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From the Chief Editor

The Pragyaan: Journal of law, which is the product of our correspondence, collaboration and contribution over the years by the esteemed scholars whose scholarly research articles are published in our Journal. It is my pleasure to introduce contemporary articles to readers, the Volume 9, Issue 2.

In this Volume of the Pragyaan we have tried for the submissions of variety of research topic written by the various academicians and students of Indian legal fraternity. We are pleased to present ten articles, two book reviews and one case comment which in themselves are putting forth better understanding of a range of issues which are of contemporaneous importance.

The objective of Pragyaan: Journal of law is to publish up-to-date, high-quality and original research papers along with relevant and insightful reviews. As such, the journal aspires to be vibrant, engaging, accessible, and at the same time makes it integrative and challenging. All research articles published in the journal after adopting double-blind review process. We offers scholars to contribute their research work, either individually or collaboratively for their own development and simultaneously f or m a k i n g the journal a leading journal among legal fraternity. We acknowledge the support of our faculty advisors, the hard work of editorial staff and the interest shown by the contributors and readers that we have been able to come out successfully year after year with each volume . I express my sincere thanks to all our contributors, members of Advisory board and referees whose untired efforts made the publication of the journal possible

In solidarity
Prof. (Dr.) R.N. Sharma

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Environmental Crimes in Colonial India: A Historical Discourse of Law

Dr. G.S. Rajpurohit*
Dr. Nitesh Saraswat**

ABSTRACT

In recent times, environment policies and laws formed during the British India have received serious scholarly attention with the emerging realm of Environmental History. As witnessed, a marked degree of continuity between colonial and post-colonial forest policy have broadened the appreciation of the policy initiatives in the environmental sphere.

The development of the forest policy was slow in India. The first such attempt was the Indian forest Act of 1865. But within a few years, foresters began to complain that the 1865 Act did not give them and the state, adequate control over forest lands. In 1878, a new forest Act was passed. By 1890 many provinces passed their own forest Acts modelled on the 1878 Act which divided the forests into three main categories: reserved, protected and village. Since the British were now the rulers, the rights of absolute ownership were vested in them, against which there could be no appeal.

An offence under the Act could be punished either under the Act or the India Penal Code as per the circumstances. The offences directly connected with forests which come under India Penal Code are: theft, criminal misappropriationcriminal breach of trust, mischief, criminal trespass, receiving of stolen property etc.

With the development of railway network, India's forests proved to be an important strategic raw material in the imperial scheme of things. This naturally entailed a restriction on the use of forests by the surrounding population - a restriction regarded us 'inevitable' if the paramount imperial interest was to be served.

The Colonial conservationist concerns focused largely on the forests and their produce. Hence, this paper has primarily taken up the forest policies and legislative initiatives to analyse the subject. Here, we have analysed Environmental Crimes in the British India as an important tool employed by the Colonial administration to serve their imperial needs rather than ecological concerns. The study aims to expand the historical comprehension of law in the British era.

1. Introduction

In recent times, environment policies and laws formed duringthe British India have received serious scholarly attention with the emerging realm of Environmental History[1], which has significantly enriched[2] the theoretical comprehensions of historical discourses in Indian History. As witnessed, amarked degree of continuity between colonial and post-colonial forest policy, though the dominant interests behind the formation and execution of state policy have differed[3], have alsobroadened the appreciation[4] of the policy initiatives in the environmental sphere.

The Colonial conservationist concerns focused largely on the forests and their produce. Hence, this paper has primarily taken up the forest policies and legislative initiatives to analyse the subject. Here, we have analysed Environmental Crimes in the British India as an important tool employed by the Colonial administration to serve their imperial needs rather than ecological concerns. The study aims to expand the historical comprehension of law in the British era.

Early Forest Policy after the British Occupation

The Britishers arrived in India in around1600 A.D. with the mission of trading goods under the banner of East India Company. But, after seeing the enormous amount of natural resources and consider able opportunity to exploit the resources present here, they started applying coercion so as to complete their aim of exploiting natural resources in India. At the time when British arrived, India was divided into several princely states ruled by different rulers. The British gradually and skilfully established itself and cleverly through the policy of divide and rule took benefit of the diversity.

The development of the forest policy was slow in India[5]. It was only when the British realized that a fast depletion of Indian forests is taking place and the methods

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1 RamachandraGuha,'Writing environmental history in India', Studies in History, (Vol 9, Issue 1, 1993), pp.119-129
2. Vandana Swami, 'Environmental History and British Colonialism in India: A Prime Political Agenda'CR:The New Centennial Review,(Vol. 3, No. 3, Michigan State University Press, Fall 2003) p. 113.
3. Ramachandra Guha, 'Forestry in British and Post-British India: A Historical Analysis', Economic and Political Weekly, (Vol. 18, No. 44, 1983), p. 1892.
4. ArunBandopadhyay, 'The Colonial Legacy of Forest Policies in India', Social Scientist, (Vol. 38, No. 1/2, Jan.-Feb., 2010), pp. 53-76
5. E. P. Stebbing, The Forests of India, (Vol.-1, John Lan & The Bodley Head Limited:London, 1922), p.61

by which private enterprise were working the forests forced the state to step into safeguard "their long term imperial interests"[6].

By around 1860, Britain became a foremost power in deforestation and devastation of its own forests andthe forests in Ireland, South Africa and north-eastern United States to extract timber for shipbuilding, iron-smelting and farming[7]. By the early nineteenth century, Britishers caused a fierce onslaught on Indian Forests and showed a total indifference to the needs of the forest conservancy.

On 3 August 1855, Lord Dalhousie, the governor general of India, reversed previous laissez-faire policy to establish the India Forest Department and annex large areas of sparsely populated lands in India. These lands were declared 'protected areas' and staffed by foresters, fireguards, rangers, and administrators. Over the next decades, forestry in India became aserious affair with International interventions.

The new colonial environmentalism aimed to generate income for the imperial British state through strict control of India's natural resources. Lord Dalhousie's new forest policies greatly expanded British authority. Thus, imperialism and environmentalism had shared goals in expanding state power.In 1862, Governor General established a department for ensuring regular supplies to railways.The complete fulfilment of this requirementneeded absolute government monopoly over the forests. The British government in India made it clear that "all the forests are the property of Government, and no general permission to cut timber therein will be granted to anyone.[8]"Hence, various Forest laws were passed to extend state control over forests.

The first such attempt was the Indian forest Act of 1865. But within a few years, foresters began to complain that the 1865 Act did not give them and the state, adequate control over forest lands. In 1878, a new forest Act was passed. By 1890 many provinces passed their own forest Acts modelled on the 1878 Act which divided the forests into three main categories: reserved, protected and village. Since the British were now the rulers, the rights of absolute ownership were vested in them, against which there could be no appeal. This was contrary to the pre modern forest policy.

Brandis[9] has highlighted the 'objects of forest legislation' during British India as the following:

1. To facilitate, the demarcation, protection and good management ofreserves,Government, or State forests.
2. To secure a certain amount of protection of forest growth onopen lands, unreserved or district forests.
3. To authorize the levy of certain rates,of duty on timber and other forest produce, and the control generally of timber and otherforest produce in transit[10].

All these forest Acts provided for control, not only of state owned lands but over forests and lands not belonging to the state where it was necessary for the public weal, public welfare or safety[11].The objective of management of forest changed from obtaining of timber for various purposes to protecting and improving forests and treating them as a living entity.

The British Government declared its first Forest Policy by a resolution on the 19th October 1884.The prime focus areas of the policy were to ensure maintenance of adequate forest cover for general well-being of the country, meeting needs of local people and after meeting local needs maximum revenue collection[12]. It also suggested a rough functional classification of forest into the following four categories as forests, forests for commercial purposes, minor forest andpastures.

To implement the Forest policy of 1884, the Forest act was enacted in 1927. Through the Government of India Act, 1935, provincial legislatures were created and the subject of the forest was included in the provincial legislature list. Thereafter, several provinces made their own laws to regulate forest, mostly based on 1927 Act. The British all along their reign in India brought many other laws in the field of environment including laws controlling water pollution, protection of the environment, prevention of air pollution and protection of wildlife.

Environment Crimes &Protection of Forestsin Colonial India

Environmental crimes during British India were largely focused on threats to the forests. An analysis byHenry Baden Powell[13] of the forest lawsin British India shows that the forest estates were under threat from three classes of dangers[14]:

6. K. P. Sagreya, Forest and Forestry, (National book Trust of India, Delhi, 1979), p.8
7. MadhavGadgil& RamachandraGuha, This Fissured Land: An Ecological History of India, (University of California Press, 1993), p.118
8. Stebbing, (1922), p.244
9. D. Brandis, Memorandum on the forest legislation proposed for British India, (Government Press: Simla,1875)
10. Ibid p.1
11. BertholdRibbentrop, Forestry in British India, (First print Calcutta 1900, Indus Publishing Company:New Delhi, 1989), p.114.
12. A., K. Mukerji, Forest Policy Reforms In India - Evolution Of The Joint Forest Management Approach, <http://www.fao.org/docrep/ARTICLE/WFC/XII/0729-C1.HTM>
13. Henry Baden Powell, A Manual of Jurisprudence for Forest Officers, (Government Printing Press, Calcutta, 1882).
14. Ibid, p. 269-283.

1. Natural calamities
2. Forest Fire
3. Offences by human agency and by cattle trespass

Against the Natural Calamities, the law could only make indirect provisions[15]. Under the Forest Act of 1878, detailed rules were not drafted related to this matter. Forest fire maybe classified as a natural calamity, because it may originate in a lightning stroke, but more often it is caused by human agency, and this is the subject of direct legal enactment. It was considered necessary to not only punish wilful offenders but also prohibit acts that exposes to such risk[16]. The destruction caused by cattle under the control of man was provided by the regulation of grazing rights and the law of trespass. Offences by human agency and cattle trespass gave rise to a criminal prosecution, and a penalty under the forest or general penal law.

According to the Forest Act of 1878, a 'forest offence' means an offence punishable under the Act. A forest offence could be punished either under the Act or the India Penal Code as per the circumstances[17].

Forest Offences Covered Under the Indian Forest Act, 1878

Powell[18] has classified the penal provisions of the Forest Act into following groups:

(a) Offences against the forest itself.
(b) Offences specially punished by sections 61 and 62.
(c) Cattle trespass.
(d) Offences relating to forest produce in transit and drift timber.

(a) Offences against the Forest itself

Offences against the forest itself are enumerated in section 25, regarding reserved forests, village and undivided forests. Section 25, it is accordingly made penal to kindle any fire in such a manner as to endanger the forest. The acts of setting fire to a reserved forest or to a protected tract were included as offences under Section 25(b) and 32(d) of the Act. Another very useful provision is also made by clause (c) of this section (25).Injury to trees was included as offence under section 25 (f)[19].

Protected Forests

In the 'protected forests' i.e. areas of waste not permanently constituted forest domains, there is a general power given to protect timber and valuable trees from injury[20]. Section 32 made it penal to set fire to the forest or to kindle fire without taking precautions to prevent its spreading and injuring timber lying in the forest or "reserved" kinds of trees, or extending to a closed portion of the tract; and also the negligent act of leaving unextinguished a fire. Offences against *protected forest*were punishable under Chapter IV of the Act[21]. The offences punished by section 32 were broadly classified as:

- injuries to reserved trees,
- breach of the prohibitions,
- breach of the rules.

It is important for protection against forest fires to have early notice of a fire breaking out and to have the assistance of as many persons as may be available. Section 78 of the Act contains such provisions[22].

(b) Special offences

The special offences were provided by sections 61 & 62for safeguard against a misuse of authority by forest officers by erasure or tampering with, or imitating, marks used in forest work[23].

(c) Cattle Trespass

The Forest Actspecially dealt the subject of cattle trespass in which human agency was only indirectly concerned. If there is a responsible person in charge of the cattle he is answerable to keep the cattle from mischief, and from straying where they ought not. Any negligence or misconduct in this respect amounted to an offence under section 25 (d) or 32 (g & h)[24].

(d) Control of Timber in transit and Offences Connected with it

The offences against timber in transit were included under Forest Act with the objective of the prevention of theft of timber from the public forests and the protection of honest timber traders[25].

15. Ibid, p. 269.
16. Ibid, p. 271
17. Ibid, pp.279-280
18. Ibid, p. 284
19. Ibid, pp. 284-285
20. Section 31
21. Ibid, pp.285-286
22. Ibid, p. 274
23. Ibid, p. 289
24. Ibid, pp. 289-294. For this offence the Forest Act prescribed penalty on the basis of size of the animal and the amount of damage caused.
25. Ibid, p. 294. Honest timber traders were those whose timber rafted on rivers or floating in single logs and already liable to all the natural accidents of river transit, to loss by flood, and breaking up of rafts, to being stranded and so forth, is further exposed to more than usual risks from timber thieves and by them to be super marked, or concealed, cut up, and made away with.

Special provisions regarding liability

Certain provisions are included in the Forest Act with the object that *Government should be saved from liability* for loss of timber in case a flood or other accident caused damage, while the timber is necessarily stored at or detained at a timber station. It was only necessary to impose the duty, but not to specify a penalty, in the Forest Act[26].

Application of the Penal Code to Forest Offences

The offences directly connected with forests which come under India Penal Code are:

a. Theft[27]

Theft, refers always to movable property, and it is the essence of theft that the property should be in the possession of the person robbed, at the time of the commission of the offence. As far as its being 'movable' is concerned, an act of cutting or separation, which severs an originally immovable article from the ground, as the act of cutting grass from the soil, pulling fruit from a tree, severing the stem from the root stock, such an act may have the effect at the same time of making the property movable and of being a theft. That is what the Code means by explaining that the act which effects the severance may also be a moving of the property which constitutes theft.

b. Criminal misappropriation[28]

Criminal misappropriation could be committed in respect of property found lying on a road.

c. Criminal breach of trust[29]

In this case the property is not only 'not in possession' of the person robbed, but the wrong-door is himself in possession, or has been entrusted with the property which he converts to his own use.

d. Receiving Stolen Property

This is an offence which, not being specifically mentioned in the Forest Act, must be prosecuted under the Penal Code. Any property the possession of which has been transferred by theft, extortion, or robbery, or which has been criminally misappropriated, or in respect of which a criminal breach of trust has been committed is "stolen property"[30].Dishonestly[31] receiving or retaining this is punishable under section 411 if it is shown:

- that the receipt or detention was dishonest
- that the offender either knew or had reason to believe that the property was stolen, or obtained by misappropriation.

a) Mischief[32]

To constitute mischief, there must be an intention to cause, or knowledge that it is likely to cause, wrongful loss or damage to the public or to any person. Mischief relates to property[33], not to men. Recourse in forest cases would not be had to this section, because the minor forms of mischief are all specified in the Forest Act itself.

b) Criminal Trespass[34]

The offence consists in entering on property in the possession of another, with intent to commit an offence or to intimidate, insult, or annoy any person in possession of such property. It also includes an unlawful remaining, with such intent, though the original entry may have been innocent. Trespassing simply, i.e., without such intent, would not be punishable under the Indian Penal Code; but as it is undesirable to allow it in a reserved forest, where it is sure almost, to be the prelude to some forest offence, it is specially prohibited by the Forest Act[35].

c) Attempts[36]

The Code does not define an "attempt," but requires that to make an attempt penal, some act must be done towards the commission of the offence. Attempts in the case of lesser forest trespass and mischief were not be prosecuted. It was only where the offence was serious, and would be clearly punishable under the Indian Penal Code, that a case of "attempt" could be successfully prosecuted.

d) Abetment[37]

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26. Ibid, p. 303.A person refusing to help would be liable to punishment under section 187 of the Indian Penal Code.
27. Section 378, Indian Penal Code, 1860
28. Section 403, Indian Penal Code, 1860
29. Section 405, Indian Penal Code, 1860
30. Section 410
31. With the intention of causing wrongful gain or wrongful loss to a person.
32. Section 425, Indian Penal Code
33. Including animals.
34. Section 441, India Penal Code, 1860
35. Section 25(d), Indian Forest Act
36. Section 511, India Penal Code, 1860
37. Section 107, India Penal Code, 1860.Explanation 1 — A person who by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2 — Whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act and thereby facilitates the commission thereof, is said to aid the doing of that act.

A person is said to abet if he:

i. Instigates any persons to do that thing ; or

ii. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or

iii. Intentionally aids, by any act or illegal omission, the doing of that thing.

e) Offences indirectly connected with Forest Administration

- Unlawful Assembly[38]
- Giving aid and information[39]
- Giving False Evidence[40]
- Harbouring of Offenders[41]

Kind of Punishment allowed

In the course of considering the offences which may be committed in connection with forests and their produce in transit it is necessary to study the nature and amount of punishment, whether under the Indian Penal Code or under the Forest Act. The Forest Act speaks merely of 'fine' and 'imprisonment', but the rules of the general criminal law applicable to these punishments are to be gathered from the Indian Penal Code, Chapter III. The only punishments known to the law are:-

- Death
- Transportation for life. (Section 56)
- Forfeiture of property (in cases where there is a death sentence or one of transportation)
- Imprisonment (simple or rigorous)
- Fine

To these, the Forest Act, 1878 added:

- Whipping, in certain cases.
- Confiscation of property and
- the suspension of forest rights

Forest Act of 1927

The objective of the Indian Forest Act of 1927 is to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.According to the Act, no person could claim a right to private property in forest land merely because he was domiciled there, or his forefathers lived there for centuries; nor did he have any rights over forest produce. This Act started with the assumption that the common land which the forest and the people cohabited was the property of the government, and that the latter was *ipso facto* entitled to the forest produce[42].

Every British Indian Law and practice had an element that viewed every resource as a commodity that deserved to be exploited, contrary to the ancient Indian practice of protecting, using and managing the natural resources by the communities facilitated by State. The laws were more punitive than preventive.

A Critical Appraisal

The British imperial interests absolutely manoeuvred the legal sphere that regulated the society and redefined criminality between men and nature. Ramachandra Guha[43] has discussed about the colonial frame of mind behind their forest policy and environmental concerns.Initially the British expressed total indifference to forest conservation. The first signs of interest in forestry arose from the imperialist considerations of maritime expansion. With most of the forests vanishing in Europe, Indian teak, considered the most durable of shipbuilding timbers, was seen as the opportunity for the England's needs for shipbuilding.Ships were built in dockyards in Goa and on the Malabar coast, as well as from teak imported into England[44].

Further, the development of railway network for rapid troop communication and facilitating colonial trade was the decisiveturning point in the history of Indian forestry. It led an unprecedented assault on forests as before the coal mines became operative, the railway companies largely usedtimber as fuel for the locomotives. Considering the forest administration was seen as a failure,the Governor General called to ensure sustained supplies forrailways.It was in this situation that the Imperial Forest Department was formed in 1864. The railways proved to be consequentialincurbing the previously exercised unlimited rights of users and witnessed the beginning of a progressive curtailment of these rights[45].The first attempt at asserting the

38. Section 141-149
39. Section 176
40. Sections 191-195
41. Section 202
42. ProggyaGhatak, 'Forest Right Legislation in India: Evolution and implications', The Fourth World Journal, (Volume 29, Issue 1, April 2009) pp. 92-93.
43. Ramachandra Guha, 'Forestry in British and Post-British India: A Historical Analysis', Economic and Political Weekly, (Vol. 18, No. 44, Oct. 29, 1983)
44. Ibid, pp. 1882-1896.
45. Ibid, p.1884

state monopoly right was through the Indian Forest Act of 1865, which was replaced by a much more comprehensive piece of legislation thirteen years later in 1878. This progressive diminution of 'rights', and the consequent loss of control over their natural resources, evoked a sharp reaction from the forest communities. From the early days of forest administration, there have been revolts in different tribal areas. These revolts, which attempted to restore a 'golden past', were swiftly crushed by the colonial state. Nevertheless, they recurred throughout the period in almost all tribal areas.

This historical process had several salient features. At the most fundamental level, the demarcation and fencing of large tracts of reserved forest meant an 'effective loss of control by the forest dwellers over their habitat'. Secondly, the loss of community ownership had effectively broken the link between man and forest. Thirdly, the large areas of forests under the Indian rulers were also drawn in, though indirectly, into the orbit of colonial capitalist expansion. It introduced a qualitative change in the relationships between ruler and subject[46].

As at the time of the building of the railway network, India's forests proved to be an important strategic raw material in the imperial scheme of things. The potential value of Indian forests was fully realised during world wars. Having learnt their lesson, the colonial rulers thenceforth retained control over forest resources, especially those conveniently situated and containing durable and versatile commercial timbers, such as teak, sal, pine, and deodar. This naturally entailed a restriction on the use of forests by the surrounding population - a restriction regarded us 'inevitable' if the paramount imperial interest was to be served[47].

Conclusion

In the end, after analysing the evolution of the environmental laws and crimes in British India, one can say that though the ecological devastation process began in the colonial period, the official measures for conservation of nature, whatever their intentions and outcomes, arose on the initiative of colonial government. The Environmental crimes emanated to serve the imperial interests and regulate the communities depended on them and society at large.

46. Ibid, p.1885
47. Ibid, p.1887

Plight of Domestic Workers in India & United Kingdom: A Comparative Analysis in Light of Human Rights and Labor Laws

Yatish Pachauri*
Pooja Bahuguna**

ABSTRACT

In India domestic workers are easily available in plenty because of illiteracy, unemployment and poverty.In order to earn the livelihood people, agree to work in the houses as a Domestic Labour and provide their services to persons who requires. These workers get very nominal amount of remuneration and because of this their living conditions are not satisfactory. For this reason, the plight of domestic workers is not improving. Those people still lack basic needs of human life. The conditions are worst in the developed countries.

In this article we are going to highlight the issues relating to Domestic Labor, their human right, and the efforts of states towards humanizing the legal provisions relating to labors and domestic workers.

1. Introduction

Domestic workers come from a poor and backward zone of the society. The greater part of them is uneducated, poor, and unskilled. And also, they are not aware of the labor market. The domestic workers are undervalued in Indian society. The land owners/ masters make them work for extra hours to get maximum output from them. Such workers do not even get proper wages for their work. These domestic workers often become victims of violence, sexual harassment, human trafficking, physical or mental abuse and forced labor as well. Though workers too are entitled to get proper rights and justice in the society so that, they can work with the dignity, but unfortunately, they don't get such rights and the decent environment in the workplace.

Though there are several legislations such as Unorganized Social Security Act,2008, Sexual Harassment Against Women at workplace (Prevention, Prohibition, and Redressal) Act, 2013 which refers to domestic workers them too, there is absence of national and uniform law for domestic workers that can guarantee the same rights and working conditions to domestic workers as enjoyed by other workers. Minors are also employed as the domestic workers to perform various household works. Despite there being various legal provisionslike Child Labor Act, the employment of minors as domestic workers is still a common practice in India. This research work will be a comparative study of the position of domestic workers in India and in UK. In UK no person can keep domestic workers without a formal contract but there are no such formal contracts in India for the appointment of domestic workers.

The interest to domestic work has been on increase both inside and outside India. With the fast transformation in the Indian economy, there has been a rise in number of poor rural women seeking work in the urban areas in country and abroad. Because of lack of knowledge and communication gap between the job seekers and job providers many of the private players take disadvantage and start Acting as a recruitment agent to recruit the domestic workers. The Global Labor Conference, 2004 on Labor Migration named these agents as recruitment agents and merchant agents. The players were characterized as "public and private operators who moved laborers over national outskirts. During the conference, the ILO tripartite constituents perceived that "recruitment might assume a way part in making vulnerabilities in the last employment stage". They prescribed that a nonbinding, multilateral schema "proposing rules and standards for best strategies with reference at international level,a chance, to be developed, especially in the region about "licensing and supervision for recruitment contracting agencies"[1].

This proposal affirmed the move far from the syndication of the State in work situation presented by the reception of the Private Employment Agencies Convention, 1997 (No. 181). Christiane Kuptsch (2006) anticipated that transients would step by step diminish their reliance on private expense charging scouts and utilize more casual systems in this manner driving governments to change controls concerning enrollment with the development of the work streams. Christiane Kuptsch trusted that universal associations and governments could shape the developing enrollment industry, much like they molded the advancing settlements industry. Nonetheless, this does not appear to be the situation, especially for untalented work in India, that in the course of the last a quarter century or more has been looking for work inside or outside the nation and who keep on being burdened by procedural prerequisites and

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1. For details please refer to "Resolution concerning a fair deal for migrant workers in the global economy", ILC92-PR22-269-En.doc: http://www.ilo.org/public/english/protection/migrant/download/ilcmig_

blackmailer operator systems. It is in this setting the ILO commanded SEWA (Self-utilized Women's Association) to embrace an investigation focused on eradicating trafficking of ladies and girls for household work. This study mainly focused on the risk factors for ladies and girls in the recruitment and in employment and some part of it also focused on the risks of human trafficking. It exposes immoral practices in the migration of labor during the recruitment and employment of labor. As per the National Human Rights Commission (2002-2003), 90% of trafficking in India is inward. The non-availability of jobs in countries rural areas or in tribal areas are the main reason for displacement of domestic workers from one place to another, for example, Jharkhand encourages the ceaseless supply of ladies in Delhi and different urban cities. India also facilitates the transport of women and girls to work in the foreign countries as a domestic worker (D'Souza, 2010).

Theprohibitions of domestic workers under national labor laws, and under migration policies that give merchant agents exorbitant control over laborers, and involvement of domestic workers in the homes, are the primary factors that extend their powerlessness to misuse. Trafficking is a broadly predominant practice and is distinctively comprehended in various settings. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000, supplementing the United Nations (UN) Convention on Transnational Organized Crime, known as the Palermo Protocol characterizes trafficking in people as- ... the enrollment, transportation, exchange, harboring or receipt of people, by methods for danger or utilization of power or different types of compulsion, of snatching, extortion, duplicity, mishandling of energy or a place of weakness or the giving or getting of installments or advantages to accomplish the assent of a man having control over someone else, for the exploitation of domestic workers.Likewise, Abuse should incorporate,any kind of likewise prostitution or different types of sexual misuse, constrained work or administrations, subjection or practices like bondage, and human organs trafficking[2].

On the premise of this definition, operational pointers of trafficking in people have been produced by the ILO and the European Commission. These pointers, which were finished in 2009 on the premise of a review of specialists, give a way to recognize those that effectively relocate, abused vagrants what's more, casualties of trafficking for constrained work (where a component of pressure is available). The ILO Forced Labor Convention 1930 (No.29) characterizes constrained or necessary work as "all work or administration that is claimed from any individual under the threat of any punishment and for which they said individual has not offered himself [or herself] willfully." Additionally, Article 3 (d) of the ILO Worst Forms of Child Labor Convention, 1999 (No. 182) and Art 3 (e) with Recommendation No. 190 order as unsafe "work under especially troublesome conditions, for example, work for extended periods or amid the night or work where the kid is preposterously restricted to the premises of the business.[3]"

The current ILO Convention No. 189 calls for Decent Work for Domestic Workers. Article 3 of it particularly states that "every part should take measures to guarantee the successful advancement and assurance of the human privileges of every single local laborer … and take the apportions set in the Convention to regard, advance and understand the key standards and rights at work". Consequently, institutional instruments to protect the privileges of these laborers must be set up. Understanding the current issues of vagrant household laborers will absolutely help advance a framework that is both down to earth and compelling. India has tended to trafficking both specifically and by implication in its Constitution. There are three Articles among the Crucial Rights in Part III and Directive Principles of State Policy in Part IV that address trafficking-related issues under Indian constitution, 1950. Article 23 of the Fundamental Rights forbids trafficking in people and all types of constrained work.

The accompanying is two non-justiciable[4] Directives of State Policy namely- article 29(e) & 29(f)

Article 29 (e) guarantees that the wellbeing and quality of people are not manhandled and that nobody is constrained by financial need to do work unsuited to their age or quality.

Article 29 (f) expresses that adolescence and youth ought to be secured against misuse.

In 2006, the GOI proclaimed Household Act as risky for youngsters and accordingly disallowed the Meaning of trafficking which was mentioned in ILO convention of 1930[5].Inaccordance with the Palermo Protocol in the Criminal Law Amendment Act, 2013 (CLA),notwithstanding, the expression "constrained work"discernibly barred in this law, the CLA utilizes the expression "rehearses like bondage". It is obscure if the

2. Reflected from "Resolution concerning a fair deal for migrant workers in the global economy". INTERNATIONAL LABOUR CONFERENCE Ninety-second Session, Geneva, 2004
3. INDISPENSABLE YET UNPROTECTED: WORKING CONDITIONS OF INDIAN DOMESTIC WORKERS IN HOME AND ABROAD. INTERNATIONAL LABOR ORGANISATION,
4. Not subject to trial in court

courts will decipher "hones like subjugation" as including trafficking for work abuse. If not, the new correction would keep on leaving specialists powerless and without full insurance from a wide range of misuse. This hole isn't tended to be plugged by other enactment identifying with trafficking. The Immoral Traffic Prevention Act, 1956 (ITPA) is confined to sex trafficking.

The Indian Penal Code 1860 stipulates discipline for various offenses not particularly managed in the ITPA. There is so far no focal law on Sorted out wrongdoing in spite of the fact that India has approved the UN Convention on Transnational Sorted out Crime 2000 and it's going with Protocol on Trafficking in Persons in May 2011,the Ministry of Labor and Employment as of late built up a National Policy for Domestic Workers that is anticipating Cabinet endorsement. This is an extremely far-reaching approach for securing the privileges of local laborers and giving them access to government disability. It will ideally prompt more extensive enactment on local work. In April 2012, the Indian Labor Conference perceived household work as work and a few States have announced least wages for local specialists. Household laborers have likewise been incorporated into the RashtriyaSwasthBimaYojana (RSBY-a national medical coverage scheme)[6] sponsored by the Central and State Governments. A few States have made Welfare Boards for household specialists, however, while the GOI is advancing to bring local specialists inside the ambit of enactment and government managed savings, data holes still continue.

PRESENT SCENARIO OF DOMESTIC WORKERS IN INDIA

Legal Provisions Related to Protection of Domestic Workers Rights.

Priorto before the Indian Constitution, 1950 the declaration named as Universal Declaration of Human Rights, 1948 existed in which general principles talk about the right provided for every kind of workers in which domestic workers are included automatically. According to the

Article 23 of Universal Declaration of Human Rights, 1948

- Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- Everyone, without any discrimination, has the right to equal pay for equal work.
- Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- Everyone has the right to form and to join trade unions for the protection of his interests.

Since, it was a declaration it was not binding on the members of the United Nations. There is no proper regulation to implement these rights. It's totally on the discretion on the member states to amend their domestic laws to give a space to the rights provided by UDHR.

Yet when the constitution of India was being drafted by the constituent assembly and it included in Part III of the Indian Constitution most of the provisions mentioned in the UDHR and these rights became enforceable by the state.

Unorganized Workers Social Security Act, 2008

This Act was passed by Government of India to give social security and deliver social welfare schemes to workers unorganized sector like domestic workers. In section 2 (k) the term “self-employed workers” is defined as: - “any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government”[7] The Act under Section- 5 says that, the central government shall constitute a “National Social Security Board” and also as per Section- 6 of the Act, the state governments will establish “state social security boards” in their respective states. The “National Social Security Board” for Unorganized Workers, established in August 2009, has limited advisory role, and does not have enough powers to monitor, implement, or impose social security measures. states, such as Chhattisgarh, West Bengal and Karnataka, most of the states have not even set up their state level welfare boards. Though the Unorganized Workers Social Security Act was passed in 2008, there has been hardly any development work on the ground. The Act itself has been criticized for not defining a minimum social security level that is enforceable by law and for not providing institutional powers to ensure effective implementation[8]. One of the main problems with the Act is that it does not confer as such any social security to

5. Domestic work was included in the list of hazardous occupations for minors (Notification No. S.O. 1742 (E) dated the 10th October, 2006 published in the Gazette of India, Extraordinary)
6. Available at http://labour.nic.in/pib/PressRelease/ExtensionofRBYtoDomesticWorkers.pdf
7. Ministry of Labour& Employment. 2008. The gazette of India, Ministry of Law and Justice, Unorganized Workers' Social Security Act, 2008. [online]http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SocitySecurity/TheUnorganizedWoekersSocialSecu rityAct2008.pdf . Page 10
8. Rathish Balakrishnan, Review of Social Security for Unorganized Workers in India. Mar, 29 2012. http://thealternative.in/inclusivity/review-of-social-security-for-unorganized-workers-in-india/.

unorganized workers; it does not also define any definite rights for workers. Social security schemes are also not defined in the Act.Theschedules only talk about the schemes and the same can be amended at any point of time by notification without them being discussed in Parliament[9].

Child Labour (Prohibition And Regulation) Act, 1986:- Does not talk about specifically on domestic workers but it does have categorized domestic-work into hazardous and dangerous work category under part A of schedule in statute, therefore it is by law prohibited in India to employ a child below 14 year as a "Domestic-Worker[10]". According to section- 1 of the said Act, a Child means – "a person who has not completed his fourteenth year of age. And Section 3 specifically says: - "No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on". And under Schedule I-part A, at 14thclause"Employment of child as domestic workers or servants", is mentioned as one of the occupations in which, as per section 3 of the Act, a child cannot be employed. Official estimates of child labour in India set the figure at 13 million although nongovernmental organizations believe it is about 60 million. The 2001 Census found about 185,000 children working as domestic labour and 70,000 working in Restaurants and Dhabas, but NGOs say that the number of children actually employed in these sectors is close to 20 million. There is a huge out-cries by various organizations and NGOs which are demanding to include "Domestic Workers" under Minimum wages Act- 1948, and to set lower limit of salaries for domestic workers, but till now, nothing could be done in this regard. Parliament failed to pass even a single amendment to the Act which could set and fix the lower limit salary criterion for domestic workers. Though certain states like Karnataka, Andhra Pradesh, Rajasthan, Bihar and Kerala have included domestic workers in their State's Minimum Wages Act and their salary have been fix by the states through their respective "Minimum Wages Acts" but still there is no penIndia legislation that can set a common parameter to decide minimum wages for domestic workers in India. Following these states, some other states too planning to include "Domestic Workers" in their Minimum Wages Act.Now, domestic workers to get benefits of Minimum Wages Act.

Justice Verma committee also had recommended to including "domestic workers" as one of the categories under employment in the Criminal law amendment Act, 2013 and the same was also accepted with some changes in the said Act by parliament. Bills: - In India, There had been so many attempts made to ask the government to recognize domestic workers as a recognized class. But nothing very impressive could have had appended. Though some statutes have included and recognized domestic workers as one of the recognized employments in unorganized sector. The bills which are pending in the parliament for consideration could really ameliorate the condition of domestic workers, if passed by the legislatures. "National commission of women" (NCW) had drafted a Bill for domestic workers in 2010 i.e. Domestic Workers Welfare and Social Security Act, 2010 which is still pending for consideration. Inter alia, the main provisions that the bill includes are: -

1- Recognized that placement agencies and specially the agents sometimes exploit domestic workers mentally and sometimes even sexually.

2- Provision for establishment of Domestic workers security fund under section 19 of the Act. Judge said Dec 16 Delhi gang rape was 'premeditated, injuries sufficient to cause death'.

Included all the placement agencies into the definition of "service providers" whether registered or not under the Act.Responsibility of the central government to establish central advisory committee. As per the bill, it would be the duty of the committee to look-after whether all the provisions in the Act are being followed properly or not. Provision for the establishment of National and State boards for domestic workers which would further formulate schemes for domestic workers. It is made compulsory under the bill that every Domestic worker has to register themselves under the board. Responsibility of the state governments to establish district boards in their state. Provision for maximum number of hours of daily work, overtime work and wages allowance. State governments are given power to decide minimum wages for their respective domestic workers' work-force.

Constitution of Task-Force and it Report:- Task force of Ministry of labour and employment, government of India has submitted many reports on Domestic workers, and many of its recommendations were also accepted by government. But so far, no impressive legislation could be made by the parliament for Domestic Workers. In the final report of the task force on Domestic workers "Realizing Decent Work" various recommendations were made for the empowerment of Domestic Workers but the enforcement of those recommendations seems very improbable as Congress Party (the then ruling government) is very soon

9. Section- 3, Unorganized Workers' Social Security Act, 2008. [online] Available at: http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SocitySecurity/TheUnorganizedWoekersSocialSecu rityAct2008.pdf
10. Ministry of Labour& Employment.THE CHILD LABOUR (PROHIBITION AND REGULATIONS, ACT 1986. [online] Available at: http://labour.gov.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/TheChildLabourProhibition%2 6RegulationAct1986.pdf . Page 11

going to face elections, and its chances of coming back to power are very bleak. But it is also true that the recommendations made by task force are very important, and if implemented, such changes followed by enactment of laws, would have helped to ameliorate the conditions of domestic workers to a great extent. The main recommendations of task force have been-

1. To userights-based approach for domestic workers whereby protection of their basic fundamental rights related to minimum wages, rest period, safe and healthy workplace, hours of work, protection from abuse, harassment and violation etc.
2. To make a comprehensive policy for domestic workers in which a law and rules should be framed in such a way those workers can work with dignity, opportunity to engage in meaningful work, and a working environment where they are able to balance their work and family life.

Report also talked about ILO convention of 2011 Concerning Decent Work for Domestic Workers (c 189) which India had supported. But report failed to recommend to the government that it should also ratify and become signatory to the same convention so that basic international fundamental rights recognized by the ILO convention could further be implemented in India by bringing in suitable legislation. Such ratification would also strengthen workers belief in their rights.

Task force further recommended that there should be an implementation committee established by the Ministry of Labour and Employment which would include representatives of government, workers' organization, and organizations representing employers. In addition to this, each state should have tripartite institutional mechanisms that can look after the implementation of policies for domestic workers in their respective states.

Workers Right to form organization:- Task force report recommends that all the workers should have right to organize, form union and join organizations. Such rights will help domestic workers to fight for their rights collectively.Right to skill development: - According to the report, Domestic work requires certain and some special kind of skills that every domestic worker is required to have. Any lack in skills on the side of domestic workers may result in less monetary benefits and also sometimes even in termination of their employment. Therefore, State governments should make such policies and program that can encourage workers to improve their skills which also include their literacy training.

Regulation of function of Placement agencies:- As discussed before, this report also talks about the regulation of placement agencies that sometimes encourage the trafficking of domestic workers. Through proper regulations of these agencies by laws, they can be regulated and any violation of domestic worker's rights would then not become possible for them.

Every domestic worker or his/her representative for that matter should have easy access to courts, tribunals or any other dispute resolution forum. The ministry of labour should come up with such complaint resolution mechanism by which domestic workers can have ability to address their grievances during and after their employment. Government should implement a kind of single window grievance Redressal mechanism through which the complaints of workers related to social protection, social security, harassment and violation and all other such problems can be address without getting into all complications of rules and procedures.

Protection of Domestic workers who seek to work abroad:- Government shall ensure the safety and security of all domestic workers who go to overseas on a long-term assignment. Domestic workers should be made aware of their rights and privileges in the foreign county. Also, they should be briefed about their duties and obligation in their simple words so that there would remain no confusion. Ministry of labour with collaboration of ministry of overseas would make policies and regulation whereby it will become necessary for employer and employee to inter onto proper contract, before going for any overseas assignment.

National Advisory Council (NAC) Report:- National Advisory Council, an important hand of Congress government, was constituted in year 2004. NAC was constituted so that it can help existing government in policy making. Several bills drafted by NAC were later passed by parliament. NAC also had issued some recommendations for domestic workers "Recommendation with regard to Essential Elements of a National Policy for Domestic Workers".

NAC had recommended many important things such as:- "Right to earn a livelihood" and "rights at work" should also be a part of domestic work. There should be equity in wages with other workers who are recognized by law. It is also mentioned in the recommendation that if in some larger labour rights framework, due to the nature of work, there is no possibility to include domestic workers;the task of the National Advisory Council (NAC) is to provide inputs in the formulation of policy by the Government and to provide support to the Government in its legislative business. The NAC comprises distinguished professionals drawn from diverse fields of development Activity who serve in their individual capacities.

Then there shall be an obligation on government to design additional mechanism to ensure that domestic workers rights as workers can be exercised comprehensively. In addition to this, Report reiterate the same recommendation

which are made in Task force report, for instance:- Minimum Wages, right to remuneration without discrimination based on sex, right to regulate condition of work including daily normal hours of work with daily and weekly suitable rest (which shall be at least 24 consecutive hours per seven days), treatment with dignity and respect, protection against forced labour ad trafficking, recognition and registration as workers with the state labour department, right to organize union and organization etc. It is important to note that even after these recommendations by various organizations, ministries, and NGOs, government could not come with a proper statute or lest with policies for this sector. There has been a lack of willingness on the side of ministers to heed to the hue and cry of oppressed domestic- workers.

The Domestic Worker's Welfare Bill, 2016: In Indian parliament a private bill named domestic labour welfare bill was introduced by a member[11] in Lok Sabha.

Some of its key features are mentioned here below.

1. Private Household and a Workplace

   Bill defines 'Domestic Work' as "*work performed in or for a private household(s) and includes cooking, cleaning, housekeeping, driving, gardening, child care and old-age care, but does not include work related to businesses run from private households."*

   Specifying households as a workplace and not treating it as a 'private space', would, in itself be a significant step in securing the rights of domestic workers.

2. Includes Migrant Workers

   In the recent confrontation between domestic workers and residents of MahagunModerne in Noida, migrant workers were identified and banned. Proposed Bill defines 'Domestic Worker' as "a *person employed to do domestic work for a remuneration, whether in cash or in kind, for one or more employers by staying at the household premises or otherwise and includes casual, temporary, contractual or migrant workers."*

3. Provision for Children under 18 employed as the Domestic Workers

   In the 2010 Bill proposed by National Commission for Women, there was a zero-tolerance towards employing domestic workers under age of 18. While the 2016 Private Member's Bill defines a 'Minor Domestic Worker' as "*one who is above the age of sixteen years, but below the age of eighteen and has completed compulsory elementary education*."

4. Enhanced Definition of Wages

   Under Proposed Bill, 'Wages' means *all remuneration expressed in terms of money, but does not include the value of any accommodation (rent), supply of light, water, medical attendance etc. The employer would also be liable to extend his/her contribution towards any social security scheme or insurance, give travel allowances or concessions and any other compensation on discharge.*

5. Contract Registration

   Employer or Placement Agency would have to, within two months of the commencement of the employment of a domestic worker, register the employment agreement and get it verified by either the local Panchayati Raj institution or the local urban body, the resident welfare association, or a non-profit organization working among domestic workers.

While the intent of the Bill cannot be disputed, it is least likely to be a priority and most likely to be met with resistance on practical aspects of implementation. And while the legislation alone won't solve bias and discrimination that the Domestic Workers in our country face, a healthy debate could go a long way in influencing attitudes among employers.

Draft of National Policy for Domestic Workers is under consideration of the Government. The salient features of the Policy are as:

1. Inclusion of Domestic Workers in the existing legislations
2. Domestic workers will have the right to register as workers with the State Labour Department. Such registration will facilitate their access to rights & benefits accruing to them as workers.
3. Right to form their own associations, trade unions.
4. Right to have minimum wages, access to social security, protection from abuse, harassment, violence.
5. Right to enhance their professional skills.
6. Protection of Domestic Workers from abuse and exploitation who are recruited to work abroad.
7. Domestic Workers to have access to courts, tribunals, etc.
8. Establishment of a mechanism for regulation of placement agencies.

Failure of government policies

India is a signatory to the ILO's 189th convention, known as the Convention on Domestic Workers; but has not ratified it yet. The convention mandates that domestic workers be given daily and weekly rest hours, their payment must meet

11. Mr. ShahshiTharoor congress M.P

the minimum wage requirement, and that they should be allowed to choose the place where they live and spend their leave. Ratifying states are also required to take protective measures against violence against such workers and are required to enforce a minimum age for employment. However, since these provisions are not binding on those countries that have not ratified the convention, India is not obliged to enforce these recommendations. There has been an attempt at creating a law within the country in the form of the 'Domestic Workers Welfare and Social Security Act, 2010' Bill, drafted by the National Commission for Women (NCW) which attempted to bring this large and vulnerable work force into the mainstream. But little progress has been made in passing this bill so far. It is perhaps past time that India revived debate on this very important bill.

In order to provide social security benefits to the workers in the unorganized sector including domestic workers, the Government has enacted the Unorganized Workers' Social Security Act, 2008. But this Act also covers unorganized workers and not domestic workers in specific. Though there are provisions for the domestic workers but implementation is lacking. Mere law formation is not enough but its strict implementation also plays an important role. India does not have proper and specific law which can regulate only the matters related to domestic workers nor the tribunals which can handle the disputes regarding this. Thus, it can be said government has not yet succeeded to make and implement proper laws in respect of domestic workers.

Channelization The System of Employment of Domestic Workers

To channelize the system of employment first we need to understand the classification of domestic workers.

Most of the domestic workers in India are from vulnerable communities such as tribals (Adivasis), scheduled caste (Dalits) or landless OBC's. Also, most of the domestic workers are women. Many of them resort to the domestic work because of the decreased employment opportunities in the agriculture and industries sectors which includes manufacturing of products. In India domestic work has no value, it is considered as a menial work just in exchange of some amount.

The domestic workers in India can be categorized as:

- Live-in domestic workers
- Migrant domestic workers

Live-in domestic workers

Live-in domestic workers reside at the place of employment. They are made to do all the domestic works such as housekeeping, washing clothes, utensils, cooking etc. These types of workers are totally dependent on their employers for the basic such as food and shelter. Most of the live-in domestic workers are women who come from small villages to cities in search of employment. To large extent they are children, young girls or divorced women. These workers live with their employer and do all the domestic works.

There are also the workers who does not live with the employer but they are mostly people who live in slums and works in multiple houses of multiple employers to earn their livelihood. They can be considered as the part time domestic workers.

Migrant domestic workers

When the workers migrate from one place to another place in search of jobs and to earn livelihood they are considered as the migrant workers. Now, further it was classified in two sub categories:

1. Inter-state Domestic workers
2. Overseas domestic workers

Inter-state Domestic workers: Migration from rural areas to the big cities occurs due to poverty, debt bondage, and male unemployment. Also, the glamour of the cities Acts as a factor to attract the women and young girls. Working in the cities is considered as the solution to poverty to villagers but they are unaware of the exploitative working conditions and poor remuneration that majority of the workers face. Increasingly, “trafficking agencies” have become a very significant factor in encouraging internal migration. In the arena of domestic work, organized trafficking is taking place as villagers living in the cities are returning to their native places to bring more women, girls and children into this labor sector. Once the girls arrive in the cities, their wages are typically locked or they go unpaid in order to pay the traffickers a fee for securing employment.

Overseas domestic workers: Overseas domestic workers are those migrant workers who move from India to other countries in need of the work. And they are typically live in domestic workers and are thus most vulnerable to physical and sexual abuse, excessively long working hours. These workers earn the lowest salary for a foreign worker, despite the fact that they may be earning more than they would earn in India for the same work. Many women travel abroad to send money back home in an effort to improve their life in India. However, in travelling abroad, they become the victims of corrupt recruitment practices, lack of work contracts, withheld salaries, physical, sexual and emotional abuse and in many cases their travel document are taken away and they are prevented from returning home. In India, the procedure for the migrating workers abroad for the work is unregulated.

Issues related to domestic workers in India

- Cases of torture, beatings, sexual assault, and incarceration are common. Indeed, hardly a week goes by without some news report about a domestic help being abused by her employer.
- Domestic workers can be hired and fired at will. The employer has no legally binding obligations.
- In a country where 93% of the workforce is in the unorganized sector and therefore beyond the purview of most labor laws, domestic workers represent a new low in terms of disempowerment: they are not even recognized as workers. Their work — cooking, cleaning, dish-washing, baby-sitting — is not recognized as work by the state.
- Only a few states like Rajasthan, Andhra Pradesh, Karnataka, Kerala and Bihar have fixed minimum wages, but in most cases the wage rate is fixed arbitrarily, is too low and irrelevant to those working in urban areas where the cost of living is much higher.
- Paid domestic work continues to be excluded from the central list of scheduled employments under the Minimum Wages Act, 1948. It is not covered under either the Payment of Wages Act (1936) or the Workmen's Compensation Act (1923) or the ContractLabour (Regulation and Abolition) Act (1970) or the Maternity Benefit Act (1961).
- India is a signatory to the ILO's 189th convention, known as the Convention on Domestic Workers; but has not ratified it yet. Though little progress has been made in passing Domestic Workers Welfare and Social Security Act, 2010' Bill.

Process of employment of Domestic workers in U.K.

Unlike India, U.K. has laws for the domestic workers and also strict implementation of these laws. Most of the domestic workers in U.K. are the migrant workers and there are strict laws made for both the workers and for the employers. There are proper agencies in U.K. who recruits the domestic works in various homes and this recruitment is in accordance with the law established by U.K. government. A proper legal contract is made between the employer and the domestic workers. The terms of domestic worker employment must be included in a written employment contract between a mission member and a domestic worker. The contract must be in English, and if the domestic worker does not understand English; the contract must also be in a language understood by the domestic worker. Two copies of the contract(s) must be signed by both parties. A copy of the signed contract in English, and in a language understood by the domestic worker if the domestic worker does not understand English, mustprovide the consular officer when a domestic worker applies for a visa. All contracts must include the following provisions:

- Description of duties
- Hours of work
- Wage rate
- Method of payment

Need to channelize the employment system of domestic workers in India

India has only two laws that, in a roundabout way, construe domestic helps as workers. The Unorganized Workers' Social Security Act, 2008, (UWSSA) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. While the former is a social welfare scheme, the latter is aims to protect working women in general. Neither of these recognizes domestic helps as rights-bearing workers. About half the states have included domestic workers as laborers under the Minimum Wages Act, which sets out terms of payment, hours of work and leave. Yet, this law is grossly inadequate. The law does not, for instance, require domestic workers and employers to register with any authority, which is crucial for monitoring whether both parties are fulfilling their contractual obligations and for adjudicating conflicts. Some states, such as Kerala and Tamil Nadu, do have welfare boards for domestic workers that attempt to do this, but they have meager funds and do not go far enough. A national law should also regulate the numerous for-profit domestic workers' agencies that have sprung up, some of which are suspected of putting children to work. Thus far, there is no national law that governs domestic employment.

India needs to take the employment of domestic workers seriously and a national need to be enacted to ensure proper wages and proper working conditions of domestic workers. The recruitment of domestic workers shall be channelized and a proper committees and agencies should be there who can regulate the appointment of domestic workers and all the issues related to their work.

Conclusions and Suggestions

A good place to start would be to consider enacting a Domestic Workers Regulation of Work and Social Security Act. Such a law will, above all, recognize domestic work as labor, partly addressing society's devaluation of housework. A national law also needs to oversee workers' safety, provide for health emergencies and their children's education, among other things.The ongoing conflict also suggests that laws can serve only as enabling frameworks, albeit crucial ones, for improving these employees' abysmal working conditions and terms. To be able to use

the law effectively, domestic workers also need to organize, given that their employers are in an economically and socially superior position.

In Indian society house is not considered as the workplace and thus the domestic workers are not considered as Actual workers. Bed room might be a part of your home, a zone of privacy and intimacy, and beyond the purview of state regulation. But for the domestic worker sweeping the floor of your bedroom, it is her workplace. To be able to secure her human and labor rights, it would be necessary to regard your bedroom—insofar as you are willing to compromise your privacy to the extent of paying a stranger to clean up after you—as the equivalent of any other workplace, say, factory or the office of a private employer.

The Indian state is clearly not ready to consider the home seriously as a workplace worth regulation or monitoring. So long as there's a mindset that the home is a private space even when it's a workplace, and domestic work is just house work and not 'proper' work, the apathy of the state towards the plight of domestic workers will continue. And so long as their labor rights remain ill-defined and unprotected, their human rights will continue to be violated.

To overcome all such issues, it is necessary to enact a law solely for the domestic workers. There shall be awareness among the workers regarding their rights. For this purpose, there are some suggestions which are given below:

- Government needs to realize the need of enacting the law for domestic workers to ensure their social security and welfare, as the issue of domestic workers is one of the most important and big issue of recent times.
- There shall be establishment of proper recruitment agencies which functions in accordance with the law.
- There shall be inclusion of domestic workers in Minimum wages Act and payment of wages Act to ensure the proper wages to domestic workers.3
- There shall be laws to regulate the working hours of the domestic workers.
- Home is the place where the domestic workers are engaged for their job but it is not yet included in the definitionof workplace and thus the same inclusion must be made.
- There should be proper tribunal to deal the matters related to dispute between domestic workers and employers.
- Government should have to start the awareness programs specifically to domestic workers so that they should know their rights.
- Government should have to form a proper board whose work is basically to supervision the existed system and the laws relating to domestic workers.
- Government should have to circulate the pamphlet and manifesto regarding the rights of domestic workers.
- Government should take initial steps regarding forming unions of domestic workers.

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Right to Health and Right to Food:A Human Rights perspective– An analysis of Indian Law

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ABSTRACT

All people have right to life, liberty, equality and dignity. These rights are in-alienable birth rights which are enjoyed by all without discrimination of race, sex, gender, age, language, creed, class, caste, color or any other status. These rights are universal in nature and application. Thus the above rights can be ascribed as human rights and can be enjoyed by any one only when one is quite healthy. Thus health has direct impact on the exercise of the human rights.

At international level also the right to the highest attainable standard of health has been recognized by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The right to health implies the absence of pollution and protection against natural hazards, right to water, food and housing as well as safe and healthy working conditions. According to the World Health Organization (WHO), health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.

Considerable efforts have been made in this direction at international level by various agencies yet the goal could not be achieved in developing nations because of the threat posed by the rise in incidence of diseases Therefore the right to health requires affirmative government action to create better conditions for people

Though the right to safe food is not directly protected under the Indian Constitution but it can be covered under the fundamental freedoms, the right to life and the Directive Principles of State Policy. The legal framework for enforcing the right to safe food and hygienic health has also been recognized in various statutes in India like Indian Penal Code, Prevention of Food Adulteration Act, Consumer Protection Act, Food Safety and Standards Act, 2006 and The National Food Security Act, 2013.

To sum up, the right to food impinges that governments must not take actions that result in increasing levels of hunger, food insecurity and malnutrition. It also impinges that governments must protect people from the actions of powerful others that might violate the right to food. States must also, to the maximum of available resources, invest in the eradication of hunger.

Health prime consideration of State-

All people have right to life, liberty, equality and dignity. These rights are in-alienable birth rights which are enjoyed by all without discrimination of race, sex, gender, age, language, creed, class, caste, color or any other status. These rights are universal in nature and application.

Rights can be described as human rights if they bear certain ideals; i.e. important, moral and universal[1]. Important in the sense that it should bear the values for goodness, truth and beauty, moral in the sense that it is concerned with independent, impartial, just, fair and reasonableness and universal in the sense that they have roots in universal values concerned with the scaffold of human rights. Thus the above rights can be ascribed as human rights.

Human Rights can be enjoyed by any one only when one is quite healthy. Thus health has direct impact on the exercise of the human rights.

Everyone has the right to the highest attainable standard of health, as recognized by the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. The right to health implies the absence of pollution and protection against natural hazards. This right is also linked to the right to water, food and housing as well as safe and healthy working conditions. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) issued a general comment on the right to health in November 2000 in which it asserted that the "underlying conditions of health" include "food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment[2]."

Health is Wealth, without health every creature, men and women cannot progress. Health is first for happiness in man's life. According to the World Health Organization (WHO), health is a state of complete physical, mental and social well-being and not merely the absence of disease or

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1. International Congress on Teaching of Human Rights, Vienna.
2. NGLS Roundup 90, May2002 LU

infirmity. 'Health'[3] connotes not negatively or narrowly as the absence of disease or infirmity, but positively and broadly "a stage of complete physical, mental and social well-being". The goal of extending the benefits of sustainable health all over life span to all members of the human family is the cardinal tenet of public health. Considerable efforts have been made in this direction at international level by various agencies yet the goal could not be achieved in developing nations because of the threat posed by the rise in incidence of diseases like cancer, cardio-vascular disease and HIV/AIDS and population explosion. The need therefore, is to prevent the higher incidence of these diseases and ensure availability of life saving drugs at affordable price. Lack of health care and mal-nutrition in addition to illiteracy are identified by Dr. Amaritya Sen as the factors responsible for containing physical freedom in our country even after half a century of political freedom.[4] Therefore the right to health requires affirmative government action to create better conditions for people.

Right to Health, Right to Food and Human Rights:-

Food, water and air are essential elements that all human beings must have access in order to exercise right to live. Therefore, the access tothe minimum essential food which is sufficient, nutritionally adequate and safe as well as sufficient, physically accessible and available and affordable pure and pollution free air and water are considered as human rights. Thusthe right to food is integral part of human right. It protects the right to all human beings to live in dignity, free from hunger, food insecurity and mal-nutrition. The right to food is not charity. Universal and sustainable food security is part and parcel of reaching the social, economic and human development objectives governments agreed upon at world conference, convention and covenants in Rio, Vienna, Cairo, Copenhagen, Beijing and Istanbul etc.

There is no doubt that without food no life is possible and therefore right to food is an aspect of right to life. The right to food is protected under international human rights and humanitarian law and the correlative state obligations are equally well-established under international law. First time in history right to food was expressly guaranteed as human right in UDHR-1948 under Article 25. It has been provided that everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Later on this right was adopted in the International Covenant on Social, Economic and Cultural Rights. Article 11 of the Covenant mandates that governments should "recognize the right of everyone to an adequate standard of living including adequate food for himself and his family.

It has been mandated by the Covenant that Governments must assure citizens of accessibility, availability and security of food and water. The obligation requires governments not to take any measure that arbitrarily deprive people of their light to food, rather the states should enforce appropriate laws and take other relevant measures to prevent third parties, including individuals and corporations, from violating the right to food of others. The obligation to fulfill (facilitate and provide) entails that governments must pro-actively engage in activities intended to strengthen people's access to and utilization of resources so as to facilitate their ability to feed themselves. Whenever an individual or group is unable to enjoy the right to adequate food for reasons beyond their control, states have the obligation to fulfill that right directly.

To sum up, the right to food impigns that governments must not take actions that result in increasing levels of hunger, food insecurity and malnutrition. It also impigns that governments must protect people from the actions of powerful others that might violate the right to food. States must also, to the maximum of available resources, invest in the eradication of hunger.

Furthermore, under Article 2(1), 11 (1) and 23 of the ICESCR, member states agreed to take steps to the maximum of their available resources to achieve progressively the full realization of the right to adequate food.

In 1974 the World Food Conference issued a Universal Declaration[5] on the Eradication of Hunger and Malnutrition. It asserted that "Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties."

The Beijing Declaration[6] which was adopted by the World Food Council in 1987, where the member states resolved to join together and in our united strength and interest to eliminate the scourge of hunger forever.

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3. The Health Machine : R.L. Bijalani& S.K. Manchanda, 1st Edn. 1990 at p. 1
4. The New Universe of Human Rights, J.S. Verma, Former C.J.I. Reprint 2006 at p. 237
5. This Declaration was endorsed by the United Nations General Assembly by Resolution 3348 (XXIX) of December 17, 1974 (Declaration 1974).
6. Beijing Declaration, 1987adopted by World Food Council

The declaration on the protection, promotion and support of Breast feeding (1990) promotes food security and disease prevention for infants through support of breast-feeding. Rome Declaration on World Food Security (1996) recognized the need to establish world food security. The participating heads of state reaffirmed "the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger."

World Food Summit Plan of Action (1996) calls for clarification and implementation of the right to adequate food in the CESCR.

The Special Rapporteurs on the Right to Food was appointed by the United Nations High Commissioner for Human Rights in 2000 to receive information on violations of the right to food and identify emerging issues related to the right to food, including the right to clean drinking water.

In addition to these Covenants, Conventions and Declarations following international organizations/ agencies are committed to human rights, especially access to nutritive food and water:

World Health Organization: The World Health Organization (WHO) is committed to promote good health. Its objective is to help "the attainment by all peoples of the highest possible level of health.

Food and Agriculture Organization of the United Nations: It is dedicated to providing services to raise nutrition standards and the standard of living globally through technical assistance projects; nutrition, food, agriculture, forestry and fishery information; agricultural and development planning.

The United Nations Children's Fund (UNICEF): It works to improve nutrition standards by forming community based programs that supply information and education, as well as emergency care to women and children.

World Food Program: It provides food aid and relief to victims of natural and manmade disasters.

CARE International: It helps families increase food production and proper management of resources, teach techniques and practices that help prevent malnutrition, provide food for relief in emergency situations and build and maintain clean water and sanitation systems.

Save the Children: It works to fix the root causes of food insecurity to prevent hunger and malnutrition through increase in agricultural production, education and distribution of food in emergencies.

WHO estimates that food borne and water borne diarrheal diseases taken together kill about 2.2 million people annually, 1.9 million of them children. Food borne diseases and threats to food safety constitute a growing public health problem. The issue of safety and quality of food is thus a very important issue because the life and health of individual depends on the food they consume. Food safety issues respect no national boundaries because hazards can be introduced or exacerbated at any point in the worldwide food chain.

Concept of Food Safety:-

Food Safety is a growing problem throughout the world. Unsafe food causes many acute and lifelong diseases and is a major public health issue. Food borne illness is considered as most wide spread health problem and an important cause of reduced economic productivity in developing and underdeveloped countries. The access to safe, reliable, affordable, and nutritious food supply is a basic need for all people. Therefore, food safety is increasingly becoming a global challenge both by virtue of its public health impact and its economic and political implications. Right to safe food is basic human right of all individuals and it is not only the duty of the government to ensure safe food but it is also the duty of all the stakeholders involved in various level of food production.It is the main responsibility of the respective Governments to ensure, accessibility of safe food, food safety and standard food to its citizens.

Food Security: Conceptual Frame Work:-

Food security is the ability of all people at the times to access enough food for an active and healthy life. The conditions to be fulfilled to ensure food security are (i) food must be available; (ii) each person must have accessibility of food; (iii) the food must be affordable; (iv) food must be of quality and as per standards; (v) food must be pure and clean and (vi) the food utilizable must fulfill nutritional requirement. Thus, food security means each person has a reliable, available, affordable and pure able food supply. Food and Agriculture Organization (FAO) defined food security as "ensuring that all people at all times have both physical and economic access to basic food they need."

World food problems involve complex issues of food production, population growth, poverty, environment, economic and political systems, ethics,and imbalance of food supply and demand. Therefore, the global food security requires sufficient food production to provide the people with the amount of food they need to lead active and healthy lives. High food prices and poverty leads to hunger and starvation. Deficiency or lack of sufficient food leads to malnutrition. Above 40 million people die every year due to under nourishment and malnutrition, 50% of which are growing children between eleven to fifteen years of age. According to an estimate about 300 million people are under-nourished in India only. Poor diet and poverty impair the health and ability of man to work efficiently. Insufficient calories and deficiency of nutrients in food lead

to a less productive life which makes a person more susceptible to infectious diseases.

Constitutional mandate and Right to Food and health:-

Though the right to safe food is not directly protected under the Indian Constitution but it can be covered under the fundamental freedoms, the right to life and the Directive Principles of State Policy. The legal framework for enforcing the right to safe food and hygienic health has also been recognized in various statutes in India like Indian Penal Code, Prevention of Food Adulteration Act, Consumer Protection Act, Food Safety and Standards Act, 2006 and The National Food Security Act, 2013.

The Indian Constitution provides to all its citizens all those rights which are considered as essential for survival and enjoyment of basic rights. These are:

Article 21 of the Constitution of India provides that: No person shall be deprived of his life or personal liberty except according to procedure established by law. It also encompasses the right to live with human dignity which in turn includes the bare necessities of life such as adequate nutrition. Further, the right to food is an integral part of the right to life. It is therefore the constitutional duty of the state to ensure that adulterated, misbranded or unsafe food articles are not manufactured, distributed, sold, marketed or imported in our country and consumers are protected against marketing of food articles which are hazardous to health and life.

Article 39 of the Constitution of India directs the state to make endeavour through policies towards securing :- (e) That the health and strength of workers, men and women and the tender age of children are not and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 47 of the Constitution of Indiacasts duty on the state to raise the level of nutrition and the standard of living and to improve public health.

Right to Food in India:-

The Present situation in our country is alarming. Rich are becoming richer and poor are becoming poorer. Disparities are increasing by leaps and bounds. Majority of the population is forced to live Below the Poverty Line (BPL). Economic independence is far cry. Inequality, unemployment, poverty, illiteracy and population growth are matters of deep concern. People are hungry not because of their miss conduct but because of their misfortune being human being. India is rich country with sufficient resource inhabited by poor people (85% resources are under the domain of 30% people and remaining 15% assets are for the remaining 70% people.

India's population is growing disproportionately to its food supply.An increase in the population base puts greater pressure on finite resources, both financial and natural and in the content, worsening of income distribution, increased poverty incidence and environment degradation. It is responsible for(i) ecological imbalance with greater pressure on natural resources; (ii) increased urban crowding with increase in demand for municipal service and infrastructure; (iii) a more unequal income distribution particularly as labour supply outpaces job creation; and (iv) signs of mass poverty, including high rate of child mortality, high levels of child malnutrition and hunger, poor school performance, unemployment and underemployment.

Right to food and judicial approach and trends in India:-

First time in Indian history the Supreme Court recognized Right to Food as Right to Life. In a significant judgment of the PUCL Vs. Union of India[7] the Supreme Court held that it is the right of every person who is starving because of his or her inability to purchase food grains have right to get food under Article 21. It is the duty of the state to provide food grains to all those persons who are aged, infirm, disabled, destitute women and men, pregnant and lactating women and destitute children from the stockwhich is lyingwith state as unused. The court directed to all states to distribute food grains immediately through PDS shops to these persons.

The Court further directed all state governments to take their "entire allotment of food grains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes".

The Supreme Court of India, while expanding ambit and scope of Article 21 of our constitution has reflected its sincere efforts to humanize the law. The Apex court while interpreting Article-21 expanded the ambit and scope of right to life to include the right to livelihood mainly indicating to provide right to food to all. Thus, the right to food has been guaranteed to every citizen.

In Manaka Gandhi v. Union of India[8] the Supreme Court recognized that life under Article-21 is not confined to mere physical existence but includes the right to live with human dignity and procedure adopted for deprivation must be just, fair and reasonable. *Francis Coralie Mullin v. Union Territory of Delhi*[9], the court held that right to life includes

7. 2000(s) Scale
8. AIR 1978 SC 597
9. AIR 1981 SC 746

the bare necessities of life as adequate nutrition. In *Olga Tellis v. Bombay Municipal Corporation*[10], the Apex court emphasized upon the role of state to secure to its citizens adequate means of livelihood as right to life which is the only base of right to food which cannot be exercised without it. In *Vincent v. Union of India*[11], the Supreme Court held that right to live with human dignity included right to maintenance and improvement of public health which is living reality. In *Shanti Star Builders v. Narayan*[12], the Supreme Court while interpreting the right to life observed that right to life embraces within it human dignity which includes the quality of life along with all the basic human needs such as food, shelter and clothing. In *Mrs. 'X' v. Hospital 'Z'*,[13] the Supreme Court held the right to life includes the right to lead a healthy life so as to enjoy all facilities of human body in their prime condition.In *Chameli Singh v. State of U.P.*[14], also the court held that right to life implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights as no other right can be availed without it[15].

In *People's Union of Civil Liberties v. Union of India*[16], the Supreme Court issued directions inter alia - (1) to GOI for sanctioning and operationalising of AnganwadiCentres (AWCs), for identifying SC/ST hamlets for AWCs on priority basis, for following minimum nutrition norms in monetary terms. The court directed Chief Secretaries of Certain States to personally appear to explain why earlier order of Supreme Court requiring full implementation of ICDS was not obeyed. The court also asked Chief Secretaries of all states / UTs to submit details regarding steps taken in regard to compliance with order dt. 7.10.2004 in PUCL case[17] regarding use of village communities, self-help groups and MahilaMandals for supply of food and preparation of meals and to indicate a time-frame within which decentralization of supplementary nutrition programme through local community as directed will be completed.

Prior to this case, the Supreme Court on 20th August, 2001 directed that government is under obligation to provide food to all, even if it has to be given free. "It should be done as no person should be deprived of food merely because he had no money." The court lamented that mere formulating the schemes without implementation is of no use. What is most important is that the food should reach the needy.

It is the primary responsibility of administration to see/to ensure that the food reaches the hungry and is not wasted without purpose by dumping in the sea or eaten by rats and to protect poor/weaker sections of society from starvation death even when the grainaries are full and a lot is being wasted due to non-availability of storage space[18]. In *P.U.C.L.V.U.O.I.*,[19] the Apex court directed states and union territories to take steps to prevent deaths due to starvation or malnutrition. The court further directed the states to prominently display its order dated 08.05.2002 in all Gram Panchayats, school buildings and fair price shops and to give publicity through All India Radio and Doordarshan the following Food Schemes (1)Targeted public distribution scheme (TPDS); (2) Antyodaya Anna Yojana; (3) Mid Day Meal Scheme; (4) National Old Age Person Scheme (NOAPS); (5) Annapurna Scheme; (6) Integrated Child Development Scheme (ICDS); (7) National Maternity Benefit Scheme (NMBS); (8) National Family Benefit Scheme (NFBS). The Apex Court further directed that these schemes must be implemented with honesty and sincerity which will go a long way towards ending the extreme scarcity and deprivation that ruin the lives of destitute/ hungry.

In State of Punjab v. Mahinder Singh Chawla[20] tha Apex Court held that the right to life includes the right to health.

Thus, the Supreme Court of India has from time to time emphasised that it is the constitutional obligation of the Government / State to take steps to fight hunger and extreme poverty and to ensure a life with dignity for all individuals.

To provide nutritive food free from adulteration and to honour international obligations under various international covenants and conventions and the dictates of Apex Court the Food Safety and Standards Act, 2006 was enacted and for effective implementation of the Act the Food Safety and Standards, Rules 2011 are also made and published[21]. To further strengthen the right to food, the National Food Security Act,2013 was proclaimed by the

10. AIR 1986 SC 180; (1985) 3 SCC 545
11. AIR 1987 SC 990
12. (1990) 1 SCC 520
13. AIR 1999 SC 495 at 503
14. AIR 1990 SC 1051
15. The Times of India, New Delhi, 21st August, 2001, p. 9C2
16. (2007) 1 SCC 719
17. (2004). 12 SCC 104
18. "Ensure Food for hungry rather than waste it", S.C. T.O.I. New Delhi, 21.02.2002, p. 9, col. 2.
19. Prevent Starvation Deaths : S.C. tell states The Hindu, 30.10.2002, see also D.I. the Chandigarh dated 07.11.2K2, p. 6, see P.U.C.L.V.U.O.I. (2007) 1 SCC 178.
20. (1990) 3 SCC 119
21. Gazette of India (Extraordinary) Part II, Section 3(i) on May 05, 2011.

President of India.

Special Features of the Food Safety and Standards Act, 2006:- The 2006 Act consolidates the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import. Its overall thrust is on ensuring availability of safe and wholesome food for human consumption

The provisions of this Act shall be implemented and guided by the provisions of Section 18 of the Act, which requires from the Central Government, the State Governments, the Food Authority and other agencies to make endeavor to achieve an appropriate level of protection of human life and health and the protection of consumer's interests, including fair practices in all kinds of food trade with reference to food safety standards and practices.

In view of the health of citizens the Act prohibits the use of food additives, processing aid, contaminants, heavy metals, insecticides, pesticides, veterinary drugs residue, antibiotic residues or solvent residues unless they are in accordance with the provisions of this Act and regulations made there under. The Act forbids manufacture of certain food items such as irradiated food, genetically modified food, organic food, health supplements and proprietary food without adhering to specific regulations.

The Act provides for license to sale food items. It provides for liability of manufacturers, packers, wholesalers, distributors and sellers. The manufacturer or packer of an article of food will be liable for non-compliance with the requirements of the Act and the rules and regulations made there under[22]. Where an article of food is supplied after the date of its expiry, or is stored or supplied in violation of the safety instructions or is unsafe or misbranded or is unidentifiable of manufacture or is received by him with knowledge of being unsafe, the wholesaler or distributor, as the case may be will be liable under the Act. Similarly seller shall also be liable under this Act for any article of food which is sold after the date of its expiry, or handled or kept in unhygienic conditions, or misbranded, or unidentifiable of the manufacture or the distributors from whom such articles of food were received or received by him with knowledge of being unsafe.

Unique provision for food recall procedures has been made by the Act. It directs food business operator to withdraw the food in question from the market and consumers indicating reason for its withdrawal and inform the competent authorities thereof.

The Act makes provision for a graded penalty where the punishment depends on the severity of the violation. The act prescribes penalties for selling food not of the nature or substance or quality demanded; manufacture for sale, storage or sale of distribution or import of sub-standard food and manufacture etc. of misbranded food or of food containing extraneous matter etc

Effective enforcement mechanism has also been provided by the Act for faithful implementation of the provisions of the Act.

The Act provides that:(i) Ration card should be in the name of adult women, (ii) It extends benefit to up to fourteen years of age. school children, (iii) Pregnant and maternity women to get Rs 1000 per month up to 6 month for food assistance, (iv) Helpless and aggrieved by hungry and starvation may be benefited, (v) Malnutrition and below poverty line person to be benefited, (vi) Right to food and health to be declared as fundamental right by incorporating a new article in Constitution, (vii) Limitation of consumption right fixed, (viii) Milk to be declared a part of agriculture product, (ix) Grant may be given to member of medium class families, (x) Maximum price, tax to be mention on every product, (xi) Cut the junk food for healthy adult life.

The Act covers the organized sector as well as the unorganized food sectors, but it does not require any specific standards for potable water, although it specifies standards for water used as an input in manufacture/preparation of food. The Act also excludes plants prior to harvesting and animal feed from its purview. Further, the provisions of this Act shall not apply to any farmer or fisherman or farming operations or crops or livestock of aquaculture and supplies used or produced in farming or products of crops produced by a farmer at farm level or a fisherman in this operation.

While the objective of the act is to establish a regime of self-compliance, its thrust is on penalizing offenders of food safety standards rather providing support to improve the systems. This may create problems for small scales food processors or sellers who run the risk of being penalized for non-compliance due to lack of capital and technical support.

Targeted Public Distribution System and Public Distribution System will become more effective in preventing malnutrition only when all the nutritive food items like pulses and edible oils are distributed with grains/atta under PDS. The Act does not cover these items.

It does not provide for ICDS facilities at AanganwadiCentres for children, which was mandated by the Supreme Court of India, like provision for nutritive food, health, pre- school education.

22. Section 27 of the Act

No time frame has been fixed for disposal of the complaints /cases under the Act.

No provision has been made for compensation to the victims of the offence.

The Act provides for 1/3 of the population 90% subsidy on food grains which will cost about1.25 lakh crore, this will make poor people totally dependent on the subsidy and will take them away from hard work/ job.

It will make poor people beggar forever, it will take people away from hard labour and will motivate towards easy money through selling subsidized food at full rate in market.

No provision has been made for monitoring the distributed subsidized food items, this will help in generating black money as these food items will be sold in open market by greedy poor people, Those children could not be benefited by the Act who are not going school or are not a student, (ii) senior citizens and pensioners,(iii) persons who suffered from natural calamities. The Act does not provide for (i) guarantee to peasants for minimum support price, (ii) establishment of test laboratories at district level, (iii) minimum period of limitation for taking cognizance of the offence.

It ensures systematically and scientifically development of food processing industry and makes a pragmatic shift from regulatory regime to self reliance.

The Act neither requires any specific standards for potable water which is usually provided by local authorities nor does it control the entry of pesticides and antibiotics into the food at its source. Standards specified under the Act and under the rules and regulations made thereunder are also to be adhered by the unorganized sector such as street food vendors, hawkers, temporary stall holders who may face difficulty in adhering to law.

Therefore, the right to food be made a basic human right and as a constitutional fundamental right may be specifically incorporated in our Constitution. Food security cannot be effectively implemented unless sufficient infrastructure is developed to take care of the provisions of the Act like, effective and efficient use of bumper stock of food grains.

Government will have to adopt stringent measures by increasing the tax base, abolishing some tax deductions and by adopting effective measures for tax evasion for implementation of the provisions of the Act in letter and spirit. These steps will help in raising funds for implementation of the Act.Provision for harsh punishment should be made for the offences under the Act.

Provision for compensation should be made for the victims of offences under the Act.

Time frame should be fixed for disposal of complaints/cases under the Act.

Provision for harsh punishment should be made for culprits and for compensation to the victims.

The most important is to create a culture of awareness to assert this basic right. The media has to play an important role in sensitizing such issues and also schemes such as family planning which will give great support to make available this 'Right to Food' to all of us, the major challenge of creating a society where all live with dignity and self-respect will be met with honorably.

An effective economic policy free from corruption, red tapism and bureaucratic blockages and a dynamic education policy are needed. But Apart from the government effort large scale public participation is required to realize the dream of right to food, safety, standards and public health.

Now in future we will have to be more alert. So that food safety, standards and public health to be inserted in our constitution by way of amendment like right to education. However, we shall have to wait and see if the Act is successful in achieving the objectives set out in it. .

Special Features of the National Food Security Act, 2013: The Act provides that:Without ensuring proper implementation of 2006 Act, The President of India proclaimed the National Food Security Act, 2013to further cause of poor people. The Act ensures: (1) access to adequate quantity of quality food at affordable prices to people to live a life with dignity. (2) that every person belonging to priority households shall be entitled to receive five kg. food grains per person per monthat subsidized prices under Targeted Public Distribution System.(3) that every pregnant women & lactating mother shall be entitled to (a) meal, free of charge, during pregnancy &six months after the child birth& (b) maternity benefit of not less than Rs six thousand in installments. (4) every child up to age of fourteen years shall have the following entitlements for his nutritional needs: (a) child in the age group of six months to six years ,meals free of charge. (b) children below six months breast feeding shall be promoted. (c) child of six years to fourteen years of age, one mid day meal free of charge.

The Act further provides that in case of non supply of entitled quantities of food grains or meals to entitled persons shall be entitled to receive food security allowance from state government. The Act mandates that eldest woman who is not less than 18 years of age in every eligible house hold shall be shall be head of the house hold for the purpose of issue of ration cards. The Act also provides for redressal of grievances for the violation of the provisions of law. The Act puts joint obligation to ensure faithful implementation of the provisions of the Act, of the central

government, state government and of local authorities.

To ensure transparency in dealings and to ensure accountabilityof concerned authorities the Act provides that the records of TPDS will be available to everyone for inspection; social auditing will be conducted about the schemes; vigilance committees have been set up to monitor and to check any irregularity or illegality; and to take special care of people living in remote, hilly and tribal areas for food security. Further a provision for penalty up to Rs. 5000/-has been for public servants or authorities found guilty.

The Act also ensures that subsidized price will be Rs. three per kg. for rice, Rs. two per kg. for wheat and Rs. one per kg. for coarse grains for three years from the date of commencement of the Act. It will entail subsidy to the tune of Rs. 1.25 lakh crore on the exchequer.

The quantity of food grain to be supplied is not sufficient to fill the belly of a person. According to survey conducted by many agencies atleast 12.14 kg. food grains, 1.5 kg pulses and 800 gm. edible oil is required by a person for his proper development in a month. This will force the poor people to purchase remaining quantity of food grains from open market at higher rates. The Act also does not provide for supply of pulses and edible oil, without which it will not be possible to eliminate hunger and problem of malnutrition.

It would have been better if right efforts would have been done towards developing infrastructure and proper implementation of economic policies and programmes to increase the rate of development, which would eventually be helpful in increasing the income of poor people.

The main problem will be that from where the food will come for 2/3 population at the rate prescribed by the Act. To keep the scheme regular and effective the states have to prepare food budget. Efforts are also required to be made for increasing the production of food grains to ensure regular supply.

Identification of families for the subsidy is major problem because of corruption. It has to be ensured that the benefit is not hijacked by the rich people. The identification of families should be done at village panchayat level to eliminate any such eventuality.

A fool proof system for continuous supervision and monitoring during transportation of food grains from FDI godown till it reaches the beneficial family has to be developed for strengthening of TPDS and PDS system.

Facility for the storage of food grains at village level should be developed to reduce the cost of transportation and to minimize the pilferage.

It is well known fact that since 1995 till date2, 84,694 farmers have committed suicide. It is most unfortunate that the Act did not take cognizance of this fact. It is suggested that subsidy to the farmers should be increased to motivate them to work for increasing the production of food grains. At present the subsidy given to farmers is only 20% of the subsidy given to industrial sector. Therefore, the subsidy to farmers should be raised to the level of subsidy given to industrial sector. It will be helpful in keeping the supply of food grains continuously for the scheme. Otherwise much more expenses then the subsidy have to be born on import of food grains from foreign countries which ultimately result in multiplying the amount of food subsidy to anunaffordable level.

According to Arjun Sen Gupta Committee[23] 84 crore people do not have capacity to incur expenses of more than Rs. 20/ per day. Putting all these in one category will not be proper and poorest of poor may be denied the benefit. It is suggested that such people should be grouped in two categories, poor and very poor. The persons of very poor should only be covered by the Act, whereas the people of poor category should continue to be covered by Antyodaya AnnaYojana.

As per survey 30% of total population falls under the BPL category, whereas the Act provides for subsidy to 67% of the population. It means 37% of the population which is not covered under BPL category will also get the benefit of the Act. It is submitted that the scope of the scheme under the Act should be reduced and confined to people of BPL category so that the scheme can be effectively implemented. To conclude, the Food Safety and Standards Act, 2006 and the National Food Security Act, 2013 are landmark consumer protection legislations which need to be implemented with full faith by the State.

Even after the implementation of Food Safety and Standards Act, 2006 and National Food Security Act, 2013 by the Government / State still India has been ranked 100 out of 119 countries and placed it in the serious category in the global hunger index[24].

This report analyzed performance of India in four indicators in terms of %, which is as under[25]:

1. Proportion of undernourished in the population 14.5%
2. Prevalence of wasting in children under five years 21.0%

23. Arjun Sen Gupta Committee Constituted by Govt. of India in 2007
24. Report of Global Hunger Index, 2017 available at ifpri.org/news-release/interpreting-indias-performance-global-hunger-index
25. Ibid

3. Prevalence of stunting in children under five years 38.4%

4. Under five mortality rate 4.8%

To come up out of hunger / malnutrition / undernutrition / mortality rate the Government of India and all States have to work hard by adopting more schemes / programmes for the purpose. Here I would like to suggest that the Government alone cannot achieve the objectives of the Acts / schemes for providing nutritive food to all. The Government should seek co-operation from the NGO's, Common Masses and all Stockholders of the schemes. The Government should also organize NukkadNataks to educate the people about the evil effects of malnutrition / undernutrition. The Government should also think of showing short films and use of social media platforms for this purpose.

Financial provisions for the children in matrimonial disputes under Hindu law

Dr.Rajshree Rathore*

ABSTRACT

We know that divorce dissolves the marriage legally but the relationship of the parties continues even after divorce in relation to maintenance of the other spouse and in relation to custody and maintenance of children. Over the years, the courts have given a very wide discretion to the provisions available for maintenance of children. This article is a treatise on all the financial provisions for the children given under Criminal Procedure Code, 1973, Hindu Marriage Act, 1955 and the Hindu Adoption and Maintenance Act, 1956.

Keywords: Children, disputes, maintenance, wide discretion

1. Introduction

Divorce legally dissolves the marriage tie. But it certainly cannot erase the past, nor canit create an unrelated future. In a sense it adjusts the relationship by realigning bonds between the parties, may be not emotionally but at least legally. It has therefore been rightly said that divorce mayend the marital tie,but it cannot end all family relations[1].

For at least two purposes, the relationship of parties continues even after divorce. Firstly, insofar as one spouse is under a liability to pay for the maintenance of the other spouse, the relationship continues, secondly where there are children of marriage, the relationship of the parties continues in relation of their custody, maintenance and education etc. Thus, divorce is not the end of the whole episode; certain relationships and obligations do survive divorce[2].

Provisions for children under Hindu Law

Under Hindu law children can seek maintenance from parents under the provisions of three statutes- section 125 of the Code of Criminal Procedure 1973, section 26 of the Hindu Marriage Act 1955 and section 20 of the Hindu Adoption and Maintenance Act 1956 .Section 125 of the Code of Criminal Procedure imposes duty only on the father to maintain his legitimate or illegitimate minor children ,whether married or not and who is unable to maintain itself .On the other hand, section 26 of the Hindu Marriage Act,1955 and section 20 of the Hindu Adoption and Maintenance Act, 1956 distributes this liability equally on both the parents to maintain their children.

The court has the discretion to award maintenance against any parent, like it happened in the case of *Dr Rajendra Kumar Batta v Dr Kanta Kumar*[3] where the wife was earning almost as much as the husband,her application under section 26 of the Hindu Marriage Act was dismissed by the court on the ground that she was capable of maintaining from her salary. Though legally both the parents may be liable for maintenance and support for theirchildren, but,generally, it is the father on whom the burden falls[4].

The provision of maintenance under section 125 of the Code of 1973 and section 20 of the Hindu Adoption and Maintenance Act,1956 are independent of any matrimonial relief. Therefore, the proceeding under these provisions can be initiated at any time when there is proof of neglect on part of the parent but under section 26 of the Hindu Marriage Act the court assume jurisdiction only when a petition for any main relief under the Act has been filed like restitution of conjugal rights, judicial separation ,divorce and nullity of marriage.

The term 'maintenance' has not been defined by the Hindu Marriage Act. But Adoption and Maintenance Act defines maintenance to include[5];

(i) In all cases, provision for food,clothing, residence, education and medical attendance and treatment;

(ii) In the case of an unmarried daughter,also the reasonable expenses of and incident to her marriage.

The court exercises vast discretion under section 25 of the Hindu Marriage Act, where if the party is capable enough, sufficient sum for the marriage expenses of sons and daughters can be ordered by the court to be paid to the

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1. Herma Hill Klay and I. Phillips, "Poverty and the Law of Child Custody."
2. Stephen Cretney, "Financial Provision The New Case Law" 122 N.L.J. at p.26.
3. 1979 H.L.R.443, at p. 449(P&H).
4. Bibi Balbir Kaur Kathuria v. Raghbir Singh Kathuria, 1977 H.L.R. 20 at p.22(P&H).
5. Sction 3(b) of the Act.

custodial parent.Section 125 of the Code of Criminal Procedure is primarily enacted with the object to prevent vagrancy or starvation. The traditional view which was taken, related to the word 'maintenance' under this section meant to provide for the appropriate food clothing and lodging[6] and also reasonable expenses of medical attendance[7]. But a bare provision for food and clothing will not make any sense if a child does not get elementary education and proper schooling[8] and other facilities like medical and other extra- curricular facilities expensesfor the overall development of his mind body and soul.

Wide discretion

The traditional thinking given in cases related to section 125 of the Code is giving way to the progressive thinking that maintenance doesn't mean the bare minimum:

"the change in the social trend is discernible in other civilized countries as well…. in my view, therefore, a deserted wife must, according to law of the Indian Republic, be held entitled to suitable maintenance which is in accord with the status of the family and not to bare food and clothing"[9].

When the question arises as to how financial provisions for children whether legitimate or illegitimate or adopted would be decided by the court, it is important to note that the whole scenario of the divorce, custody and maintenance policy has undergone a considerable change .The provision of the Code of Civil Procedure,1908, introduced by the amendment in 1976,Order XXXII-A, *inter-alia*, applies to a suit or proceeding in relation to… the custody of any minor or other member of the family under a disability[10] and "a suit for proceeding for maintenance[11]" family.Rule 6 of the Order defines 'family' to include:

a) a man and his wife;

b) children of husband and wife;

c) children of husband;

d) children of wife;

e) any children of a man when he is not married or when married but living separate from his wife and also any children maintained by him

f) any children of a woman when she is not married or when married living separate from her husband and also children maintained by her, and this includes any combination of one or more groups specified above.

Thus, very wide jurisdiction has been conferred on the courts to adjudicate upon children.

Under section 125 (1) of the Code of 1973, there are three conditions to be satisfied before the father can be ordered to pay maintenance to the child,*viz*,

a) that the father has sufficient means;

b) he has neglected to maintain the child; and

c) the child has no separate income for his or her maintenance.

Under the section the right of the child to claim maintenance is independent from the right of the mother. Hence, even if the mother's claim for her maintenance is refused for any reason, for example, her refusal to live with the husband without any just cause[12], or living separate by mutual consent, the claim for the child cannot be defeated on that ground .The father cannot claim his right to custody in the proceeding under the present section and his very instance that the child must live with him as a condition of his maintaining[13].

Latest trends

In various High Courts and Supreme Court decisions, the financial provisions are being given a very wide scope .The Hon'ble Kerala High Court in the case of *Vishambhar v Dhanya and another*[14] has held that in the cases under section 20,right of a male child to claim maintenance would cease when he attains the age of majority,but in the cases of a female child such child will continue even after she attains majority, unless she gets married.The Hon'ble Apex Court in the judgement of *Dr.JagdishJugtawat v Smt. Manjulata And Ors.* on October 25, 2000has held,that even if a girl attains majority but is unmarried her entitlement for maintenance from her father is maintainable under law.Thus, the courts have given a very wide interpretation in the decisions relating to the custody and financial provisions battles related to the children, especially, keeping in view the welfare of the child to be the paramount consideration.

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6. Ramankutty v. Kalyanikutty, A.I.R. 1971 Ker.22
7. RamanathanChettiar v. Alamelu Achi, A.I.R. 1943 Mad. 342.
8. Puranshi v. Nagendra, A.I.R. 1950 Cal. 465 (D.B.).
9. Joginder Singh v. Raj Mohinder Kaur, 1990 Pb. 249 at p. 254.
10. Rule 1(2)(c) of O.XXXII-A.
11. Rule 1(2)(d), id.
12. Muneruddin v. Rakshana, 1978 Cr.L.J.(N.O.C.)4(A.P.).
13. Kumar Dang v. Vasudev Dang 1976 H.R.L. 678(H.P.).
14. A.I.R. (2005) Ker.

Victim Blaming: Transgression from the Real World to the Virtual World

Ms. Sakshee Sharma*

ABSTRACT

The phenomenon of Victim Blaming has long been associated across the world with the crime of rape and sexual harassment. Various theories of victimology deal with the root cause of such blaming by the society. Just World Theory, sexism, cognitive biases and theories of self-blame delve into the cause behind the widespread practice of blaming the victim. However, it has been noticed over the time that victim blaming has not restricted itself only to cases of physical sexual harassment, but has transgressed into cyberspace as well. With greater number of people, especially women, falling prey to sexual harassment online, victim blaming has become a reality of the virtual world. The present article cites various examples and cases of online sexual harassment and the reaction of the cyber community depicting unmistakable colours of victim blaming. The parallel drawn between such blaming in physical sexual harassment and virtual sexual harassment demonstrates the all-pervading practice of subjecting the victim to double victimisation.

Key Words: Victim Blaming, Victim, Just World Theory, Sexism, Sexual Harassment, Rape Victims, Cyber, Misogyny.

1. Introduction

The present article is a modest endeavour of the researcher, to discuss various facets of victim blaming as a manifest tendency of misogynistic societies, while addressing various cyber harassment occurrences against women. For this purpose, the researcher wishes to inspect victim blaming trends in cyber harassment cases and draw parallels with much discussed yet, still prevalent victim blaming of rape victims. The aim of the paper is to study the various theories and aspects of victim blaming that mostly occurs post a sexual assault or rape incident, recognize the psychology behind such practice and its ultimate implication on the victim's decision making process. But first, it is important to understand the various nuances of victim blaming and its severe negative consequences.

Victim-Blaming

The act of holding the victim of the crime or abuse, partly or entirely responsible for the crimes committed against them is commonly termed as *Victim Blaming*[1]. The two major reasons for such psychosocial conduct is to avoid culpability and deny vulnerability by placing the blaming the person who suffered the harm rather than the perpetrator[2]. Victim blaming is carried out predominantly after sexual and abusive victimization of women in order to excuse ourselves from the responsibility to care for the victim and punish the culprit. Victim blaming as an unfortunate phenomenon has been in practice in various parts of the society for quite some time, but has only recently been identified as a dynamic used to empower the criminal and maintain the status quo[3]. The term *Victim Blaming* is attributed to the phrase "blaming the victim", coined by William Ryan in his book 'Blaming the Victim' in 1971. The book was in response to years of oppression and the civil rights movement, and the phrase 'blaming the victim' was used to describe one of the tactics used by the privileged to remain in power. Lately, the term has been widely adopted in the victimological perspective by the advocates and scholars, particularly in respect of sexual assault and rape cases[4].

Victim-Blaming in Rape and Cyber Harassment Cases

The victim-blaming culture is majorly perpetuated by sexism, the Just World Theory, cognitive biases and the theories of self-blame[5]. Through victim blaming, the perpetrator, the bystanders and the society at large relieve themselves from their tacit accountability, to ensure a potential victim's safety, prior to the incident; and to deliver justice to the victim, post the crime. For the purpose of this paper the researcher wishes to revisit sexism and the Just World Theory in the context of rape and abuse culture.

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1. S.L. Maier, "Sexual Assault Nurse Examiners' Perceptions of the Revictimization of Rape Victims", Journal of interpersonal Violence, 27, 287-315.
2. Juliana Breines, "Why Do We Blame Victims?" Psychology Today: Health, Help, Happiness. p. 24, Nov. 2013. Webvisited 06 Oct 2014.
3. Julia Churchill Schoellkopf, ,"Lesbian Gay Bisexual Transgender Queer Centre", Paper 33, 2012 at 2.
4. Supra Note 3.
5. Ibid.
6. Hostile sexism: This expresses a negative evaluation of women and misogynistic attitudes. Benevolent sexism: which is positive in tone but considers women stereotypically and expects them to remain in restricted roles". See: Ma. Luisa, et al, "Ambivalent Sexism, Attitudes Towards Menstruation and Menstrual Cycle-Related Symptoms, International Journal of Psychology, 49, 280-287, 2014.

Sexism (both *hostile* and *benevolent*)[6] is quite often cited as one of the reasons which encourage rapists and the society to blame the women for the abuse they face. Victim-blaming in rape cases has often been used as a medium to trivialize sexual violence inflicted by men on women by shifting the blame from the rapist to the victim. This in turn, furthers the oppression and social control of women and also exonerates sexually aggressive men from their culpabilities[7]. While going through the literature related to cyber harassment and gender trolling, one realises that similar sexist attitudes have time and again given voice to individuals who don't shy away from calling cyber harassment victims as "whiny baby girls" who are overreacting to "a few text messages"[8]. The blaming does not stop with the absolving of the perpetrator of his acts; it continues to serve a bigger purpose of preserving the status quo. The dismissal of cyber harassment as "no big deal" reeks of a sexist conspiracy to undermine women's autonomy, to discredit them and make them responsible for their own harassment by portraying them as "fragile", "hysterical" and "particularly sensitive"[9].

A parallel narrative employed by the critics, suggesting to the women of the cyber world to either "man up" or to go offline, suggests another misogynist attempt to establish male dominance over the cyberspace, in affirmation with the prevalent norm of the physical world. In this light, examining The Telegraph's Brendan O 'Neill's calling of 'combating the personal attacks' as a "Victorian effort to protect women from coarse language"[10] demonstrates the social psychology of misogynist conformists, who believe that women should expect to be addressed and subjected to coarse and crude language and that is the inevitable price that they will have to pay if they wish to be on the internet. O'Neill remarked, "If I had a penny for every time I was crudely insulted on the internet, labelled a prick, a toad, a shit, a moron, a wide- eyed member of a crazy communist cult, I'd be relatively well- off. For better or worse, crudeness is part of the internet experience, and if you don't like it you can always read The Lady instead.[11]"

Citron cites various commentators disparaging Kathy Sierra, a tech blogger who was initially criticised for her blogs by a few readers, which rapidly snowballed into receiving constant death and rape threats accompanied by pornographic and death suggestive graphics and images. Many commentators exclaimed while ridiculing her, "if you aren't comfortable with the possibility of this kind of stuff happening, then you should not have a public blog or be using the internet at all[12]" Markos Moulitsos, the founder of the liberal blog Daily Kos, trivialized the threatening situation of Kathy with a "Look, if you blog, and blog about controversial shit, you'll get idiotic emails. Most of the time said death threats don't even exist…But so what? It's not as if those cowards will actually act on their threats.[13]" These statements are suggestive of the belief, that a woman receiving a flood of threatening messages and images, which causes her distress and fear for her life, isn't really a victim as long as these images and messages are physically manifested on her person. Ironically, many commentators tend to relegate cyber sexual harassment and abuse by comparing it to "real rape". They claim that unlike "real rape", words and images on a screen cannot really hurt anyone[14]; however the incongruity in this statement becomes detectable when the "real rape" victims too are handled and criticised in the manner similar to the victims of online sexual harassment and abuse.

Another theory that has been associated much closely with victim-blaming is the Just World Theory[15], according to which, people in order to maintain a sense of control over their own lives, like to believe that they could not be a victims in a sexual assault or rape incident as the world is overall a good and safe place[16]. By deeming the world to be just and fair, the people believe that everyone gets what they deserve and they deserve everything that they get[17]. In other words, the bystanders and the society tell themselves

7. Rose Mary Lynn Ubell,"Myths and Misogyny: The Legal Response to Sexual Assault", Master of Studies in Law Research Papers Repository,4 , 2018, at 13.
8. Danielle citron, Hate Crimes in Cyberspace (Harvard University Press 2014), p. 19
9. Jacqueline Vickery & Tracy Everbach eds.,Mediating Misogyny: Gender,Technology and Harassment (Springer International Publishing, 2018) p. 15.
10. Supra Note 8 at 73.
11. Brendan O'Neill, "The Campaign to 'Stamp Out Misogyny Online' Echoes Victorian Efforts to Protect Women from Coarse Language," Telegraph (U.K.) (blog), November 7, 2011, http:// blogs .telegraph .co .uk /news /brendanoneill2 /100115868 /the -campaign -to -stamp -out -misogyny -online -echoes –Victorian-efforts -to -protect -women -from -coarse -language /; Danielle Citron, Hate Crimes in Cyberspace (Harvard University Press 2014).
12. "I Never Told Kathy Sierra to Shut Her Gob (But I Wish I Would Have)," Violent Acres (blog), March 27, 2007, http:// www.violentacres.com /archives /147 /i -never -told -Kathy -sierra -to -shut -her -gob -but –I; Danielle Citron, Hate Crimes in Cyberspace (Harvard University Press 2014)
13. Supra Note 8 at. 74
14. Supra Note 8 at 76.
15. R.M. Hayes et al.,"Victim Blaming Others: Rape Myth Acceptance and the Just World Belief", Feminist Criminology, 8, 202-220
16. Tomas Stahl et al., Rape"Victim Blaming as System Justification: The Role of Gender and Activation of Complementary Stereotypes", Soc Just Res 23:239-258, 242(2010)
17. Megan Crippen, "Theories of victim blame", SeniorHonors Projects 66, at 4 (2015)

that they will not fall prey to the perpetrator as long as they don't do what the victim did to "deserve" the abuse. By conforming to this belief, the bystanders and the society mechanically distance themselves from the victim and create a false sense of in control and safety in their lives[18]. They accept the victims' characters and behaviours to be the cause behind their victimization instead of the perpetrator and/ or the circumstantial factors[19]. This further leads to the question, as to what set of characteristics and behaviours do the bystanders commonly associate as the cause of victims' (much deserved) sexual abuse? Here one can refer to the stereotypical approach of the society towards gender expectations. These gender expectations coupled with the inherent sexism in the society generates certain sets of normative behaviours which the women 'should' follow, in order to protect themselves from being victimized. For example, women are constantly advised on how to behave and dress to avoid harassment and rape. This promotes a more general perception, that those women who don't dress according to the social expectations and choose to "dress like a slut", might get raped or harassed as they are "asking for it[20]".

These gender expectations even facilitate in providing subtypes of women[21] such as good/bad, traditional/non-traditional, and chaste/promiscuous[22] and these subtypes may lead to blaming of those women victims who don't conform to the more traditional subtype[23]. For example, women who are promiscuous or dress sexy are believed to be more likely to be raped[24], or victims who were intoxicated received more blame[25]. Victims of rape are blamed more or seen as more responsible for, and deserving of, the rape when they are seductively dressed rather than plainly dressed, they resist a rape or fight back rather than remain passive, are intoxicated rather than sober, or carrying a condom[26]. Similar patterns of subtype profiling are seen to be exhaustively employed when it comes to abuse and harassment online. In a number of cases, women who expressed their views on subjects that are considered controversial or taboo for women to talk about, have been on the receiving end of tasteless, offensive and often times threatening attacks by the cyber community. What starts as a garish comment here and there by an individual, often develops into a potential mob attack. Such attacks, by the sheer volume of the offensive and harassing messages sent, cause great distress and harassment to the victim. Lena Chen, a Harvard University student, blogged about her hookups, alcohol use, and "feeling like a misfit at an elite school". As a reaction to her posts many anonymous commentators attacked her not with criticisms related to her writing, but rather with death threats, suggessions of sexualized violence, and racial slurs[27]. The harassment did not stop just here. On a gossip blog, someone posted her sexually explicit photos, taken by her boyfriend, without her permission. This continued even after she shut down the blog and her nude pictures were reposted all over the internet[28]. This woman faced this excruciating and embarrassing agony because some individuals, who labelled her as an "attention whore", believed that she should be made to learn a much deserved lesson for "making a blog about her personal sex life[29]" and not observing the behavioural norms that a good natured woman should follow.

The case of leading women's rights and anti rape activist Kavita Krishnan draws attention to attitude of the bystanders and the society when it comes to taking steps in order to protect the rights of women at the occurrence of any such harassment attack on her. In the wake of the Nirbhaya (Delhi gang rape) case 2012, as a part of the protest, Kavita Krishnan agreed to participate in a live web chat organized by the news portal, Rediff. During the chat, a user with the handle 'RAPIST' threatened Krishnan repeatedly with rape threats. Eventually the moderators asked Krishnan to log off the chat as the threats escalated. Krishnan complied reluctantly[30]. This incident makes on to ponder over two major points of interest. Firstly, the death threats that Krishnan received, according to the Just World Theory, can be viewed as a justified reaction to a woman who dares to transgress the gender expectation that has

18. Supra Note 3 at 7
19. Supra Note 17
20. Supra Note 3 at 4.
21. M.R Burt, "Cultural myths and support for rape", Journal of Personality and Social Psychology, 38, 217-230(1980).
22. Ibid.
23. Ibid.
24. Ibid.
25. R.A. Schuller & A.M. Wall, "The Effect of Defendant and Complainant Intoxication on Mock Jurors' Judgment of Sexual Assault", Psychology of Women Quarterly, 22, 555-573 , (1998)
26. Nicole M. Capezza& Ximena B. Arriaga, "Why do People Blame Victims of Abuse? The Role of Stereotypes of Women on Perception of Blame", Sex Roles(2008) 59:839-850(2008).
27. Supra Note 8 at 78 ; Cassie, "Harvard Asian Slut to Be Next Kaavya," AutoAdmit, January 24, 2007, http:// www .autoadmit .com /thread .php ?thread _id = 569172 & mc = 19 & forum _id = 2
28. Ibid ; Maureen O'Connor, "Lena Chen and the Case of the Naughty Nudie Pics," IvyGate (blog), December 22, 2007 , http:// www .ivy
29. Supra Note 8 at 78; Lena Chen, "The Five Types of Haters Female Bloggers Encounter (And What to Do about Them)," the ch!cktionary (blog), August 2010, http:// thechicktionary .com /post /409408816 /the -fi ve -types -of -haters -female -bloggers -encounter -and
30. Supra Note 9.

been approved by the society for her. Any woman, who tries to fight back for justice in a misogynist society and in turn endangers the established status quo, is, through her actions, provoking the much deserved abuse against herself. Secondly, the reaction of the moderators of the platform in asking Krishnan to log off rather than making efforts to silence the threats unfortunately prove, that the efforts of the society to provide a safe environment to the woman, in the physical or the virtual world, might just fall short and thus it is the woman's responsibility to protect herself from harassment[31].

Conclusion

The objective of this paper was to understand and discuss the similarities in the victim blaming of the "real rape" victims and the victim blaming of "virtual sexual harassment" victims. After careful perusal of the various incidents cited by various authors, we understand that when it comes to the true cause behind the process of victim blaming, a few factors can be held responsible for such. The need of the perpetrator to exert superiority over the victim and to escape culpability, the need to experience control over one's own life under the Just World Theory, distancing oneself from the victim in order to deny such similarities with the victim which can indicate future victimization of the individual; and projection of gender expectations on the women victims are some of the mostly cited factors which lead to the blaming of the victims of rape and sexual abuse. In a similar manner, cyber harassment and online sexual abuse too, are being denied the much deserved focus and attention due to the widespread victim blaming attitudes prevalent among the critics. Understanding the role of stereotypes in the process of victim blaming is vital to identifying ways to counteract this harmful tendency. It is the unfortunate truth of today that many women, who face cyber harassment and online sexual abuse, are ultimately forced to quit the internet or are made to shut up by large number of cyber citizens who conform to the victim blaming attitude.

31. Ibid ; Pal, D. (2013, August 25). Rape threats on Rediff: Kavita Krishnan speaks out. First Post. http://www.firstpost.com/living/rape-threats-on-rediff-kavitakrishnan-speaks-out-727395.html

Women Centric Laws – Legality and Challenges

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ABSTRACT

The jurisprudence behind the formation of laws, strictly in the context of gender in India seems unreasonable. This statement is made on account of the failure of such laws to draw balance in the society as needed. The laws are inherently dynamic in nature. The presumption of such nature which is based on the super traditional society, where women were compulsorily at the mercy of men, has become redundant in the present era.

Since the inception of the Constitution, the framers ensured gender equality and out rightly rejected any form of discrimination. But a set of pre-constitutional laws and certain contemporary laws have ignored the idea of gender balance. The women of today are not subjugated, and they enjoy equal rights as men. The author does not imply that the situation of women is best in India, but the real emphasis is put on drawing a balance in the policies. Laws such as Indian Penal Code, 1860, Domestic Violence Act, 2005, etc. have such flawed presumptions where men are almost convicted before even the initiation of trials. Various reports suggested about the mass number of ill motivated cases filed by women out of pure vengeance. Strict laws must be put in place to curb the same, but not at the cost of innocence.

We must look forward to equality in its real meaning in the context of laws, and thus a review should be made of all such laws. The protection of women, in presence of gender neutral laws and in the absence of such flawed presumptions is the utmost responsibility of law. The paper aims to look into the issue while highlighting such gender biased laws and would strive to suggest a way to achieve balance in the laws.

1. Introduction

The conundrum under the law continues significantly due to illeducation and the political ambition of different political parties. People all around the world talk about strengthening the status of women and improve their role in nation building. This is a popular as well as necessary step to be taken towards the path of women empowerment. But, some critic may raise a standard question that why such empowerment is necessary? For ensuring the answer, we absolutely need to look into the history of women in Indian society over period of time. In all societies around the world, discrimination based on gender has been evident. Discrimination based on gender is one of the basic fundamental features of the human society[1]. Ancient texts available suggest that condition of women in the primitive era was splendid. There existed equal opportunity of education, art and even the freedom to choose their life partner. The various instances of 'swayamvar' is one powerful indicator of such privileges. But later the condition deteriorated due to perpetual invasions, which raised the security concern. Unfortunately, such conditional change in the pattern of the society slowly took the form of custom, which is strangling the lives of women even in 21st century. Women empowerment could be achieved if the economic and social status of women is improved[2].

From time to time Indian legislators have passed certain laws which specifically call for the protection of women. The Immoral Traffic(Prevention) Act[3],The Protection of Women from Domestic Violence Act[4], Sexual harassment laws[5] etc. are a few prime womencentric legislations that has been put in place, to check the growing trend of violence against women. The author does not deny in anyway about the factual truth about atrocities against women in contemporary time. The data ipso facto represent a worrisome figure and more stringent steps are required. The author is simply trying to identify that class of victim who are abused in the name of such protective legislation.

The oxford dictionary describes “gender neutrality” as an adjective, that is applicable to both male and female genders. It describes the idea that policies, language and other social institutions should avoid distinguishing roles according to people's sex or gender and emphasizes on the equal treatment of men and women legally with no discrimination[6]. According to Flavia Agnes “*gender*

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1. Sudha Chaudhary, “Domestic Violence in India”, 147 JIR146-152(2013).
2. Flavia Agnes, Law and Gender Inequality: The Politics of Women’s Rights in India, 71(Oxford University Press, New Delhi, 2nd Ed., 1999).
3. The Immoral Traffic(Prevention) Act, 1956 (Act 104 of 1956).
4. The Protection of Women from Domestic Violence Act, 2005(Act 43 of 2005).
5. The Sexual Harrasment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013(Act 14 of 2013).
6. Oxford Dictionary, available at: https://en.oxforddictionaries.com/definition/gender-neutral (last visited on 5th Sep, 2018).

neutrality lies on the presumption that by neutralizing the law to be victim and perpetrator neutral the offence of rape will be desexualized and the stigma attached to the offence will vanish and if the reform take place, they will be injurious towomen and that basic and primary problems will not be highlighted"[7]. This is a kind of harsh and extreme feminist argument which fails to analyze the whole scenario. The stigma related to such heinous offences remains intact, irrespective of nature of the law. I.P.C. defines the offence of rape where the law already has presumed the gender of victim as well as perpetrator[8]. As per the survey conducted by the government along with some non-government organizations in 2007 revealed that 53.2% of children have experienced one or other forms of sexual abuse and very shockingly 52.9% of them were boys. Fortunately in the recent month, Minister of Women and Child Development,Maneka Gandhi has amended the legislation in POCSO[9] in order to make it gender neutral. She further added that India would no longer remain silent on male sexual abuse and adequate steps would be taken. This happens to be a welcome move on the part of government.

Biased Laws and Suggested Measures

Moving on towards the similar nature of legislations laid around under various heads of laws. In recent years there has been wide debate over about legal victimization perpetrated by domestic violence laws[10] and provisions related to dowry[11]. The particular provisions are non-bailable, non-compoundable and cognizable. It directly presumes the guilt on the part of husband and his whole family. The law strictly specifies "husband" in place of spouse, which makes it purely gender specific. The presumptions put forth within both the provisions seem flawed, as it is opposed to the very principle of criminal justice system. Hence this law has been responsible for gross abuse on the part of women. In the case of SapnaGautam v. State of NCT, Delhi[12], the Court imposed a penalty of Rs. 40,000 on a woman abusing the law and further added that " A man presumed to be innocent unless proven guilty"[13]. The Supreme Court of India, in the case of Rajesh Sharma v. Union of India[14], has gone far enough and termed these atrocity embarked by law not less than" legal terrorism".

Let us Move on towards the crime of adultery. The particular provision stated that if a man is involved in a sexual relationship with a married woman, he is guilty under this offence[15]. The law does not make women liable of such offence. There had been long standing debate on making this offence gender neutral, hence thematter reached the apex court in the form of public interest litigation by businessman, Joseph Shine in 2018[16] and finally declared unconstitutional. There had been extensive hearing on the subject, as it violates the sanctity of article 14[17] and women are said to be protected under the garb of 15(3)[18].During the argument the petitioner took into account leading cases such as *Yusuf Abdul Aziz v. State of Bombay*[19]. The reasoning propounded in the series of judgments such as *Sowmithri Vishnu case*[20] and *V. Revathi v. Union of India*[21], was said to be flawed on the grounds of article 14 and the court also seemed affirmative The five judge bench disagreed with the centre's stand on the matter and said that the aim of such law collapses where the element of consent is present. The consent changes the circumstance from being criminal to non-criminal and it does not make sense in the end. The bench also added that the law in question targets only married women and not the man who can have sexual relationship with unmarried women, widow and married women with consent of their husband, the latter part being highly detriment to the dignity of a woman. The Supreme Court, thus, struck down this colonial era legislation on 27th September'18. Our country is in dire need of such progressive judgment and thought process, which takes into account gender equality and the dignity of a woman in absolute sense.

Another major legislation, Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act[22], which also suggested for protection of only one gender, completely ignoring the other. In the present context, where

7. Flavia Agnes, Law, "Gender Neutraity in Rape Laws: Ideology and Female Sexuality", 37 Eco. & Pol. W (2002).
8. Indian Penal Code,1860 (Act 45 of 1860), s.375.
9. Protection of Children from Sexual Offences Act, 2012 (no. 32 of 2012).
10. Supra Note 8, s.498-A.
11. Ibid, s.304-B.
12. CRL.M.C. 389/2014.
13. Ibid.
14. 2017 SCC Online SC 821.
15. Supra Note 8, s. 497.
16. Joseph Shine v. Union of India, WP (Crl.) No. 194/2017.
17. The Constitution of India, ar-14.
18. Ibid, ar-15(3)
19. AIR 1954 SC 321
20. Sowmithri Vishnu v. Union Of India, 1985 SCC Cri 325
21. (1988) 2 SCC 72
22. Supra Note 5.

women are equally qualified as men are holding key positions and enjoy authority over a number employees both men and women, there are instances and fair chances of a male employee being harassed sexually by female superior or colleague. Gender neutral laws with respect to sexual harassment have been recognized and accepted in most of the countries such as United Kingdom, Denmark, Australia and United States of America. This harassment has a pattern of hierarchy and whoever stands at the top can easily abuse their position, whether male or female.

Criminal Law (Amendment) Act[23] included various such provisions that made the law stricter and more deterrent. The offence of voyeurism[24] and stalking[25] added through this amendment lays punishment only for male. These acts are heinous and the perpetrator must be made accountable. But what if a woman does the similar act which are laid down in the municipal criminal law? The law fails to address such lacuna and it presumed men to be of evil nature, putting a blind eye to the plight of a man who can become a victim of the said offence. The provision regarding acid attack[26] was inserted as gender neutral law in the same amendment in 2013, thus, recognizing the basic and much needed concept of gender neutrality. A petition has been field in the Supreme Court[27] to make the offence of rape gender neutral, challenging the constitutional validity of the provision. The petition noted the lack of acknowledgement of male and transgender victims of rape under the legal framework and the impending need of the same[28]. The International position of such laws is generally gender neutral and such presumption or prejudice against a particular gender conveys a foul message in the society.

Religious Personal Law- A Brief

Looking on the other side of the coin, in India, major communities like Hindus and Muslims used to govern themselves with their own respective personal laws before the period of colonization. The scenario changed gradually with the arrival of colony, as different territories were under separate legal arrangement. British laws were introduced except for the personal matter settlement, which still was carried out by religious personal laws. The judicial role in this regard was significant even if unintentional. Gradually, legislative changes were also introduced, but despite these changes the idea has persisted that the religious personal laws are immutable. The significant feature of such personal law is that women always enjoy lesser rights and privileges than men. Independent India, though committed to foster all forms of equality, continuously failed to reform such biased personal laws. Whenever there is an argument of subjugation of women through personal laws, the matter of religious interference and sanctity hinders the same. The productive debate is leftfar behind and whole new religious discussions emerge which might prove harmful to the political parties in power. There have been changes in Hindu law to bring about fairness, but it is the minority community which halts the positive reformation in the name of religious sanctity. The reform made to make women equal coparcener in Indian succession Act in 2005 was a revolutionary step, However, the legislation nevertheless still leaves women with lesser rights than that of men[29]. If we take a look into Muslim personal laws, it seems to be highly discriminating. Both Shia and Hanafi laws differ as far as equality of lawis concerned for men and women. Men are allowed to keep four wives, freedom to marry a non-Muslim and many more. These are prime examples just to show case the exact circumstances. In the leading case of *Narasu Appa Mali v. State of Bombay*[30], the question for consideration in front of the High court of Bombay was "whether the personal laws applicable to the Hindus and Muslims are laws in force within the meaning of artice 13(1) of constitution?[31]" The Court did not affirm the consideration and failed to address the concern. Every responsible institution of this country tries to save itself from the religious flak, as they fear harsh retaliation and consequences. But in the recent Judgment of *ShayaraBano v. Union Of India*[32], the picture looks a little modified. The court held the practice of Talaq- i- Biddat unconstitutional as it was detrimental to fundamental rights of Muslim women. There is a clear mention in the Constitution about the position of religious consciousness[33], as it is always subjected to part three of constitution. There is constitutional supremacy prevailing in the country and thus, every such text which is otherwise, must stand secondary.

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23. The Criminal Law Amendment Act, 2013 (NO. 13 of 2013).
24. Ibid, s.354C
25. Ibid, s.354D
26. Ibid, s.326A.
27. The petition filed by NGO- Criminal Justice Society of India.
28. Priyanka Mittal, Plea Seeking Gender-neutral Rape Law Filed in Supreme Court, LIVEMINT(Oct. 24,2018) https://www.livemint.com/Politics/mQAawFlpYjNVoeVEtgHnhL/Plea-seeking-genderneutral-rape-law-filed-in-Supreme-Court.html
29. Poonam Saxena, Succession Laws and Gender Justice: Redefining Family Law in India, 282 (Routeledge, New Delhi, 2008), 282-305.
30. AIR 1952 BOM 84
31. Ibid.
32. 2017 SCC Online SC 963.
33. The Constitution of India, ar-25.

Conclusion

Equality is a dynamic concept as ruled by the Apex court in the*Royappa* judgment[34]. The prime thing over here is perception. India has seen a gradual and positive development of the ideas enshrined in our constitution. After some initial reluctance, the court opted for liberal interpretation of rights and liberties. The story from *AK Gopalan*[35] to *Maneka Gandhi*[36] has been of great contribution towards such journey. Since our Constitution was adopted, it advocated for equality of law and equal protection of law as matter of fundamental rights to every citizen. Article 14 and 15 puts a check on the state which disables it from discriminating among citizens, either on the basis of caste, sex, race, religion and place of birth. Sex is one of the grounds, where extra constitutional protection is also provided through article 15(3), which calls for beneficial legislation and protective discrimination of women and children. The particular provision was included in the constitution because the framers were well aware about the condition of women in society and hence, needed to be protected. The framers moved a step ahead and put additional provisions under Directive Principle of State Policy as well as Fundamental Duties to foster contribution from both state and citizens of this country. Despite certain additional protection, the condition does not seem very healthy. Based on these constitutional schemes, several protective laws have been enacted under different heads. Here comes the negligible thread where legislature needsto be most cautious. Legislation is a rather intricate task and does need a comprehensive research. A healthy research points out all possible pros and cons related with it. Next comes the time of balancing of interest of stakeholders. In the contemporary era, the process of legislation has hit a new low. If we talk strictly about the criminal law regime, the laws made through Criminal Law (Amendment) Act[37], seems a little odd on jurisprudential ground. The laws completely failed to address the concern for other gender. The traditional concept of male, who is tough and cannot be abused, has been carried on by the legislature unnecessarily since a long time.

The purpose of author is not to elaborate on each and every legislation which is gender biased, but to propagate that each such legislation in picture is a reason to worry. The J S Verma Committee[38], which was responsible for the criminal law amendment in 2013, had suggested to make rape laws gender neutral, but due to uproar of feminist groups it could not get place in the final draft. They argued that making such law gender neutral would take away the stigma related to the offence, The reasoning sounds absurd and irrational as whether a person commits rape either on a female or male, society disgust them equally. Thankfully, recently a petition has been filed in the Apex matter on the matter and we hope that the Court recognize the stigma of the other gender and reach a reasonable conclusion.The concept of equality is for creation of balance, where every individual is of equal status.Article-15(3)[39] provides a ground discriminatory laws for women, but the construction of this provision has been done in foul manner. It does not mean that law should put a blind eye across the border. There is no debate over cutting the available privileges to women by the author, as equality creates equal footing. During the hearing of constitutional validity of § 498 A[40], the government has quoted 15(3) as the defense of such laws. The Court's argument regarding 498A went through an interesting but unfortunate phase. The Supreme Court had passed a landmark judgment in *Rajesh Sharma v. Union of India*[41], where the Apex Court put restriction on immediate arrest under the cases of 498 A. The court went further and directed District Courts to form a District Welfare Committee which would conduct preliminary enquiry about the said atrocity. Upon the submission of report by such committee further action could be directed. This decision drew huge flak from feminist groups and was widely criticized. Unfortunately, the Supreme Court overturned its decision as on 14th September 2018 and restored the old position while entertaining the review petition.

The purpose of author to cite these few examplesis to reflect the thought process behind such legislation. What seem to pull us back? The ideas behind thefoul presumptions, extreme discriminatory laws and religious personal law are similar in nature. Politics has a fine blend with the legislation process and there is no denying it. Majority of these legislations are enacted either to pacify the anger of citizens or to gain political support. All the responsible institutions either refuse or run away from countering such issues. The jurisprudence that the author propounds does not limit any rights of any section of society. Neutrality itself means not being on either of sides, which signifies what one gender enjoys, other gender too have access to it. The women empowerment jurisprudence never calls for discrimination against men. The principle of gender justice

34. E.P. Royappa vs. State of Tamil Nadu, 1974 AIR 555
35. A.K. Gopalan vs Union of India, AIR 1950 SC 27
36. Maneka Gandhi vs Union of India, AIR 1978 SC 597
37. Supra Note 23.
38. Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law, 66 (January 23, 2013).
39. Supra Note 18.
40. Supra Note 8.
41. Criminal Appeal No. 1265 of 2017.

and women empowerment has been highly misinterpreted by pseudo feminists and it has real adverse consequences. When one gender enjoys certain privileges and other does not, it creates a sense of frustration. Certain legislative presumptions have destroyed the lives and careers of people due to abuse of such laws. On one hand law provides extra constitutional protection to one gender and other gender are being victimized due to it. This feeling of frustration creates an unfair gender divide and hatred. These laws damage the very root of social integration, which seem completely unconstitutional, based on constitutionalism we enshrine.

The author reaffirms that there are wide atrocities against women in India and there is urgent need of social and moral upliftment. The problem with human nature is we tend to go extreme which intricate the issue. The foul presumption and conceptions have successfully corruptedthe legislative process and needs urgent treatment. The first step towards finding a solution to a problem is to identify and accept it. The legislators must enact fair laws purely based on constitutional principles. We must never forget that victims of these draconian laws also are the citizens of this country and state has the strict accountability to address these serious legal errors. There shall be such legislations which take into account the concerns of large masses without any consequential or procedural discrimination. This would surely draw the necessary balance between the genders and put an end towards unnecessary battle of sexes. Legislation is a serious work and must be performed through laid fair procedure. Hasty legislations may pacify temporarily but embarks long term damage to the system. The failure of executive to efficiently implement the law is the big factor towards creation of such gender biased legislation. No matter how strict laws are put in place, if implementation is inefficient whole idea stands frustrated. All such gender biased laws shall be compulsorily reviewed and institution must play a rather pervasive role towards a fair conception building.

E-Waste: A Menace for our Generations

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Saumya Sahai**

ABSTRACT

Electronic waste has been a very prominent waste stream these days happening from the use of electronic items in the past few years after a great development in the techniques, consumers, technology, economy and urbanization. The electric products do contain various contaminants and chemicals like cadmium; lead etc. which makes the life of humans impossible. Also even in the developing countries recycling and dumping of e-waste may involve a great risk to life of workmen's and the society. And also a great care and caution is required to avoid hazardous exposure in the process of recycling. So there arises a great need of proper regulation and management of the e-waste which has become big issue to deal with as because it is causing a great destruction to humans as well as the environment.

Among several ways to deal with this menace, one is the enactment of penal provisions and laws which will actually have a deterrent consequence on the violators. As a result in thiscountry there areseveral laws dealing with this menace of e-waste directly or indirectly but there seems to be no change and the problem and non-enforcement of the law still lies the same with no improvements at all and the main cause for the increasing environment degradation is because of this electronic waste and the impotency of the law to deter the perpetrators and violators.

Therefore the main objective and approach of this paper would be to assess the present situation of e- waste management and to find out the various issues relating to the e-waste problem and also suggest for some efficient strategies for efficient e-waste management in our country. And also an attempt will be made to throw some light on the environment legislations and other laws dealing with e-waste.

Keywords: E-waste, Environment and health, Hazardous components, punitive legislations.

1. Introduction

Since the globe is surrounded by the advancement of technologies andthe use of electronic products havealso increased with a rapid pace. All the age groups of the society are depended upon use of certain electronic products as it has made the working of life very easy and smooth.

But all this comes with certain pros and cons in the use of electronic system where the physical and mental work was reduced, whichhas also given birth to the problem of E-waste or Electronic waste. E-waste means the products which are unwanted and has become obsolete due to long use. These cannot be used further because of the end of the capacity to use the product. The amount of the E-waste increases due to advancement in the technology and the materials used in old technology has to be thrown in thrash such as the material used in VCRs was converted to E-waste because of the invention of DVD players and the material used in DVD players was later converted to thrash by its replacement by blue-rays players. The E-waste is derived from all electronic materials such as computer, monitors, television, VCRs, fax materials etc.

The E-wastes are filling the landfill of the world and the main issue is that the E-waste cannot be recycled fully and it is almost only 25% of the material which can be recycled and the rest has to be disposed.

Also due to a rapid increase in the technology, the Indian information technology industries have today been a noticeable global presence due to the software sectors. Also changes in the policies have led to enormous increase of prominent MNC's in the country to set up their manufacturing units, research and development centers. This all has led to growth in the economy and changing consumption patterns of the consumers.The rapid growth and development is leading to significant social and economical impacts. And the increased consumption of these electronic products has also led to hugecollection of junk electronics which are being imported from outside countries and thus,are creating a complicated scenario for solid waste management in India.

Therefore, there is a need for proper regulation and management of e-waste as because it can cause a severe risk to health and environment which has become a serious for this modern era.

Definition

Though it is very difficult to give a precise meaning to the term E-waste as because everything which we use in our

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daily life today starts from the electric product. Even the fresh air we are breathing today is just because of this electric product only i.e. Air purifiers. But then also an attempt has been made by The E-Waste (Management) Rules, 2016 which defines e-waste inclusively as "any electrical and electronic equipment, whole or in part discarded as waste by the consumer or bulk consumer as well as rejects from manufacturing, refurbishment and repair processes"[1].

Thus on the other hand, (BAN) Basel Action Network also tried to give an illustrative definition to the word E-waste as "E-waste includes a broad and developing dimensions of electronic appliances ranging from big household appliances, such as air-conditioners, refrigerators, mobile phones, music systems and usable electronic items to computers and laptops discarded by their users".

At the last it can be summarized that E- waste is any electric product, appliance or an equipment which has been actually thrown or scrapped as of no use and which used to run from any power or electricity.

Research Design

The methodology used in the paper is an exploratory method based on qualitative analysis of the environmental and social conditions in the electronic waste sector. The exploratory method was encouraged as because of inaccessibility of enough information on electronic waste. This is a doctrinal research and materials collected are secondary data. The information and data were actually collected through analysis of various published articles and papers mainly from NGO's and government, news articles, portals, and various reports. The paper thus mainly focus on the issue related to Electronic waste management and thus the author will also make an attempt to throw some light on the environment legislations and other laws dealing with e-waste.

Categorization of E-Waste

Although it is difficult to categorize E-waste but a survey has been let down. As per EU Directive (EU 2002), WEEE consists of 10 categories of e-waste. Table shows the different categories of WEEE[2]

Major Issues or Challenges Related to E-Waste in India

i. Huge amount of Electronic waste generation: - Our country ranks 5th as in generation of huge quantity of e-waste materials.[3]

ii. Structural deficiency: - There are no proper recycling arrangements and facilities and also there lies huge gap between the dumped electronic wastages and collection mechanisms.

iii. Excessive import of electronic wastes: - Also the developed countries send their electronic wastes into the developing countries like India, China etc. for the process of recycling[4].

iv. Inefficient enactments: - There is no stringent laws and provisions dealing directly to issue of electronic wastes.

v. Health effects: - The electronic wastes do contain many hazardous chemicals and gases that may even cause death of the general people and also the people and workers involved in the recycling process do suffer from many ailments and diseases.

S. No.	CATEGORY	LABEL	% CONTRIBUTION
1	Large household appliances	Large HH	42.1
2	Small household	Small HH	4.7
3	Consumer equipment	ICT	33.9
4	Lighting equipment	CE	13.7
5	Electrical and electronic	Lighting	1.4
6	Toys and leisure and sports equipment	E&E Tools	1.4
7	Medical devices	Toys	0.2
8	Monitoring and control instruments	Medical equipment	1.9
9	Automatic dispensers	M&C	0.1
10	Automatic dispensers	Dispensers	0.9

1. Electronic Waste (Management) Rules, 2016, Section. 3(1) (r).
2. Waste electrical and electronic equipment. Basu, M, "New e-waste management plan lucrative for states", The Pioneer, New Delhi, 18 May, 2010
3. Thomas Reuters, 2015)
4. (Lundgren, 2012)

vi. Child labour involvement: - Children's of aged between 10-14 years are engaged in the activities of e-waste and that to without any safety and protection[5].

vii. Lack of awareness and sensitization among the general public: - There is no awareness among the public about disposal and reuse of electronic waste.

viii. Huge cost to employ recycling plants and machineries: - The advanced technology recycling machineries do cost very high and is not economically viable[6].

ix. Opportunity of fraud: - When the computers which are dead put in dumped gadgets but they have some personal details and bank details which could have been detected and used for fraud purposes etc.

x. Lack of funding by the government in order to develop the infrastructure: - There lies no serious efforts by the government as to look into the environmental problems mainly concerning to the issue of e-wastes.

xi. Unwillingness on the part of authorities: - There lies no coordination between acting for electronic waste management and disposal personnel's and this also includes the non-involvement of the municipalities.

Environment and Health Effect

Natural impacts of risky waste emerge because of essential, auxiliary and tertiary outflows of dangerous waste. Frequently electronic products can be arranged into three principle classifications, white merchandise that comprise of family unit apparatuses, dark colored merchandise including TVs, and cameras and dim merchandise incorporate PCs, printers and scanners. Dark products are more dangerous than white and darker merchandise.[7,8],

E-wastes are made of huge number of segments, some containing poisonous substances that adversely affect human wellbeing and the earth if not dealt with appropriately. Frequently, these risks emerge because of the disgraceful reusing and transfer forms utilized.

A portion of the major related wellbeing impacts incorporate influencing regenerative frameworks of people both male and female, harming lymphocytes and influencing development impediment. Poisonous chemicals introduce in e-waste can harm focal sensory system and key organs including liver and kidney. Constant treatment of such materials without utilization of defensive apparatus can cause skin growth, pallor, and cancer-causing tumors and may cause hormonal issues. Different issues incorporate hypertension and mental issues[9].

This effect is observed to be more terrible in creating nations like India where individuals occupied with reusing e-squander are generally in the sloppy area, living in nearness to dumps or landfills of untreated e-squander and frequently working with no security or protections. Numerous specialists occupied with these reusing tasks are the urban poor and uninformed of the risks related with them. For instance, such reusing exercises can prompt defilement of nearby drinking water sources causing serious wellbeing impacts[10].

Hazardous Components and their Impact on Human Health and Environment[11]

Hazardous substance	Impact
Barium	Develops hazardous hydrogen gases (if wet), may disturb heart muscles.
Arsenic	Poisonous, may cause lung cancer, can affect the skin and sometimes fatal.
Cadmium	Poisonous, softens bones, affect kidneys, severe pain in spine and joints.
PCB (polychlorinated biphenyls)	Can cause severe damage to environment, may cause cancer in animal, and affect nervous system, immune system, endocrine system and reproductive system.
Mercury	Poisonous and injurious, may cause liver or brain damage, affect immune system, central nervous system and kidneys, also impairment of foetus growth.
Dioxin	Toxic for animals, decrease growth rate and reproduction also can cause malfunction to foetus.
Chromium	poisonous, can cause lung cancer, liver and kidney damage,
(CFC) Chlorofluorocarbons	A halogenated substance, Toxic emissions, affects ozone layer and can cause genetic damage in organisms, skin cancer.
Lead	May affect nervous connections, can cause brain and blood disorders, May affect reproductive systems, kidneys.
Nickel	Can cause reactions and allergies.

5. (ASSOCHAM, 2014)
6. (ELCINA, 2009).
7. Sheng.P.P, Etsell. T.H, "Recovery of gold from computer circuit board scrap using aqua regia", Waste Management and Research 2007, 25:380–383, 2007
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10. LARRDIS (Reasearch Unit): "E-waste in India", Rajya Sabha Secrestariat 2011.
11. (Source: Report on Assessment of Electronic Wastes in Mumbai-Pune Area- MPCB, March 2007)

E-Waste Legislation In India

The ecologically stable administration of e-waste management is a huge test for India. The test relates to imported e-waste, as well as to the expanding measures of locally delivered e-waste. Till date, no enactment managing only with e-waste exists. The accompanying area inspects the current administrative structure for e-waste in India, looking at existing enactment. Although no e-squander laws as of now exist, two controls – the Hazardous Waste (Management and Handling) (HWM) Rules 1989 and the Batteries (Management and Handling) Rules 2001 – are relevant to some degree[12].

The HWM Rules require accepting, treating, transporting or putting away risky waste to first get authorization from the pertinent State Pollution Control Board (SPCB) by both an organization and person. Besides, the HWM Rules additionally stipulates forbidding of imported dangerous waste for transfer or dumping. The government can deny this by issuing an import approval record for unsafe waste that will be handled or reused. Alteration to the HWM Rules in 2000 extended the extent of the Rules to incorporate arrangements on e-squander out of the blue. In any case, these arrangements just connected to import and fare exercises.

The new Hazardous Wastes Management, Handling and Tran's limit Movement Rules of 2008 supplanted the old HWM decides that contain extra arrangements on e-squander taking care of inside India. These arrangements require each individual intending to reuse or reprocess e-waste to get earlier approval from the significant SPCB. In any case, the SPCB enlistment process has been condemned for allowing a similar approval to gatherers, dismantlers and recyclers without evaluating their capacity to treat the e-squander in a naturally solid way[12]. The duty has been separated between the states and the Central government. While Central government approves people bringing in e-squander for handling or reuse, and the SPCBs approve gatherers, dismantlers and recyclers.

The Batteries (Management and Handling) Rules2001 solely cover lead corrosive batteries and subsequently have an exceptionally constrained effect on e-waste. Under the direction, makers, merchants and constructing agents are in charge of sorting out an aggregate reclaim framework for batteries[14]. The assignment of duty under existing enactment additionally causes issues. Duty regarding observing a few exercises tumbles to the states, while the government is in charge of others. This blend of variables has brought about the strength of the casual reusing division as naturally stable recyclers experience issues sourcing enough e-waste to work at limit[15]. Numerous partners have in this way contended, "The nonappearance of enactment is one of the greatest hindrances in executing an e-squander administration framework"[16].

The draft of Hazardous Waste (Management and Handling) Rules 2010 is the latest endeavor to control e-waste in India. The draft rules are yet to be sanctioned and include no huge changes. The draft's degree incorporates every one of the partners associated with e-waste taking care of, with an emphasis on makers, merchants, refurbishes, gathering focuses, purchasers, dismantlers and recyclers. The control is constructing completely with respect to the Extended Producer Responsibility and Integrated Producer Responsibility standards. On the off chance that established, it would be the primary bit of Indian control to incorporate these standards extensively. The ultimate result of this draft rules are as yet anticipated.

Drawbacks of the Act

The direction tries to formalize the casual area by sorting out, enrolling and observing their exercises instead of meaning to close them down. Be that as it may, the significant disadvantage of the proposed law is it doesn't involve measures for restoring those personals who are engaged with the chaotic segment[17]. The draft rules expect to move reusing and metal-extraction exercises to the formal division. In a perfect world, the casual area would turn out to be a piece of the EPR arrangement[18]. In any case, past requiring enrollment, the draft does not determine how it will guarantee that casual recyclers diminish their tasks to destroying and gathering exercises. Moreover, the

12. Alexeew. J, Chakrabarti. R, Melnitzky. S, Lung, A, "E-waste handling practices in Europe and India: Lessons learned from both sides". Berlin: Adelphi Research, 2009.
13. Skinner.A, Dinter. Y, Lloyd. A, Strothmann. P, "The Challenges of E-Waste Management in India: Can India draw lessons from the EU and the USA?" ASIEN, 117:S7-26, 2010
14. Skinner.A, Dinter. Y, Lloyd. A, Strothmann. P, "The Challenges of E-Waste Management in India: Can India draw lessons from the EU and the USA?" ASIEN, 117:S7-26, 2010
15. Skinner.A, Dinter. Y, Lloyd. A, Strothmann. P, "The Challenges of E-Waste Management in India: Can India draw lessons from the EU and the USA?" ASIEN, 117:S7-26, 2010
16. TZ-MAIT: "A study on E-waste assessment in the country", The German Technical Cooperation Agency (GTZ) and Manufacturer's Association for Information Technology Industry (MAIT) press release on date December 13, 2007. Available online at [http://www.mait.com/admin/press_images/press77-]
17. LARRDIS (Reasearch Unit): "E-waste in India", Rajya Sabha Secretariat 2011.
18. Chaturvedi.A, Arora. R, Ahmed. S, "Mainstreaming the Informal Sector in the E-waste Management", 2007 Available online at [http://www.weeerecycle.in/publications/research_papers/Informal_Sector_in_E-Waste_Ahmedabad_Conference.pdf]

fundamental motivating forces that outcome in the casual segment having the capacity to outbid the formal division stay unaddressed. While formalization might be a proper objective, the draft rules are badly prepared to accomplish it[19].

A further obstruction to the new draft tenets' execution is an absence of consciousness of the dangers of uncalled for e-squander transfer. Most makers at present ship their items with no data about how to deal with them at their finish of-life. Therefore, customers are unconscious of appropriate transfer techniques. The Indian Central Government has not made any endeavors to instruct the overall population about the issue up to this point; the main training efforts were little ones keep running by NGOs. Casual gatherers, merchants and merchants of e-squander are frequently either ignorant of the issues or don't see the need of following up on them. Without seeing motivation to embrace naturally stable reusing forms, casual recyclers will be hesitant to incorporate into the formal division. Another disadvantage of the draft enactment is it doesn't depict the marketable strategy for gathering of e-squander from customers. The enactments authorized by the Government cover age, stockpiling, transportation and transfer of perilous waste however doesn't propose a streamlined accumulation component. Further, however the new principles considers the thought of import of e-squander it doesn't perceive the size of trans-limit development of e-squander under various classes, for instance under the guise of metal pieces and used electrical machines are foreign made in the nation which progress toward becoming unaccounted.

Punitive Legislations Regarding E-waste

Today the quality of the environment is deteriorating at a very fast rate because of numerous reasons such as no proper planning, no treatment plants and infrastructure etc. as already discussed in this paper above. But there lies one more important cause for the degradation of our environment due to electronic waste and i.e. the impotency in our legislations to forecast the violators. Though in our country India we have many laws to prevent our environment dealing with electronic waste directly or indirectly, but then to the enforcement mechanism being so slow to impose it, the situation is getting more adverse day by day because of another set of reasons i.e. insufficient database, slow justice system, reluctant regulatory authorities, incapable enforcement mechanisms as to evidence and deter the violators and violations.

Some of the rules/legislations directly or indirectly dealing with Electronic waste in the environmental law are as follows:-

i. Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

ii. Electronic waste (management) Amendment rules, 2018.

iii. The Water (Prevention and Control of Pollution) Act, 1974.

iv. The Environment (Protection) Act, 1986.

v. The Air (Prevention and Control of Pollution) Act, 1981.

From the above enactments only few deal with the punitive measures relating to the electronic waste. The main law dealing this issue is the Environment (Protection) Act, 1986 which has three punitive provisions directly dealing with electronic waste are:-

- Section 15 dealing with Individual's liability, being the most important provision, which imposes an imprisonment for a term which may extent to five years or with fine which may extend to one lakh rupees, or with both. In case of failure, additional fine can be imposed up to five thousand rupees for every day during the failure or contravention continues. And if the failure continues for more than one year then the offender shall be punishable with imprisonment for a term which may extend to seven years.
- Section 16 dealing with Companies liability and
- Section 17 dealing with liabilities of Government departments.

Other enactments indirectly dealing with the issue of Electronic waste are Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. The water Act 1974 has actually seven important punitive provisions which have implied application as imprudent destroying and recycling e-waste resulting in pollution of the water as well as air. The seven important punitive provisions are as follows[20]:-

- Section 24 and Section 43- Prohibition on use of stream or well for disposal of polluting matter and penalty for contravention thereof and the punishment shall be Imprisonment which shall not be less than one year and six months which any extend up to six years and with fine.
- Section 41 (1)- Failure to comply with the direction under S.20 (2) or 20 (3)and the punishment shall be imprisonment up to 3 months or fine up to Rs. 10,000 or both if the failure continues, an additional fine of Rs. 5000 per day.
- Section 41 (2)- Failure to comply with any order under

19. LARRDIS (Reasearch Unit): "E-waste in India", Rajya Sabha Secrestariat 2011.
20. https://hspcb.gov.in/Water%20Act,%201974%20Relevant%20provisions.pdf

section 32 (1) (c) or direction by a court under section 33 (2) or a direction under section 33 A and on Failure shall be punishable with imprisonment for one year and six months which may be extended to six years with fine. An additional fine uptoRs. 5000/- per day in cases where the failure continues.

- Section 41 (3) - Failure under section 41 (2) continues beyond a period of one year after the date of conviction and in this the Offender, on conviction shall be punishable with imprisonment for a term which shall not be less than two years which may extend upto seven years and fine.
- Section 42- Penalty for certain acts like destroying, obstructing, damaging, failing to furnish, failing to intimate etc. shall be punishable with Imprisonment for a term which may extend upto three months or with fine to Rs. 10,000/- or with both.
- Section 44- Contravention of Section 25 or 26 and the punishment shall be Imprisonment which shall not be less than two years which may extend upto six years and with fine. In addition liable to pay a higher water cess as per Schedule II of the Water (Prevention & Control of Pollution) Cess Act, 1977.
- Section 45- Enhanced penalty after previous conviction under sections 25 or 26. It states that if any person is again found guilty of an offence under the same provision, on the second and every subsequent conviction shall be punishable with imprisonment which shall not be less than one and a half years which may extend upto six years and with fine.
- Section 45 A- Penalty for contravention of any provision of the Act which no penalty has been provided elsewhere in the Act than here Shall be punishable with imprisonment upto three months or with fine which may extend uptoRs. 10,000/- or with both. In continuing contravention of failure. An additional fine which may extend to Rs. 5000/- per day.
- Section 47- Offences by Companies.
- Section 48- Offences by Government Departments

The Air (Prevention and Control of Pollution) Act, 1981 also do comprise of some very important punitive provisions which are as follows[21]:-

- Section 22- Discharging or causing or permitting to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under section 17 (1) (g), n any air pollution control area.
- Section 37 (1) - Failures to comply with directions issued by State Board under section 31A.
- Section 37 (2)- Continuance of failure under section 37 (1) beyond a period of 1 year after the date of conviction and for this shall be punishable for Imprisonment for a minimum of two years, which may extend to seven years and with fine.
- Section 38- (a) Destroying, pulling down, removing, injuring or defacing any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board.
- Section 38- (b) Obstructing any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act.
- Section 38- (c) Damaging any work or property belonging to the Board.
- Section 38 - (d) Failure to furnish any information required by the Board or any officer or other employee under the Act.
- Section 38- (e) Failure to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down, or the apprehension of such occurrence to the Board or other prescribed authorities or agencies.
- Section 38- (f) Making a false statement while giving any information required under the Act.
- Section 38- (g) Making a false statements for the purpose of obtaining consent under section 21 of the Act. In all the above clauses i.e. (a), (b), (c), (d),(e), (f), (g) the punishment shall be for the imprisonment for a term upto three months or with fine upto ten thousand rupees or with both.
- Section 39- Contravention of any of the provisions of the Act or any order or direction issued there under for which no penalty has been elsewhere provided in the Act and for this punishment shall be Imprisonment for a term upto three months or with fine upto ten thousand rupees or with both. In case of continuing contravention, an additional fine which may extend to five thousand rupees for every day during which such contravention continues.
- Section 40- Offences by Companies
- Section 41- Offences by Government Departments

21. https://hspcb.gov.in/Air%20Act%201981%20Relevant%20Provisions.pdf

Punitive Provisions Under Indian Penal Code (1860) Dealing Indirectly with E-waste

While the Indian Penal Code was being drafted in the year 1860 the Britishers do incorporated some of the provisions related to environment and their deterioration. But there was no specific legislation regarding environment as because there was no awareness among people, no hazardous effect to the environment, no industries, less population and also there were no vehicles. So because of these reasons there\ was no such pressure or pollution in the environment, also people during those days used to worship the environment religiously.

Indian Penal Code 1860 do contains various provisions relating to the environmental pollution under Chapter 14[22] which can also be indirectly applied to electronic waste. For instance, Sections 269, 268, 270, 278, 277, 284,290.

- Section 268- Public Nuisance[23]. This section do covers all types of pollutions i.e. whether it is land, water, air or noise pollution. And it also extends to apply on the pollution caused by dumping and burning of e-wastes.
- Sections 269 & 270 *deal with negligent and malicious acts likely to spread infections that are dangerous to life and hence punishable for such act with imprisonment upto six months to six years or with fine or both respectively.*

It is very much evident that Sections 269 and 270 can be the solution to many issues troubling the society. If we can determine that there was a negligent act by a person, establishment or government which is likely to proliferate infection harmful to life and no care was taken, and then we can use our rights using the provision of Section 269.

- Section 277 *deals with as to any person who voluntarily fouls the water of any public spring or reservoir, so as to making it unfit for any ordinary use shall be punishable with imprisonment for three months or with fine of five hundred rupees or with both.*
- Section 278 *deals with any person who voluntarily tries to or actually vitiates the atmosphere by making it hazardous to dwelling people's health, or doing any business in neighborhood or at public way shall be punished with fine upto Rs.500.*
- Section 284 *deals with any person who with a hazardous substance does any act so rashly and negligently which can even endanger human life likely to cause injury or hurt to any other person be punished with imprisonment for a term of 6 months or with fine upto Rs.1000 or with both.*
- Section 285 *deals with any person who does any act so rashly and negligently with the fire or similar like substance which could even endanger human life be likely to cause injury to any other person shall be punished with imprisonment for a term of 6 months, or with fine upto Rs.10000 or with both.*
- Section 286 *deals with any person who does any act so rashly and negligently with any explosive substance which could even endanger human life be likely to cause injury to any other person shall be punished with imprisonment for a term of 6 months, or with fine upto Rs.10000 or with both.*
- *Under Sections 426,430,432 of Indian Penal Code general pollution caused by mischief can be controlled and the same is punishable.*

Conclusion

The administration of the disposal of e waste has been a big problem for the current state. The reason behind the growth of these problems is that man is now a slave of the technology and undoubtedly in the coming years this slavery will leave man in most pitiful state. E waste has a very deterrent effect on the health and environment of the man.

The man and the society are presently in an alarming state as e waste has tremendously done the bads to the society. Secondly the level of awareness and sensitization towards the issue also plays a major role for its redressal. Presently it can be understood as a need of the hour that the human race with brotherhood and harmony takes steps for the prevention of the harm through the e waste and its radiation. Thirdly e waste management is itself a verytechnical task. The people involved with the management of e waste have the fear of having deterrent effect on their health as it produces toxic gases and also leads to incidents which are hazardous for the human life. The e waste management also requires workforce which have scientific knowledge and well versed with technologies. However, because of the harm that the e waste causes on the normal life and health of the people involved in its management, it becomes very difficult to gather an efficient workforce.

Fourthly for any good done to the society there is a requirement of indulgence of the government as government is has the key to easily channelize the hurdles

22. Chapter XIV - Of offences affecting the Public Health, Safety, Convenience, Decency and Morals.
23. "A person is guilty of a public nuisance who does any act or is guilty of illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right."

that might come in the way. The central Pollution control board and the State pollution control board must be vested with such powers so that it can take such decisions for the benefit of the environment and shall also possess machineries which would help in the enforcement of the measure taken by them. These Pollution control boards should also be bestowed with scientific advancement technologies, research methodologies and also expertise man power to deal with these issues.

Suggestions and Recommendations

- There should be tax incentives given to the companies which are involved scientifically in recycling .of electronic waste.
- Generate awareness in the society about the practices of electronic wastes for collection and avoid dumping in landfills and to properly deal in standard method of electronic waste management.
- Every agencies whether Government, NGO's, producers and service providers must be required mandatorily to spread awareness about hazardous effects of electronic wastes.
- The telecom companies and manufactures must be mandated to set up an organization for proper disposal of electronic waste.
- Education and training must be provided to personnel's and workers who are engaged in recycling process.
- Strict laws and guidelines for the imports of hazardous substances.
- Proper coordination between Municipal authorities and State Pollution Board as for proper management of electronic waste and environment in a friendly way.
- Proper maintenance of data and assessment regarding electronic waste has to be conducted on a regular basis as for processing and recycling e-waste.
- Encouragement and certification for green design/products.
- Establishment of proper collection channels for electronic waste fromthe generator to the recycler.
- Huge funding by the central and state government for enforcement and monitoring of the regulations.
- Efficiency in regulatory mechanism enlarged by manpower andlatest technology.

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Victimology: La Douleur Des Victimes (The Sorness of the Victims)

Anand Singh*

ABSTRACT

The concept of victimology is not new,till today a victim does not have many say in administration of criminal justice system. Today alsoVictims is considered as Ignorant Piece in spite of all the gender is the one who suffer a lot. Many studies were done, but no comprehensive or concise text provide in the field of criminology.

1. Introduction

Victimology is a new branch of study, wherewe studied the relationship between the victim and the perpetrator. The French lawyer, Benjamin Mendelsohn coined the term "VICTIMOLOGYfrom 'VICTIMA'a Latin expression& 'LOGOS'a Greek saying. Victimology is basically the suffering of the victims suffered due to the act of an individual or group.

Defiinition

"Victim" has its underlying foundations in numerous antiquated dialects that secured a huge span from North Western Europe toward the southern tip of Asia and furthermore characterized in numerous International Covenants. In General Victims is the Person who endured misfortune or damage that misfortune or damage might be Physical, prudent mental or of the comparable Nature.

Any individual can become unfortunate casualty whether he/she has an immediate effect of wrongdoing on them or not.

A unfortunate casualty is an individual who directly affects wrongdoing in criminal cases, and in the open intrigue case overall population will happen to exploited people. Moreover, any individual endured hurt because of the demonstration of someone else, or we can say that by the demonstration of transgressor, at that point individual endured hurt is an unfortunate casualty.

A close relative of an individual who passed on during a wrongdoing is additionally an injured individual.

Families of any individual who kicked the bucket or endures some damage during that specific wrongdoing.

'Exploited people' signifies people who, independently or all in all, have endured hurt, including physical or mental damage, passionate torment, financial lessor generous disability of their central rights, through acts or omissions that are infringing upon criminal laws usable inside Member States, including those laws forbidding criminal maltreatment of intensity."[1]

"A individual might be viewed as an injured individual, under this Declaration, regardless of whether the culprit is recognized, secured, arraigned or convicted and paying little mind to the familial connection between the culprit and the victim. The expression "injured individual" additionally incorporates, where suitable, the immediate family or wards of the immediate unfortunate casualty and people who have endured harming mediating to help exploited people in trouble or to forestall exploitation."[2]

Laws Relating to the Rights of Victims in India.

In 2013 Criminal Procedure Code was amended and some provisions introduced relating to the rights of victims. Due to this we can say that Indian judiciary is also thinking about the rights related to the victims.

In Criminal Procedure Code, 1973 Section 2(w)(a) included that a guardian or legal heir of the victim as a victim and confers them the right equivalent to victim &Section 24(8) of the Code of criminal procedure. By this insertion the victim is able to engage his advocate of his choice to assist the public prosecutor.

Section 26(A) of the criminal procedure code, 1973 provides that offense under section 376 and 376 (A) to 376 (D) of the Indian penal code shall be tried as far as practicable by a court presided over by a woman.

In the second proviso of Section 157 of the Criminal Procedure Code, 1973 it is inserted that the statement of the rape victim will be recorded at the residence of the victim or in a place of her choice or as far as practicable by the woman police officer in the presence of her parent or guardian or near relative or a social worker of the nearby locality.

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1. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. Article 1
2. ibid. Article 2

Section 173(1-A) of the Criminal Procedure Code. This amendment is made by stipulating a specific time of three months for the investigating agency to complete the investigation if the allegation relates to the offence of rape of a child.

Section 357(a)[3] of the Code of criminal procedure. This amendment was incorporated in order to provide for the state government to prepare in coordination with the central government a scheme called "Victim compensation scheme" for the purpose of compensation to the victim or his dependents who suffered loss or injury as a result of the crime.

Constitution of India, 1950.

As per article 21, it discusses in a roundabout way to the rights identified with exploited people like right to free Legal guide, right to pick of a lawyer, right to get remuneration. These rights are consequence of the translation of legal executive.

Role of Judiciary: To Provide the Justice to Victims.

In India, judiciary is also now thinking about the rights related to the victims that's why in some cases judiciary provide some compensation to the victims or to their family.

Suresh &anr v. State of Haryana on 28 November, 2014[4] right now Court award pay to the mother of expired of 10 lakh Rs which is paid by the Haryana government lawful assistance authority inside one month from the request for this duplicate.

Abdul Rashid v. U.N. Declaration of Basic on 11 December, 2013[5] right now Court award pay to the mother of expired of 10 lakh Rs which is paid by the Haryana government lawful assistance authority inside one month from the request for this duplicate.

Ankush Shivaji Gaikwad V. State of Maharashtra[6], in this case court held that, the Award or refusal of compensation in a particular case may be within the Court's discretion there exists a mandatory duty on the Court to apply its mind to the question in every criminal Case. Application of mind to the question is best disclosed by recording reasons forwarding /refusing compensation.

These are the only hardly any models wherein court award some remuneration to the exploited people to satisfy some need of the person in question and his family at some degree. In any case, some time the pay award by the court was not adequate for the person in question and his family. In India there is no legitimate association and technique to choose the pay it thoroughly relies upon the conditions of the cases and the assessment of legal executive. It is absolutely optional intensity of court to how a lot of remuneration ought to be given to the people in question.

The purpose of the compensation for the victim was best defined in the case of SaraswateParabhai v. Grid Corp. of Orissa[7], the Hon'ble Orissa High Court in this case held that, "The facts demonstrate that ideal pay is not really conceivable and cash can't reestablish a body outline that has been battered and broken, as state by Lord Morris in West v. Shephard . Equity necessitates that it ought to be equivalent in esteem, despite the fact that not the same in kind. Object of giving remuneration is to put petitioner beyond what many would consider possible similarly situated monetarily, as he was before mishap. Comprehensively talking on account of death premise of remuneration is loss of financial advantages to the wards of the perished which incorporates monetary misfortune, costs, and so on and misfortune to domain. Article is to moderate hardship that has been caused to the lawful Compensation granted ought not be lacking and should nor be preposterous, over the top, or insufficient. There can be no careful uniform principle for estimating estimation of human life and proportion of harms can't be landed at by exact scientific figuring however sum recoverable relies upon wide certainties and conditions of each case. It should not be reformatory against whom guarantee is declared nor it ought to be a wellspring of benefit of the individual in whose support it is granted."

Conclusion

Since from 1948 we have general announcement and from 1950 we have Constitution of India and after that Code of Criminal Procedure, 1973 (with ongoing correction 2013) however this isn't adequate enough for the upliftment of unfortunate casualties until and except if lawmaking body made separate laws for them which secures the rights and shield the exploited people from the misuse. Law is made for the advantage not for the abuse this view was remember to the governing body while encircling laws to the people in question.

Presently after made laws the administration primary targets are excessively centered around the usage part of that law which is the official obligations since whatever the

3. Criminal Procedure Code ,inserted in 2009.
4. [Criminal Appeal No. 420 of 2012]
5. O.J.C. No. 13765 OF 1996.https://indiankanoon.org/doc/105359290/
6. Criminal Appeal no. 689 of 2013 decided on 3rd May, 2013.Retrieved from: www.supremecourtofindia.com.
7. AIR 2000 Ori 13

governing body surrounded as a law it was bad until and except if the official appropriately executes in the Indian legitimate framework. Since as we as a whole realize that earlier before the Indian constitution there is a widespread revelation of human rights which gives some privilege to the people in question however the issue is that this specific statement doesn't tie on the individuals country then how the unified country anticipates from the nations to execute this assertion in their specific residential laws.

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Title of the Paper: Human Trafficking; a Socio-legal Facet of Modern World

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ABSTRACT

Human trafficking is a form of neo-slavery having global ramifications. It involves the movement of people either by force, allurement or deception and then subjecting them to inhuman working conditions resulting in gross exploitation and blatant violation of human rights. It is the third largest criminal industry in the world, after arms and drug-dealing generating billions of dollars in profits every year while victimizing millions of people around the globe. The gullible sufferers, particularly the most vulnerable sections of society such as women and children, marginal farmers, landless laborers including those belonging to scheduled caste and scheduled tribe are trapped into this vicious circle due to their pathetic socio-economic conditions including illiteracy, abject poverty, poor health support system, lack of skill and employment opportunities at the doorsteps with diseases or famines leading into the death trap etc.

Several United Nations Conventions and Instruments with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as United Nations Convention against Transnational Organized Crime at the fore, require the implementation of laws which can properly respond to trafficking, in as nuanced and effective way as the crime is complex and injurious. Even though tremendous efforts have already been made at both national and international levels for combating this world-wide epidemic, still many challenges requires to be addressed in order to close the existing gaps and loopholes. In this paper, the author intends to examine the global extent of the problem including 'Kabutarbazi' as well as factors giving fillip to it. While critically examining the existing legal frameworks for prevention of human trafficking further desirable socio-legal steps to ameliorate this problem has also been suggested.

Key-Words: Human Trafficking, Neo-slavery, vulnerable section, Conventions, Socio-Legal.

1. Introduction

Human trafficking is a modern form of slavery. It involves trade and exploitation of human beings for profit. It is a crime and human right violation. Trafficking in human beings considers as criminal and exploiting practices among persons specifically children and women. Trafficking constitutes multidimensional form of exploitation and violence. It is a greatly horrifying offence against humanness that violates human esteem and liberties[1].

Article 3, Paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in persons defines Trafficking in Persons as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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 the giving or receiving of payments and benefits toachieve the consent of a person having control over another person, for the purpose of exploitation[2].

Traffickers use various coercive measures to lure them and force them into various forms of exploitation such as forced prostitution, forced labor, forced begging, forced criminality, domestic servitude, forced marriage and forced organ removal. They are in search of people who are susceptible for a variety of reasons, including psychological or emotional vulnerability, economic hardship, lack of social security, natural disasters, or political instability. It can happen anywhere and victims can be of any age, race, gender or nationality. This modern slave trade is a threat to all nations which leads to break down of families, fuels organized crimes, undermines public health and creates opportunities for extortion among government officials[3].

1.1 Elements of Human Trafficking

Trafficking in persons has three constituent elements;

- The Act (What is done)-Recruitment, transportation, transfer, harbouring or receipt of persons
- The Means (How it is done)-Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- The Purpose (Why it is done)-For the purpose of

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1. http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue3/Version-6/E2303062024.pdf.
2. https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html.
3. https://www.nij.gov/topics/crime/human-trafficking/pages/welcome.aspx.

exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs[4].

Human Traffickers generate huge profits by victimising millions of people around the world. Traffickers are estimated to exploit 40.3 million victims, with an estimated 25 million victims in forced labour and 15 million victims in forced marriage. Despite growing awareness about this crime, Human Trafficking continues to go underreported due to misconceptions about its definition and lack of awareness about its indicators. It is a hidden crime because victims rarely come forward to get help because of language barriers, fear of traffickers and fear of law enforcement[5].

Human Trafficking is a market-driven criminal industry which is based on the principles of supply and demand. It thrives for a number of reasons including Low Risk and High Profits. Traffickers believe in existence of very less risk to affect their criminal operations and factors behind it include lack of government, Low community awareness, ineffective lawsand lack of Law enforcement investigation. When individuals are willing to buy commercial sex, they create a market and make it profitable for traffickers to sexually exploit children and adults. When consumers are willing to buy goods and services from industries, they create a profit incentive for labour traffickers to maximize revenue with minimal production costs. If not checked human trafficking will continue to flourish at places where traffickers can reap substantial monetary gains with relatively low risk of getting caught[6].

1.2 Scope And Targets of Human Trafficking

Human Trafficking is a complex and dynamic crime. It takes place in wide variety of contexts and difficult to detect. One of the greatest challenges in developing target based response and measuring its impacts is the lack of reliable, high-quality data related to the scale of human trafficking and profile of victims[7]. Exploitation is at the heart of human trafficking.Victims of trafficking often come from vulnerable populations including migrant's, oppressed or marginalized groups, runways or displaced persons or the poor[8]. 80% of trafficked persons are women and children.

The latest global estimate according to the International Labour Organization (the United Nations agency that deals with global labour issues), calculates that nearly 21 million people are victims of human trafficking worldwide. Roughly 4.5 million of those victims are trafficked for the purpose of sexual exploitation. In the case of sex trafficking, exploitation implies the forced prostitution or sexual abuses of vulnerable men, women, and children. However, if a victim is a minor, it is aconsidered a crime regardless if there is evidence of force, fraud, or coercion. Victims aretrafficked across both national and international borders, infiltrating nearly every part of the world.

The most significant number of victims are said to come from Asia and the Pacific region, although human trafficking in Africa continues to grow when compared to its 2005 estimates.According to one World Health Organization report, the global scale of the problem is attributed to the various roles nations play in the exploitation of the victims, whether that be recruiting, harbouring, transporting, or acting as destinations for victims. One UN report estimates that trafficking victims represent over 130 different nationalities and are present in almost 120 countries.

2. Factors Contributing to Human Trafficking

Trafficking is a complex phenomenon which happens in every country of the world assuming different forms however the root causes behind it are essentially the same throughout the world for all forms of modern day slavery. Some of the major causes of Human Trafficking around the world include[9]:

- Poverty: It is one of the largest contributors to Human Trafficking. Poor people are often targeted by traffickers who exploit them in lieu of offering them an opportunity of earning money.
- Lack of Education: A lack of education leads to lack of awareness regarding one's rights which makes one vulnerable and traffickers take very advantage of it.
- Demand for cheap Labor/Demand for Sex: The demands for cheap labor and for commercialized sex lead to opportunities for traffickers to exploit people. Traffickers can make a large profit by producing goods and services through cheap or free labor and selling the products or services at a higher price. Commercialized sex is a lucrative market that allows traffickers to maximize profits from their victims through an endless cycle of buyers and high prices.
- Lack of human rights for vulnerable groups: In many countries, groups that are marginalized in society lack

4. https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/three-elements-of-human-trafficking.
5. http://www.kcrj.us/community-justice/human-trafficking/trafficking-elements.
6. https://humantraffickinghotline.org/type-trafficking/human-trafficking.
7. https://migrationdataportal.org/themes/human-trafficking.
8. http://www.humantrafficking.com/humantrafficking/trafficking_ht3/what_is_ht.htm.
9. http://humanrightsissues.org/10-causes-of-human-trafficking/.

institutionalized human rights, which can lead them to be potential victims of trafficking. Traffickers can prey on these marginalized groups because they lack protection of the law enforcement agencies.

- Lack ofLegitimate economic opportunities: When people lack legitimate economic opportunities, they become easily vulnerable to human trafficking. These are groups that are especially vulnerable in this area are migrants without work permits, those who lack education, those who live in rural areas where there are very less jobs available, as well as women and certain ethnic groups who may not be able to get jobs due to discrimination.
- Social Factors and Cultural Practices: Cultural and social practices are also major causes of Human Trafficking in many countries where bonded labour is considered as an acceptable way to pay off debt and selling of poor children is the norm in rural areas.
- Conflict and natural Disaster: It leads to economic instability and lack of human rights which makes people more vulnerable to human trafficking situations. In conflict zones and wars, some rebel or military groups will use child soldiers and keep sex slaves. Additionally, both conflict and natural disaster can lead people to migrate out of their hometowns and home countries, making them more vulnerable to traffickers.
- Lucrative Business: Trafficking generates a large profit and hence acts as an incentive for traffickers to continue this business on a wide scale.
- Lack of safe migration options:For those looking to migrate out of their home countries due to safety concerns or economic opportunities, they are especially vulnerable to traffickers. Traffickers can use illegal smuggling as a way to trick people into forced labor or sex trafficking. And for migrants looking for jobs in other countries, traffickers typically offer them job opportunities that seem legitimate, only to force them into a trafficking situation[10].

3. Human Trafficking: Global Implications

The impacts of trafficking are felt in both the countries from which the people are trafficked, and the countries to which they are trafficked. In both countries it has implications for Society, Economy, health & Rule of Law. No region of world has been untouched by Trafficking. It is a very herculean task to accurately measure the impact of trafficking because of its covert nature.

Lack of Legislation, Inexperience in dealing with the issue, Corruption, Victim's inability or unwillingness to cooperateare obstacles which make it difficult to determine the scale and impact. However, while trafficking is too covert to accurately measure, the numbers involved are significant. Estimates suggest that 400,000 illegal immigrants reach Europe each year, while 850,000 arrive in the US annually (however, these figures include those who have paid smugglers, as well as trafficked victims). In 2004, the US government approximated that 600,000-800,000 are trafficked internationally annually, of which 80 per cent are female and 50 per cent are minors, with 70 per cent of females being trafficked for commercial sexual exploitation. ILO estimates that 2.44 million people are in forced labour worldwide as a result of trafficking (out of an estimated 12.3 million people worldwide in forced bonded labour, child labour, and sexual servitude). It is also clear that everywhere it occurs, the consequences are devastating for victims and the larger[11].

The scale of trafficking also causes particular blow to gender equality and women's rights, presents a strain on law enforcement, and affects security and health systems.

- Economic Impacts: Trafficking causes an irretrievable loss of human resources and future productivity.
- Societal Impacts: Trafficking undermines extended family ties, and in many cases, the forced absence of women leads to the breakdown of families and neglect of children and the aged.
- Health Impacts: Victims suffer significant health impacts while they are being transported and when they have reached their destination. They are exposed to unhealthy environments such as overcrowded areas and unsanitary conditions which makes them prone to various infectious diseases.
- Gender Equity & Human Rights: Trafficked people are subject to all manner of human rights violations, not least of all the rights to life, liberty and freedom from slavery. Trafficked children are deprived of the right to grow up in a protective environment, and to be free from sexual exploitation and abuse.
- National Security and Rule of Law: It undermines the efforts made by the Government to combat it which threatens the security of vulnerable populations.
- Impacts on destination countries: There are also significant impacts of unregulated migration on both the economy, and security, particularly given that trafficking is considered an element of the larger

10. Ibid.
11. Freida M' Cormack, The impact of human trafficking on people and countries, (May.25, 2019, 7:04 a.m.),http://gsdrc.org/docs/open/hd780.pdf.

problem of organised crime and the illicit global economy, and closely linked with the trade of illicit drugs, arms, and so on[12].

4. Legal Framework & Landmark Rulings

India has wide range of laws enacted by the Parliament and some State legislature, apart from provisions of the Constitution which is the basic law of the country.

Constitution of India

Article 23- Protects against exploitation, prohibits traffic in humans and beggar and makes this practice punishable under law[13].

Article 24- Protects children below age 14 from working in factories, mines or other hazardous employment[14].

Indian Penal Code

There are around 25 provisions for trafficking but some of the significant among them are as below-

Section 366A- Inducing any minor girl under the age of eighteen years to go to any such place with intent to forced or seduced illicit intercourse with another person shall be a punishable offence.

Section 366B- Importing any girl under twenty-one years with the intent that she will be, forced or seduced to illicit intercourse with another person is a punishable offence.

Section 374- Punishes any person who for unlawfully compels any person to labour against his will[15].

Section 370 - Buying or disposing of any person as a slave.—Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine[16].

Section 370 A - Whoever, knowingly or having reason to believe that a minor has been trafficked1, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine[17].

Immoral Traffic (Prevention) Act 1956

The Immoral Traffic (Prevention) Act, 1956 is the primary legislation for the prevention of sexual exploitation for women and girls. The word "Trafficking" is defined only by the Goa Children's Act, 2003, which is a state law. Thus, while the ITPA is the main legislation related to the commercial sexual exploitation of children, it does not define trafficking[18].

Offences specified are:

- Keeping a brother or allowing premises to be used as a brothel
- Living on the earnings of prostitution
- Attempting, procuring or taking person for the sake of prostitution
- Detaining any person in premises for prostitution
- Prostitution in the vicinity of public places
- Seduction of a person in custody

Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits employment of children below specific age and in certain specified occupations. It also imposes punishment for the employment of minor children.

Information Technology Act, 2000

The act penalizes transmission of any such material in electronic form which is inappropriate and lascivious. This act also addresses the problem of pornography.

Section 67A- Punishes publication or transmission of material containing sexually explicit act in electronic form.

Section 68B- Punishes publication or transmission of material depicting children in sexual explicit act in electronic form[19].

Juvenile Justice (Care and Protection of Children) Act, 2000

The law is relevant for children who are vulnerable and are therefore likely to be the victim of trafficking. It protects juveniles in need of care and protection.

Karnataka Devadasi (Prohibition of Dedication) Act, 1982

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12. Ibid.
13. MP Jain, Indian Constitutional Law, 1233-1234, (7d ed.2014).
14. S.K. Chatterjee, Offences against Children & Juvenile Justice, 181-184 (2d ed. 2019).
15. https://accountabilityhub.org/provision/indian-penal-code-section-370(Feb 14, 2020, 3:00p.m.)
16. Introduced by Criminal Law Amendment Act, 2013.
17. Introduced by Criminal Law Amendment Act, 2013.
18. https://www.lawnn.com/human-trafficking-india.(Feb 14, 2020, 3:00 p.m.)
19. Ibid.

Act provides about dedication of any girl with or without consent of the dedicated persons engaging her in prostitution is unlawful and punishable.

Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989

This law prohibits any ceremony dedicated as Devadasi in any manner and imposes a penalty of imprisonment for three years and fine.

Goa Children's Act, 2003

This act is defined precisely in Trafficking. It includes every type of sexual exploitation in the definition of sexual assault. Manager and owner of the establishment are responsible for the safety of minors or children in hotel premises. There are strict laws on about the safety of children and publishing pornographic materials[20].

International Instruments

A list of Conventions and contents to eliminate the children's sexual abuse-

- International Conventions for the Suppression of the Traffic is Persons and of the Exploitation of the Prostitution of others, 1949
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages enforced with effect from 9th December 1964
- The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) Convention enforced with effect from 3rd September 1981.
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985, adopted by the United Nations General Assembly in November 1985.
- The Convention on the Rights of the Child (CRC), 1989 adopted on 2nd Sep 1990 (India ratified in November 1992)
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990, adopted by the General Assembly in December 1990, complement the previously adopted Beijing Rules.
- The Declaration on the Elimination of Violence Against Women, 1993
- The International Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182), 1999- Convention enforced with effect from 19th November 2000.
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), 2001.
- The Optional Protocol on the sale of children, Child prostitution and child pornography, 2000- UN adopted on 18th January 2002[21].

Regional Instruments

At regional (South Asia level) we are signatory of two/instruments, dealing with the sexual exploitation.

Those instruments are:

- SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002;
- SAARC Convention on Regional Arrangements for the promotion of Child welfare in South Asia, 2002.

India has implemented various International Conventions on Trafficking such as:

UN Convention: India has ratified the United Nations Convention on Transnational Organised Crime (UNCTOC) which has as one of its Protocols Prevention, Suppression and Punishment of Trafficking in Persons, particularly Women and Children.

SAARC Convention: India has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. A Regional Task Force was constituted to implement the SAARC Convention.

Bilateral mechanism : For dealing with cross border trafficking and to address the various issues relating to prevention of Trafficking, victim identification and repatriation and make the process speedy and victim-friendly between India and Bangladesh, a Task Force of India and Bangladesh was constituted.

A Memorandum of Understanding (MoU) between India and Bangladesh on Bi-lateral Cooperation for Prevention of Human Trafficking in Women and Children, Rescue, Recovery, Repatriation and Re-integration of Victims of Trafficking was signed in June, 2015.

Therefore, it can be concluded that there exists a number of National & International organisation that provide the platform on which countries can work together to eradicate this global scourge. They work from grass root level, promoting awareness and advocating for change in the communities. These groups confront traffickers, Criminal gangs and broken system in order to make a difference. They use their resources to take a stand and serve as a voice

20. https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf(Feb 15, 2020 3:00p.m.)
21. S.C. Tripathi, Women & Criminal Law, 216-218 (2d ed. 2014).

for those who are exploited and forced to work against their will.

Landmark Rulings:

The Apex Court of India and various High Courts have set up various panels & committees to ensure that there exists monitoring mechanism in place for the right of trafficked victims and also to ensure implementation of the law. Besides this, The Courts have also created mechanism for victim protection and various guidelines to tackle this menace. Some of the Landmark judgments related to combating Human Trafficking are provided below:

In People's Union for Democratic Rights v. Union of India[22], The SC defined the meaning of Forced Labour vis a vis Article 23 of the Constitution of India. The Supreme Court stated there is breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution.

In Bandhua Mukti Morcha v. Union of India[23], the Supreme Court gave directions on rehabilitation of bonded labour and setting up of Vigilance Committee in prone areas. It also gave directions regarding the necessary steps to be taken by the Central & State Governments for the purpose of ensuring levy of fair minimum wages directly to the work man employed in stone quarries and not through middlemen.

In Public Union for Civil Liberties v. State of Tamil Nadu & Others[24], The Supreme Court of India gave various directions to National Human Rights Commission regarding involvement in monitoring the pace and progress of the implementation of the law, national policy &program of action. The Ministry of Labour constituted a Task Force, comprising officers of the Central Government and the Government of Haryana who are responsible for enforcement of various labour laws. The Task Force is required to undertake periodic visits and inspections of the stone quarries and crushers to ascertain facts about working and living condition of the workers.

In Vishal Jeet v. Union of India[25], The Supreme Court ordered for an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking.

In M C Mehta v. State of Tamil Nadu[26], The Apex Court laid down various measures which need to be taken in order to provide support to the child labour and his family. The Supreme Court stated that "We are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,000; and the Inspectors, whose appointment is visualized by Section 17 to secure compliance with the provisions of the Act, should do this job. The Inspectors appointed under Section 17 would see that for each child employed in violation of the provisions of the Act, the employer concerned pays Rupees 20,000 which sum could be deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The liability of the employer would not cease even if he would desire to disengage the child presently employed. It would perhaps be appropriate to have such a fund districtwise or areawise.

InMadhu Kishwar v. State of Bihar[27], the Apex Court laid down that provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 reflects the integral scheme of Fundamental Rights & Directive Principles of State Policy.Article 2(f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms.

22. (1982) 3 SCC 235.
23. AIR 1984 SC 802.
24. (2004) 12 SCC 381.
25. (1990) 3 SCC 318.
26. 1996 6 (SCC) 756.
27. (1996) 5 SCC 125.

In Gaurav Jain v. Union of India[28], The court took a proactive actionby laying directions for rehabilitation of the unfortunate fallen women caught in the trap of prostitution; in order to bring them into the mainstream of the social order.

5. Combating Human Trafficking: A Long Way to Go

Despite a number of domestic and International Laws prohibiting Human Trafficking in India, thousands fall victim to an organized crime of human exploitation, and abuse for illegal purpose like flesh trade, Domestic work, fake marriages, Child marriages, Organ Trade etc[29].

Major Challenges:

Major challenges to combat or prohibit human trafficking are very significant and immense. Despite, several laws and conventions, this offensive crime is continual increasing in the whole world. Human trafficking is a largely hidden crime that has only recently gained the attention of law enforcement, human rights advocates, and policymakers. Research in the field continues to evolve and has focused almost exclusively on the victims. Reliable data are needed, especially about the characteristics of victims and perpetrators, the mechanism of operations, and assessments of trends. In addition, law enforcement officials must overcome substantial legal, cultural, and organizational barriers to investigating and prosecuting trafficking cases. These barriers, and strategies to overcome them, are still being identified.[30]

Some of the challenges that are becoming hindrance to combat this social evil are inadequacy of information and awareness towards trafficking related issues. Other challenges are lack of co-ordination and collaboration between government and non-government organizations and lack of effective implementation of legislations that are made on the prohibition of the human trafficking. Similarly, restricted social service assistance and inadequate resources to the trafficked survivors for their protection and welfare are other obstacles. Furthermore, lack of support and co-operation at the international level is another big challenge in eradication of this problem. At the same time, limited facilities of stringent punishment for the traffickers, pimps or brothel-keepers, Lack of actions by the officials to punish the traffickers are other hurdles in eradicating this menace[31].

6. Conclusion & Suggestions

Slavery has unfortunately existed throughout history. Human Trafficking is a modern form of slavery which is expanding so significantly that it has come to represent one of the world's most pressing violations. According to data from the United Nations, two thirds of the trafficking victims detected globally are women. Seventy-nine percent of the victims are trafficked for the purpose of sexual exploitation.

In fact, gender-based violations of human rights are one of the fundamental causes for the existence of human trafficking. Gender violence and other forms of discrimination against women and girls can foster and exacerbate their vulnerability, leading them to become victims of human trafficking. Sexual exploitation is noted as by far the most commonly identified form of human trafficking followed by forced labor. This may be the result of statistical bias. By and large, the exploitation of women tends to be visible. Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking, in aggregate statistics. In comparison, other forms of exploitation are under-reported. Therefore, for cases of labor exploitation, committed action is required from all competent labor authorities. They must take an increased role in addressing this matter, which until now has been mainly handled by police and immigration authorities[32].

The lack of data regarding the true extent of human trafficking seriously compromises the capacity of potential measures to combat this crime, especially considering the transnational dimension of human trafficking. The lack of data also hinders the realistic evaluation of the impact of any future plan for intervention. Globally, Majority of human trafficking crimes occurs on a national or regional level and is committed by individuals who have the same nationality as their victims. This is not the case in Europe, which is considered the destination for victims coming from very diverse points of origin. It is common for authorities to incorrectly identify trafficked persons as immigrants illegally attempting to cross the border. Clearly, there is a lack of reliable victim identification procedures. While many trafficking victims consent to be illegally smuggled from one country to another when they embark on their journey, in the course of their journey, they may be tricked or forced to endure situations of exploitation and thus become victims of human trafficking. Effective action against forced labor requires authorities to go beyond the criminal or punitive approach at the administrative level[33]. This is

28. (1997) 8 SCC.
29. Monika, Law against Human Trafficking in India, (May. 23, 2019, 10:06 a.m.), https://blog.ipleaders.in/human-trafficking/.
30. https://www.nij.gov/topics/crime/human-trafficking/pages/welcome.aspx.
31. https://pdfs.semanticscholar.org/aab4/6dce5d7a3ce2bcebfd34788aa4dd31faab56.pdf.
32. https://shodhganga.inflibnet.ac.in/bitstream/10603/128151/21/14_chapter%208.pdf.
33. https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2015/06/Conclusions_and_recomendations.pdf.

important to guarantee financial compensation for workers under laws against forced labor and human trafficking. This is especially relevant for exploited workers who may not be entitled to compensation under criminal law. Human trafficking is a very lucrative criminal activity, generating billions of Euros.

The low number of convictions is due in part to the fact that trafficking cases are too often prosecuted as other crimes, instead of being prosecuted as human trafficking. Judicial proceedings that charge traffickers continue to rely almost exclusively on victims' statements. However, effective financial research is an important tool for obtaining evidence and for risk assessment. This is required to guarantee the rights of trafficking victims.

States must rely on organisms that have the expertise to develop the legal framework and comprehensive policies against trafficking. There is a general consensus regarding the need to establish formal channels for the participatory role of social organizations that are specialized in detection procedures and in offering assistance to trafficking victims. There are no international standards regarding the nature, duration, and purpose of the recovery and reflection period for human trafficking victims. This lack of clear standards causes significant variation in national practices and a high degree of confusion regarding the necessary requirements for offering and obtaining this measure. The residence permit is an important measure to guarantee victims' protection and it increases the likelihood of a victim cooperating with the authorities for criminal prosecution. Identifying and sharing best practices among national authorities is a very effective and practical tool to progressively improve detection and victim assistance standards.

The right to an effective remedy is a fundamental human right of all individuals, including victims of trafficking, who must be respected, protected and satisfied by the State in accordance with international human rights standards. The United Nations Special Rapporteur on trafficking in persons, especially women and children, declares that the right of compensation for victims is nothing more than one element of their right to recovery, restitution, satisfaction and the guarantee of non-repetition, as well as their right to a number of related matters that allow them to truly exercise their right to an effective remedy under free and secure conditions. States have the responsibility to deem refugee status to individuals who have been trafficked and fear persecution upon return to their home country or who fear being trafficked, so that they may receive the corresponding international protection. This guarantee is to be applied to individuals who meet the criteria for refugee status according to the 1951 Convention or the 1967 Protocol relating to the Status of Refugees.

The UNHCR draws attention to the most common obstacles human trafficking victims face in their attempts to receive international protection. The obstacles lie in the difficulty of establishing a well-founded fear of persecution and the membership of a particular social group. The identification of a minor as a trafficking victim should not reduce or restrict their right to seek international protection or to be recognized as a refugee. Given the lack of reliable data, it is not possible to perform a quantitative analysis regarding the age or sex of child trafficking victims, their countries of origin or destination, or the types of exploitation they may be subjected to. Regarding identification, it is essential for States to carry out age determination and adopt proactive identification measures, such as strengthening the procedures for the registration of births as well as the registration of missing and exploited children. Methods and procedures used for identifying trafficked minors should require institutions and agencies to swiftly and adequately refer them to appropriate services. UNICEF directives intended to protect minors are extended to children born to trafficking victims. It is essential that trafficked minors have adequate access to the concerned authorities in order to report their situation. Subsequently, procedures should evaluate the minor's individual circumstances. Moreover, criminal proceedings cannot rely solely on testimony of the victim. This is particularly relevant in the case of minors, since identification should be based on additional evidence.

Hence, the suggested measures for prevention can be summed up as follows:

- Political apathy and government commitments to combat trafficking are required to be articulated in coherent natural policies.
- Consensus on a definition of trafficking is required to classify legal frame works,
- Public Awareness, strengthening of legislations and ensuring their effective implementation are need of the hour.
- Proper and Sincere counseling for re-integration and re-habilitation of rescued victims are required.
- Imposition of stringent punishments to the traffickers, pimps and brokers through legal provisions,
- Sex tourism should be strictly prohibited and Cyber pornography should be strictly monitored.
- Establishment of proper co-ordination between Governments and NGOs will cater the need to a great extent.

By following the aforesaid measures, the menace of Trafficking which has posed a great challenge before the society would be prohibited in all its forms.

Legal Framework and Judicial Deliberation on Commercial Surrogacy

Shalini Gupta*
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ABSTRACT

There is an increasing acceptance of commercial surrogacy arrangements in certain jurisdictions around the world. The advancement of sterility in current society and deterioration in adoption of children had increased the need for further Assisted Reproductive Technologies options to be made available[1]. Furthermore the wish to have a biological child of one's own blood and DNA aided with technology and the purchasing capacity of money has contributed increase the practice of commercial surrogacy in India. Not only for infertile couple, commercial surrogacy also comes to help women who are poor such as daily wage earners or who have no employment and husband do not contribute sufficiently to family, which fuels into the increase of commercial surrogacy. In India the reason for increasing commercial surrogacy is the higher level of poorness and the absence of any law for the regulation of this practice due to this surrogate mother can be found easily or on low cost. Due to the cheapness and easiness couples from foreign countries come to India to opt surrogacy here.

1. Introduction

Children are valuable to every country and are the future pillars of the nation. In every society children are considered as essential desire. Though there is no duty to reproduce, the desire to do so is strong in human beings due to religious, cultural, social, family, personal and legal motivations. The desire to bring a child can be so overwhelming as to cause people to go to great lengths to achieve such a goal[2]. Thus in cases where the couples or individuals are unable to have a child of their own through natural biological process, they may adopt assisted reproductive technologies for having a child. Surrogacy has developed as the best option for having a child, and every year, more and more children are taking birth to surrogate mothers. This increased use of surrogacy has received worldwide attention in recent years and has caused huge debate regarding the protection of rights and welfare of the various participants involved in surrogacy. In any discussion on surrogacy, the issues that affect the surrogate children is more equally important and controversial and require ample attention because among the various stakeholders involved in surrogacy contracts, the child is the most vulnerable and may be exposed to the hard impacts of surrogacy. It is generally argued that the ultimate victim of surrogacy arrangements is the child. This is because in a surrogacy process the creation of a child no longer occurs within the traditional formula of one biological unit i.e. the father as the sperm donor; the mother as the egg donor and provider of womb; and the child being the genetic offspring of the two. In a surrogacy the creation of child involves the presence of a third party i.e. the surrogate mother and in certain cases a stranger egg donor, or sperm donor. Due to the envelopment of a third party in the creation of a child, surrogacy has raised concerns about the protection of the rights and interests of the surrogate child.

The surrogate child is not a party to the surrogacy contract, but is the outcome of such a contract and due to the inherent vulnerability of a child, it becomes imperative for the state to interfere in surrogacy agreements and procedure for ensuring the protection of rights and welfare of the surrogate child. Many countries have adopted legislations for the protection of the surrogate child. But In India there is no specific legislation till now for dealing with the protection of rights of surrogate child. India being a hub for surrogacy process, and the absence of a legal framework would adversely affect the interests of a surrogate child. The Baby Manji[3] case is a glaring example which highlights the immediate and urgent need to address the issue of surrogate child.

In this case a Japanese couple named Ikufumi and Yuki Yamada entered into a contract with Pritiben Mehta (a married Indian woman with children) under the supervision of Dr. Nayna Patel[4] in Gujarat. The clinic staff under the supervision of Dr. Patel created an embryo from Ikufumi Yamada's sperm and an egg harvested from an anonymous Indian woman[5] and then implanted the embryo into Mehta's womb. Meanwhile in June 2008, the Yamadas

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1. Reetu and Basudutta, Surrogate Birth, 96 online journal, 108 July (2009).
2. Veile Barbara, Surrogate Motherhood- The Need For Social Acceptancel, 13 Ohio N.U. Law Review, 523-524 (1986).
3. Supra no. 14.
4. Supra no. 61.
5. Supra no. 14.

divorced. A month later, on July 25, 2008, Baby Manji was born to the surrogate mother. Though Ikufumi Yamada wanted to raise the child, his ex-wife, Yuki, did not want the child as she was not connected to the baby biologically, genetically and legally. The surrogacy contract did not cover such a situation of refusal by one of the intended parents. There was no law existing in India to clarify and solve this matter[6]. After this situation Ms Emiko Yamada came from Japan to take care of baby Manji who was her grandmother and filed a petition in the Supreme Court of India under Article 32 of the Constitution of India. The Court referred her to the National Commission for Protection of Child Rights established under the Commissions for Protection of Child Rights Act, 2005. Finally, the decision was to give the custody of baby Manji to her Grandmother and father[7].

This case raised various questions related to the care and welfare of the surrogate child for which there is no clear answer in Indian legal framework. For example, who is the mother of the child; whether the intended mother has any liability if she refuses to accept the child and what is the appropriate remedy in such cases; whether the child is an Indian citizen or foreign citizen; whether the child can acquire a passport in India without having a mother and so on. The Baby Manji case is only a tip of the iceberg. The surrogacy practice may present more complex and serious problems for the surrogate child. There may be worst situations where both the commissioning parents can refuse to take custody of the surrogate child after its birth; or one of the intended parents may have died and the other may not be in a position to accept the child. In such cases the welfare of the child is at stake.

1. Growing Trend of the Practice of Commercial Surrogacy in India

Though the practice of Surrogacy has been existing from the past, but it has become a huge business in recent years, not only nationally, but cutting across national boundaries also. Commercial surrogacy is a growing business in India. India is well positioned to lead the world in making commercial surrogacy a viable industry, due to cheap labour, highly qualified doctor's availability of better medical infrastructure and restrictive lessness of laws on surrogacy[8]. Commercial surrogacy in India is a part of a larger trend known as medical tourism and has specifically been renamed as reproductive outsourcing.

In our rapidly globalizing world the growth of reproductive tourism is fairly a recent phenomenon, increasing number of infertile couples from the U.S., Britain and other countries are looking for surrogate mothers in India, because of cheap services available here, which fuels in the growth of commercial surrogacy in the country day by day surrogacy, along with other part of India's medical tourism trade, has grown dramatically in recent years with physicians here overseeing an estimated 15,000 surrogacy births for domestic and overseas couples in 2010 approximately.

Outsourcing to India is taking new dimensions. Anand a small town in the Western state of Gujarat and Mumbai in India have been in broadcast as the favourable destination for surrogacy services. India is emerging as a preferred destination for prospective surrogate mothers. According to a report by alliance of Indian Industry, medical tourism has a prospective of increasing by 25 percent annually to procure the country Rs. 100 billion a year. Similar figures by media reports also recommends towards the growing trend of medical tourism. Though the practice of surrogacy has occurred for a long time, but in recent years, it has become a huge way to earn money, cutting across geographical boundaries. Services for surrogacy are advertised, and surrogate agencies making large profit by providing and arranging the services of surrogates. The desire to have a biological childand women, who is ready to be surrogate because of monetary reasons, has turned the procedure of surrogacy into an industry.

The few regulations and little government interference in the industry make India a more hassle-free location for infertile couples seeking commercial surrogates. Currently, the Indian government has no official, enforceable laws to monitor or regulate the industry. In 2005, the Indian Council for Medical Research formulated guidelines for the Surrogacy Industry, but these guidelines have no binding force, absence of any law to regulate this practice makes the foreigners couples a best destination for surrogacy as most of the countries prohibits the commercial surrogacy arrangements, so in India the Surrogacy industry is Keeps on growth, the other reason for its growth is of lower cost, involved in surrogacy brings incentives for foreigners to travel to India. The total cost for contracting with a surrogate mother in the united states fluctuate between $59,000 and $80,000 whereas in India current cost is lower than America standard, which ranges from $25,000 to $7,000. Thus Indian cost required for surrogacy is much cheaper than that of United States, so the couples seek so for surrogacy in India for a very low price. The other reason for which this practice of commercial surrogacy is keeps on growing is that of availability of surrogate mothers and availability of medical infrastructure. So, in India today this practice of surrogacy is growing like an Industry with no

6. Ibid.
7. Supra no. 46.
8. The new Encyclopedia Britannica, 11 ed,5th, 413 (2002).

legal framework and keeps on growing. There are lots of clinics providing these facilities to earn more and more profit which converts this practice into a business to gain more profit, which may cause harmful results in the absence of any law. So there is a need of a strong legislation for its regulation in the absence of an independent law on commercial surrogacy, the practice poses a lot of social and legal problems.

Commercial Surrogacy is the most controversial solution to the problem of infertility. The practice of commercial surrogacy is growing rapidly in India without any law, which gave rise to many of these controversies.

2. Need of Regulation for the Practice of Commercial Surrogacy In India

In India the field of surrogacy is unregulated which raises many social as well as legal complexities; there is no law to deal with the cases of surrogacy and no body of experts to supervise the ethics of the business or to certify the institutions. The state does not have passed any law requiring clinics offering infertility services to register themselves, and there is no body which monitors the quality of the services provided. The infertility industry is only one part of an unregulated private health care system, which is based on profitability rather than need, as these health services are capitalizing on cultural demands, and on people's poverty[9], which can result into the exploitation of women as there is no prescribed rules for the payment of compensation to the surrogates, and in absence of these norms, the agents can defraud the surrogates and pay them a little amount of money which results into the exploitation of surrogate mothers. So to overcome the adverse effects of commercial surrogacy there is a need for the regulation of surrogacy in India. The sensitive issue of surrogacy in the absence of laws or regulation has become a free playing field of unscrupulous intermediaries who lure and push uneducated and poor women into surrogate motherhood and there is a possibility of misuse of children born out of surrogacy[10]. The concept of surrogacy is definitely a blessing and a boon for many infertile couple, so by its legalization a poor surrogate mother in India will be able enough to earn a square meal for herself when she gets paid for renting her womb, thereby helping the needy couples.

So there is a need for the legalization of commercial surrogacy in India to minimize the ill-effects of surrogacy and to maximum their utility by exploring all option in efforts to have a baby under the lenses of law. So there is a need to regulate untramineted commercialism of ARTs and of surrogacy in India is a much need step towards checking unethical medical practice, the human rights of the surrogate and children and their legal financial and health related rights need to be better protected. Moreover many ART clinics have been caught orchestrating networks of professional surrogates and making tidy profits recruiting their services, it is therefore, imperative that commercial surrogacy be legally regulated in India to victimization of both the surrogates and the intended parents, so that this practice can be used for the betterment of the society rather than making it as a business industry and the legalized surrogacy acts as a boon for the desperate childless couples who dreamt of parenthood.

3. Surrogacy Versus Adoption

In this world child is the most precious and vulnerable gift of god. Those who are not able to have this wonderful gift due to any lacking always feel aloneness and unsatisfied. A number of couples across the world are facing embarrassment since they do not have any child. For those couple Surrogacy is a pleasing gift that can bring the big happiness in their life. The development in medical science and increased social awareness and acceptance has made this practice popular in the society and couples who desire to have the child are getting child by it every year. The number of cases who are opting this procedure is increasing continuously all over the world and among these countries, India are becoming a foremost centre for surrogacy because of easy availability of surrogate mothers and legal elasticity. While surrogacy is becoming very popular at the present time, another method has been in existence from a long time and that is adoption. Although it is also one of the most popular and well accepted methods, but surrogacy definitely has few straightforward benefits over adoption. Genetic factor is one of the major reasons to opt surrogacy rather than adoption. The parents are more warmly attached because they have seen and feel the complete procedure of pregnancy from the starting till the childbirth. It gives them a higher level of mental peace and satisfaction. In the past it was assumed that when a couple did not have a child on their own, they should adopt a child to accomplish their parenthood dreams. This concept is now become out-dated as there are far more options available for infertile couple as well as singles and homosexuals who want children. Now people have the option to pursue advanced infertility treatment and egg, sperm and embryo donation are become common, national and international adoption is ordinary and surrogacy is becoming popular.[11]

Both of the approaches are actually having the same objective, that is, to give the chance of enjoying the

9. AgnihotriJyotsna Gupta, New Reproductive Technology, 1st edition, 368 (2000).
10. Dr. Chavan Ganesh Pratibha, Psychological and Legal Aspect of Surrogate motherhood, 95, 107 July (2008).
11. Thakkar H Irvi, Surrogate Motherhood, 88 online Journal, (2011).

sweetest moments of life for a couple who has been waiting eagerly to enjoy the parenthood for a long time. Surrogacy delivers chance where the couple can feel the responsibility and seriousness of childbearing process and that creates more emotional affection between the parents and child. The fact is that new born is here ditarily connected to at least one of the parents and it gives a feeling of relief and cheerfulness to the parents. They feel more closeness with the child because of their biological relation to the child. Gestational surrogacy involves eggs and sperms of the couple and therefore it is actually their genetic offspring, developed in a different womb. This is a real feel good factor for them as compared to adoption where they are not much assured by the genetic issues. The close relationship of intended parents and surrogate mother creates a healthy relationship and the progress of pregnancy and health of the mother can be monitored easily to avoid any complications. The emotional bonding is more strong and cohesive.

Another most important factor in case of surrogacy is that the intended couple can choose the surrogate mother that is going to carry the baby. This is not possible in case of adoption where there is no chance of deciding anything about the genetic parents of the child. Although adoption is surely one of most amazing ways to create the family and giving complete unconditional love and affection to a child that does not belong to you genetically is surely not an easy task. It requires great amount of courage and openness of heart.

But there are some children who need to be adopted. Society might make a judgement that such infertile couples would make that choice, thereby benefiting both children in need and society. Accordingly, a state might decide that it is best that infertile couples not be permitted to create another baby by contract, when at least a few of them might otherwise decide to take on a child in need. Surrogacy advocates injure their case when they brag that as surrogacy develops, it will come to replace adoption. That would be a clear social harm. The interests of existing children in having families, and society's concern that children grow up in as secure and loving an environment as possible, should not be ignored in the decision whether to encourage surrogacy, in vitro fertilisation and ovum/sperm donation.

Infertile couple would argue that the chance to have a "normal" child and a child as biologically connected to them as possible, is not afforded by adoption and that although it benefits society more for them to adopt an existing child than to conceive a new one, the same is true without any restriction by the state. Moreover, it is hypocritical to raise the needs of deprived children against surrogacy when we as a society in other respects follow policies so obviously contrary to their needs. Indeed if we provided minimally adequate welfare for poor families with children with special needs, a national day care policy, a program to meet the housing needs of poor people, and support for battered women who would take care of their children if they could, just to name a few obvious examples, poor families would be able to stay together, and there would be many fewer children in need of families. If we provided free prenatal care to those who cannot afford it, there would be many fewer special-needs children. Society does have a responsibility towards existing children in need, and it should exercise that responsibility, but it is unfair for it to meet its obligation simply by transferring the responsibility to couples who need surrogacy to reproduce. A ban on surrogacy would not really impose an obligation upon infertile couples to care for existing children, although it would increase the likelihood that some of them will do so and that would be part of its purpose. The serious issue is whether it is fair so to preclude infertile couples and women who want to be surrogates, and the turns on a value judgment; whether the needs of existing children should be given preference or whether the needs of parties who would use surrogacy are more important.[12]

4. Framework to Deal with Commercial Surrogacy in Contemprary Indian Legal Senario

Commercial surrogacy is treated as legal in India with the landmark judgment in baby Manji case and the Guidelines published by Indian Council of Medical Research (ICMR) in 2005 which prescribes ways and use of Assisted Reproductive Technologies (ART) procedures or treatment by fertility clinics. Subsequent to this, Law Commission of India in 2009 issued its 228th Report for the regulation of ART clinics. Later, in 2010 and 2013 respectively, Union Ministry of Health and Family Welfare and ICMR had formulated ART Bill which is still awaiting enforcement. The bill legalised commercial surrogacy by providing for payment as "monetary compensation" to the surrogate mother by intended parents.

5. Guidelines of Indian Council of Medical Research

In India, there is no legislation dealing with the surrogate motherhood. However, the Ethical Guidelines for Biomedical Research on Human Subjects of the Indian Council for Medical Research lays down certain rights and duties to follow in these processes. In 2005, the Indian Council of Medical Research (ICMR) issued guidelines for accreditation, supervision and regulation of ART clinics in India.

12. Martha A. Field, Surrogate Motherhood: The Legal and Human Issues, 57 (1990).

Below are the main points from these guidelines:

- DNA tests are obligatory to determine that the intended parents are definitely genetic parents. If this is not the case of adoption as an alternative.
- Surrogacy should be normally only option for patients who are physically or medically impossible/ undesirable to carry a baby to term.
- The payments received by the surrogate mothers should be documented and cover all genuine expenses associated with the pregnancy.
- The responsibility of finding a surrogate mother should rest with the couple, or a semen bank, not the clinic.
- A surrogate mother should be 45 years or below of age. The ART clinic should ensure possible surrogate woman satisfies all the testable criteria to go through a successful full-term pregnancy.
- A woman may act as a surrogate only three times in her lifetime.
- The surrogate mother must declare that she will not use drugs intravenously, and not undergo blood transfusion excepting of blood obtained through a certified blood bank. A relative, a known person, as well as a person unknown to the couple may act as a surrogate mother for the couple.

These guidelines are simply guidelines. It required a surrogate mother to sign a contract with the future parents. But the guidelines did not address the requirements of what should be in the contract. All that this means is that surrogate mothers need to sign a "contract" with the childless couple. There are no stipulations as to what will happen if this contract is violated.

According to these guidelines, the surrogate should not be more than 45 years old and should test negative for HIV and Hepatitis Band C. Moreover, no one can be a surrogate for more than three times. These guidelines ensured that women were fit to carry on pregnancy but many describe the guidelines discharged by the Indian Council of Medical Research, which governs commercial surrogacy, as being full of loopholes that they may lead to exploitative practices as it is implemented without audits by the clinics themselves.

The increasing need for regulation became apparent in the relations between clinics and the surrogates. There were genuine cases where both the biological parents and the surrogate mothers benefit but lack of a law is gaping opportunity for exploitation, and this is not just about foreigners. A story by reporter of 'India Uncut' had brought that how young girls from orphanages were being 'hired out' for surrogacy and they themselves never got any money. The need to create a safe distance between the clinic and the surrogate to avoid unethical practices was felt. Dr. R.S. Sharma, deputy director general of the ICMR and member-secretary of the bill's drafting committee expressed, "IVF clinics should only be concerning themselves with science."[13] The problem is that these guidelines are not adequate to answer such an immense problem. As the use of such techniques increases, the need for more explicit public policy in several areas must be addressed.

6. Report No 228 of Law Commission of India

In the absence of any law on Surrogacy, it is presently regulated by the guidelines formulated by the Indian Council of Medical Research. In a Phenomenal way to legalise the practice of surrogacy in India, Law Commission has also submitted its 228th Report "Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to Surrogacy." In this report the Law Commission has made an attempt to critically examine every issue pertaining to surrogacy agreements and the implementation thereof. The major recommendations given by the Report will follow hereinafter:

1. Surrogacy arrangement will be administered by contract amongst parties. Such a contract will cover all the terms requiring the consent of surrogate mother to bear the child, agreement of her husband and other family members for the same, medical procedures for artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parents etc. However, such an agreement will not be for commercial purposes.
2. A surrogacy arrangement should provide for financial support for surrogate child in the event of the 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. 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. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.
4. 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

13. Brenhouse Hilary, India is a rent Womb Indrustry, The Time Magazine, June (2010).

declaration of guardian.

5. Cases of abortions should be governed by Medical Termination of Pregnancy Act, 1971, only.
6. The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.
7. Surrogacy agreement should necessarily take care of things like, life-insurance cover for the surrogate mother, prohibition of sex-selective surrogacy, protection of privacy right of the donor as well as the surrogate mother etc.[14]

7. Proposed Bill on Surrogacy

In 2002, a Bill drafted by a 15- member team of experts headed by Baidyanath Chakraborty in collaboration with the Indian Council for Medical Research and National Academy of Medical Science was submitted to the Union Health and Law Ministries on National Guidelines for Accreditation, Supervision and Regulation of Assisted Reproductive Technologies (ART) Clinics in India. This document has drawn up guidelines for the ethical practice of acceptable ART methods and for taking measures for setting up of an independent body through legislation for accreditation, regulation and supervision of infertility clinics in India, which was later, in 2005; released as a published document. However, since these guidelines had no legal binding and the rules and regulations were not mandatory, they were not strictly implemented, resulting in an absence of any form of regulation. Subsequently, Indian Council of Medical Research (ICMR) and Union Ministry of Health and Family Welfare (MoHFW) had formulated draft Assisted Reproductive Technologies (Regulation) Bill & Rules, 2008 and 2010 respectively. Recently ICMR and MoHFW again have come up with the draft Assisted Reproductive Technologies (Regulation) Bill, 2013 which is still awaiting enforcement. The draft bill of 2013, an exhaustive document containing 100 sections addressing various issues relating to ART, is stated to now be 'Top Secret', being a part of the Cabinet note as per the requirement and procedure of the handbook of the Cabinet Secretariat on Cabinet writing notes. The draft bills and rules of 2008 and 2010 were extensively circulated for public opinion, besides being sent to state governments, institutions, statutory bodies, NGOs, medical professionals and other stake holders, but the 2013 bill has not been circulated or placed in the public domain. Although the Bill attempts to incorporate many issues related to ART, it unfortunately carries on the vestiges of the drawbacks present in the National Guidelines issued in 2005. When the title of the bill mentions the term "regulation", it is expected that such a bill will regulate the practice of ART and safeguard the rights and interests of the users, in this case women, and incorporate provisions to prevent misuse and malpractice, thereby making the providers accountable to the women/couples and the law of the land. However, through the various clauses, it tends to promote the interests of the private sector providers of these technologies rather than regulate them and comes across as inadequate in protecting and ensuring the health and well-being of women and children. Because assisted reproductive technologies amplifies deep-seated notions of "blood", now bolstered by genetics, it tends to overshadow safer, cheaper and more progressive options like adoption. ART clinics do not provide reliable information about low rates of success, the probabilities of multiple pregnancies and the high possibility of fetal abnormalities-instead they promote false and unethical claims to lure clients. Though the draft bill prohibits clinics from advertising, it neither foresees the newer forms that publicity will take nor specifies what kinds of information should be made public by the regulatory agencies proposed. One can therefore expect that the unreliable and even false promotional advertising currently in evidence will continue.[15]

The starting point of tackling the question of surrogacy lies in recognising that this new technology splits up older notions of natural reproduction into three parts- "social" parents, a gestational mother, and the genetic matter that links the first two. While it is usually the case that one or both of the subsequent social parents are also donors of gametes, the possibility cannot be ruled out that both egg and sperm donation are from other sources. There is already considerable literature on the risks of egg donation for women, and their potential exploitation within ARTs more generally, but the bill does little to protect such oocyte donors. The draft bill is quite clear, though, in prohibiting the surrogate from being an egg donor (which would open up the possibility of artificial insemination and therefore make procedures much simpler, safer and cheaper), even in a situation where the future mother cannot provide them. Do we see this as a means to reduce the surrogate mother's "rights" to the baby, or rather as a way to promote the role of the clinics? Why not permit genetic surrogacy? Clearly, the current mode of advancing surrogacy arrangements increases the number of "stakeholders" and their possible conflicts of interest- the commissioning parents; the surrogate mother; her family, if any; the new baby; and the commercial sperm banks and ART clinics.[16]

Today, ART markets as well as the state emphasise relationships of blood and the genetic basis of paternity,

14. Supra no. 46.
15. John E Mary, The Business and Ethics of Surrogacy, Economic andPolitical Weekly, 10, January (2009).
16. Ibid.

marginalising the essential social and biological contribution of nurturing children in an enabling environment. Is it ethical to use prevailing social constraints that prevent open surrogacy arrangements to promote the business of surrogacy and ART? The amount of compensation given to the surrogate mother is another particularly different aspect when what is involved is the creation of life- a baby no less. Its value has to be universally uniform as a product of the procreative power of women and not of social labour that varies in value and creates commodities. It is said that in west up to 50% of the total cost goes to the surrogate mother while in India most of the money is appropriated by sperm banks, ART clinics and Lawyers. The bill leaves the amount of compensation to the private contract between the surrogate and commissioning parents- two unequal parties. It also ignores the role of sperm banks and the clinics in the matter till date and offers no mechanism of legal support to the surrogate mother in getting a fair contract. Given the surrogate's relative socio-economic vulnerability, the absence of safeguards is glaring in a situation governed by India's relative "cheapness" and the search for profits by the agencies involved.[17]

In its current form, the bill barely addresses several important concerns and ignores national health and population norms. To take but one example, in spite of the punitive application of a two-child norm in other contexts, the bill permits three surrogate pregnancies for a woman. A closer inspection of the procedures involved reveals that it actually permits up to three cycles for attempting a pregnancy per couple, which would add up to as many as nine pregnancies, not counting a surrogate mother's own children. And this from the very same ministry, that is responsible for women's reproductive health. Whatever its intentions, the draft bill does not seriously engage with minimising misuse and malpractice on the part of service provider, nor does it protect the health and well-being of the most vulnerable parties- the surrogate mother and the baby born of such arrangements. The comments here on the different aspects concerning surrogacy are meant to stimulate a wider debate, which should form a basis for more detailed critiques of the proposed law.

The Highlights of the Proposed Bill of 2010:

- Setting up of Advisory Boards on National and State levels.
- Surrogacy to be open to gay and lesbian couples and to single women.
- NGOs to serve as agencies for surrogates.
- Record keeping for surrogates.
- Advertising be allowed to find surrogate mothers.
- Rights and duties of patients, donors, surrogates.
- Determination of status of the child.
- Foreigners can seek surrogacy in India.
- Prohibition of sex-selection
- Right of the child to information about donors or surrogates.

7.1 The Lacunae of the Proposed Bill

- Social and ethical complexities arising out of surrogate motherhood have not been addressed.
- No protection for surrogate mothers in case of medical problems.
- NGOs can exploit commercial surrogates.
- Ambiguity about the children's right to know.
- Surrogates can be considered as components of technology.
- Surrogates are forced to use only in vitro fertilisation instead of artificial insemination.
- Little participation of intended parents in selecting a surrogate.
- Treatment of infertility is not mandatory.
- No provision of any authority to check upon scientific research and medical clinics.
- No defined courts or judicial forms to resolve surrogacy disputes.
- Best interest of the child is overlooked.

8. Applicability of the Principles of Indian Contract Act 1872 to Commercial Surrogacy

As there is no specific law for surrogacy in India, surrogacy agreements is the very specific to deal all relative matters concerning the process of surrogacy. In this agreement, each party involved in the process should state their concern and intension and should agree to terms and regulations of the process. It includes surrogate's intension to gestate the child, payment schedule and monetary benefit she avails from the intended parents for the service she contributed. Surrogate mother, her husband and intended couple have to sign and agree to the surrogacy agreement for starting the real process of surrogacy and they have to abide by that agreement and its contents. In

17. Ibid.

commercial surrogacy, the surrogate mother is paid to carry a child to the term in her womb. The payment is made to the surrogate mother on an understanding that she shall carry the child to the term and hand over the child to the intended parents. This understanding arises out of a contract between the surrogate and the intended parents[18].

A commercial surrogacy agreement is an agreement entered between the surrogate mother and the intended parents, making their intention clear with regard to each of their roles for performing the surrogacy. The surrogacy agreement should contain all aspects of their relationship between the intended parents, surrogate mother and the child[19]. The contents of the agreement include the payment module to the surrogate mother. The contract phase of the surrogacy agreement finalizes the monetary reward to the surrogate to be paid by the intended couple for the service rendered by the surrogate. The agreement demarcates the liability of the Surrogate and intended parent upon which either of the parties to the agreement has agreed upon. The surrogate and intended parents are required to sign the surrogacy agreement after clearly understanding the contents of the agreement. The parties to the agreement are the intended parents, the spouse of the surrogate mother also signs the agreement, so as to show his acknowledgement to the surrogacy agreement, also the intended parents may appoint a person who shall be named in the agreement, who shall take the child into his possession, in an event of uncertainty over the actual intended parents possibility of taking custody of the child and at the same time the medical professional may also be a party who will also be the beneficiary in these agreements, so there may be more than two parties to these agreement. Though these agreements i.e. of surrogacy agreements are alike other agreements which relates to the agreement or promise made by both parties and the contract law is primarily concerned with agreements that involve one party, or each party, giving an undertaking or promise to the other party and also stated in Indian contract Act 1872 under Section 10 that all agreements are contracts if made by free consent of the parties competent to contract for a lawful consideration with lawful object and the contract should not have been declared to be void under the act. So if a surrogacy agreement meets all the requirement of a contract under sec 10 of Indian contract act 1872, then the agreements deems to be a legal contract. So in the absence of any specific law to deal with these surrogacy contracts the question arises whether these contracts should be regulated under the Indian contract law and should be treated alike with other commercial contracts under the contract law. As there are no prescribed rules regarding the regulation of these type of contracts in the guidelines of ICMR, so the provisions of a Indian contract Act are made applicable for handling these contracts, but at the same time it is observed that a surrogacy contract, though a contract, but needs to be distinguished from other commercial contracts and should be treated differently with other contracts as the subject matter of these contracts are different from the other contracts and there are more than two parties to the surrogacy contracts i.e. of surrogate mother her husband, intended parents, ART clinic, legal guardian appointed by foreign couples, which makes difference between these contract and other contracts under the contract Act, so these contracts should be regulated by an independent Act, therefore the rules of enforceability, settlement and relief must be different from the other commercial contracts under contract law.

9. Judicial Interpretations Onsurrogacyin India

India does not have any law dealing with the complicated issue of surrogate motherhood. India being a country with plethora of cultural heritage has not been able to keep pace with the changing scenario in the context of surrogacy. India, a nation which is often named as 'Surrogacy Hub', still does not have a structured framework for surrogate motherhood, which is also one of the biggest businesses running in the country[20]. The surrogacy agreement, which is based on free consent and a meeting of the minds of the parties concerned towards a particular outcome, has been held to be valid in India and is therefore interpreted in light of the provisions of The Indian Contract Act, 1872. There is no enactment on surrogacy on the subcontinent and The Indian Contract Act, 1872 exercises jurisdiction over all agreements and contracts.

In the Landmark case Baby Manji Yamada vs. Union of India[21], when the couple divorced after opting the surrogacy and in the absence of clear laws on Surrogacy, the main issue arise of the custody of that baby. Because according to the Adoptions and Maintenance Act, 1956, a single father cannot adopt a girl child. So he sent his mother in his stead and a petition was filed before the Supreme Court. The Government seemed to be helpless in this matter as there were no laws governing the effect of surrogacy. The Apex Court directed that the National Commission for Protection of Child Rights was the apt body to deal with this issue. As a result of this case the debate within India about surrogacy has intensified. In the controversy that followed, several infirmities in the

18. Supra no. 118.
19. Ibid.
20. PareekPriya, Surrogacy- Concept or Renting a Womb, Legal Services India.
21. Supra no. 14.

arrangement came to light including the absence of a legal contract between the parties, a fact that many saw as a worrying reminder of the potential for exploitation of native surrogates. A Pandora's Box has opened with a floodgate of questions and issues related to ethics and legality surrounding surrogacy with Baby Manji case. The Supreme Court in legitimising surrogacy and equating it with an industry has re-opened the debate on commercialisation of surrogate motherhood in India. Linking surrogacy with other forms of outsourcing businesses and identifying factors like 'excellent medical infrastructure, high international demand and ready availability of poor surrogates' have raised the question on exploitation of women, abuse of their reproductive organs, lack of choice making capacity and undue pressure on women to earn money in a patriarchal society. It was observed that by Supreme Court that "commercial surrogacy reaching industry proportions are sometimes referred to by the emotionally charged and potentially offensive terms 'wombs for rent', 'outsourced pregnancies' or 'baby farms". It is presumably considered legitimate because no Indian law prohibits surrogacy. But then, as a retort, no law permits surrogacy either. However, changing face of law is now going to usher in a new rent-a-womb law as India is set to be the only country in the world to legalise commercial surrogacy[22]. Justice *ArijitPasayat* and *Justice Mukundakan Sharma* of the Supreme Court held that the father was the genetic father of the child and he was given custodial rights of the child. Ultimately, Manji Yamada was issued an identity certificate without a nationality or a mother listed, and the Japanese authorities granted her a humanitarian visa, promising to grant her citizenship once paternity was established. The Government was instructed to issue the passport to Manji Yamada and she returned with her grand –mother. Most importantly, the Supreme Court held that the Surrogacy Agreement was valid in India. What is most noticeable in the Baby Manji Yamada case is that the stance of the Court was not only pro-surrogacy it was also extremely pro-contract. The contract was held to be valid and therefore of most importance even though what the Court granted went against a particular legislation in the country.

In *Jan Balaz vs. Union of India*[23], the Gujarat High Court conferred Indian citizenship on two twin babies fathered through compensated surrogacy by a German national in Anand district. The court observed: "we are primarily concerned with the rights of two new born, 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."

The court considered the surrogacy laws of countries like Ukraine, Japan and United States. It was also stated in the judgment that there is an extreme urgency to push through the legislation answering all these issues. After a frustrating two year legal battle in India on behalf of their surrogate sons- Nikolas and Leonard- German couple Jan Balaz and Susan Anna Lohald got to go to Germany after the Supreme Court of India intervened and in a court hearing on 26 may 2010, the Indian Government agreed to provide them exit permits. The twin babies were born in the state of Gujarat in January 2008 and registered as children born of a foreign couple through an Indian surrogate mother. Upon being declined birth certificates, Jan Balaz moved the Gujarat High Court which ruled that since the surrogate mother is an Indian national therefore, the children will also be treated as Indian nationals and will be entitled to Indian passports. However, the Government of India challenged this decision stating that the toddlers being surrogate children, they could not be granted Indian citizenship, which rendered the twins stateless as they got neither German nor Indian citizenship. The German authorities had also refused visas to the twins on the ground that German law did not recognise surrogacy as a means to parenthood. Ultimately, Jan Balaz and Susan Lohald went through an inter-country adoption process in India, upon which the Indian Government granted exit permits to the German surrogate twins to enable their journey back home to Germany. Clearly, courts worldwide lean to favourably interpret existing laws aiding surrogacy[24] right[25].

A typical case that demonstrates how in the absence of a specific law on surrogacy the process can get rather difficult to resolve is that of surrogate child Emperor Kaioyus Van Buren Green, born to a surrogate mother through in vitro fertilisation. His mother J. Pearl Linda came from US with her husband Eric Dalton's sperm from cryo bank in New York. The ovum was donated by a woman in India, and Emperor was born at a fertility center in Hyderabad on December 7, 2011, using a surrogate mother. The Hyderabad Regional Passport Officer, however, declined a passport to Emperor, as it was not proved that Linda's husband was the child's biological father. Delton, a Jamaican national, had not come to India as he reportedly suffers from aerophobia (fear of flying by air). There is no Jamaican Embassy in India. Now Linda has three options to enable a travel document for Emperor: Get Eric Delton to Hyderabad for a DNA test to establish that he is the

22. Malhotra Anil, Business of Babies, The Tribune, 14 December 2008.
23. Supra no. 62.
24. Supra no. 129.
25. Jain M. P., Indian Constitution of India, 2005.

biological father; approach the US Embassy to get Daltons DNA sampling report or blood sample to Hyderabad to ascertain his parentage: or undergo the process of legal adoption /guardianship[26].

In the absence of a surrogacy law, the 2005 guidelines of the Indian Council for Medical Research are the only enabling provisions, as per which one of the parents should establish the parentage of the surrogate child. Only a DNA test can prove this. Linda is not the biological mother. Hence, only Dalton's DNA test can do it. Under the Hindu Adoptions and Maintenance Act, 1956, only the Hindus by religion can adopt in India. Linda is not a Hindu, and can only become a legal guardian of Emperor under the Guardians and Wards Act, 1890. However, without conclusive proof of who is the father, this petition may not be entertained or adjudicated by courts in India. It seems invoking the prerogative writ jurisdiction of the High Court may be the only solution possible, or else she would have to apply through the social or child welfare agency recognised or licensed in her own country as per the Supreme Court guidelines on inter-country adoption.

The Ministry of Home affairs (MHA), according to the guidelines of July 9, 2012, restricted surrogacy to foreign nationals; i.e. a man and a woman married for at least two years would be required to take medical visa for surrogacy in India. As of now, even though surrogacy is an administrative concern and in the domain of the Ministry of Health and Family Welfare (MoHFW), it has been decided that till the enactment of a law on the ART Bill, 2013, the guidelines issued by MHA will prevail till then. Hence, foreign single parent surrogacy is barred. In March 2014, the concerned departments and ministries of government of India proposed to revise the Bill with significant changes. The most crucial proposal is to restrict surrogacy in India to "infertile Indian married couples" only. Non-resident Indians (NRIs), Persons Indian Origin (PIOs) and Overseas Citizens of India (OCIs) would be eligible but foreigners, unless they are married to Indian citizens, will not. The purpose of this is to prevent exploitation of Indian women who may be tempted to take the risk of surrogacy in the face of financial hardships[27].

10. Conclussion

The practice of surrogacy is in prevalence through the ages in all societies in the world, including India in one or other form. But the practice was not openly practiced in ancient period. It was a matter of secrecy. Instances of genetic surrogacy were found in Hindu mythological stories, as there was no any documented instance. Though it was present in stories, but it is observed that, the practice was in existence through the age, before the advent of Assisted Reproductive Technologies. But in modern period, with the advancement in medical science, there has been a tremendous increase in the innovation of new techniques, which helps in the process of reproduction. With the advent of Assisted Reproductive Technologies, peoples can have a chance of procreating their own biological child. With the passage of time new techniques were developed in the field of reproduction and one of them was concept of surrogacy. Surrogacy is a method of reproductive technologies, which takes popularity since the end of 20th century, with the advent of IVF (In-Vitro Fertilization). In the beginning the concept of surrogacy was a matter of need, but as time passes and with the involvement of monetary transaction in the practice, its commercialization began. With the increasing demand for surrogacy the field of surrogacy in India gains popularity all over the world. And India is becoming the leading destination for commercial surrogacy to the peoples all over the world. In India the cost for surrogacy is very low in comparison to other countries, secondly in India the perspective surrogates are easily available, thirdly the, medical facilities are also available at a reasonable price, and lastly there is no law to restrict the practice of commercial surrogacy in India, which fetus into the growing trend of surrogacy cases here. In the absence of law the practice of commercial surrogacy becomes more controversial at legal as well as social points. It is criticized on much social ground such as on morality basis, that the practice is immoral or repugnant to human dignity, because the practice involves monetary transaction for conception and delivering a child for another's. Similarly, the practice of commercial surrogacy is also criticized for the reason, that commercial surrogacy amounts to the exploitation of the surrogate mother, but, it is contended

26. Supra no. 129.
27. Malhota Anil, Ending Discrimination in Surrogacy Laws, The Hindi Times, 3 May 2014.

Book Review

Prof. (Dr.) R.N Sharma*

The book titled India and the Rights of Indigenous Peoples by C. R. Bijoy, Shankar Gopala krishnan and Shomona Khanna, published by Asia Indigenous Peoples Pact (AIPP) an organization of Indigenous Peoples Movements in Asia, Thailand, edition 2010 is a remarkable peace of literature on the Constitutional Legislative and Administrative Provisions concerning Indigenous and Tribal Peoples in India and their Relation to International Law on Indigenous Peoples. This book has been edited by Ms. Luchie Maranan.

India being a home of largest population of Indigenous Peoples of any country of the World, the population of Indigenous Peoples has diverse ethnicities cultural and socio economic situation. In India like other Indigenous Communities around the World do share one characteristic – social, political and economic marginalization. This book has been divided into three parts:

1-Introduction to India's Indigenous Peoples, and its Legal System: In this chapter the author has described in detail the category of scheduled tribes, brief history from pre Colonial and Colonial periods. The author has also discussed the current status of scheduled tribes in the states where they are in sizeable number. The author has discussed thread bare the legal and policy frame works including the rights which have been provided by the constitution and other legislative matters. The author has also discussed these rights confirmed on Indigenous Peoples in relation to the UN, ILO and other regional instruments rectify by the Government of India.

2- In part two the author has discussed in detail the laws throw with the rights of Indigenous People have been protected. The author has referred to various constitutional provision meant for the purpose and has also covered those expects which may enable the Indigenous People to be the part of common message specially the rights relating to self-management, rights relating to protection of their culture and language, rights relating to land natural resource and environment, socio economic rights and rights of their children.

3- In part three the author has drown conclusion and put forth lot many recommendation to accord due protection to the Indigenous Peoples so that they may not feel segregated from the society.

The author has discussed in detail the case study relating to tribal of Nagaland tribal of Jharkhand State. With appropriate examples with reference tables the author has successfully explained the plight of Indigenous Peoples of the two states.

This book can be said to a best book for those who want to keep themselves abreast from the rights of Indigenous Peoples in India.

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Book Review

Arnisha Ashraf*

Politics among Nations: The struggle for power and peace (6th Edition), reprinted 2018., Hans J. Morgenthau, Revised by Kenneth W. Thompson, Published by Kalyani Publishers New Delhi- Ludhiana.

This book is very relevant to the international politics scientists who are dealing with the realistic theory of international politics.

Part one of this book contains the theory and practice of international politics. The principles of politics realism and different approaches to the science of international politics to make it more understandable has been discussed in detail. Not only this what limitations are there in understanding the problem of international peace has also been discussed in detail.

Part two of the book deals with the meaning of political power, its depreciation and the root causes of it. It has also been illustrated in detail the imperialism and economic theories of imperialism. The policy of prestige and the ideological elements in international policies has also been discussed threadbare.

Part third of the book deals with national power, roots of modern nationalism, elements of national power along with the measures to evaluate the national power.

In part four, the author discusses the balancing theory and different methods adopted for the balance of power. The author has also evaluated the uncertainty, unreality and inadequacy of the balance of power.

In part five the author has elaborately discussed the limitations of national power in international perspective. He has also discussed the psychological aspect as one of the limitations of national power.

In chapter six, the limitations of national in international law perspective has been discussed in terms of UN charter.

In part seven, the author has empathically illustrated that the new balance of power theory is inflexible and it lack in disappearance of the balancer. He has also described the potentialities of the bipolar system.

In part eighth and nine, he has discussed the problem of peace at world level and pointed out that the problem of disarmament, arms control, non use of nuclear weapon are main hurdles in maintain the peace in the world. Author advocated for peaceful change in international affairs and for formation of international government. The author advocated that problem of peace can be resolved through transformation through cultural approach, functional approach etc.

In part ten, the author advocated that peace can be achieved through accommodation. In this regard, he advocated that role of diplomates can play a leading role in accommodating and making more synthesized effort by diplomats to have cordial relations between the states. The author has also discussed nine rules which are required to be followed by diplomats.

The author concluded that the road to international peace which we have outlined cannot compete in inspirational qualities with the simple and fascinating formulae that for a century and a half have fired the imagination of a war weary world. The author guided Mr. Winston Churchill where he gave call for peace through accommodation as he had done in almost fifty speeches.

This book is illustrative and encompass the whole gamete of contemporary political powers which are being active in maintaining peace and harmony but are successful to some extent only. This book is a must read for the political scientists and by those who are one way of other in power in any of the country in the world.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 2357 OF 2017
GOVT. OF NCT OF DELHI ..... APPELLANT(S)

VERSUS

UNION OF INDIA ..... RESPONDENT(S)

JUDGMENT dated July 04, 2018

Dr. Nitesh Saraswat*

The 5 judge bench comprising Chief Justice Dipak Misra, Justices DY Chandrachud, A.M. Khanwilkar, Ashok Bhushan and A.K. Sikri unanimously held that the Chief Minister and not the Lieutenant Governor (LG) is the executive head of the government. The judgment was delivered by CJI Dipak Misra speaking for himself and other Justices. Ashok Bhushan wrote two separate concurring opinions.

The Supreme Court's judgment focused on three key constitutional questions:

(1) Status of Delhi under the Constitution

Though Delhi is not a State, it enjoys a sui-generis special status. Court added that the LG is at best an administrator in a limited sense. CJI Misra did not view Delhi as a Union Territory where LG is the executive head.

Justice Chandrachud was more categorical in stating that the administration of Union Territory under Article 239(1) is different from Article 239AA which provides for an elected Legislature. Hence Delhi is not a Union Territory.

Justice Bhushan invoked Article 239(1) and held Delhi to be a Union Territory.

(2) Lt. Governor to act on 'aid and advice' of the Council of Ministers

The judgment held that the executive power of Delhi government is co-extensive with the legislative power of the Delhi Assembly. Thus the LG is bound by the 'aid and advice' of the Council of Ministers on all matters where Delhi Assembly has the power to make laws.

CJI Dipak Misra cited principles of 'Collective Responsibility' and 'Co-Operative Federalism' to support his stance.

Justice DY Chandrachud held 'cabinet form of government' to be a basic feature of the Constitution.

In the case of Delhi, Justice Bhushan held that the LG is bound by the aid and advice of the Council of Ministers.

(3) Lt. Governor cannot refer 'every' matter to the President

The proviso to Article 239AA (4) allows the LG to reserve "any matter" for consideration of the President where the LG has a difference of opinion with the Council of Ministers. While holding that "any matter" could not mean "every matter", the judgment clarified that this power can be exercised only in the exceptional situations where there is a genuine difference of opinion with the Council of Ministers.

In April 2015, the Delhi lieutenant governor said it was not mandatory for him to send files regarding police, public order and land—his reserved subjects—to the chief minister's office. He was backed by the Ministry of Home Affairs in May 2015 which through a government notification said the LG had the final decision on matters related to police, public order, land and services, adding that the Delhi Anti-Corruption Branch (ACB) could not investigate central government employees.

In June 2015, while presenting the Delhi budget for approval to the Delhi Legislative Assembly, the deputy chief minister Manish Sisodia—acting as the finance minister—announced the government's intention to raise circle rates on agricultural land throughout the National Capital Territory of Delhi. In August 2015, Lieutenant Governor Jung opposed the government's move on circle rates and stayed it.In response, the Delhi government

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reasserted its intention to raise the circle rate, saying the LG had no say on the matter and was bound to follow the government's aid and advice.

In August 2015, the Delhi government ordered the creation of a commission of inquiry headed by retired Delhi High Court judge, to investigate the alleged CNG fitness scam that occurred during the chief ministership of Sheila Dikshit. The move was opposed by LG who referred the matter to the Ministry of Home Affairs, asking whether it was legal for the government to form a commission of inquiry without his approval.The home ministry later ruled that the Government of National Capital Territory of Delhi was "not the competent authority to set up" an inquiry commission, thus holding that the Delhi government order was "legally invalid and void ab initio".

In December 2015, the Delhi government formed a one-member commission of inquiry composed of former solicitor general to investigate an alleged scam in the Delhi & District Cricket Association.Lieutenant Governor asked for the Government of India's opinion on the legality of the inquiry commission. Chief Minister Kejriwal maintained that the commission of inquiry was legal and asked the Government of India to move the Delhi High Court if it had any issue with the commission's formation. In January 2016, the Ministry of Home Affairs informed LG that the commission was not valid because the Delhi government did not have the power to form an inquiry commission because Delhi was not a state.

In August 2016, a division bench of the High Court of Delhi ruled that the LG had "complete control of all matters regarding National Capital Territory of Delhi". The court also pronounced that all commissions of inquiry set up by the Government of Delhi were illegal, it also ruled that directions issued by the government to the Delhi Electricity Regulatory Commission and the directors nominated by it to the boards of private electricity companies were illegal. Further, the court upheld the May 2015 Ministry of Home Affairs notification which ruled that the Delhi ACB could not investigate central government employees. The court, however, said the LG was bound by the aid and advice of the Delhi council of ministers on matters related to the appointments of special public prosecutors.[Not satisfied with the high court's decision, the Delhi government decided to move the supreme court.

For The Government of National Capital Territory of Delhi (GNCTD), Chidambaram argued that Delhi's lieutenant governor was not like a viceroy but just the president's representative and that his or her powers were dependent on the president's pleasure. Chidambaram also argued that per the Government of National Capital Territory of Delhi Act, 1991, the LG was "required to act on the aid and advice" of the council of ministers of the Delhi government.Subramanium argued that the Delhi government was not debating the parliament's supremacy but said the legislative assembly also had "elbow room" in Delhi's governance, adding that the LG was misusing the powers assigned to his or her office to refer differences of opinion to the president. He also said the LG's extraordinary discretion was to be used in exceptional circumstances and not in day-to-day governance of Delhi[61] and that the chief secretary and other officers did not exercise volition on the government's welfare schemes and proposals but simply used them to mechanically defer matters for the lieutenant governor's disposition.[62]

For the GoI, Singh argued that the Delhi government's role was limited to that of municipal governance. Singh also said that because the Article 239AA of the Constitution of India came under the section for union territories, Delhi was a union territory.

While hearing the case, the supreme court said Delhi's lieutenant governor had more powers than state governors, who were supposed to generally follow the aid and advice of the state chief minister-led council of ministers.

The supreme court ruled that according to the Article 239AA of the Indian constitution, although the government had to keep him or her informed of its decisions, Delhi's lieutenant governor had no independent decision-making powers and had to follow the aid and advice of the chief-minister-led council of ministers of the Government of Delhi on matters the Delhi Legislative Assembly could legislate on, viz., all items on the State List (items on which only state legislatures can legislate) and the Concurrent List (items on which both the Parliament of India and the state legislatures can legislate) barring police, public order and land.[3][64][65][66][67][68] The court added that on matters referred to him/her, the LG was bound to follow the orders of the president.

Although the court ruled that the lieutenant governor still had the right to seek the president's opinion in case of a disagreement between him/her and the government, the president—who is bound by the aid and advice of the prime minister-headed Union Council of Ministers—would be the final authority in case of a conflict, with his or her opinion being binding on both the LG and the Delhi government, it cautioned the LG to use this power only in exceptional circumstances and not in a "routine or mechanical manner". The court, however, did not define what "trivial" differences in opinion meant.[69]

The court also ruled that "there is no room for absolutism and there is no room for anarchism also" in the governance of the National Capital Territory of Delhi.

At the same time, the supreme court—citing the report of the Balkrishnan Committee of 1987—ruled that although having a special status, Delhi was not a state; hence, unlike

state governors, Delhi's lieutenant governor was not a mere constitutional figurehead but also bore the title of administrator.

There seems to be a shift in the delicate federal balance between the Centre and the States. There's a growing concern that the Centre is pushing hard to control the opposition-ruled States through the institution of the 'Lieutenant Governor'. The Centre appoints a Lieutenant Governor, or LG, as the constitutional head of a State (or Union Territory), that wields discretionary powers. The exercise of discretionary power, exercised at the behest of the Union Government, has the potential to disrupt the federal balance.

This case brought the institution of the LG into controversy.The Court held that the LG is not the executive head of Delhi. Rather, it held that the Chief Minister and the Council of Ministers lead the executive. It clarified that the LG, who is an administrator appointed by the Union, is bound by the advice of the Chief Minister, and secondly, that the LG has no independent power under the Constitution. The Court further observed that where two interpretations are possible on textual provision, primacy should be given to an interpretation, which furthers representative democracy, a basic feature of the Constitution.

Though this case has almost settled the issue, who the executive head of the Delhi Government is, but still the questions of who heads the Services and the Anti-Corruption Bureau, and who has the power to set up enquiries over public functionaries are yet to be comprehensively settled. However, specific disputes were referred to the smaller benches. Nevertheless, the judgement has strengthened the principle of co-operative federalism by limiting the scope of the Centre's interference and by checking the discretionary powers of the LG.

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CALL FOR PAPERS

PRAGYAAN: JOURNAL OF LAW

Volume 10, Issue 1, June 2020

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Pragyaan: Journal of Law is a flagship law journal of School of Law, IMS Unison University and has been enlisted in the UGC List of Journals in the category of Social Science. Pragyaan Journal of law (JOL), a bi- annual peer-reviewed journal, was first published in 2011 and seeks to promote original and diverse legal scholarship in a global context. It is a multi- disciplinary journal aiming to communicate high quality original research work, reviews, short communications and case report that contribute significantly to further the knowledge related to the field of Law. The Editorial Board of the Pragyaan: Journal of Law (ISSN: 2278-8093) solicits submissions for its Volume 10 Issue 1 (June 2020). While there are no rigid thematic constraints, the contributions are expected to be largely within the rubric of legal studies and allied interdisciplinary scholarship.

We seek contributions in the form of:

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1. Articles (Maximum 8,000 words inclusive of footnotes and Abstract)
2. Essays (Maximum 4,000 words inclusive of footnotes)
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4. Book Review (Maximum 2,000 words inclusive of footnotes) besides other forms of scholarly writing.
   - Place tables/figures/images in text as close to the reference as possible. Table caption should be above the table. Figure caption should be below the figure. These captions should follow Times New Roman 11point.

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4. The following pages should contain the text of the paper including: Introduction, Subject Matter, and Conclusion & References. Name (s) of author(s) should not appear on this page to facilitate blind review. 5. Plagiarism Disclaimer: Article should contain a disclaimer to the effect that the submitted paper is original and is not been published or under consideration for publication elsewhere. (Annexure I) The signed document must be e- mailed/ posted to The Editor along with manuscript.
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