ISSN No. : 0974-5521

Pragyaan :

Journal of Law

a bi-annual Journal

Institute of Management Studies
Dehradun

Volume 1 : Issue 1. Deceber 2011

Listed in Ulrich's International Periodicals Directory, USA

Pragyaan : Journal of Law

Volume I : Issue 1. December 2011

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From the Chief Editor

It is our pleasure to present our first issue of Pragyaan: Journal of Law. The experience has been marvelous and full of challenges. Our team faced all challenges with never-ending energy and attitude. It depicts boundless enthusiasm, emotions, imagination and of course talent of the young minds. We applaud this creative endeavor with fine contribution from academicians and practitioners for the success of the journal.

Pragyaan: Journal of Law is a peer refereed bi-annual Journal. Accordingly, it brings to the readers only select articles of high standard and relevance. In a country governed by the rule of law, it is important that awareness about the laws is created among those who are supposed to be concerned with these laws. Academicians can play a very important role in the development of the law, and there is need to encourage young minds to participate in development of law based on the needs of the changing society and technical advances. This Journal provides an excellent platform to all the academicians and practitioners to contribute to the development of sound laws for the country. The current issue addresses vital issues such as surrogacy, live-in-relationships, patenting of industrial designs, legal education, education ethics, and impulsive buying.

We would like to express our gratitude to the Management of the institute, Chief Advisor, Editorial Advisory Board, and the Panel of Referees for their constant guidance and support. Appreciation is due to our valued contributors for their scholarly contributions to the Journal. We would also like to thank our Editorial members and Faculty of Law whose valuable suggestions and continuous support has helped us to achieve a level of professional identity and competence. We are also thankful to those who facilitated quality printing of this Journal.

We wish to encourage more contributions from academicians as well as practitioners to ensure a continued success of the journal.

We hope that this issue of Pragyaan: Journal of Law will prove to be of interest to all the readers. We have tried to put together all the articles coherently. Suggestions from our valued readers for adding further value to our Journal are however, solicited.

Dr. Pawan K Aggarwal

Pragyaan : Journal of Law

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Research Papers/Articles

Importance of Legal Education and Its Future

Justice K.D.Shahi & Alok Kumar Yadav[1]

Introduction

Law plays very crucial role in social, economical and political development of the country and its citizens. Future of the country is preserved by law of the nation. Every responsible citizen is supposed to know law of the nation and in this chain legal education performs very vital role by developing sense of awareness among people and educating student who are future of the nation. The present scenario of the discipline of Law has become one of the choicest disciplines in the field of education. Those days have gone, when legal education used to be the last resort for career seekers. The entire gamut of challenges that we face today, has turned our lives into a very complex one. And to successfully cope up to the situation, current and up-to-date knowledge of law has become an absolute imperative.

Legal profession in India is integral part of Indian judicial system and for administration of justice. Indian Advocate Act spells out that Indian legal market would be open to Indian citizens alone. But now The Parliament of India is going to begin the new era of legal profession. It has passed a Limited Liability Partnership Act, which may enable various foreign law firms to make an entry in India & boost legal profession. The traditional field and area for Indian lawyers is going to change. Legal profession was deemed to be a noble profession since a long time. Now it would be a noble profession as well as noble business because it may be acquired, merged, amalgamated or taken over to global players. Moreover, foreign law firms are seeking to establish branch offices in India to do foreign and legal work in Indian Territory and interested to recruit Indian lawyers. The salaries and remuneration which they are expected to give are comparable to top class management jobs. The objective of this paper is to throw light on importance of legal education and its future in this globalisation of Indian Legal system.

Meaning and Definition of Legal Education

It is very difficult to define legal education. There may be different meanings, at different time and places in the light of existing circumstances of society. It is an admitted fact that legal education is a human science which furnished beyond techniques, skills and competences the basic philosophies, ideologies, critiques and instrumentalities all addressed to the creation and maintenance of a just society[2]. So legal education means the education, which is legal. In *Manubhai Vashi Vs. State of Maharashtra and Others*[3], Hon'ble Supreme court held that ---the legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of different situations. "Legal education is essentially a multi-disciplined, multi-purpose education which can develop the human resources and idealism needed to strengthen the legal system. A lawyer, a product of such education would be able to contribute to national development and social change in a much more constructive manner."--S.P.Sathe

According to Law Commission of India, "Legal Education is as a science which imparts to students the knowledge of certain principles and provisions of law to enable them to enter to legal profession. The legal education tries to point the ways and means to acquaint us with legal system and find out how it functions and affects our society.

History of legal Education

History of legal education in a democratic

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[1] *The first author has been former High Court Judge and currently he is Director of IMS School of Law, Dehradun. The second author is Lecturer in Law at IMS School of Law, Dehradun.*

[2] *Sushma Gupta, "History of Legal Education".*

[3] *AIR 1989 Bom 296.*

society cannot be over accentuated. In Vedic period 'Dharma' was also included dispensation of justice by King who acquired specific legal knowledge. In that time law was a part of ethics and religion, of morals and values, of philosophy and consciousness. The role of ethics and philosophy in explaining social problems and giving directions for social action is not adequately appreciated today. However, in making law, no society can afford to ignore Ethics and morals. One can say that law is an applied ethics. No civilised society can be structured without developing its moral fibre and consciousness either through law, religion, education or other instruments of social control. It is education which ultimately results in shaping or transforming the whole society in to human civilization. Spiritually, it is believed that the life on the earth is regulated by the laws of the Lord or the Divinity. It is 'rule of law', that draws the essential difference between human society and animal world. It is the legal education that plays a portentous role in promoting social justice. Education or awareness of laws, characterize the lawyers as 'Social Engineers'.

In India the modern legal education system came into existence in 1885. Numerous committees were framed to consider and propose reforms in legal education. Constitution of India basically laid down the duty of imparting legal education. Advocates' Act, 1961 brought uniformity in legal system. In the changed scenario, the additional roles ideated, are that of policy planner, business advisor, negotiator of any interested groups etc. In Globalisation Era, legal system in India includes catering to the needs of new brand consumers or clients namely foreign companies, collaborators etc. For strengthening our legal education system, we need to face the new challenges. Imparting of legal education has always been considered as one of the noblest profession. Legal education which is part of general education cannot be viewed in isolation.

Objective of Legal education

Education makes a person civil and smart. Every education has its importance. “Legal Education” is extremely important. In most countries with the common law tradition, legal education has established itself as an acknowledged discipline in universities. In England it was only in 1826 that the foundation of the first modern University Law School was laid in the form of the University College London[4]. In the common law tradition, law was taught under an apprenticeship and it picked up in the course of legal practice without any systematic instruction. In recent times, law has been reckoned to be an instrument of social change. The prime object of legal education is to produce professional and expert lawyers. There are many objectives of legal education such as, to produce skilled lawyers, who can solve the problems of the society and also who can face the new challenges. So the objective of legal education is to make such competent lawyers. There are many scholars who have suggested some aims of legal education. Lord Denning in his address to the society of Public Teachers of Law, expressed his view by emphasizing three purposes of legal education-

1. To show how legal rules have developed, the reasons underlying them and the nexus between legal and social history.
2. To extract the principles underlying the existing legal rulers, and
3. To point out the right road for future development[5].

Dr. Mohammad Farogh[6] in his observations on legal education in a modern civilized society wants to include the following aims and objectives:

1. To inculcate students with the operative legal rules, both substantive and procedural,
2. To provide the students with adequate experience to apply these rules,
3. To equip the students with sufficient knowledge of the historical an sociological background of the country's legal system,
4. To provide the students with some knowledge of

[4] *Report of the Omroad Committee on 'Legal Education'.*
[5] *Id.*
[6] *Dr.Mohammad Farogh, 'Legal Education: Contemporary Trends and Challenges”, AIR, 1998(6)*

the other legal system of the world so that the students do not find themselves at a complete loss when it comes to adopting a comparative approach,

5. Very significantly, the students should be encouraged to participate in discussions, seminars and challenge the very premise of legal concepts and their applications.

Importance of Legal Education

Law is a mirror for society and essential tool for change. The importance of legal education cannot be underestimated. Knowledge of law increases the importance of man and his status. It is supposed to be known law by everyone. According to Babylon's Dictionary, "Legal education is the education of individuals who intend to become legal professionals or those who simply intend to use their law degree to some end, either related to law (such as politics or academic) or business. It includes: First degrees in law, which may be studied at either undergraduate or graduate level depending on the country. Vocational courses which prospective lawyers are required to pass in some countries before they may enter practice, higher academic degrees". *Ignorance of law is not innocence but a sin which cannot be excused*. Thus, legal education is imperative not only to produce good lawyers but also to create cultured law enduring citizens, who are inculcated with concepts of human values and human rights. We must have a legal education which can fulfil the need of the society and country as well. We are no longer laissez-faire but a welfare State and in a welfare society law plays a very important role in every affair of human being. Law serves as an important instrument to achieve socio-economic development[7]. The recession in the present time affected the world and all sectors, but surprisingly the global legal field remained unaffected by it. Almost, all reputed companies of US, UK and Japan want to divert its legal work to the developing nations like India including the work of drafting of contracts and agreements. It may be helpful for them to reduce their expenses as the legal work is highly expensive in those countries. Indian lawyers are able to provide them legal assistance at a comparatively economical cost. In Legal process outsourcing (LPO), the latest trend in legal industry is attracting international law firms to set up collaborative units in India. 'Clifford Chance' a famous international law firm has initiated steps towards setting up a branch in India in collaboration with an Indian Law Firm. The L.P.O. sector shall cross 6 billion US $ by 2015 as calculated by (National Association of Software and Service Companies). The existing Indian law firms have started focusing on US, UK, South Asian, Japanese and Korean legal markets. The future is only for those LPO providers who will show their economical cost, better client satisfaction & better service than others. The salaries and remuneration have much increased in last two decades in almost all the sectors including legal. A fresh law graduate from a good institute can earn upto 5 lakh per year in an established LPO. After one or two years of experience they can earn beyond their expectation. To work in a LPO you must have good communication and writing skills besides a Degree of Law. The recent pronouncement by US President Barak Obama to reduce outsourcing work to the countries like India may affect BPO but LPO shall remain unaffected by such policy or pronouncement.

The news item on "Law & Behold", Times of India 6 Nov. 2005 may be referred verbatim. It pays to study law and how ... The highest salary offer of Rs. 10 lac was made this year at NLUSI (National Law School of India)it was followed by Rs.8.4lac at ALS, Delhi. Compare this with the highest offer of 14lac at the top three IIMS and you will see just how close the race is. Emerging areas like IPR, Cyber Law, Arbitration, Competition Law and Public Health Law are also throwing up new jobs for law graduates. Gone are the days when most of the law graduates took up litigation as a career, donned in black gown and starting out as an assistant to a senior lawyer, taking at least 10 years to start fighting cases on his own. Today, most students look for jobs with law firms or corporate houses because of high salary.

[7] *Maxwell Cohen, 'Condition of Legal Education in Canada", 28 Canadian Bar Review, (1950)*

The corporate law has opened considerable opportunities in private as well as public sector. But this field needs hard working along with expertise knowledge in Drafting, Negotiable Instruments, Contracts, Banking, Taxation, Insurance, Arbitration and Conciliation. Future as a taxation lawyer also seems to be quite good. In practice, companies usually rely on legal advice of Taxation Lawyers in spite of having a full time Chartered Accountant. In the words of Hon'ble Mr. Justice A.M.Ahmadi 'Law' is a special calling, demanding high quality of study and research and a commitment to the cause of justice. That is why Roscoe Pound described a member of a profession as one pursuing 'a learned art' as a calling. The study of law must, therefore, be of that quality and standard as would justify Roscoe Pound's description of a professional. But in recent years both lawyers and judges have become increasingly concerned about the quality of legal education imparted by our law colleges all over the country and have rightly lamented the fall in the standard of legal education. This discontent has become more articulate in recent times as it has had a direct impact on the prestige of the legal profession. The decline in the prestige and image of the legal profession should be a matter of concern to all those connected with the legal system. It is, therefore, high time that we identify the areas of default and initiate corrective action to repair the damage before it is too late.[8] One is reminded of the typical response of U.S. Chief Justice Warren E. Burger when his senior judge gently chided him to wait for a few years before saying what was wrong “No, I'm afraid that if I wait too long I'll get used to it” and followed it up by remarking “My mother taught us that the time to fix the cracks in the plaster is when you first move into a house. Later on you don't pay attention to them.” I think we have waited long enough to repair the cracks in the legal education system of this country and it is high time that we rise from our arm-chairs and start the repair work in right earnest.[9]

Conclusion

The legal education is very necessary for the welfare of society. It makes a lawyer skilful and competent. It solves the problems of society. It makes people aware towards their rights. Lawyer is just like a doctor, as the doctor treats his patient in the same way a lawyer looks after his client. The need of hour is to improve the legal education because there are many new problems which the lawyers have to know and to solve. Some more attention is to be given towards the improvement of legal education. The globalization of markets and business enterprise generates the growth of a worldwide law of business transactions. The global multiplication of exterior business relationships and the growth of arms-length regulatory styles fuel a growing demand for lawyers and their involvement in more and more social, economic, and political relationships. The multinational legal firms are adhering to Legal Process Outsourcing (LPO) from India because of cost advantages that has opened up better rewarding avenues for any law professionals. The growing international dimension undoubtedly poses challenges, including the need to maintain and improve standards and a greater awareness of the legal systems in other jurisdictions. The quality of Legal education has a direct impact on the prestige of the Legal Profession. We must, therefore, identify the areas of default and initiate corrective action to repair the damage. Unless pragmatic steps are undertaken without loss of time, Legal Education will suffer and consequently the country's justice delivery system will stand diluted. A concerted action on the part of bar, the Bench and the law teachers is called for to improve the deteriorating standard of Legal education. We have to equip ourselves better so that we will not only keep pace with the current developments but also meet the demands of the future.

[8] *Justice A.M. Ahmadi, “Repairing the Cracks in Legal Education”.*

[9] *(1993) 1 SCC (Jour)3.*

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The Legal status of surrogacy: A global scenario

Shoaib Mohammad [1]

ABSTRACT

This paper aims to determine the legal status of surrogacy in domestic laws of different countries. Also it examines the types of surrogacy techniques prevailing and the legal problems caused by its development around the world. Various highlighted cases are focused from different domestic courts. The doctrinal method of study is used which aims to find out the legal status of surrogacy in different countries including India.

Key Words: *Surrogacy, Traditional surrogacy, Intracervical insemination, Intrauterine insemination, Biological parents, Surrogate mother, Commissioning couple, Gestational surrogacy, Reproductive technology, Assisted Reproductive Technology.*

Meaning of Surrogacy

In traditional surrogacy (also known as the *Straight* method) the surrogate is pregnant with her own biological child, but this child was conceived with the intention of relinquishing the child to be raised by others such as the biological father and possibly his spouse or partner. The child may be conceived via sexual intercourse, home artificial insemination using fresh or frozen sperm or impregnated via IUI (intrauterine insemination), or ICI (intracervical insemination) which is performed at a fertility clinic. Sperm from the male partner of the 'commissioning couple' may be used, or alternatively, sperm from a sperm donor can be used. Donor sperm will, for example, be used if the 'commissioning couple' are both female or where the child is commissioned by a single woman.

In gestational surrogacy (the *Host* method) the surrogate becomes pregnant via embryo transfer with a child of which she is not the biological mother. She may have made an arrangement to relinquish it to the biological mother or father to raise, or to a parent who is unrelated to the child (e. g. because the child was conceived using egg donation, sperm donation or is the result of a donated embryo). The surrogate mother may be called the gestational carrier. Gestational surrogacy is of two types: Altruistic surrogacy and Commercial surrogacy.

Altruistic surrogacy is a situation where the surrogate receives no financial reward for her pregnancy or the relinquishment of the child (although usually all expenses related to the pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing, and other related expenses).[2]

Commercial surrogacy is a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by higher income infertile couples who can afford the cost involved or people who save and borrow in order to complete their dream of being parents. This procedure is legal in several countries including India where due to high international demand and ready availability of poor surrogates it is reaching industry proportions. Commercial surrogacy is sometimes referred to by the emotionally charged and potentially offensive terms "wombs for rent", "outsourced pregnancies" or "baby farms".

Rationale/Justification of surrogacy

Intended parents may arrange a surrogate pregnancy because of female infertility, or other medical issues which may make the pregnancy or the delivery risky. A female intending parent may also be fertile and healthy, but unwilling to undergo pregnancy. Many homosexual male couples turn to surrogacy as it is their only option of becoming parents,

[1] *HOD, IMS School of law, Dehradun, Uttrakhand, India.*

[2] *"Assisted Reproductive Technology (ART) Glossary". Reproductive Technology Council. http://www.rtc.org.au/glossary/index.html. Retrieved 2008-01-06.*

because in many countries it is not yet legal for gay couples to adopt children.

Alternatively, the intended parent may be a single male or a single woman who is unable to bring a pregnancy to full term.

Surrogates

Surrogates may be relatives, friends, or previous strangers. Many surrogate arrangements are made through agencies that help match up intended parents with women who want to be surrogates for a fee. The agencies often help manage the complex medical and legal aspects involved. Surrogacy arrangements can also be made independently. In compensated surrogacies the amount a surrogate receives varies widely from almost nothing above expenses to over $30,000. Careful screening is needed to assure their health as the gestational carrier incurs potential obstetrical risks.

It is estimated that in the United States, the payment for a surrogate mother ranges between US$25,000 and $50,000, the whole procedure can cost $75,000 to $90,000. Fees anywhere from $10,000 to $30,000 are considered fair by the surrogates themselves; with most voting in the $22,000-$35,000 range. The fees for the rest of the process- including fertility clinics; lawyers; medical fees; and agencies and/or egg donors (if they're used) generally cost more than the fee going to the surrogate. Gestational surrogacy costs more than traditional surrogacy, since more complicated medical procedures are required. Surrogates who carry a baby for a family member (i.e., sister or daughter) usually do so not only for expenses.

Global Historical Background of Surrogacy

Having another woman bear a child for a couple to raise, usually with the male half of the couple as the genetic father, is referred as antiquity. For example, chapter 16 of the Book of Genesis relates the story of Sarah's servant Hagar bearing a child via NI to Abraham for Sarah and Abraham to raise. Babylonian law and custom allowed this practice and infertile woman could use the practice to avoid the divorce which would likely be inevitable otherwise.[3]

Attorney Noel Keane is generally recognized as the creator of the legal idea of surrogate motherhood. However, it was not until he developed an association with physician Warren J. Ringold in the city of Dearborn, Michigan that the idea became feasible. Dr. Ringold agreed to perform all of the artificial inseminations, and the clinic grew rapidly in the early part of 1981. Though Keane and Ringold were widely criticized by some members of the press and politicians, they continued and eventually advocated for the passage of laws that protected the idea of surrogate motherhood. Bill Handel, who is a partner in a Los Angeles Surrogacy firm, also attempted to have such laws passed in California, but his attempts were struck down in the State Congress. Presently, the idea of surrogate motherhood has gained some societal acceptance and laws protecting the contractual arrangements exist in eight states.[4]

In the United States, the issue of surrogacy was widely publicised in the case of Baby M, in which the surrogate and biological mother of Melissa Stern ("Baby M"), born in 1986, refused to cede custody of Melissa to the couple with whom she had made the surrogacy agreement. The courts of New Jersey found that Mary Beth Whitehead was the child's legal mother and declared contracts for surrogate motherhood illegal and invalid. However, the court found it in the best interest of the infant to award custody of Melissa to her biological father William Stern and his wife Elizabeth Stern, rather than to the surrogate mother Mary Beth Whitehead.

Legal Position of Surrogacy in different Countries

There is a default legal assumption in most countries that the woman giving birth to a child is that child's legal mother. In some jurisdictions the possibility of surrogacy has been allowed and the intended parents may be recognized as the legal parents from birth. Many states now issue pre-birth orders through the courts placing the name(s) of the intended

[3] *Postgate, J.N. (1992). Early Mesopotamia Society and Economy at the Dawn of History. Routledge. p. 105. ISBN 0415110327.*
[4] *Map of laws by jurisdiction from The American Surrogacy Center (TASC)*

parent(s) on the birth certificate from the start. In others the possibility of surrogacy is either not recognized (all contracts specifying different legal parents are void), or is prohibited.

Australia

In all states in Australia, the surrogate mother is deemed by the law to be the legal mother of the child as well, and any surrogacy agreement giving custody to others is void. In addition, in all states and the Australian Capital Territory arranging commercial surrogacy is a criminal offence, although the Northern Territory has no legislation at all governing surrogacy and there are no plans to introduce laws on surrogacy into the NT Legislative Assembly anytime soon.[5]

In 2006, Australian senator Stephen Conroy and his wife Paula Benson announced that they had arranged for a child to be born through egg donation and gestational surrogacy. Unusually, Conroy was put on the birth certificate as the father of the child. Usually couples who make surrogacy arrangements in Australia must adopt the child rather than being recognised as birth parents, particularly if the surrogate mother is married.[6] After the announcement, Conroy's home state of Victoria announced that they were reconsidering the Victorian laws that make surrogacy within the state almost impossible.[7]

In 2009, Queensland Premier Anna Bligh told State Parliament that the Government would overhaul laws to make altruistic surrogacy legal based on recent recommendations. Commercial surrogacy would continue to be illegal.[8]

Canada

Commercial surrogacy arrangements were prohibited in 2004 by the Assisted Human Reproduction Act. Altruistic surrogacy remains legal.[9]

In the province of Quebec, any agreement whereby a woman undertakes to procreate or carry a child for another person is absolutely null. [10]

France

In France, since 1994 any surrogacy arrangement that is commercial or altruistic is illegal or unlawful and sanctioned by the law (Art. 16-7 du code civil).[11]

India

Commercial surrogacy has been legal in India since 2002.[12]

India is emerging as a leader in international surrogacy and a destination in surrogacy-related fertility tourism. Indian surrogates have been increasingly popular with fertile couples in industrialized nations because of the relatively low cost. Indian clinics are at the same time becoming more competitive, not just in the pricing, but in the hiring and retention of Indian females as surrogates. Clinics charge patients between $10,000 and $28,000 for the complete package, including fertilization, the surrogate's fee, and delivery of the baby at a hospital. Including the costs of flight tickets, medical procedures and hotels, it comes to roughly a third of the price compared with going through the procedure

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[5] *Nader, Carol (2007-12-03). "Senator wins paternity battle".*

[6] *Coorey, Phillip (2006-11-07). "And baby makes five - the senator, his wife and the surrogate mothers.*

Nader, Carol (2007-12-03). "Senator wins paternity battle". The Age. http://www.theage.com.au/articles/2007/12/02/1196530480979.html. Retrieved 2008-01-04.

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[8] *Odgers, Rosemary (2007-12-03). "Surrogacy to be decriminalised". Courier Mail. http://www.news.com.au/couriermail/story/0,20797,25373795-952,00.html. Retrieved 2008-04-23.*

[9] *Assisted Human Reproduction Act*

[10] *Civil Code of Québec, 1991, c.64, article 541*

[11] *French civil code*

[12] *The Associated Press (2007-12-30). "India's surrogate mother business raises questions of global ethics". Daily News. http://www.nydailynews.com/news/us_world/2007/12/30/2007-12-30_indias_surrogate_mother_business_raises_-2.html?page=0. Retrieved 2008-07-14.*

in the UK.[13] Clinics quote costs of a single successful cycle without complications from $14,000 to $25,000, and less than 50% of tries are successful. An unsuccessful cycle will be roughly 1/3 to 1/2 the cost of a successful cycle, incurring IVF, surrogate recruitment and travel costs, without incurring the full surrogate compensation or delivery costs. A successful cycle may require additional costs, especially if the baby is born premature (intensive care costs) or if additional medical testing is required for either the baby or surrogate mother during the pregnancy.

Surrogacy in India is relatively less expensive and the legal environment is favorable. In 2008, the Supreme Court of India in the Manji's case [14] (Japanese Baby) has held that commercial surrogacy is permitted in India. That has again increased the international confidence in going in for surrogacy in India.

The Law Commission of India[15] has submitted on "NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A SURROGACY." The following observations had been made by the Law Commission:

[1] Surrogacy arrangement will continue to be governed by contract amongst parties, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.

[2] A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.

[3] A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.

[4] One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.

[5] Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.

[6] The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.

[7] Right to privacy of donor as well as surrogate mother should be protected.

[8] Sex-selective surrogacy should be prohibited.

[9] Cases of abortions should be governed by the Medical Termination of Pregnancy Act 1971 only.

The Report has come largely in support of the Surrogacy in India, highlighting a proper way of operating surrogacy in Indian conditions. Exploitation of the women through surrogacy is another worrying factor which the law has to address. Also, commercialization of surrogacy is something that has been an issue in the mind of the Law Commission. However, this is a great step forward to the present situation. We can expect a legislation to come by the end of 2012.

[13] *"Regulators eye India's surrogacy sector" by Shilpa Kannan in India Business Report, BBC World. Retrieved on 23 March, 2009*
[14] *For full text on Decision of the Manji Case By G R Hari, Indian Surrogacy Law Centre, see Indiansurrogacylaw.com*
[15] *The 228th Report.*

There is an upcoming Assisted Reproductive Technology law, aiming to regulate the surrogacy business. However, it is expected to increase the confidence in clinics by sorting out dubious practitioners, and in this way stimulate the practice.[16] The Assisted Reproductive Technology (Regulation) Bill, 2010, is under consideration in India. According to the provisions of the bill, a woman acting as surrogate mother in India cannot be less than 21 or over 35 years. Also, she cannot give more than five live births, including her own children. With India fast emerging as a hotspot for rent-a-womb phenomenon, the Union health ministry has now finalised the Assisted Reproductive Technologies (ART) Regulation Bill 2010, which has been sent to the law ministry for its approval. The Bill has incorporated several landmark stipulations. For instance, no surrogate mother shall undergo embryo transfer more than three times for the same couple. If a surrogate mother is married, the consent of her spouse is mandatory. Only Indian citizens can be considered for surrogacy. No ART bank or clinic can send an Indian citizen for surrogacy abroad. Strict confidentiality has to be maintained about the donor's identity. A would-be surrogate mother will be duty bound not to engage in any act that could harm the foetus during pregnancy and the baby after birth.

Once the Bill gets the assent, it will become binding on a surrogate mother to relinquish all her filial rights over the baby. And, the birth certificate of the baby born through surrogacy will bear the name of the individual or individuals, who had commissioned the surrogacy, as parents. The commissioning parents could be a single man or woman, a married couple or an unmarried couple, who are in a live-in relationship.

The bill defined couple as two persons living together and having legal sex, lesbians and gays won't be allowed to use ART. However, Live-in couples can go for IVF only if the woman cannot biologically bear a child, or it is risky for her to bear one. No ART clinic shall consider conception by surrogacy for patients for whom it may normally be possible to carry a baby to term. A doctor will have to first certify that a conception would lead to undesirable medical implications. The commissioning parents will be legally bound to accept the custody of the child irrespective of any congenital abnormality. Refusal will be considered a cognizable offense under this Act.

The Bill makes another very important point: No woman can be treated with gametes or embryos derived from the gametes of more than one man or woman during any one treatment cycle. An ART clinic cannot mix semen from two individuals before use. "Now, if the sperm count is less in a semen sample, it is mixed with multiple samples for a good count. This is unethical and not permitted by the bill. At present, an individual is free to open an infertility or ART clinic since no permission is required for it. "There has been, consequently, a mushrooming of such clinics around the country. It has become important to regulate the functioning of such clinics to ensure that the services provided are ethical and that the medical, social and legal rights of all those concerned are protected. The Bill details procedures for accreditation and supervision of infertility clinics," the note added.

Hence, a foreigner or foreign couple not resident in India, or a non-resident Indian individual or couple, seeking surrogacy in India shall have to appoint a local guardian, who will be legally responsible for taking care of the surrogate during and after the pregnancy till the child/children are delivered to the commissioning couple.

Israel

In March 1996, the Israeli government legalized gestational surrogacy under the "Embryo Carrying Agreements Law." This law made Israel the first country in the world to implement a form of state-controlled surrogacy in which each and every contract must be approved directly by the state.[17] A state-appointed committee permits surrogacy arrangements to be filed only by Israeli citizens who share the same

[16] *"Regulators eye India's surrogacy sector" by Shilpa Kannan. India Business Report, BBC World. Retrieved on 23 Mach, 2009*

[17] *Teman, Elly. "The Last Outpost of the Nuclear Family: A Cultural Critique of Israeli Surrogacy Policy," forthcoming in: Birenbaum-Carmeli, Daphna and Yoram Carmeli (eds.), Kin, Gene, Community: Reproductive Technology among Jewish Israelis, Oxford: Berghahn Books*

religion. Surrogates must be single, widowed or divorced and only infertile heterosexual couples are allowed to hire surrogates. [18]

The numerous restrictions on surrogacy under Israeli law have prompted some intended parents to turn to surrogates outside of the country. Some turn to India because of its low costs. Others use US surrogates where an added bonus is an automatic US citizenship for the newborn.

Japan

In March 2008, the Science Council of Japan proposed a ban on surrogacy and said that doctors, agents and their clients should be punished for commercial surrogacy arrangements.[19]

Saudi Arabia

Religious authorities in Saudi Arabia do not allow the use of surrogate mothers. They have instead suggested medical procedures to restore female fertility and ability to deliver. To this end, Saudi authorities sanctioned the world's first uterus transplant in an infertile woman.[20]

United Kingdom

Commercial surrogacy arrangements are illegal in the United Kingdom.[21] Whilst it is illegal in the UK to pay more than expenses for a surrogacy, the relationship can be recognized under S 30 of the Human fertilization and Embryology Act 1990 under which a court may make parental orders similar to adoption orders. How this came about is one of those occasions when an ordinary person can change the law. Derek Forrest was a family solicitor in a Preston law firm who was approached by a couple facing proceedings by their local authority. The wife had no womb but did have ova which could be fertilized by her husband's sperm. This they did and a surrogate gave birth to their child. When they took the child home to their Cumbrian address the local authority insisted that they should go through the procedure for registering as foster parents for their child even though genetically it was their own child. It was quickly realized that there was no defense to these proceedings and the only possibility was to adopt their own child. Derek Forrest wrote to The Times setting out the predicament his clients found themselves in and elicited a lot of favorable response. Then the matter came to the cognizance of Parliament because the barrister acting for the parents knew a Member of Parliament who represented the parents. It just so happened that the Human Fertilization and Embryology Bill was going through Parliament at the time and the Barrister spoke to the MP to see what could be done. The MP then got things moving and got S.30 drafted and passed as an amendment through parliament. The result was that the couple was the first to obtain parental orders under the new Act.

United States

Many states have their own state laws written regarding the legality of surrogate parenting.

A) California

California is generally accepting of surrogacy agreements, particularly when the couple seeking surrogacy has contributed some of the genetic material. While the state has no statute directly addressing surrogacy, state courts have used the Uniform Parentage Act to interpret several cases concerning surrogacy agreements. In fact, one of the most influential cases regarding surrogacy rights (Johnson v. Calvert) was decided in California. In 1993's Johnson v. Calvert, the California Supreme Court held that the intended parents in a gestational-surrogacy agreement (an agreement in which the carrying mother had no genetic relationship to the baby) should be recognized as the natural and legal parents. Since the intended mother donated the egg but the surrogate mother gave birth, the court decided that the person who intended

[18] *Weisberg, D. Kelly. 2005. The Birth of Surrogacy in Israel. Florida: University of Florida Press*

[19] *http://www.japantoday.com/jp/news/430424 Kyodo News*

[20] *"Medical First: A Transplant Of a Uterus". New York Times. http://query.nytimes.com/gst/fullpage.html?sec=health&res=901EFDC1230F934A35750C0A9649C8B63.*

[21] *[1] from Childlessness Overcome Through Surrogacy (COTS)*

to procreate should be considered the natural mother. A 1998 case, Buzzanca v. Buzzanca, addressed the issue of traditional surrogacy agreements in which the surrogate mother has been artificially inseminated. In this case, a surrogate mother was impregnated using her egg and anonymous sperm. In other words, neither of the intended parents had a genetic link to the child. The court found that when a married couple uses non-genetically related embryo and sperm implanted into a surrogate intended to procreate a child, they are the lawful parents of the child. Another similar 1998 case, In Re Marriage of Moschetta, dealt with the same issue, except that the intended parents had separated. In that case, the court awarded legal parent rights to the intended father and surrogate mother. It is unclear what result would come from a same-sex couple attempting to use surrogacy in California to start a family. California seems to rely heavily on the "intent of the parties," but the Buzzanca case only speaks of married couples and Moschetta seems to emphasize the importance of a committed relationship, if not a marriage, between the intended parents.[22] A bill, AB25, signed in 2001 by Democratic Government.

B) New York

New York law holds surrogacy agreements void and unenforceable. Under New York law, surrogacy contracts are contrary to public policy. Case law also reflects that position. However, at least one court has recognized the rights of intended parents in an assisted reproduction situation absent a contract. In one 1994 divorce proceeding, a husband sought sole custody of the two children of the marriage on the basis that his wife was their gestational, but not genetic, mother. The wife had undergone an in vitro fertilization procedure in which she was impregnated with an anonymous donor egg fertilized with her husband's sperm. The Court followed the analysis of the California Supreme Court in a similar case, Johnson v. Calvert (see California entry for summary). Accordingly, the Court found the gestational mother to be the legal mother of the children, based on the intent of the parties regarding parentage. The Court did not mention or consider the statutory ban on surrogacy in this case. In one case in 1990, decided before the statutory ban on surrogacy agreements was passed, a married couple had entered into an extensive contract with a surrogate, including a $10,000 "surrogate fee." The Court found the surrogate's commitment to relinquish the child she carried could not be truly voluntary because of the financial inducement. While the Court went on to find that its conclusion might be altered by a sworn statement by the surrogate that the child's best interests lie with the contracting couple, this option is probably foreclosed by the subsequent passage of the law voiding surrogacy agreements.[23]

C) Washington

Washington allows uncompensated surrogacy arrangements but deems illegal and unenforceable any agreement involving any payment to the surrogate mother other than medical and legal expenses. State law specifies that compensated surrogacy arrangements are void and unenforceable as against public policy, and is punishable as a gross misdemeanor. A custody dispute between the surrogate mother and the intended parents is resolved according to a multi-pronged balancing test codified in Washington law, largely based upon the child's relationship with each parent. A parent-child relationship can be established by a valid surrogate parentage contract or an affidavit and physician's certificate wherein an egg donor or gestational surrogate sets forth her intent to be the legal parent of the child. A 1989 opinion from the attorney general confirmed this assessment of state law, and also indicated that a surrogate parenting agreement is not enforceable if the surrogate withdraws her consent to relinquish her child before court's approval of the consent.[24]

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[22] *California Family Code § 7540 (2001); Johnson v. Calvert, 5 Cal. 4th 84 (Cal. 1993); Buzzanca v. Buzzanca, 61 Cal. App. 4th 1410 (Cal. Ct. App. 4th 1998); In Re Marriage of Moschetta, 25 Cal. App. 4th 1218 (Cal. Ct. App. 4th 1994).*

[23] *NY CLS Dom Rel § 122 (2001); McDonald v. McDonald, 608 N.Y.S.2d 477 (N.Y. App. Div. 1994); In the Matter of the Adoption of Paul, 550 N.Y.S.2d 815 (Fam. Ct., Kings County 1990).*

[24] *RCW §§ 26.26.210-.260 (2002); RCW § 26.26.101 (2002). 1989 WL 428954 (Wash. A.G.).*

Ethical issues

Mother-child relationship

A study by the Family and Child Psychology Research Centre at City University, London, UK in 2002 concluded that surrogate mothers rarely had difficulty relinquishing rights to a surrogate child and that the intended mothers showed greater warmth to the child than mothers conceiving naturally.[25] Anthropological studies of surrogates have shown that surrogates engage in various distancing techniques throughout the surrogate pregnancy so as to ensure that they do not become emotionally attached to the baby[26] Many surrogates intentionally try to foster the development of emotional attachment between the intended mother and the surrogate child.[27] Instead of the popular expectation that surrogates feel traumatized after relinquishment, an overwhelming majority describe feeling empowered by their surrogacy experience.[28] In fact, quantitative and qualitative studies of surrogates over the past twenty years, mostly from a psychological or social work perspective, have confirmed that the majority of surrogates are satisfied with their surrogacy experience, do not experience "bonding" with the child they birth, and feel positively about surrogacy even a decade after the birth.[29] Assessing such studies from a social constructionist perspective reveals that the expectation that surrogates are somehow "different" from the majority of women and that they necessarily suffer as a consequence of relinquishing the child have little basis in reality and are instead based on cultural conventions and gendered assumptions.[30] Many surrogates form close and intimate relationships with the intended parents. When the greatness of their efforts is acknowledged, they recall their surrogacy experience in the years to come as the most meaningful experience of their lives.[31] Still, surrogacy continues to be a widely debated subject that has been widely criticized by feminists, who claim that surrogate motherhood is a form of commodifying and dismembering the female body and thus a patriarchal form of violence, not unlike prostitution.

Compensated surrogacy

Also variously called "Commercial surrogacy", "paid surrogacy", "wombs for rent", "outsourced pregnancies" or "baby farms", compensated surrogacy refer to a form of surrogate pregnancy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by well off infertile couples who can afford the cost involved. This procedure is legal in several countries including India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates is reaching industry proportions.[32] The procedure involves willing and medically fit surrogate mothers being impregnated in-vitro with the egg and sperm of couples unable to conceive on their own. Commercial surrogacy has been legal in India since

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[25] *Mac Callum, Fiona et al. 2003. Surrogacy: The experience of commissioning couples Human Reproduction, Vol. 18, No. 6, 1334-1342*

[26] *Teman, Elly (2003) "The Medicalization of 'Nature' in the Artificial Body: Surrogate Motherhood in Israel," Medical Anthropology Quarterly 17 (1):78-98.[2]; Teman, Elly (2010) Birthing a Mother: The Surrogate Body and the Pregnant Self. Berkeley: University of California Press*

[27] *Teman, Elly. 2003. "Knowing the Surrogate Body in Israel," in: Rachel Cook and Shelley Day Schlater (eds.), Surrogate Motherhood: International Perspectives, London: Hart Press, pp. 261-280[3]*

[28] *Ragone, Helena. Surrogate Motherhood: Conception in the Heart. 1994. Westview Books; Teman, Elly. 2010. Birthing a Mother: The Surrogate Body and the Pregnant Self. Berkeley: University of California Press*

[29] *Teman, Elly. 2008. "The Social Construction of Surrogacy Research: An Anthropological Critique of the Psychosocial Scholarship on Surrogate Motherhood," Social Science & Medicine. Volume 67, Issue 7, October , Pages 1104-1112. [4]*

[30] *Teman, Elly. 2008. "The Social Construction of Surrogacy Research: An Anthropological Critique of the Psychosocial Scholarship on Surrogate Motherhood," Social Science & Medicine. Volume 67, Issue 7, October , Pages 1104-1112. [4]*

[31] *Teman, Elly. 2010. Birthing a Mother: The Surrogate Body and the Pregnant Self. Berkeley: University of California Press*

[32] *"India's baby farm". The Sun-Herald. 2008-01-06. http://www.smh.com.au/news/world/indias-baby-farm/2008/01/05/1198950126650.html. Retrieved 2008-01-06., Indian women carrying babies for well-off buyers, 'Wombs for rent' pleases women and customers, but raises ethical questions; Monday, December 31, 2007; The Associated Press; CBC News; Canadian Broadcasting Corporation, "Business is booming for India commercial surrogacy program" by Associated Press, Dated: Monday, December 31, 2007; The Albuquerque Tribune, NM, USA, Paid surrogacy driven underground in Canada: CBC report; Wednesday, May 2, 2007; CBC News; Canadian Broadcasting Corporation*

2002 and in many other countries, including the United States. But India is emerging as a leader making it into what can be called a viable industry rather than a rare fertility treatment.

There is concern if this practice keeps growing the way it is, it could change from a medical necessity for infertile women to a convenience for the rich with specially the wealthy couples of the West choosing commercial surrogacy over a natural childbirth because of the pain and stress of natural childbirth causing the whole industry to be farmed out.

Bioethicists are concerned that Indian surrogates are being badly paid for their surrogacy and that they are working as surrogates in a country with a comparatively high maternal death rate.[33] However high maternal death rate is found in the poorest of the poor section of the population in India who may not get access to proper medical facilities in time or from amongst many who opt not to access them because of superstition and illiteracy. Surrogate mothers in India under commercial surrogacy programs on the other hand usually are carefully chosen, cared for with amongst the best highly advanced medical, nutritional and overall care available in the field anywhere in the world.[34] and medical tourism in India is already a flourishing industry. Teams of maids cook and doctors look after the surrogate mothers in the clinics which care for the women during pregnancy and delivery, and counsel them afterwards.[35]

Complicacy in Citizenship of Children Born

In a landmark judgment in a case which had no precedents in the country, the Gujarat State High Court in India conferred Indian citizenship on two twin babies fathered through compensated surrogacy by a German national in Anand district. Raising a lot of questions related to surrogacy, the bench observed, "We are primarily concerned with the rights of two newborn, innocent babies, much more than the rights of the biological parents, surrogate mother, or the donor of the ova. Emotional and legal relationship of the babies with the surrogate mother and the donor of the ova is also of vital importance." After considering the case laws related to surrogacy of countries like Ukraine, Japan and the USA, the court decided the case at hand by inclining to recognize the surrogate mother as the natural mother of the children. And since the woman is Indian, the children were granted Indian citizenship and passports under the legal provisions.[36] However as India does not allow full fledged dual citizenship[37], the children will have to convert to Overseas Citizenship of India[38] if they are also going to be taking foreign citizenship of their biological parent's country.

Conclusion

The study focused on the legal status of surrogacy in different domestic laws worldwide. The doctrinal study was adopted. The study shows that there is no uniformity in law as far as surrogacy law is concerned. Some of the states have declared the surrogacy illegal, some take it as legal. But the study makes quite clear that there is a wide difference between the laws on different issues of surrogacy. Sometimes they seem to be uniform and sometime they are completely deserted.

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[33] *"India's baby farm". The Sun-Herald. 2008-01-06. http://www.smh.com.au/news/world/indias-baby-farm/2008/01/05/1198950126650.html. Retrieved 2008-01-06.*

"Unicef - India - Statistics". Unicef. http://www.unicef.org/infobycountry/india_statistics.html#59. Retrieved 2009-10-31.

[34] *Regulators eye India's surrogacy sector; By Shilpa Kannan; 18 March 2009; India Business Report, BBC World*

[35] *Indian women carrying babies for well-off buyers, 'Wombs for rent' pleases women and customers, but raises ethical questions; Monday, December 31, 2007; The Associated Press; CBC News; Canadian Broadcasting Corporation*

[36] *HC confers Indian citizenship on twins fathered through surrogacy; Express News Service; Nov 12, 2009; Ahmedabad; Indian Express Newspaper*

[37] *OCI just a recognition of Indian roots: Vayalar; by Rema Nagarajan, TNN; 29 September 2006; The Times of India*

[38] *Overseas Citizenship of India (OCI); Ministry of Home Affairs, Government of India website, Diaspora Services: Overseas Citizenship of India Scheme; The Ministry of Overseas Indian Affairs (MOIA), Government of India website, What is the basic difference between an NRI/PIO/PIO Card Holder and an OCI? Overseas Indian Facilitation Centre, a not for profit public private initiative of Ministry of Overseas Indian Affairs (MOIA) and Confederation of Indian Industry (CII), was launched on 28th May 2007; Official Government of India portal*

The position of Indian law on surrogacy completely depends upon Assisted reproductive technology Bill, 2010 however in the absence of such law it is considered as legal with ambiguity on different issues.

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Assisted reproductive technology Bill, 2010.

Industrial Design and its Importance in Success of A Product with Special Reference to The Design Act, 2000

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In this present competitive age, innovation is being perceived as a new engine of economic and industrial growth. Design or visible product features such as its size, shape, configuration, material, texture, finish, colour, graphics, etc., play a very decisive role in the consumers' mind while selecting a product. Design adds value to a product in many ways by making it attractive and appealing to customers. Protection of design helps economic development, by encouraging creativity in the manufacturing sector, as well as traditional arts and crafts. It contributes to the expansion of commercial activity and the export of national products. This makes it very essential for enterprises to protect their valuable intangible assets. The existing legislation on industrial designs in India is contained in the Designs Act, 2000. The key objective of this paper is to discuss the importance of industrial design in the success of a product in market and also the provisions of the Designs Act, 2000, which help in protecting the industrial design in India.

Keywords: Industrial Design, Protection, intangible asset and Design Act, 2000.

Introduction

In the competitive landscape of today's marketplace, aesthetic sensibilities add value to a wide variety of products through non-functional external or visible product features such as its size, shape, configuration, material, texture, finish, colour, graphics, etc., and may play a decisive role in the consumers' mind while selecting a product. This is especially true for all types of products when all functional and cost aspects are comparable for a product category. Therefore, manufacturers of a wide range of products customise their products to appeal to specific market segments. In this manner, original creative designs help to create new niche markets for new or improved products by differentiating these from competing ones offered by competitors. To gain and sustain a leadership position in a market, it is often desirable, if not imperative, to create distinctive, original, attractive designs for manufactured products. And also to protect such designs by their timely registration as industrial designs so as to prevent, stop or discourage their unauthorised copying or imitation.[1]

In a globalizing economy, innovation is being perceived as a new engine of economic and industrial growth. Countries with innovative local industries invariably have laws to foster innovation by regulating the copying of inventions and identifying symbols and creative expressions, so does India having put Intellectual Property Rights legislation in place and being upgraded as and when required. All over the world, efforts are being directed to create and safeguard the intellectual property rights of individuals, companies and ethnic groups. Enterprises devote a significant amount of time and resources to enhance designs for customizing products to appeal to specific market segments, create a new niche market and strengthen their brands by creating customer delight and affectionate experience with product / service offerings.

Design adds value to a product in many ways by making it attractive and appealing to customers. Protection of design helps economic development, by encouraging creativity in the manufacturing sector, as well as traditional arts and crafts-they contribute to the expansion of commercial activity and the export of national products. This makes it very essential for the enterprises to protect their valuable intangible assets. Protecting these intangible assets and also to see that these do not harm others intellectual property forms a

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[1] *www.imtma.in/pdf/ch5.pdf*

crucial part of business strategy of any creative professional be it designer or manufacturer.[2] Thus, design plays a very important role for a product to gain popularity in the market.

Definition and Importance of an Industrial Design

Industrial designs refer to creative activity which result in the ornamental or formal appearance of a product, and design right refers to the right over a novel or original design that is accorded to the proprietor on valid registration of the design. Industrial designs are an element of intellectual property.

Generally, an industrial design refers to a product's overall form and function. An armchair is said to have a "good industrial design" when it is comfortable to sit in and we like the way it looks. For businesses, designing a product generally implies developing the product's functional and aesthetic features taking into consideration issues such as the product's marketability, and the costs of manufacturing, transport, storage, repair and disposal. From an intellectual property law perspective, however, an industrial design refers only to the ornamental or aesthetic aspects of a product. In other words, it refers only to the appearance of an armchair. Although the design of a product may have technical or functional features, industrial design, as a category of intellectual property law, refers only to the aesthetic nature of a finished product, and is distinct from any technical or functional aspects. Industrial design is relevant to a wide variety of products of industry, fashion and handicrafts from technical and medical instruments to watches, jewelry, and other luxury items; from household products, toys, furniture and electrical appliances to cars and architectural structures; from textile designs to sports equipment.[3]

As per the Designs Act, 2000, "design" means only the features of shape, configuration, pattern, ornament, composition of lines or colors, applied to any article whether in two dimensional or three dimensional or, in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which, in the finished article, appeal to and are judged solely by the eye; but does not include any trademark, as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act,1958 or property mark, as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act,1957.[4]

Thus, Design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye. Design does not include any mode or principle of construction or anything which is mere mechanical device. It also does not include any trade mark or any artistic work.[5] Examples of two-dimensional designs are textile, wallpaper and carpet designs, and of three-dimensional ones are the shape of a toy, package, car, electrical appliance, mobile phone, piece of furniture or the shape and ornamentation of kitchenware. In certain circumstances, the features constituting a design may be the color, texture or material of an article. In some countries, computer icons have recently been protected as industrial designs.[6]

Need for Protecting an Industrial Design

Industrial Design is recognized primarily for its attractiveness to the potential customers. Design ensures that the new products are more efficient, usable, convenient and safe to use and meet the constraints of the environment. The various rationales for design protection indicate that a major impetus in introducing intellectual property protection for design is the belief that design plays a very important role in promoting and maintaining competition within a market economy. The historical study of the

[2] *http://www.nid.edu/download/TouchingIntangibles4CreativeProfessionals.pdf*
[3] *'Looking Good: An Introduction To Industrial Designs For Small And Medium Sized Enterprises', Business Series Publication 2 of W.I.P.O*
[4] *Section 2(d), The Designs Act, 2000*
[5] *http://ipindia.nic.in/ipr/design/Design_RegistrationBooklet/RegistrationBooklet.pdf*
[6] *In India desktop icons, graphic display, etc. are subject matter of copyright and not a subject matter of design registeration.*

development of the design phenomenon underlines such rationales. One compelling reason which explains the interplay between product design, market forces, and the law is that "design" is closely tied to the twin phenomena of production and consumption. These are two factors which generally shape the economic and social structure of any country.[7] The gallop interviews of over 300 executives of leading U.S. companies indicate that in small companies $ 1 invested in Industrial Design activity fetches $160 in sale. The returns are even higher in bigger companies. The poll also concludes that the contribution of Industrial Designer is estimated to be 60% in success of the product and is even higher in smaller business.[8] So, seeing the above statistics, it is very clear that design is a very important factor for the success of the product, and thus it needs to be protected.

The objective of granting an exclusive right in an industrial design can be defined as providing the possibility of obtaining a return for investment made, and progress achieved, in the field of aesthetics in order to stimulate overall research and development of the aesthetic feature of technical or functional products.

Under United States Law, the rational for *sui generis* design patent protection is clear from first Supreme Court decision in this area. In *Gorham Mfg. Co. V. White*,[9] the court stipulated that the essential rationales for design law are that the design right may enhance the design's "salable value", "may enlarge the demand for it" and may "be a meritorious service to the public". The notion is that of an intellectual property subject matter that will play an important factor in the product market, increasing the competitiveness of the manufacturer or vendor of the product, and enhancing societal life.

In the context of industrial design law, it should be appreciated that the word `design' refers only to the eye appeal or external form of a manufactured product and not to any of its functional features. Attracting potential customers/buyers in a marketplace is always a challenge for manufacturers, including those that rely heavily on the functional features of a product to really `make a difference'. But for doing so, the product itself should come into the zone of consideration of the potential buyer/customer. The corporate image of its manufacturer, the brand image of the product itself, and/or its external appearance that may catch the eye of a potential customer/customer often trigger the initial interest. In other words, eye appeal of the design of a product is often the first level of customer appeal, which is induced by a product's outward appearance or looks. A product may be superior to another in its aesthetic features and/or its functional features, such as, its reliability in performance or the convenience in its use, based on ergonomics delivered through technology.

Design registration particularly makes business sense when it improves competitiveness of a business and brings in additional revenue in one or more of the following ways:[10]

- By registering a design you are able to prevent it from being copied and imitated by competitors, and thereby strengthen your competitive position.
- Registering a valuable design contributes to obtaining a fair return on investment made in creating and marketing the relevant product, and thereby improves your profits.

Industrial designs are business assets that can increase the commercial value of a company and its products. The more successful a design, the higher is its value to the company.

A protected design may also be licensed (or sold) to others for a fee. By licensing it, it may be possible to enter markets, that otherwise would have been unable to service.

Registration of industrial designs encourages fair competition and honest trade practices, which, in turn, promote the production of a diverse range of

[7] *Design Law: Creativity And Competition* by Uma Suthersanen at http://www.ip.rcast.u-tokyo.ac.jp/atrip/member/program.html
[8] Design as a Strategy for a Developing Economy, IDC, IIT Bombay, at http://www.idc.iitb.ac.in/resources/reports/desing-as-a-strategy-developing-economy.pdf
[9] *81 U.S. (14 Wall.) 511*
[10] *http://www.wipo.int/freepublications/en/sme/498/wipo_pub_498.pdf*

aesthetically attractive products.

Thus, anything that is worth copying is worth protecting, and it is the cornerstone around which laws protecting design revolve. Design protection plays a role in relation to competition, encouragement and innovation. A rational basis for the protection of designs is to reward the designer's creativity and to provide incentives for further contributions; however, a balance must be maintained between such reward and the long term goal of promoting competition within a market based economy.

Important Provisions of the Design Act, 2000

The essential purpose of design law it to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the Designs Act, 2000 and this Act serves its purpose well in a scenario of rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

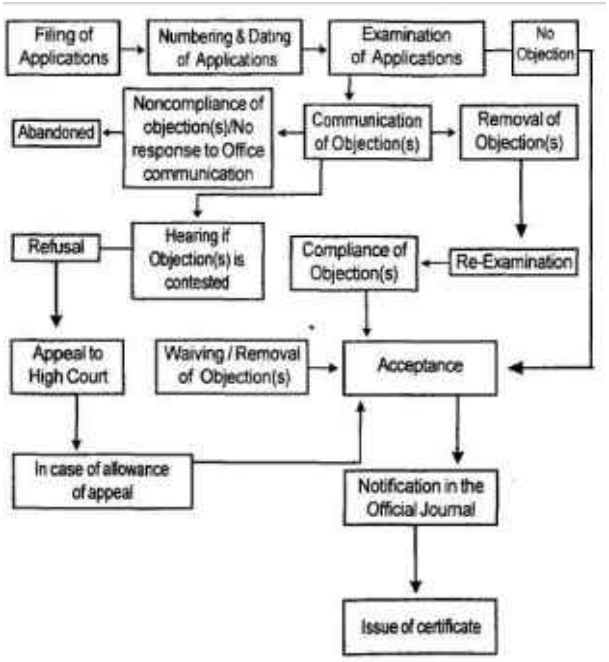
Essential requirements for registration[11]

? A design should be new or original

? Not be disclosed to the public anywhere by publication in tangible form or by use or in any other way prior to the filling date or the priority date of the application for registration, where applicable.

? Be significantly distinguishable from known designs or combination of known designs.

? Should not comprise or contain scandalous or obscene matter.



? Should not be a mere mechanical contrivance.

? Be applied to an article and should appeal to the eye.

? Should not be contrary to public order or morality.

Who Can Apply for Registration of Design

Any person or the legal representative or the assignee can apply separately or jointly for the registration of a Design.[12] The term "person" includes firm, partnership and a body corporate. An application may also be filed through an agent in which case a power of attorney is required to be filed.

Procedure for Registration

Registration of designs is done by the Patent Office at Kolkata. An application may be filed endorsing on the application a brief Statement of the novelty he claims for his design.[13] The application is to be accompanied by the prescribed fee[14] and in the prescribed Form[15] and in prescribed manner. The

[11] *Section 5(1), The Designs Act,2000*
[12] *Section 5, The Designs Act,2000*
[13] *Rule 12, The Designs Rules, 2001*
[14] *The First Schedule, The Designs Rules, 2001*
[15] *The Second Schedule, The Designs Rules, 2001*

application under Section 5 shall be accompanied by four copies of the representation of the design and the Applicant shall state the class[16] in which the design is to be registered.[17] On consideration of the application, if the Controller finds that the Applicant fulfils all the prescribed requirements, he shall register the design. If on consideration of the application any objections appear to the Controller, a statement of these objections shall be sent to the Applicant or his agent.[18] He may also apply to the Controller for being heard on the matter. When the Controller refuses the application after the submission, he may directly appeal to the Central Government. The decision of the Central Government on the registrability of the design is final. The controller shall grant a certificate of registration to the proprietor of the design when registered. The controller may, in case of loss of the original certificate, or in any other case, in which it deems it expedient, furnish one or more copies of the certificate.[19] The term of a design registration is initially for a period of ten years with the option of renewing it for further period of five years.[20] After the certification of design, the controller will make the entry into the register of designs.[21] The register of designs shall be prima facie evidence of ownership of design. The exclusive right conferred on a design is termed as "Copyright in Design".

Piracy of a Registered Design

Infringement of a copyright in design is termed as "Piracy of a registered Design". It is not lawful for any person during the existence of copyright to do the following acts without the consent or licence of the registered proprietor of the design. Section 22 of the Designs Act, 2000, lays down that the following acts amount to piracy:

(1) To publish or to have it published or expose for sale any article of the class in question on which either the design or any fraudulent or obvious imitation has been applied.

(2) To either apply or cause to apply the design that is registered to any class of goods covered by the registration, the design or any imitation of it.

(3) To import for the purpose of sale any article belonging to the class in which the design has been registered and to which the design or a fraudulent or obvious imitation thereof has been applied.

In fact any unauthorised application of the registered design or a fraudulent or obvious imitation thereof to any article covered by the registration for trade purpose or the import of such articles for sale is a piracy or infringement of the copyright in the design.

Judicial Remedy

The judicial remedy for infringement of a registered design recommended in the Act is damages alongwith an injunction. Section 22(2) of the Designs Act, 2000, stipulates remedy in the form of payment of a certain sum of money by the person who pirates a registered design. A suit in the appropriate manner for seeking the relief in the form of an injunction is also recommended. An important case between *Reckitt & Coleman (RCI) Vs. Renkit Industries (RIL),*[22] RCI filed a case in the Calcutta High Court in India against RIL on the grounds of

PLAINTIFF'S DESIGN

ACCUSED DESIGN

[16] *The Third Schedule- Classification of good*
[17] *Rule 11, The Designs Rules, 2001*
[18] *Rule 18, The Designs Rules, 2001*
[19] *Section 9, The Designs Act, 2000*
[20] *Section 11, The Designs Act, 2000*
[21] *Section 10, The Designs Act, 2000*
[22] *www.ircc.iitb.ac.in/webnew/unused/IPCourse04/design_pgwipo.doc*

piracy of their design registered 'harpic' bottle. The principal basis of the allegation was the inclined nozzle besides allegation of passing off.

Various Products in the Market

The defendant RIL argued that the nozzle angle is solely dictated by function and hence is not a subject matter for a design registration. Moreover other competing products in the market also have same/similar angle of the inclined nozzle. The court refused injunction.

In an another case of *Reckitt Benckiser (India) Ltd. Vs. R.R. Corporation*[23], related to the design of the nozzle of the bottle a decree of mandatory injunction was granted in favor of the Plaintiff Reckitt Benckiser (India) Ltd where the principal basis of the allegation was a unique and unusual child resistant cap which is sold in an unique design of the 'Harpic' Power bottle. The plaintiff has established that it has valid design registration in respect of its unique shape bottle and its cap. The plaintiff claimed that it also has a design registration for the child resistant cap bearing design registration No. 176807 dated 1st July, 1998. The plaintiff launched its product applying the unique design in 2001. Plaintiff gave the figures in relations to the product HARPIC sold in bottles featuring the design in the plaint and contended that the design has become exclusively associated with the plaintiff alone. Considering the entire facts and in totality of circumstances, the suit of the plaintiff is decreed and defendant was restrained from manufacturing, selling or offering for sale its products in the bottle applying the said registered design bearing Nos. 176807 and 184080 of the plaintiff. The defendant was also directed by the Delhi High Court to deliver to the plaintiff all bottles and their moulds used for manufacturing such bottles which infringe designs of the plaintiff.

Conclusion

The design registration seems to be a very cost effective and powerful tool that can be used for the benefit of an enterprise to create and retain its competitive position in the market place. Further, when companies are competing at equal prices and functionality, design is the only thing that makes a difference. Hence, in the present competitive business scenario, protecting valuable design is the need of the hour for every designer, manufacturer, or a company. Further, protecting valuable design should be made a crucial part of the business strategy of any designer, manufacturer or company. It is also important to create design awareness in the society that will ultimately use

[23] *MANU/DE/2885/2005*

Live-in Relationship: The Legality of Unconventional Relationship in India

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ABSTRACT

This Paper deals with the issue of "Live-in Relationship: The Legality of Unconventional Relationship in India". In present Live-in Relationship is one of the most controversial legal topics. The aspect of Live-in relationship was not very clear in India until The Hon'ble Supreme Court gave its landmark judgments on the topic in the year 2010, thereby making its stand firm on the issue and upholding the sovereignty of law in India. Thus, the issue is steadily crawling up in the Indian Society and requires legislation to negate chances of misuse of the relationship.

Key Words: Live-in Relationship, Legality, Supreme Court, Cohabitation, Morality.

Introduction

"Marriages are made in heaven, goes the popular saying. Probably Indians believe in this saying more than anybody else in the world".

India is a country, which is having social values and great culture. But now it is slowly opening its door for western culture and lifestyle and one of the most critical incidents amongst it is the concept of live-in relationship. Some people, though limited have started leading a very liberal lifestyle in a society where the sacrosanct union of man and woman in marriage is essential for their acceptance. It is nothing but the concept of live-in relationship. This is an arrangement by choice entered into by a man and woman without the 'license' of marriage. This concept is not new but it has newly originated with a touch of glitz and glamour added to it. People are giving their acceptance and thanks to the film stars and high profile people who have been endorsing this way of living. The changing mindset is evident from daily soaps to movies like 'Salaam Namaste'.

A number of people are now living together without being married. Just a generation or two ago, it was disgraceful for an unmarried man and woman to live together. In present scenario the view of some couples are that living together is easy and others find themselves attacked by angry family members, excluded from faith communities, baffled by how to introduce each other and discriminated against because they are not married. In some places and situations, unmarried partners can share a policy and get certain legal protections; in other situations, they are considered legal strangers with no rights, even if they have lived together for decades.

Meaning of Live-in Relationship

The meaning of live-in relation is an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally and/or sexually intimate relationship. The term live-in relationship is most frequently applied to couples who are not married. The term 'wife' should include live-in partner too (according to Supreme Court)

The legal definition of live-in relationship is "an arrangement of living under which the couple which is unmarried lives together to conduct a long-going relationship similarly as in marriage."

Today, cohabitation is a common pattern among people in the Western world. There are a number of reasons behind living together. These may include:-

1. Wanting to test the compatibility
2. Or to establish financial security before marrying.

It may also be because they are unable to legally marry, for instance, if they are of the same sex, some

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interracial or inter-religious marriages are not legal or permitted. Other reasons include living with someone before marriage is an effort to avoid divorce, a way for polygamists or polyamorists to avoid breaking the law, a way to avoid the higher income taxes paid by some two-income married couples (in the United States), negative effects on pension payments (among older people), philosophical opposition to the institution of marriage and seeing little difference between the commitment to live together and the commitment to marriage. Some couples may also choose cohabitation because they see their relationships as being private and personal matters, and not to be controlled by political, religious or patriarchal institutions.

Law and Morality in Live- in Relationship

The belief of Indian is that Marriages are made in heaven. Marriage institution in India passed various inestimable tests and which got legal sanction after the enactment of Hindu Marriage Act, 1955. The debate on live-in relationship, started in the year 2005 when, Khusboo, a popular Tamil film star expressed her views on pre-marital sex in an interview to a Tamil edition of a national magazine in September 2005 which carried an article "*Sex and Young Women*". Her views on free sex, virginity notions sparked off protests in Tamilnadu. The Pattali Makkal Katchi (PMK)'s legal and women's of Dr. S Ramadoss functionaries began to file criminal complaints against Khushboo in their respective areas magistrate courts and was backed by the dalit outfit, Vaduthalai Chiruthaikal Katchi(VCK). Twenty three (23) criminal complaints were filed. These cases were mostly filed for the offence under Sections 499, 500, 505 of Indian penal code, 1860 and Sections 4 and 5 of the Indecent Representation of Women (Prohibition) Act 1986. High court on 30.042008 refused to quash the proceedings by exercising its inherent powers under Section 482, Code of Criminal Procedure, 1973, on the premise that the relevant considerations in this case were questions of fact which were best left to be determined by a trial judge. A special leave petition was then filed by the noted film actress Khushaboo seeking to quash 23 criminal cases filed against her after she alleged endorsed pre-marital sex interviews to various magazines in 2005.The matter came up for hearing, before a three judge bench of Supreme Court consisting of Hon'ble chief justice (then) of India K.G. Balakrishanan, Hon'ble Justice Deepak Verma and Hon'ble Justice B.S.Chauhan. They observed that living together in (part of) life…. When two adults want to live together, it is not an offence. It cannot be illegal. Judges repeatedly asked the advocates opposing Khushboo to cite from the rule books- Indian penal code or criminal procedure code- to back their arguments. The argument of the counsel was that her comments on purportedly endorsing premarital sex would adversely affect the young people leading to decay in moral values and country's philosophy.

The Apex court said that living together is a right to life and referred Article 21 which granted right to life and liberty as fundamental right and further stated that views stated by Khushaboo were personal especially in the context of live-in relationship, calling on society not to be hypocritical and to address social realities.

Even though freedom of speech and expression is restricted on grounds of decency and morality among others, in my opinion stress must be laid on the need to tolerate unpopular views in socio-culture space. Free flow opinions and ideas are essential to sustain the collective right.

The Supreme Court quashed all the criminal complaints against the Tamil film star Khushboo and held it is not task of the criminal law to punish individual merely for expressing unpopular views. Even in societal mainstream, there are considerable number of people who see nothing wrong in engaging in live-in relationship and premarital sex."

In *Payal Sharma Vs Superintendent, Nari Niketan and others*,[2] a bench consisting of Hon'ble Mr. justice Markendeya Katju and Hon'ble Mr. Justice R.B. Mishra of Allahabad High Court (2001) observed and were of opinion that, a man and woman, even without getting married, can live together if they so wish. This may be regarded as immoral by the society, but it is not

[2] *2001 (3) AWC 1778*

illegal. There is disparity between law and morality. I think, in live-in relationship, a couple gets to know one another better if they are already staying together before marriage. You get the best possible perspective upon whether the two of you are compatible or not. If the answer is not, well you have a way out. On the other hands, there are many religious and social taboos attached to this kind of arrangement and for good reasons. In the end, what is best, all depend upon the circumstances.

Reasons for Live-in relationship

"*Married in haste, we repent at leisure*".

The above line by *William Congreve* truly defines the mentality of live-in relation of couples. Some people are against live-in relationship because in their opinion it is against morality. But my question is whether every immoral act is illegal or whether every immoral act is prohibited by law or society? We find answer in the negative because all immoral acts are not prohibited by law. Secondly if we suppose that it is against law, then the question is by which law it is prohibited? In present, people are becoming more and more individualistic and career oriented. They spend less time at home and more time in offices. With more and more women going out for work, the nurturer of the family is not giving enough time for family and children. Why there is need to go into marital bonding and forsake one's liberty? Everyone likes a life free of tensions and responsibility. Moreover, the divorce laws are too cumbersome in India. If one has to get a divorce then it takes years to finally get it done and trauma suffered by the partners during these years is too much. This is also one of the biggest reasons for live-in relations. Too much legality is involved with the institution of marriage which one can easily escape in the case of live-in relationships. It's a much popular analogy of live-in relationship that it's like "*taking a car for a test drive*" as the couple can easily walk in and walks out of the relationship without any legal bondage. It's better to know the person beforehand than marrying in haste and getting oneself in a legal mess.

Legal Status of Live-in Relationships

The legal status of such live in couples lacks a definition. The rights and obligation which such couples have towards each other and the status of children born out of such a tie exudes a hazy phantom. At present, there is no law related to live-in relationship; the law is insinuated in the court rooms via myriad cases. When it comes to live-in relationship, in earlier cases the court tended to presume marriage based on number of years of cohabitation.

In the cases prior to independence like *A Dinohamy Vs WL Blahamy*,[3] the Privy Council laid down a broad rule postulating, "*Where a man and a woman are proved to have lived together as a man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.*"

The same principle was reiterated in the case of *Mohabhat Ali Vs Mohammad Ibrahim Khan*.[4] After independence the first case that can be reviewed is *Badri Prasad Vs Dy. Director of Consolidation*[5] wherein the Supreme Court recognised live-in relationship as valid marriage, putting a stop to questions raised by authorities on the 50 years of live-in relationship of a couple. From the initial time, from when the court recognised live-in relationship, for a considerably long period the courts have presumed marriage. Courts in recent cases, have postulated that live-in relationship are not illegal *per se.* The Allahabad High Court, in 2001, in *Payal Sharma Vs Superintendent, Nari Niketan, and others*,[6] stated that a live-in relationship is not illegal. Payal had approached the Allahabad High Court when she was forced to live-in Nari Niketan at Agra, following her arrest, along with Ramendra Singh, with whom she had a live-in relationship. The Agra police arrested her and Singh on the basis of an FIR lodged by her father,

[3] *(1928) 1 MLJ 388 (PC)*
[4] *AIR 1929 PC 135*
[5] *AIR 1978 SC 1557*
[6] *2001 (3) AWC 1778*

accusing Singh, an already married man, of kidnapping Payal. Payal Sharma produced documentary evidence evincing the fact that she was 21 years old. On the basis of this evidence, the court directed the authorities to set her free. Hon'ble Mr. Justice M Katju and Hon'ble Justice R.B. Mishra observed, "*In our opinion, a man and a woman, even without getting married, can live together if they wish to. This may be regarded as immoral by society, but is not illegal. There is a difference between law and morality.*"

At this juncture, we may refer to the decision given by this Court in *Lata Singh Vs. State of U.P. & Anr*[7], wherein it was observed that live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of `adultery`), even though it may be perceived as immoral.

In *Patel and others* case,[8] the Supreme Court observed that live-in relation between two adults without a formal marriage cannot be construed as an offence. It also stated that there is no such statute which postulates that live-in relationship is illegal. The same proposition was upheld in the case of *Tulsa Vs Durghatiya*[9] where the long term live in relationship was recognised as equivalent to marriage.

At the risk of repetition, I again quote the judgement of Supreme Court passed on 23rd of March, 2010 in the *Khushboo case*.[10] The argument of the prosecution was that the comments of actress Khushboo allegedly endorsing pre-marital sex will adversaly affect the moral fabric of society. The court, while quashing the charges framed on Khushboo, commented that there was no law which prohibits pre-marital relationship. A three judges' bench comprising of Hon'ble chief Justice K.G. Balakrishanan, Hon'ble Justice Mr. Deepak Verma and Hon'blke Justice Mr. B.S. Chauhan observed "*When two adult people want to live together what is the offence. Does it amount to an offence*"? The court further said, "*Please tell us what is the offence and under which section. Living together is a right to life*", thereby referring to the right to life guaranteed under Article 21. Though this was an obiter dictum, it provided a positive impetus to live-in relationship.

On the other side, Delhi High Court, in a recent case, observed that a live-in relationship is a walk in and walk out relationship. Hon'ble Justice S.N. Dhingra noted, "*There are no legal strings attached to this relationship nor does this relationship create any legal-bond between the partners*". The court further added, *"People who choose to have live-in relationship cannot complain of infidelity or immorality as live-in relationships are also known to have been between a married man and unmarried woman or vice-versa*" [11]

Hence, though more or less uniformity has been exuded in a positive direction by the court when it comes to live-in relationship, the law does not cut a clear picture as can be observed from the recent Delhi High Court judgement.

In *Velusamy Vs D Patchaiamma,*[12] Hon'ble Supreme court observed that a woman in a live-in relationship is not entitled to maintenance unless she fulfils certain parameters, the Supreme Court had observed that merely spending weekends together or a one night would not make it a domestic relationship. The bench comprising of Hon'ble Justice Mr. Markandey Katju and Hon'ble Justice Mr. T S Thakur said that in order to get maintenance, a woman, even if not married, has to fulfill the following four requirements:

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage.

[7] *AIR 2006 SC 2522,*
[8] *(2006) 8 SCC 726*
[9] *(2008) 4 SCC 520*
[10] *JT 2010 (4) SC 478*
[11] *Alok Kumar v. State Crl.M.C.No. 299/2009*
[12] *S L P (Crl.) Nos.2273-2274/2010.*

4. They must be voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In *S.Khushboo Vs Kanniammal,*[13] the Hon'ble Supreme court opined that a man and woman living together without marriage cannot be construed as an offence. The Apex court said there was no law which prohibits live-in relationship or pre-marital sex. The Supreme Court held that live-in relationship is permissible only in unmarried major persons of heterogeneous sex. In case, one of the said persons is married, man may be guilty of offence of adultery and it would amount to an offence under section 497 IPC.

Status of Child Born Under Live- in Relationship

Now the question is about the right of child born under live-in relationship, we again find the law to be groping in the dark. The Hindu Marriage Act, 1955 gives the status of legitimacy to every child, irrespective of birth out of a void, voidable or valid marriage. However, they don't have property and maintenance rights. There is no such presumption of legality of child in any other religion or law, in such cases, legality of the child born out of such relationship is doubtful.

Another important issue that needs to be taken note of is, if the live-in partners and the parents desire to get out of the relationship, the future of the child comes into question. There must be a provision to secure the right of the child, in case; none of the parent wants to keep the child. Court may appoint a guardian to look after the interest of the child. The child ought to be entitled to have share, both in mother's and father's property. The relationship with some other person, while the husband is living is not 'live-in relationship' but 'adultery'.

Conclusion

The courts have proclaimed that man and woman living together is not an offence...*Children born out of such relationship can no longer be called illegitimate*. This is a landmark approach especially in a country which is known for her strong moral values and traditional integrity. It shows the magnitude of impact that this small but influential section of people is having on our society. This relatively new concept is gaining popularity among the youth especially in metropolitans. The young working class who want to surge higher in their professional life don't want to be tied down by marriage. They want to work as equal partners in their relationship. Also, most individuals are not sure whether their partner is 'the one'. Such youngsters in a bid to know their partners better end up in this well packaged relationship that offers the emotional and physical security of a relationship with the freedom and independence of being single. But such relationships come with a lot of strings attached to it. No one can ensure that children will not be born out of such relationships. The responsibility and parentage of such children will be questioned once the couple is no longer together. Even the issue of rights of women involved in such relationship is questionable. Who will provide for her needs once the man no longer wants to 'live-in' with her? While the Supreme Court's opinion might not have the undesirable effect on couples preferring to be live-in relationship rather than opting to get married, it could certainly embolden more young men and women as they would now be convinced that there is no breach of law in the live-in relationship. One can only weigh the pros and cons and take into account the impact of their decision on their family and most importantly on themselves.

In the context of live-in relationship, we may raise a question regarding legality of group live-in relationship. Supposing five men and five women make a group to live together, sleep together and also change beds and partners without any distinction and live years together and enjoy sex, produce children, will this be legal or illegal, ethics and morality a part? What would be the status of children, where it is not known who is born from which partner? What name, nomenclature and status should be derived by these relationships? In this respect, much needs to be thought, debated, decided and shared with the society. Changing the face is not difficult but facing the change may be disastrous and can destroy the basic structure of our society and human 'Sanskriti' (culture.)

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Human Trafficking and Globalisation: A Modern Day Slavery and Human Right Discussion.

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Introduction

The past decade, human trafficking has become an issue of growing concern in every part of the world. Traditionally people tried to understand and explain trafficking as criminal justice issue or migration issue but in the modern world more efforts are made to explain this as one of the major human right issue. It is also considered as a new and pernicious form of slavery inflicting many thousands of people across the world.

One of the exhaustive definitions given in Article 3 of the UN Convention against Transnational Organised Crime 2000 states that "trafficking in person shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs".

The smuggling of human is different from human trafficking. The term "human trafficking" has become a term of art to mean modern and contemporary slavery and forced labour, including, but not limited to, the commercial sex trade, agriculture, manufacturing, domestic servitude, tourist industry and child soldiers. It is somewhat of a misnomer as human trafficking indicates a process that leads to slavery and not slavery itself. As an example, a person who is smuggled into a country may be working in violation of that country's domestic laws, but she is free to accept or reject job offers. On the other hand, a person who is trafficked into a country is forced to work without compensation and has no freedom of choice in his job selection. Some would also argue that the term "human trafficking" is too antiseptic and legalistic and avoids the emotional and historic impact of calling the problem, but it is slavery.

Trafficking in human beings is a global trend, in recent years it has been subject to increasing international attention. Human trafficking is a complex phenomenon, and it is a challenge to address this issue due to its invisible nature. Many times, it travels from unknown and unreported phenomenon to sensational and disturbing stories. Because the trafficking is fuelled by a combination of socio-economic, cultural or political conditions, it becomes a part of wide range of themes. Being a complex phenomenon, trafficking can be viewed from different perspectives. Thus, it is important to acknowledge the standpoint from which it is being approached.

Traditional and modern jurisprudence understood and discussed it as a criminal activity. The reason is that trafficking uses highly organized crime structure. Instead of operating within a loose framework of one or two individuals carrying out operations on a small-scale level, it operates within an intricate system of varying levels of power. Trafficking follows the more traditional hierarchical structure of transnational organized crime, with one individual or group issuing orders, and various sub-levels.

Trafficking involves the movement of people for the purposes of exploiting their labour or services. The vast majority of people who are trafficked are migrant workers. They are seeking to escape poverty and discrimination, improve their lives and send money back to their families. They hear about well-paying jobs abroad through family or friends or through "recruitment agencies" and other individuals who offer to find them employment and make the travel arrangements. For most trafficked people, the real

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problems begin as soon as they arrive in the country of destination, as the work they were promised does not exist and they are forced, instead, to work in jobs or conditions to which they would not have agreed.

Globalisation Talk

Traditions of colonialism and exploitations have made people and products interchangeable, thus legitimizing the unequal treatment of people based on race, class, gender, and culture. These trends are often invisible and are manifested in government policies. These trends also support the power dynamic between the privileged and the marginalized. This is evident that most individuals targeted for trafficking are "of dark colour" and poor, and most clients are white and wealthy. As disadvantaged individuals are forced into sexual exploitation, they are moved into forms of labour that objectify and mechanize their bodies.

It is believed that many of the traditional ethos and norms have disappeared and the world is "shrinking" and evolving toward a sort of global community; the transfer of people both voluntary and coerced is becoming more prevalent. The condensing of the world can be attributed to the process of globalization. It is proclaimed that globalization is the developmental process which increasingly integrates global economy through free trade, free flow of capital, and the tapping of cheaper foreign labour markets that transcend nation-state boundaries. Globalization disseminates practices, values, technology, and other human products throughout the globe. It must be acknowledged that forms of slavery and human trafficking are not just outcomes of globalization; they are part of the globalization process itself that involves a functional integration of dispersed economic activities.

Globalization fosters interdependence between states for commerce and facilitates the transfer of commodities. Comparative advantage in goods and cheap labour in developing states has played a significant role in objectifying and exploiting humans for economic ends. In developing states where agrarian lifestyles once predominated, citizens are left without an education or the appropriate skills to compete in an evolving work-force. To a large extent, the lesser developed countries of the world have become the factories and workshops for the developed countries. A high demand for cheap labour by multinational corporations in developed countries has resulted in the trafficking and exploitation of desperate workers who, in turn, are subjected to a lifetime of slave-like conditions.

Present day globalization, poverty and humanitarian crises all impact on the problem of human trafficking. The International Organization on Migration (IOM) has been studying the movement of people across international borders for decades. The number of people who are uprooting themselves and travelling thousands of miles to find employment is vast. They have become the new nomads. These workers are often exploited, with up to 1.2 million of them trafficked in modern slavery each year. While the outsourcing of labour made possible by globalization, increased profits, eventually someone took note that the most profitable employee is one that you do not have to pay at all. This was not part of some conspiracy by those leaders within the globalization movement. However, it is now part of the "dark side" of globalization and it must be recognized and dealt with.

Further, the process of globalization is especially pronounced and entrenched in the world economy. An increasingly integrated world economy enables human trafficking to thrive. Just like the slavery of old, modern day trafficking of human beings is a lucrative business that has only become more rewarding for traffickers with the advent of globalization. In fact, the trans-Atlantic slave trade of centuries ago epitomized economic globalization. Just as it was back, human trafficking, as abhorrent as it is, remains a matter of supply and demand. The reality is that the development of human trafficking is primarily economic, and follows the model of supply and demand. The free market principles continue to promote a global marketplace-the movement of goods, people, and capital across borders increases, consequently raising demand for trafficked persons. The ultimate destination for trafficked persons often correlates with tourism, since many developing states rely on tourism for economic stability. As tourism grows, so does the demand.

The economic globalization has led to a form of "global apartheid" and a corresponding emergence of a new "fourth world" populated by millions of homeless, incarcerated, impoverished, and otherwise socially excluded people (Polakoff 2007). It is from this pool of "fourth world" denizens where victims of human trafficking are increasingly drawn. From this perspective, economic globalization is the prime culprit of the facilitation of an exorbitant number of vulnerable trafficking victims worldwide. To corroborate this stark and unfortunate economic reality, the ILO estimates that annual global profits generated from trafficking amount to around U.S. $32 billion (ILO 2008). It is in large part due to globalization that human trafficking has become such a lucrative and thus, fast-growing criminal activity and concern of human right.

Vulnerability Aspect

More precisely, according to the U.S. Department of State's 2008 report, about 600,000 to 800,000 peoplemostly women and childrenare trafficked across national borders. In this age of globalization, one can only expect these numbers to escalate as the inequalities and the economic disparities between the developing and developed worlds continue to rise.

There is a strong linkage between human trafficking, sexual exploitation or prostitution. It can be considered as a part of lucrative global industry in a neo-liberal globalization. The women and girls are caught in the industry as the new "slaves" of the contemporary era. The immense annual worth of this industry makes it attractive to organized crime networks. This situation has lead to an increasing number of women working in extreme conditions of sexual exploitation and being exposed to risky sexual practices, violence, and the world of drugs.

It has been conservatively estimated that at least 200-225,000 women and children from South-East Asia are trafficked annually, a figure representing nearly one-third of the global trafficking trade. Of the estimated 45-50,000 women and children trafficked into the US each year, 30,000 are believed to come from South-East Asia. Overwhelming figures show that trafficking in women and children, an obscene affront to their dignity and rights, is a gross commercialization of innocent human lives, indulged in by organized criminals. This commoditization effectively creates a supply of vulnerable individuals that fall victim to trafficking as a result of economic instability, family disintegration, and prevalent attitudes that objectify women and children. Traffickers prey on the hopes and fears of their victims, promising them rewarding employment opportunities across the border. Once traffickers have a victim at their disposal, they use any means necessary to control and ensure their victims' cooperation in selling cheap sex and labour which often includes threats, sexual assault, and drug addiction.

Trafficking violates all known canons of human rights and dignity. In this world of tragic and complex human abuse, women and children form a particularly vulnerable class. In the existing social scenario in India, vulnerability is a product of inequality, low status and discrimination as well as the patriarchal and captivating authority unleashed on children, especially the girl child. All of this is further compounded by an apathetic attitude of society fuelled by a mindset which views women as mere chattels. With no freedom of choice and options for a life with dignity, these hapless women and children are merrily trafficked and exploited forcing them to lead a life crippled with indignity, social stigma, debt bondage and a host of ailments.

Relation between Migration and trafficking

Trafficking, smuggling and migration are separate, but they are inter-related issues. Migration may take place through regular or irregular channels and may be freely chosen or forced upon the migrant as a means of survival (e.g. during a conflict, an economic crisis or an environmental disaster). If the method of migration is irregular then the migrant may be assisted by a smuggler who will facilitate illegal entry into a country for a fee. The smuggler may demand an exorbitant fee and may expose the migrant to serious dangers in the course of their journey, but on arrival at their destination, the migrant is free to make their own way and normally does not see the smuggler again.

It is no coincidence that the growth in trafficking has taken place during a period where there has been an increasing international demand for migrant workers, which has not been adequately acknowledged or facilitated. The lack of regular migration opportunities to take up work in other countries and the fact that many migrants are looking for work abroad as a means of survival, rather than an opportunity to improve their standard of living, has left migrants with little choice but to rely on smugglers or traffickers in order to access these jobs. Despite this, many governments have responded to the problem by proposing tighter immigration controls, which usually increase the profitability of smuggling and trafficking and make matters worse.

One of the studies reveals that there are 85 million female migrants and 90 million male migrants. This number covers women who migrate for a variety of reasons and for various purposes, including those who migrate for employment. Female migrant workers often find employment in informal sector which is unprotected by labour legislation such as domestic work, child care, and care for the elderly and so on. This study clearly states that the situation of female domestic workers, who despite working and generating income, are not considered 'real' or 'formal' workers. The end result is that such sections of women are facing the same situation as the trafficked one.

The relation of migration, smuggling and trafficking is complex and interlinked. In reality, there is no clear and easy formula for identifying when a particular migrant will be trafficked for forced labour. The most that can be said is to show the patterns, systems and policies which are making migrants vulnerable to trafficking. In summary, migration may take place through regular or irregular channels, and may be freely chosen or forced upon the migrants as a means of survival.

Asian Scenario

Migration in South Asia has contributed enormously to this illegal trade, as globalisation has created dramatic shifts in the world labour market, and more women than ever before are leaving their traditional occupations in search of work. Until the 1980s, the trafficking of women was primarily an Asian phenomenon. Historical changes in nations has increased the illegal industry as well as made women more vulnerable to traffickers.

One of the largest human trafficking problems in the Middle East is the trafficking of migrant workers. Many migrant people, mainly from Asian states, are tricked into coming to the Middle East; they then find themselves in a forced labour situation or working for very low wages. This tragic phenomenon is especially prevalent in the oil-rich Gulf States of Kuwait, Oman, Qatar, and the United Arab Emirates (UAE). In addition, these workers may be held to pay off their debt, which accumulates from the exorbitant costs of travel and housing. Organizations like the International Labour Organization strongly warn migrating workers about fraudulent schemes that promise workers transportation and work in another state. Although the Gulf States have one of the highest populations of migrant workers in the world, certainly not all of them are victims of human trafficking.

Women are enticed with lies and false promises of employment, while in reality are forced into commercial sexual exploitation in Asian region, the women are smuggled to other countries, accruing large financial costs, and then forced into exploitative labour in order to repay debts to traffickers.

India is at the same time a source, transit, and destination country. So, while human beings are trafficked from India to other countries, significant numbers are also trafficked into India. Organized crime plays a significant role, but so does political and police corruption. Internal trafficking in India remains the most significant problem. Ten thousands victims are trafficked internally each year. The primary internal destination for trafficking is the more developed cities. Women are trafficked from rural regions and used mainly for domestic work and for sexual exploitation.

Addressing the Problem

Humans are trafficked from all corners of the globe with all sorts of characteristics to a variety of locations. Until it is possible to do more detailed research on the differences between different genders,

ethnicities and ages, it will be difficult to decipher more specific generalizations. In almost any part of the world where there exist particular conditions where people are vulnerable, there is likely going to be someone who is willing to take advantage of that vulnerability. At the same time, there are many other parts of the world with the economic resources to create a market for trafficked individuals. As suggested by one of the UNDP study, it is a subject wrapped in layers of silence. The process of clarity will involve numerous effective studies, debates and arguments.

Human trafficking, according to recent estimates, has now acquired equal second ranking in terms of profits with the trade in illegal armaments (Hunter 2006, 1), though almost certainly this includes people smuggling in the calculations, as the boundaries between human trafficking and smuggling are often blurred. Another study states that illicit fund generated by human trafficking is second only to the sale of illegal sale of drugs. Trafficking is a phenomenon cloaked in ambiguities involving issues which most would prefer to avoid. The use of centralized structures facilitates the illegal transport of human beings through recruitment, deception, harbouring, and trade, thereby exemplifying the involuntary nature of trafficking. Although trafficking is also a business, it thrives under rigid control and job separation.

Research carried out by the ILO estimated that, in 2000, 1.2 million children had been trafficked for sexual or labour exploitation internationally. An accurate calculation of the total number of people trafficked is difficult because of the clandestine nature of trafficking and the problems involved in detecting and documenting trafficking cases. Extrapolations from documented cases are often used to estimate the number which are not coming to public attention and will always contain a margin of error. Assessments are even more difficult when they are being made across regions or internationally, as data may be collected using different criteria, for example with some looking only at those trafficked across borders and others looking at both cross border and internal trafficking. The ILO stressed that it encountered difficulties in its data collection on trafficked children; especially as some of the statistics it collected were on a yearly basis and others gave snapshots measuring the numbers trafficked at a particular time.

There is a tension between immigration and migration. Domestic immigration laws of nation-states are often at odds with the broader international human rights laws pertinent to migration. Domestic immigration laws regulate the number of non-citizens that can enter and be part of the social and political fabric of a country. They are seen as legal barriers that protect the borders and the sovereign integrity of a country. International migration laws, on the other hand, are crafted to protect the human rights of individuals, whatever their designated citizenry may be. International migration laws recognize the right of any human being to be free from mortal danger, whether natural or human-made, and the right to move to a place on the planet of relative safety. Domestic immigration laws are often designed to keep those very same endangered people from entrance. A few of the many consequences of this tension include illegal smuggling and human trafficking, because desperate people do desperate things for themselves and their children.

Anti-trafficking laws are problematic to enforce because victims of trafficking are hesitant to identify traffickers for fear of repercussion. Furthermore, trafficking is a crime that transcends borders, and therefore jurisdictions. Applying international law to a person who resides in another state is a costly and complex endeavour. Additionally, human trafficking usually violates several laws, and is not a one-time event. Building a case against traffickers can take a great deal of time, resources, and energy. In countries where resources are limited, these complexities can hinder enforcement of anti-trafficking laws.

Another dilemma of enforcing anti-trafficking laws is the lack of training of the local enforcement officers within the state. Even if the state has implemented anti-trafficking laws, it is not likely that the border patrol officers, federal agents, and local police officers are well-versed in international or domestic laws in regards to human trafficking. Victims of trafficking are often treated as criminals or illegal immigrants, and either arrested or deported.

Additionally, since trafficking victims are usually not in their country of origin, there is often a language barrier between enforcement officers and the victims, making information-gathering problematic.

Conclusions

Despite the difficulties of collection of detailed information about trafficking, which includes reliable base line statistics, a detailed analysis of individual cases is essential if we are to understand the traffickers' modus operandi, why people are being trafficked and how traffickers are maintaining control over them. These aspects can vary between different trafficking groups as well as from one country to another. Only once this type of information has been collected will it be possible to put together an effective counter trafficking strategy which takes into account the individual circumstances in sending and receiving countries. Integrated counter trafficking policies should contain components which seek to ensure prosecutions of traffickers; the protection and support of trafficked people; and the prevention of trafficking through the implementation of measures to tackle the root causes of the problem.

The vast majority of anti-human trafficking money is being offered to organizations involved in rescue and rehabilitation work. While this is commendable and necessary, but there should be funding for research, data collection and analysis that is rare and very hard to find either for short-term or longitudinal studies. The result is that governments and international organizations are being forced to make important policy decisions based on inadequate analysis of the problem. A review of the literature on human trafficking, county by country, region by region, and topic by topic, is the critical first step to understanding the scope of the problem, but also, perhaps more importantly, to finding the gaps in the knowledge base so that coordinated research can be directed to those areas. Without research and attendant analysis, policymakers are making decisions in the dark and are wasting precious and limited resources. The country specific measures need to be understood in the international legal frame work.

The problem is deeply rooted in the socio-economic, political and cultural reality of the context in which it occurs, although this may not be its immediate cause. The culprits are the traffickers about whom relatively little is known. This gap has to be urgently addressed, along with the demand factors which drive trafficking. It is a fundamental violation of the rights of human beings and shows a blatant disregard for the dignity of a person. The counter-trafficking measures are broadly divided into four categories: juridical, prevention, protection and return. In the fight against trafficking there should be discussions on priority areas for the development and strengthening of counter-trafficking programmes and initiatives. Need to develop a clear understanding of the nature of risks created by the developmental process itself for instance, through improved physical connectivity or by the promotion of tourism and ways to mitigate/eliminate such risks through active interventions. Effective support programs should focus on training diplomatic personnel in identifying and providing care for trafficking victims, since victims are more likely to seek out their consulate or embassy than the local police.

International law is a powerful conduit for combating human trafficking. The most reputable and recent instruments of international law that have set the course for how to define, prevent, and prosecute human trafficking are the United Nations Convention against Transnational Organized Crime and its two related protocols are the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, which entered into force in 2003-04. The United Nations Office on Drugs and Crime (UNODC) created these conventions, which have supported ability of international law to combat human trafficking. In support of enforcing these instruments, the UNODC established the United Nations Global Initiative to Fight Human Trafficking in 2007.

Enforcement of international law in regard to human trafficking is most effective and efficient when it is incorporated into regional and domestic

legislation. Regional and domestic instruments have played a key role in the prevention and elimination of human trafficking.

Trafficking is only just beginning to be looked at through a human rights framework. The invisibility of the crime is easily maintained since victims rarely denounce their traffickers out of fear, and furthermore lack the power to pressure public authorities to take action. Nonetheless, it is essential that states first address the trafficking problem as an internal human rights issue that affects its political, social, and economic systems. If states continue to ignore the domestic manifestations of the issue, the cost will be high.

Perhaps what is necessary is not a worldwide solution, but various regional ones. To overcome the vulnerability experienced by individual countries, as well as the often-cumbersome nature of international affairs, counties have bonded together to find financial solutions. These same associations, based on economic and cultural ties, can also work together to formulate policy and to create solutions to the problem of human trafficking, but to do all of this, much more research is needed.

Corruption among public authorities and institutions facilitates victimization of vulnerable individuals with corrupt societies. There are significant linkages of high incidence of trafficking and the lack of effective anti-corruption strategies. Likewise, corruption goes hand-in-hand with profits. Trafficking serves an economic function to outside parties, not just the traffickers, which promotes the sustenance of corruption and perpetuates the problem since many individuals are economically dependent on the trade. However, trafficking could not exist without corrupt public officials, which suggests that many of those profiting from trafficking are public officials themselves. Trafficking requires the collaboration of many individuals, and considering high trafficking profits and usually low local wages accepting bribes is a common temptation for public authorities. Since corruption enables trafficking, it is inherently linked to the lack of effective anti-trafficking policy.

However, as governments are made more aware of the nature of trafficking, there is more pressure to view the issue within a human rights framework and not merely as a societal hindrance that can be ignored. Individual governments must address trafficking as a domestic issue that violates basic human rights, align their anti-trafficking policies with neighbouring states according to international standards, and make prevention and rehabilitation services readily available. Increasing public awareness about the issue and supporting victims with necessary services is critical to successfully combating the issue.

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Analysis of FDI in Multi-Brand Retail in India: Legal Perspective

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ABSTRACT

Across the world, foreign direct investment (FDI) has been increasing dramatically since the beginning of 1990s. In the present scenario India has become a popular destination for Foreign Direct Investments for many countries due to its market attractiveness and government policy to encourage large amount of foreign capital. Considering its global position India has also opened up many sectors for foreign investment, latest proposal being, Foreign Direct investment in Multi-Brand retailing having sectoral cap of 51%, and increase in scope of FDI in Single-Brand retail from 51% to 100%. This paper examines the legal and socio-economic perspective of increasing the FDI limit in India.

Keywords: Foreign Direct investment, Multi brand, Retail, Legal aspects

Introduction

Foreign Direct investment is a channel through which an investment in a foreign country is made through the acquisition of a local company or the establishment of an operation by a new site. In simple words, FDI refers to capital inflows from abroad that are invested in, to enhance the production capacity of an economy. Foreign Investment in India is governed by the FDI policy announced by the Government of India and the provisions of the Foreign Exchange Management Act (FEMA) 1999. The Reserve Bank of India ('RBI') in this regard had issued a notification, which contains the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000. This notification has been amended from time to time.

The Ministry of Commerce and Industry, Government of India is the nodal agency for monitoring the FDI policy on regular basis and reviewing changes in sectoral policy/ sectoral equity cap. The FDI policy is notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP).

Before looking into the legal aspects of FDI in retail sector both in single-brand and multi-brand, it is first important to understand the various aspects of FDI policy in India.

The foreign trade policy of India has been formulated with a view to invite and encourages investments from abroad. The Reserve Bank of India has prescribed various administrative and legal compliances for FDI. A foreign company planning to set up business operations in India has the following options:

? Investment under automatic route;

? Investment through prior approval of Government

Legal Procedures for Foreign Investments:

Investment under automatic route

FDI in sectors/activities to the extent permitted under automatic route does not require any prior approval either by the Government or RBI. The investors are only required to notify the Regional concerned offices of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors.

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Investment through prior approval of Government

FDI in activities that are not covered under the automatic route require prior Government approval and are considered by the Foreign Investment Promotion Board (FIPB). Approvals of composite proposals involving foreign investment/foreign technical collaboration are also granted on the prior recommendations of the FIPB. Application for all FDI cases, except Non-Resident Indian (NRI) investments and 100% Export Oriented Units (EOU's), should be submitted to the FIPB Unit, Department of Economic Affairs (DEA), Ministry of Finance, Government of India. Application for NRI and 100% EOU cases should be presented to Secretariat for Industrial Assistance (SIA), Department of Industrial Policy & Promotion, Ministry of Commerce and Industry, Government of India. The investment can be made in various modes as described below:

? Investment by way of Share Acquisition

A foreign company planning to invest is entitled to acquire the shares of an Indian company without obtaining any prior permission of the FIPB, subject to the prescribed parameters and guidelines. If the acquisition of shares directly or indirectly results in the acquisition of a company listed on the stock exchange, it will be required to obtain the approval of the Securities Exchange Board of India (SEBI).

? New investment by an existing collaborator in India

A foreign investor already having an existing venture or collaboration both technical and financial, with an Indian partner in particular field, if proposes to invest in another area, such type of additional investment shall require prior approval from the FIPB, wherein both the parties are required to demonstrate that the new venture does not prejudice the existing one.

General Permission of RBI under FEMA

Indian companies making investment by purchase of shares or by collaborating with existing partner after receiving approval through FIPB route do not require any further clearance from RBI for receiving inward remittance and issue of shares to the foreign investors. The companies are required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and within 30 days of issue of shares to the foreign investors or NRI's.

Reasons why Foreign Investors Are Looking Forward towards India

? The Global Competitiveness index (Table 1) sourced from Deloitte and US Council on competitiveness Index 2010 depicts that India has become the second most competitive country in manufacturing after China.

? Fig. 1 reveals that FDI flow in India from Singapore and Germany stands at 3% while in Netherlands and U.S. stands at 5% which indicates we need to attract these countries for more foreign investments by opening more sectors for FDI.

? India is being touted as the next big retail destination with an average CAGR of 40% to 45%.

? The sheer size of the population demands attention from retailers worldwide and the potential for growth in this nascent industry is tremendous.

? India is the world's 4th largest economy in terms of Purchasing Power Parity, after USA, China and Japan.

? India is rated ahead of China on the Foreign Direct Investment Confidence Index (FDICI) making it an attractive retail market among other emerging economies in the world.

? According to a study conducted by the Associated Chambers of Commerce and Industry (ASSOCHAM), the annual retail sale that was close to US$ 6 billion in 2007, and was expected to reach USD 17 billion by 2010.

Table 1

Global Competitiveness Index				
Rank	Country	Current Score	Score in Five Years	Change
1	China	10	10	0
2	India	8.15	9.01	+0.86
3	South Korea	6.79	6.53	-0.26
4	USA	5.84	5.38	-0.46
5	Brazil	5.41	6.32	+0.91
6	Japan	5.11	4.74	-0.37
7	Mexico	4.84	4.84	0
8	Germany	4.80	4.53	-0.27
9	Singapore	4.69	4.30	-0.39
10	Poland	4.49	4.52	+0.03
11	Czech Republic	4.38	3.95	-0.43
12	Thailand	4.17	4.35	+0.18

Source: Deloitte and US Council on Competitiveness – 2010 Global Manufacturing Competitiveness Index

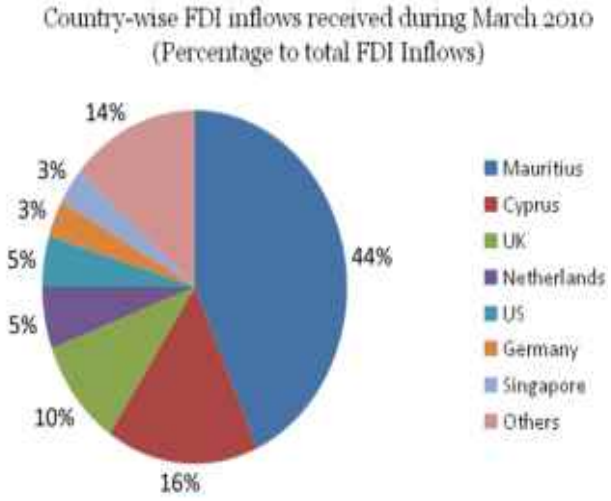


Fig. 1

Legal Aspects of FDI with Regard to Retailing in India

Since India is a signatory to World Trade Organization's General Agreement on Trade in Services (GATS), which includes wholesale and retailing services, it had to open the retail trade sector for foreign investment. Though there were initial reservations towards opening up of retail sector for foreign direct investment due to various reasons like fear of job losses, procurement from international market, competition and loss of entrepreneurial opportunities; Investment in a Single-Brand retail outlet was permitted since 2006, to the extent of 51%. However, FDI in multi-brand retail remained prohibited.

Following are the existing sector specific guidelines for FDI with regard to the conduct of trading activities in retail sector issued by DIPP

a) FDI up to 100% for cash and carry wholesale trading and export trading allowed under the automatic route.

b) FDI up to 51 % with prior Government approval (i.e. FIPB) for retail trade of 'Single-Brand' products, subject to Press Note 3 (2006 Series)

The government now proposes to increase the FDI limit owing to stiff competition and problems being faced by the Indian retail industry. The Proposed recommendations are:

(i) An Increase in FDI limit to 100 percent in single-brand retail trading.

(ii) Introduction of FDI in multi-brand retailing to the extent of 51 %.

Definition of Retail

In 2004, The High Court of Delhi defined the term 'retail' as a sale for final consumption in contrast to a sale for further sale or processing (i.e. wholesale). A sale to the ultimate consumer. Thus, retailing can be said to be the interface between the producer and the individual consumer buying for personal consumption. This excludes direct interface between the manufacturer and institutional buyers such as the government and other bulk customers. Retailing is the last link that connects the individual consumer with the manufacturing and distribution chain. A retailer is involved in the act of selling goods to the individual consumer at a margin of profit. Indian retail industry accounts for 14% to the national GDP and employing 7% of the total workforce (only agriculture employs more) in the country. The statistics show that it is definitely one of the pillars of the Indian economy. The retail sector in India is the second largest employer after agriculture. As per the latest survey of National Sample Survey Organization (NSSO), in 2007-08, retail trade employed 7.2% of total workers and provided job opportunities to 33.1 million persons. Some of the points worth considering regarding Indian retail market are:

? Nearly 720 million Indians to join consuming age by 2010
? 55% of the Indian population will be under 20 years of age by 2015
? There has been 32% rise in urbanisation by 2008
? 10% annual growth in Retail market since 2000
? 7% of the population is engaged in retailing
? 5.5 retail outlets per 1000 population, highest in the world
? 25-30% annual growth in retail loans and credit cards

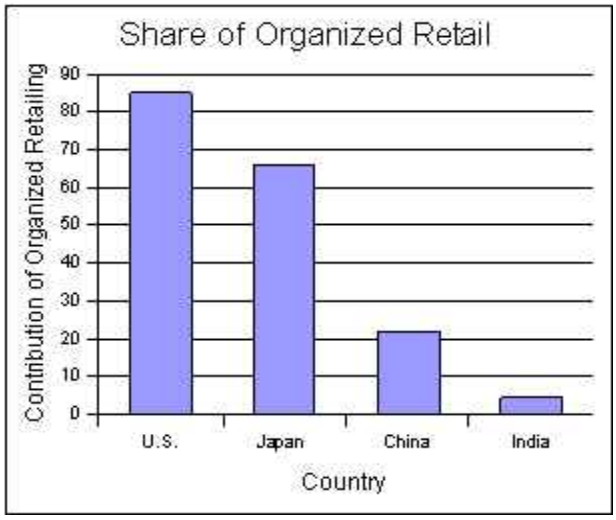
Division of Retail Industry

Indian retail industry is mainly divided into two divisions: (i) Organised Retailing, and (ii) Unorganised Retailing

Organised retailing refers to the trading activities undertaken by licensed retailers, i.e., those who are registered for sales tax, income tax, etc. These include the corporate-backed hypermarkets and retail chains, and also the privately owned large retail businesses.

Unorganised retailing popularly known as mom and pop stores, on the other hand, refers to the traditional formats of low-cost retailing, It includes the local kirana shops, owner manned general stores, paan/beedi shops, convenience stores, hand cart and pavement vendors, etc.

In India, the retail sector is highly fragmented with 97 per cent of its business being run by the unorganized retailers. It is the largest source of employment after agriculture, and has deep penetration into rural India as it generates more than 10 per cent of India's GDP. However, the so called organized retail is at its infant stage. A comparison of share of Indian organized retail sector with those of other developed countries can be made from the following Chart 1.



According to the international standards a retail store is considered as organized only when it features more than 10 employees. The above chart clearly shows the pity state of Indian organized retail. While in countries like U.S. and Japan most of the retail trading is within organized sector, in India most of the trading is done through unorganized retail sector. The following Chart 2 shows the share of various segments in the total organized retail in India

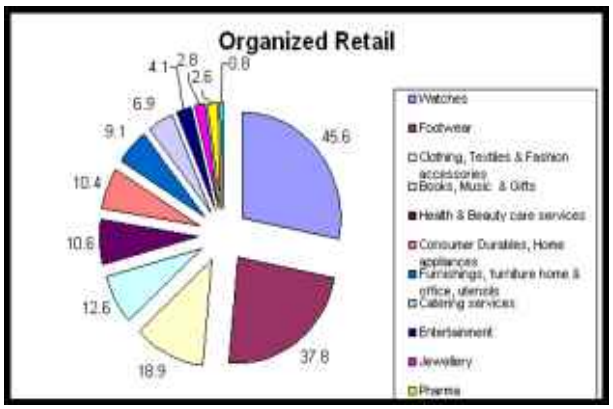


Chart 2

According to a study being conducted by Economy Watch it was observed that non-urban areas account for only about 15% of organized retailing. It clearly indicates that it is high time that the retail industries shall pay importance to diversification and draw strategy to reach non-urban markets. If they remain confined to the metropolis then they will soon hit a ceiling and will not be able to grow. If we compare Indian FDI policy with other countries we find that Retail markets in Germany, South Africa and many other countries allow 100% foreign investment in retail. This has helped in setting up of cash and in creating wholesale markets. However, in India, only 51% FDI is allowed in single-brand retail. In case of multi-brand retail, FDI is completely prohibited.

According to leading rating agency CRISIL, the penetration of the domestic organised retail sector will increase from the current 6.5 percent to nine by 2015, if the proposed move to allow foreign direct investment (FDI) in retail sector is implemented quickly. The organised retail market is expected to increase to Rs 3.5 lakh crore from the present Rs 1.4 lakh crore, the agency said in a report.

Legal Formalities of FDI in Single-Brand Retail

The Government has not categorically defined the meaning of "Single-Brand" anywhere neither in any of its circulars nor any notifications. In single-brand retail, FDI up to 51 per cent is allowed, subject to Foreign Investment Promotion Board (FIPB) approval and subject to the conditions that

? only single-brand products would be sold (i.e., retail of goods of multi-brand even if produced by the same manufacturer would not be allowed),

? products should be sold under the same brand internationally,

? single-brand product retail would only cover products which are branded during manufacturing and

? Any addition to product categories to be sold under "single-brand" would require fresh approval from the government.

? Since 2006, a total of 94 proposals have been received till May, 2010. Of this, 57 proposals were approved. An FDI inflow of US $ 194.69 million (Rs. 901.64 crore) was received between April 2006 and March 2010, comprising 0.21% of the total FDI inflows during the period, under the category of single-brand retailing.

Legal Formalities of FDI in Multi-Brand Retail

Till now the FDI in the multi brand retail is prohibited however the government is considering a proposal to introduce FDI upto 51% in this sector also. The various requirements for the investors while planning to invest in multi-brand retail are as follows:

? The minimum amount of FDI by a foreign investor would be $100 million.

? At least 50 per cent of total FDI will be invested in "back-end infrastructure," which will include investment on processing, manufacturing, distribution, design improvement, quality control, packaging, warehouses, storage, logistics and related infrastructure.

? At least 30 per cent procurement of manufactured or processed products shall be sourced from small industries that don't have plant and machinery more than $1 million worth.

? Multi-brand retail outlets can sell unbranded fresh agriculture produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products

? Retail sales locations will be set up in cities with a population of more than 10 lakh according to 2011 census and will cover an area of 10 km around the municipal limits of such cities.

? Government will have the first right to procurement of agricultural products as the Public Distribution system (PDS) is still in many ways the life line of the people living below the poverty line. To ensure that the system is not weakened the government may reserve the right to procure a certain amount of food grains for replenishing the buffer.

The Department of Industrial Policy and Promotion (DIPP) has justified increasing FDI limit to 100 percent in single-brand retail trading. It has asserted that the 100 per cent ownership would bring "global best practices" in management, quality, design, packaging and production to India. It would also incentivise local producers to "scale-up" their production that would create multiplier effect on employment and income generation.

Necessary Prerequisites to Expand Scope of FDI

FDI in multi-brand retailing is a sensitive issue and must be dealt cautiously as it has direct impact on a large chunk of population running small stores

with limited resources. The foreign capital channelized through investment can be aimed at maximizing itself without any thought, may swell up profits in the hands of a few, and widen the gap between the rich and the poor. This flow of foreign capital needs a check to protect a situation like this. It shall be designed in a manner that it leads to a win-win situation for India. This can be done by including certain inbuilt safety valves within the rules and regulations for FDI in multi-brand retailing. For example the rules and regulations may contain a provision to provide employment to the locals upto a certain limit and a certain amount of farm produce be procured from the poor farmers. Similarly to develop our Small and Medium Enterprise (SME), it can also be stipulated that a minimum percentage of manufactured products be sourced from the SME sector in India.

The government may also make some regulatory framework to ensure that the retailing giants do not resort to predatory pricing or acquire monopolistic tendencies. Besides, the government and RBI can evolve suitable policies to enable the retailers in the unorganized sector to expand and improve their efficiencies. The investments in retail by the FDI route, when they come, should come only through a short-list of recognized tax adherence countries. The irregular capital flow or suspect tax havens shall be blockedfirmly. Likewise, rules shall be made to include full disclosures required to know as to who the investors are. And in case there are legal issues, then there must be strict regulations as to who can be punished in the Indian legal system.

Conclusion and suggestions

The anticipated expansion in scope of FDI to the extent of 100% in Single-Brand retail and 51% in MultiBrand retail should be accompanied by health rules and regulations, certain protective conditionalities and legal framework to prevent any misuse of the provisions for facilitating inclusive growth of retail sector.

Further, the following specific suggestions may be considered:

- Preparation of a legal and regulatory framework and enforcement mechanism to ensure that large retailers are not able to dislocate small retailers by unfair means.
- Extension of institutional credit, at lower rates, by public sector banks, to help improve efficiencies of small retailers; and undertaking proactive programme for assisting small retailers to upgrade themselves.
- Enactment of a National Shopping Mall Regulation Act to regulate the fiscal and social aspects of the entire retail sector.
- Formulation of a Model Central Law regarding FDI in Retail Sector.
- Trade being a State subject, FDI proposals in multi-brand retail may have to pass another approval stage at the State level, that needs to be facilitated.

Abbreviations Used

DIPP Department of Industrial Policy and Promotion

FIPB Foreign Investment Promotion Board

F&G Food and Grocery

CRISIL Credit Rating and Information Services of India Ltd.

MSME Micro Small & Medium Enterprises

APMC Agricultural Produce market Committee

PDS Public Distribution system

SME Small and Medium Enterprise

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Corporate Governance in MNCs

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ABSTRACT

The importance of corporate governance in MNCs has never been more evident than today. Recent MNC debacles, corporate accounting scandals, and the drastic deflation of market values in the US and around the world have resulted in extra attention to this issue. This paper gives the conceptual view about mechanisms of corporate governance such as ownership concentration, board member participation, executive compensation, traits and issues in the working of MNCs.

Introduction

Corporate governance is "the system by which companies are directed and controlled. It involves a set of relationships between a company's management, its board, its shareholders and other stakeholders; it deals with prevention or mitigation of the conflict of interests of stakeholders. Ways of mitigating or preventing these conflicts of interests include the processes, customs, policies, laws, and institutions which have impact on the way a company is controlled. An important theme of corporate governance is the nature and extent of accountability of people in the business, and mechanisms that try to decrease the principalagent problem.

Corporate governance also includes the relationships among the many stakeholders involved and the goals for which the corporation is governed. It guarantees that an enterprise is directed and controlled in a responsible, professional, and transparent manner with the purpose of safeguarding its long-term success. It is intended to increase the confidence of shareholders and capital-market investors. As MNCs operate across national boundaries and legal systems and have a parent legal entity in a common law or civil law country and subsidiaries in the other form of legal system. A firm's governance structures and practices may vary greatly across country subsidiaries. Variance in corporate governance law across countries has important implications for tightening, in the absence of strong international codes and guidance. This paper gives an overview about the corporate governance and the working of MNCs.

Relevant literatures

The term “corporate governance” is a relatively new one both in the public and academic debates, although the issues it addresses have been around for much longer, at least since Berle and Means (1932) and the even earlier Smith (1776). Shleifer and Vishny (1997) define corporate governance by stating that it “deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment”. A similar concept is suggested by Caramanolis- Cötelli (1995), who regards corporate governance as being determined by the equity allocation among insiders (including executives, CEOs, directors or other individual, corporate or institutional investors who are affiliated with management) and outside investors. John and Senbet (1998) proposed that “corporate governance deals with mechanisms by which stakeholders of a corporation exercise control over corporate insiders and management such that their interests are protected”. Hart (1995) closely shares this view as he suggests that “corporate governance issues arise in an organization whenever two conditions are present. First, there is an agency problem, or conflict of interest, involving members of the organization these might be owners, managers, workers or consumers. Second, transaction costs are such that this agency problem cannot be dealt with through a contract”.

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Decision-making in MNCs is a complicated socio-political strategic management process (Bower and Doz, 1979: 165). The 500 largest MNCs account for over 90% of foreign direct investment (FDI) stock and about half of world foreign trade (Rugman and Verbeke, 2004).

Management theory focuses on complexity of MNCs and the related internalization of external conditions as basis for competitive advantage. MNC complexity varies on a country basis and thus approaches business and society issues. MNCs cannot maximize shareowner wealth while ignoring broader legal and political environments varying by country and region. Organizational integrity, in the form of strong core values and ethics, may be the minimum-cost solution to legal compliance (Paine, 1994). The precise way in which those monitoring devices are set up and fulfill their role in a particular firm defines the nature and characteristics of that firm's corporate governance.

All these numerous definitions share, explicitly or implicitly, some common elements. They all refer to the existence of conflicts of interest between insiders and outsiders, with an emphasis on those arising from the separation of ownership and control (Jensen and Meckling, 1976) over the partition of wealth generated by a company. A degree of consensus also exists regarding an acknowledgement that such corporate governance problem cannot be satisfactorily resolved by complete contracting because of significant uncertainty, information asymmetries and contracting costs in the relationship between capital providers and insiders (Grossman and Hart, 1986, Hart and Moore, 1990, Hart, 1995). And finally, one can be led to the inference that, if such a corporate governance problem exists, some mechanisms are needed to control the resulting conflicts.

Multi National Corporations (MNCs)

Key hallmarks of the modern economy are the continuing expansion and increasing significance of multinational corporations. Multinational corporations account for a sizable portion of the world output and trade. A multinational corporation is a business concern with operations in more than one country. These operations outside the company's home country may be linked to the parent by merger, operated as subsidiaries, or have considerable autonomy.

MNCs operate across various types of economies and legal systems involving different approaches to corporate governance and CSR and also varying levels of governmental corruption. MNC traits include distance, exposure to different cultures, organizational complexity, need to decentralize to local conditions, dispersed activities, marked variations between host and home countries, and the liability of foreignness in host countries (Zaheer, 1995). A firm's governance structures and practices may thus vary greatly across country subsidiaries. Many MNCs are organized as a set of subsidiaries that are legal entities in host countries (Kiel et al., 2006). While the parent legal entity in a home country is subject to that country's corporate governance laws and codes, MNCs operate as a collection of subsidiaries and often joint ventures. Each of such affiliates of the MNC is typically a legal entity in the host country. MNCs may be structured legally in some instances around essentially parent and local tax considerations. Some foreign affiliates are wholly owned; others are not. Subsidiaries may have local boards; joint ventures may have separate boards of managers.

Corporate Governance in MNCs

The importance of corporate governance in MNCs has never been more evident than today. Recent MNC debacles, corporate accounting scandals, and the drastic deflation of market values in the US and around the world have resulted in extra attention to this issue. Current attempts at legislative and organizational reform for better self governance seem to be a precursor to companies looking beyond the "earnings game".

In the context of an MNC, corporate governance is the system that not only monitors the relationship between executives and stakeholders (including shareholders) but also directs its various globally dispersed businesses and pinpoints the distribution of power, rights, and responsibilities among critical participants in the corporate-level-

decision-making process that affects worldwide corporate affairs. Corporate Governance in publicly traded MNCs generally contains two related tiers:

1. Parent-level corporate governance-how the parent company's rights, power and responsibilities are divided and monitored.
2. Subsidiary-level corporate governance-how foreign subsidiaries that have their own board of directors deal with their shareholders and other local stakeholders while simultaneously answering to and integrating with the parent firm.

Subsidiaries with their own board of directors are either independently listed and traded on foreign stock exchanges(in this case with local public shareholders) or they are not listed on exchanges but meet either a host country's legal requirements or a parent firm's strategic considerations for establishing such boards. If an MNC participates in some ownership in a foreign enterprise but not to the extent that it actually controls the enterprise, then this foreign unit is not considered second-tier governance. Although subsidiaries that do not have their own board of directors are not strongly related to an MNC's overall corporate governance, they at least impact an MNC's corporate accountability in a fundamental way. First tier governance influence the second tier through ownership holding, operational coordination, corporate support and performance monitoring. Second tier governance in turn channels back to the first tier through advice provision, governance sharing, information reporting, and directorate expansion.

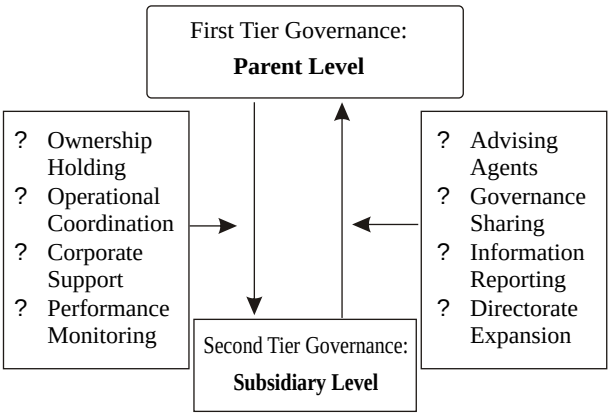


Fig1. Two-Tier Corporate Governance in MNCs

THE PARENT-SUBSIDIARY CORPORATE GOVERNANCE RELATIONSHIP

Although agency theoretic relationships between shareholders and managers have usually been the focus of attention for scholars, they are not the only kinds of dyadic agency relationships. In fact, agency relationships are fairly general and can be observed at all types and levels of organizations (Chang, 1999; Jensen & Meckling, 1976; O'Donnell, 2000). For example, agency relationships exist between the CEOs of conglomerates (the principals) and the strategic business unit (SBU) managers that report to these CEOs (agents) (Chang, 1999). The interests of the individual SBU managers may be incongruent not only with the interests of the CEOs, but also with those of the other SBU managers. Each SBU manager may try to make sure his or her unit gets access to critical resources and achieves the best performance at the expense of the performance of other SBUs and the whole organization.

Similarly, agency relationships exist between the managers at the headquarters of multinational corporations (principals) and the managers that run the subsidiaries of multinational corporations (agents) (Chang, 1999; Hamilton & Kashlak, 1999; O'Donnell, 2000; Roth & O'Donnell, 1996; Sanders & Carpenter, 1998). The agency relationships are created between the headquarters and subsidiaries of multinational corporations because, the interests of the managers at the headquarters who are responsible for the performance of the whole organization can be considerably different from the interests of the managers that run the subsidiaries. The incongruence of interests between the multinationals' headquarters and subsidiaries can arise not only due to concerns that can be seen in any parent-subsidiary relationship, but also due to the fact that the multinationals' headquarters and subsidiaries operate in different cultures and have divergent backgrounds. Finally, similar to what we observe in shareholder-manager relationships, the subsidiary managers in the headquarters-subsidiary relationships are monitored and bonded via bundles of subsidiary specific corporate governance mechanisms, so that the agency costs are minimized. These subsidiary specific bundles

of monitoring and bonding contracts represent the headquarters-subsidiary corporate governance relationships.

Board of Directors

Boards of directors, which consist of top level executives of firms and non-executive outside members, are institutions that carry out the role of ratifying and monitoring the managerial decisions with the help of their non-executive outside members.

As is the case with all corporate governance mechanisms, monitoring by boards of directors is not without costs. Outsiders on the board may lack the expertise about the firm that the managers of the firm have, therefore, the outsiders may accept unsound managerial proposals and reject sound ones (Seth & Rediker, 1992/93). The outsiders may also lack the incentives to challenge managerial decisions (Seth & Rediker, 1992/93). Subsidiary boards of directors have similar characteristics to the corporate boards of directors. However, it must be noted that in subsidiary boards the role of outsiders may be played not only by directors that are not affiliated with the parent company or the subsidiary in any way, but also by directors that are employees of the parent but not of the subsidiary.

Managerial Compensation Packages

Tying managerial compensation to firm value is not without costs. As managers' exposure to firm specific risk increases, the risk averse managers may ask to be compensated at higher levels to make up for the risk they are undertaking (Seth & Rediker, 1992/93).

Managerial compensation packages can be used to align the interests of the subsidiary managers to those of the headquarters, too. An additional friction that makes using contingent compensation more costly in subsidiaries is that most subsidiaries of multinational corporations are not publicly traded companies. As a result, market value based standards and rewards can not be used in subsidiary contingent compensation schemes.

MNCs and Choice of Law Issues

Given the fact that MNCs by their nature have a presence in at least more than one country, the application of the foregoing choice of law principles to MNCs is murky at best, and proceeds along in a case-by-case basis. However, Professor Philip Blumberg suggests two different approaches to resolve the choice of law questions associated with MNCs: the "entity" approach and the "enterprise" approach.

A. "Entity" Approach

Under the "entity" approach, each country in which an MNC operates would apply its own law exclusive to a particular unit of the MNC doing business within the country's territory. This would act as the default rule in international law for MNCs. For example, if an MNC has a parent corporation in the home country and subsidiaries in the host country, each country applies its law to the corporation incorporated under its laws and not the others. This approach is preferred by most commentators and is consistent with the Restatement (Third) of the Foreign Relations Law of the United States.

B. "Enterprise" Approach

The minority approach is the "enterprise approach," in which a single rule of law would apply to the entire MNC. Blumberg suggests that this approach may be implemented in two ways: extraterritoriality or through harmonization. In other words, with extraterritoriality, the laws of one country Â most likely the home country Â would apply to the whole MNC. With harmonization, the various countries may agree on a single harmonized set of rules to govern the MNC.

Corporate Governance: MNCs vs. Domestic Firms

Corporate Governance in MNCs shares many common elements with corporate governance in domestic firms. Conventional mechanisms of corporate governance such as ownership concentration, board member participation, and executive compensation apply to both. However, corporate governance in MNCs differs from that in domestic firms in several ways.

? First MNCs have to deal with more demanding and more diverse global shareholders and stakeholder groups that seek greater disclosure and more transparent explanations for major

decisions.

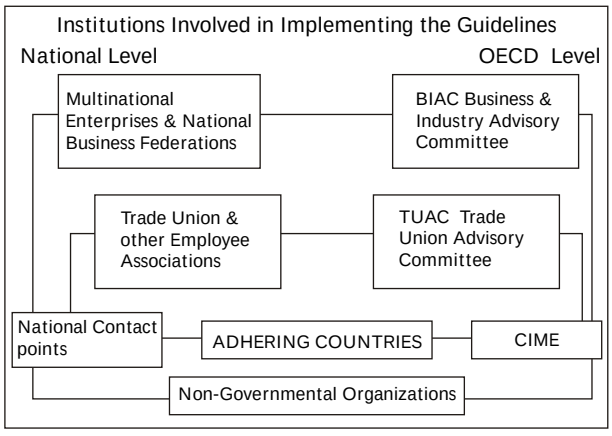
? Second, as a growing no. of MNCs becomes listed on multiple exchanges in multiple countries and certain overseas units become independently listed on host country exchanges. MNC corporate governance is also becoming much more complex and subject to many more institutional constraints.

? Third, unlike domestic firms those normally have only one board and one executive team. MNCs may have several boards or executive teams at different levels or in different countries.

? Fourth, the corporate governance framework for MNCs includes additional governance mechanisms other than the conventional ones that domestic firms use such as market based governance, cultural based governance and discipline based governance. Together, these three unique systems constitute a MNCs corporate governance framework for all tiers.

? Fifth, MNC corporate governance must be designed to cope with much more complex strategies, structures and environments than domestic corporate governance. Governance design requires not only independence, transparency and accountability-the three core principles in any country but also a balance of effective governance and business growth.

? Finally, MNCs face heterogeneous corporate governance standards institutionalized by different countries throughout the world in which they invest and operate.



The OECD Guidelines for Multinational Enterprises

During the 1970s and 1980s other voluntary codes were promoted by regional governmental organizations. These were often industry-specific codes or focusing on specific issues. The Organization for Economic Co-operation and Development (OECD), principles of corporate governance are:

? Ensuring the basis for an effective corporate governance framework

? The right of shareholders and key ownership function

? The equitable treatment of shareholders

? The role of stakeholders in corporate governance

? Disclosure and Transparency

? The Responsibilities of the Board

? one of the main influencing organizations,

The OECD issued and adopted the Guidelines for Multinational Enterprises in 1976 by the Member States. The guidelines are recommendations partly overlapping with the UN Global Compact, but also include aspects of information, consumer interest, science, technology, anti-trust and taxation. The Guidelines were revised in 2000 and constitute propositions aimed at enterprises of the Member States. They contain the policy that enterprises should respect human rights of those affected by the corporation's activities and should be consistent with the host government's international obligations and commitments. This implies that not only local regulations of the host State should be considered, but also international obligations, especially if these norms declare more expansive responsibility.

The revision in 2000 also expanded the focus on the National Contact Points (NPC) that promote the guidelines, handle enquiries and assist in its implementation when problems emerge. If violations occur, either in a third State or in the territory of the Member State, the NPC may receive complaints. When no agreement is reached on the national level, the NPC must after the revision issue a statement that identifies the violating corporation unless

considerations of the interests of the implementation of the Guidelines require other measures. Although this complaints mechanism can deter corporate conduct that violates human rights by acclaiming public interest, the compliance with the guidelines is voluntary and there is no enforcement procedure provided. The Guidelines still constitute the most widely used instrument on the international level. The European Commission has further stated that the OECD Guidelines for Multinational Enterprises are setting universally applicable standards for MNEs from industrialized countries and should also apply above any code from the EU. This is in line with other statements from the EU related to corporate responsibility. By promoting the OECD Guidelines, the consistency of the norms will further promote corporate uniformity in the global setting.

The common aim of the governments adhering to the guidelines is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise.

I. Concepts and Principles: sets out the principles which underlie the Guidelines, such as their voluntary character, their application world-wide and the fact that they reflect good practice for all enterprises.

II. General Policies: contains the first specific recommendations, including provisions on human rights, sustainable development, supply chain responsibility, and local capacity building, and more generally calls on enterprises to take full account of established policies in the countries in which they operate.

Disclosure: recommends disclosure on all material matters regarding the enterprise such as its performance and ownership, and encourages communication in areas where reporting standards are still emerging such as social, environmental and risk reporting

III. Employment and Industrial Relations: addresses major aspects of corporate behaviour in this area including child and forced labour, non-discrimination and the right to bona fide employee representation and constructive negotiations.

IV. Environment: encourages enterprises to raise their performance in protecting the environment, including performance with respect to health and safety impacts. Features of this chapter include recommendations concerning environmental management systems and the desirability of precaution where there are threats of serious damage to the environment.

V. Combating Bribery: covers both public and private bribery and addresses passive and active corruption.

VI. Consumer Interests: recommends that enterprises, when dealing with consumers, act in accordance with fair business, marketing and advertising practices, respect consumer privacy, and take all reasonable steps to ensure the safety and quality of goods or services provided.

VII. Science and Technology: aims to promote the diffusion by multinational enterprises of the fruits of research and development activities among the countries where they operate, thereby contributing to the innovative capacities of host countries.

VIII. Competition: emphasizes the importance of an open and competitive business climate.

IX. Taxation: calls on enterprises to respect both the letter and spirit of tax laws and to co-operate with tax authorities.

Conclusion

Since governance cannot meet every goal whether ethical or motivated by profit, the governance process should highlight the conflicting goals. The best enterprises deal with goal conflicts by clarifying a few business principles and applying them. Government agencies have poor governance because of multiple agencies with conflicting directives. When an ethical issue arises in MNCs, it must be filtered up to the

appropriate senior level manager who has the knowledge and capability to make a decision. Without proper governance it can be mismanaged or not decided on. So it should be the combine effort of both government and MNCs to successfully implement the policy of corporate governance.

Suggestions

? Align incentives and rewards. Make sure that financial incentives work to encourage desirable behavior. Avoid financial disincentives as well that might prohibit positive behavior. Clarify charge backs. This is one of the most important things to look at first.

? Assign ownership and accountability. You have to have an owner even though the board is finally responsible. The owner has to have an enterprise wide view, understand the nature of the assets, and have credibility. The owner must implement governance as part of a team and not alone.

? Design at multiple levels. For large MNCs, you need many levels. Start with enterprise wide strategies and goals. Divisions, business units, and geographies require a separate but connected layer of governance. Structurally, more synergy is found at the lower level and more autonomy is found at the top levels.

? Increase transparency and education. The more you educate the more you know the process. The more the process is known the more you have confidence in governance. The less you know, the more likely non-ethical workarounds and "special deals" will occur. Communicate, document and make senior management announcements often.

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Education For Juvenile Delinquents : An Overview

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ABSTRACT

This paper discusses the nuances and problems of juvenile delinquency, and also suggests measures to control and curb such tendencies.

Key Words: Delinquency, juvenile, Truancy,

1. Introduction

Criminal acts of young people are called juvenile delinquency. Sometimes the term delinquency is also used to refer to conduct that is antisocial but not against the law. However, it usually describes activities that would be considered crimes if committed by an adult. This excludes "status offenses," or actions that become legal matters only if conducted by children, such as running away from home, not attending school, or drinking alcohol. [11]

Delinquency implies conduct that does not conform to the legal or moral standards of society. Juvenile delinquency therefore means criminal acts carried out by a juvenile person.

Depending on the nation of origin, a juvenile becomes an adult anywhere between the ages of 15 to 18, although the age is sometimes lowered for murder and other serious crimes. In India for example the age for attaining adulthood is 18 years.

In Western countries, delinquent behavior is most common in the 14- to 15-year-old age group. At age 14, most delinquent conduct involves minor thefts. By age 16 or 17, more violent and dangerous acts, including assault and the use of a weapon, become prevalent.

Most delinquents do not continue this behavior into their adult life, for, as the circumstances of their lives change and they get a job, marry, or simply mature out of their turbulent adolescence, their conduct usually falls in line with societal standards. Although the evidence is ambiguous, most is higher than that of non delinquents. In the United States, boys make up 80 percent of the delinquent population, and this rate is similar throughout Europe and Japan. [11]

2. Schools and Delinquency

Schools are often the forum in which delinquent behavior originates. Most delinquents perform poorly in school and are unhappy in the school environment. Many delinquents are dropouts who leave school at an early age but have no job opportunities. Juvenile gangs often perform delinquent acts, not solely out of frustration with society but also out of a need to attain status within their group. A gang can provide the rewards a juvenile cannot get from his school or other institution.

Efforts have been made to identify potential delinquents at an early age in order to provide preventive treatment. Such predictions of delinquency generally depend not only on the child's behaviour in school but also on the quality of the child's home life. [11]

A great deal of scientific research examines the relationship between poor school performance and delinquency. The direction of the causal link between education and juvenile delinquency is fundamentally complex. Early aggressive behavior may lead to difficulties in the classroom. Such difficulties, in turn, may result in a child's receiving unfavorable evaluations from teachers or peers. These, in turn, might result in delinquency. Equally, delinquency could be another manifestation of whatever characteristics got the child into trouble with school authorities in the first place.

Some studies have shown reductions in

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delinquent behavior when a teenager drops out of school. Others have shown increasing rates of delinquency following school dropout. In addition, many studies have shown that family and child characteristics predict both problems in school and an increased likelihood of delinquent behavior. Despite the ongoing discussion of the direction of causality, the evidence is clear that poor school performance, truancy, and leaving school at a young age are connected to juvenile delinquency. [12] Several factors linked to delinquency, aggression, and violence have been identified. For example, research has found that verbal and reading deficits are linked to victimization (both inside and outside school), drug use, aggression, and delinquent behavior when students who fall behind in reading become marginalized as failures.

Rolf Loeber, of the University of Pittsburgh Medical Center, Western Psychiatric Institute and Clinic, US; cautioned that the relationship between delinquency and school performance should not be oversimplified. It may be that progression from delinquent behavior to school failure is contingent on other factors, since not every offending juvenile experiences school failure and not every failing student commits offenses.

According to Albert K. Cohen-Delinquency and Crime are related to the school in much the same way they are related to family condition, namely , through the effects which school activities have on the students associations with delinquent and non-delinquent behavior patterns. If the school is located in a delinquent area, it may affect the values of various types of persons, the child later will encounter, may fail to present anti-delinquency behavior patterns, or may provide pleasant or unpleasant experiences which effect the child's association with delinquent behavior patterns. [5]

According to Kamerdze: The fact is that some children dislike school and play truant is understandably related to family conditions and to other conditions outside the school as well as the school programme itself. However the nature of the activities provided by the school probably greatly effects the truancy rate, the truancy except that it is itself frequently defined as delinquency , probably is important to delinquency largely to the degree that it increases probabilities of contracts with delinquent behavior patterns. [6]

Thomas Dishion, of the University of Oregon's Department of Psychology, described the danger of assuming that all intervention programs are benign. As part of a study designed to measure and code interactions among teenage boys assembled at school to discuss problems in their relationships with parents and peers, Dishion and his colleagues (1999) found that interactions among the boys were influenced by the content of their conversations. [13]

Conversation was classified into two categories: rule-breaking talk and norm-accepting talk. Researchers observed that the nonverbal reactions to rule-breaking and norm-accepting topics and activities communicated either positive or negative reinforcement for the associated behavior (Dishion et al., 1996a). Among non delinquent dyads, normative talk led to positive reinforcement in the form of laughter. Alternatively, in dyads in which the members had some experience with delinquency, normative talk failed to elicit a positive response; only rule-breaking talk received positive feedback. [14]

Finally we can say that schools are designed to promote student achievement and healthy development and, for the most part, are successful in creating an environment that facilitates these. Schools play an essential part in educating, socializing, and otherwise preparing children for their roles as adults in an ever-changing world. Students' commitment to school and learning is known to contribute to their academic success and to operate as protective factors against many problem behaviors. Some schools are seriously handicapped in their ability to successfully encourage bonds to school and learning. It is important to remember that schools operate in a complex social context characterized in many instances by limited resources. Gottfredson (1997:5-1) has noted: By far the strongest correlates of school disorder are characteristics of the population and community contexts in which schools are located. Schools in urban, poor, disorganized communities experience more disorder than other schools. Research

has also demonstrated that the human resources needed to implement and sustain school improvement effortsleadership, teacher morale, teacher mastery, school climate, and resourcesare found less often in urban rather than in other schools .[15]

3. Family environment and peer influence

Family factors which may have an influence on offending include: the level of parental supervision, the way parents discipline a child, particularly harsh punishment, parental conflict or separation, criminal parents or siblings, parental abuse or neglect, and the quality of the parent-child relationship. [16]

Children brought up by lone parents are more likely to start offending than those who live with two natural parents. It is also more likely that children of single parents may live in poverty, which is strongly associated with juvenile delinquency. [17] However once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. [18] Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent. [19]

If a child has low parental supervision they are much more likely to offend. [20] Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. [21][22] When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. [23] A lack of supervision is also connected to poor relationships between children and parents. Children who are often in conflict with their parents may be less willing to discuss their activities with them. [24]

Adolescents with criminal siblings are only more likely to be influenced by their siblings, and also become delinquent, if the sibling is older, of the same sex/gender. [25]

Cases where a younger criminal sibling influences an older one are rare. An aggressive, non-loving/warm sibling is less likely to influence a younger sibling in the direction of delinquency, if anything, the more strained the relationship between the siblings, the less they will want to be like, and/or influence each other. [26]

Peer rejection in childhood is also a large predictor of juvenile delinquency. Although children are rejected by peers for many reasons, it is often the case that they are rejected due to violent or aggressive behavior. This rejection affects the child's ability to be socialized properly, which can reduce their aggressive tendencies, and often leads them to gravitate towards anti-social peer groups. [27] This association often leads to the promotion of violent, aggressive and deviant behavior. "The impact of deviant peer group influences on the crystallization of an antisocial developmental trajectory has been solidly documented." [28]

Aggressive adolescents who have been rejected by peers are also more likely to have a "hostile attribution bias" which leads people to interpret the actions of others (whether they be hostile or not) as purposefully hostile and aggressive towards them. This often leads to an impulsive and aggressive reaction. [29]

Hostile attribution bias however, can appear at any age during development and often lasts throughout a person's life time. Children resulting from unintended pregnancies are more likely to exhibit delinquent behavior. [30] They also have lower mother-child relationship quality. [31]

4. Society / Community influence on Delinquents

Social control

Social control theory proposes that exploiting the process of socialization and social learning builds self-control and can reduce the inclination to indulge in behavior recognized as antisocial. The four types of control can help prevent juvenile delinquency are:

Direct: by which punishment is threatened or applied for wrongful behavior, and compliance is rewarded by parents, family, and authority figures.

Internal: by which a youth refrains from delinquency

through the conscience or superego.

Indirect: by identification with those who influence behavior, say because his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships. Control through needs satisfaction, i.e., if all an individual's needs are met, there is no point in criminal activity. [32]

Social Labeling

Labeling theory states that once young people have been labeled as criminal they are more likely to offend. [33] The idea is that once labeled as deviant a young person may accept that role, and be more likely to associate with others who have been similarly labeled. [34]

Labeling theorists say that male children from poor families are more likely to be labeled deviant, and that this may partially explain why there are more lower-class young male offenders. [35]

Social disorganization

Current positivist approaches generally focus on the culture. A type of criminological theory attributing variation in crime and delinquency over time and among territories to the absence or breakdown of communal institutions (e.g. family, school, church and social groups.) and communal relationships that traditionally encouraged cooperative relationships among people [36]

5. GLOBAL PERSPECTIVE (Some regional aspects of Juvenile Delinquency)

United Nations', World Youth Report, 2003 gives a vivid and overall picture with respect to Juvenile Delinquency in the different regions of the World. While certain aspects of juvenile delinquency are universal, others vary from one region to another. As a rule, cultural contexts are important in understanding the causes of juvenile delinquency and developing culturally appropriate measures to deal with this.

In Africa, delinquency tends to be attributed primarily to hunger, poverty, malnutrition and unemployment, which are linked to the marginalization of juveniles in the already severely disadvantaged segments of society.Many of the urban poor live in slum and squatter settlements with overcrowded, unhealthy housing and a lack of basic services. It is here that the majority of urban youth and children live. [37] Juvenile crime and delinquency are on the rise, a trend also linked to the rapid and dramatic social, political and economic changes that have taken place in Africa in recent decades. The principal offences committed by young people are theft, robbery, smuggling, prostitution, the abuse of narcotic substances, and drug trafficking. [38]

In Asian countries, juvenile crime and delinquency are largely urban phenomena. Statistically, as is true elsewhere, young people constitute the most criminally active segment of the population. The most noticeable trends in the region are the rise in the number of violent acts committed by young people, the increase in drug-related offences, and the marked growth in female juvenile delinquency. [39]

The financial crisis that hit some countries in East and South-East Asia in the late 1990screated economic stagnation and contraction, leading to large-scale youth unemployment. For millions of young people, this meant a loss of identity and the opportunity for self-actualization. [40]

Some countries are facing great difficulty because they are located near or within the “Golden Crescent” or the “Golden Triangle”, two major narcotics-producing areas of Asia. Traffickers actively involve adolescents and youth in serving this industry, and many of them become addicted to drugs because of their low prices and easy availability. [41]

In Latin America, the young have been the hardest hit by the economic problems linked to the debt crisis in the region, evidenced by the extremely high unemployment rates prevailing within this group. Juvenile delinquency is particularly acute and is often associated with the problem of homelessness among children and adolescents.

In the Arab world, the problems associated with juvenile delinquency vary from one country to another. Some countries have experienced socio-economic difficulties, while others have become prosperous. In the latter group, delinquency may

occur in connection with migrants seeking employment, or may be linked to factors such as continued urbanization, sudden affluence, rapidly changes in the economy, and the increasing heterogeneity of the population. The conflict between traditional Arab-Islamic values and newer, often imported values appears to be a common problem throughout the region.

In the Industrialized countries, increased prosperity and the availability of a growing range of consumer goods have led to increased opportunities for juvenile crime, including theft, vandalism and the destruction of property. With the social changes that have occurred over the past few decades, the extended family has been replaced by the nuclear family as the primary kinship group. The informal traditional control exercised by adults (including parents, relatives and teachers) over young people has gradually declined, and adequate substitutes have not been provided. Lack or insufficiency of parental supervision is one of the strongest predictors of delinquency. The contemporary Western family structure constitutes one of the most important factors associated with the increase in juvenile delinquency in the past 50 years. [42]

CONCLUSION

The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Educational opportunities should be provided to Since the family is the central unit responsible for the primary socialization of children, governmental and social efforts to preserve the integrity of the family should be pursued.

Special attention should be given to children of families affected by problems brought about by rapid and uneven economic, social and cultural change, in particular the children of indigenous, migrant and refugee families.

Education systems should, in addition to their academic and vocational training activities, devote particular attention to the following:(a) Teaching of basic values and developing respect for the child's own cultural identity and patterns, for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;(b) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;(c) Involvement of young persons as active and effective participants in, rather than mere objects of, the educational process,(d) Undertaking activities that foster a sense of identity with and of belonging to the school and the community.

Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons. Schools should serve as resource and referral centers for the provision of medical, counseling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs". Special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons. Teachers and other professionals should be equipped and trained to prevent and deal with these problems. Information on the use and abuse of drugs, including alcohol, should be made available to the student body. Schools should serve as resource and referral centers for the provision of medical, counseling and other services to young persons, particularly those with special needs and suffering from abuse, neglect, victimization and exploitation.

Through a variety of educational programmes, teachers and other adults and the student body should be sensitized to the problems, needs and perceptions of young persons, particularly those belonging to underprivileged, disadvantaged, ethnic or other minority and low-income groups. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups. Special assistance should be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs". Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy on discipline, and decision-making.

Community-based services and programmes which respond to the special needs, problems, interests and concerns of young persons and which offer appropriate counseling and guidance to young persons and their families should be developed, or strengthened where they exist. The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance. Government agencies should provide young persons with the opportunity of continuing in full-time education, funded by the State where parents or guardians are unable to support the young persons, and of receiving work experience.

Finally, it is concluded that in order to educate and to prevent Juvenile Delinquency a holistic approach at all levels i.e., the government, the Schools, and the Society should be initiated as they all have a shared responsibility towards the control and prevention of Juvenile Delinquency.

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Short Submission

Education for Juvenile-Delinquents: Role of Schools

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ABSTRACT

Schools are designed to promote student's achievement and their healthy development, and for the most part they are successful in creating an environment that facilitates these. There appears to be considerable agreement that School can help to prevent and control juvenile-delinquency. Education,especially in class-rooms, with teachers being the observant of the deviant behavior that includes truancy, school failures & behavioral and attitudinal problems. Pre-delinquency behavior can be observed at the initial stages at the school and suitably curbed by taking appropriate measures. This information coupled with an understanding of home and community problems, can help to locate children who are delinquent prone. It can also help the educators to locate those gaps in the school's system that fosters delinquency malady. Thus Schools can play a major role in the prevention of the problems, by pin pointing and correcting aberration in the system.

Introduction

There appears to be considerable agreement that School can help to prevent and control juvenile-delinquency. Education, especially class-rooms, teachers are the logical ones to observe deviant behavior. They see almost all children have the opportunity to observe the special type of behavior and which is frequently indicative of pre-delinquency. This includes truancy, school failures and behavioral problems. This information coupled with an understanding of home and community problems, can help to locate children who are delinquent prone.

It can also help the educators to recognize some of the school situations which foster the delinquency cancer. In the later categories the school can play a major role of prevention, but often the school's responsibility is to study information to another agency, better equipped to handle particular problems.

In order to play a positive role in the prevention and control of delinquency, the school must have personal with an understanding of the problem, curriculums which meet the educational needs of all children, special services for those who need special attention and a working relationship with other child-serving agencies. A school so prepared should be able to prevent delinquency and improve the conditions of delinquents.

William E. Amos has suggested the following three goals of school-education in the area of delinquency prevention.

(i) Developing a new value system in which the school would be a force working against the discrimination and rejection experienced by pupils drawn from the lower class.

(ii) Making the school an instrument for fostering work attitude, self-esteem and job skills to improve the employability of graduates of schools in deprived cases.

(iii) Providing school experience, designated to improve the self image of delinquency-prone children.

This study presents an overview of the effects of the efforts made to prevent treat juvenile-delinquency mainly through educational institutional referred to as schools.

School and Delinquency

According to Albert K. Cohen, delinquency and crime are related to the school in much the same way they are related to family-condition, through the effects which school activities have on the students

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associations with delinquent and non-delinquent behavior patterns. If the school is located in a delinquents area, it may effect the values of various types of persons, the child later will encounter and may fail to present anti-delinquency behavior patterns, or may provide pleasant or unpleasant experiences which effect the child's association with delinquent behavior patterns.

According to Kamerdze the effect is that some children dislike school and play truant that is understandly related to family conditions and to other conditions outside the school as well as the school program itself. However, the nature of the activities provided by the school probably greatly effects the truancy that is frequently referred to as delinquents rate.

The Study of forty two (42) cities of Washington indicated that, in general, the greater, the number of days that the schools are in session each year the lower the delinquency rates. But in other urban areas, which have the best education facilities the crime rates are higher than those in rural areas.

Today the number of educated people is increasing day by day every year, but the crime rate instead of decreasing, is also increasing.

THE BROSTAL SCHOOLS FOR JUVENILE OFFENDERS IN INDIA

On the basis of recommendations of the Indian Jail committee various states have passed special Laws for the detention and training of Juvenile offenders. These are known as Brostal schools. The acts passed by the states in India are described in chronological as under:

(i) The Madras Brostal Schools Act,1926.

(ii) The Punjab Broastal Schools Act, 1926.

(iii) The Bengal Brostal Schools Act, 1928. (Repealed by the West Bengal Children Act, 1959)

(iv) The Central provinces Brostal Schools Act, 1928.

(v) The Bombay Brostal Schools Act, 1929.

(vi) The United Provinces Brostal Schools Act, 1938.

(vii) The Mysore Brostal Schools Act, 1943.

(viii) The Travencore Brostal Schools Act, 1945.

(ix) The Kerala Brostal Schools Act, 1961.

VISITING TEACHERS FOR THE JUVENILE OFFENDERS

One special service aimed at prevention and treatment of behavior disorder is the visiting faculty programme. Visiting teacher are individuals trained to assist regular classroom teachers to better understand the children with problems which are interfering or may interfere with their learning and to assist the children who are experiencing difficulties. They work cooperatively with other members of the school team. Some schools classify persons with such duties as school social workers.

The Michigan County Special Education Administration Manual (1960) indicates that the training of visiting faculty includes skills and contents area work in dynamics of behavior and some medical, psychiatric and psychological information. Also the trained the professional people should function as members of the school teams. It is essential that they must recognized their role as such and equally as important that they may be accepted by the schools as a vital link in a school programme aimed at serving the children.

COMMUNITY ACTION:

If the family school structure fails to bring positive results in controlling the behavior of children, the community must step in, to provide the sense of belonging which the child desperately needs, the lake of which makes him to seek it else where. In the community, this service can be effectively provided by those who can organize such children and give them compassionate understanding which they need.

In the United Kingdom a beginning in the Institutional treatment was made when a school for the children of the criminals was established in London 1978. John Pound started a ragged school for the neglected children in Brostal in 1818. The second half

of the nineteenth century saw the establishment of a network of industrial schools and reformatories for neglected children and young offenders all over the Britain. In the United States, the first Institution for the care of children was established in New York City in 1825, which was private institution for the prevention pauperism. Other similar institutions were set up in the other cities. The care of Juvenile Offenders on scientific basis was started in 1869 when the state agent was appointed at Boston. The first Juvenile Court was established in 1899 at Chicago, which began to act as the guardian of Juvenile delinquents. The other state also followed the examples an set up Juvenile Courts and enacted the children act.

CONCLUSIONS

Educating systems should, in addition to their academic and vocational training activities, devote particular attention to following with a view to prevent and treat Juvenile delinquency

(i) Teaching of basic values and developing respect for the child's on cultural identity and patterns for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms;

(ii) Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;

(iii) Involvement of young persons as active and effective participants in, rather than mare objects of, educational process;

(iv) Undertaking activities that foster a sense of identity with and of belonging to the school and the community.

Educational systems should seek to work together with parents, community organizations and agencies concerned with the activities of young persons. Schools should serve as resource and referral centers for the provision of medical, counseling and other services to young persons. School systems should plan, develop and implement extracurricular activities of interest to young persons, in co-operation with community groups. Special assistance should to be given to children and young persons who find it difficult to comply with attendance codes, and to "drop-outs". Teachers and other professionals should be equipped and trained to prevent and deal with these problems. through a variety of educational programmes, School systems should plan, develop and implement extracurricular activities of interest to young offenders, in co-operation with community groups. Schools should promote policies and rules that are fair and just; students should be represented in bodies formulating school policy, including policy, including policy on discipline, and decision-making. Finally, it is concluded that in order to educate and to prevent Juvenile Delinquency a holistic approach at all levels i.e., the government, the Schools, and the Society should be initiated as they all have a shared responsibility towards the control and prevention of Juvenile Delinquency.

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Legal Barriers for the Indian Insurance Industry: An Overview

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ABSTRACT

This study given as overview the various government regulations enacted from time to time for the growth and monitoring of life insurance industry in India.

Keywords: - Indian insurance industry, history of insurance industry in India, regulation for insurance business in India

Introduction

Life insurance is a contract between the policy owner and the insurer, where the insurer agrees to pay reimburses the insured individual on his/her death or illness. The insured agrees to pay an insurance premium for the service.

Life Insurance is the fastest growing sector in India since 2000 as Government allowed Private players and FDI up to 26%. Life Insurance in India was nationalized by incorporating Life Insurance Corporation (LIC) in 1956. All private life insurance companies at that time were taken over by LIC. It started off with a capital of 5 crore and that too from the Government of India. In 1993 the Government of Republic of India appointed R N Malhotra Committee to lay down a road map for privatization of the life insurance sector.

While the committee submitted its report in 1994, it took another six years before the enabling legislation was passed in the year 2000. Legislation amending the *Insurance Act* of 1938 was introduced and the *Insurance Regulatory and Development Authority (IRDA) Act* of 2000 was legislated in 2000. In the same year the newly appointed insurance regulator started IRDA issuing licenses to private life insurers. In 2003, the Indian insurance market ranked 19th globally and was the fifth largest in Asia.

The inauguration of a new era of insurance development has seen the entry of international insurers, the proliferation of innovative products and distributionchannels, and the raising of supervisory standards. Insurance is essentially the means to financially compensate for unseen losses to human life.

History of Life Insurance in India

Insurance has its presence in the writings of Manusmrithi, Yagnavalikya (Dharamsastra), and Kautilya (Arthasastra), which made emphasis on the pooling of the resources for the redistribution during the natural calamities like epidemics, flood fire etc. Insurance in its current form has its history dating back 1818, when Oriental Life Insurance Company was started by Anita Bhavsar in Kolkata keeping in mind the needs of European community. The Indian Life Assurance Co. Act 1912 was the first statutory measure to regulate life insurance business. With the establishment of the Oriental Life Insurance Company in Kolkata, the business of Indian life insurance started in the year 1818. In 1928, Indian Insurance Co. Act was enacted to enable the government to collect statistical information about both life and nonlife business in India and Foreign insurer. In 1938, Insurance Act 1938 was set for effective control over the activities of the insurer. On 19 January 1956, the life insurance sector was nationalised and Life Insurance Corporation came into existence. 245 Indian and foreign insurers and provident societies were taken over by the central government, nationalized and merged into one entity, the Life Insurance Corporation of India. In 1968, the insurance act was made to regulate investment and minimum solvency margin. The insurance sector in India has completed all the facets of competition from

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being an open competitive market to being nationalized and then getting back to the form of a liberalized market once again. The history of the insurance sector in India reveals that it has witnessed complete dynamism for past two centuries approximately.

The General Insurance Business Act of 1972 was enacted to nationalize about 100 general insurance companies which were and subsequently merged into four companies. All the companies were amalgamated into National Insurance, New India Assurance, Oriental Insurance and United India Insurance, which were headquartered in each of the four metropolitan cities.

Until 1999, there were no private insurance companies in India. The government then introduced the Insurance Regulatory and Development Authority Act in 1999, thereby de-regulating the insurance sector and allowing private companies. Furthermore, foreign investment was also allowed and capped at 26% holding in the Indian insurance companies.

In 2006, the Actuaries Act was passed by parliament to give the profession statutory status on par with Chartered Accountants, Notaries, Cost & Works Accountants, Advocates, Architects and Company Secretaries.

A minimum capital of Rs.100 Crore (US$20 million) is required, by legislation, to set up an insurance business.

The Insurance Regulatory and Development Authority Act, 1999

It is an Act that provides for the establishment of an authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of an insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General Insurance Business (Nationalisation) Act, 1972.

The Parliament ratified the Insurance Regulatory and Development Authority Bill, 1999 on 7-12-1999, thus stigmatizing the monopoly of the Life Insurance Corporation and General Insurance Corporation over the insurance sector.

The Bill, adopted by the Lok Sabha on December 2, was passed in the Rajya Sabha on 7-12-1999. The Insurance Regulatory & Development Authority Act, 1999 seeks to open up the insurance sector for private companies with a foreign equity of 26 per cent. It is also aimed at ending the monopoly of the Life Insurance Corporation (LIC) and General Insurance Corporation (GIC) in the insurance sector of the country.

The Insurance Laws (Amendment) Bill, 2008

? The Insurance Laws (Amendment) Bill, 2008 was introduced on Dec 22, 2008 in the Rajya Sabha. The Bill was referred to the Standing Committee on Finance (Chairperson: Shri Ananth Kumar), which was scheduled to submit its report by the first day of the next session

? The Bill amends three Acts: the Insurance Act, 1938; the General Insurance Business (Nationalisation) Act, 1972; and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The amendments include raising the maximum limit for foreign equity in Indian insurance companies, permitting foreign re-insurers to open branches and providing for permanent registration of the insurers.

? The Bill adds, modifies and omits certain definitions in the 1938 Act. It defines “health insurance business” as a contract that provides for sickness benefits and medical expenses on the basis of an indemnity, reimbursement, service or prepaid plan. It amends the definition of “actuary” to bring it in line with definition in the Actuaries Act, 2006.

? The Bill increases the maximum permitted limit of foreign equity in Indian insurance companies from 26% to 49%. The cap of 26% for insurance co-operative societies is not modified.

? Every insurer has to be registered in order to carry on insurance business. In order to be registered, each category of insurer requires a minimum amount of capital: for life insurance

or general insurance, the minimum paid up capital required is Rs 100 crore; for health insurance, the minimum paid up capital required is Rs 50 crore; and for re-insurance business, the minimum paid up capital required is Rs 200 crore. A foreign re-insurance business needs to have a minimum of Rs 5000 crore as net owned funds to be registered under the law.

? There is provision for permanent registration of the insurers with annual renewal fee and right to cancel registration if the insurer violates any conditions specified by IRDA.

? The Bill amends the capital structure, voting rights and maintenance of registers of beneficial owners of shares of public limited companies. It also provides for maintenance of accounts and balance sheets, conduct of audits and submission of returns and actuarial reports.

? The Bill seeks to provide for investment of assets in the prescribed manner. It prohibits any insurer from investing funds of policy holders outside India.

? The Bill seeks to facilitate the entry of Lloyd's of London in the insurance business in India as a foreign company in joint venture with Indian partners and also as a branch of foreign re-insurer.

? Every insurer who conducts business of general insurance shall underwrite a specified percentage of insurance business in third party risks of motor vehicles.

? The Act allows the transfer or assignment of life insurance policy in the specified manner. The Bill amends this provision. It states that an assignment in favour of a person made on certain conditions is valid provided that a conditional assignee shall not be entitled to obtain a loan on the policy or surrender the policy.

? The Act allows the holder of a policy of life insurance to nominate to whom the policy money shall be paid in the event of the holder's death. The Bill makes provision for the holder to indicate whether a nominee is a "beneficiary nominee" or a "collector nominee". A "beneficiary nominee" is entitled to receive the entire proceeds payable under the policy. A "collector nominee" is any person other than a beneficiary nominee who is liable to pay benefits arising out of the policy to the beneficiary nominee or legal heirs of the policy holder.

? The Bill makes the insurers responsible for appointing insurance agents and the IRDA for regulating their eligibility and qualifications.

? No life insurance policy shall be questioned on any ground whatsoever after five years from the date of the policy. The Bill also limits the ground for challenge within the period of five years.

? Bill omits provisions related to Tariff Advisory Committee in view of the detariffing of rates and premiums.

? The Bill empowers the Life Insurance Council and General Insurance Council to frame bye laws for elections, meetings, and collection of fees from its members.

? The Bill enhances penalties for offences such as carrying on business of insurance without registration or not complying with the obligation toward rural and social sector and third party insurance of motor vehicles.

Recent Development of LIC of India

Parliament passed the Life Insurance Corporation (Amendment) Bill that seeks to increase the company's paid-up capital to Rs.100 crore from the existing Rs.5 crore and create a separate fund for its expansion, with the Rajya Sabha approving the measure. The new regulation replaces the 55-year-old Life Insurance Corporation Act, 1956. The bill has already been cleared by the Lok Sabha, the lower house of parliament.

Minister of State for Finance Namo Narain Meena said the government would continue to provide sovereign guarantee to the policy holders of the Life Insurance Corporation.

The new regulation also seeks to allow the country's largest life insurer to create a separate account to fund its expansion plans.

"A separate account will be created. LIC will have its own fund which can be used for its expansion," Meena said while replying to a debate in the Rajya Sabha, the uppar house of the parliament. The new regulations will bring Life Insurance Corporation on par with the private insurers in terms of paid-up capital. As per the Insurance Regulatory and Development Authority (IRDA) norms the minimum capital base of an insurance firm should be Rs.100 crore.

Remarks

The authorities and Acts enacted by the Government of India, over time, could be considered desirable, in fact necessary, for controlling the activity of insurance providers with a view to protect the interests of insured. Liberalisation of the insurance sector to over time would have generated healthy competition to the advantage of insured.

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The Legacy of Gandhi

*Dr. Tarun Pratap Yadav**

The Gandhian Legacy in Hindu-Muslim Relations

Gandhi born as a Hindu and who remained deeply in his approach to human relations was not a dogmatic thinker. The influence of Tolstoy, his ideal of small Christian village communities, Jainism from where he developed his firm commitment to non-violence, the techniques and the methods of peaceful civil disobedience that he witnessed in England during his stay in that country, combined with his reading of Hindu, Muslim, Christian and other sacred scriptures, to furnish an elaborate philosophy of social activism and reformism that was not a sum total of those diverse sources but a new, modern approach to politics and questions of social amity and justice.

If Gandhi's moral and social philosophy is to be summed up in a few words it would be that human beings are intrinsically good and therefore through love and solidarity societal differences like cultural, religious ,economic and political can be transcended. However, he did not believe that goodness can prevail on its own, constant efforts have to be made to establish justice in society. Thus while declaring himself as an orthodox Hindu; he did not hesitate to reject untouchability as a great social evil within Hindu society. Much of his efforts were directed at the eradication of untouchability.

Given the challenges of the cultural and religious diversity and the threats of terrorism, the views of Gandhi have special relevance in the present world. He employed a number of regular practices to enhance Hindu-Muslim understanding. He also took part in some political events so as to create better understanding between the two communities. It would be fair to say that his practices and efforts were motivated by the two primary objectives: to bring British colonial rule to an end and to keep India united.

With regard to Hindu-Muslim relations his morning sessions of public prayers are particularly significant.

He began the day with the recitations of Bhagvat Gita, Quran, Bible and other sacred scriptures. Doing this was an exceptional way to demonstrate that all paths lead to same God. Many Muslims who witnessed the morning prayers have admitted that they were particularly and deeply touched by the sanctity Gandhiji accorded to the Quran. Thus Gandhi elevated *Sarva Dharma Sambhava* the leitmotif of his social responsibility and gave it a dignity in his daily actions that did not exist in the past.

Gandhiji wanted to bring Muslims into the anti-colonial struggle against the British rule. He recognized the fact that Indian Muslims were in an emotional and religious sense affiliated with a universal community, but rather than holding this against them he tried to win them over by coming out openly in favour of the Khilafat Movement.

A revival of Gandhian Legacy on the Hindu-Muslim relations is an imperative to save South Asia from the disaster of an armed conflict between India and Pakistan, which could involve use of nuclear weapons. Such a war will render this region unfit for human habitation for centuries. But his message of peace and peaceful resistance to injustice is for all humanity, and all societies can learn a lot from his idea of equal respect for all religions. Therefore, the Gandhian legacy on inter-communal relations deserves to be studied once again.

Gandhi's Influence on Indian Foreign Policy

The essential elements of the Gandhi's philosophy were the concepts of non-violence, the importance of the moral dimension in the conduct of men as well as the nations, and satyagraha (or the struggle for truth, compassion and justice). All these principles continue to influence India's foreign policy even today. India's foreign policy has its root in its freedom struggle that was largely shaped by the

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Gandhian values. The defining characteristics of India's foreign policy in the first few decades after India's independence were questionably inspired by Gandhi. These were:

? Non-alignment or the right to follow an independent foreign policy and to decide foreign policies on merit.

? Moral, diplomatic and economic support for the struggle against the colonialism, racism and apartheid.

? Non-violence and the quest for the nuclear disarmament.

? India's role as the international peace-maker.

India's position on world issues was informed by the moral clarity and the courage which won India many admirers, made India the leader of the developing countries and gave it an influence in world affairs, out of proportion to its real economic and political strength. Outsiders' perceptions of India were significantly shaped by the Gandhi's message.

Gandhi's Economic Thought

An attempt to understand Gandhi's economic ideas must be conceptualized in the economic atmosphere prevailing in the closing decades of the 19th century and the early decades of the 20t century. These circumstances are as follows:

? A highly neglected agriculture sector.

? Decline of the traditional textiles and other handicrafts in India.

? Colonial neglect of infrastructure.

? Active discouragement to the emergence of the Indian entrepreneurship.

The concept of Swadeshi

Gandhiji himself defined Swadeshi as the spirit in us which restricts us to the use and service of our immediate surroundings to the exclusion of the more remote. Gandhi's central economic concern is the protection of village crafts against further encroachment from the foreign industry, and the Swadeshi concept which embodied this concern becomes the progenitor of his entire thinking on the economic issues.

It would possibly be unfair to attribute to Gandhiji, the opposition of complete denial of the international trade and exchange. His intellectual instance seemed to be closer to the modern theory of *trade among unequal partners* propounded by the economists such as the Pomfret which would argue for a less discriminatory trade regime against the Third World.

Views on Industrialization and Technology

Opposition to industrialization is a very prominent feature of Gandhian economics whose social existence is to be preserved in its pristine form against all change. This led Gandhiji to oppose all forms of modern industrialization (whether foreign or domestic). Gandhiji's model of development was one in which every village produced all its necessities and in certain percentage in addition for the requirement of the cities. But he is no obscurantist and he recognizes that a moderate amount of industrialization may be necessary for a nation's survival. He therefore concedes the existence of heavy industry, only cautioning that heavy industries will need to be centralized and nationalized. But they will occupy the least part of the vast national activity which will be mainly in the villages.

Gandhiji's antagonism to the technology went further than the usual argument of “technology displacing labour”. To him, technology was to be feared because it threatened the very basis of the dignified human existence. He used to think that in modern terms, it is beneath human dignity to lose one's individuality and become a mere cog in the machine. Further, he desired every individual to become a full blooded member of the society and villages become self sufficient. He insisted that it was the duty of the government to encourage the existing industries of villagers *according to the village methods,* that is, the villagers working in their pawn cottages as they have done from immemorial times.

Legacy of Democratic Decentralization

Gandhiji believed that the real development of

India was possible through its indigenous political system in which the centralized state would wield only such power as was not within the scope of the lower tiers of the participatory governance. The state was not the architect of but the facilitator of development. More positively, he was for a multilayered autonomous vertical integration of the political institutions with its base as the India's villages and its superstructure at the Centre-----manifesting a descending level of power over the people as one moved from base to superstructure. The newer concepts of Development Administration and Good Governance match with the concepts of our Mahatma. India also incorporated Article 40 in its constitution and had come up with the 73rd and 74th Constitutional Amendment Acts which provide strength to lower / local level governments. These are the gifts of our Father of Our Nation to us.

In the end, I would like to say that decentralization *per se* is not necessarily democratization. Neither deconcentration nor delegation of power is a sufficient condition for effective democratization. What is important is real devolution of power to the constitutionally-elected representatives at the level of local self government.

Educational Ethics in Varnashrama Vyavastha: A Legacy

** Dr. Ravi Saran Dixit*

ABSTRACT

Human needs beget social organisations. Human needs are defined in terms of human interests, purposes and aspirations. The adjustments of human behaviour with these purposes and aspirations define actual planning of the social organisation. The Hindu conception of life and its conduct is also organized in terms of such considerations.

Hindu sages agree that any scheme of social organization aiming at the best functioning of every human being as a social unit must consider firstly man as a social being with reference to his training and development in the natural and social environment in order to fulfil his final aim of his existence and secondly this has to be coordinated with another scheme which studies man in terms of his natural endowments, dispositions and attitudes. These two problems are undertaken in the scheme of "ashrama" and "varna" respectively together known as "varnashrama vyavastha". It refers to the nurture and the nature of man. The scheme of "ashramas" devised by the Hindus is a unique contribution in the whole history of the social thought of the world.

This paper endeavours to investigate the institution as a socio-psychological phenomenon rather than discuss the purely psycho-physiological techniques of education or training process which is generally construed as the subject matter of Educational Psychology as practised among the Hindus since archaic times.

Introduction

In order to understand the psycho-moral basis of the "ashramas" properly, it is imperative to understand the theory of "purusharthas". This theory concerns with the understanding, justification, management and conduct of affairs of the individual's life in relation to the group, in and through the "ashramas". The "purusharthas" are four namely, 'dharma', 'artha', 'kama' and 'moksha'. These are the psycho-moral bases of the "ashrama" theory as on the one hand, the individual receives a psychological training through the "ashramas" in terms of lessons in the use and management of the "purusharthas" while on the other hand, in actual practice, individual has to deal with the society in accordance with these lessons.

The word 'ashrama' is originally derived from the Sanskrit root 'srama' meaning 'to exert oneself'; therefore, it may mean a place where exertions are performed and the action of performing such exertions. Literally, 'ashrama' refers to a resting place. Therefore, the word signifies a halt or a stoppage or a stage in the journey of life for the sake of rest in order to prepare oneself for the further journey. The 'ashramas' are to be regarded as resting places during one's journey on the way to final liberation which is the main aim of life. 'Vyasa' says in 'Mahabharata' that the four stages of life form a ladder of four steps. The 'ashramas' are four in number, namely, (a) the brahamacharya- that of a student; (b) the grihastha- that of a married man or the householder; (c) the vanaprastha- that of a retired life in the forest, after abandoning the home, preparatory to complete renouncement of worldly relations and (d) the samnyasa- the life of complete renunciation of worldy relations and attachements.

According to the Hindu Dharma-Sastra, each individual should normally pass through four phases of life, one after another and live in them in accordance with the 'sastras' if he desires to obtain salvation (*moksha*). Before entering into last phase, i.e., '*samnyasa*'individual has to pass through the previous

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three phases of life in their proper order besides he has to carry out the duties and obligations laid down for each of the '*ashramas*' and he has to see that he has duly given his dues in connection with the social obligations or three 'debts', namely, the debt to the 'rishis', the debt to the ancestors and the debt to the Gods. These three debts could be vicariously satisfied respectively by studying Vedas in accordance with the rules laid down for the study (by passing through *Brahamacharyasrama*); by begetting sons in accordance with the *dharma* (by going through the *grihasthasrama*) and by offering sacrifices according to one's capacity (by performing duties of the *vanaprashathasrama*).

Significance of Purusharthas in Varnasrama Vyavastha

The *upanayana* ceremony introduces the young boy into the *Brahamacharyasrama.* After the studies is over in accordance with the *dharma* laid down for the *brahmachari*, he takes a holy bath symbolic of his completition of that *asrama* course and now he becomes a *snataka*. He now becomes fit to enter the next asrama, i.e., *grihasthasrama*.

In the *brahacharyasrama*, *dharma* is the predominant *purushartha*. Dhrama has to be learnt up in all its aspects and ramifications and it has to be practised particularly as a check upon *kama* and *artha* because these latter two are far from the objectives of the young trainee, moreover, the ultimate value of *moksha* has to be learnt during this *ashrama*. In the *grihasthasrama*, both *artha* and *kama* become the fields of the personality of the individual who has already acquired a knowledge and practice of *dharma* and who has studied the value and place of *moksa* for his self realization. It must be kept in mind that kama and artha are essential part of the heritage of both the human individual and races, and hence they form part of the natural, physical and psycho-physiological instrument for the functioning of both the group and the individual. However, this instrument has been misused and malfunctioned by individuals and races. Now instead of demanding a total rejection of them as merely base and worthless, the Hindu sages have taught that artha and kama shall be wisely directed into proper life-functions as prescribed by dharma and hence artha and kama have been so placed in the ashram scheme that by right functioning they contribute to the growth and development of human race.

The Social Psychology of Education

The brahmacharyasrama deals with the management of education as a social institution. Outlook and methods of education prevalent in a society have a far reaching significance and influence upon the other social institutions of the society. This significance is of mutual nature whereby the system of education prevalent amongst the society influences as it also gets influenced by the society which it serves by its norms, values and *mores*. Education is the main instrument by means of which it passes to the individuals the traditions, disciplines and culture it has gathered through long and continual endeavours of mankind making the best of the gifts of human life. It trains the individual to adjust himself to the ideas and ideals that have made the history of the society. Evidently amongst all the social institutions, the system and outlook of education is of primary significance. For example, a state may dispense with religion as the erstwhile USSR tried to do or a state may refuge to distinguish fixed forms of sexual union like marriage, but education is indispensable to any society as all the accumulated knowledge of the ages and all standards of conduct would be lost without it. Panunjio (1939) maintained that "the primary function of the educational system is to transmit knowledge of the forms and skills society regards as indispensable to its survival and improvement. That system regularizes the knowledge-transmitting activity; inculcates the folkways and *mores;* trains the young to fit into the established cultural scheme, aims to aid the individual in the development of personality and aptitudes; and sets forth the broadlines which the society believes must be followed in order to survive and improve". Sumner (1906) held that education transfers the *mores* to the individual; i.e., "He learns what is approved or disapproved; what kind of man is admired most; how it ought to behave in all kinds of cases; and what he ought to believe or reject". Thus along with imparting knowledge and skills, education also transmits the particular system of morals, social

and cultural values of the group and thus undertakes the indoctrination of both the rational and emotional elements which make up the adult individual. Education is essential to both the renewal and the growth of human society.

The Hindu Home

In the Hindu home, every male child stated his educational career by observing some rites and rituals associated with the *upanayana* ceremony. The earliest reference to this ceremony is probably found in the *Atharva-Veda*, where the Sun is described as a Brahmana student approaching his *acharya* with firewood and alms. The *Satapatha Brahmana* describes that the acharya places his right hand upon the head of the pupil symbolising the imparting of the very core of his own personality to the pupil and on the third night such personal inner splendor of the teacher supposedly enters the very core of the pupil's whole being and thereafter the pupil becomes a true Brahmana on being taught the *Savitri Mantra*. Smriti and Grihya Sutra have given elaborate descriptions of rites to be performed at the Upanayana ceremony. A girdle has now to be tied round the waist of the young boy to be initiated. This girdle is to be made of *munja* for Brahmana, of bow-string for Kshstriya and woolen thread for a Vaishya boy. Then the boy is given a staff or danda and a sacrificial cord is adjusted round his body. The *acharya* then inquires after the name, family and other particulars of the boy and asks whether he is serious to undertake the vow of *brahmacharya* under his instructions.

The *upanayana samskara* is virtually regarded as the second birth of the young boy and till this ceremony is not performed, every child is considered as nature-born and as such as good as *sudra*. After upanayana ceremony the child becomes a *dvija* or twice-born and enjoys the full rights of an *Arya*.

These elaborate rituals and ceremonies centred round the *upanayana* have a great social significance. They create an atmosphere of dignity and seriousness about the occassion and hence they serve to impress the minds of the individuals or the group participating in the ceremonies with the deeper significance attached with it. With the performance of the *upanayana* ceremony of the child, the child gets his first lesson of simple living and tolerance of frustration irrespective of the status of the family in which he is born. In all humility and reverential attitude the initiated child had to start begging alms for his teacher. Next there are rules regarding taking meals for the students. According to Manu, he should take meals only twice a day and must abstain from taking a third between the two. He has to avoid over-eating as it causes ill-health, shortens the life and prevents acquition of the spiritual merit, will not lead to heaven and is condemned by men. Students should never eat flesh and honey. Mahabharta says: “Eating morning and evening is an ordinance of the Godess. It is ordained that no one should eat anything between these periods”. Manu says regarding the dress of the students that a Brahmana students shall wear a piece of hempen cloth, a Kshatriya student shall wear a piece of silken cloth and a Vaishya student shall wear a piece of woolen cloth just enough to cover the body. Each of these three has to put on upper garments made of skins of anatelope, of ruru and of the goat respectively. The Brahmana student should wear a piece of cloth dyed with maddar and the Vaishya student should wear a cloth dyed with termeric or made of raw silk. The sacred thread to be worn by students should be made of cotton for the Brahmana, of hempen for the Kshatriya and of woollen for the Vaishya students. It is worth noting that the higher the Varna, the less luxurious is the quality of cloth to be worn by them. The staff held by the students should be straight, unburnt and pleasing in appearance. It is only meant for safety of the students and not for deliberately offensive purposes. Students are also required not to indulge in luxuries such as anointing the eyes, using scents, umbrella and shoes. He is not supposed to embellish his body with ointments nor to enjoy dancing, music and playing on the instruments or take part in gambling or useless gossiping. Students are to preserve their vow of *brahmacharya* and are not to talk to women more than necessary. They are to speak truth, be modest and possess self control and keep themselves free from lust, anger and greed. They have also to behave without causing any harm to any one. Thus, the Hindu student was trained in the habits of simple life no matter to what family he belonged.

In India, irrespective of the social status of the family they had to take up same mode of life. In the Mahabharta and the Ramayana there are several instances displaying how even princes had to undergo the same rigours of the students' life along with their poorest fellow-students. The student has to rise up early in the morning before sun-rise and take bath everyday. Among Hindus it was unique that the students had to live in the premises of the *guru*. This unique system had a special bearing upon the minds of the young students. Presumably the young boy may come in contact with environment and surroundings which may not be conducive to his free and healthy moral and mental development. Moreover, some family prejudices and beliefs may obstruct the free and proper development of his faculty of reason. The young child was placed in the hands of the *guru* at an age when his attitudes towards things and persons around him was not yet formed and fixed. At this stage his mind is so flexible that it should be the duty of the parents to place him under the care of a tried person of a high moral character. Childhood is the formative period of life when suggestions and imitations play great part in one's life and the individual's character is due to the various impressions his mind has received during childhood. Among Hindus the young boy had to live with the *acharya* away from his near relations in an environment free from temptations and full of simplicity. This system may claim another advantage vis-a-vis modern school system. The former avoided any occasion of conflict between the teacher and the family whereas in the latter the child finds itself divided between two kinds of interests. Therefore, the Hindus correctly say *acharya* as the "spiritual father" of the student.

The moral influence of the teacher upon his students acquired weight as the teacher did not charge fees. It has significance in that the education of the Hindu child never depended upon the financial position of the family in which he was born nor did the quality of education suffer due to the lack of capacity to spend money over it. Thus, education was not dependent or controlled by external factors such as financial beneficiaries, ruling authorities or political system. Knowledge was never given with any material motives and it was also not acquired with such a motive. As such there were not competitive examinations thereby grading the students' ability. It was a sacred duty to acquire knowledge for its own sake. Such as absence of material motive in learning had a tremendous psychological impact in keeping it free from many evils with which modern educational institutions are infested with.

Concluding Remarks

The salient features of the Hindu educational system display how it functioned as a social organization with a view to creating strong personalities whose reason was to keep ever awake, whose mental powers and capacities were well-developed and whose understanding of the meaning of life was founded upon a broad basis unaffected by any political, family or secular interest and whose intellectual impulses to learn was kept pure and alive not governed by material motives.

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