoring, it surely has an important role to play there, especially in strengthening social accountability mechanisms. Capacity development, so important to all aspects of Poverty reduction strategy implementation, is all the more essential to functioning forms of participation, which require strengthened capacities on both technical matters and process issues. Mirroring these messages, and in view of the great importance placed on participation, the topic is not relegated to a single heading of this paper but instead should be treated as a cross-cutting issue throughout.

POVERTY REDUCTION STRATEGIES MONITORING

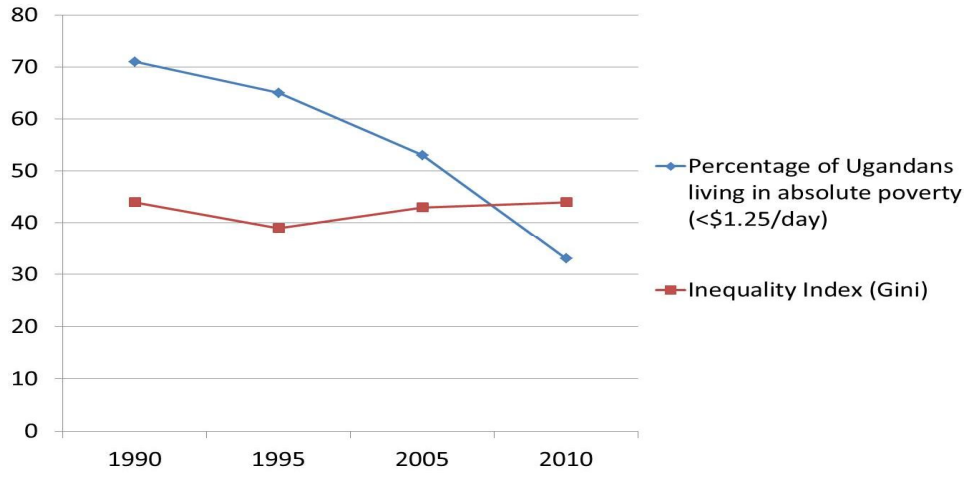
Monitoring is essential to the success of all poverty reduction efforts, and must be understood as a primarily political task that has a technical side, not the other way around – perhaps all the more so in the Poverty reduction strategy context. The key to effective monitoring lies in feeding back the monitoring information into the national dialogue and policy formulation processes. Using the information to enable parliaments and civil society actors to hold their governments accountable is, of course, a crucial part of monitoring.

CAPACITY DEVELOPMENT FOR POVERTY REDUCTION STRATEGIES

Capacity development is a very important cross-cutting issue, Key amongst these principles are: the need to include various approaches to, strategies for, and methodologies of capacity development at different levels (individual, organizational, and societal); the view of capacity development as an endogenous, country-specific process that is based on voluntary action and motivation; the need for it to be carried out systemically, as opposed to an offering of stand-alone training measures; the fact that ownership of capacity development is absolutely essential to its success; the requirement of accountability to the ultimate beneficiaries; and the need for a continuous mix of specific technical training with cross-cutting issues and the overall "big picture".

POVERTY ERADICATION INITIATIVE BY THE GOVERNMENT OF UGANDA

Uganda has made significant progress in eradicating poverty and achieved the first millennium development goal of halving the number of people in extreme poverty. Uganda was listed as the 9th most successful country in Africa as regards poverty eradication. The trend in poverty eradication is shown in the below figure and the finance ministry in the country projected that the extreme poverty level will have reduced to 10%. This success has been attributed to the deliberate efforts to combat poverty in the country by numerous national strategies.



ISSN 2394 - 7780

Uganda has made progress towards poverty elimination having successfully achieved the millennium development goal target of halving the number of people in extreme poverty way ahead of the 2015 deadline. Today, an estimated 25% still live in extreme poverty.

CONCLUSION

The world's reduction of extreme poverty from 47% of the entire population in 1990 to 14% of the entire population has shown the possibility of eradicating extreme poverty from the world in the generations to come. The world celebrated in 2010 when, five years ahead of the MDGs deadline, the target to halve this percentage had been met and stood at 22 per cent (1.2 billion). However, as with other MDGs, progress has been uneven. Despite gains in most regions of the world, the proportion of sub-Saharan Africa's population living on under $1.25 a day remains at just under 50 per cent. And out of the overall global reduction, China and India alone accounted for 75 per cent. Pulling 700 million out of extreme poverty is a major achievement. But the target was, by design, only partially addressing the problem. There remain today over a billion people living on under $1.25 a day. The World Bank estimates that by 2020 this will reduce slightly to 900 million, or 15 per cent of the developing world population. The next step, reaching the remaining billion, will prove an even greater challenge in achieving the goals of agenda 2030.

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HUMAN SECURITY, HUMAN RIGHTS AND WEAPONS OF MASS DISASTER

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ABSTRACT
The concept of human security has emerged in recent years to re-balance debates on security away from an exclusive and excessive focus on military security of the state and its institutions, towards the people whom the state serves. International human rights law is an underused branch of international law when assessing the legality of weapons of mass destruction and advocating for their elimination. International Human rights Law has a great potential in the era of globalization to renew our focus on global threats from the mad race of accumulation of weapons of mass destruction and challenges to human wellbeing and advancement; of particular relevance are the rights to life, to humane treatment, to health and to a healthy environment, associated with the right to a remedy for violations of any human rights.

Human security and human rights do not mean the same thing. Nor are they overlapping concepts. They are separate ideas and have separate functions. However, an argument for strong conceptual links between human security and human rights can be made. It is clear, however, that cognate as the human rights and human security perspectives are, they have not been effectively brought together as yet.. While the writing on human security acknowledges the importance of human rights, there has been little evidence to date that human rights theory or practice has responded. This paper is an initial exploration as to how conceptual links might be advanced to a practical stage through the promotion and protection mechanisms of the international human rights and security system.

1. INTRODUCTION
Gone are the days when it could be said with any sincerity that international weapons law, the evolving branch of international law that regulates the development, production, stockpiling, testing, transfer and use of conventional weapons and weapons of mass destruction, comprised only international humanitarian law (IHL) and disarmament law. International environmental law and especially international human rights law both potentially apply to and control weapons, and in particular their testing, transfer and use. While the testing and transfer of nuclear weapons are beyond the scope of this article, it argues that constraints imposed on the use of force by international human rights law, and the accountability that the law foresees for any such unlawful use (which would include any future use of nuclear weapons), provide a valuable complement to the rules of IHL governing the conduct of hostilities.

2. HUMAN RIGHTS AND HUMAN SECURITY
The concept of human security has emerged in recent years to re-balance debates on security away from an exclusive and excessive focus on military security of the state and its institutions, towards the people whom the state serves. It has a great potential in the era of globalization to renew our focus on global threats and challenges to human well being and advancement.

International human rights standards developed over fifty years derive from the concept of human dignity and worth. The range and depth of these standards has been a significant achievement of the international community. The translation of those standards from normative principles into legally binding obligations accepted by states both in times of peace and conflict has constituted a process of enormous importance to humankind. The creation of machinery for continuing supervision over the implementation of these rights by governments, however limited that machinery may be, is a gain that must not be diluted.

Human security and human rights do not mean the same thing. Nor are they overlapping concepts. They are separate ideas and have separate functions. However, an argument for strong conceptual links between human security and human rights can be made. It is clear, however, that cognate as the human rights and human security perspectives are, they have not been effectively brought together as yet. While the writing on human security acknowledges the importance of human rights, there has been little evidence to date that human rights theory or practice has responded.

3. THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND HUMAN SECURITY
The 2003 Report of the CHS entitled *Human Security Now* rightly sees human security and human rights as complementary:

Human rights and human security are … mutually reinforcing. Human security helps identify the rights at stake in a particular situation. And human rights help answer the question: How should human security be promoted?

ISSN 2394 - 7780

The notion of duties and obligations complements the recognition of the ethical and political importance of human security.

A similar affirmation of the positive potential of the relationship, from a human rights perspective, was expressed at a workshop in Costa Rica convened by the CHS in 2001:

We reaffirm the conviction that Human Rights and the attributes stemming from human dignity constitute a normative framework and a conceptual reference point which must necessarily be applied to the construction and implementation of the notion of Human Security. In the same manner, while acknowledging that norms and principles of International Humanitarian Law are essential components for the construction of human security, we emphasize that the latter cannot be restricted to situations of current or past armed conflict but constitute a generally applicable concept.

The Commission on Human Security (CHS) defines the purpose of human security as protecting **'the vital core of all human lives in ways that enhance human freedoms and human fulfillment.**' The CHS Report points out that what puts people's security at risk include threats and conditions that have not always been classified as threats to state security. 'Human security is also concerned with deprivation: from extreme impoverishment, pollution, ill health, illiteracy and other maladies.' Human security thus means, 'protecting fundamental freedoms—freedoms that are the essence of life.

The International Commission on Intervention and State Sovereignty expressed the same thinking forcefully:

The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national territorial security alone. The concept of human security can and does embrace such diverse circumstances.

There is historical continuity in linking security to human rights. The core idea of human security can be found in the Four Freedoms proclaimed by **Franklin D. Roosevelt** in his State of the Union Address on 6 January 1941. Roosevelt's vision of 'a world founded upon four essential freedoms'

1. freedom of speech,
2. freedom of religion,
3. freedom from want and
4. freedom from fear; was to become one of the cornerstones of the new United Nations.

In order to secure those freedoms the United Nations was given the purposes of maintaining international peace and security, promoting economic and social development along with human rights, goals to be achieved through international cooperation. That generation recognized that war and hostilities, economic and social deprivation and gross human rights violations represented a breeding ground for insecurity, repression, want and fear. Reporting to the United States Congress in June 1945 just after the **San Francisco Conference**, American Secretary of State **Edward Stettinius**, Jr. put it as follows:

The battle of peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace … . No provision that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes.

Human security therefore may be thought of as present day rediscovery of the essential linkages between the different purposes of the United Nations, and of the duty on Member States to cooperate in advancing those purposes coherently. The mainstreaming of human rights into all UN activities, following the Secretary-General's reform proposals in 1997, reflected similar thinking. The key concepts that the Commission on Human Security Report suggests as the **'added value'** of the human security idea are protection and empowerment. Human rights goals have come to be articulated in similar terms in the process of establishing the human rights contribution to development, conflict resolution, peacekeeping and peace building for example. The time should be ripe therefore for the deployment of human security analysis, discourse and

ISSN 2394 - 7780

perspectives in human rights work. Some tentative ideas as to how such thinking might be stimulated are suggested below through a brief outline of the international human rights system.

4. THE INTERNATIONAL HUMAN RIGHTS NORMS

The promotion and protection of human rights as a purpose of the United Nations brought concern for the individual directly to the international level. The main catalogue of human rights can be found in the Universal Declaration of Human Rights (UDHR). The UDHR is not *per se* legally binding. It is nevertheless widely considered as spelling out the rights that the UN Charter referred to. Over the years the core principles in the UDHR have come to be considered binding as customary international law and/or general principles of international law, and the principles are treated as such by the United Nation's most important monitoring and protection body, the Commission on Human Rights. The UDHR was reaffirmed with the adoption of two legally binding international covenants in 1966, on **civil and political rights** and on **economic, social and cultural rights**. Today more than 140 states have accepted to be bound by these treaties. These three instruments are together commonly referred to as the International Bill of Human Rights, and they constitute the foundations of international human rights law. On these foundations a great number of other international and regional human rights treaties have been built. International human rights law is, in principle, applicable to all at all times, i.e. both in peacetime and in times of internal and external conflict. The Geneva Conventions of 1949 added specific protections in the context of armed conflict while a legal regime for the protection of refugees was established by the 1951 Convention relating to the Status of Refugees.

This edifice of human rights law provides legal guarantees that address, among many other rights, the rights to food, health, education, housing, and protection of the family. It extends protection to culture, democracy, participation, the rule of law and access to justice. It offers protection against enslavement, torture, inhuman or degrading treatment or punishment, freedom of thought and belief as well as the right to freedom of opinion and expression. The freedom to enjoy all such rights is an element of human security. The effective force of human rights undertakings by states, however, is dependent on the implementation of these rights by governments as well as on the effectiveness of the international human rights machinery set up to monitor and encourage national implementation.

5. INSTITUTIONS AND MECHANISMS FOR IMPLEMENTATION OF HUMAN RIGHTS

TREATY BODIES: The international UN-based human rights system is divided into the treaty-based protection mechanisms and those that have developed through the inter-governmental UN Commission on Human Rights. There are now **seven core universal human rights treaties** each overseen by a 'treaty body', or a committee of independent experts. Each has similar functions—broadly to monitor the implementation of the human rights provisions contained in those treaties. Four of the committees have also been given jurisdiction to receive and adjudicate on individual complaints from those states which accept this optional procedure. When a state ratifies an international treaty, it assumes the obligation to implement the provisions of the treaty at the national level. It also assumes the obligation to submit reports periodically to the relevant treaty body on the measures it has taken to ensure the enjoyment of the rights provided in the treaties. State reports are examined by the treaty bodies, along with information from a variety of sources, in the presence of a delegation from the reporting state. A committee's examination of such reports results in the adoption of 'concluding observations/comments', in which the treaty body presents its concerns and makes specific recommendations to the state party for future action. The state party is expected to implement the recommendation of the treaty bodies. The treaty bodies also adopt general comments or recommendations in which they offer guidance to states about the meaning of specific articles of the treaties.

6. HUMAN RIGHTS LAW RULES ON THE USE OF FORCE

But, does human rights law even govern the use of force? The response to this question might seem self-evident to many. Nonetheless, it is important to reaffirm, unequivocally, that this body of international law applies clear and strict rules to any use of force, particularly for law enforcement purposes. This is the case whether force is used within or outside a situation of armed conflict. If there is no armed conflict, or the force does not have the requisite nexus with an armed conflict, IHL holds no sway. So, human rights law must effectively control the behaviour of the State as it responds to unlawful violence, whether everyday criminal violence or that which is terror in nature.

Human rights law's regulation of the use of force encompasses two core rules. First, any force used must be only the minimum necessary (**the principle of necessity**). Second, force used must be proportionate to the threat (**the principle of proportionality**).These rules are cumulative, and violation of either means that human rights (in particular the right to life and/or the right to freedom from inhumane treatment) have been violated. Their application must, however, be "realistic" – indeed, human rights jurisprudence has shown that a "margin

ISSN 2394 - 7780

of appreciation" may be allowed to a State in exceptional circumstances, such as when it is confronting a terrorist attack – and must effectively balance protection and security. Nonetheless, the rules are specific and clear both in their normative content and in their practical application. They are not mere aspirations.

Outside a situation of armed conflict – for instance, where a State opposes peaceful protesters against the regime, or where it counters armed opposition insofar as the violence is not regular and intense and/or the opposition has not coalesced into one or more "organized armed groups" – any use of nuclear weapons by a State on its territory would inexorably contravene these rules. Use of nuclear weapons could never amount to minimum necessary force, and such a use of force would therefore violate international human rights law. IHL, of course, would simply not apply.

A more likely scenario, however, is use of nuclear weapons in armed conflict as part of the conduct of hostilities. Here, the legal situation is more complex.

6. THE APPLICATION OF HUMAN RIGHTS LAW TO THE CONDUCT OF HOSTILITIES:

There are potentially two significant obstacles to the application of human rights law to the conduct of hostilities that must be addressed before the substantive content of the law is assessed: the first is the **geographical limitations** on the jurisdiction of human rights law, and the second is the material scope of its application.

7. GEOGRAPHICAL LIMITATIONS ON THE JURISDICTION OF HUMAN RIGHTS LAW:

A potential obstacle preventing the application of human rights law to the use of weapons in armed conflict, including nuclear weapons, is the idea that physical geography acts to limit the law's jurisdictional reach. The United States has been a leading advocate of this position, asserting, with respect to the **International Covenant on Civil and Political Rights (ICCPR) in** particular, that the duty accepted by each State Party "***to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized***" means that only persons on its territory may formally enjoy the protection of human rights.

The Human Rights Committee has explicitly rejected this position, both generally and with regard to the United States specifically.

What is more, the International Court of Justice (ICJ) has also, albeit implicitly, rejected extraterritoriality as an element that would ipso facto bar the application of human rights law to the use of nuclear weapons in warfare. As the ICJ observed:"**In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities**." Thus, in adjudging that human rights law continued to apply to the conduct of hostilities in armed conflict, and given that the Court's 1996 Advisory Opinion on the threat or use of nuclear weapons (Nuclear Weapons Advisory Opinion) was only addressing situations of international armed conflict, the ICJ must have accepted that there is no jurisdictional limitation to the reach of international human rights law, at least as it applies to the use of nuclear weapons.

8. MATERIAL SCOPE OF APPLICATION OF HUMAN RIGHTS LAW:

A number of States have, at least in earlier decades, sought to sustain the position that human rights apply only in peacetime and not during situations of armed conflict. On one level this argument is nonsensical, while on another it has been contradicted by jurisprudence. The absurdity of the position writ large can be seen in the fact that States engaged in armed conflicts must still prevent and repress ordinary crimes committed on their territory (at the very least, outside the confines of any area in which hostilities are actively being conducted between the parties to the conflict) as well as at other loci under their jurisdiction. Such law enforcement activities are clearly to be done in accordance with domestic criminal law as overseen by the State's obligations under international human rights law, not by reference to IHL's far less restrictive rules of distinction and proportionality in attack.

Further, as the ICJ observed in its 1996 Nuclear Weapons Advisory Opinion, some have contended that a leading human rights treaty, the 1966 International Covenant on Civil and Political Rights, **"was directed to the protection of human rights in peacetime, but that questions relating to unlawful loss of life in hostilities were governed by the law applicable in armed conflict"**. The ICJ dismissed this argument in the following terms:

The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities.

ISSN 2394 - 7780

Accordingly, therefore, the Court has accepted that, in principle, human rights law forms part, the law applicable in armed conflict. Thus, all the provisions of the ICCPR will potentially apply during armed conflict, subject to the possibility of derogation from full observance of some in a time of grave national emergency.

9. HUMAN RIGHTS MOST LIKELY TO BE VIOLATED BY THE USE OF NUCLEAR WEAPONS

The enormous destructive effect of a nuclear detonation, as well as the long-term radioactive effects, is likely to result in the finding of a violation of some or all" of a range of human rights. The rights to life, to humane treatment, to a healthy environment and to the highest attainable standard of health etc…

THE RIGHT TO LIFE

The right to life is often described as "a fundamental human right; a right without which all other rights would be devoid of meaning". Respect for the right to life is generally non-derogable under human rights treaties, meaning, as the ICJ observed, that the right not arbitrarily to be deprived of one's life applies in toto also in hostilities. This right is both a treaty and a customary norm, and at its core may even amount to a peremptory norm of international law.

As well as, consonant with other human rights, obliging action to respect, protect, and fulfil its enjoyment, the right to life also has significant procedural elements associated with it. The European Court of Human Rights (ECHR) has held that this includes a duty on the State to investigate alleged violations of the right to life:

The obligation to protect the right to life under [Article 2], read in conjunction with the State's general duty under Article 1 of the [European Convention on Human Rights] to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State …

THE RIGHT TO HUMANE TREATMENT

Fallout is also relevant to consideration of the right to freedom from cruel, inhumane or degrading treatment, as set out in the 1966 ICCPR, the 1984 Convention against Torture, and the three main continental human rights treaties. While the material and personal scope of this right is in no way synonymous with the customary and conventional IHL prohibition against the use of means or methods of warfare of a nature likely to cause superfluous injury or unnecessary suffering, to the extent that nuclear weapons are of such a nature, this would certainly entail a violation of this human right. "Radiation adversely affects the immune system so that the injured will not recover in the way they could have from weapons without this effect. In addition to causing more deaths than otherwise, this prolongs suffering."

Further, upon the detonation of a nuclear weapon, people can be rendered blind from looking at the initial flash, and those not killed may suffer horrific burns. It is well accepted that vision is our most important sense, perhaps accounting for 90% or more of our sensory input. While other senses, such as hearing and touch, may facilitate post-blindness adjustment to one's life experience, none of them can come close to replacing sight.

Burns caused by nuclear weapons may go beyond third-degree burns, in which all layers of the skin are destroyed, to fourth-degree burns, in which the injury extends into both muscle and bone. Both third- and especially fourth-degree burns can be fatal. Burns place a huge burden on medical resources, often requiring specialist treatment. These are all inevitable and therefore entirely predictable consequences from the use of a nuclear weapon. In most instances, such use will amount to a violation of the right to humane treatment.

THE RIGHT TO A HEALTHY ENVIRONMENT

Beyond the direct harm caused to individuals by a nuclear weapon detonation, the environment in which they live may be seriously – and almost permanently –affected. As the ICJ noted in its 1996 Nuclear Weapons Advisory Opinion, *nuclear weapons have the potential to destroy … the entire ecosystem of the planet. … The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. … Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.*

THE CONDUCT OF HOSTILITIES IN A NON-INTERNATIONAL ARMED CONFLICT

The majority of armed conflicts in the modern world are non-international in character. Unfortunately, this is also where IHL has relatively far less to say, at least in the relevant treaties. Indeed, Article 3 common to the four Geneva Conventions does not, by general agreement, regulate the conduct of hostilities at all. The 1977 Additional Protocol (II) to the Geneva Conventions (AP II), which applies to non-international armed conflicts in States Parties where an armed opposition to the State regime effectively controls territory, does include provisions specifically regulating the conduct of hostilities. It provides in its Article 13 as follows:

ISSN 2394 - 7780

- The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
- The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
- Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

One might argue that use of a nuclear weapon in any populated area would predictably violate paragraph 2: while a nuclear weapon can be targeted with a high degree of accuracy, its effects cannot be controlled, and its use would certainly spread terror among the civilian population (though whether this could be deemed to be its primary purpose as opposed to a clearly foreseeable consequence might be debated).

While the rule (also called a principle) of proportionality in attack almost certainly applies in all armed conflicts as a norm of customary IHL, just as the **International Committee of the Red Cross's (ICRC)** landmark study concluded in 2005, this prohibition did not find its way into the final text of AP II, nor, with respect to non-international armed conflicts, into the 1998 Rome Statute of the International Criminal Court. Similarly, no prohibition against attacks on all civilian objects (namely, all objects which are not military objectives) is explicitly included in AP II, nor are such attacks included as a war crime in non-international armed conflicts in the Rome Statute. Specific protection is, however, afforded to cultural property. The 1999 Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property enhances the Convention's protection by providing that cultural property can only be attacked if it becomes a lawful military objective and no feasible alternative exists. Article 22 specifically applies the Second Protocol to non-international armed conflicts.

Arguably, human rights law has much to bring to the protection of civilians in non-international armed conflicts. The difficulty in determining who is a lawful target under IHL is typically far greater than in an international armed conflict, as armed groups typically operate clandestinely when operating against the government. While in certain conflicts the members of non-State armed groups may wear uniforms and bear arms openly, this tends to be the exception that proves the rule. IHL, though, seemingly makes no distinction in the application of its primary rules on the conduct of hostilities between international and non-international armed conflict. The two most important primary rules are the rule on distinction in attack and the rule on proportionality in attack. While their formulation as rules is clear and largely uncontested, their practical application is highly contentious, as the **Gotovina case** before the **International Criminal Tribunal for the former Yugoslavia (ICTY)** graphically demonstrated.

In the Gotovina case, the ICTY Trial Chamber had found that, on 4 and 5 August 1995, Croatian army artillery units fired artillery shells and rockets at the so-called "four towns" in the Krajina, and after carefully comparing the evidence on the locations of impacts in these towns with the locations of possible military targets, it concluded that they had targeted not only military objectives but also areas devoid of such lawful targets. As such, the Chamber found that Croatian forces had treated the towns themselves as targets for artillery fire, holding therefore that the shelling of the towns constituted an indiscriminate attack on the towns and an unlawful attack on civilians and civilian objects.

In its pre-trial brief, the prosecution asserted both the unlawful nature of the attack and its "terrifying effect". The defendants were convicted, and General **Ante Gotovina** was sentenced to **twenty-four years of imprisonment for a series of crimes against humanity and violations of the laws and customs of war**. He appealed against his conviction. The majority in the ICTY Appeals Chamber argued, wrongly in the present author's view, that the Trial Chamber had based its entire decision that the attacks were unlawful on the fact that all shells or rockets landing at a distance of more than 200 metres from a lawful military objective were deemed indiscriminate. The Appeals Chamber unanimously agreed that no such standard existed in IHL. The majority of the Chamber could not "exclude the possibility" that the shelling was aimed at legitimate targets:

10. A GLIMPSE ON WEAPON OF MASS DESTRUCTION (WMD)

By the late 1990s, the term *WMD* was an integral part of American national security discourse, as evident by its growing usage. A full text search of the *New York Times* identified the number of stories every year from 1945 to 2010 using the term *WMD* or a variant. Other than 1973, the term appeared in at least one article every year during that 65-year period. During the late 1940s and early 1950s, it appeared in stories about 30 times every year, declining to an average of only 20 a year in the late 1950s and the 1960s. There were fewer than nine

ISSN 2394 - 7780

stories every year on average during the 1970s and 1980s. In other words, contrary to common belief, the term was more common at the start of the Cold War than at the end.

After the end of the Cold War, however, the term saw increasing usage. It appeared an average of more than 100 times a year in the early 1990s and an average of 160 times a year in the late 1990s (peaking at 370 appearances in 1998). Heaviest use of the term *WMD* occurred during and after the 2003 invasion of Iraq: 1,069 stories in 2003 and 632 stories in 2004. Indeed, it appeared so often in 2002 and 2003 that *WMD* made lists of the most used or overused phrases. After that, the frequency declined precipitously, and now appears to have returned to about the same average rate as found during the late 1990s. Although often associated with the administration of George W. Bush, his two predecessors also used it extensively.

Despite the extensive use of the term during the past two decades, there is a widespread perception that it has no accepted definition and that it means whatever the user wants it to mean. The views of one academic are representative of this perspective:

In 2004 British government review of Iraq WMD intelligence offered the following comment:

*There is a considerable and long-standing academic debate about the proper interpretation of the phrase **"weapons of mass destruction."**We have some sympathy with the view that, whatever its origin, the phrase and its accompanying abbreviation is now used so variously as to confuse rather than enlighten readers.*

The term is integral to the international community's long-standing disarmament dialogue. In its original formulation, **"weapons capable of mass destruction**," the term appears in the very first resolution passed by the United Nations (UN) General Assembly in 1946. By 1948, an alternate form, **"weapons of mass destruction,"** became the preferred usage. Already it was so integral to discussions of disarmament that the United Nations tasked a committee to generate an authoritative definition. That committee generated the following definition:

[WMD are] . . . *atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or any such other weapons.*

WMD AND CIVIL AND POLITICAL RIGHTS

Since 2001, in many parts of the world the fear of terrorist attacks has combined with the fear of chemical, biological and nuclear weapons to produce a climate in which governments are increasingly prone to enact 'emergency measures' that infringe civil liberties and that citizens find increasingly difficult to undo. Terrorists acts of the past—assassinations, train derailments, arson—are as nothing compared with the technologically sophisticated and militarily coordinated mass assaults of Al Qaeda and its imitators.

Every time one of these dreadful incidents occurs, the natural reaction is to think 'What if?' What if it had been a nuclear device? What if the still-unidentified anthrax terrorist had managed to more widely distribute the substance? What if Aum Shinrikyo had succeeded in spreading sarin throughout the Tokyo subway system? It is a line of thinking to which only hyperboles can do justice. Thus, former United States Defense Secretary William Cohen, testifying on 23 March 2004 before the National Commission on Terrorist Attacks Upon the United States, stated that terrorism, combined with WMD, 'is likely to pose an existential threat to the world.

HUMAN RIGHTS, HUMAN SECURITY AND DISARMAMENT

Needless to say, there would be tension between security and human rights even if there were no WMD. However, as in the case of security and war, a whole new dimension is given to the security/ human rights equation when WMD are factored in. In order to appreciate just how serious this phenomenon is, it is necessary to take a closer look at the impact on the observance of certain fundamental civil and political rights since 11 September 2001. These impacts have taken a variety of forms, from torture and degrading treatment of prisoners and detainees to privacy issues. A few are briefly mentioned here.

Article 7 of the International Covenant on Civil and Political Rights explicitly prohibits torture: *'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'* A similar set of prohibitions is contained in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which 136 states were parties as of June 2004. As of this writing, it remains to be seen what various investigations currently underway will reveal about the level of command and authorization from which the culture of 'aggressive' interrogation and pre-interrogation measures of prisoners of war and other detainees by the American military in Afghanistan, Guantanamo and Iraq have emanated. What is already clear is that somewhere along the line the notion of fighting fire with fire, or terror with terror, replaced the notion of

ISSN 2394 - 7780

intransgressible norms of behaviour mandated by the Geneva Conventions and the above-mentioned treaties. Thus Alan Dershowitz, the wellknown Harvard law professor, has publicly taken the position that torture is justified when undertaken to prevent a terrorist nuclear attack.

WMD AND SOCIAL AND ECONOMIC RIGHTS

In 1998, Stephen I. Schwartz and nine other nuclear experts produced a book containing the results of an extensive study of the cost of the American nuclear weapons programme up to that year. The figure they arrived at was 5.5 trillion US dollars. Imagine if one were to include the amounts spent on nuclear weapons programmes by other countries and the amounts spent by all countries on other WMD. It requires no particular proficiency in the art of economics to appreciate what this amount could have produced if used instead on providing millions of people with their right to health, housing, education, culture, social security and all the other desiderata guaranteed to them— on paper—by the International Covenant on Economic, Social and Cultural Rights.

11. CONCLUDING REMARKS

So where does this leave international law governing the use of nuclear weapons? Fragmented, arguably! While human rights law does not outlaw the use of nuclear weapons altogether, it at least offers a reasonable chance of accountability should, God forbid, these weapons ever be used in anger again. In addition, outside armed conflict, that branch of international law would unequivocally outlaw any use. The degree of care with regard to human life that human rights law demands in police or military operations for law enforcement significantly exceeds that which is required by the prevailing rules of IHL governing the conduct of hostilities. The new thinking on human security can be of great value from a human rights perspective. The two concepts are not the same but can reinforce each other both at theoretical and practical levels. However a considerable distance remains between the two approaches. A practical way forward to explore theoretical and practical dimensions of the relationship would be to have an expert of the UN Sub-Commission on the Promotion and Protection of Human Rights nominated to undertake more detailed consultations and thinking on how the two fields may offer support and strength to each other.

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ISSN 2394 - 7780

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THE BANJARA TRIBES IN THE ERA OF GLOBALIZATION AND THEIR CULTURAL CRISIS

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ABSTRACT
Several studies have depicted the people labeled as gypsies mysterious and intriguing. A number of so-called gypsy-like tribes are said to have inhabited and migrated from and to India. The Banjaras, described as nomadic people are sometimes identified as the "gypsies of India". They are popularly known as Gor-Banjaras, settled as clusters in Tandas (living place) in different parts of India. The nomadic culture is considered as a central aspect to the European gypsy and the Banjara identity. Hence, some studies have established a cultural connection between these communities. However, the identity of the Banjaras has now mutated into different patterns of travelling. Some families travel for few weeks to few months. Many clusters are still nomadic in nature. Further, they travel on a seasonal basis. Nevertheless, a majority of them have settled down in one place and have maintained their identity through 'holiday trips'. In the modern era, the nomadic culture is substituted with a search for constant opportunities for income, abiding by law, settling down with families and trying to become a part of the society. Both the original tribes of India and the Western gypsies have undergone constant transformation with respect to their cultural and individual identities that are contingent with political, economic and societal influence. Thus, it has resulted in variations in language and culture. This paper will discuss on Banjara tribe, which is considered gypsy-like in nature. The discussion would move around the changing linguistic and cultural patterns of the tribe under the influence of globalization.

Keywords: Banjara, Lambani, Globalization, Cultural, Linguistics.

INTRODUCTION
At the outset, I would like to assert that the information provided about various facets of Banjara community has been collected from the literature as well as my own experience and observations.

Banjaras, a tribe settled in various parts of India, are recognized as *Lambadis*, *Lambanis*, *Labanis*, *Lamaras*, *Banjarans*, *Banjaris*, *Banjaras*, *Brinjaris*, *Vanjars*, *Vanacharas*, *Vanjaris*, *Sugalis*, *Sukalis* (Thurston 1994, p393). The word, Banjara, assumed a mutilation of the term Vanachara, means those who roam in forests (Hutton 1951, p 275). As the Banjaras were traders of 'lavana' (salt), it is said that this is one of the derivation of their name and the other being 'lamba', which means tall in Hindi language fitting to that name. The physical appearance shows that the men and women of this tribe are usually tall and muscular. The word *Sugali* is said to be derived from *Supari* (mixture of nuts). The Banjaras were salt sellers (Balaji 1982:107). The Banjaras are commonly ascertained as a nomadic group from the Rajasthan, a state situated in the northern part of India. Later are said to have spread across the other parts of India.

Some scholars have noted that primarily from the Western part of the Rajputana region, the Banjara community advanced throughout India as traders of commodities like grains and salt. The tribe is said to have played important role in winning or losing of kingdoms. The advancement in transport seems to have made Banjaras to change their profession from salt sellers to cultivators of lands in order to do agriculture. This looks as if has helped the nomadic community to settle down in a constant place, which fashioned the evolution of settlements of the nomads, called *Tandas* on the out skirts of cities and villages.

At present, the Banjara groups are found in almost all parts on India but largely constrained to the southern regions of India, particularly to Andhra Pradesh, Telangana, Karnataka and Maharashtra as well. Though many scholars over the few decades have discussed and debated over many of the issues pertaining to the origins of the gypsies of European and other countries, it is rather surprising that sufficient attention has not been given to the origins of the Banjara community, which is more recognized as a gypsy-like cluster.

Banjara community has experienced a drastic transmutation from an underdeveloped and self-sustaining to a literate and dependent on society. These migrants have stopped from restricting themselves and have started to engage living with the other communities, no matter the caste or religion, and have become the normal law abiding citizens in the society especially after the establishment of sovereignty of India. They have slowly come under the influence of globalization, within which they have advantages, like educational privileges, modern medical facilities, business, employment, career, personal development and disadvantages like extinction of primitive tribal profession, culture and traditions.

ISSN 2394 - 7780

Sub-communities in Banjara Tribe: The Banjara tribe is also known as 'Lambani's'. It is a community identifies as scheduled caste inhabiting throughout the state of Karnataka and Scheduled tribe in Andhra Pradesh etc. According to 2001 census, it is one of the largest castes in Karnataka. And also it is identified as one of the largest tribes in the state of Andhra Pradesh. Banjara community comprises of five main clans viz., 1) Bhukiya (Rathod) 2) Vadthya (Jadhav) 3) Chauhan 4) Pamar/pawar and 5) Banoth (Ade). They are further divided into Patrilineal kin groups called Pada or Jath (sub clan). Bhukya consists of 27 Padas, Vadhitya 52, Chauhan 6, Parmar 12 and Banoth 15.

Banjaras connection with Gypsies: Gypsies of the Europe are a distinct tribe with nomadic culture at their center of identity. Based on linguistics and occupations, their origin has been traced down to northern India. According to Marlene Sway, during the nineteenth century, gypsy vocabulary's similarity with Indian languages has been established. (Sway 1975:48). Once this was done, author says gypsiologists, moved on to establishing similarities in occupation. On the other hand, H Risley says that many scholars that have worked in India, have not been able to trace down a single gypsy during their entire years of research but have found many gypsy-like tribes in terms of their habits, trades and tricks but the language is vernacular of the places they roam but not of gypsy (Risley and Sinclair 1902:180).

Impact of globalization on Banjara Community: With the passage of time and the impact of globalization, an immense change is observed in the Banjara community. This can be visualized through the habitat, dressing patterns, food, dancing and life style. Most of the Banjaras are still found to be living as groups in huts along with their families. The families live together in their own settlements at a distance from the town or city. These settlements, as already mentioned are recognized as Tandas. This geographical location in which the community lives has become synonymous with Banjaras. At present the situation is slowly changing. Mainly after India becoming an independent nation. The then government started off by giving special privileges and passing polices for the betterment and future development of the scheduled tribes, in which the Banjara tribe is one among them. The basic and much needed policy was reservation policy for the scheduled tribes which has driven them to get jobs, education, loans for business by banks. This seems to have led the community to give up their traditional homes (huts) and settle in well constructed brick houses along with the main stream society.

The dressing pattern of the Banjaras has undergone a major change. The unmarried women are dressed up in colorful and embroidered "Odni" (a type of dress which will cover the above body) and "Ghagro" (a type of long skirt), who in the modern era are very less in number. Moreover, the married women are dressed in "Kachli" (made of mirror chips and it is stitched with coins and silver plates decorated dress) and "Phetia" and "Tukri" (Phetia is a skirt as same as Ghaugri, but Tukri is used for covering the head and is long enough to wrap down their backs. They also have tattoos on their hands. They wear big bangles called "Balliya". These are specially made out of elephant tusks. Men wear *Dhoti* and *Kurta* and *Pagdi* (turban). These clothes were designed especially for the protection from harsh climate in deserts and to distinguish them from others (Naik 1998:171-177).

With the Banjaras becoming more prone to the societal affairs and the globalization impact seem to have brought a major change on the dress codes, which are greatly altered. In the present times, most of the Banjara women are found to be draped in sarees. Men are found wearing shirts, trousers, jeans and T shirts. Banjaras are said to be having a rich traditional dress which is almost into non usage. A traditional recognition of the community is vanishing.

Banjara Cultural Profile and Correspondent Changes Nomadic Culture: Banjaras, after settling down, slowly became dependent on agriculture. This dependency mainly looks as if has emerged due to their withdrawal in trading salt. The community started to cultivate in the forest areas, as they did not own any lands. They cleared forests and cultivated the land. As they received their harvests, they left for a different place for their living. They made temporary tents or constructed huts and lived like nomads. Most of their livelihood revolved around forest products and hunting. The clusters gradually settled in the outskirts of villages. The settlements were named as *Tandas*. The Banjaras rooted themselves to these *Tandas*, by building huts, performing agriculture and cattle rearing. However, it can be said that in the last few decades, the Banjara community started to migrate itself to the main stream villages and to the urban areas for a better living. A radical change can be envisaged in the taking up of various professions by the Banjaras. A number of them have changed their professions from cultivators to taxi drivers, hard labors and so on by settling themselves in cities. So, the question of endangerment to the nomadic culture can be raised.

Education: In the past few decades, it has been noted that the Banjaras have gradually taken up to education. However, still illiteracy and poverty among the community are big challenges. Various governments in India

ISSN 2394 - 7780

have brought polices and schemes for scheduled tribes, in connection to free education. The governments, in the last few decades, along many non-[1]governmental organizations (NGOs) have come up with many schemes, which have been implemented for providing free education.

This has brought out facilities and opportunities to many a deprived tribe in India. Among the Banjara community, with each year an increase in the percentage of literacy rate is found. However, still various measures are to be taken up by the government for the raise of literacy level of the Banjaras. At present, some case studies point out that among the Banjara community at least 10% of the population is reaching the level of higher education. One of the main factors for such an improvement is due to globalization. The student community is getting to know more about various technologies and in turn is getting acquainted with these new techniques at the levels of research.

Social Celebrations and Family Systems Marriage: The aspect of marriage in the Banjara community is unique. Earlier the marriage ceremony was carried out for eight days. However, in the present age, it has slowly deteriorated to two days. This transformation can be considered, as an outcome of the community's assimilation with society (mainly the nearby villages) consisting of various groups. The other class and castes have directly or indirectly influenced the traditions of the Banjara community. The Banjara marriages were performed with all their unique costumes. However, the transfiguration, seems to have forced the tribe to perform their marriages, in accordance to the norms of either the Hindu marriage system or the Christian (a few converted Banjaras). The Banjara culture allows men to go with polygyny (Iyer 1998:154-168). Due to the effect of globalization, currently these practices are not much in practice. This may be said also is due to the synthesization of the Banjara community with the other groups. However, the practice of polygyny has been modified in affinity with the Hindu customs of marriage, where until and unless either the husband or wife gets divorced or passes away, is one allowed to get married.

Religion: The origin of Banjaras from Northern India and its spread to other parts of India has resulted in change and adoption in social traditions depending on the geographical and physical circumstances. Banjaras called as Banjaras in Telangana have rich cultural heritage following customs and rituals of Hindus but are totally neglected from the mainstream society. It is evident from the above literature that Banjaras worship female deities of Hindu religion while their way of living is in complete contrast to other people (Aparnarao and Casimer 2003:114-118). Banjaras live in thandas i.e. villages far away or disconnected from the mainstream society adopting the socio-cultural traditions passed on to them by their ancestors. However the scenario is changing which is evident from the fact that Banjara people are moving to towns and cities in search of employment and livelihood thereby resulting in awareness and inclusion in the society through education, job and this is visible in their way of living and dressing that has changed over the years.

Pregnancy: Among the Banjara community, earlier the pregnant women had to give birth in *Tandas*. They were accustomed to the local mid-wives due to the geographical areas that they were settled in. The economical condition was poor and to seek the help of doctors was a costly affair. In general, most of the deliveries are found to have been carried out in a natural process without giving proper medication (Karamsi 2010: 455-467). And, the risk of mother-child death was too high. Nevertheless, the gradual change in the thought of crossing the boundaries of the *Tandas* has helped to decrease the death toll of the mother and the child. Further, it is to be noted that, the present situation is far better, due to the services of the governments, which have extended their hands to almost all the rural areas. At present, most of the deliveries are carried out in modern-day hospitals and some of the families are going on for preventive measures.

Divorce: The issue of divorced women is also very peculiar in the Banjara community. The women are allowed to re-marry in the Banjara system. But, most of the women once married; do not usually prefer divorce as they feel that divorce is not a genuine act in accordance to the customs of the community. However, widows are allowed to re-marry in the Banjara culture, if the women's husband dies. The brother-in-law is given preference. He can marry the widow and is permitted by the customs of the community to live with two wives in the same house. However, with the advent of public health awareness programmers and livelihood in the main streams of society, this custom has been structured as unofficial among the Banjaras. Though, the custom of polygymy is still retained among the cluster, the present economical and social conditions do not assist for such a practice.

Banjara Council for Administration of Tandas : The Banjaras have their own traditional council for each *Tanda*. This acts mainly in sorting out the disputes originated from economic and social causes. The council consists of 5 persons named Nayak (Headman), Karbhari (Secretary), Nasabi(Jury), Hasabi(Accoutant) and Dao(Elder person). All the offices of the council are hereditary. The traditional council is known as Nayaker Ghar. This traditional council will try to sort out the disputes among the community or among the people in a

ISSN 2394 - 7780

systematic way after hearing the arguments from both the sides (Rathod Shamala 1984: 49). The council's conclusions and its final resolutions are to be strictly abided by the people of the community. With the influence of globalization, gradually the Banjara councils have extinguished. The clusters are now under the jurisdiction of government. The rules and regulations framed and passed by the government are being followed.

Influence of other languages on Banjara Language: Grierson states that the Gorboli/Lambadi is the language of the community, which is noted to be among the Indo Aryan Language family. It falls into the main dialects of Punjabi and Gujarati (Grierson 1907:1-5).The language possesses the characteristics of an old form of speech, which has been preserved unchanged for some centuries. It is noted that the language is also based partly on Marwari, and partly on Northern Gujarati. He further points that the Lambadi dialect of southern India is mixed with the surrounding Dravidian languages. The language in and around the Telangana region, is found to be influenced by languages like kannada, Telugu, Urdu and Hindi. The Banjaras are also found to be using in their communication, a dialect, identified as Ghorbholi language. The Banjara language and its variations do not have script. The Banjara language started taking shape in tune with the languages of other communities. It has been highly influenced in time. For instance, the influence of kannada language on banjara/Lambani language has lead to Code-mixing, Code-switching, Borrowing. As part of my research work, I have identified that there are some words, which are not at all used in Lambani language. Some translations are done here under;

LIST OF BORROWED WORDS AND THEIR REPLACEMENTS

Word in Banjara	Word in Kannada	English Meaning
Sogan	Pramana	Promise
Accho	Channagi	Very good (In reference to beauty)
Sudho	Nera	Straight forward
Raas	Rashi	Heap
ajo	Banni	Come
Vach	Oodu	Read
Geed	haadu	Song
Khano	Uta	Food
Sojo	Malagu	Sleep

Ghano Tumba More

Table: Some changes highlighted due to the influence of globalization

Social phenomena	Existing system	Changes under globalization
Dress	Men- Dhoti, Kurta, Pagadi, Bavdi	- Pant, Shirt, Suit, tie and other modern western attire
	Woman- Phetiya, kanchli, chantiya, chotla, balliya, rapyar haar, paular haar etc	- Saree, Blouse, chudidaara, dupatta and other modern clothes.
	Boys- Dhoti,Kurta, Pagadi, Bavdi	-Pant, Shirt, T-shirt, Jeans and other modern clothes
	Girls- Ghagro, Polka, Odni, Laldi	- Skirts, chudidaara, salwaar, dupatta and other modern clothes
Way of life	Nomads and salt-traders	Occupation differ from place to place
Education	Nil or trade related	Up to university level or less
Marriage	Polygamy	Monogamy or bigamy
Delivery	At home, social-midwife, No operations	Hospitals and modern practices
Death	Dado, Chormo and other ceremonies, belief in rebirth	On the verge of extinction and with Varying beliefs
Language	Only Gorboli/ Banjara Language, Monolingual	Local language is in use and multi-linguistic
Family	Joint	Nuclear
Marriage system	Exogamous, caste-specific	Adopting the trend of the changing times
Festival	Teej, Holi etc	Still prevalent and also other popular festivals of the region wherever settled

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CONCLUSION

The paper shows richness and the cultural patterns of the Banjara community. However, with the advent of globalization, traditions are on the verge of extinction, although the changes that come with globalization are important but there is a need to preserve the culture that is innate to this tribe. This paper has been an effort to focus this tribe's history, traditions, language and culture. Current research efforts to make critical analysis of transformations under the influence of globalization leading to code-switching, code-mixing in Banjara are subjected to changes.

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INTELLECTUAL PROPERTY RIGHTS-VIS-À-VIS-ARTIFICIAL INTELLIGENCE: A STUDY

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ABSTRACT
In the global innovation economy, demand for intellectual property titles-patents, trademarks, industrial designs, copyright is rapidly increasing and becoming more complex. An intellectual property in this knowledge economy is expanding from its traditional concept. It changed from industrial property to intellectual property and it included not only those manufactured in industries' but also vast range of copyrights also. Now artificial intelligence is emerging more in the field of patents and world is witnessing robust growth in this field. Area of artificial intelligence is driving important development in technology and business. In this paper researcher is trying to explore the areas of artificial intelligence and its emerging scope, from the autonomous vehicles to medical diagnosis and even in advanced manufacturing.

Keywords: Intellectual Property Rights, Knowledge Economy, patents expansion of economy

INTRODUCTION
In this competitive world Creativity and innovation are in the forefront, driving economy, development, growth and progress in all the knowledge based economies. Intellectual property protects applications of ideas and information that are of commercial value. This is growing in importance to the advanced industrial countries in particular, as the exploitable ideas becomes more sophisticated and as their hopes for a successful economic future come to depend increasingly upon their superior subject matter of new knowledge. Intellectual property rights are tools for economic development that should contribute to the enrichment of society.

Before understanding concept of intellectual property, meaning of property should be studied. Property possesses different applications having different degrees of generality. The term property in its widest sense includes, all a person's legal rights, of whatever description. A person's property is all that is his in law. In the second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights. In a third application, the term includes only corporeal property, i.e. the right of ownership in material things. Incorporeal property is any other property other than proprietary right. It's of two types, namely jura in re aliena, such as leases, mortgages and servitudes and jura in re propria over immaterial things such as patents, copy rights and trade-marks, etc. This second category of incorporeal property is popularly described as the intellectual property rights.[1]

Legal framework was also evolved in such a manner for each type of subject matter of intellectual property to balance both social interests of the society as a whole and in its economic, cultural and social development and to secure a fair value for one's individual efforts and investment of capital and labour. With the harmonization of intellectual property rights and opportunities, to secure stronger protection for these rights, new statutes were added at International level.

Intellectual property rights can have multiple impacts on the capabilities of societies for socio-economic development through innovation and adaptation and more creativity and growth leading to competition and regulation, good education, public health and access to knowledgeThe International frame work of legislative and administrative assistance to developing countries has been strengthened by the agreement on trade related Aspects of intellectual property rights (TRIPS) administered by the world trade organization (WTO) in cooperation with WIPO.

ARTIFICIAL INTELLIGENCE--------
Intellectual property of whatever species is in the nature of intangible incorporeal property. In each case it consists of a bundle of rights in relation to certain material object created by the owner. Patents began as instruments used by noble or republican governments in later medieval and early Renaissance Europe primarily to induce the transfer and disclosure of foreign technologies. Even the most cursory attention to this bit of history should give pause to one casual supposition which the basic economic analysis of the patent system has fostered - viz., that the protection of intellectual property has been instituted, where governments recognized there was more to be gained by stimulating indigenous inventive activity, than by applying knowledge of

[1]Salmond on jurisprudence, Twelfth Edition, P.J Fitzgerald, Indian Economy Reprint 2004, universal law publishing co.pvt ltd, Page no.413

ISSN 2394 - 7780

techniques and products that could be "borrowed" freely from the rest of the world. Artificial intelligence according to john Mccarthy , AI is the science and engineering of making intelligent machines , especially intelligent computer system[1]

Artificial intelligence is a new digital frontier that will have a profound impact on the world, transforming the way we live and work. AI in a broad and multi-disciplinary in its approach and it touches range of policy and questions. One of those key questions is property and intellectual property.[2]

Artificial intelligence growth is fuelled by digitized data and rapidly advancing computational processing. It can improve weather forecasting, boost crop yields, enhance detection of cancer, predict an endemic and improve industrial productivity.

Artificial intelligence is raising and WIPO technology trends draws report on data in it is a non-biological intelligence system.it is going to be huge impact on future expansion of market.

Business areas in which WIPO and IPOs are exploring the use of AI are as follows

- Automatic classification of patents and classification of patents and goods/services for trademark applications.
- Search of patent prior art and figurative elements of trademarks
- Examination and formalities checks for trademarks and patents
- Helpdesk service (automatic replies to client)
- Machine translation, linguistic tools and terminology
- Data analysis for economic research

History of AI emerged in the 1950s, with the first mention of the term coming during the Dartmouth summer research project on artificial intelligence in 1956. Machine learning is the dominant artificial intelligence technique. It is found in 40% of all AI related studied and the technique grew at an average rate of 28% every year from 2013-2016. The ability to craft a fragrance is something that takes master perfumers years of experience to develop. A group of IBM researchers and skilled perfumers at symrise, a global producer of flavors and fragrances, got together to explore how to use AI or that.

ARES OF AI

Mixing artistic and scientific thought into one big pot resulted in philyra- an AI product composition system that can learn about formulas, raw materials, historical success data and industry trends. Philyra uses new, advanced machine learning algorithms to sift through hundreds of thousands of formulas and thousands of raw materials, helping identify patterns and novel combinations, it can detect gaps in the global fragrance market for which entirely new fragrance formulas can be designed.

The new Brazilian cosmetic OBoticaro has used philyra and it is scheduled for release in 2019.[3]

Wipo has devised a new framework for the understanding of developments in the field , with AI related technologies grouped to reflect three dimension of AI , they are as follows such as machine learning, functional applications, such as speech processing and computer vision, and application fields, including telecommunications and transportation..

For each of these areas, this report provides data and analysis that identify trends, key players, geographical spread and market activity, including acquisitions and litigation. In addition, it includes contributions from AI experts from across the globe, addressing issues such as existing and potential uses and impact of AI technology, legal and regulatory questions, data protection and ethical concerns.

[1] Artificial intelligence and robotics-2017 leveraging artificial intelligence and robotics for sustainable growth, report of march 2017, in association with ASSOCHAM and PWC, available at www.pwc, accessed on 3/10/2019 at 10.59pm

2.G.F.Gurry's opening statement at wipo, Director General's meeting on sep 27 2019, www.wipo,org, accessed oon 29 th sep 2019 at 7.48pm

[3] Wipo technology trends 2019, artificial intelligence available at www.wipo.org accessed the web on 9/112019 at 3.33pm

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AI related inventions are booming, shifting from theory to commercial application since artificial intelligence emerged in the 1950s, innovators and researchers have filed applications for nearly 340,000 AI related inventions and published over 1.6 million scientific publications.

Companies, in particular those from japan, the United States America and china, dominate patenting activity. Out of the top 20 companies 12 are based in japan, three are from the U.S. and two are from china. IBM and Microsoft are leaders in AI patenting across different AI related areas.

Healthcare AI is drawing the attention of investors, which is bringing capital to the field and accelerating technological innovations. According to third party statistics, global healthcare AI startups have raised us$4.3 billion through 576 deals since 2013. China overtook the United Kingdom in the first half of 2018 to become the second most active country in terms of capital investment in healthcare AI. [1]

These are the some of the areas in which AI are emerging and even though it has created new dimensions in the field of patents in particular and intellectual property in general, many of the thinkers have cautioned about the use of AI and its impact on the different segments of life and percentage of its inclusion in different field's should be clearly studied. But AI has emerged as leading invention at the global level cannot be ignored at all.[2] Concept of intellectual property and emergence of AI, especially in patents has occupied at the global level.

CONCLUSION

AI is all set to bring about revolution in the business landscape, business and consumers are bound to be divided on how quickly and eagerly they should adopt and integrate the new applications and work flows from it. AI holds the potential to address socioeconomic concerns such as stimulating economic growth, improving global health and education and helping enhance the quality of life for humans.

[1] Cornell university, INSEAD and WIPO(2019) Global innovation index 2019, chapter vth, application of artificial intelligence and big data I chna's healthcare system, page no 104, available at www.wipo.org

[2] Artificial intelligence in india –hype or reality, impact of artificial intelligence across industries and user groups, study available athttps:// www.pwc.in, accessd at 10pm on 3rd October 2019

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DOMESTIC WORKERS ARE ARTERIES OF URBAN INFORMAL SECTOR: HEALTH A CONCERN OF STATE- A STUDY.

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INTRODUCTION

"Health care for ALL is a human right"- Sen. Bernie Sanders.

A new challenging era established in India is about right to health- a basic entitlement that allows an individual to ameliorate his fundamental right to live with human dignity and enjoy his right to health as a fundamental essence of his life. The right to life enshrined under the Indian Constitution is meaningful only when every individual has been accomplished with it. We are today moving towards the era of globalisation, where the people are finding employment in various forms of occupation that falls within both the formal and informal sector. The informal sector workforces dominate the world economy, but the sector is unprotected and unrecognised. The Judiciary has always been the pillar in escalating and upholding the right to health of an individual that is implied under Article 21 of the Indian Constitution.

World of work-life today is utterly dependent on the engine of domestic workers without whom the life of the urban homes never starts. The economy of developed and developing nations dwells on both formal and informal sector employment. Domestic work sector is that service sector where large number of women are concentrated to make a living and support their economic household to relieve them from financial scarcity. Domestic work is mostly feminised sector attracting large section of poor, illiterate and unskilled women and girl children into this occupation. According to the report of the National Sample Survey Organization (NSSO 2004-05), the strength of domestic workers is gradually increasing, and most of the time, they are not accounted in India. Though the strength of domestic workers is increasing, to fit into the economical household of an urban family, they are thus deprived of a dignified status and recognition at the workplace, a private household of an employer and are being left with little hopes.

Domestic work encompasses large numbers of women and girl children into employment. The demand for domestic workers is always high as every other woman who seeks employment outside her home needs someone who can help her at doing the household chores. The fact is actual across the globe due to urbanisation and development of the economy. Therefore, the domestic workers are crossing the borders for gaining employment beyond the boundaries of the State. With the growth and demand of this sector, the inflow of migrant into rural areas and the outside country has invited comprehensive appraisal from the international and national community for the recognition and protection of this domestic workers as a worthy human being. The International Labour Organization (ILO) and the Domestic legal system feel India feel the need of the hour is to grant 'decent work' status to domestic workers. The place of work is a stranger home (an employer's home), a private premise or a workplace, which is new to the employee who finds himself or herself covert within that environment. These domestic workers who help the most urbanites women to take up jobs outside their homes and also help them to carry out the duty with no hassle, it would be merciless if they are not respected and their recognition is due to them by the society.

India carries a high attitude of domestic workers flown out of the reason for slavery practices in India, which is an age-old custom. Although the number of female domestic workers (FDWs) is increasing worldwide, concern over their health issues is most often neglected by the State as well as by the employer. The domestic work that happens at the private household of an employer is entirely out of reach to any of the enforcement agencies of the state. Domestic workers are the worst among the informal sector workforce. Domestic work industry is the replica of slavery that is practised by the states since ancient time. They suffer a lot. The health issues of the domestic workers are being neglected by most of us because we consider them as non- workers and performing just the extension of the traditional housework.

The magnitude of domestic work has increasingly become part of the global division of labour and inextricably integrated within it. Informal sector employment in India, as elsewhere is characterised by poor working conditions, precarious employment arrangements, class, caste and gender discrimination, lack of employment benefits, lack of social security measures, lack of welfare and health benefits, fear of losing jobs as contracts are informal. The above factors have influenced severely on the living and working conditions, thus depriving them a decent work environment. The rights in general and domestic workers, in particular, are the inbuilt innate energy-producing elements that are required to be professed and enjoyed by the weaker section of the society, but the domestic workers are denied access to the provisions of labour rights as a 'worker', as the sector is unrecognised and unprotected.

ISSN 2394 - 7780

Domestic workers contribute as a significant source of employment to the person coming from the poorer section of society. Poverty and financial inability to maintain their families, alcoholism of the male member in the family, pushes the women to enter the domestic work sector. The Neo- liberalisation era since 1999, the numbers of domestic workers increased approximately by 120 per cent. The demand for the growth of the domestic work sector is because women are breaking the traditional barriers and encapsulating employment opportunities in corporate and IT World. The various tasks performed by the domestic workers at the household of the employer is virtually affecting their health and safety, that will ultimately push them down.

The various health and occupational diseases suffered by the domestic workers are the followings- Stress, Psychological disorders, physical, verbal and emotional torture, communicable and non-communicable deceases. Though the domestic work industry is blooming at large, comprising of more than 90% of women into the fold, still the very concept of work is considered as the domain of women's work; that was once performed by the member of the family as an unpaid job. The significance of the domestic work sector, to our Indian economy can be computed from the careful analysis of its size, growth, demand, supply and participation of domestic workers in India. According to Pratchi Talwar, a social activist from (Nirmala Niketan, an NGO) proclaims that many women workers resort to domestic work as a source of employment, because of the reduction of employment opportunities in the agricultural and manufacturing sectors.

Occupational health and safety regulations that are framed by the states for preventing injury or illness in the workplaces are only applicable to the formal sector workers in the formal employment such as mines, factories offices and shop. The domestic workers, part of informal sector employment, are not covered by the Occupational Health and Safety regulation; because they seek employment in an industry that provides employment in private homes, though domestic work is essential source of employment, though there are many health and safety risks involved in the work; and even they are vulnerable to poverty, still no legislation provides legal protection to them. The 4.75 million of domestic workers are being benefited by the Rashtriya Swayam Bheema Yojana (RSBY), health insurance scheme, a policy of the Government of India for offering health insurance coverage up to Rs 30000. However, the said policy though includes domestic workers, especially women but the implementation of the same is futile.

DEFINITION OF DOMESTIC WORKERS

The term of "domestic worker" is been defined by the International Labour Organization and the National legislation of different countries according to the basis of tasks performed, hours of work done and depending on the productivity of the employment. ILO defines domestic workers as the one who performs the task in or for an employer in a household for remuneration is called a domestic worker. However, it does not include a family member of the household.

National Policy on Domestic Workers as recommended by the Taskforce on Domestic workers[1] provides a definition of domestic work as: 'For the purpose of this policy the '***domestic worker'*** means "a person who is employed, for remuneration whether in cash or kind, in any household, through agency or directly either on temporary or permanent basis, part-time or full time to do the household work or allied work, but does not include any member of the family of an employer".

The increase in the number of domestic workers is due to the shift from an agrarian-based economy to a manufacturing and service-based economy. Based on the nature of employment relationship between the employer and employee and hours of work, the domestic worker is being classified into Part-time, Full-time, Live-in and live-out workers. The right to health is a long-established norm in International Human Rights Law.

HEALTH AND SAFETY ISSUES OF DOMESTIC WORKERS

The main issue, which is the primary concern for domestic workers, is that of occupational health issues as they are far away from the social security law. The health factor and issues are being discussed in this chapter. The health conditions and the occupational decease they suffer have been ignored with no remedy. Finally, what is the legal protections that are available to domestic women workers are being articulated and examined here. The domestic work is being considered as the second-generation job, that has been typically transmitted from mothers to young daughters and working girls. The diversity of generic live-in domestic workers, particularly unmarried young women, migrant workers, working conditions is being analysed through a condominium of vulnerability they are undergoing throughout their participation in various tasks they perform. The complacency attitude of the women workers in the rural areas to meet the challenges of high qualifications, skill and training

[1] National centre for Labour.org/about us.html retrieved on 12 Dec, 2018 at 10 pm.

ISSN 2394 - 7780

to gain employment in the formal sector have always pushed them to secure opportunities in the informal sector activities that are neither protected under existing labour laws nor is controlled by any governmental agencies.

The health and safety risk that is faced by domestic women workers in domestic service employment is many. The informal sector women workers belonging to the lower strata of the society are prone to ailments, and diseases. Poor housing, sanitation facilities, lack of adequate and portable water supply, unhygienic surroundings of the living and working area are some of the factors that affect the health of the domestic workers that require special attention. The health issues that are the outcome or the probable consequences of the occupation health hazards are stress, physical violence, sexual harassment, psychological disorders, communicable and non-communicable deceases, and so on.

OCCUPATIONAL HEALTH HAZARDS

In any form of employment in an economy, the working conditions and the nature of employment tend to have significant repercussions on the health of a particular employee. A worker suffers from occupational health hazards if the employer does not provide him with a safe place of work and the proper environment to work. An occupational health hazard means any injury, ailments, impairment or a decease affecting a worker or an employee during the course of employment. This occupational health hazard affects the community of workers as a whole unable to find a solution for the same. Inadequate surveillance is the main reason for the increasing prevalence of work-related and communicable diseases. The various health issues that are suffered by the domestic workers, a part of the informal sector workforce at the place of work and in the course of employment are as follows-

a) Sexual Harassment and abuses – at the workplace both sexes are subject to abuses.

b) Biological hazards- Respiratory problems- contact with toxic or unhealthy substance pushes them to risk.

c) Overtime work –develop chest pain and breathing problems.

d) Lack of protective instrument when they are handling and caring sick member.

e) Psychological issues: - Due to unauthorised deduction and withholding of salary, isolation from families, a domestic worker faces verbal abuses and humiliation causing them to suffer low-esteem and feel the sense that the work they do is not meaningful and inhuman caste practices.

f) Deprived of the fundamental right to education and are working in conditions that are the worst form of child labour.

INTERNATIONAL PROTECTION OF DOMESTIC WORKERS AND HEALTH ISSUE

The preamble of WHO states that "the enjoyment of the highest attainable standards of health is one of the main fundamental rights of every human being…….". Right to health is fundamental to the enjoyment of all other human rights and for securing a life with utmost dignity. The International Labour Organization in its Convention No 189 states the health concern of the member states is being proclaimed in the following words-

Article 13 (1) states the following. "*Every domestic work has a right to a safe and healthy working environment. Each member shall take, in accordance with national laws, regulations and practice effective measures with due regard to the specific characteristic of domestic work, to ensure the occupational social and health of domestic workers."*

The United Nation does not involve with the issue directly. However, through its agency ILO, it is striving for the protection of the health of workers. The provisions under Article 23 and 24 of the Universal Declaration of Human Rights (UDHR), also proclaims that everyone who works has the right to be given equal pay, dignity, social protection, and rest or leisure hours.

The ILO's Convention No 189 was a landmark achievement for the domestic workers as the said convention did identify and recognise the fundamental labour rights of the domestic workers, part of the informal sector employment. With the coming into force of this convention, the rights of the domestic workers are to be realised and upheld. Globally every year, June 16 has been celebrated as the Domestic Workers Day to commemorate the success of bringing into action the *Magna Carta* of domestic workers right. The convention No 189 is an inspirational tool for domestic workers through this convention they can breathe normally. The above provision makes the member states to abide by the principles and make necessary changes to protect domestic workers against health issues. To bring changes among the working conditions of domestic workers and to ensure the enjoyment of the labour rights so that they can lead a decent and dignified life, many changes have to be incorporated within the domestic legal system of the state.

ISSN 2394 - 7780

THE CONSTITUTIONAL PROTECTION AND RIGHT TO THE HEALTH OF DOMESTIC WORKERS

The Right to health of a particular person or an individual is guaranteed by the India Constitution impliedly under Article 21, which proclaims the right to life and personal liberty of a particular person. Most of the Supreme Court judgments have upheld the right employee's health. In the case of *Consumer Education Research Centre Vs Union of India*, the Supreme Court held that occupational accidents and deceases constitute an appalling human tragedy of modern industry and one of the most important forms of economic waste". Article 21 of the Indian Constitution, is also read along with Article 39(e), 41, 43 48A and all other related Articles. The concern of the State duly recognised by the Indian Constitution for achieving health and safety under Directive Principles of State Policies shall be the prime concern of the state.

RELEVANT LEGISLATIONS IN INDIA

The legislation that exclusively provides for the regulation of occupational health and safety at workplaces are the Factories Act of 1948; the Mines Act, 1923; Employees State Insurance Act, 1948; and the Workmen Compensation Act, 1923. This Act provides for the health, safety, welfare and other aspects of Occupational Health and Safety (OHS) for workers in factories. The Employees State Insurance Act, 1948 and the Workmen Compensation Act, 1923 is a piece of social welfare legislation that is both compensatory in nature; enacted with an avowed object of providing certain benefits to the employees in cases of sickness, maternity, health, occupational and employment injury and also make provision for matters incidental to it. The employees working in an establishment or a factory is compensated for injuries occurred in due course of employment. Though India has a large number of labour legislations, the numbers of accidents are very high.

CONCLUSION AND SUGGESTIONS

Traditionally the subject of protection of domestic workers is a grey area in Indian Labour Jurisprudence that hitherto has to see the light of the day. The domestic workers are glooming at a high rate of participation by the women workers but left with no rights and legal protection. In India, the priority of the state primary health care system should include the occupational health and safety services to all workers, whether formal or informal sector and shall have a system of enforcement mechanism. The Labour inspectors should be allowed to enter the home, a private household of an employer and the place of work for the domestic workers to inspect. The primary health care doctors shall be trained in such a way to ascertain about what are the various kinds of occupational health issues and decreases the domestic worker may suffer in the course of his domestic work employment. Informal sector is over dominated by the people coming from the more reduced section of the society and being illiterate, they are unaware of the rights available to them and health is the concern of the state, government should resolve to protect and explore the health benefits to as many of them coming from poorer section of the society.

The health issues of domestic women workers are critical to be looked into and to achieve the above-said goals as follows-

Firstly, there requires a touch of humanity;

Secondly, the fundamental basic health needs of domestic workers are to be protected and;

Thirdly, the sensitivity of the National Domestic workers movement has initiated the protection of domestic workers. The following suggestions have to be incorporated to achieve the above-said goals: -

- Raising awareness among the women workers about the increasing occupational health and safety issues, about domestic workers rights would help the workers to understand the rights, they are entitled to and how to find assistance to improve their situations.
- Universal E-health policy and scheme should be extended to the informal sector workers and particularly to the domestic workers.
- Strict enforcement of existing labour laws would protect domestic workers and protect them from health and occupational hazards.
- The employers should mandate for a regular annual health check-up of the domestic workers.
- The contract of employment between employers and domestic workers should mandate the health protection policies for domestic workers.
- Employers should be provided with a tax exemption or any other rebate of the amount so contributed by the employers towards the workers' health insurance so that they will be ready to contribute for the health, safety and welfare of their domestic workers.

ISSN 2394 - 7780

Ultimately the right to health stipulates a system of entitlements to health care protection including the health system, facilitates and product based on availability, accessibility, acceptability and quality as a core component of human rights. Domestic women workers are to be respected with high dignity and respect. The various health problems suffered by the domestic women workers, in particular, can be resolved by enacting a comprehensive labour welfare legislation for the protection of rights of the domestic workers. Currently, in India, the concern for the rights of the domestic workers and their health issues has to be in the central focus for the amelioration and upliftment of these workers.

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AN EMPHRICAL STUDY OF WORKING CONDITIONS OF AGRICULTURE LABOUR: A CASE STUDY OF RANEBENNUR TALUK

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India lives in her villages. Our progress therefore, depends on the extent to which we can overcome the poverty and neglect of our rural folk.

-Mrs. Indira Gandhi

ABSTRACT
India with an area of about 1.3 million square miles is the seventh largest country in the world and judged by its population of about 125 crores, ranks second in the world. It has been said that India lives in the villages. The census report indicates that nearly eighty percent population of the country dwells in the villages. The various studies have clarified that nearly a quarter of agrarian population of India consists of Agriculture Labours and more than fifty percent of agricultural-Labour households have no land2. The proportion of Agriculture Labourers in rural Labour force of the country have been steadily growing over the years. In order to have a clear insight, it would be worthwhile to examine the growth of Agriculture Labourers in the rural society. Moreover the socio-economic circumstances in which the agricultural Labourers are brought up and work, also require close consideration. These two issues are interrelated and bring to the force. The consideration of the whole rural set up in the past, as well as in the present time frame, together with the rural laws having a bearing upon the economic life of the rural folk.

INTRODUCTION

Ranebennur Taluk of Haveri District is one of the backward Taluk in State of Karnataka. Haveri District has 7 Taluks. Namely, Ranebennur, Byadgi, Haveri, Hirekerur, Hangal, Shiggaon, Savanur. There is a shared Parliamentary constituencies in Haveri District namely Haveri-Gadag Parliamentry Constituency. The total population of Ranebennur is 2,36,069 out of which total number of workers categoriszed as :

(i) Cultivators

(ii) Agricultural Laboureres,

(iii) Household Industrial worker

(iv) Others.

The census furnished below during 2011-2012 about the Total working population including Agricultural Labour will Clearly show the clear picture of Ranebennur taluk of Haveri District.

The writer has conducted a survey based on the questionnaire prepared(see Annexure I) . interviews are taken by the writer to understand the ground realities of the agriculture labours and their problems in ranebennur taluk. Questionnaires are prepared in three sets viz. ***Respondant 1 as Agriculture workers, Respondent 2 as Land Owners, responded 3 as Members of Raita sangha.***

The writer have interviewed 20 agriculture labours viz Respondant 1 in four villages Kajjari, Kunbev, Kakol and Devaragudda of Ranebennur taluk randomly. And 10 agriculture land owners each form the same four villages of Ranebennur taluk, and also 5 members each from the Raita sanghas of the said four villages.

The below mentioned table shows the data furnished by the author during the field investigation:

SL NO.	PARTICULARS OF VILLAGE	NO OF RESPONDANTS	WAGES RANGE	HOURS OF WORK	LEISURE PER DAY
1	Kajjari	20	150-250	8-10	30 min
2	Kakol	20	140-230	8-10	30 min
3	Kunbev	20	120-200	9-10	30 min
4	Devaragudda	20	100-200	7-10	30 min

Table 1.1: showing the Payment of Wages, Hours of work for Respondant 1(**Agriculture Workers**)

ISSN 2394 - 7780

SL NO.	PARTICULARS OF VILLAGE	NO OF RESPONDANTS	WAGES RANGE	HOURS OF WORK	LEISURE PER DAY
1	Kajjari	10	180-280	8-9	30 min
2	Kakol	10	150-250	8-9	30 min
3	Kunbev	10	150-220	7-8	30 min
4	Devaragudda	10	120-200	7-8	30 min

Table 1.2: showing the Payment of Wages, Hours of work for Respondant 2(**Agriculture Land Owners**)

SL NO.	PARTICULARS OF VILLAGE	NO OF RESPONDANTS	WAGES RANGE	HOURS OF WORK	LEISURE PER DAY
1	Kajjari	05	150-200	8-10	30 min
2	Kakol	05	140-180	8-10	30 min
3	Kunbev	05	120-200	9-10	30 min
4	Devaragudda	05	100-180	7-10	30 min

Table 1.3: showing the Payment of Wages, Hours of work for Respondant 3(**Raita Sanga Members**)

SL No.	DESCRIPTION	RESPONDANT 1 (80)	RESPONDANT 2 (40)	RESPONDANT 3 (20)
1	Wages	127- 220	150- 237.5	127.5-190
2	Hours of Work per Day	8-10	7.5-8.5	8-10
3	Leisure per day	30 min	30 min	30 min
4	Awareness about Minimum Wages Notification	50- Not aware 20- Not Heard 8- Don't Know 2- Aware	25-Not Aware 10-Not Heard 2-Don't know 3-Aware	5-Not Aware 10- Heard 2-Don't know 3-Aware

Table 2: showing the Comparison of Payment of Wages, Hours of work for Respondant 1, 2 &3

SL No.	DESCRIPTION	RESPONDANT 1 (80)	RESPONDANT 2 (40)	RESPONDANT 3 (20)
1	Any Disease from agriculture activity	50- Not Affected 30- Affected	25- Not Affected 15- Affected	15- Not Affected 5- Affected
2	Injuries from agriculture activity	62- Affected 18- Not Affected	30- Affected 10- Not Affected	15- Affected 5- Not Affected
3	Compensation received for any Disease/Injury	66-Not Received 10-No Response 04- received very less from Employer	35- Not Received 12- No response 03- Not Aware	17- Not received 03- Received
4	Awareness about law of compensation	50- Not aware 20- Not Heard 8- Don't Know 2- Aware	25-Not Aware 10-Not Heard 2-Don't know 3-Aware	5-Not Aware 10- Heard 2-Don't know 3-Aware

Table 3: Showing Effect of Disease and Causing of Injuries due to apply of Pesticides.

The Ranebennur Taluk has more number female Agricultural Labour. Child labour is also reported engaged in Agricultural. The farmers adopted the way of Government Schemes to improve the income of Agricultural Labour and there are many self-helf groups in the rural areas in Ranebennur Taluk. There are Anganwadi,

ISSN 2394 - 7780

Which give informal education to children under group of 2-5 years. Mid day meal scheme for children is properly implemented; the NGO's will also help in providing social awareness and social services in rural area where Agricultural Labour resides.

The Department of District SC/ST Corporation, District Social Office, and Zilla Panchyat have many scheme for SC/ST and other backward classes for economic improvement of them

CONCLUSIONS AND SUGGESTIONS

The Writer draws the following conclusions out the studies carried out on the problems of Agricultural Labour. The upper caste landlord, Bureaucrats, political leaders exploited the Agricultural Labour from generation to generation.

It is concluded that the risk in agricultural operations faced by agriculture workers in the modern times has increased due to the input of technology and applying the chemicals and fertilizers for agriculture production**.** Therefore the writer submits that the hypothesis framed in this work is sustained

It is concluded the working conditions of agriculture workers are turning to be more hazardous without proper response to address the hazards and risks by the instrument of law and policy. the rate of illiteracy in handling techno based farming by the agricultural labour is neither increasing nor it is decreasing it is in the status quo position.

Lack of knowledge in agricultural among labour has led of Social problems due to which the governmental schemes are not understood and utilized by the agricultural labour.

Agricultural labour residing near to the urban areas is benefied by the schemes and programs of the government. And the writer draws the attention about the difficulty in implementing the minimum hours of work as practically impossible in agriculture in the chapters above mentioned in this dissertation and hence the second and third hypothesis framed by the writer is sustained.

It is concluded that the problem of agricultural labour have been attracting the attention of the Government since independence. It has appointed the National Commission on Labour (1969), National Commission on Agricultural (1967) National commission on Rural labour (1989),commission the two Agricultural Labour Enquires and there Rural Labour Enquires and so many other commission and committees to study the problems of agricultural/rural labourers and has formulated different laws and regulations, schemes and programs in accordance with the recommendations of these Commissions and committees.

It is concluded from statistics that the wage payment to the agricultural labour are not uniform throughout. There is regional difference in the payment of wages. There are different hours of work and terms of employment and conditions of services for agricultural labour in different area.

It is concluded from the studies that existing central legislation are concerned; the Minimum wages Act is the only important Act applicable to the agricultural workers working on their Co-operative farms, large mechanized farms or uneconomic fragmented holdings to deal with the regulation of wage payment and working conditions. The enforcement of the Minimum Wages Act, encounters its most serious obstacle in tradition agriculture, outside the large plantations and modernized farms.

The lack of enforcement arrangement that could begin to cover the innumerable, small and scattered places, of employment , the weakness of workers organizations ,the transient character of most work relationships, widespread illiteracy, the non-existence of record-keeping the prevalence of extended family in majority cases, near feudal relationship with employers, the prevalence of the system of payment in kind, and perhaps most important , the ready availability, at least at certain seasons of the year. Persons who desperately need to find work, no matter how poorly paid all these obstacles combined to make compaliance with legally prescribed labour standards of any kind highly problematic. The basic deficiencies are inadequate Inspectorate, unsympathetic and apathetic government personnel, lack of awareness of workers and employers of their rights and responsibilities and paying capacities of the employer .The National commission on Labour has emphasized the need for agricultural productivity, through laobur -intensive scientific farming ,with particular emphasis on organizational and institutional reforms. The National Commission on Agriculture also recommended the adoption of an integral program of employment creation, another structural change in rural economy as the most effective way of improving the conditions of agricultural labourers, besides the Fixation and enforcement of minimum Wages.

ISSN 2394 - 7780

It is concluded that the provision of contract labour Labour (Regulation and Abolition) Act, 1970, The Inter-state Migrant Workmen(Regulation of Employment and condition of services) Act,1979 are not implement for Agricultural Labour due to lack of social and legal awareness in agricultural.

The proviosions of Dangers Missions (Regulation) Act,1983 and The Insectidents Act, 1968 are unknown to the agricultural labour

SUGGESTIONS : On the basis of the conclusions presented the following suggestions are forwarded.

1. The government has to take an initiative to train farmers and farm labours in handling the agro technologies by way of conducting camps and training sessions. It is necessary in the present time to go for the technology based farming since the burden of population is not stopped yet on the shoulders of the government. Hence the government has to take care to protect the safety and interest of farmers by adopting appropriate measures.
2. Agricultural should be treated as on Industry. The Government should give due attention for improving the irrigation facilities in the agriculture areas. The implementation of land reforms has field therefore; co-operating should be encouraged which will reduce cost on agricultural activities. The employment will be increased and spirit of integration, community sentiments of we reduced if co-operation farming is encouraged. Caste based co-operative farming should not be encouraged. The Government should provide finance, training, and moral support for the formation of co-operative farming.
3. The problem of agricultural labourers in India cannot be overcome by legislative enactments and developmental schemes in isolation. They should be linked with structural-institutional reforms in rural areas.
4. Since bulk of agricultural are from Scheduled Caste, Scheduled Tribe and other Backward classes. The Government should take steps to identify the problems faced by them through constant surveys. Any developmental schemes for SC and SC Should be properly assessed and for this writer suggest a separate Directors be established at State level with regional officers at least in 10 Districts Corporation at each District but before this it is suggested that the schemes should be given statutory

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CYBER SQUATTING: INDIA'S DOMAIN NAME POLICY

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ABSTRACT
Rapid developments and enhancements in information technology have brought a new platform for trade and business. They have increased their significance and presence in the "online markets" with the help of their trademarks to attract consumers. Hence, in this scenario, trademarks plays an important role in cyberspace and therefore, increasing the need for their protection. Today domain names reflect the goodwill, reputation and high recall value in respect of a business. As it gave an identity to the business houses and corporate giants hence, apprehensions regarding their piracy or misuse came up as the main issues. Disputes over rights to domain names, which serve as a source identifying function in cyberspace at international trademark law and the cyber law. In India, victims of cyber squatting have several options to combat cyber squatting.These options includes sending letters to the cyber squatter, bringing an arbitration proceeding under ICANN's rules and bringing a lawsuit in state or federal court. In order to resolve disputes related to .IN domain names NIXI has evolved an Alternative Dispute Resolution mechanism namely .INDRP (.IN Domain Name Dispute Resolution Policy) based on the Indian Arbitration & Conciliation Act, 1996 and the principles given under the UDRP of ICANN. There is no provision in the present Information Technology Act 2000 in India to punish cyber-squatters. Though there is no legal compensation under the IT Act, .IN registry has taken proactive steps to grant compensation to victim companies to deter squatters from further stealing domains. In the absence of an explicit legislation, Indian courts apply provisions of the Trade Marks Act, 1999 to domain name disputes.

INTRODUCTION
Today domain names reflect the goodwill, reputation and high recall value in respect of a business. Domain names are big business, for the past several years, domain names, the "real estate of the Internet," have generated substantial returns for investors, who often refer to themselves as "domineers." Today, a domain name holder can display pay-per-click advertising on a website, and sit-back and let the money roll in while Internet users click on those ads. A single domain name can bring in hundreds of dollars a day, and many domain name holders have thousands or even millions of domain names. As it gave an identity to the business houses and corporate giants hence, apprehensions regarding their piracy or misuse came up as the main issues.[1]

CYBER SQUATTING
Cyber squatting is an offence related to the registration of a domain name by an entity that does not have an inherent right or identical trademark registration in its favour, with the sole intention to sell them to the legitimate user in order to earn illegal profits.

In popular terms 'Cyber squatting' is the term most frequently used to describe the deliberate, bad faith and abusive registration of a domain name in violation of rights in trademarks and service marks.[2]

The term "Cyber Squatting" means the deliberate, bad faith and abusive registration of a domain name in violation of rights in trademarks and service marks.[3]Cyber Squatting is also a combination of two words cyber (computer network) & squatting (one that settles on property without right). Cyber squatting which is the act of occupying an abandoned or unoccupied space or building that the squatter does not own, rent or otherwise have

[1] https://lawmantra.co.in/infringement-of-intellectual-property-rights-causes-and-consequences/, (visited on 12.10.2018)

[2] Pravin Anand, Shamnad Basheer and Keshav S. Dhakad, "Prevention is Better than Cure: An Often Repeated Aphorism that is Often Forgotten (Internet and Intellectual Property Rights)", Chartered Secretary, August 2000, pp.959-963

[3] Pravin Anand, Shamnad Basheer and Keshav S. Dhakad, "*Prevention is Better than Cure: An Often Repeated Aphorism that is Often Forgotten (Internet and Intellectual Property Rights)"*, Chartered Secretary, August 2000, pp.959-963.https://www.legalcrystal.com/case/722626/pen-books-pvt-ltd-vs-padmaraj, http://shodhganga.inflibnet.ac.in/bitstream/10603/7829/13/13_chapter%204.pdf (Visited on 14/7/2014)

ISSN 2394 - 7780

permission to use.[1] This has resulted in considering "Registration of Domain Names without the intention of using them as cyber squatting.[2] In 2016, the World Intellectual Property noted that, cyber squatting cases related to Top-Level Domains hit record number with 3,000 reported cases representing an increase of more than 10 percent.[3]

It is a general practice where companies desire to obtain such domain names which can be easily identified with their established trademarks. This helps the public to identify the company as there is no physical contact between the two of them. Domain names and trademarks are connected with each other. If a company or an individual registers a domain name which is similar to or identical to someone else's trademark or domain name and then tries to sell the same for a profit, it is known as "Cyber squatting". [4]

The term, cyber squatter, refers to someone who has speculatively registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the mark or service mark. Sometimes parties register names expecting to auction them off to the highest bidder.[5]

The definition of Cyber squatting can be best summarized in *Manish Vij v. Indra Chugh,*[6], the court held that "an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium". Many multinational companies like Tata, Bennett & Coleman, Mc Donald's etc., were among the first victims of cyber squatting.

Many cases are also decided by the WIPO (World Intellectual Property Organization) and ICANN. Cyber squatting can be understood as the registration of domain name that consists of a mark that is constituted only if the registration has been done in bad faith, that is, with the intention of selling the domain name at a much higher price to the owner of the trademark, or diverting the consumers of the trademark, or to create an impression of having some kind of affiliation with the owner of the trademark. This practice of abusive registration of domain names is known as cyber squatting .As long as a cyber squatter owns the domain name, the trademark owner cannot register his own trademark as a domain name. Thereby, a cyber squatter breaches the right of the trademark owner to utilize his own trademark.[7]

CHARACTERISTICS OF CYBER SQUATTING

a. The domain name is identical or misleadingly similar to a trade or service mark in which the complainant has rights.

b. The domain name has been registered and is being used in bad faith.

c. The holder of the domain name has no rights or legitimate interests in respect of the domain name.

Thus, cyber squatting is the act of registering a popular web address, such as a company's name or the name of a famous individual, with the intent of selling it to the real owner or with a view to prevent the real owner from registering his/her trademark as a domain name.[8]

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[1] Robert C.Scheinfeld & Parket H. Bagley, Long –Arm Jurisdiction; Cyber squatting, *NY.L.J,* Nov .1996, p.26

[2] *Supra* note 10.

[3] David Nelmark, "Virtual Property: The Challenges of Regulating Intangible ,Exclusionary Property Interests Such as Domain Names", *Northwestern Journal of Technology and Intellectual Property,*Vol.3, No.1,2004,p.7.

[4]Ashwin Madhavan, "Domain Names and Cybersquatting", *Indian Law Journal,* http://www.indialaw journal.org/archives/volume1/issue_2/article_by_ashwin.html, (Visited on 26.6.2017)

[5] Johhn D.Mercer, "Cybersquatting Blackmail on the Information Superhighway", *Boston University Journal of Science and Technology Law,2000,*p.11

[6] AIR 2002 Del 243

[7]Hussain Mahammad, "Trade Mark & Domain Names Conflict & Conciliation", Vol.VIII (201) *Kashmir University Law Review.*

[8] *Oppedahl & Larson v. Advanced Concepts*, Civ. No. 97-Z-1592 (D.C. Colo., July 23, 1997); See also *Insitufarm Technologies, Inc v. National Ennirotech Group*, (No. C-97-2064 EDL), https://cyber.harvard. edu/property99/domain/,http://shodhganga.inflibnet.ac.in/bitstream/10603/7829/13/13_chapter%204.pdf, (Visited on 14/7/2017).

ISSN 2394 - 7780

TYPES OF CYBER SQUATTING

a. Misspelling the intended site is known as typo squatting, when the visitor accidentally or inadvertently misspells the url or site name, leads the visitor to the spoofed website that does not belong to the company. Example: A victim may type www.del.com instead of www. dell. com .

b. Phrasing domain name differently, when the mala-fide registrant registers a domain name that looks similar but phrased a bit differently, duping the visitor, to believe the domain is official which they intended to visit. Example: www.amaron.com may be wrongly phrased as www.amaronbattery.com.

c. Using a different domain extension, here when the mala-fide registrant uses a different extension for the name of a well known website. Example: www.jbl.net for www.jbl.com.

d. Omission of the dot, a very common trap in the world of cyber squatting where a small typographical error by the visitor lands them to a different website than what was warranted for. A website by the url www.deepanjan.com is what the visitor wants to visit and a cyber squatter registers a domain by the name wwwdeepanjan.com and the visitor doesn't put the dot after www, he lands to a different place altogether[1].

METHOD TO RECOGNIZE CYBER SQUATTING

With the growth of the Internet, domain names have increasingly come into conflict with trademarks. The possibility of such conflict arises from the lack of connection between the system of registering trademarks, on one hand, and the system of registering domain names, on the other hand. The system of registering trademarks is administered by a public authority on a territorial basis and gives rights to the trademark holder that may be exercised within the territory. The system of registering domain names is governed by a nongovernmental organization without any functional limitation. Domain names are registered on a first-come first-serve basis and offer a unique, global presence on the Internet. This difference in the system of registering trademarks and domain names has led to the emergence of cyber squatting which is the practice of registering domain names in bad faith.[2]

On approaching the domain name if the following results appear then a person has reason to believe that the domain name he/she wants is being used by a cyber squatter:

a. a "can't find server" message; or

b. An "under construction" page; or

c. A page that appears to have no relationship to the meaning of the domain name.

INDIA'S DOMAIN NAME POLICY

Violation of intellectual property rights are not restricted to the traditional systems alone. The use of domain names on the existing framework of intellectual property. With the development of the Internet into arguably the most pervasive medium of mass communication, there is growing need felt by corporations and other entities to obtain the most suitable domain name for their Website is gaining importance.

In India, there is no legislation which explicitly refers to dispute resolution in connection to cyber squatting or other domain name disputes. There is no provision in the current Information Technology Act 2000 to punish cyber-squatters. Therefore, in India the issues of cyber squatting are mainly governed by principles of passing off. However, it has also adopted a policy, called INDRP in line with the UDRP. The INDRP is a policy which is applicable for .in domainames.in' is the country code Top Level Domain (ccTLD) for India and is administered by IN Registry which is an autonomous body under the National Internet Exchange of India (NIXI).

India has liberalized its domain name policy as in its previous policy only the commercial entity which was registered in India could apply for it. With the expansion of the commercial world there came repeated demands to allow the foreign corporate to have a domain name in the country as it was not feasible for the foreign corporate to incorporate a local entity only for the purpose of holding a domain name registration in India.

The highlights of the liberalized policy are as follows:

a. New categories of the sub-domains like gen.in.,firm.in and ind.in have been added.

b. For a foreign entity to register a domain name in India the sub-do-mains would be co.in,gen.in and firm.in.

[1] http://journal.lawmantra.co.in/wp-content/uploads/2016/06/2.pdf, (Visited on 22.5.2017)

[2] http://shodhganga.inflibnet.ac.in/bitstream/10603/7829/13/13_chapter%204.pdf,(Visited on 14/2/2019)

ISSN 2394 - 7780

c. The co.in requirement to have a mandatory local presence in India has been done away with to some extent.

d. The gen.in category has been added to facilitate foreign corporate who were unable to meet the local presence requirement.

e. The previous condition that the name server should have physical presence in India and that the domain name applicant should have permanent Internet connectivity through an ISP has also been removed.

The disputes involving the registration of ".in" domain name are resolved in accordance with the .IN Dispute Resolution Policy (INDRP) and the INDRP Rules of Procedure. As per INDRP, if a person considers that a registered domain name conflicts with his legitimate rights or interests, he may file a complaint with the .IN Registry on the following premises:[1]

1. Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights,

2. Registrant has no rights or legitimate interests in respect of the domain name,

3. Registrant's domain name has been registered or is being used in bad faith.

To bring a proceeding under the INDRP, Complainant needs to file the complaint with the .IN Registry along with the relevant fees. .IN Registry then appoints an Arbitrator out of the list of Arbitrators maintained by it. The complaint and documents are forwarded to the Respondent and the Arbitrator by the .IN Registry. Arbitrator then conducts Arbitration proceedings in accordance with the Arbitration and Conciliation Act 1996.Rules thereunder, and the Dispute Resolution Policy & Rules. Arbitrator is required to pass an award within 60 days of the complaint and forward a copy of the same immediately to the complainant, respondent, and the .IN Registry.[2]In India, in order to settle dispute relating to domain names in the generic Top Level domain like .com, .org, .net etc. you have the option to resort to UDRP. In case of dispute relating to registration of ".in" domain name, a person may approach INDRP. Indian companies may also resolve their grievances relating to domain names by filing a suit in a civil court of competent jurisdiction. The civil court may pass an order under the Common law of passing off, and grant a permanent injunction against the wrongful user of the domain name. Such judgments are mostly in favor of the trademark owners discouraging cyber-squatters from holding domain names for their benefit.[3]

An examples of famous cyber squatting cases as follows:

In the"THE TRIDENT" and "TRIDENT HOTELS", while Arun Jose had registered the domain name "tridenthotels.com'. The Court held that the domain was held by the respondent in bad faith and hence he was responsible for cyber squatting.

In *Newstoday Printers and Publishers (P) Ltd. v. IntelU, Inc*[4], Newstoday Printers registered the domain of 'newstoday.co.in' in the 'co.in' domain, consisting of their registered trademark of "News Today", while the respondent registered the domain name of 'newstoday.com' in the '.com' domain. The court held that even though the domain name was identical or confusingly similar to a trademark in which the complainant had rights, the complainant failed to establish that the respondent had no rights or legitimate interest in respect of the domain name or that the domain name was registered in bad faith. The complaint was accordingly dismissed.

In the case of *Tata Sons Ltd v. Ranadasoft*[5], though Tata Sons had registered the domain name "tata.com", the respondent registered the following variations of domain names incorporating the trademark "TATA"-

[1]https://singhania.in/domain-name-cyber-squatting/?utm_source=Mondaq&utm_medium=syndication &utm_campaign=View-Original

[2] http://www.mondaq.com/india/x/724872/Trademark/Domain+Name+Squatting+In+India,(Visited on 12.10.2018)

[3] http://www.mondaq.com/india/x/724872/Trademark/Domain+Name+Squatting+In+India,(Visited on 1.10.2018)

[4]WIPO case No.D2001-0085,http://www.wipo.int/amc/en/domains/decisions/html/2001/d2001-0085.html, (Visited on 27.5.2017)

[5]WIPO case No.D2000-1713, http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1713.html, (Visited on 27.5.2017)

ISSN 2394 - 7780

"tatapowerco.com", "tatahydro.com" "tatawestside.com", "tatahoneywell.com", "tatayodogawa.com", "tatateleservices.com", "tatassl.com", "tatatimken.com" "jrdtata.com" and "ratantata.com". The Court held that the domain names were held by the respondent in bad faith and hence he was responsible for cyber squatting.

In the case of *Manish Vij v. Indra Chugh* [1], Cyber squatting has been defined as "an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium" .As e – commerce over the Internet is conducted in the absence of physical contact, without physical interaction or to inspect goods, as a consequence identity is achieved through the use of trademarks and domain names. But there is an abusive practice by companies having e-commerce operations in registering a domain name that includes the name or trade mark of another, generally, of a well –known .This is usually done in hope of selling the names for making profit in the market.[2]Domain name registries often assign names without any necessity of prior clearance. As a result, a person can obtain a domain name of a famous trademark or brand name even if he has no connection with that name[3].

In cases of *American Standard, Inc. v. Toeppen,[4] Intermmatic , Inc v.Toeppen[5] and Panavision International v.Toeppenn[6].*The Court held that registration in order to prevent rightful trademark owners from doing business on the Internet unless they paid a cyber squatters fee constituted commercial use of the mark. These decisions also suggested that cyber squatting was covered under the dilution states also, since it lessened the capacity of a trademark owner to identify and distinguish its goods or services by means of the Internet.

In *Panavision International LP v. Toeppen,[7]* in this case, the plaintiff Panavision owned registered trademarks for 'Panavision' and 'Panaflex'. The defendant, Dennis Toeppen registered the domain name. Posted on Toeppen's site were photographs of the city of Pana, Illinois. When plaintiff demanded Toeppen cease and desist his use of the domain name, then the defendant offered to 'settle the matter' for $ 13000 in exchange for the domain name registration. When plaintiff rejected the offer, Toeppen plaintiff registered other trademark 'Panaflex' as a domain name and posted the word 'hello' on the website. In a suit for trademark infringement, trademark dilution and unfair competition, the District Court found the defendant liable for dilution and enjoined him from using plaintiff's marks or marks similar to them in connection with any commercial activity.

In *Essel Packaging Limited* v. *Sridhar Narra Ltd. & Another,*[8] the Court observed that, "merely because a party gets a registration of a domain name does not mean that it also acquires proprietary rights over the same. Registration of domain names does not involve any process of enquiry. Its registration in bad faith itself is a ground for injunction."

In *Card Service International Inc. v. McGee*[9]American Court held that the domain name serves to the same function as a trademark and is not merely to be constructed as an address as it identifies an internet site to these who reach it, much like a person name identifies a particular person.

In *Mark & Spencer v. One-in-a-million,[10]*The defendants had registered as domain names, a number of well-known trade names, associated with large corporations with which they had no connection. Then they offered them to the companies associated with each name for an amount. The Court held that when a person

[1] AIR 2002, Del 243

[2] Sushil Madan, "Students guide to Information Technology", 1st edn, (Allied Services Taxman Allied Services, Pvt .Ltd,2005),p.280

[3] Gringrass Clive, "The Laws of the Internet", (London :Butterworths , 1997), p.143

[4] 9966 CV02147,1996 US Dist. LEXIS 144451 (CD III filed May 31,1996)

[5] 947 F.Supp.1227 (NDIII 1996)

[6] 945F.Supp.1296: 1996 US Dist. LEXIS 19698 (CD Cal.1996), aff'd 1998 US App.LEXIS 7557, 98 Daily journal DAR 3929 (9th Cir.April 17,9998)

[7] 141 F 3d 1316, 46 USPQ 2d 1511 (CA 9 1998), courses.cs.vt.edu/cs 4984/ computerlaw/ Panavision .doc. (Visited on 14/7/2017)

[8] 2002 (25) PTC 233 (Del.)

[9] 950 F. supp. 737

[10]1999 FSR 1

ISSN 2394 - 7780

deliberately registers a domain name an account of its similarity to the name brand name or trademark of an unconnected commercial organization he must expect to find himself at the receiving end of injunction to restrain the threat of passing off.

When the disputes between the trademark owners and the domain name owners came before the courts, it emerged that whether normal trademark remedies were applicable or not was a debatable question, since this was not, strictly speaking, an offer of competitive goods or services. But later developments showed that the courts were sympathetic to the cause of the trademark owners, and they did have legal rights in such disputes, for the judiciary consistently ruled against cyber squatters.[1]

INDIAN LEGISLATION ON CYBER SQUATTING

In ***Satyam Infoway Ltd* v. *Sifynet Solutions (P) Ltd***[2]case,Suprem court stated tha-*"As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off."*

The Information Technology Act 2000 of India addresses numerous cybercrimes and has set up a special cyber crimes cell however the Act oddly ignores the problem of domain name disputes and cyber squatting. The only saving grace for victims of such offences is that domain names may be considered trademarks based on use and brand reputation and so fall under the Trade Marks Act 1999. However not all domain names are trademarks. Numerous cases including that of Yahoo, Rediff and Satyam have laid down the following guidelines-

1. The defendant should have sold/ offered its goods/ services in a manner that deceives the public into thinking that the goods/ services of the defendant are in fact the plaintiff's.
2. Misrepresentation by the defendant to the public should be established.
3. Loss/ likelihood of it should be established.

In the above mentioned **Satyam case** the appellant registered several domain names like *www.sifynet, www.sifymall.com* etc. in June 1999 through ICANN and WIPO, based on the word "Sify", coined using elements of its corporate name, Satyam Infoway, which earned a wide reputation. The respondent registered *www.siffynet.net* and *www.siffynet.com* with ICANN is 2001 and 2002 respectively as it carried on business of internet marketing. On the respondent's demand to the appellant towards transfer of the domain name failing, the City Civil Court granted a temporary injunction against the respondent on the ground that the appellant was the prior user of the trade name "Sify" which had built up solid goodwill overtime in relation to the internet and computer services.

On appeal the High Court held that the balance of convenience between both the parties should be considered and the respondent had invested huge sums of money in the business. It held that customers would not be misled or confused between the two parties as the two businesses were different altogether. On further appeal,The Supreme Court found that both the lower courts agreed on the principles of passing off actions in connection with trademarks being applicable to domain names. The Supreme Court held that in order to claim passing off and restrain the defendant from passing off its goods/ services to the public as that of the plaintiff's, the test of deceiving the public with respect to the identity of the manufacturer/ service provider, misrepresentation and loss or likely hood of it should be applied and established. The appellant's claim to being one of the largest internet service providers in India was not challenged and the words "Sify" and "Siffy" are both visually as well as phonetically similar to quite an extent, with or without the addition of "net" to "siffy". The Supreme Court did not accept the respondent's explanation of the word "Siffynet" being derived from a combination of the first letter of the five promoters of the Respondent. The Court held that there was an overlap of identical or similar services by both parties and confusion was likely, unlike claimed by the defendant. As for the balance of convenience issue, the Court was convinced of the appellant's evidence of being the prior user and having a reputation with the public with regard to "Sify". The respondent would not suffer much loss and could carry on its business under a different name. The Supreme Court ignored the High Court's finding that no prejudice would be caused to the appellant as it had another domain name, since this would be important only if

[1] Beginner's Guide to Domain names, "https://www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf, (Visited on 10/1/2018)

[2] [AIR 2004 SC 3540]

ISSN 2394 - 7780

the case was one where the right to use was co-equal to both parties. In this case, the respondent's adoption of the appellant's trade name was dishonest and so the High Court's decision was set aside while that of the City Civil Court was affirmed.

Judicial case laws have acknowledged the domain name problem and have tried to address it with injunctions, domain name transfers and damages under the laws of passing off; however legislature regarding the same has gaping holes which need to be filled in with specific amendments.

The Trademarks Act 1999, provides criminal remedies for non bailable cognizable offences, being imprisonment up to 3 years and fine up to Rs. Two Lakhs, however the use of this provision for trademarks involved in domain name disputes is nonexistent. In fact this provision is barely even used in other trademark cases due to the requirement under the Act for an approval of the criminal complaint by the Trademarks Registrar. Such an administrative hurdle takes months to overcome leading to defeat of the entire exercise.

JUDICIAL APPROACH TOWARDS CYBER SQUATTING

In India, currently, there is no legislation or provision relating to disputes with regard to domain names or cybersquatting therefore, the Trademarks Act 1999, plays an influential role in decisions of the court. Unlike other countries that have recognized this menace, India has only relied upon the precedents of the courts.However, in the case of *Satayam Infoway v. Siffynet Solutions*[1], the Hon'ble Supreme Court indicated to the need for domain name protection as follows:

"The original role of a domain name was no doubt to provide an address for computers on the Internet. But the Internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the Internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for Internet communication but also identifies the specific Internet site. In the commercial field, each domain name owner provides information/services that are associated with such domain name. A domain name is easy to remember and use, and is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the Internet to find websites they are looking for, but also at the same time, serves to identify and distinguish the business itself, or its good or services, and to specify its corresponding online Internet location.

Moreover, in case of *Rediff Communication v Cyberbooth* [2],the court decided that the value and importance of a domain name is equitable to being like the company's asset and therefore, domain names must be treated like corporate assets and must also be protected as such, similar to trademarks.

In case of *Yahoo Inc v. Akash Arora*[3], was another such case where the plaintiff sought permanent injunction to restrain the defendants from using the trademark or domain name yahooindia.com or such deceptively similar to the trademark "Yahoo" for any commercial purposes. The defendants argued that as Yahoo was not trademarked in India, there is no infringement, as it did not fall under the definition of goods under Indian Trade Marks Act, 1999. Yet, the plaintiff was granted the injunction, as services rendered on Internet are globally recognized as goods and Yahoo's trademark ought to be protected. As there are no special laws or statutes to prevent cyber squatting in India, the principle of passing off is primarily applied.

In the case of *Tata Sons Ltd V Manu Kosuri*[4], Tata's trademark was misappropriated. The defendant registered many domain names incorporating the trademark Tata. The court held as domain names are valuable corporate assets, they are entitled to trademark equivalent protection.

In the case of *Anil Ambani Case*[5], recently the Delhi High Court restrained a person named Ram Prakash from using a website domain www.anilambani.com saying it was a 'deliberate attempt to play mischief' with the Chairman of Reliance Industries. The defendant has posted false information in respect of certain business ventures and business strategies of the plaintiff. The court said "the website was a gross misrepresentation to the

[1] http://www.legalservicesindia.com/article/1745/Cybersquatting-and-Domain-Names.html

[2] AIR 2000 Bombay 27

[3] 1999 Arb. L. R. 620, https://www.bananaip.com/ip-news-center/yahoo-inc-akash-arora/

[4] 2001 PTC 432 (Del)

[5]"Court restrains 'Ambani' Netizen", *Hindustan Times*, January 22, 2008, p.9, http://shodhganga. inflibnet.ac.in/bitstream/10603/7829/13/13_chapter%204.pdf, (Visited on 15/7/2017)

ISSN 2394 - 7780

customers and to the public at large and this conduct was calculative to injure the goodwill and reputation of the plaintiffs. The use of the word 'anilambani' in the website by the defendant is a dishonest and unlawful act."

Mumbai's Sushmitas Sen who was crowned Miss Universe but her writ obviously does not run in cyber space. The former Miss Universe is set to take a Canada based man to court for having squatted on the domain name. The man like most cyber squatters who register websites in the names of celebrities is refusing to budge unless substantial money changes hands is given. The cyber squatter who has stolen the domain name, is sitting in Toronto", fumes Sen, "he should brace himself for a nightmare as I am taking him to the court".

A man from Florida brought rights to a domain name in Pope Benedict's 16th name sending the Vatican City into a flap. The issue was resolved when he donated the rights of the name to a charity. Cyber squatting is not really a big issue in India because the vanity of stars having official websites has not really taken off. Most Bollywood stars are unaware that their names have been hijacked or that sites in their names can be potentially misused for porn. Every big star like Salman Khan, Hrithik Roshan, Ajay Devgan, Kareena Kapoor, Kajol and Priyanka Chopra don't own their domain names.

CONCLUSION

India already has a dispute resolution policy that is in lines with rules and procedures of UDRP which is based in United States of America. But there is a need to draft a legislation in lines with that of American legislations (Federal Trademark Dilution Act, 1995 and Anti-Cybersquatting Consumer Protection Act, 1999) to stop the domain name disputes in India, so that these squatters could be punished and these crimes could be avoided in future. The new domain name dispute law should be intended to give trademark and service mark owners legal remedies against defendants who obtain domain names "in bad faith" that are identical or confusingly similar to a trademark. And the plaintiff may elect statutory damages and has discretion to award in damages for bad faith registration. It should act as an important weapon for trademark holders in protecting their intellectual property in the online world.

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SMALL CHANGE – HUGE IMPACT

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SMALL CHANGE – HUGE IMPACT *
Ethics and Equity are at the core of debate of climate change. Debate has to move from Climate Change to climate justice. -**Narendra Modi**

I. ABSTRACT
In this article the author is going explain the Climate change is one of the complex problems facing mankind today. The overriding complexity of the problem is attributed to its deeper global ramifications on a vast range of issues impacting the very survival of life on Earth. The impact of climate change were on Indian agriculture , water, sea level, eco system, Bio diversityand health.

II. INTRODUCTION
Climate change is one of the complex problems facing mankind today. The overriding complexity of the problem is attributed to its deeper global ramifications on a vast range of issues impacting the very survival of life on Earth. Understanding such a complex issue with vast and varied dimensions and implications, assumes greater significance for all stakeholders, especially for our policy makers. There are varieties of perceptions regarding the exact size and consequences of climate change. Yet, it is no secret that risks emanating from climate change are indeed profound, which call for urgent mitigation. There is now strong evidence that climate change is a reality. Today, it has been scientifically established that significant global warming is occurring. Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level. There is no denying the fact that the problem exists and it is assuming alarming proportions, each passing day. Therefore, there is an imperative need to take urgent and strong measures in the interest of calibrating an appropriate response to meet the emerging challenges of climate change. Climate change is not an isolated issue. It has several aspects and inter-linkages namely, science and technology, economy and trade, diplomacy and politics - that makes it not just another issue in this complicated world of proliferating issues, but the mother of all issues. Climate change, however, is different from other problems facing humanity and it compels us to think differently at many levels. It obliges us to think about what it means to live as part of an ecologically interdependent human community. In the face of many diversities that characterize human society, climate change provides a potent reminder of one thing that we share in common - the planet Earth. All nations and all people share the same atmosphere. And, we only have one. Addressing the climate chaos by all the countries both individually and collectively, will be critical to the human well-being and prosperity of the present as well as the future generations.

III. MEANING OF CLIMATE CHANGE
Climate change refers to the variation in the Earth's global climate or in regional climates over time. It describes changes in the state of the atmosphere over time scales ranging from decades to millions of years. Climate change has been defined by many in many ways. While some define it as an offshoot of Earth's natural processes, others define it as a result of human activities. Striking a balance between these two varying perspectives, climate change is defined as "a change which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods". Truly, the present changes in the Earth's climate cannot be explained alone by the natural processes that explain Earth's previous warm periods.[1] There is a broad scientific consensus that most of the warming in the recent decades can be attributed to human activities. If humanity is, in large part, responsible for this change, then whatever choices we make today, will have a significant bearing on the climate of the future. This makes climate change a formidable concern.[2]

IV. IMPACTS OF CLIMATE CHANGE
Though climate change poses a variety of challenges, the present paper would specifically focus on the issues viz . agriculture and food security, water stress and water insecurity, rising sea levels, biodiversity and human health, which have immense relevance from the perspective of developing countries in general and India in particular.

[1] Jeffrey D. Sachs, '*Common Wealth: Economics for a Crowded Planet'*, Allen Lane, 2008.

[2]Id.

ISSN 2394 - 7780

(i) Agriculture and Food Security

Climate Change is projected to have significant impacts on conditions affecting agriculture, including temperature, precipitation and glacial run off. It affects agriculture in more ways than one. It can affect crop yield as well as the types of crops that can be grown in certain areas, by impacting agricultural inputs such as water for irrigation, amounts of solar radiation that affect plant growth, as well as the prevalence of pests.

Rise in temperatures caused by increasing green house gases is likely to affect crops differently from region to region. For example, moderate warming (increase of 1 to 3 o C in mean temperature) is expected to benefit crop yields in temperate regions, while in lower latitudes especially seasonally dry tropics, even moderate temperature increases (1 to 2 o C) are likely to have negative impacts for major cereal crops. Warming of more than 3 o C is expected to have negative effect on production in all regions.[1] The Third Assessment Report of the IPCC, 2001 concluded that climate change would hit the poorest countries severely in terms of reducing the agricultural products. The Report claimed that crop yield would be reduced in most tropical and sub-tropical regions due to decreased water availability, and new or changed insect/pest incidence. In South Asia losses of many regional staples, such as rice, millet and maize could top 10 per cent by 2030.

As a result of climate change the amount of arable land in high-latitude region is likely to increase by reduction of the amount of frozen lands. At the same time arable land along the coast lines are bound to be reduced as a result of rising sea level. Erosion, submergence of shorelines, salinity of the water table due to the increased sea levels, could mainly affect agriculture through inundation of low lying lands.

The International Commission for Snow and Ice (ICSE) reported that Himalayan glaciers – that are the principal dry-season water sources of Asia's biggest rivers - Ganges, Indus, Brahmaputra, Yangtze, Mekong, Salween and Yellow – are shrinking quicker than anywhere else and that if current trends continue they could disappear altogether by 2035.[2] If the predictions are true then the magnitude of the impact can be gauged from the sheer numbers of people it will affect. Approximately 2.4 billion people live in the drainage basin of the Himalayan Rivers. The above predictions certainly pose a serious threat to agriculture which impacts human lives in many ways. One of the foremost impacts is food security.

Agriculture is important for food security in two ways: it provides the food and also the primary source of livelihood for 38.7 percent of the world's total workforce. In Asia and the Pacific, this share accounts for approximately 50 per cent and in sub-Saharan Africa, nearly two-thirds (63 per cent) of the working population still make their living from agriculture.[3] If agricultural production in the low-income developing countries of Asia and Africa is adversely affected by climate change, the livelihoods of large numbers of the rural poor will be put at risk and their vulnerability to food insecurity will be manifold.[4]

(ii) Impacts on Indian agriculture

Agriculture is the mainstay of Indian economy and provides food and livelihood security to a substantial section of the Indian population. The impact of climate change as witnessed in recent times has immense potential to adversely affect agriculture in this country in a variety of ways. As a large part of the arable land in India are rain-fed, the productivity of agriculture depends on the rainfall and its pattern. Agriculture will be adversely affected not only by an increase or decrease in the overall amounts of rainfall but also by shifts in the timing of the rainfall. Any change in rainfall patterns poses a serious threat to agriculture, and therefore to the economy and food security. Summer rainfall accounts for almost 70 per cent of the total annual rainfall over India and is crucial to Indian agriculture. However, studies predict decline in summer rainfall by the 2050s.29 Semi arid regions of western India are expected to receive higher than normal rainfall as temperatures soar, while central India will experience a decrease of between 10 and 20 per cent in winter rainfall by the 2050s. Relatively small climate changes can cause large water resources problems particularly in arid and semi arid regions such as northwest India.

Productivity of most crops may decrease due to increase in temperature and decrease in water availability, especially in Indo-Gangetic plains. This apart, there would be a decline in the productivity of rabi as compared

[1] IPCC Fourth Assessment Report, 2007, p.38

[2] Khoday, Kishan, 2007 *Climate Change and the Right to Development:* Himalayan Glacial Melting and the future of Development on the Tibetan Plateau UNDP-Human Development Report 2007/2008)

[3] Global Employment Trends: Brief (ILO, January 2007, p.12)

[4] Id.

ISSN 2394 - 7780

to kharif season crops. Rising temperature would increase fertilizer requirement for the same production targets and result in higher GHG emissions, ammonia volatilization and cost of crop production.[1] Increased frequencies of droughts, floods, storms and cyclones are likely to increase agricultural production variability. Therefore, we have to place equal emphasis on saving lives and sustaining livelihoods.[2]

(iii) Water Stress and Water Insecurity

Lack of access to water is a perturbing issue, particularly in developing countries. At present a whopping 1.1 billion people around the world lack access to water and 2.6 billion people are without sanitation. Climate change is expected to exacerbate current stresses on water resources. By 2020, between 75 and 250 million people are projected to be exposed to increased water stress due to climate change.[3]

Spreading water scarcity is contributing to food insecurity and heightened competitions for water both within and between countries. As the world population expands and the consumption of water spirals upwards, water problems are bound to intensify. By 2025, 40 per cent of the world's population, more than 3 billion in all, may be living in countries experiencing water stress or chronic water scarcity.

Increase in temperature due to climate change has been widespread over the globe. Warming has resulted in decline in mountain glaciers and snow cover in both hemispheres and this is projected to accelerate throughout the 21st century. This will in turn lead to reducing water availability, hydropower potential, and would change the seasonal flow of rivers in regions supplied by melt water from major mountain ranges (e.g. Hindu-Kush, Himalaya, Andes) where more than one-sixth of the world population currently lives.[4] By 2050s freshwater availability in Central, South, East and South-East Asia, particularly in large river basins, is projected to decrease.[5]

A warmer climate will accelerate the hydrologic cycle, altering rainfall, magnitude and timing of run-off. Available research suggests a significant future increase in heavy rainfall events in many regions, while in some regions the mean rainfall is projected to decrease. The frequency of severe floods in large river basins has increased during the 20th century and it is likely that up to 20 per cent of the world population will live in areas where river flood potential could increase by the 2080s.

Increasing floods poses challenges to society, physical infrastructure and water quality. Rising temperatures will further affect the physical, chemical and biological properties of fresh water lakes and rivers, with predominantly adverse impacts on many individual fresh water species, community composition and water quality. In coastal areas, sea level rise will exacerbate water resource constraints due to increased salinisation of groundwater supplies.

(iv) Impacts on water situation in India

India stands to face major challenges in many fronts in so far as the impact of climate change is concerned. Water security is one of the most important threats in this regard. Water resources will come under increasing pressure in the Indian subcontinent due to the changing climate.

The Himalayan glaciers are a source of fresh water for perennial rivers, in particular the Indus, Ganga, and Brahmaputra river systems. In recent decades, the Himalayan region seems to have undergone substantial changes as a result of extensive land use (e.g. deforestation, agricultural practices and urbanization), leading to frequent hydrological disasters, enhanced sedimentation and pollution of lakes. There is evidence that some Himalayan glaciers have retreated significantly since the 19th century.[6] Available records suggest that the Gangotri glacier is retreating about 28 m per year. Any further warming is likely to increase the melting of glaciers more rapidly than the accumulation. Glacial melt is expected to increase under changed climate conditions, which would lead to increased summer flows in some river systems for a few decades, followed by a

[1] *Effect of Global Warming on Crop Productivity* , Y.S. Shivay and Anshu Rahal, Kurukshetra , July 2008, p.19

[2] M.S. Swaminathan, For an Action Plan for Bihar, *The Hindu* , 5 September, 2008

[3] Climate Change 2007: Synthesis Report, IPCC, p.11, Geneva

[4] Climate Change 2007: Impacts, Adaptation and Vulnerability (Fourth Assessment Report of the IPCC, Geneva, 2007, p.11)

[5] Climate Change 2007, Synthesis Report, p.11

[6] The Day After Tomorrow: Impact of Climate Change on the World's Water , Dr. Pradipto Ghosh, Terragreen , 2008, p.9

ISSN 2394 - 7780

reduction in flow as the glaciers disappear.

As a result of increase in temperature significant changes in rainfall pattern have been observed during the 20th century in India. A serious environmental problem has also been witnessed in the Indo-Gangetic Plain Region (IGPR) in the past whereby different rivers (including Kosi, Ganga, Ghaghara, Son, Indus and its tributaries and Yamuna) changed their course a number of times. The recent devastating floods in Nepal and Bihar due to change of course of River Kosi is a case in point.

Available study suggests that food production has to be increased to the tune of 300 mt by 2020 in order to feed India's ever-growing population, which is likely to reach 1.30 billion by the year 2020. The total foodgrain production has to be increased by 50 per cent by 2020 to meet the requirement. It is feared that the fast increasing demand for food in the next two or three decades could be quite grim particularly in view of the serious problem of soil degradation and climate change.

The rise in population will increase the demand for water leading to faster withdrawal of water and this in turn would reduce the recharging time of the watertables. As a result, availability of water is bound to reach critical levels sooner or later.

During the past four decades, there has been a phenomenal increase in the growth of groundwater abstraction structures. Growing demand of water in agriculture, industrial and domestic sectors, has brought problems of overexploitation of the groundwater resource to the fore. The falling groundwater levels in various parts of the country have threatened the sustainability of the groundwater resources.

It is evident that the impact of global warming threats are many and alarming. Water security in terms of quantity and quality pose problems for both developed and developing countries. However, the consequences of future climatic change may be felt more severely in developing countries such as India, whose economy is largely dependent on agriculture and is already under stress due to current population increase and associated demands for energy, freshwater and food.

(v) Rise in Sea Levels

Nearly 70 % of Earth's surface comprises of water in the form of seas and oceans. Sea level rise under warming is inevitable. Sea level rise is both due to thermal expansion as well as melting of ice sheets. Thermal expansion would continue for many centuries even after GHG concentrations have stabilized causing an eventual sea level rise much larger than projected for the 21st century. If warming in excess of 1.9 to 4.6°C above pre-industrial level be sustained over many centuries then the final rise in sea level due to melting polar ice could be several meters, because it will be in addition to that of rise of sea level due to thermal expansion. The present scenario clearly indicates that the sea level will definitely rise.[1]

Satellite observations available since the early 1990s show that since 1993, sea level has been rising at a rate of around 3 mm per year, significantly higher than the average during the previous half-century.[2] IPCC predicts that sea levels could rise rapidly with accelerated ice sheet disintegration. Global temperature increases of 3–4°C could result in 330 million people being permanently or temporarily displaced through flooding. Warming seas will also fuel more intense tropical storms. With over 344 million people currently exposed to tropical cyclones, more intensive storms could have devastating consequences for a large group of countries. The 1 billion people currently living in urban slums on fragile hillsides or flood-prone river banks face acute vulnerabilities. People living in the Ganges Delta and lower Manhattan share the flood risks associated with rising sea levels.[3]

(vi) Impacts on Coastal States in India

The coastal states of Maharashtra, Goa and Gujarat face a grave risk from the sea level rise, which could flood land (including agricultural land) and cause damage to coastal infrastructure and other property. Goa will be the worst hit, losing a large percentage of its total land area, including many of its famous beaches and tourist infrastructure. Mumbai's northern suburbs like Versova beach and other populated areas along tidal mud flats and creeks are also vulnerable to land loss and increased flooding due to sea level rise. Flooding will displace a large number of people from the coasts putting a greater pressure on the civic amenities and rapid urbanisation.

[1] An Assessment of the Intergovernmental Panel on Climate Change: Climate Change 2007: Synthesis Report, p. 20

[2] IPCC Fourth Assessment Report, p. 111

[3] UNDP Human Development Report 2007-2008, p.78

ISSN 2394 - 7780

Sea water percolation due to inundations can diminish freshwater supplies making water scarcer. The states along the coasts like Orissa will experience worse cyclones.

Many species living along the coastline are also threatened. The coral reefs that India has in its biosphere reserves are also saline sensitive and thus the rising sea level threatens their existence too, not only the coral reefs but the phytoplankton, the fish stocks and the human lives that are dependent on it are also in grave danger.

(vii) Ecosystems and Bio-diversity

Climate Change has the potential to cause immense biodiversity loss, affecting both individual species and their ecosystems that support economic growth and human well being. It is difficult to predict the overall result of climate changes on animal and plant kingdom.

Devastating effects on the native habitats of many animals and plants due to global warming is likely to drive a considerable number of today's known animal and plant species to extinction. Mass extinctions of the Earth's flora and fauna have occurred before also but those were driven by natural factors. However, the projected extinctions of flora and fauna in the future will be human driven i.e. due to adverse impact of human activities. The growth of human populations around the world, along with attendant pollution and loss of habitat, has set the stage for mass extinctions and large scale alterations in the flora and fauna.

According to International World Wildlife Fund (WWF) and National Wildlife Federation in the United States species from the tropics to the poles are at risk. Many species may be unable to move to new areas quickly enough to survive changes that rising temperatures will bring to their historic habitats. WWF asserted that one-fifth of the world's most vulnerable natural areas may be facing a "catastrophic" loss of species.[1] Another survey in 2004 of 5,743 amphibian species indicated that one in every three species was in danger of extinction due to global warming.[2]

Studies predict that global warming will also lead to extinction of insects in the tropical zone by the end of the century while insects in the temperate zones and the poles could experience a dramatic increase in numbers. It will also have catastrophic impact on the marine ecosystems. They will be affected not only by an increase in sea temperature and changes in ocean circulation, but also by ocean acidification, as the concentration of dissolved carbon dioxide (carbonic acid) rises. This is expected to negatively affect shell forming organisms, corals and their dependent ecosystems.[3] Accelerated warming of the atmosphere will also alter the flora and fauna around the world.

(viii) Impacts on India's Biodiversity

India is a land of mega-biodiversity, encompassing features from glaciers to deserts. However, climate change is posing grave threat to its ecosystems. Mountain ecosystems are hot spots of biodiversity. However, temperature increases and human activities are causing fragmentation and degradation of mountain biodiversity. The Himalayan Ecosystem is considered as the lifeline not only to India but also to our neighbouring countries such as China, Pakistan, Nepal, owing to the perennial rivers that arise out of the melting glaciers. It is home to the largest amount of glaciers after the North and the South Poles. However, climate change is threatening this life giver drastically.

It is also predicted that there will be an increase in the phenomenon of Glacial Lake Outburst Floods (GLOFs) in the eastern and the central Himalayas, causing catastrophic flooding downstream, with serious damage to 'life, property, forests, farms, and infrastructure'.[4] The melting glaciers of the Himalayas have a serious impact given the fact that they give rise to the perennial rivers that further flourishes the agriculture. The Himalayan rivers are closely interlinked with the Indo-Gangetic Ecosystem, which is primarily an agricultural ecosystem, nearly 65-70% of Indians having agriculture as their primary occupation.[5] The current scenario of food insecurity is also attributed to the climate change as human sustenance is greatly dependent on the agriculture of the Indo-Gangetic Ecosystem.

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[1] Bruce E. Johansen, ' *Global Warming in the 21st century*: *Plants and Animals in Peril'* , p.536

[2] *lbid* p.579

[3] ICIMOD Technical Paper: The Melting Himalayas, p.6

[4] *lbid*

[5] India 2008

ISSN 2394 - 7780

The National Environment Policy, 2006 states that the Indian Desert Ecosystems (arid and semi-arid region) occupies 127.3 mha (38.8%) of the country's geographical area and spreads over 10 states. The Indian desert fauna is extremely rich in species diversity of mammals and winter migratory birds. Recent studies have shown that deserts have shown signs of expansion, thus leading to a process called desertification. The climate patterns have altered the natural attributes of a desert region; for example the floods in the desert district of Barmer in Rajasthan in 2006. The recent conflicts of Darfur is also said to be linked to the climate change process, the tribe needs to expand due to the unavailability of pastoral land for their cattle which is their main occupation. Coastal and Marine Ecosystem is one of the assets of India. The mangrove forests (wetlands) of the rivers and the coasts acts as carbon sink as well as a habitat for a unique and diverse species of plants and animals. The wetlands act as a natural barrier to flooding (that may be caused by the rising sea levels) and cyclones. The most explicit event in the perspective of climate change affecting the marine ecosystem is the example of coral bleaching.

In the Peninsular India, even the rivers of the Peninsula are dependent on the monsoons, thus the Peninsular Ecosystem is basically a monsoon dependent ecosystem. India is heavily dependent on the monsoon to meet its agricultural and water needs, and also for protecting and propagating its rich biodiversity. Climate change is linked with the changing patterns observed in the monsoons of India.

(ix) Climate Change and Health

Climate change poses a host of threats to the survival of mankind. The debilitating impact of climate change has broadened the sphere of discourse much beyond the traditional concern like environment or development. The far reaching consequences of climate change has forced policymakers and planners to look at every possible aspect of human survival. Arguably, it has catastrophic effects on human health. Each year, about 800,000 people die from causes attributable to air pollution, 1.8 million from diarrhoea resulting from lack of access to clean water supply, sanitation, and poor hygiene, 3.5 million from malnutrition and approximately 60,000 in natural disasters.[1] A warmer and more variable climate would result in higher levels of some air pollutants, increased transmission of diseases through unclean water and through contaminated food.

Climate change has a direct impact on human health. For example, the warmer the climate the likelihood of its impact on human health becomes worse. Available studies suggest that there will be an increase in health problems. It is anticipated that there will be an increase in the number of deaths due to greater frequency and severity of heat waves and other extreme weather events.

Climate change and the resulting higher global temperatures are causing increasing frequency of floods and droughts leading to the risk of disease infections. By 2090s climate change may bring a doubling in the frequency of extreme drought events. Many more million people are projected to be flooded every year due to sea-level rise by the 2080s.[2] Lack of freshwater during droughts and contamination of freshwater supplies during floods compromise hygiene, thus increasing rates of diarrhoeal disease. Endemic morbidity and mortality due to diarrhoeal disease primarily associated with floods and droughts are expected to rise in East, South and South-East Asia due to projected changes in hydrological cycle.[3] Flooding also creates opportunities for breeding of disease carrying insects such as mosquitoes. Areas affected by frequent floods and drought conditions also witness large scale migration of populations to relatively stable regions leading to overcrowding and unhygienic conditions resulting in transmission of diseases like Japanese encephalitis and malaria.

Climate change is a major factor in the spread of infectious diseases. Diseases, confined to one specific geographic region spread to other areas. The World Health Organization (WHO) in their studies have indicated that due to rising temperatures, malaria cases are now being reported for the first time from countries like Nepal and Bhutan. It has also been predicted that an additional 220-400 million people could be exposed to malaria- a disease that claims around 1 million lives annually. Dengue fever is already in evidence at higher levels of elevation in Latin America and parts of East Asia. Climate change could further expand the reach of the disease.[4] Studies suggest that climate change may swell the population at risk of malaria in Africa by 90 million

[1] World Health Organization: Protecting Health from Climate Change

[2]Climate Change 2007: Impacts, Adaptation and Vulnerability (Working Group II Contribution to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers and Technical Summary)

[3] Climate Change 2007: Synthesis Report (A report of the IPCC, Geneva, 2007)

[4] UNDP Human Development Report 2007-2008

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by 2030, and the global population at risk of dengue by 2 billion by 2080s.

Rising temperatures and changing patterns of rainfall are projected to decrease crop yields in many developing countries, stressing food supplies. This will ultimately translate into wider prevalence of malnutrition/ undernutrition. In some African countries, yields from rain-fed agriculture could be reduced by up to 50 per cent by 2020.[1]

Emission of the Green House Gases have been responsible for the depletion of ozone layer, which protects the Earth from the harmful direct rays of the sun. Depletion of stratospheric ozone results in higher exposure to the ultra violet rays of the sun, leading to an increase in the incidents of skin cancer. It could also lead to an increase in the number of people suffering from eye diseases such as cataract. It is also thought to cause suppression of the immune system.

The projections by WHO and IPCC[2] suggest that the negative effects of climate change on health are greater. In addition, the negative effects are concentrated on poor populations that already have compromised health prospects, thus widening the inequality gap between the most and the least privileged. The balance of positive and negative health impacts will vary from one location to another, and will alter over time as temperatures continue to rise.[3]

V. INDIA'S RESPONSE TO CLIMATE CHANGE CHALLENGES

The impact of Climate Change is so far-reaching that no country can now afford to sit on the sidelines. India, with 17 per cent of the world's population, contributes only 4 per cent of the total global greenhouse gas emissions against 30% approx. of the US and 25% of the EU countries. In terms of per capita GHG emissions, India is further lower at only 1.1 MT CO2 (about 23% of the global average) as compared with the per capita emission of 22 MT CO2 in US and 15 MT CO2 in EU. The divergence in the status becomes starkly obvious when seen against the backdrop of the fact that around 55 per cent of India's population still does not have access to commercial energy.

It has been India's stand not to agree to any commitments related to reducing greenhouse gas emissions. India stands for equity in global negotiations on climate change. India believes that since developed countries are more responsible for the problem, owing to their historical as well as current emissions, they must deliver on their commitments to stabilize and reduce their emissions of GHGs.

In order to meet the demands of rising standards of living and providing access to commercial energy to those lacking it, the total emission of green house gases is bound to increase in India and also in other developing countries. India is committed to a path of sustainable development. Though India's per capita emissions are lowest in the world, we have recently adopted a National Action Plan on Climate Change. As a responsible nation, we are mindful of our obligations. Our efforts, of course, would be greatly enhanced with global support, especially in terms of financial flows and technology access.[4]

India has been pressing at the UN Framework Convention on Climate Change and other international conferences for collaborative development of clean technologies and immediate transfer of existing technologies which are environment friendly. India has also been trying to impress upon developed countries to transfer environmentally sound and cleaner energy technologies into the limited public domain for use by developing countries for early adoption, diffusion and deployment accompanied with transfer of financial resources. India had also called for early operationalization of the Adaptation Fund and Special Climate Change Fund under the United Nations Framwork Convention on Climate Change for addressing Climate Change issues in the developing countries.

India is a partner to the new Asia Pacific Partnership on Clean Development and Climate which consists of key developed and developing countries— Australia, China, Japan, South Korea and the USA besides India. It

[1] Climate Change 2007: Impacts, Adaptation and Vulnerability(Working Group II Contribution to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change Summary for Policymakers and Technical Summary)

[2] Climate Change 2007: Synthesis Report, IPCC, Geneva, 2007

[3] *Ibid*

[4] Speech of the Prime Minister of India, Dr. Manmohan Singh at G-8 Summit on Climate Change, July 9, 2008, Hokkaido, Japan

ISSN 2394 - 7780

focuses on development, diffusion and transfer of clean and more efficient technologies and is consistent with the principles of the UNFCCC and complements the efforts under the UNFCCC and will not replace the Kyoto Protocol.

India's climate friendly measures

Despite the fact that India's contributions to greenhouse gas emissions are very small, the Government of India has taken many measures to improve the situation in this regard. The Ministry of Environment and Forests is the nodal agency for climate change issues in India. India has initiated several climate-friendly measures, particularly in the area of renewable energy. It has one of the most active renewable energy programmes besides having perhaps, the only dedicated Ministry for non-conventional energy sources in the world (Ministry of New and Renewable Energy).

India had adopted the National Environment Policy 2006 which provides for several measures and policy initiatives, to create awareness about climate change and help capacity building for taking adaptation measures. The National Forest Policy also envisages active measures for expanding carbon sinks through increase in forest and tree cover to 25 per cent by 2007 and 33 per cent by 2012. A major afforestation programme covering 6 mn hectares has been launched under the XIth Plan for this purpose.

On 30th June 2008 India unveiled its National Action Plan on Climate Change (NAPCC) with a view to lay down the priorities and future actions of the Government for addressing climate change and updating India's national programme relevant to addressing climate change. The National Action Plan identifies measures that promote our development objectives while also yielding co-benefits for addressing climate change effectively. Eight national missions (solar mission, energy efficiency, sustainable habitat, water, Himalayan ecosystem, green India, Eco-green agriculture and knowledge) have been specifically outlined to simultaneously advance India's development and climate change related objectives of adaptation and GHG mitigation. However, we have not set any quantitative goals towards emission reduction. Experts suggest to work out quantitative goals and specific institutional mechanisms and regulations in respect of all eight missions, besides evolving certain feasible and verifiable indicators for each mission for their impact assessment.[1]

Further, in pursuance to the announcement made by the Finance Minister while presenting the Union Budget 2007-08, the Government has set up an "Expert Committee on Impacts of Climate Change" on 7 May 2007 under the chairmanship of Dr. R. Chidambaram, Principal Scientific Advisor to the Government of India, to study the impacts of anthropogenic climate change on India and to identify the measures that India may have to take in the future in relation to addressing vulnerability to anthropogenic climate change impacts.

Moreover, a Council has also been set up under the Chairmanship of the Prime Minister of India on 6 June 2007 constituting eminent persons to evolve a coordinated response to issues relating to climate change at the National level and provide oversight for formulation of action plans in the area of assessment.[2]

Besides, the Indian Government has initiated "Green India" programme which envisages undertaking massive afforestation of degraded forests land in the country. Financial resources to be mobilized include funds available under "Compensatory Afforestation Fund Management and Planning Authority (CAMPA)", mobilising funds from the market, developing partner associations, and income from tree felling at ecologically appropriate intervals. The "Green India" programme will cover about six million hectare in the country in about 10 years

VI. ALTERNATIVES

(i) Greater Share of Renewable Energy in the Energy Mix

To effectively address the concerns of climate change and to follow the path of sustainable development, the global energy diet, which is fossil fuels centric, must be changed. Efforts must be made to harness the potential of alternative sources of energy, such as hydropower, solar and wind and progressively make transition to clean energy. The science tells us that the climate stabilization requires humanity to cut its use of carbon fuels by at least 70 per cent.[3] Nature has endowed us with renewable energy resources abundantly.

We can also explore the possibility of harnessing nuclear energy for meeting the long-term energy needs. France, with 70 per cent of its energy use coming from nuclear source, has cut down its emissions, besides

[1] P.P. Sangal, India's Climate Change Action Plan, *The Economic Times* , New Delhi, 29 July, 2008

[2] Id.

[3] IPCC: *Second Assessment Synthesis of Scientific*—Technical Information Report

building a sustainable energy security for itself. We need to optimally use renewable energy resources and rewire the globe with clean energy. In the context of India, the change in energy diet is imperative, as at present, nearly 80 per cent of our energy comes from burning of fossil fuels, which is the greatest source of GHGs. We need to harness the solar energy and the wind energy and increase their share in our total energy mix. In this context, there is also a body of opinion that supports India's efforts towards increasing share in nuclear energy from the perspective of achieving long-term energy security and sustainable development.

India has maintained a consistent position that it will not make any commitments to reduce its GHG emissions since it has one of the lowest per capita emissions, and it is the developed world that created the problem in the first place and the developing world needs the carbon space to grow.[1] Yet, we need to take some firm measures in this direction as a responsible country. A close scrutiny of various sectors of the Indian economy would reveal that upgradation of energy infrastructure, renewable energy infrastructure investments and policies that promote energy security present opportunities for GHG emission reduction.

Investment in renewable energy infrastructure is a priority area for action. Unless we make substantial investment in building and maintaining low carbon infrastructure in transportation, construction and other related sectors, we cannot meet the challenges of climate change in a long run. Our course of development should, therefore, be based on Clean Development Mechanism. Besides, R&D in alternative fuels and low carbon infrastructure must get due priority. Unless, we develop indigenous green technology, we cannot attain sustainable development.

(ii) The Gandhian Approach Towards Sustainable Development

Mahatma Gandhi, an ardent champion of sustainable development, advocated harmonious existence of mankind with nature and ecology based on equity and justice. He said long ago in 1924, "Earth provides enough to satisfy every man's need, but not any man's greed".[2] With this world view, Mahatma Gandhi was engaged in criticizing the colonial modernity which went beyond the carrying capacity of the planet earth and exploited people and resources across the planet. Therefore, our freedom struggle under his leadership was in a way the first ever struggle in history for sustainable development.

Gandhiji's ideal life was an enlightened unselfish ethical life of plain living and high thinking. He wrote in 1938:

"Man's happiness really lies in contentment. He who is discontented, however much he possesses, becomes a slave to his desires….. The incessant search for material comforts and their multiplication is an evil. I make bold to say that the Europeans will have to remodel their outlook, if they are not to perish under the weight of the comforts to which they are becoming slaves…".

Mahatma Gandhi was so peeved of the western culture and civilization that he wrote 'if India followed the western model of development she would require more than one planet to achieve the progress they had attained'.

The Nicolas Stern Committee Report on Global Warming and Global Economy also underlined the Gandhian philosophy when it observed that at the current rate of consumption of resources and energy of the planet, mankind would require more than one planet for survival. The Stern Committee Report, therefore, stressed on reduction of green house gas emissions by remodeling life style and by transiting from a carbon economy to a non-carbon economy.

We need to remodel our outlook and achieve the goal of sustainable development. By adopting a combination of factors which include the adoption of clean technologies, equitable distribution of resources and addressing the issues of equity and justice, we can make our developmental process more harmonious with nature.

VII. CONCLUSION

Climate change is the defining issue of our times. It is perhaps, the greatest challenge to sustainable development. It should be addressed by all countries with a shared perspective, free from narrow and myopic considerations. The developed countries need to look beyond their narrow self interests and work jointly with the developing countries to evolve cooperative and collaborative strategies on the issue of climate change, which is of immense relevance for the future of mankind. However, the efforts so far in the direction of

[1] G. Ananthapadmanabhan, What should be India's stand at Bali climate meet? The Economic Times , 20 November, 2007

[2] Collected Works of Mahatma Gandhi, vol. 29

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meeting the challenges of climate change have been sporadic and incoherent. We urgently need a new economic paradigm, which is global, inclusive, cooperative, environmentally sensitive and above all scientific. According to Jeffrey Sachs, a perceptive commentator, "The world's current ecological, demographic and economic trajectory is unsustainable, meaning that if we continue with "business as usual" we will hit social and ecological crises with calamitous results". Sustainable development based on addressing the needs of the poor and optimal harnessing of scarce resources of water, air, energy, land, and biodiversity will have to be sustained through more cooperative endeavours. Then alone, we could make some headway in saving our lone planet from the brink of climate disasters.

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EXAMPLES OF REFERENCES

All references must be arranged first alphabetically and then it may be further sorted chronologically also.

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Fox, S. (1984). Empowerment as a catalyst for change: an example for the food industry. *Supply Chain Management*, *2*(3), 29–33.

Bateson, C. D.,(2006), 'Doing Business after the Fall: The Virtue of Moral Hypocrisy', Journal of Business Ethics, 66: 321 – 335

- **Multiple author journal article:**

Khan, M. R., Islam, A. F. M. M., & Das, D. (1886). A Factor Analytic Study on the Validity of a Union Commitment Scale. *Journal of Applied Psychology*, *12*(1), 129-136.

Liu, W.B, Wongcha A, & Peng, K.C. (2012), "Adopting Super-Efficiency And Tobit Model On Analyzing the Efficiency of Teacher's Colleges In Thailand", International Journal on New Trends In Education and Their Implications, Vol.3.3, 108 – 114.

- **Text Book:**

Simchi-Levi, D., Kaminsky, P., & Simchi-Levi, E. (2007). *Designing and Managing the Supply Chain: Concepts, Strategies and Case Studies* (3rd ed.). New York: McGraw-Hill.

S. Neelamegham," Marketing in India, Cases and Reading, Vikas Publishing House Pvt. Ltd, III Edition, 2000.

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- **Unpublished dissertation/ paper:**

Uddin, K. (2000). A Study of Corporate Governance in a Developing Country: A Case of Bangladesh (Unpublished Dissertation). Lingnan University, Hong Kong.

- **Article in newspaper:**

Yunus, M. (2005, March 23). Micro Credit and Poverty Alleviation in Bangladesh. *The Bangladesh Observer*, p. 9.

- **Article in magazine:**

Holloway, M. (2005, August 6). When extinct isn't. *Scientific American, 293*, 22-23.

- **Website of any institution:**

Central Bank of India (2005). *Income Recognition Norms Definition of NPA.* Retrieved August 10, 2005, from http://www.centralbankofindia.co.in/ home/index1.htm, viewed on

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