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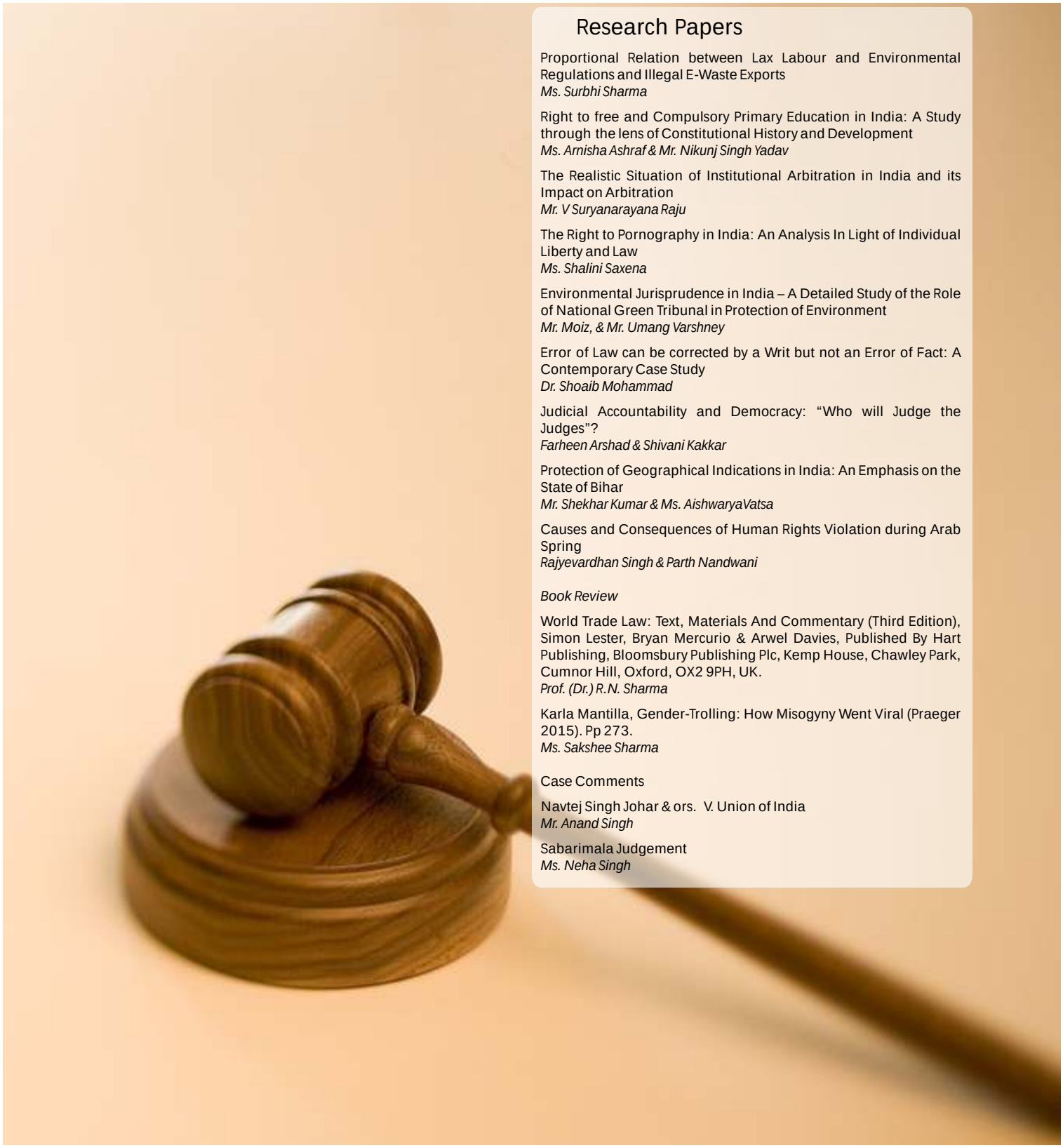

Research Papers

Proportional Relation between Lax Labour and Environmental Regulations and Illegal E-Waste Exports
Ms. Surbhi Sharma

Right to free and Compulsory Primary Education in India: A Study through the lens of Constitutional History and Development
Ms. Arnisha Ashraf & Mr. Nikunj Singh Yadav

The Realistic Situation of Institutional Arbitration in India and its Impact on Arbitration
Mr. V Suryanarayana Raju

The Right to Pornography in India: An Analysis In Light of Individual Liberty and Law
Ms. Shalini Saxena

Environmental Jurisprudence in India – A Detailed Study of the Role of National Green Tribunal in Protection of Environment
Mr. Moiz, & Mr. Umang Varshney

Error of Law can be corrected by a Writ but not an Error of Fact: A Contemporary Case Study
Dr. Shoaib Mohammad

Judicial Accountability and Democracy: "Who will Judge the Judges"?
Farheen Arshad & Shivani Kakkar

Protection of Geographical Indications in India: An Emphasis on the State of Bihar
Mr. Shekhar Kumar & Ms. AishwaryaVatsa

Causes and Consequences of Human Rights Violation during Arab Spring
Rajyevardhan Singh & Parth Nandwani

Book Review

World Trade Law: Text, Materials And Commentary (Third Edition), Simon Lester, Bryan Mercurio & Arwel Davies, Published By Hart Publishing, Bloomsbury Publishing Plc, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK.
Prof. (Dr.) R.N. Sharma

Karla Mantilla, Gender-Trolling: How Misogyny Went Viral (Praeger 2015). Pp 273.
Ms. Sakshee Sharma

Case Comments

Navtej Singh Johar & ors. V. Union of India
Mr. Anand Singh

Sabarimala Judgement
Ms. Neha Singh

Pragyaan: Journal of Law

From the Editor

It gives us great pleasure to present to readers, the 9thVolume of 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.

This Volume of the Pragyaan is fully immersed with publications which have attracted high quality submissions with variety of research topic undertaken by Indian legal fraternity. We are pleased to present eleven articles 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 are published in the journal after adopting double-blind review process.

We offer scholars to contribute their research work, either individually or collaboratively for their own development and simultaneously for making 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

Pragyaan: Journal of Law

Volume 9, Issue 1, June 2019

CONTENTS

ISSN 2278-8093

1. Proportional Relation between Tax Labour and Environmental Regulations and Illegal E-Waste Exports 1-7
Ms. Surbhi Sharma, Assistant professor, Amity Law School, Amity University Noida

2. Right to free and Compulsory Primary Education in India: A Study through the lens of Constitutional History and Development 8-12
Ms. Arnisha Ashraf & Mr. Nikunj Singh Yadav, Assistant Professor, School of Law, IMS Unison University, Dehradun

3. The Realistic Situation of Institutional Arbitration in India and its Impact on Arbitration 13-16
Mr. V Suryanarayana Raju, Assistant Professor of Law, HNLU, Raipur

4. The Right to Pornography in India: An Analysis in Light of Individual Liberty and Law 17-26
Ms. Shalini Saxena, Assistant Professor, School of Law, IMS Unison University, Dehradun

5. Environmental Jurisprudence in India – A Detailed Study of the Role of National Green Tribunal in Protection of Environment 27-32
Mr. Moiz, & Mr. Umang Varshney, Students of Law, Aligarh Muslim University, Aligarh

6. Error of Law can be corrected by a Writ but not an Error of Fact: A Contemporary Case Study 33-35
Dr. Shoaib Mohammad, Assistant Professor, School of Law, IMS Unison University, Dehradun

7. Judicial Accountability and Democracy: "Who will Judge the Judges"? 36-44
Farheen Arshad & Shivani Kakkar, Students, LL.M., IMS Unison University, Dehradun

8. Protection of Geographical Indications in India: An Emphasis on the State of Bihar 45-49
Mr. Shekhar Kumar, Assistant Professor, School of Law, IMS Unison University, Dehradun & Ms. Aishwarya Vatsa, Assistant Professor of Law, University of Petroleum and Energy Studies, Dehradun

9. Causes and Consequences of Human Rights Violation during Arab Spring 50-61
Rajyevardhan Singh & Parth Nandwani, Students, BBA.LL.B. (Hons.), IMS Unison University, Dehradun

Book Review

10. World Trade Law: Text, Materials And Commentary (Third Edition), Simon Lester, Bryan Mercurio & Arwel Davies, Published By Hart Publishing, Bloomsbury Publishing Plc, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK. 62
Prof. (Dr.) R.N. Sharma, Professor & Dean, School of Law, IMS Unison University, Dehradun

11. Karla Mantilla, Gender-Trolling: How Misogyny Went Viral (Praeger 2015). Pp 273. 63-64
Ms. Sakshee Sharma, Assistant Professor, School of Law, IMS Unison University, Dehradun

Case Comments

12. Navtej Singh Johar&ors. V. Union of India 65-66
Mr. Anand Singh, Assistant Professor, School of Law, IMS Unison University, Dehradun

13. Sabarimala Judgement 67-68
Ms. Neha Singh, Assistant Professor, School of Law, IMS Unison University, Dehradun

Proportional Relation Between Lax Labour and Environmental Regulations and Illegal E-waste Exports

Surbhi Sharma*

ABSTRACT

India's net e-waste production is nearly two million tonnesannually. Moreover, by this time, India has secured a position among the top five countries in e-waste generation.[2] On the outskirts of Delhi, spectators can look on numerous informal extractors including women and children, casually called as 'kabbadiwala' or 'raddiwalas' dismantling, handlingand mining reusable precious components with little to no protection. Toxins and chemicals absorption from such primitive manual segregation methods not only blemish the operator's health but also jeopardise nearby communities and next generations.[3] Thus, violating the right to healthy and wholesome environment intrinsic to fundamental right to life guaranteed under Article 21 of the Indian Constitution. [4] Accordingly, many countries have tightened their domestic laws with respect to dumping, recycling and dissemination of e-waste.

Key words: - lucrative E waste, fiscal drain, recycling market.

1. Introduction

The boundless appetite of the consumers to get their hands-onbrand new, beaming electronic gadgets has engendered innovative technological creations. But it also de-escalated the life-expectancy of the electronic and electrical products. Going by the technical jargon, e-waste is the unwanted by-product of the ingredients used in the making of electronic and electrical appliances that have ceased to hold any value to their owners. UN report, 2019 documented that the World produces approximately 50 million tonnes of e-waste annually,[5] approaching the weight of practically nine Great Pyramids of Giza [6]and only 20% of it is recycled. This mushrooming technological dump has transfigured into a toxic e-waste time bomb. Moreover, 80% of e-waste generated is manually segregated, dismantled or unsafely disposed in landfills by the informal workers and extractors of developing countries. Components of e-waste through and through contain heavy metals and persistent toxic substances (PTSs) condemning the workers and scrap-dealers to a lethal cocktail of lead, cadmium, mercury, beryllium, brominates flame-retardants (BFRs), polyvinyl chloride (PVC), and phthalates, among other chemicals and toxins.

India's net e-waste production is nearly two million tonnes annually. Moreover, by this time, India has secured a position among the top five countries in e-waste generation.[7]On the outskirts of Delhi, spectators can look on numerous informal extractors including women and children, casually called as 'kabbadiwala' or 'raddiwalas' dismantling, handling and mining reusable precious components with little to no protection. Toxins and chemicals absorption from such primitive manual segregation methods not only blemish the operator's health but also jeopardise nearby communities and next generations[8]. Thus, violating the right to healthy and wholesome environment is intrinsic to fundamental right to life guaranteed under Article 21 of the Indian Constitution.[9] Accordingly, many countries have tightened their domestic laws with respect to dumping, recycling and dissemination of e-waste.

Due to extended producer responsibility, take back initiatives and advanced recycling fees; e-waste disposal cost multiplied in the developed countries. Thus, primarily

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2. https://timesofindia.indiatimes.com/india/india-among-the-top-five-countries-in-e-waste-generation-assocham-nec-study/articleshow/64448208.cms
3. Liu Q, Cao J, Li KQ, Miao XH, Li G, Fan FY et al. 2009. Chromosomal aberrations and DNA damage in human populations exposed to the processing of electronics waste. Environmental Science and Pollution Research 16(3):329-338
4. Subhash Kumar v. State of Bihar (AIR 1991 SC 420/ 1991 (1) SCC 598.
5. https://www.unenvironment.org/news-and-stories/press-release/un-report-time-seize-opportunity-tackle-challenge-e-waste
6. https://unu.edu/media-relations/releases/ewaste-rises-8-percent-by-weight-in-2-years.html
7. https://timesofindia.indiatimes.com/india/india-among-the-top-five-countries-in-e-waste-generation-assocham-nec-study/articleshow/64448208.cms
8. Liu Q, Cao J, Li KQ, Miao XH, Li G, Fan FY et al. 2009. Chromosomal aberrations and DNA damage in human populations exposed to the processing of electronics waste. Environmental Science and Pollution Research 16(3):329-338
9. Subhash Kumar v. State of Bihar (AIR 1991 SC 420/ 1991 (1) SCC 598.

e-waste originating countries such as USA, Japan and EU are exporting e-waste to recipient countries such as India, Pakistan, Ghana and Nigeria, inter alia, under the aegis of charity or for recycling purposes. Eventually, the waste burden is artfully shifted to the developing countries. Current driving factor to the existing trajectory of e-waste transboundary movement is the low-cost alternative provided by low-cost intensive labour, unregulated unorganised sector and least resistant environmental laws in the least developed countries (LDCs) and developing countries.

This legal contribution describes and analyses the proportional relationship between non-existent and lax environmental regulations, unorganised cost intensive labour market and the extant global trajectory of WEEE export to developing countries. Part II of this paper provides the definition of e-waste. Part III describes the lucrative e-waste recycling market. Part IV examine show the shooting up e-waste burden could soon become a headache for the Indian government. Additionally, outlines the dangers e-waste pollution to the nearby communities, the informal workers, especially, women and children. Part V explores the various drives of e-waste exports to LDCs and developing countries. Moreover, it also explains the loopholes in the domestic policies of the developing countries that facilitate the e-waste flow. Finally, part VI contains the conclusion of the paper.

2. DEFINITION OF E-WASTE

There is no universally recognised classic definition of e-waste. This inconsistency creates tensions between domestic policies and international policies of profit driven countries.

Definition by Step Initiative Organisation: E-Waste is a term used to cover items of all types of electrical and electronic equipment (EEE) and its parts that have been discarded by the owner as waste without the intention of re-use(due to failure, technical capability, cosmetic condition, age, replacement, organizational policy, depreciation, etc.)[10].

Alternatively, electronic waste (e-Waste) loosely refers to any white goods, consumer and business electronics, and information technology hardware that is in the end of its useful life. Specifically, Puckett et al.[11]

However, e-waste depends upon the average life cycle or obsolescence rate of the electrical and electronic equipment and that is an aggregate of active life, passive life and storage. 'Active life 'denotes the number of years a machine can be efficiently and effectively operated. Additionally, 'passive life 'signifies the number of years after active life that it can be refurbished and reused. 'Storage 'amounts to time before disposal.[12]

Since, average life of electrical and electronic equipment is typically coequal to active life; although, in developing countries it is equivalent to sum of active life, passive life and storage. Hence, the North is generating e-waste at a full-blown scale and South is paying the price for the high-tech lifestyle in the North.

3. LUCRATIVE E-WASTE RECYCLING MARKET

When developed countries such as the US began shipping their e-waste to developing countries in the late 1980's, receiving nations started to form a new business sector that disposed of the waste without proper regulations, equipment, or safe disposal techniques. These businesses created jobs for people in these developing countries, and helped support many poor families. The governments running these countries also had financial incentives to accept e-waste from developed nations. For example, China's government established a collecting fee of $50 US currency per ton of waste collected.[13] Economically, the exchange was a win-win for both sides. Businesses in developed countries are able to ship their e-waste to developing countries at low cost and no longer have to keep up with strict disposal practices in their own countries. On the other side, developing countries have financial incentives to accept the waste, and the disposal business has created much needed jobs. Economically, this exchange works well for both sides. However, these incentives to ship waste to developing countries only adds to the amount of e-waste undergoing unsafe disposal practices and causes several other issues pertaining to human and environmental health.

4. WHY IS SHOOTING UP E-WASTE BURDEN A SORE SUBJECT

In order to score a larger margin in this lucrative business of mining of e-waste, all the stakeholders of the informal supply chain from the brokers to employers of the extractors to the re-sellers choose to be unethical and irresponsible. Use of the primitive methods of dismantling

10. http://www.step-initiative.org/e-waste-challenge.html
11. J. Puckett, L. Byster, S. Westervelt et al., Exporting Harm: The High-Tech Trashing of Asia, The Basel Action Network (BAN) and Silicon Valley Toxics Coalition (SVTC), 2002, http://www.ban.org/E-waste/technotrashfinalcomp.pdf.
12. http://shodhganga.inflibnet.ac.in/bitstream/10603/138634/9/09_chapter%203.pdf
13. Sthiannopkao S, Wong MH (2013) Handling e-waste in developed and developing countries: Initiatives, practices, and consequences. Sci of the Tot Environ 463: 1147-1153.

and extracting provide the unorganised sector with a competitive edge over the organised sector. But this money saving act is eventually very costly to the environment. Recipient developing countries leading the pack in accepting e-waste from the developed world today include China, India, Pakistan, and Nigeria.[15]

More than ever the approaching future of extant and upcoming generations depends upon the management waste, especially e-waste.

5. A Dangerous Human Dimension of E-Waste

About 76% of e-waste workers in India suffer respiratory ailments like breathing difficulties, irritation, coughing and choking due to improper safeguards, according to a study Electronic Waste Management in India by industry lobby group ASSOCHAM.[16]This part explores the illustrations of intimidating environmental and human health effects cause by unsafe recycling and manual extraction of metals from the case studies countries such as China, Nigeria, Philippines, Brazil, etc.

People in developing countries are exposed to hazardous chemicals in a variegated ways. Victims of e-waste can be affected by direct exposure as well as indirect exposure. Direct exposure can occur when the toxic chemicals are inhaled, touched by skin contact, or ingestion of the chemicals. Many of the chemicals found in electronic components can easily leach out into local water sources, find their way in food, and can easily be blown away by the wind and transported into the air. Mercury, a heavy metal found in thermostats, fluorescent bulbs, and other household items bio accumulates in wildlife, especially fish when mercury is deposited in the lakes and streams. While some fish are safe to eat, others become toxic to the point where little consumption can be very harmful to human health.[17]

Chemicals can originate from major household appliances encompassing refrigerators, washers, and dryers also from consumer accessories numbering TVs, cell phones, computers, monitors, and even sporting equipment. Some of these components that contribute to the toxic waste include batteries, circuit boards, cathode-ray tubes, and lead capacitors. [18]The majority of the e-waste is comprised of iron and steel (50% of waste). However, majority of these components contain toxic compounds like PCBs, dioxins, and heavy metals in their elemental forms. Lead, Cadmium, Nickel, and Lithium alone are found in used batteries, being mass produced in electric vehicles.[19]

In Bangladesh, at a shipyard in Chittagong, contamination plagued the nearby soil from chemicals that are commonly found in electronic waste. Soil samples contained compounds such as "lead, mercury, cadmium, arsenic, antimony trioxide, polybrominated flame retardants, selenium, chromium, and cobalt".[20]Despite the risk, many developing countries do not have proper regulations and policies in place to protect the local people and environment. For example, in Nigeria precious metals are removed from circuit boards by using acid, and then dumping them onto the ground or into streams.[21]

The toxins exposed to the environment from e-waste disposal threaten local ecosystems. One study in Guiyi tested the surrounding paddy farm soil and found levels of polybrominateddiphenyl ethers (PDE) and polychlorinated di-benzo-p-dioxins that exceeded international guidelines for agricultural areas.[22] Heavy metals in the soil can contaminate plants. If these plants are consumed by humans, the heavy metals can then accumulate in human bodies and cause harmful effects.

Studies in Guiyi also found high levels of PDEs, lead, and copper in the towns road dust. Increased dust levels correspond to higher levels of pollution and suspended solids. Dust tested in 2008 in Guiyi is found to have lead and copper levels 300 times higher than surrounding areas without e-waste dumping sites. Particulate matter from heavy metals in the air can increase risks of mortality and morbidity. This risk is most serious for workers, as the suspended solids tend to concentrate inside the e-waste

14. https://www.omicsonline.org/open-access/effects-of-electronic-waste-on-developing-countries-2475-7675-1000128.php?aid=88750#3
15. Garlapati VK (2016) E-waste in India and developed countries: Management, recycling, business and biotechnological initiatives. Renew and Sustain Ener Rev 54: 874-881
16. https://www.livemint.com/Politics/tt0SWNyPcg7IqbwugF2VCK/76-of-ewaste-workers-in-India-suffering-from-respiratory-a.html
17. https://www.omicsonline.org/open-access/effects-of-electronic-waste-on-developing-countries-2475-7675-1000128.php?aid=88750#9
18. Perkins BD, Nxele S (2014) E-waste: A Global Hazard, Annals of Global Health. Article and Rev 80: 286-295.
19. Lin X, Xu X, Zeng X, Huo X (2017) Decreased vaccine antibody following exposure to multiple metals and metalloids in e-waste-exposed preschool children. Environ Pollution 220: 354-363.
20. Alam M, Bahauddin KM (2015) E-Waste in Bangladesh: Evaluating the Situation, Legislation and Policy and Way Forward with Strategy and Approach. PESD 9: 25-46.
21. Kiddee P, Naidu R, Wong M (2013) Electronic waste management approaches: An overview. Waste Manag 33: 1237-1250.
22. Kiddee P, Naidu R, Wong M (2013) Electronic waste management approaches: An overview. WastManag 33: 1237-1250.

dismantling workshop.[23]

6. Economical Headache and A Possible Fiscal Drain

Land is a limited resource that is available to each country. Some percentage of e-waste is recycled in the developing country and some precious metals are extracted out of it. However, the non-functional part and the material that has no profitable resale valueis dumped unsafely in the nearby feasible landfills. India is itself a net e-waste producer. More than 70% of collected urban waste is dumped at landfills. And most of them are brimming.Javadekar the then environment minister in 2017, pointed out that 43 million tonnes of solid waste are collected annually, out of which 11.9 million (22-28%) are treated and 31 million (72-78%) are dumped at landfill sites. If garbage is dumped at the current rate without any treatment, 1,240 hectares of land will be required in the form of landfill area per year.[24]

Landfilling is one of the major municipal solid waste (MSW) disposal methods practiced worldwide. Though it is considered most cost-effective means of waste disposal, but poor management practices especially in developing countries like India are the major causes of environmental pollution. Recently several studies have been carried out to understand the effects of landfill pollution on human health as well on the environment. Toxic gas emissions from landfills pose a serious threat to the environment as well as on human health. Some studies have shown that toxic gases released from landfill sites are even responsible for lung and heart diseases in humans. Landfills also generate a toxic soup known as leach ate, formed when waste is subjected to biological and physiochemical transformation. Leachate is highly toxic and causes land and groundwater pollution.[25]

At the root of the problem is poor or no segregation of garbage by the municipalities and lack of 'engineered' landfills in Delhi. The only scientific landfill site in the city that captures leachate (liquid) and vapours is at Narela-Bawana. According to experts, unless garbage is handled in a more systematic manner, pollution levels in the national capital will spike alarmingly with each passing year.

Points out Chitra Mukherjee, head of programmes at the Delhi-based Chintan Environmental Research and Action Group: "In the long run we must do away with landfills and follow a decentralised model of solid waste management."

According to her, that would entail handling waste at the local level along with its collection, segregation, transportation, treatment and disposal. It would also require waste segregation at source into organic, recyclable and injurious materials. [26]

7. E-Waste Work and Its Impact On Women and Children's Health

Unfortunately, even among those that are often socially under-acknowledged there are some populations that have it worse than others. As might be expected, there is a widespread stigma associated with doing waste work. Women in India's Dalit caste for example, are at the bottom of the e-waste recycling hierarchy. Typically, Dalit families live close to waste sites and make their living by scavenging for waste, which they take to others to process and sell. In many of these groups, women and girls are accorded a lower social status than men and boys.[27] Women are thus disproportionately affected by the e-waste sector, since it is they who often assume the lowest-tier jobs. They are, as it were, the "lowest of the low."

As the lowest of the low, women waste workers operate not only under the radar of many policy makers and politicians, but also in the shadows of the household.[28] Of the 14 general types of hazardous chemicals commonly found in e-waste, more than half affect women's general reproductive and endocrine functions. Women exposed to environmental toxins such as heavy metals, flame retardants, PCBs, and phthalates may suffer from anaemia, foetal toxicity, hormonal effects, menstrual cycle irregularities, endometriosis, autoimmune disorders, and cancers of the reproductive system.

E-waste work may also be tied to fertility problems. Lead and mercury exposure within the first trimester of pregnancy may affect foetal development, resulting in potential neurobehavioral development problems, low birth weight, or spontaneous abortion and birth defects.[29]Ambient air pollution, a consequence of burning

23. Zhang WH, Wu YX, Simonnot MO (2012) Soil contamination due to e-waste disposal and recycling activities: A review with special focus on China. Pedos 22: 434-455.
24. https://thewire.in/environment/landfill-solid-waste-cpcb
25. https://www.researchgate.net/publication/325966193_Scenario_of_Landfilling_in_India_Problems_Challenges_and_Recommendations
26. https://www.thehindubusinessline.com/specials/clean-tech/time-to-dump-the-dumpyard/article25301672.ece
27. J.A. McFalls, Population: A lively introduction (Washington, DC: Population Reference Bureau, 2007).
28. M. Waring, "Counting for something! Recognizing women's contribution to the global economy," in A. M. Jaggar (ed), Just methods: an interdisciplinary feminist reader (Boulder, CO: Paradigm Publishers, 2008), pp. 97-104.
29. L. M. Frazier and D. B. Fromer, "Reproductive and developmental disorders," in B. S. Levy, D. H. Wegman, S. L. Baron, and R. K. Sokas (eds), Occupational and environmental health: Recognizing and preventing disease and injury (Oxford: Oxford University Press, 2011), pp. 446-460.

e-waste in open-air pits, is also linked to reduced fertility. The damage to reproductive function after several years of exposure to this pollution is irreversible. For many women, this damage has occurred before they even reach reproductive age. Children may also be exposed to toxins by working directly with e-waste, playing near a processing area, or even through interacting with parents who work with e-waste outside the home. For example, "e-waste processing workers may unintentionally carry hazardous materials home on their skin and clothing, subjecting their families to unintended exposure."

8. WHAT INDUCES E-WASTE EXPORTS TO LDCs AND DEVELOPING COUNTRIES?

The near-universal adoption of the Basel Convention in 1989 placed restrictions on the trans boundary movement and disposal of toxic wastes, thus ostensibly addressing equity, health, and environmental issues arising from the transfer of hazardous waste between more-developed countries (MDCs) and LDCs. The US, however, is one of two signatories that has not ratified the Convention, and still exports significant quantities of hazardous waste—including e-waste. The UN Millennium Development Goals (MDGs)—which include, among other things, (1) promoting gender equality and empowering women, (2) reducing child mortality, (3) improving maternal health, (4) ensuring environmental sustainability and (5) securing global partnerships for of locally, approximately 50-80% of e-waste is shipped to LDCs such as China and India.Sometimes this disposal is legal, though often it is illegal or disguised as 'donations.' Since MDCs like the European Union (EU) and the US produce an estimated 12 million tons of e-waste annually, this constitutes a substantial burden shifting.There can be little doubt that MDCs either legally or illegally shift the disposal burden to LDCs primarily for economic reasons. Disposal is cheaper in LDCs for a number of reasons, including cheaper local labour markets, relaxed enforcement of existing regulations, and because costs such as the health of workers and the environment, which can be severe, are externalized.

For the most part, the international community recognized the growing health and environmental dimensions of the transnational movement of e-waste in the early 1980s, and responded by negotiating the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The Convention specifically addresses the vulnerability of LDCs due to the increasing likelihood of businesses from industrialized states disposing of their hazardous waste in cheaper as well as less environmentally regulated countries.Yet the US, the single largest exporter of hazardous waste, has not ratified the Basel Convention and continues to export hazardous waste, and in particular e-waste, to LDCs. In this respect, the people most severely affected by e-waste are effectively unrecognized by those who are most responsible for generating the waste.

To underscore the significance of this point, consider that one-quarter of India's population lives below the international poverty line of $1.25 a day. Informal recyclers in India can earn between $2-5/day by selling collected and sorted waste through middlemen up the recycling chain.[31] Thus, the poverty of hundreds of millions of their citizens, in addition to their ever-increasing need for raw materials, as well as the immediate monetary benefit of importing hazardous waste, forces LDCs to view e-waste as a commodity first, and a health and environmental issue second. Additionally, trade agreements, loan conditions, and aid agreements with the international community influence the economic decisions of LDCs. In order to benefit from significant monetary packages, governments may feel pressure to ignore international hazardous waste standards. When they do, the poor and the politically voiceless have little recourse. It would be easy to characterize these negative outcomes as "externalities," but we hope to have shown that these are not mere externalities. They are more aptly characterized as a consequence of failed recognition, the impact of which leads to the violations of the human rights of people living in poverty.[30]

The unorganised sector is the traditional subsistence sector based on production for the purposes of domestic consumptions restricted local market production relations of an informal face-to-face multifaceted type use of simple technology and man-tool relations of a direct nature.[31]

The informal sector is the result of the under-development which is a necessary evil of capitalist sector and underdeveloped agricultural economy. The growing size of the employment sector is mostly due to the Inability of the formal sector in generating and providing employment to the increasing human resources.[32]

Today the unorganised or the informal sector account for more than 90 per cent of the workforce in the country and almost 50 per cent of the national income evolves from this sector . Ever since the initiation of the liberalisation policies

30 https://www.hhrjournal.org/2014/07/women-e-waste-and-technological-solutions-to-climate-change/

31. SubhadraChanna, "What to do with the Informal Sector of the Indian Economy - Reflections from Case Studies", Man in India, Vol.68, S.No.2, June, 1988, p.187.

32. http://shodhganga.inflibnet.ac.in/bitstream/10603/65369/7/07_chapter%201.pdf

in the early nineties, informalisation of jobs has become a matter of concern. Growing competition combined with increased market opportunities and limited resources have led to the emergence of an informal economy. The predominance of the informal sector has led to a situation of the benefits of economic growth being concentrated among few with a growing proportion of the population living as working poor.[33]

Formal-Informal employment is spread across two sectors viz; organised (formal) and unorganised (informal). The National Commission for Enterprises in the Unorganised Sector (NCEUS) has defined the informal/ unorganised sector as all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten workers. Informal workers being spread both in organised and unorganised sector, the NCEUS also gave a definition of informal workers as, Informal workers consist of those working in the informal sector or households, excluding regular workers with social security benefits provided by the employers and the work.

Reasons for Informalisation of Workforce Literature indicates labour market rigidities, poor skill levels, increasing competition from imports as the factors inducing creation of informal employment and decline of formal employment opportunities.[34]

9. Lax Domestic Laws

In August 2006, when the Abidjan Hazardous Wastes Crisis exposed the occurrence of illegal hazardous waste exports from Europe, the UNEP Executive Director, Achim Steiner stated: "As global trade flows expand and tough domestic controls raise the costs of hazardous wastes disposal in developed countries, the opportunities and incentives for illegal trafficking of wastes will continue to grow."[35] It is an affirmation of the rising trend in the export of hazardous wastes by fraudulent means in global trade.

Normally, a computer recycler in the U.S., for instance, would scan the incoming electronic waste materials for its most valuable components and probably sell them in a store or to specially brokers. The rest of the material would be broken down and sorted according to the type of waste (eg. circuit boards, wires and cables, plastics, cathode ray tubes (CRTs), and non-recyclables). These are sold to the brokers who then ship them mainly to China or the South Asian countries—India, Pakistan and Bangladesh. Alternatively, the e-waste materials are sometimes simply sold off in bulk without any separation whatsoever. E-waste brokering is an aggressive and competitive business and buyers for all kinds of e-waste for the Asian market are always available.[36]

Illegal export becomes possible when the environment and occupational regulations are non-existent, minimal, lax or not well-enforced, as they are in some developing countries. Low labour costs in these countries also provide the impetus for the export in wastes. For instance, labour cost in China is $1.50 per day.[37] In addition, exporting e-waste is more lucrative for the exporter country than recycling or disposing it within the country. For instance, waste traders in Europe or USA have to pay US $20 to recycle a computer safely in their countries while they can sell it at half the cost to the informal traders in developing countries.[38] Again, while it costs Rs. 12,000 to recycle a tonne of rubbish after segregation in the U.K., shipping the rubbish to India costs just about Rs. 2,800.[39]

The U.S. produced five times more hazardous waste in 2002 (265 million tonnes) than it did in 1975 (57 million tonnes). The cost of managing such waste within the country would be enormous depending on the toxicity and reactivity of the substances. Thus, it would be more economical to ship toxic wastes to the developing countries when the cost is negligible. Considering its cost-effectiveness, export is a clandestine option chosen by some companies in the industrialized countries. The illegal exports are mostly justified as 'charity' or as 'recycling'.[40]

India's Ministry of Environment and Forest (MoEF) is to place legal liability for reducing and recycling electronic waste with producers for the first time under the E-waste (Management and Handling) Rules 2011. The rules, which form part of the Environment Protection Act, will come into effect from 1 May 2012.

A provisional rule drafted by the Ministry last year included a ban on import of second-hand electronic equipment for charity or other re-use – much of which passed into the hands of informal recyclers. This clause has been removed

33. http://shodhganga.inflibnet.ac.in/bitstream/10603/65369/7/07_chapter%201.pdf
34. http://www.ies.gov.in/pdfs/CII%20EM-october-2014.pdf
35. 'UNEP Responds to Abidjan Hazardous Wastes Crisis', , Geneva, 8 September, 2006.
36. https://rajyasabha.nic.in/rsnew/publication_electronic/E-Waste_in_india.pdf
37. Schwarzer S., A.D. Bono et al, 'E-waste, the hidden side of IT equipment's manufacturing and use', Environment Alert Bulletin (UNEP Early Warning on Emerging Environmental Threats) No. 5, 2005.
38. G.S. Mudur, 'Rest in Pieces', The Telegraph, 28 March, 2004
39. RadhaVenkatesan, 'Is India a global trash can?', The Times of India, — 24 April, 2010.
40. https://rajyasabha.nic.in/rsnew/publication_electronic/E-Waste_in_india.pdf

from the final rule.

The proposed rules, however, do not recognize the magnitude of transboundary movement of e-waste under different categories, said Aashish Chaturvedi, programme manager of gtz. "It only declares imports for charity illegal. What about the other ways through which e-waste is imported? For example, under the pretext of metal scrap and second-hand electrical appliances, Electronics can now be imported for refurnishing and repair," he added. The proposed rules, for the first time in India, bring in the concept of extended producer responsibility, making manufacturers liable for safe disposal of electronic goods. It requires manufacturers to take back the products after their life is exhausted and devise discount schemes for consumers who return the products. A company called E-WARDD got itself registered in March this year. It used to be an informal association of recyclers in Karnataka. The law currently does not provide for any plan to rehabilitate those involved in informal recycling, said a senior environment ministry official.

The Department of Industrial Research, which studied the status and potential for e-waste in India in February 2009, said a symbiotic relationship between the formal and the informal sector was crucial. "The informal sector's role in collection, segregation and dismantling e-waste needs to be nurtured to complement the formal recyclers as supply chain partners. They should take on the higher technology recycling processes," the study said.[41]

10. CONCLUSION

In as much as least-developed countries (LDCs) and developing nations generally lack financial or institutional resources, they may only be able to respond to, rather than initiate, technological management strategies themselves. In this respect, any downstream health and environmental costs are effectively foisted upon the citizens of those countries. LDCs and developing countries could gain greater control by staying ahead of the discussion. The south is paying the high price for the high tech lifestyle of the north. Companies and nations who don't want to comply with the regulations choose to free ride by exporting the e-waste to third world countries by illegal means. They do it to gain financial and operational advantage over other companies in this brutal profit driven economy. There is a need for harmonised definitions of keywords so that developed countries can no more mis utilise the terms such as used goods or charity or donations and quite artfully shift the burden to the developing countries. New rules on e-waste in India don't talk about imports. Export import policies are tax and allow the developed countries to export non-functional e-waste under different pretexts. Developed countries take the pain of transporting e-waste because of the cost effective parallel informal labour markets in countries like India. No environmental regulations are effectively enforced. Hence, facilities provided to miners and extractors are minimum and hence, cost is reduced by price suppressing effects. If India wants to reduce the burden of e-waste, policy makers need to build and enforce environmental regulations. Moreover, the informal sector is to be brought under organised sector. Otherwise, India will end with huge amount of e-waste and no land resource to use as landfills for dumping and the cost of harmful environmental effects would be fiscally drowning.

41. https://www.downtoearth.org.in/coverage/tricks-of-the-ewaste-trade--325

Right to Free and Compulsory Primary Education in India: A Study through the lens of Constitutional History and Development

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ABSTRACT

Primary education also called an elementary education is typically the first stage of formal education, coming after preschool and before secondary education. Primary education usually takes place in a primary school or elementary school. In some countries, primary education is followed by middle school, an educational stage which exists in some countries, and takes place between primary school and high school. Primary education is very important and should be imparted to all children between the age 6-14 years as there is no other alternative to it. If history of Indian Primary education is track back, we find mention of education in primary form in Vedas and old scriptures.

Key Words: Primary, Education, Constitution

1. Introduction

Free and compulsory education for all children in India is the constitutional commitment/directive to be fulfilled by the State under Article 45 and 21-A thus, making it a fundamental right inserted through the Constitution (Eighty-sixth Amendment) Act, 2002. And, the aim of this educational movement is to achieve the goal of universalization of primary education. The system provides children with an education that is free from pressure, anxiety and fear as it entitles all children from the age of 6-14 years for free and compulsory education.

During appropriation of the Constitution in 1950, one of the principle objective of Indian government was to accomplish the objective of Universalization of Primary Education inside the following ten years for example by 1960. Keeping in view the instructive offices accessible during around then, the objective was extremely yearning to accomplish inside a limited capacity to focus ten years since Indian training framework is maybe the biggest instructive framework everywhere throughout the world. As it have a large number of understudies of different monetary foundation from essential stage to college level. Consequently, the deadline was moved on various occasions. Till 1960, all endeavors were centered around arrangement of tutoring offices. It was simply after the close to acknowledgment of the objective of access that different segments of essential training, for example, enrolment and maintenance, began getting consideration of organizers and strategy producers. It is the Quality of Education, which is at present in the concentration in all projects identifying with essential training when all is said and done and essential instruction specifically.

2. Historical Background of Primary Education:

Before discussing the development of elementary education in India, we should look the trace the historical background of Indian primary education. As quoted by Ram Nath Sharma in his book "*History of Education in India*"[1], knowledge can be gained by three steps according to ancient Indian philosophy. They are *Shravana* or Hearing, *Manan* or Meditation and *Nididhyasan* or realization. Training in antiquated India was free from any outside control like that of the state or Government or any gathering legislative issues. One of the most significant obligations of the ruler was to ensure that the scholarly intellectuals sought after their investigations and their obligation of giving learning without impedance from any source whatever. So additionally instruction didn't experience the ill effects of any common intrigue or preferences in India. There were three agencies of education which were Gurukula or the group of the instructor and his home where the students used to remain during the time of study. The second is Parishad or greater instructive establishments where a few instructors used to encourage various subjects and the third is the Sammelan which abstract methods getting together for a specific reason. In this kind of instruction establishments researchers assembled at one spot of exchanges and rivalries for the most part on the solicitations of the ruler.[2]

In ancient India, education was free and available to all except the Shudras who looked for it, yet in later occasions, it was constrained and confined to just the Brahmans. However, the Buddhist who denounced the caste system made education accessible to all regardless of any caste.[3] The aim of education was to prepare the different castes of

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1. Ram Nath Sharma &Rajendra Kumar Sharma, HISTORY OF EDUCATION IN INDIA,2(Atlantic Publishers and Distributors, 2004).
2. Sharma, History, 2.
3. Sharma, History, 7.

people fir their actual needs of life. The subjects of instructions varied according to the vocational needs of the different castes, for instances from the Vedas and Vedangas in the case of Brahmans, to the art of warfare for Kshatriyas and to agriculture and trade, art and crafts in the case of the Vaishyas.[4]

Universities in ancient India were not well organized bodies like the universities of modern times. Among some of the important places of higher education in ancient period were Takshila, Nalanda, Vikramshila, Valabhi and other.[5]

Like the Hindu rulers, the muslim rulers too held education and learning at a higher position and respected and patronized learned men and regarded it as a religious merit to encourage, support and impart education. As mentioned by S M Jaffar in his book,"*Education in Muslim India*", Islam attaches incredible significance to securing and expansion of "ilm" or Knowledge.Medieval[6] period witnessed a radical transformation in the Indian subcontinent. The country was invaded by various foreign rulers and several traders from around the world came and settled in the country. These people carried with them their own culture and intermixed with the individuals of the each region of the state. The Mughal rulers came to India and established their rule, Education developed with a fresh aspect during that period, as there was a phenomenal communication between Indian and Islamic conventions in all fields of learning like religious philosophy, religion, reasoning, expressive arts, painting, design, arithmetic, drug and stargazing.

Instruction in medieval India prospered for the most part during the Mughal rule from the beginning of 1526 until the end of Mughal political presence in 1848. The Muslim rulers promoted urban education by bestowing libraries and literary societies. Primary education was imparted through the 'Maktab' which were attached to mosques.[7] Maktabs were places where students learned reading, writing, and basic Islamic prayers. Madrasahs or secondary schools were to teach advanced language skills. The courses that were taught in Madrasahs generally included grammar, logic, theology, rhetoric, literature, and other subjects. The course of studies in Calcutta Madrasa founded by Warren Hastings, the first Governor General of India in 1791 included grammar, logic, theology, rhetoric, literature,, law, arithmetic, geometry, astrology and natural philosophy.

In 1793, when the East India Company's Charter was renewed, an attempt was made by some people in England to compel the Company to spend a portion of the revenues of India on the education of the Indians.[8] However, this suggestion never observed the beam of light. Also, it was the Christian missionaries from whom the Indian masses basically received religious education pertaining to Christianity In any case, the East India Company didn't permit the evangelists for the proliferation of religious education to the ordinary citizens in India. Since, they felt that the education from the missionaries would encourage the religious sentiments among the people in India that could affect the business policy and the diplomatic role of the East India Company. In this way, from 1793 to 1813 the organization didn't allow the preachers to work for the Indian individuals. Thus, it created an agitation against the East India Company that the Company was opposed to the teachings of Christ and neglected to provide education for the Indians. Interestingly, the agitation was supported by many in England and ultimately made a conclusion by making an attempt to impart education and learning to the Indians through an education clause which came to be known as Charter Act of 1813. Hence, this Act ultimately made a State system of Education in India[9].

By this Act, the British Government facilitated that besides ensuing to settling the expenses of the civil, and commercial establishments, a sum of not less than one lakh rupees each year shall be set apart out of the surplus arising from the territorial acquisition, for the revival and improvement of the education of the Indians. As such the Charter Act of 1813, obliged the East India Company to recognize obligation with respect to the guidance of the Indian people and imparting education to them.

The present system of education in India can be credited to the undertakings of Christian clergymen. Their earliest efforts were restricted confined mainly to elementary education. In different areas of the country elementary schools were set up by the evangelists. Also, they displayed another plan of guidance, which rehearsed a basic impact on the present course of action of the country. Right when the British Government passed the agreement Act of 1813, the Company was facilitated to recognize the commitment of educating the Indians.

During the early half of the nineteenth country, the progress of primary education was unsatisfactory. When the charter

4. Sharma, History, 9
5. Ibid ,15
6. S M Jaffar, EDUCATION IN MUSLIM INDIA , BEING AN INQUIRY INTO THE STATE OF EDUCATION DURING THE MUSLIM PERIOD OF INDIAN HISTORY(1000-1800),1(Idarah- I AdbiyatDelli, 2009).
7. K.S.Vakil, EDUCATION IN INDIA, 35. (Allied Publishers Private Limted,1954),.
8. K.D. Basu, HISTORY OF EDUCATION IN INDIA UNDER THE RULE OF EAST INDIA COMPANY, 5 (The Modern Review Office, Calcutta).
9. Basu, History,147.

of the East India Company was renewed in 1853, need was felt for complete audit of the whole field of education in India.

It was in the year 1854, the Educational Despatch, popularly known as the Woods Despatch brought a noteworthy historical importance in the establishment of graded schools through out India.[10]

The Despatch rejected the Downward Filtration Theory, recognized indigenous evaluation schools as the foundation of the enlightening system and proposed a course of action of honor in assistance to schools which were not genuinely administered by government. In the year 1882, Lord Ripon assigned Indian Education commission under the chairmanship of William Hunter fundamentally to review the progression of basic preparing.

The commission recommended "Primary education be regarded as the instruction of the masses through the vernacular in such subjects as will best fit them for their position in life, and be not necessarily regarded as a portion of instruction leading up to the university."

Regarding legislation and administration, the District and Local Boards were given definite power and after 1882, the management of primary education became the responsibility of the local bodies and they were to be guided by the department's rules laid down by the government.The period from 1904 to 1912 was however a period of consideration, yet results were not the slightest bit great or dynamite. At that point the exchange of instruction to the common control under the Montague Chelmsford Reform of 1919, prompted the opening of new plans and of new types of the board of essential training. The Harlog Committee 1929, which was selected by the Indian Statutory Commission to study the development of instruction in British India and gave more consideration to mass training. Looking into the advancement of mass training the board of trustees prescribed a portion of the recommendations with respect to the issues of wastage and stagnation in the field of essential instruction.[11]

The Government of India Act, 1935, presented some sacred changes and commonplace Autonomy was given in the field of instruction. In 1937, Mahatma Gandhi communicated his own thoughts regarding the issue of training in India and propounded Basic Education. Gandhi's plan of Universal free instruction, his useful program for mass recovery, the acknowledgment of popularity based lifestyle and the resulting developing confidence in training drove the route for the execution of mandatory training.[12]

After Independence in the year 1950, the Constitution of India in Article 45 includes a directive that, free and compulsory elementary education for all children up to the age of 14 should be provided within ten years of the commencement of the constitution. For the qualitative development of Primary education steps were taken in different Five Year Plans and funds were allocated for the said purpose. The Government of India appointed different committees and commissions for the qualitative improvement of primary education in the country.[13]

Huge endeavors have been made over the most recent fifty years to universalize rudimentary training. Since 1950, great advancement has been made in each circle of rudimentary training. In 1950-51, there were around 210 thousand essential and 14 thousand upper elementary schools. Their numbers are currently expanded to 627 thousand and 190 thousand individually as in the year 1998-99; along these lines demonstrating a normal yearly development of 2.30 and 5.58 percent per annum. Upwards of 83 percent of the complete 1,061 thousand residences approach essential tutoring offices inside 1 km and 76 percent homes to upper essential tutoring offices inside a separation of 3 km. Around 94 and 85 percent of the absolute country populace is gotten to essential and upper grade schools/segments. The proportion of essential to upper grade schools after some time has improved which is at present 3.3. More than 84 percent of the all out 570 thousand grade schools in 1993-94 had school structures. The quantity of single-instructor grade schools has likewise extensively declined.[14]

The quantity of educators both at the essential and upper essential degrees of training after some time has expanded numerous folds. From a low of 538 thousand out of 1950-51, the quantity of elementary teachers in 1998-99 expanded to 1,904 thousand (MHRD, 2000a). Additionally, upper essential educators during a similar period expanded from 86 thousand to 1,278 thousand. The student educator proportion is at present 42: 1 at the essential and 37:1 at the upper essential degree of training. Regardless of the noteworthy improvement in number of educators, the level of female instructors is still low at 35 and 36 percent individually at the essential and upper essential degree of training. Be that as it may, most

10. Basu, History,161.
11. https://shodhganga.inflibnet.ac.in/bitstream/10603/118542/8/08_chapter%205.pdf
12. Ibid
13. Ibid
14. https://www.educationforallinindia.com/page101.htm

of instructors, both at the essential (87 percent) and upper essential (88 percent) levels, are prepared.[15]

Over some stretch of time, enrolment, both at the essential and upper degrees of instruction, has expanded altogether. From a low of 19 million of every 1950-51, it has expanded to around 111 million out of 1998-99 at the essential and from 3 to 40 million at the upper essential level. At present, the enrolment proportion (net) is 92 and 58 percent separately at the essential and upper essential degree of training. The level of young lady's enrolment to the absolute enrolment at the essential and upper essential degree of training in 1998-99 was around 44 and 41 percent. In spite of progress in degrees of consistency, the drop out rate is still high at 40 and 57 percent separately at the essential and basic degree of training. The progress from essential to upper essential and upper essential to auxiliary level is as high as 94 and 83 percent. Be that as it may, the student's accomplishment the nation over stayed inadmissible and far beneath than the desires. The Government of India started various projects and activities to achieve the status of all inclusive enrolment. Regardless of all these huge accomplishments, the objective of general rudimentary instruction stays subtle and far a far off dream.[16]

3. Development Phase in Elementary Education:

According to the United Nations Education board, India is the only country, has progressed the most over the world by sending students to school at elementary stage. United Nations also lauded Indian government effort in implementing the welfare program in elementary education. Significant efforts have been made by the Indian government for the progress in every sphere of elementary education. India's elementary education was portrayed by historical inequalities at the time of independence. But, the Indian government commitment in ensuring free and compulsory education for all elementary students has made a remarkable progress as an evident from the provision of schooling facilities. Official statics reveal the progress of history and development of elementary education in India.

4. National Policy on Elementary Stage:

Starting approaches and activities were made to defeat the issues in rudimentary instruction, yet the characteristics and investments as far as basic training still continue. Be that as it may, the national strategies with the wide scope of difficulties were planned by the administration to provide another guidance in setting of present day substances and future concerns. What's more, this national arrangement additionally prescribed the base level learning for all understudies at rudimentary stage and arrangement of youngster driven showing approach in grade schools.

5. Strategies & Equality Education:

The last but the most important point to consider in Indian education is equality of education, and that is measured in terms of student accomplishment. If we look back at the history and development of elementary education in India, government took the responsibilities of the new innovation and strategies that are being applied to the elementary stage education. Some of the major innovations and strategies are: decentralized micro planning providing the platform of universal participation, non formal education system for them who can't afford the full time schooling, improved facilities by revamping school operational board and many more. However, Indian government commitment in elementary education has made the largest progress in terms of any country in the world.[17]

6. Key Highlights of Union Budget 2019-20 with respect to Education:

New National Education Policy to be brought which proposes:-

- Major changes in both school and higher education.
- Better Governance systems.
- Greater focus on research and innovation.
- National Research Foundation (NRF) proposed.
- To fund, coordinate and promote research in the country.
- To assimilate independent research grants given by various Ministries.
- To strengthen overall research eco-system in the country.
- This would be adequately supplemented with additional funds.
- Rs. 400 crore provided for “World Class Institutions”, for FY 2019-20, more than three times the revised estimates for the previous year.
- Study in India' proposed to bring foreign students to study in Indian higher educational institutions.
- Regulatory systems of higher education to be reformed

15. Ibid
16. Ibid
17. https://www.brainbuxa.com/blog/history-and-development-of-elementary-education-in-india

comprehensively:

- To promote greater autonomy.
- To focus on better academic outcomes.

- Draft legislation to set up Higher Education Commission of India (HECI), to be presented.
- Khelo India Scheme to be expanded with all necessary financial support.
- National Sports Education Board for development of sports persons to be set up under Khelo India, to popularize sports at all levels.
- To prepare youth for overseas jobs, focus to be increased on globally valued skill-sets including language training, AI, IoT, Big Data, 3D Printing, Virtual Reality and Robotics.
- Set of four labour codes proposed, to streamline multiple labour laws to standardize and streamline registration and filing of returns.
- A television program proposed exclusively for and by start-ups, within the DD bouquet of channels.
- Stand-Up India Scheme to be continued for the period of 2020-25. The Banks to provide financial assistance for demand based businesses.[18]

7. Conclusion:

To make the primary education system viable i.e to ensure completion, to stop the trend of dropping out, to enhance the quality of education and teaching , a lot of measures are needed. For this , it is impossible only for the government to shoulder the responsibility of improving the situation. The non government organizations and civil organizations should come forward with massive programs of mass education. Hence, our civil society must be more active in making the education a social movement and make the people aware of it.

18. https://pib.gov.in

The realistic situation of Institutional Arbitration in India and its Impact on Arbitration

V Suryanarayana Raju*

ABSTRACT

In the present world the importance relating to dispute settlement through Institutional Arbitration has gained importance due to the overwhelming economic growth and International trade. In this respect Indian parties to the arbitration also choosing interest on Institutional Arbitration. By choosing this type of arbitration parties' responsibility is somewhat lesser in compared to other counterpart Ad-hoc arbitration. By the interest of the parties towards the institutional arbitration in India the focus has raised and need of institutions aroused. On these important lines in this article the author wants to emphasise the present condition of the institutional arbitration in India and its growth. In the present Juncture the analysis of realistic situation of an institutional arbitration is the welcome measure for its development. Further the author wants to describe measures to be taken for the development of institutional arbitration in India.

KEY WORDS: Institutional Arbitration, Ad-hoc Arbitration, India.

1. Introduction

Arbitration is one of the Alternative Dispute Resolution mechanisms for sorting out disputes between the parties outside the court procedure in similar like Conciliation, Mediation and Negotiation etc. Due to globalization in the recent world, the International Trade which has been developed drastically. By development of trade between the nations disputes also arose with similar effect. For sorting out of these disputes, the parties are choosing Arbitration as a lucrative mechanism. Out of the arbitration existed in the present form is either Domestic arbitration or International Commercial Arbitration. The finalisation of domestic arbitration and international commercial arbitration depends on the nationality of the parties. In order to solve disputes by way of Arbitration the parties either need to choose Ad-hoc Arbitration or Institutional Arbitration. Ad-hoc arbitration is the process which parties of the arbitration agreement decides the procedure of arbitration. But in the process of institutional arbitration the particular chosen institutional rules will be applicable. Apart from the rules of arbitration from starting to ending of the arbitration proceedings the particular institution will monitor all the proceedings with effective manner. This process is completely different from Ad-hoc arbitration such as appointment of arbitrator, conduct of the arbitral proceedings and jurisdiction of the arbitral tribunal etc. In this type of arbitration the institution is responsible for all proceedings as per the rules adopted by the institution. Generally all the famous centres on institutional arbitration is following the UNCITRAL Arbitration Rules.

In particular, the famous Arbitral Institutions following their own rules, but the same rules are at par with the United Nations Commissions Rules on International Commercial Arbitration. The UNCITRAL Arbitration rules occupy an important position, both historically and in contemporary arbitration practice.[1] In 1973, UNCITRAL proposed the preparation of model arbitration rules[2]. By seeing the objective of UNCITRAL Rules was to create a unified, predictable and stable procedural framework for international arbitrations without stifling the informal and flexible character of such dispute resolution mechanisms[3]. Basically the UNCITRAL Rules are designed for use in ad hoc international commercial arbitration. Like most institutional arbitration rules, the said rules prescribe a basic procedural framework for the arbitration. However, some Institutional rules provide for easy settlement of disputes by following their own rules. On further, the dis-satisfied party entitles to appeal to an arbitral Institution at second instance, which can confirm the Award made by the institution, amend the award or completely set aside the first award and the decision taken in an appeal, is determined to be final and binding upon the parties[4].

In India the Arbitration and Conciliation Act, 1996 which provides provisions relating Ad-hoc arbitration. The said Act is completely silent on the provisions of institutional arbitration. Despite the law commission in its various

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1. The Arbitration and Conciliation Act, Sec 2 (1) (f), 1996
2. Gary E Born, International Commercial Arbitration, 2nded , P 72 (2014)
3. Draft of United Commission on International Trade Law, 6th session U.N. Doc A/9017, 85(1973)
4. Ibid.

reports suggested for the incorporation of provisions relating to institutional arbitration in the Arbitration and Conciliation Act, 1996[5]. But the legislature is not developed the practice of law relating to institutional arbitration. On the other countries such as Singapore and Hong Kong provided attractive provisions relating to institutional arbitration. The international arbitration act[6] enacted by Singapore and Hong kong arbitration ordinance[7] having some supportive measures for the development of institutional arbitration.

We can understand this is one of the reason the parties in India which is choosing Ad-hoc arbitration even though we having 35 more reputed institutions for arbitration. According to survey conducted in 2013[8] most of the Indian parties prefers Ad-hoc arbitration in comparison with the counterpart institutional arbitration. Generally in foreign countries where the amount of dispute is more parties prefers to go for institutional arbitration. In India completely on opposite side even the amount of dispute is more the parties adopts Ad-hoc arbitration as a primary method of arbitration.

There is a huge confusion that which arbitration is suitable for the Indian context? There is a clear cut advantage under the institutional arbitration which provides a clear adopted rules of arbitration, proper timelines for the conduct of proceedings, expertise staff for smooth proceedings and list relating to panel of trained arbitrators available under the particular institution[9]. Besides on the Ad-hoc arbitration the parties having liberty to choose their own procedure in arbitration agreement, flexibility to choose procedure relating to appointment of arbitrator and conduct of the arbitral proceedings etc[10]. In general to the parties of Ad-hoc arbitration, fourfold choice of law options which available in the case of International Commercial Arbitration. By specifying those,

1) Law relating to the Arbitration Agreement.
2) Law relating to Procedure of Arbitration.
3) Substantive law involved in the particular dispute.
4) Choice of law rules applicable in International Arbitration.

Ad-hoc arbitration which mentioned under the Arbitration and Conciliation Act, 1996 is very useful when the both parties having same of set of intensity to solve the dispute[11]. But in case of any party wants to delay it is taking more time for solution. In India specifically in the Ad-hoc arbitration the arbitrators collecting the fees on sitting basis i.e) which leading to the cost affect to the parties with unnecessary conclusions. Further when the parties having no knowledge about procedure relating to arbitration in those cases institutional arbitration shall be preferable. The famous institutional arbitration centres solves disputes adequately. The Arbitration and Conciliation (Amendment) Act, 2015[12] which brought certain changes relating to imposing time limit for the arbitration procedure and reducing arbitrator fees in the case of delay in arbitration proceedings also not able to solve the original problem under the Ad-hoc arbitration. Apart from the above all aspects, Indian courts intervention and interpretation of the arbitration law which is creating more confusion on the parties to arbitration. By considering the above statements we could say somewhat India is unfriendly jurisdiction for the parties to arbitration.

In India specifically there are certain reasons for failing of the institutional arbitration includes:

a) Lack of support from the central and state governments for the development of institutional arbitration.
b) More judicial intervention in the procedure of arbitration.
c) Lack of infrastructure in the Arbitral institutions.
d) Absence of important and credible Arbitral institutions.
e) Absence of provisions relating to institutional arbitration in the Arbitration and Conciliation Act, 1996.
f) Lack of Legislative support.
g) Overwhelming confusion relating to the institutional arbitration.

In India most of the arbitral institutions failed to give better services in comparison with the foreign arbitral institutions. These Indian arbitral institutions maintaining less case load due to the misconceptions surrounded in the institutional arbitration in India. This has created anomaly

5. Grain and Feed Trade Association Rules, Art 12.6
6. See 246th Law Commission report
7. See International Arbitration Act, revised Edition, 2002
8. See Hong Kong Arbitration ordinance, 2011
9. 'Corporate Attitudes & Practices towards Arbitration in India', PricewaterhouseCoopers (2013), available at https://www.pwc.in/assets/pdfs/publications/2013/corporate-attributes-and-practices-towardsarbitration-in-india.pdf (Last accessed on 13/06/2019)
10. SundraRajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', The Law Review (2010).
11. Ibid.
12. Ibid.

for the Indian institutions, by taking advantage from this situation other arbitral institutions from foreign working very hard for gaining confidence from Indian parties of arbitration. In the Domestic arbitration the Indian parties generally opting out the Ad-hoc arbitration mentioned under the Arbitration and Conciliation Act, 1996. Coming to the case of International Commercial Arbitration up to some extent parties are choosing institutional arbitration. The major drawback for not choosing the institutional arbitration is lagging of legislative enactment.

The rules of the institutions in institutional arbitration having much weightage because of the reason the parties majorly prefer where the parties friendly rules are existed. One of the major problem with the Indian institutions on institutional arbitration is that not adopting party friendly rules. Further Indian arbitral institutions should enact rules at par with the UNCITRAL model rules. Moreover Indian institutions does not having the mechanism for feedback on the rules and system like e-filing, e-discovery etc. another foremost important reason for failing of the Indian institutions by not providing the system like case management services and secretariat services. Most of the developed foreign institutions provides the said services an effective manner. These type of services which providing confidence on institutions among the parties to institutional arbitration.

The important aspect in the institutional arbitration is that maintaining panel of arbitrators from expertise industry and process relating to appointment of arbitrator. In the both the aspects the Indian institutions failed to determine or appoint expertise panel of arbitrators. Our Indian institutions are maintaining retired judges and advocates as a panel of arbitrators.

According to phrase mentioned under high level committee report the appointment of judges in the arbitral institutions is creating a post retirement employment to the judges and advocates. At the same time, another drawback in the institutional arbitration in India is not adhering with the strict time lines. In organisation like SIAC, LIAC, ICC, ADR institute of Canada the timelines would be followed in every step of the arbitration procedure. In India necessary delays happened during arbitration procedure by way of adjournments. Simply we can understand the strict following of expedient time limits in every step of arbitration procedure could create faster results in the institutional arbitration.

Coming to the enforcement of arbitral awards, Indian courts changes its dimensions very frequently. This scenario is causing effect on the international arbitration. In general we can say there are two type of arbitral awards. One is domestic seated arbitral award which includes the award made under either domestic arbitration or in international commercial arbitration. The second type of award is foreign seated arbitral award i.e. where seat of arbitration is situated outside India. While enforcing the foreign seated arbitral awards in India the parties are facing huge problems relating to materialisation of award. Quite obviously once the famous arbitral institution gives an arbitral award; due to reputation of the arbitral institution it is enforced. The scenario with Indian courts is completely different from the other countries courts while enforcing the institutional arbitration awards. Other countries courts enforce the famous institutions awards in a structured manner[14].

Apart from the all other obstacles to institutional arbitration Cost is the major drawback. On the direction, parties having misconception that cost of institutional arbitration is higher in comparison with the Ad-hoc arbitration. But on the other side through adjournments of dates under Ad-hoc arbitration is high probability then automatically cost is higher even in this type arbitration. In my opinion choosing of institutional arbitration is much better than Ad-hoc arbitration because the process will complete within the time limits prescribed by the institutions.

On consideration of all these mentioned issues the institutional arbitration which facing problem in its development in India. But in the developed countries certain institutions play important role for development of arbitration through institutional arbitration. By seeing the certain advantages for choosing of particular institutions includes:

1) Specified rules of arbitration.
2) High standard of professionalism.
3) Expertise arbitrators.
4) Checks and balancing system.
5) Administrative support.
6) Accountability of arbitrators.

In the world wide certain arbitral institutions gained an importance for conducting the institutional arbitration. Those some of the leading Arbitral Institutions are:

1) International Chamber of Commerce (ICC) International Court of Arbitration.
2) American Arbitration Association and international centre for dispute resolution.
3) London court of International Arbitration.
4) ADR Institute of Canada.

13. SundraRajoo, 'Institutional and Ad hoc Arbitrations: Advantages and Disadvantages', The Law Review (2010) p 554.

5) International Centre for settlement of Investment Disputes.

6) Permanent Court of Arbitration.

7) Swiss Chamber's arbitration Institution.

8) Singapore International Arbitration centre.

9) Hong kong International Arbitration Centre.

On the other side, many experts criticise Institutional arbitration, as parties need to comply with the procedural requirements, Moreover need to bind on institutional rules, but in the Ad-hoc arbitration the parties having right to follow their own procedure. The reason behind criticism was institutional arbitration which developing delocalized approach towards international commercial arbitration.

By seeing the Indian scenario, Institutional Arbitration is still under the pipe line to finding its roots towards growing importance in comparison with the other institutions in the world. In our country the parties litigate through civil courts but not opting Arbitration as a dispute solving mechanism. In other developed countries the parties voluntarily prefer the institutional arbitration. Moreover the laws and policies towards the institutional arbitration in the developed countries are attractive. By seeing these scenarios the Indian government must and should take immediate decisions towards the development of Institutional Arbitration in India. Previously way Society Registration Act, 1860 ICADR (The International Centre for Alternative Dispute Resolution) established an institution with the objective to develop Alternative Dispute Resolution as a key method to solve legal problems. The government thought it is necessary to provide a forum for resolving international and domestic disputes quickly.

Subsequently certain actions have been initiated by forming the Justice shri Krishna Committee on the Arbitration. The committee has submitted its report with overwhelming recommendations towards the development of Institutional Arbitration. On the basis of report recently the New Delhi International Arbitration Centre Bill has been passed by the parliament for establishing a world class institution towards development of Institutional Arbitration in India. This is a welcome measure but again with drastic lagging, further recent Amendment Bill also which is going to come with the objective to ranking institutions and finally towards development of Institutional Arbitration in India.

The above said NewDelhi International Arbitration Centre which has been established with the objective of making institution for national importance then in order increase and settle the disputes through Alternative Dispute Resolution Mechanisms those include Arbitration, mediation, negotiation and conciliation. By specifically establishing this centre Indian government wants to promote Institutional Arbitration is the foremost step for parties for the settlement of disputes in comparison with the Ad-hoc arbitration. Further the mentioned centre will give training to the prospective arbitrators.

On concluding the present research paper, there is an overwhelming requirement towards the development of institutional arbitration in India by adopting supportive policies and legislations.

The Right to Pornography in India: An Analysis in Light of Individual Liberty and Law

Shalini Saxena*

ABSTRACT

The word pornography is defined as "writing, photographs, movies etc. intended to arouse sexual excitement"[1]. The digital world (the movement of video pornography, interactive cyber-sex, webcam sex, social networking mobile phones etc.) to attempt to understand the nature of affects that surround pornography, especially as reflected in the law and its desire to contain it and how laws desire to contain is also about subjective and practices around technology[2]. All these arises the questions on our law, history, film, video, new media and technology which focuses on pornography itself and how or in what manner they present it to the world.

Key Words: Pornography, Privacy, Restrictions

1. Introduction

It has been for decades and centuries that the humans are trying to create the explicit images of their sexual fantasies and desires. But what we can see today that the time has totally changed after the world came to know about the sex guide "Kama sutra" which was illustrated to the world in 5th century in India. There are two radical feminists named Andrew Dwarkin and Catherine Machinan who took instances on pornography who looks pornography from the point of view of women in the society. As it is Dwarkin who was a drafter of law and was supposed to give women their civil rights to sue and raise voice against those who hurt them through pornography. The definition of Pornography according to Dwarkin is the insult offered to sex and it accomplishes the active subordination of women i.e. the creation of a sexual dynamic in which the putting down of woman, the suppression of women and ultimately the brutalization of women is what sex is taken to be[3]. The connection drawn among sex entertainment and sexual misuse is excessively covered in enthusiastic talk which in itself ought not dark the contention but rather to make the systems of control more clear. That be that as it may, does not occur rather a further clouding of ladies and their subjectivity, their pleasure and encounters happens as we are persistently gone up against in Dwarkin's writings with the lady who is an unfortunate casualty, who is hushed, who is mistreated and who is externalized with depersonalized. The definition of Pornography according to Catherine Machinan who argues, Pornography affects people's belief in rape myths.[4] Catherine Machinan in his definition of Pornography also argues that the pornography it promotes the rape myths and motivates people to become violent against the woman and focuses on pornography to become violent to arouse their sexual desires, which is well documented. The advanced obviously adds a completely extraordinary layer to intelligence and correspondence yet additionally maybe brings into play distinctive corpo-substances and epitomized encounters in invigorated situations, or even through gadgets conceivable outcomes. In any case, it is very the less difficult ways that the computerized intuitive in the manners by which the watcher moves of his or her very own infringement through various material or how modest advanced methods of generation particularly cell phones take into consideration making and setting up of their own recordings. A 'BBC World Service' Poll of 27,973 adult in 26 countries, including 14,306 Internet users[5], was conducted between 30 November 2009 and 7 February 2010. The head of the polling organization felt overall that the poll showed that; despite worries about privacy and fraud people around the world see access to the internet as their fundamental right. They think the web is a force for good and most, don't want government to regulate.[6] The poll found that nearly four in five (78 %) users felt that the

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1. Garlick and Steve, "A New Sexual Revolution? Critical Theory, Pornography and the Internet", Published by Canadian Review of Sociology, Vol. 48, No. 3, August 2011
2. Kamiel and Yuvat, Pornography, "Community and the Internet-Freedom of speech and obscenity on the Internet", Published by Rutgers Computer and Technology Law Journal, Vol. 30 No. 1, Spring 2004
3. www.allresearchjournal.com > PartP
4. Susanne V. Knudsen and Lotta Lofgren Martenson,"Generation P? Youth, Gender and Pornography", Published by Aarhus University Press, 2008
5. For the BBC Poll Internet users are those who used the Internet within the previous six months (http://en.wikipedia.org/wiki/category: Internet governance)
6. BBC Internet Poll Detailed findings BBC world service, 8 March, 2010

internet has brought them greater freedom that most internet users 53 % felt that "the internet should never be regulated by any level of government anywhere and almost four in five internet users around the world felt the access to the internet was a fundamental right. 50 % strongly agreed, 29 % somewhat disagree, 6 % strongly disagreed and 6% gave no opinion.[7]

2. Concept and Historical Background of Pornography

The word Pornography, derived from the Greek Porni ("prostitute") and Graphein ("to write"), was originally defined as any work of art or literature depicting the life of prostitutes. In many historical societies, frank depictions of sexual behavior, often in a religious context, were common[8].

"Pornography or porn is the portrayal of explicit subject matter for the purposes of sexual excitement and erotic satisfaction." It may use any of a variety of media, ranging from books, pamphlets, paper, writing, drawing, painting, representation, figure, film, video, video game etc[9].

Eroticism in ancient India was a well-studied concept as shown by the Kama sutra, written by MallanagaVatsyayana sometimes during the 2nd or 5th century[10]. The portrayal of sexual nature is as old as civilization in the world, but if we talk about the concept of pornography which we understood today was entirely different in the Victorian era and did not even exist until the Victorian era. The legislations made in the 19th century writings and images, regarded as pornographic content and would order for the destruction of shop and warehouse stock, which is meant for sale. However, the private stuffs and viewing of some forms of pornography was not made an offence until recent times.

When the large scales of trench of Pomeii were undertaken in the 1860s, the sexually stimulating art of the Romans came to light, shocking the Victorians who saw themselves as the intellectual heirs of the Roman Empire. They don't even have the idea to what to do with the frank portrayal of sexuality and to venture to hide them away from everyone but upper class scholars. The movable objects of sexuality were locked away from everyone in the Secret Museum in Naples and the object which could not remove was covered and scaled off as to not decline the sensibilities of women, children and the working class. Before long, the world's first law condemning erotic entertainment was established by the Parliament of United Kingdom in 1857 in the Obscene Publication Act.

According to the Victorian point of view, that the pornography can be seen only by the selected class of people can also be seen in the wordings of the court case in 1868 where the question arises that, "whether the tendency of the matter charged as obscenity is to deprave and corrupt those minds are open to such immoral influence.[11]" Despite all these facts the portrayal of sexually stimulating image was very common throughout the history.

3. Legal Framework In India

Inside the legal framework we talk about all the constitutional and other legal provisions made in India in co-relation with Pornography, which not only talks about the violation of the constitutional rights for moral policing but also other acts under which talks about the concept of pornography and other sexual assaults along with their prescribed punishment for the offence under Indian Penal Code 1860, Information Technology Act 2000, Prevention of Children from Sexual Offences Act, 2012 etc.

4. Constitutional Framework

We all are very well versed with the constitution of our country which is also considered to be as the backbone of every law in India. And in order to conduct the Constitutional test over any law or new act it must be accordance to the fundamental right available to the citizen of the country under Part III which protects the right of every citizen from getting violated. So if we talk about the telegraph and the media laws as well as the powers of the Ministry and Information then, also it should be according to the Fundamental Right, of which the fundamental right of speech and expression provided under Article 19 of the constitution[12] with regard to the electronic media is the

7. Internet access is a fundamental right BBC News 8 March, 2010
8. https://www.britannica.com/topic/pornography)
9. Lin, Wan-Ying; Jacobs and Katrien, "To view or Not to view: The influence of Social Networks and Subjective Norms on online Pornography Consumption", Published by International Journal of Cyber Society and Education, Vol.5 No. 1, June 2012
10. Article by Suresh Bada Math, BijuVishwanath and Maria Christine Nirmala, "Sexual Crime in India: Is it influenced by Pornography?" Published on April 2014 on Indian Journal of Psychological Medicine
11. Article by Archana W Awaghad and Kalpana V Jawale, "Legal issues and challenges on Pornography in India", Posted on 13th July, 2014
12. M.P. Jain, "Constitution of India", Published by LexisNexis, 33rd Edition

most important one. Justice Sawant, Secretary, Press Information Bureau said that the freedom of speech and expression includes right to acquire information and disseminate it[13]. We all know that there are several provisions under Information Technology Act, 2000 which does not make watching adult pornography illegal but watching child pornography illegal under Section 67B of the IT Act, 2000[14] which talks about Punishment for publishing or transmitting of material depicting children in sexually explicit act etc., in electronic form which has been added in 2008. Likewise in the constitutional law as well we have certain provision under Part III of it under the fundamental rights provided to the citizens which prevents and refrain the central government or any other authority from banning the porn sites supported by various renounced judges of the Supreme Court and is also one of the main reason behind failing to ban all the porn sites by the central government. As it has been already made clear that any individual who is watching porn within the 4 walls privately cannot be refrained or stopped from watching any pornographic content unless it would directly lend to the violation of the of the Article 21 (Right to personal liberty)[15] of the constitution because Right to Privacy which is provided under Article 21 is integral to the fundamental right to life and the Supreme Court including in this issue has several times upheld it. This is the reason that the Parliament also chose not to make any such law criminalizing watching porn or any sexual content. Although the publishing and transmitting of the obscene act which is considered as an offence and is punishable under Section 67 of the Information Technology Act and of course watching child pornography is totally banned and is not protected and supported by any constitutional provisions.

But it is also the truth that we also have any fundamental right Article 19 (freedom of speech and expression) which not also provides such freedom to citizens but to the media as well where blocking of all the adult porn sites will be a failed experiment because it is next to impossible for blocking all the servers as they are the biggest drivers of the e-commerce and the government should also take such limited bite from the pie, only how much they can chew. Because if we take example of China and America also who is among the most progressive countries in the world and of course China who even controls the single bits and bytes of their technology used by citizens also failed, tried fight; with the poor and constrained themselves banning only child pornography. Another issue is the right of censorship. The issue of Pornography has been from the beginning with Section 79 of the IT Act which talk about the obligation of middle people in specific cases that it puts the proprietors of the control on the mediators, which is the thing that by law ought not be done in light of the fact that the privilege of oversight and audit by the court is central to the Article 19 of the Indian Constitution[16], which is the right to speak freely and sensible limitations thereof. It isn't for business undertakings to take a gander at these issues in that structure. So putting anything to be obstructed under Section 79 is truly permitting the state forces to be given to private substances to be practiced and under the danger of what the area 79 is the withdrawal of safe harbor. The middle person security was that on the off chance that you convey things, which you have not created yourself, you have safe harbor in the event that you pursue certain arrangements. Furthermore, from the earliest starting point, learning lodge and in the event that we are the piece of that previously discussed how this itself so dubiously worded that it can prompt at last requesting that the go-between exercise restriction powers and that is the thing that appears to have been finished by this request since first they requested that they square, which is moderately danger of withdrawal of safe harbor. At that point, we likewise need to choose such inquiry that whether the youngster erotic entertainment or these 857 locales ought to be blocked or not. This is straight forward surrendering government oversight forces to the middle people under the risk of safe harbor which is in obvious sense extremely inadmissible[17].

5. Other Legal Provisions

Talking about the legal status of the Pornography it differs from country to country. There are most of the countries which at least allow some forms of pornography in their country that's why there exists the porn industry as well like other film industries. The distribution and the production of pornography or any sexual content is illegal in India but watching it privately within 4 walls and saving it in the

13. The freedom of speech and expression includes the right to acquire information and disseminate it. Freedom of speech and expression is necessary, for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates of social and moral issues. It is the best way to find out the truest model of anything, since it is only through it that the widest possible range of ideas can circulate? It is the only vehicle of political discourse so essential to democracy. Secretary Ministry of Broadcasting and Cricket Association of Bengal and others, AIR 1995 SC 1236
14. VakulSharma,"Information Technology: Law and Practice(Cyber Laws and Laws Relating to E-Commerce)", Published by Universal Law Publishing, Edition 5th
15. V.N. Shukla, "Constitution of India". Published by Eastern Book Company, 12th Edition by Mahendra Pal Singh
16. Article by Shodhganga, "The Constitutional aspect of legal control over the electronic media", Published on 23rd July, 2014
17. Article by David L. Tubbs' & Jacqueline S. Smith, "Pornography, The Rule of Law, and Constitutional Mythology", Published on 12th March, 2018

laptop is not considered illegal in India. Government of India has already made clear that Chapter XI, Section 67, of the Information Technology Act, 2000 which talks about online pornography is punishable offence. Taking example of the CEO of Indian subsidiary of E-bay who was charged with various criminal offences for allowing the trading of and containing these clips on the websites[18], In 2007, the Indian Ministry of Women and Child Development completed an overview of youngsters and youthful grown-ups 53.22 % of kids announced having sexual maltreatment 5.69 % had been explicitly attacked oral sex or entrance of vagina or rear-end. Information Technology Act 2000, Chapter XI, Section 67, the government of India clearly specifies online pornography as a punishable offence[19]. The Indian Penal Code, 1860 (IPC), Section 293[20] also specifies in clear terms, the law against sale of obscene objects to minors. As it pertains to pornography or "obscenity" is laid down in section 292 of the Indian Penal Code which was amended by the IT act to include electronic data[21].

The IT act amended in 2008 and section 67 was inserted which criminalizes browsing, downloading creation and publishing child pornography. Child anime porn is also explicitly criminalized for ex. browsing for child pornography on the internet which can lead to a 5 year term of imprisonment and 4 lakhs fine[22].

6. Alternative Sections Of Indian Penal Code, 1860

1. Section 228 A: Disclosure of identity of the victim of certain offence[23]

   Punishment: 2 years of imprisonment and fine.

2. Section 292: Sale, etc., of obscene books, etc[24].

   Punishment: on first conviction, 2 years of imprisonment with fine of 2000 rupees and on second conviction, 5 years of imprisonment with fine of 5000 rupees.

3. Section 293: Sale, etc., of obscene objects to young person[25]

   Punishment: on first conviction, 3 years of imprisonment with fine of 2000 rupees and on second conviction, 7 years of imprisonment with fine of 5000 rupees.

4. Section 354: Assault or criminal force to woman with intent to outrage her modesty[26]

   Punishment: 1 year of imprisonment extended to 5 years of imprisonment and with fine

5. Section 354 C: Voyeurism[27]

   Punishment: on first conviction 1 year of imprisonment which can be extended to 3 years of imprisonment and fine and on second conviction 3 years of imprisonment which can be extended to 7 years of imprisonment and with fine

6. Section 370: Trafficking of Person[28]

   Punishment: 7 years of imprisonment extended to 10 years and with fine.

7. Section 375: Rape[29]

8. Section 376: Punishment for Rape[30]

   Punishment: Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine

9. Section 503: Criminal Intimidation[31]

10. Section 504: Intentional insult with intent to provoke breach of the peace[32]

    Punishment: 2 years of imprisonment or fine or both.

11. Section 507: Criminal intimidation by an anonymous communication[33]

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18. Judicial empowerment for handling the cases related to pornography (BBC Poll detailed findings BBC World Service), 8 March, 2010
19. Ibid p.9
20. Prof. S.N. Mishra, "The Indian Penal Code", Published by Central Law Publications, Edition 20th
21. Swati Deshpande Browsing Child Porn will land you in jail: Times of India, 2009, 2-16 (Pornography & Law by NamitaMalhotra)
22. Ibid p.11
23. Section 228A, Indian Penal Code, 1860
24. Section 292, Indian Penal Code, 1860
25. Section 293, Indian Penal Code, 1860
26. Section 354, Indian Penal Code, 1860
27. Section 354C, Indian Penal Code, 1860
28. Section 370, Indian Penal Code, 1860
29. Section 375, Indian Penal Code, 1860
30. Section 376, Indian Penal Code, 1860
31. Section 503, Indian Penal Code, 1860
32. Section 504, Indian Penal Code, 1860

OFFENCES	POCSO ACT, 2012	Amended Act, 2018
Use of child for pornographic purposes	? Maximum: 5 years	? Minimum: 5 years
Use of child for pornographic purposes resulting in penetrative sexual assault	? Minimum: 10 years ? Maximum: life imprisonment	? No change
Use of child for pornographic purposes resulting in aggravated penetrative sexual assault	? Life imprisonment	? Minimum: 20 years ? Maximum: life imprisonment, or death
Use of child for pornographic purposes resulting in sexual assault	? Minimum: Six years ? Maximum: Eight years	? Minimum: Three years ? Maximum: Five years
Use of child for pornographic purposes resulting in aggravated sexual assault	? Minimum: Eight years ? Maximum: 10 years	? Minimum: Five years ? Maximum: Seven years

Punishment: 2 years of imprisonment

12. Section 509: Word, gesture or act intended to insult the modesty of a women[34]

    Punishment: 3 years of simple imprisonment and fine

7. Information Technology Act, 2000

1. Section 66: Computer related offences- If any person, dishonestly or fraudulently, does any act referred to in section 43[35]

   Punishment: 3 years of imprisonment and fine of 5 lakh rupees

2. Section 66 A: Criminalizes the sending of offensive messages through a computer or other communication devices….meant to deceive or mislead the recipient about the origin of such messages, etc.[36],

   Punishment: 3 years of imprisonment and with fine

3. Section 67: Publishing for publishing or transmitting obscene material in electronic form[37]

   Punishment: 3 years of imprisonment with 5 lakh rupees fine

4. Section 67 A: Sending offensive messages through communication devise[38]

   Punishment: 5 years of imprisonment with 10 lakh rupees fine

5. Section 67 B: Punishment for publishing or transmitting of material depicting children in sexually explicit act etc., in electronic form[39]

   Punishment: 7 years of imprisonment and 10 lakh rupees fine

6. Section 67: Publishing for publishing or transmitting obscene material in electronic form In short, it can be said that:

a. Watching porn in your private space is not illegal.

b. Saving it on your personal laptop, smartphone etc., is not illegal.

c. Distribution /Sale/Showcasing/Publishing/Sending on private messages etc. is illegal.

d. Sending porn videos/images/texts or anything depicting sexually explicit acts (unless educational) to someone is illegal.

e. Child pornography, in any sense whether watching, saving, sharing etc., is totally illegal[40].

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

As well as we have the POCSO Act, this criminalizes the offences related to child pornography in any manner.

1. Section 3: Penetrative Sexual assault[41]

   Punishment: Section 4; 7 years to imprisonment of life

2. Section 5: Aggravated Penetrative Sexual Assault[42]

   Punishment: Section 6; 10 years to imprisonment of life.

33. Section 507, Indian Penal Code, 1860
34. Section 509, Indian Penal Code, 1860
35. Section 66, IT Act, 2000
36. Section 66A, IT Act, 2000
37. Section 67, IT Act, 2000
38. Section 67A, IT Act, 2000
39. Section 67B IT Act, 2000
40. Section 67 IT Act, 2000
41. Section 3 POCSO Act, 2012
42. Section 5 POCSO Act, 2012

3. Section 7: Sexual Assault[43]

   Punishment: Section 8; 3 years to 5 years of imprisonment

4. Section 9: Aggravated Sexual Assault[44]

   Punishment: Section 10; 5 years to 7 years of imprisonment

5. Section 11: Sexual Harassment of the Child[45]

   Punishment: Section 12; 3 years of imprisonment

6. Section 13: Use of Child for Pornographic Purposes[46]

   Punishment: Section 14(2); 5 years of imprisonment and in case of subsequent conviction 7 years of imprisonment

7. If along with pornographic acts offence also committed under the following sections then the punishment will be accordingly:

- 10 years to life imprisonment[47]
- life imprisonment[48]
- 6 years to 8 years of imprisonment[49]
- 8 years to 10 years of imprisonment[50]

9. The Protection of Children from Sexual Offences (Amendment) Act,2018

1. Section 3: Penetrative Sexual assault[51]

   Punishment: Section 4; 20 years to imprisonment of life with fine

2. Section 5: Aggravated Penetrative Sexual Assault[52]

   Punishment: Section 6; 10 years to imprisonment of life and maximum is death penalty

3. Section 9: Aggravated Sexual Assault

(i) Assault committed during a natural calamity

(ii) Administering any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity[53]

4. Section 13: Use of Child for Pornographic Purposes

JUSTICE MALIMATH COMMITTEE- on criminal changes to reevaluate about the law, and they have acquainted on alteration with the demonstration, which rebuffs the youngster erotic entertainment itself.

10. Judicial Approach Regarding Pornography

It we talk about the concept of Pornography in Indian perspective then the whole picture of pornography would revolves around the film, video-technology, literature, books etc. not only the viewpoint of the law towards the pornography but also the policies and governing rules of the law according to the society also matters a lot. If we keep away the legal field from the pornography, then only the various legal researchers, studies, and analytical or the critics can concentrate into the questions related to the pornography which is related to technology, historical background, film video, media mobiles and many more things related to pornography.

However, we require law to prohibit the pornographic content in the clear sense and on all the justifiable grounds. But it's the legal perspective which categorizes pornography by only one word i.e. "obscenity". It is also the harsh reality or the flaws in the legal system that the term pornography cannot be depicted by a single word of obscenity which is portrayed through videos, films, porn movies, porn talking, porn articles etc., which has a very wide scope.

Therefore, how the Indian law works and how they are co-related with the dirt and filth of the obscenity is explored particularly through the elucidation of pornography which arouses the bodily reactions, desires and pleasures which our body reacts by watching all such films. It can easily distract the minds of the people who gets too much involves in such kinds of pleasures and desires. Therefore, the body and the individual himself started behaving in an unassailable manner. Talking in the legal sense, then, pornography is an aggravated form of porn of obscenity which depicts the sign of vulgarity and obscenity meant for the arousing of the sexual desires and pleasures i.e. Pornography. And when the news got viral about the

43. Section 7 POCSO Act, 2012
44. Section 9 POCSO Act, 2012
45. Section 11 POCSO Act, 2012
46. Section 13 POCSO Act, 2012
47. Section 3; Section 14(2) POCSO Act, 2012
48. Section 5; Section 14(3) POCSO Act, 2012
49. Section 7; Section 14(4) POCSO Act, 2012
50. Section 9; Section 14(5) POCSO Act, 2012
51. Section 4 POCSO Amendment Bill, 2019
52. Section 5 POCSO Amendment Bill, 2019
53. Section 9 POCSO Amendment Bill, 2019

leaking of the pornographic content which is allegedly assisted by the digital technologies and the internet then, suddenly the swarm of moral, ethical, social dilemmas pushes back the pornography and the unexpected atrocities into the domain of law.

Nussbaum's analysis on obscenity law on pornography relies on the work of the radical feminists Andrew Dwarkin and Catherine Machinans[55], as far as the obscenity law and the pornography are concerned. According to the Nussbaum's analysis, the emotions of unclear outbreak which doesn't allow us to decide that for the equality of the women should not be objected on the ground of obscenity but on the grounds how we humiliate the women. According to Dwarkins, the legal test for sex entertainment ought not to be the penis erection but rather it must be the status of ladies and sex entertainment which is discrete, recognizable arrangement of sexual misuse that harms ladies as a class by making imbalance and misuse. Whether her contentions are in favor of the truth of pornography industry or not. The different pornography stars entering in the business for cash making and picking up prevalence in a soiled and disturbing way. Law ought to have the basic control from the designer of the pornography cut, to the individual who put it online who disseminated it by means of p2p sites (peer 2 peer sites) to somebody who endeavored to sell it, to those running the bartering site. As a result of this remote connections in the system unique offense become flimsier on a feeling of legitimate or even moral obligation is excessively disregarded and torpid on the another hand.

Concluding the fact that the consumption and watching of the pornography was never considered as an offence but it is the time and the desire of the people which is so solidified into a form that it has been retrieved by us when we really desire to encounter such moment in relation to pornography.

12. Judicial Pronouncements on Pornography

We have all witnessed a large number of cases depicting the offences like rape, assault and harassment etc. and every time when such kind of activities takes place the very first question which comes to the mind of every individual that behind such sexual assaults is Porn and the pornographic content really responsible or not? We all know that 1/3rd of the internet is covered by the porn-sites but still it cannot be said that it is the only reason behind the rising rates of the rape and other sexual assaults in the country. Because, of course the partial banning of the porn-sites is also not the solution to over-come from such problem, as we already know that directly or indirectly it leads to the violation of the fundamental rights like Article 21 Right to life. And it has been already said by Justice H.L. Dattu that- "Ban on child pornography is necessary but not on adult pornography.

Although we know this fact, but there is some social activist who filed the petition for banning the porn sites and for this they are seeking help of judiciary for the solutions for preventing the impact of pornography on the society. It was in 2013 when a PIL petition was filed in the Supreme Court of India for banning the porn-sites and pornography in India. Central government became duty bound for giving the response to the supreme court of India when the court issued the notice. Government informed the court that the Cyber Regulation Advisory Committee constituted under Section 88 of the IT Act, 2000[56] was assigned with a brief with regard to availability of pornography on internet and it was looking into the matter and the matter is still pending before the Supreme Court[57]. Apart from issuing notice to the central government, Supreme Court also issued the notice to the ministries of home affairs information technology and broadcasting, while, the internet service providers association of India seeks for the anti-pornography laws which was filed by advocate Vijay Paswani. According to the news published in the express news: the PIL which was filed by the Advocate Kamlesh Vaswani before the Supreme Court for banning the pornography and other pornographic content in the country because according to him it was becoming the main cause for increasing sexual offences against the women[58]. But it also the fact that the ban on the online pornography is neither feasible nor possible as it does not lies totally in the hands of the court. By giving reviews on the PIL filed for banning the pornography /porn-sites in the country, in the article written by Utkarsh Anand, New Delhi published, on April 28, 2014 that, it is not possible for making complete ban on the porn sites and on the pornography in the country as well as it has been also estimated by central government to the court that without any proper and specific laws against the pornographic it is very difficult to deal with the large number of cases filed in such matters. And the Secretary Departments of Telecommunication (DOT) also has a view that blocking the porn websites is not possible and feasible due to various practical difficulties because the internet services which we use in our daily life is located in the foreign

54. https://www.prsindia.org/billtrack/protection-children-sexual-offences-amendment-bill-2019
55. Article by Archana W Awaghad and Kalpana V Jawale, "Legal issues and challenges on Pornography in India", Posted on 13th July, 2014
56. Ibid p.10
57. http://www.livemint.com/politics/PIL
58. KamleshVasvani. Vs. Union of India & Others Pornography ban matter 1 Law Street, Retrived 4 June, 2015 (http://indianexpress.com/article/opinion/editorial/cant_ban_pornography

countries where such kind of publication is permissible. The government also maintained that before contents get released in the cyber space, total ban reduces the censorship. Supreme Court also asked the Secretary Department of Technology to notify them in such content and in response the Secretary Department of Technology to notify them in such context and in response the Secretary of Department of Technology stated that they have limited power in such process and on contemplating their powers they said that the request for blocking any of the porn sites or the complaint should come directly from the court or a nodal officer of any organization and not from the single individual. The barriers which the technological department of the country faces, only create the hindrances in banning the porn websites in the country and the barriers between the law and its control on pornography.

After analyzing the whole matter, Supreme Court also has the view that in India the Supreme Court itself or any other authority cannot stop or intervene the individual from watching the porn or any pornographic content privately in a room and if any intervention done then, it is a violation of the fundamental right of the individual right of personal liberty and such interim orders cannot be passed by the court. Because suppose if any individual comes to the court and questions to the court that I am 18 years above and I am watching the porn within 4 walls of my house then on what authority you can stop me from watching it? As stopping the person will definitely violate the fundamental right of that individual of Article 21 (Right to personal liberty) of constitution, in the opinion of former Chief Justice of India H. L. Dattu. This issue is really a very serious issue and there is an urgent need to take some action against such issue which is expected from center. As H.L. Dattu had also asked the Union Home Ministry to file a detailed affidavit related to such issue. As the server through which it is all available to the people is not controlled by any particular country neither it have its own server in order to ban the porn-sites completely. Because we also know that for every problem there is a solution and with one trick and click the users can crack the code and can also view the banned porn-sites as well through accessing TURBO VPN and downloading the apps like ULTRA SURF which can unlock any blocked sites even the porn-sites. As a result of which when on 1 August 2018, as ordered by Uttarakhand High Court, government banned 827 porn-sites but later on lifted ban from 100 porn-sites depicting adult pornography and 700 porn-sites are still banned which depicts child pornography, when got scolded by Supreme Court because it clearly violates our fundamental right to life and free access to the internet. So I really don't think so banning porn-sites only will be solution to combat the society problem because we believe or not; India is watching more porn than ever and rank number 3 in the world knocking out Canada to grab the 3rd position after U.S. and Britain.

13. Case Referred from United States:

The Supreme Court has tended to erotic entertainment more regularly than practically some other issue of tantamount explicitness, and little miracle why—the Court has perused a certain vulgarity special case to the free discourse proviso, giving it the unenviable duty of deciphering an implicit eighteenth century meaning of profanity two centuries later. What's more, the more the Court has endeavored to characterize vulgarity, the more mind boggling that definition has progressed toward becoming. The Supreme Court made things marginally simpler for itself in three cases, all chose 1967 and 1973.

Jacobellis v. Ohio (1967)[59]

Compelled to decide if the craftsmanship film Les Amants was profane, notwithstanding the way that it was clearly not planned to fill in as sex entertainment, the Court recognized the trouble of its activity—before decision for the film on numerous, unclear grounds. Equity Potter Stewart significantly caught the Court's test:

"It is conceivable to peruse the Court's conclusion in [past sex entertainment cases] in an assortment of ways. In saying this, I infer no analysis of the Court, which, in those cases, was looked with the assignment of attempting to characterize what might be indefinable. I have achieved the end, which I believe is affirmed at any rate by negative ramifications in the Court's [recent decisions] that, under the First and Fourteenth Amendments, criminal laws around there are intrinsically restricted to in-your-face erotic entertainment. I will not today endeavor further to characterize the sorts of material I comprehend to be grasped inside that shorthand portrayal, and maybe I would never prevail in comprehensibly doing as such. However, I know it when I see it, and the movie engaged with this case isn't that.

"The trouble is that we don't manage established terms, since 'indecency' isn't referenced in the Constitution or Bill of Rights … for there was no perceived special case to the free press at the time the Bill of Rights was embraced which treated 'disgusting' distributions uniquely in contrast to different kinds of papers, magazines, and books … What stuns me might be sustenance for my neighbor. What makes one individual bubble up in fury more than one leaflet or motion picture may reflect just his despondency, not shared by others. We manage a routine of restriction which, whenever received, ought to be finished by

59. Jacobellis v. Ohio (1967)

established correction after full discussion by the general population."[60]

15. Concluding Observations and Suggestions

Although pornography totally damages and demolishes the moral, ethical values of the society in many ways and hampers the culture of the society along with the modesty and afferent but it is also the matter of fact which we cannot deny that we do not have any specific laws, legal provisions or any concrete act to totally impose ban on pornography. No doubt we have concrete provisions and acts to criminalize child pornography under IPC, It Act, and POCSO Act. Therefore, we have already imposed total ban on the porn-sites depicting child pornography and made it a punishable offence but it is also the bitter truth of our legal system that we do not have such concrete law to do the same with the adult pornography and all the experiments made to ban it have failed somehow. Though many PIL petitions have been filed to ban all the porn-sites and the central government itself took the initiative to ban 800-900 porn-sites but later had to lift the ban from the adult porn-sites when got scolded by the Supreme Court for taking such a big step without seeking permission from the court because this step of central government violates many fundamental rights of the citizens provided by the constitution and other provisions of the IT Act as well because the constitutional law being the protector of the fundamental rights of the citizen cannot itself become the violator of their rights because watching porn in private within 4 walls and keeping or storing in the laptop or the smartphones till it is not distributed and published is totally legal.

Right now, it is very difficult to figure out that what is India up to. Why our country is in such a muddled situation? The question still raises in the mind of many individuals that why India and the competent authorities of the country is playing such a Hippocratic role because it has not been hidden from the world that it is India only who gave the world Kama Sutra, knowledge of sexuality written by MallanagaVatsyayana somewhere in 2nd or 5th century and it is India only who allowed the movies like Satyam ShivamSundaram and Bandit Queen which carries the message of social evil which is indecent and obscene and despite a lot of criticism and filing petitions against the movies to ban due to its obscene and indecent scenes from the film still the court allowed for their release. I am not totally against of banning porn-sites but I am against the dual phased role played by our country and by its citizens who at some point enjoyed Kama sutra and has enhanced its knowledge and the same citizens are only demanding for its ban. The legal system of our country despite finding solutions to find out the middle path, making strong concrete laws to make any offence punishable in relation to pornography is only talking about how to make ban on pornography. It is also evident that sex plays an important role in each and everyone's life and its correct knowledge is also important for everyone equally but despite providing the correct knowledge to the individuals we consider it as a taboo and not only this the Human Resource Development Ministry has decided to ban the word 'Sex' from sex education and all the government schools in India will soon have limited topics on sex education. Don't know why we are heading backward where other countries in the world are heading towards development or for open mind-set of the society, where we have an example of country like Amsterdam which got its 1st 5D Porn cinema with water jets and water cannons. Can't figure out the muddled perception of our country, may be sex is a western culture and we Indians probably were born due to photosynthesis or praying to God.

16. Suggestions

(1) Proper Sex education to each and every individual of the society.

(2) Avoiding the skipping or exclusion of chapters related to sex or reproduction in the schools and making it compulsory.

(3) Enforcement of impregnable law for punishing any offences committed due to pornography.

(4) Enforcement of the unassailable laws to prevent free access of porn-sites by teenagers.

(5) An exacting watch of law ought to be made just as the digital laws.

(6) Active inclusion of some social associations so as to shield the ladies and child from such offenses and exercises.

(7) Judicial strengthening for taking care of the cases identified with erotic entertainment.

(8) Reformative and hindrance discipline ought to be made for illicit exchange of sex entertainment.

(9) References should be taken from the countries like U.S. and Australia for adopting the prominent laws to keep a check on such activities.

(10) A proper verification system should be installed in the country, by the Internet service providers as done by U.K. and Australia.

60. https://www.thoughtco.com/supreme-court-pornography-cases-721208

(11) Steps should be taken for strengthening the cyber walls.

(12) Software like Optin as installed by U.K. to prevent the teenagers from accessing to any porn-sites should also be installed in our country India.

(13) More participation from the individuals of the society should be welcomed for spreading awareness about sex education and its related concept in the society.

(14) More groups like 'Committee 67' which was formed by 12 law students from symbiosis, ILS Pune etc., for generating awareness to sensitize and influence the central government to amend the Section 67 of the IT Act, 200061, should be formed and encouraged.

(15) Again mindfulness with respect to the foundation of the porn industry (for the most part in rural areas) ought to be advanced.

Proper support gatherings and access should be scattered among the general population as a piece of government's approach, with more profound entrance into India.

61. Ibid p.10

Environmental Jurisprudence in India – A detailed studyof the Role of National Green Tribunal in Protection of Environment

Moiz & Umang Varshney*

ABSTRACT

The Supreme Court has held that the right to life as enshrined in Article 21 means something more than survival or animal existence and would include the right to live with human dignity. It would include the right to minimum subsistence allowance during suspension and all those aspects which go to make a man's life meaningful, complete and worth living.

1. Introduction

The existence of life on earth since time immemorial is solely dependent upon the environment. Thus an ecological imbalance is a potential threat to our planet. Pollution and misuse of environment resources is largely responsible for destroying this ecological balance. The environmental pollution is a bigger threat to the mother earth then the dreaded nuclear war whose eventuality has considerably receded since the cold war. Justice Krishna Iyer has described this threat in the following words:

If dehumanized industrialization, with all its profit hungry vulgarity and ecological insensitivity, invades nature without enlightened resistance from society and poisons or depletes all resources of land, water and air, the crucifixion of humanity is a certainly and the resurrection of the race a lost possibility unless we begin the battle for human values against barbarity incorporated, right now.[1]

Global concerns for environmental protection were voiced at the United Nations conference on the human environment held at Stockholm in June 1972. India's response to the global concern for environment protection is reflected in the constitution (forty second amendment) act, 1976. The articles 48-A and 51-A were inserted in the constitution, putting a sense of responsibility on the state as well as citizens to protect and improve the environment.

Judicial contribution for the promotion of environmental protection and prevention of environmental degradation has been conspicuous. The conflicts relating to environmental issues leading to judicial intervention have led to the birth of a new branch of jurisprudence, viz, ENVIRONMENTAL JURISPRUDENCE or GREEN JURISPRUDENCE. The Supreme Court of India and the High Court's through landmark decisions have breathed a new life into various legislations enacted to protect the environment. The PRECAUTIONARY PRINCIPLE, POLLUTER PAYS PRINCIPLE AND THE DOCTRINE OF PUBLIC TRUST are some of the landmark observations of these courts which became the law of the land.

2. Evolution of Green Jurisprudence

The judiciary, a spectator to environmental despoliation for more than two decades, has recently assumed a proactive role of public educator, policy maker, super administrator, and more generally, amicus environment. But this does not signify the absence of environment conservation and laws in India.

2.1 Historical Background of Environmental Conservation in India-

The ancient India provides no direct evidence of environmental laws but the people did not ignore the environment completely. This is evident through the planned cities with uniform urban planning, carefully executed layout, water supply & drainage etc of Indus valley civilization. Later, the advent of Aryans too provides evidence of consciousness of people towards the mother earth. Religious scriptures of Vedic age contain numerous mantras in the form of prayers for the environment- 'Prayers for peace in universe and says that the earth should be peaceful, herbs should be peaceful, vegetation should be peaceful, in fact he prays that peace should also be peaceful.'

Regular and independent Forest were present during the reign of Mauryan Dynasty. Kautilya's Arthashastra contains the references of Wildlife sanctuaries & protection. The hierarchy was as follows: (1) Pashuvan (Game Forest), (2) Mrigvan (Deer Forest), (3) Dravyavan (Productive Forest), (4) Hastivan (Elephant Forest). Similarly, The Gupta Kings were also concerned about the state of forests and wildlife.

During the colonial rule, many acts were promulgated from 1897 onwards such as the Indian Fisheries act, Bengal & Bombay Smoke Nuisance Acts, AP Agri, Pest & Diseases Act, The Factories Act, and Orissa River Pollution & Prevention Act. However the early part of 20th century saw Severe and unheeded exploitation of natural resources without much consideration of ecological consequences at the hands of british government in India.

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1. Justice V.R. Krishna Iyer, environmental pollution and the law 1-2 (1984).

The post-independence era saw the sudden boost in industrial development. Environment was not the major concern. National Parks & Wildlife Sanctuaries were set up but with a bias towards timber yield & revenue generation. Private forest were under govt. control. However soon the government realised its mistakes and around the beginning of 1970s marked the beginning of environmental movement and various legislations were drafted for the protection of the environment. India became part of several international treaties and legislations stressing on the need to protect the environment.

2.2 Judiciary as a Pioneer in Evolving Green Jurisprudence-

The GREEN JURISPRUDENCE has evolved through ages. Justice Krishna Iyer and Justice Bhagwati are the pioneers behind the evolution of this branch of jurisprudence. It was observed in the landmark judgement of Municipal Council Ratlam v. Vardhichand[2] that, judiciary can positively intervene and direct the administration to take action in affirmation in order to remedy the deteriorating urban environment. In his judgement Justice Krishna Iyer observed:

"Public nuisance, because of pollutants being discharged by big factories to the detriment of poorer sections, is a challenge to the social justice component of the rule of law"[3]

In the case of Union Carbide corp. v. Union of India[4], the Apex court pointed out that technology option before scientists and planners in making a choice between high-risk, resource-intensive, high-input anti-ecological hard technology and the human, flexible, Eco comfortable, soft technology is difficult. The court went further and observed:

Indeed there is a need… to evolve a national policy to protect national interest from such ultra-hazardous pursuits of economic gains....

Undoubtedly formulation and effective implementation of imaginative policy in long run will help in preventing environmental degradation and lessening the ecological imbalance.

The flurry of legislation, tax enforcement, and assertive judicial oversight have combined to create a unique implementation dichotomy; one limb represented by the hamstrung formal regulatory machinery comprised of pollution control boards, forest bureaucracies and state agencies; the other, consisting of a non-formal, ad hoc citizen and court driven implementation mechanism.

We find in these laws a governmental effort to supplement the old licensing regime with an array of new regulatory techniques. Public hearing under the Environmental Impact Assessment Regulations of 1994 provides a form to non-governmental organisations to voice their concerns to project proponents. Citizens' initiative provisions, together with a statutory 'right to information' now enable an aggrieved citizen to directly prosecute a polluter after examining government record data.

Another feature of new regime is the vesting of enormous administrative power in the enforcement agencies. This shift away from judicial to administrative enforcement of environmental laws was intended to improve compliance. The new legislation has spawned new enforcement agencies and strengthened the older ones.

Responding to a suggestion of Supreme Court in *Indian Council for Enviro-legal Action v. Union of India*[5] the union government has established a national coastal management authority and corresponding state level agencies. Further, the past decade has seen a growth in the budget and staff of central and state pollution control boards, charged with implementing the water and air acts.

'If the mere enactment of laws relating to protection of environment was to ensure a clean and pollution free environment, then India would, perhaps, be the least polluted country in the world. But this is not so. There are stated to be over 200 central and state statutes which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environmental degradation which, on the contrary has increased over the years[6].

Environmental jurisprudence has been growing at a rapid pace and judiciary through its eco-friendly judgments has been giving the necessary boost to environment protection measures. Justice Kuldeep Singh deserves a special mention for it is his observations and judgements ordering affirmative action which has stirred up and woken the administrative authorities from a deep slumber. He, not only struck a heavy blow on polluters but also lent a helping hand to the victims of pollution. He delivered a

2. AIR 1980 SC 1922.
3. Ibid.
4. AIR 1990 SC 273.
5. 1996 (5) SCC 281,303.
6. 1996 (5) SCC 293.

landmark judgment of great jurisprudential value in Vellore Citizens Welfare Forum v. Union of India[7]. The apex court through this decision revolutionized and revitalized environmental jurisprudence by making polluters liable to restore the environment damaged by pollution beside paying compensation to the affected persons(Polluter Pays Principle).

The Polluter Pays Principle came into existence at international level in the 1972 OECD Council Recommendation on Guiding Principles concerning the International Aspects of Environmental Policies. These principles experienced the revival by OECD Council in 1989 in its Recommendation on the Application of the Polluter Pays Principle to Accidental Pollution, and the principle was not to be restricted to chronic polluter.

The apex court speaking through Justice Kuldeep Singh, in its final order observed that '*the precautionary principle*' and '*polluter pays principle*' are essential features for sustainable development. The court thus adumbrated the two principles[8].

The court observed that the 'polluter pays principle' as interpreted in Indian Council for Enviro Legal Action v. Union of India[9] means that the absolute liability for harm caused to environment extends not only to the compensation to the victims but also to the cost of restoration of environment. Remediation of the damaged environment is a part of the process of sustainable development, thus the polluter is liable to pay.

In the international frame '*Sustainable Development*' came to be known as a concept for the first time in the Stockholm Declaration of 1972. Justice P.N. Bhagawati once made a insightful observation: 'We need judges who are alive to the socio-economic realities of Indian life' This statement explains the gradual shift in the judicial approach while dealing with the issues of sustainable development.

'The '*precautionary principle*' and '*polluter pays principle*' are part of environmental law of the land[10]. The court observed that once these principles are enumerated as a part of customary international law there would be no difficulty in accepting them as a part of the domestic law. The court further observed that since our legal system has been founded on the *common law principle of Britain,* thus the right to pollution-free environment is a part of basic jurisprudence of the land.

In M.C. Mehta v. Union of India[11], the Apex Court observed, "The precautionary principle has been accepted as a part of law of the land. Article 21, 47,48A, and article 51A(g) of the constitution of India give a clear mandate to the state to protect and improve the environment and to safeguard the forest and wildlife of the country… the precautionary principle makes it mandatory for the state government to anticipate, prevent and attack the cause of environment degradation..."

The principle of Absolute liability is one tort where there is no need not establish the fault. It is no-fault liability. In the Oleum Gas Leak case (M.C. Mehta v. Union of India)[12], the apex Court held that an enterprise engaged in a hazardous or inherently dangerous industry posing a potential threat to the health and safety of people working in the factory and to those residing in the surrounding neighborhood, owes an absolute and non-delegable duty to the community and society to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise is absolutely liable to compensate for such harm and it should be no defense for the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.

Another jurisprudential principle was laid down by justice Kuldeep Singh in MC Mehta v. Kamal Nath[13], in the decision, the *Doctrine of Public Trust* was referred by the apex court to prevent unjustified and improper appropriation of common resources for private ends harming the ecology. In the decision, the court held that the pristine glory of the natural resources cannot be permitted to be eroded for private, commercial or any other use unless such use is for public good or in public interest.

This doctrine was developed by ancient roman empire, the court linked it to the contemporary environment concerns and observed:

The public trust doctrine primarily rests on the principle that certain resources like air, sea, water, and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of status in life…

It was observed in Indian Council for Enviro Legal Action v. Union of India[14], that:

7. AIR 1996 SC 2715.
8. K GopalaPillai, Justice kuldeep Singh & Environmental Jurisprudence in India, 186-87(The academy Law Review, vol. 20:1 & r, 1996).
9. (1996) 3 SCC 212.
10. Supra note 7.
11. (1997) 3 SCC 715.
12. AIR 1987 SC 1086.
13. (1997) 1 SCC 388.
14. (1996) 5 SCC 293.

"*Enactment of a law, but tolerating its infringement is worse than not enacting a law at all… when a law is enacted containing some provisions which prohibit certain type of activities, then it is of utmost importance that such legal provisions are effectively enforced… infringement of a law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead t oa lawless society.*"

The State is holding the natural resources as a trustee and cannot commit breach of trust[15]. The greatest contribution of justice Kuldeep Singh to jurisprudence is the declaration making the public trust doctrine a part of law of the land. This shows that law is always above the might of an individual and the court through its innovative and dynamic intervention safeguard the interests of the society and their right to enjoy nature's gift and common heritage[16]

3. Constitutional Provisions and Legislations

3.1 Constitutional Provisions for Protection of Environment-

In the Constitution of India, it is clearly stated that it is the duty of the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife.[17]

No constitution in the world contains provisions for environmental protection. Before 42nd amendment act, there were no specific provisions dealing with environmental protection in the constitution. But it was under the leadership of late Mrs. Indira Gandhi that the environmental provisions were incorporated in the constitution.

Article 48A and Article 51A (g)[18] were incorporated with a aim to provide a specific area for the effective adjudication of environmental principles. The scope of Article 51A(g) came under the lens in L. K. Koolwal v. State of Rajasthan the high court of Rajasthan[19] while delivering judgment observed

"We can call Article 51A ordinarily as the duty of the citizens. But in fact it is the right of the citizens as it creates the right in favor of citizens to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Article 51-A gives a right to the citizens to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities created under the peculiar law of the State."

The United Nations Conference on Human Environment held in June, 1972 at Stockholm raised the issue of the protection of biosphere on the official agenda of international policy and law. To comply with the principles of the Stockholm Declarations, the Government of India, by the Constitution (42 Amendment) Act, 1976 incorporated provision by the inclusion of Article 48A and 51A(g) which form the part of Directive Principles of State Policy and the Fundamental Duties respectively for the protection and promotion of the environment.

Further the 7th schedule was amended to include certain other entries dealing with environment. Also the 11th and 12th schedule were added to the constitution of India to further strengthen the law on environment.

3.2 Right to Environment as a Fundamental Right-

The *due process* clause of the Supreme Court in the Maneka Gandhi v. Union of India[20], widened the scope of article 21[21]. Right to live in healthy environment is now an extension of article 21. It embraced the protection and preservation of nature's gift without which the life cannot be enjoyed. The Supreme Court of India indirectly conceived this right in the case of Ratlam Municipality v. Vardichand[22]. The right to humane and healthy environment is seen indirectly approved by the apex court in various MC Mehta group of cases decided in the eighties. In Subhash Kumar v State of Bihar[23] the apex court observed:

"Right to live ... includes the right to enjoyment of pollution free water and air for full enjoyment of life."

The Concept of quality of life and living has gradually enlarged by judicial intervention. The courts paid emphasis on right to life although significantly, certain cases had wider perspective of the constitutional provisions on environment. These provisions impose a constitutional mandate for protection of environment. Once the existence of a fundamental right to environment is established in Article 21, it is likely that the right may not

15. Nicola Tilche, In What Ways Is The Emphasis On Public Participation A Positive Development In Environmental Law? An Analysis Of The Aarhus Convention And Its Impact On EU Environmental Law And Policy.(Environmental Law & Practice Review, Volume 1, 2011)
16. Supra note 8.
17. Article 48, The Constitution of India, 1949.
18. Constitution of India, 1949.
19. AIR 1988 Raj. 2.
20. AIR 1978 SC 59.
21. Constitution of India, 1949.
22. AIR 1980 SC 1622.
23. AIR 1991 SC 420.

be confined to human beings only. As Justice Douglas had stated, inanimate objects may also be considered as invisible parties in environmental litigation.

3.3 Environmental Legislations in India

There are number of laws regarding environmental protection, stretched both pre and post independence however the pre-independence laws exclusively did not deal with environmental protection so we look now for several provisions which came after independence and have worked towards the protection of environment. Chapter XIV of the Indian Penal Code (IPC), 1860 deals with Offences Affecting the Public Health, Safety, Convenience, Decency and Moral which contains the aspect of environment and its protection.

Section 268 of IPC talks about Public Nuisance[24]. Section 269 and Section 270 of IPC talks about "negligent act likely to spread infection or disease dangerous to life"[25], "malignant act likely to spread infection or disease dangerous to life"[26] respectively.

Section 278 of IPC talks about "making atmosphere noxious to health"[27]. Section 290 of IPC provides for the punishment of Public Nuisance."[28] There are provisions to stop the environment degradation but the punishments are not severe as compared to the act of the people so there is need of proper punishment and legislation to encounter this problem of environmental degradation.

In this Era people are well aware of the need to protect the environment. Due to industrialization and population growth there have been a lot of legislations and has raised concern regarding the environmental protection besides a constitution there are certain legislative provisions which deals with the protection of environment.

The 1976 amendment incorporated subject to deal with environment and prevention and control of pollution in the Indian constitution. Constitutional provisions have been discussed previously now we will talk about some legislative provisions which came post in independence and have been functioning to protect the environment.

Several provisions of environmental protection by different states for example the Orissa river pollution prevention act 1953 dealt with the rivers while the Maharashtra prevention of water pollution act 1969 dealt with rivers which were flowing or dried whether they were natural or artificial. Basically these provisions were not unified and due to the rise of population and pollution levels getting higher and the invasion of humans to the forest lead to a need for a unified effort or policy to deal with the environmental protection.

The Water Prevention and Control of Pollution Act, 1974, was enacted to prevent and control pollution by establishing control board at both centre and state level. The Forest Conservation Act, 1980, was initiated to promote social well being of the forest and to keep a check on deforestation while The Air Prevention and Control of Pollution Act, 1981, initiated control board for the air pollution.

Several other legislations were enacted in order to keep the spirit of environment alive. Then came the 1986 which marked as the year where they was unified legislation that is the environment protection act which came towards removing the loopholes in the previous legislation.

4. Role of National Green Tribunal in Protection of Environment

NATIONAL GREEN TRIBUNAL is a quasi-judicial body, established by National Green Tribunal Act, 2010, exclusively deals with environmental litigations. India became the third country after Australia and New Zealand to have such a system to protect the environment. The idea behind enactment and establishment of a tribunal was to impart justice as fast as possible by the judges and environmental experts.

The plethora of cases before supreme court and other courts puts them under some extreme burden to deliver appropriate remedy on matters concerning environment, therefore there was a need felt for an alternate forum to resolve the environmental dispute in a very efficient manner.

The Supreme Court in MC Mehta v. Union of India[29] declared that environment court must be established to hear and dispose environmental cases. National Environment Tribunal Act, 1995 and National Environment Appellate Authority Act,1997 were passed but these enactments failed to work for their preamble. The National Green Tribunal Act, 2010 was passed by the Indian parliament to deal with all the environment related cases in India.

The Supreme Court observed that since environment cases involve assessment of scientific data it would be desirable to have the setting up of "environmental courts on a

24. Section 268, Indian Penal Code, 1860.
25. Section 269, Indian Penal Code, 1860.
26. Section 270, Indian Penal Code,1860.
27. Section 278, Indian Penal Code,1860.
28. Section 290,Indian Penal Code,1860.
29. AIR 1987 SC 965-967.

regional basic with a professional judge and two experts keeping in view the expertise required for such adjudication".

The Supreme Court in judgments, namely, M.C. Mehta v. Union of India[30], Indian Council for Environmental – Legal Action v. Union of India[31], A.P. Pollution Control Board v. Nayudu[32]inspired the cause for enactment of NGT. The reference made in the Nayudu case to the idea of a "multi-faceted" Environmental Court with judicial and technical/scientific inputs as formulated by Lord Woolf in England recently and to Environmental Court legislations as they exist in Australia, New Zealand and other countries, was considered by the commission.

The Act is also an endeavor of the Parliament under Article 253 of the Constitution read with Entry 14 of List I of Schedule VII to fulfill the obligation of India towards Stockholm Declaration, 1972, calling upon the States to take appropriate steps for the protection and improvement of the human environment and Rio Declaration, 1992, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.

4.1 Jurisdiction of the Tribunal-

The National Green Tribunal has power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the National Green Tribunal Act, 2010.

This Act confers on the Tribunal, the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Act. It further provides a time-limit of six months within which the applications for adjudication of dispute under this section shall be entertained by the Tribunal. It also empowers the Tribunal to allow such applications to be filled within a further period not exceeding sixty days, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period.

4.2 Some Notable Decision of National Green Tribunal-

NGT imposed a fine of Rs. 5 crore on Art of Living Foundation in march 2015 as they organized World Cultural Festival on Yamuna floodplain and affected the environment. On 25 April 2014, The NGT observed that the health of Yamuna will be affected by the proposed recreational facilities of the government on the river. The NGT also recommended the Government to declare a 52 km stretch of the Yamuna in Delhi and Uttar Pradesh as a conservation zone.

The National Green Tribunal has cancelled the clearance given by the then Union Environment and Forests Minister, Jairam Ramesh, to the Parsa East and Kante-Basan captive coal blocks in the Hasdeo-Arand forests of Chhattisgarh, overruling the statutory Forest Advisory Committee. An attempt to minimize air pollution at the capital of India and NCR PM 2.5 particles have reached alarming level. As per this order, 10 yrs, old vehicles are not allowed to ply.

5. Conclusion

The judiciary through several decisions has been evolving the ambit of right to life under Article 21 to include the concept of right to healthy environment. Further the right to environment is often associated with human right, mostly right to live. Thus it is of utmost importance that our environment and surroundings be pollution free and clean In order to live a healthy life. Thus, in India, the judiciary has interpreted Article 21 to give it an expanded meaning of including the right to a clean, safe and healthy environment. Thereby giving birth to an incomparable environmental jurisprudence in the form of the constitutional right to healthy environment.

The NGT has been enacted with a view to provide speedy justice to the environmental problems. National Green Tribunal also provides strict penalty for non-observation of its orders. This will allow implementation of the order of the tribunal. However, the rules relating to constitution and composition of selection committee of the tribunal tilts the balance of power in favor of Central Government. The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 were also enacted with the same motive as of this present Act, thus it is hoped that legislation will become operational in letter and spirit and will provide much needed relief against offences/complaints for degradation of environment. The present legislation provides interference and control by the central Government in the affairs and processes of the tribunal which should be avoided to give tribunal an unrestricted hand to decide the inherent matter as proceedings.

30. AIR 1987 SC 965-967.
31. 1996(3) SCC 212.
32. 1999 (2) SCC 718.

Error of Law can be corrected by a Writ but not an Error of Fact: A Contemporary Case Study

Dr. Shoaib Mohammad*

ABSTRACT

It is considered the jurisdiction to issue a writ of certiorari is supervisory and not appellate. It is a tool to correct error of law not error of fact. This issue is settled by the number of judicial pronouncements including recent pronouncement of Uttarakhand High Court. The petition[1] decided by the Uttarakhand High Court which was initially filed in the Allahabad High Court in the year 1994 questioning the order passed by the State Public Services Tribunal, Lucknow. The State Public Services Tribunal had quashed the termination order of the petitioner as illegal and void. The opposite parties (respondents) were directed to re-instate the petitioner forthwith, and were directed to pay him salary from the date of his joining till the date of his superannuation, if he had not already retired on attaining the age of superannuation. The Tribunal, however, observed that no orders were being passed for payment of salary to the petitioner, for the intervening period, on account of his continued absence from duty; and it was open to the opposite party to regularize the period of absence if deemed proper, and in accordance with the Rules.

Key Words: Writ, Petition, Tribunal

1. Introduction

The Government of Uttar Pradesh questioned the order, passed by the State Public Services Tribunal, before the Allahabad High Court to the extent the earlier order of termination was quashed. The petitioner-employee filed the writ petition before the Allahabad High Court questioning the order passed by the State Public Services Tribunal to the extent he was denied salary from the date of his termination till he was permitted to join duty. While the Writ Petition filed by the Government of Uttar Pradesh, against the order of the State Public Services Tribunal, continued to remain on the file of the Allahabad High Court, the Writ Petition filed by the employee (petitioner) was transferred to Uttarakhand High Court.

The petitioner was appointed as a Panchayat Mantri on 27.07.1968 and, in the year 1971, Panchayat Mantries were declared to be Government servants. The petitioner applied for casual leave from 19.04.1978 to 27.04.1978 and, thereafter, continued to seek extension of his leave, the last of which was for a period of 15 days from 13.07.1978. The respondents directed the petitioner to undergo a medical checkup, and produce a medical certificate to be issued by the Chief Medical Officer. The petitioner, however, failed to secure such a certificate initially contending that his serious illness disabled him from appearing before the Chief Medical Officer; and, thereafter, on the ground that, though he had appeared before the Medical Officer, no such report was furnished to him. The petitioner's services were terminated by order dated 11.04.1980 with retrospective effect from 24.04.1978, i.e on completion of the initial period of the casual leave sought by the petitioner. Questioning the said order of termination, among others, on the grounds of violation of principles of natural justice, the petitioner invoked the jurisdiction of the State Public Services Tribunal, 12 years after his termination, in the year 1992.

In the order, impugned in this Writ Petition, the State Public Services Tribunal held that the petitioner had absented himself from duty; he did not appear before the Chief Medical Officer despite repeated directions, to which he did not even submit a reply; he continued to apply for leave; he had appended a certificate, issued by an Ayurvedic Doctor, without undergoing a medical checkup by the Chief Medical Officer; and the impugned order of termination had been passed after issuing a show-cause notice to the petitioner. On the sole ground that the impugned order of termination dated 11.04.1980 had been passed with retrospective effect i.e w.e.f 20.04.1978, the State Public Services Tribunal quashed the said order, holding that the order of termination cannot be passed with retrospective effect, and this circumstance alone rendered the termination order dated 11.04.1980 void. While holding that the petitioner had been absent from duty throughout, and had filed the Claim Petition on 25.08.1992 after a period of more than 12 years, the State Public Services Tribunal observed that, since the order of termination was void, the law of limitation had no application on void orders; and the impugned order of termination was, therefore, liable to be quashed. However, on the ground that the petitioner had absented himself from duty, and had also violated the directions issued by

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1. Naresh Kumar Jainv.State Public Services Tribunal and Others.2019 SCC OnLineUtt 613

the second opposite party from time to time for undergoing a medical checkup, the State Public Services Tribunal, while directing reinstatement of the petitioner, declined to pass any order for payment of salary for the intervening period because of the petitioner's continued absence from duty, but, however, left it open to the opposite party to regularize the period of absence of the petitioner, as they deemed proper, and in accordance with the Rules.

While it is debatable whether the State Public Services Tribunal could have granted the relief sought for in the Claim Petition, despite the employee having invoked its jurisdiction 12 years' after the order of termination was passed, it would be wholly inappropriate for us to examine this aspect since the Government of Uttar Pradesh has filed a Writ Petition before the Allahabad High Court questioning the very same order passed by the State Public Services Tribunal, albeit to the extent the order of termination was quashed and the petitioner was re-instated into service. We have, therefore, confined our examination in this Writ Petition to the action of the State Public Services Tribunal in denying the petitioner salary for the period between the date of his termination from 11.04.1980 till the date on which the petitioner was required to join duty.

As noted herein above, the petitioner had approached the State Public Services Tribunal only in the year 1992, and the order of termination was set aside two years after he invoked the jurisdiction of the State Public Services Tribunal in the year 1994. Having approached the State Public Services Tribunal after a period of 12 years, the petitioner cannot be heard to contend that he should also be paid his salary for the intervening period from the year 1980 to 1992 when he approached the Tribunal, even though it was he who had slept over his rights for around 12 years. The State Public Services Tribunal has also refused to grant the petitioner back-wages, even for the period 1992 to 1994, on the ground that the petitioner had absented himself from duty and had also violated the directions issued by the respondents to undergo a medical checkup before the Chief Medical Officer. The petitioner's interests has been, adequately, safeguarded by the State Public Services Tribunal leaving it open to the opposite parties to regularize the period of absence as they deemed proper, and in accordance with the Rules.

The parameters of judicial review, in the exercise of the certiorari jurisdiction under Article 226 of the Constitution of India, is limited. A writ of certiorari can be issued for correcting errors of jurisdiction such as in cases where the order is passed without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction or where, in exercise of the jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly. The jurisdiction to issue a writ of certiorari is supervisory and not appellate. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. The adequacy or sufficiency of evidence, and the inference of fact to be drawn therefrom, cannot be agitated in certiorari proceedings[2] as it is in the province of a court of appeal.

If the tribunal has erroneously refused to admit admissible and material evidence, or has erroneously admitted inadmissible evidence, or if a finding of fact is based on no evidence, it would be an error of law which can be corrected by a writ of certiorari. Where the conclusion of law by the Tribunal is based on an obvious mis-interpretation of the relevant statutory provisions, or in ignorance of it or even in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Whether or not an error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case, and upon the nature and scope of the legal provisions which is alleged to have been misconstrued or contravened.[3]

Unlike an appellate authority which can re-appreciate the evidence on record, the High Court, in the exercise of its certiorari jurisdiction, would not substitute its views for that of the Tribunal, nor would it re-appreciate the evidence on record to arrive at a conclusion different from that of the Tribunal whose order is impugned before it. Even if two views are possible, and the Tribunal has taken one of the possible views, the High Court would not interfere, in the exercise of its certiorari jurisdiction, even if it were to be satisfied that other possible view, canvassed before it, is more attractive. A finding of fact reached, on the appreciation of evidence, cannot be reopened or questioned in writ proceedings save a finding of fact which is either perverse or is based on no evidence. If a provision is reasonably capable of two constructions, and one construction has been adopted by the authority, its conclusion may not always be open to correction in writ proceedings.[4]

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior tribunals. A writ can similarly be issued where, in exercise of the jurisdiction conferred on it, the tribunal acts illegally or improperly, as for instance, it decides a question without giving an

2. Syed Yakoob v. K.S Radhakrishnan, AIR 1964 SC 477
3. Ibid
4. Syed Yakoob v. K.S Radhakrishnan, AIR 1964 SC 477

opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. A writ of certiorari can be issued in the case of illegal exercise of jurisdiction, and also to correct errors of law apparent on the face of the record, even though they do not go to jurisdiction. It is only errors of law apparent on the face of the record, and not errors of fact though they may be apparent on the face of the record, which can be corrected[6], and not every error either of law or fact which can be corrected by a Court of appeal or revision.[7]

Further an error of law, which can be corrected by a writ of certiorari, must be self-evident. It should not need an elaborate examination of the record[8], or require a detailed examination or an elaborate argument to establish it[9]. An error cannot be said to be apparent if one has to travel beyond the record to see whether the judgment is correct or not. It is an error which strikes on the mere looking, and does not need a long-drawn out process of reasoning on points where there may conceivably be two opinions. Such an error would not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record.[10]

The order passed by the State Public Services Tribunal, to the extent the petitioner was denied back-wages from the date of his termination order dated 11.04.1980 till the order passed by it on 07.05.1994, does not suffer from any such manifest error as to require us to exercise our certiorari jurisdiction. We see no reason, therefore, to interfere with the order of the Tribunal dated 07.05.1994 denying the petitioner salary from the date of his termination till the date of his reinstatement. Suffice it to make it clear that, in terms of the order passed by the State Public Services Tribunal, it is always open to the respondents to regularize the period of absence of the petitioner as they deem proper, and in accordance with the Rules. We also make it clear that the order now passed by us is confined only to the petitioner's claim for back-wages, during the intervening period, on the premise that the order of the Tribunal dated 07.05.1994, quashing the termination order of the petitioner dated 11.04.1980 as void, is valid. Needless to state that in case the Writ Petition, filed by the Government of Uttar Pradesh before the Allahabad High Court, were to be allowed, the petitioner would not be entitled for any of the reliefs granted by the State Public Services Tribunal in its order dated 07.05.1994

5. CIT v. Saurashtra Kutch Stock Exchange Ltd., (2008) 14 SCC 171; and Syed Yakoob v. K.S Radhakrishnan, AIR 1964 SC 477
6. Shri.Ambica Mills Co. Ltd. v. S.B Bhatt, AIR 1961 SC 970; R. v. Northumberland Compensation Appeal Tribunal, (1952) 1 KB 338; and NagendraNath Bose v. Commr. of Hills Division, AIR 1958 SC 398
7. T. PremSagar v. The Standard Vacuum Oil Company Madras, AIR 1965 SC 111; Bachan Singh v. GaurishankarAgarwal, (1972) 4 SCC 257; and NagendraNath Bose v. Commr.of Hills Division, AIR 1958 SC 398.
8. Shri.Ambica Mills Co. Ltd. v. S.B Bhatt, AIR 1961 SC 970
9. CIT v. Saurashtra Kutch Stock Exchange Ltd., (2008) 14 SCC 171; Hari Vishnu Kamath v. Syed Ahmad Ishaque, AIR 1955 SC 233; Batuk K. Vyas v. Surat Borough Municipality, AIR 1953 Bom 133
10. CIT v. Saurashtra Kutch Stock Exchange Ltd., (2008) 14 SCC 171; SantLal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336

Judicial Accountability and Democracy: "Who Will Judge the Judges?"

Farheen Arshad & Shivani Kakkar*

"The place of justice is a hallowed place, and therefore not only the Bench, but also the foot space and precincts and purpose thereof ought to be preserved without scandal and corruption"[1].

ABSTRACT

The Romans long back had asked: *Quis Custodietimposs custodies* i.e. who is there to watch the watchmen themselves? It is comprehensible that if the judiciary were to be under the constant scrutiny of the Legislature and the Executive or either of the two, it would not be able to discharge its obligations without fear or favour, affection or ill-will. Therefore, should the judges be made to judge themselves?

This paper begins with the discussion on the concept of 'judicial accountability', its importance in the ancient times and the compelling contemporary circumstances that call for a robust mechanism to ensure accountability in the strongest pillar of democracy (i.e. judiciary). Some of the sordid incidents in the judiciary have been mentioned and it is evident that there is erosion of values in all walks of life and the judiciary is not an exception in this regard. The road to achieving judicial accountability is not without hurdles. The pertinent problems have been elucidated at length subsequently. The various significant provisions of the Judicial accountability bill, 2010 have been enlisted in the paper and simultaneously the lacunae in the clauses have been highlighted. Thereafter, possible solutions to overcome the apparent limitations of the bill have been put forward as well in order to make the intended legislation viable. As concluding remarks, suggestions have been given which would facilitate the process of making the judiciary venerable and free from the malady of corruption.

1. Introduction

The word 'accountable', as defined in the Oxford Dictionary, means 'responsible for your own decisions or actions and expected to explain them when you are asked[2].Clearly, the concept of 'judicial accountability' refers to making the judges answerable for their decisions in the Court of Law.

The concept of judicial accountability in India is considered in two ways. First aspect is the accountability of the higher judiciary in India for its judgments i.e. having the judges be responsible for their decisions. A reasoned judgment is what is desired. The second aspect is with respect to the institutional methods of appointing the Judges, removal of the Judges and the inhibitions to the criticisms of their work by the 'law of contempt of court[3]. The learned founding fathers of the Constitution have intended to uphold the principle of accountability of courts in India which is evident from the reading of the 'third schedule which imposes in the judge a duty to preserve the sovereignty and national integrity.

1. Need for judicial accountability since time immemorial

In the Vedic days of Ancient India, the monarch alone was the administrator of law and justice, yet the monarch was not above the law but subservient to it. His duties, rights and obligations were laid down in the religious texts. The foremost duty of the monarch was the protection of the subjects as laid down in the ancient Indian body of jurisprudence i.e."Dharmashastra". If he swerved from the accepted laws of the land, he would be punished like any other citizen of the state. It is evident that even the archaic principles of administration of justice recognized the magnitude of discharging such a function, subjecting even a king to the sanction of the law. History is rife with instances of injustice in exercise of judicial functions. There exist several illustrations, from which it is evident that the pre-independence era was a period of effacement of the individual's right to the life and property. Individuals were at the mercy of the arbitrary and capricious will of those in power, resulting in a sort of 'matsyanyaya' (bigger fish swallowing the smaller fish). Thereby the terms "judicial

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1. "On Judicature" by Francis Bacon. Francis Bacon is an English philosopher, statesman, scientist, lawyer, jurist, author and pioneer of the scientific method. He served both as Attorney General and Lord Chancellor of England. He has been called the father of empiricism (theory of knowledge).
2. OXFORD CONCISE ENGLISH DICTIONARY 10 (Oxford University Press, 2009).
3. CYRUS DAS, JUDGES AND JUDICIAL ACCOUNTABILITY 200 (Universal Law Publishing 2004).

murder" and "miscarriage of justice" became synonymous with the administration of justice. A case in this regard which is worthy of mention is the 'Trial of Raja Nand Kumar' where judicial standards were guided by injustice, inequity and unconscionable action[5]. The principal reason for such injustice was clearly because of the capricious and absolute prerogative of the monarch. Hence, subjecting the monarch to the sanction of the law became necessary.

The law of human conduct has laid down considerable precedent that for the use of a device there also exists its abuse. It is evident that the absolute autonomy to the judiciarybecomes a vassal of prerogative. The same has been succinctly stated by Justice Frankfurter, that man being what he is, cannot be safely trusted with the complete immunity from outward responsibility in depriving others of their rights[6].

2.1 Ancient Text on Judicial Accountability- "Shukraniti on Biases[7]"

Shukraniti cautions judges to avoid reasonable likelihood of biases against them. The main contents of this text are discussed as under:

(a) Raga: Exhibiting affection in favour of a party to litigation by speech or conduct both in the Court or outside.

(b) Lobha: Being greedy, which creates an impression in the mind of the litigant public that he is amenable to receive bribes, pecuniary or otherwise.

(c) Bhaya: (Fear) Afraid to deliver judgment against powerful parties or Government

(d) Dwesha: (ill-will) Giving an impression that he has enmity against one of the parties to the litigation by his conduct in the Court or outside.

(e) Vadinoshca Rahashturi : (The Judge meeting and hearing a party secretly) This shall include advocates of a party to a case also in the modern day context.

2.2 Growing need for Judicial Accountability in the contemporary milieu

Reported upon year after year, large parts of the bureaucracy are seen to be corrupt. The cash for votes and cash for queries scams and the allegations of corruption in the spending of MP and MLA local area development funds have eroded the voter-taxpayer's faith in parliamentarians and legislators alike. With two out of three organs of the State often failing to live up to their expectations, people have always looked upon the judiciary as the island of hope where justice will be delivered despite the sometimes long wait.[8] The judiciary has thus been looked upon as the strongest pillar of the Indian democracy. However, unfortunately it has been beset with unprecedented problems in recent times. The working of the judges of the superior courts (High Courts and the Supreme Court) has come in for intense scrutiny and grave doubts have been cast against the conduct of some judges[9]. Undoubtedly, the malady of corruption has crept into the judicial system as well. Below, a few major controversies in the regard have been elucidated.

*The Dinakaran Imbroglio:*The episode has brought to the surface the vexed problem of the arbitrary and totally unsatisfactory manner of selecting and appointing judges as well as the unresolved problem of dealing with complaints of misconduct and corruption against judges. There are several allegations about the ostensibly dishonest manner in which Justice Dinakaran dealt with a number of cases, in Tamil Nadu and then as Chief Justice of Karnataka[10].

Prosecution of Justice Nirmal Yadav: Justice Nirmal Yadav has been accused formally of corruption, destruction of evidence, and fabrication of evidence. She has become the first judge to be charge sheeted while still in office. In August 2008, a businessman who wanted Justice Yadav to rule in his favour routed the money accidentally to another woman judge named Justice Nirmaljit Kaur. Upon 15 lakhs arriving at her home, she reported the matter to the police, who discovered the money was meant for Justice Yadav[11].

Soumitra Sen's case: Calcutta High Court judge Soumitra Sen will be the second Judge in independent India to face impeachment for alleged misconduct in misappropriating Rs. 42 lakh when he as a lawyer had been appointed a receiver by a court of law. A motion for impeachment against Justice Sen has been admitted after a three-member committee headed by sitting Supreme Court Judge B Sudarshan Reddy found him guilty of misconduct under Article 124 (4) read with proviso (b) to Article 217(1)

4. Form of oaths or Affrmations are mentioned in this schedule.
5. Trial of Raja Nand Kumar, (1775).
6. Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 171 (1971)
7. As discussed in the Conference of Judges held at VigyanBhavan, New Delhi in 2001.
8. "Strengthening The Judicial Standards and Accountability Bill, 2010", NCPRI, retrieved from righttoinformation.info/…/NCPRI-Note-on-Judicial-Accountability-and-…
9. Retrieved from http://www.hindu.com/2011/03/30/stories/2011033055931400.htm.
10. The Dinakaran Imbroglio: Appointments and Complaints against judges, ECONOMIC AND POLITICAL WEEKLY, October 10, 2009.
11. Available at http://www.ndtv.com/article/india/cbi-to-file-chargesheet-against-justice-nirmal-yadav-today-89322.

of the Constitution of India[12].

2.3 Hurdles in the path of Judicial Accountability

The problem of judicial accountability can be presented as follows[13]:

1. *The actions of the Judiciary on the premise of independence of the judiciary cannot be at the expense of accountability.*

   The independence of the Judiciary has its basis in 'Article 50'[14] of the Constitution. This constitutional provision moots the principle of 'separation of powers' i.e., no one branch of the state will be able to subordinate the other. The Constitution recognizes and gives effect to the concept of equality between the three wings- executive, legislature and judiciary and the concept of "checks and balances"[15]. Our Constitution has insulated the judiciary from the interference of both the legislature and the executive and thus the Indian Judiciary independent. It prohibits any discussion in the Parliament or the State legislatures on the conduct of a Judge either of theSupreme Court or the High Court with regard to their respective duties under Article 121 and Article 211[16].

   The questions that crop up at this juncture: if judicial accountability is needed in the contemporary era, will it not hinder the independence of the judiciary? Should we do away with judicial accountability? If judicial accountability is indispensable part of a democratic set- up, then how should it be balanced with the judicial independence?

   In the contemporary times, when judicial corruption is becoming rampant, some question why judicial independence should create a barrier to any potentially effective means of ensuring judicial accountability. Judicial independence however should not be so lightly dismissed. It, too, is vital for preserving a system of liberty and Rule of Law.[17] Thus, the challenge is to strike the right balance between independence from external forces on the one hand and accountability to the community on the other hand?[18]

2. *The disciplinary control via the process of impeachment (as seen in the case of Justice V. Ramaswami)*[19] *is extremely difficult process to pursue in practice.*

3. *The additional immunity with which the judges have cloaked themselves as held in Justice R. Veeraswamy's case,*[20] *to the effect that even an FIR for any crime committed by a judge cannot be registered against him without the prior permission of the CJI.*

4. *The exercise of the power of 'contempt of court'*[21] *which has been occasionally used to punish even legitimate criticism of the judiciary is another hurdle in the process of accountability.*The Contempt of Court Act, 1971 is a sword which hangs over the neck of the people and the media, intimidating them from exposing the rot within the judiciary. Of course, the judiciary, unlike the parliament, or the government, is not democratically accountable in the sense that it does not have to seek re- election.

5. *Now the judiciary has even sought to remove itself from the ambit of the RTI and the "Lokpal bill" which has been hogging the limelight*.

2.4 The Judicial Standards and Accountability Bill, 2010- A step forward in Achieving Judicial Accountability

At present, there is no legal procedure for dealing with complaints against judges, who are governed by

12. Indian Const. art. 124 & 127: Article 124(4) when read with proviso (b) to Article 217(1) states that a judge of a High Court shall not be removed from his office except on the grounds of 'proved misbehaviour'. The prefix 'proved' only means proved to the satisfaction of requisite majority of Parliament, if so recommended by the inquiry committee. Available at http://articles.timesofindia.indiatimes.com/2010-11-10/india/28256473_1_impeachment-motion-justice-soumitra-sen-judges-inquiry-act; and http://www.newkerala.com/news/world/fullnews-149257.html; See also, "Motion to impeach Justice Sen on Aug 17", THE INDIAN EXPRESS, , August, 11, 2011 Chandigarh, p. 7.
13. PrashantBhushan, Comments of the Committee on Judicial Accountability on the Judges Enquiry Bill, 2006, available at http://www.judicialreforms.org/files/4%20Comments%20of%20COJA.pdf.
14. Indian Const. at. 50: Article 50 of the Constitution reads as follows: "The State shall take steps to separate the judiciary from the executive in the public services of the State"
15. State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453 ¶ 17; See also, Justice J.S Verma, Judicial Independence: Is it threatened?,retrieved fromhttp://www.hcmadras.tn.nic.in/jacademy/articles/Judicial%20Independence-Is%20It%20Threatened-JS%20VERMA.pdf.
16. VijaylaxmiMadanabhavi, Impeachment and Judicial Accountability, INDIAN BAR REV., Vol. XXXVII 193(2010).
17. Wallace, Clifford, Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives, Judges and Judicial Accountability, 2 INDIAN REPRINT 88 (2005).
18. Kapadia, Supra note 5 at 2.
19. K. Veeraswami v. U.O.I, JT1991(3)SC198.
20. Id.
21. Indian Const. art. 129 & 142: Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish anyone for contempt of any law court in India including itself.

'Restatement of Values of Judicial Life,' adopted by the judiciary without any statutory sanction.[22] The "Restatement of Values of Judicial Life"[23] is a 16-point charter meant to serve as a "guide for the judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice".This charter was adopted by the Full Court of the Supreme Court on May 7, 1997. Since the judiciary has time and again reiterated that the Restatement of Values is not legally binding and not enforceable through judicial orders as it doesn't have the force of law, it is being planned by the legislators to include a detailed list of do's and don'ts in the proposed law. [24]The Judicial Standards and Accountability Bill, 2010 is a significant initiative in this direction.The Bill seeks to replace the Judges (Inquiry) Act, 1968 while retaining its basic features.[25]

The original Lokpal bill which has been hogging the limelight in the resent times would have resulted in making the higher judiciary accountable to two separate organisations: the Lokpal and the Judicial Oversight Committee. What is in fact needed is that the judiciary be excluded from the purview of the Lokpal bill in lieu of a robust judicial accountability bill that would check the malady of corruption in the judicial system.[26]

3. Components – The Independence of the Judiciary

The components of the independence of the judiciary as talked of here refers to some of the requisite terms and conditions which are so necessary that if they are absent, the independence of the judiciary also cannot exist.

It is very difficult to lay down certain set conditions as law is dynamic in itself and of the changing economic, political and social scenario.

Constitutional Provisions:-

3.1 The Independence of the Judiciary

Though in India there is no express provision in the Constitution but the independence of Judiciary is imbibed in the letters of various provisions of the Constitution.

Independence of judiciary and rule of law are the basic features of the Constitution it cannot be abrogated even by constitutional amendments.

Many provisions are provided in our constitution to ensure the independence of the judiciary. The constitutional provisions are discussed below:

1. Security of Tenure: The judges of the Supreme Court and High Courts have been given the security of the tenure. Once appointed, they continue to remain in office till they reach the age of retirement which is 65 years in the case of judges of Supreme Court (Art. 124(2)) and 62 years in the case of judges of the High Courts (Art. 217(1)). They cannot be removed from the office except by an order of the President and that too on the ground of proven misbehaviour and incapacity. A resolution has also to be accepted to that effect by a majority of total membership of each House of Parliament and also by a majority of no less than two third of the members of the house present and voting. Procedure is so complicated that there has been no case of the removal of a Judge of Supreme Court or High Court under this provision.

Prof. Shibban Lal Saksena of the members of constituent assembly had suggested that the appointment of Judges should be confirmed by 2/3rd majority of the parliament. This proposition was rejected by the house because it would compromise the independence of judiciary and would leave the fate of the judge in the hands of the executives and legislators. This set the tone for Independence of Judiciary in our country.

Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary.

The bone of contention in this particular section is the word 'consultation', that whether 'consultation' means concurrence or merely communication.

In S.P Gupta v. Union of India the Supreme Court held that 'Consultation is a mere Suggestion not concurrence and is not binding on the president'. Their reasons were as follows:-

- They followed the judgment in Sankalchand Sheth.
- They said that Chief Justice of India is also a man with the flaws and failings of a common man, hence making his view binding on the President and the executives may be dangerous idea.
- They referred the constitutional assembly debates where Dr. Ambedkar strongly opposed the idea.

2. Salaries and Allowances: "Those who control the purse strings will always have some capacity to influence the actions of those who are dependent upon the content of

22. P. Sunderarajan& J. Venkatesan, "Cabinet nod for Judicial Accountability bill", THE HINDU (online edition),Wednesday, Oct 06, 2010, retrieved from http://www.hindu.com/2010/10/06/stories/2010100664441200.htm.
23. Retrieved from Restatement of values of Judicial life available at http://judicialreforms.org/files/restatement_of_values_jud_life.pdf.
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the purse There can be no doubt that executive government control over judicial salary fixation is always at least an incipient threat to judicial independence." The salaries and allowances of the judges is also a factor which makes the judges independent as their salaries and allowances are fixed and are not subject to a vote of the legislature. They are charged on the Consolidated Fund of India in case of Supreme Court judges and the Consolidated Fund of state in the case of High Court judges. Their emoluments cannot be altered to their disadvantage (Art. 125(2)) except in the event of grave financial emergency.

The conditions of service of judges while in office cannot be varied during the tenure nor can their salaries be reduced. Until their salaries are determined by or under a law made by the parliament, their remuneration or allowances are as specified in II Schedule to Constitution of India8. Selection to the Higher Judicial Service in terms of Article 233 of the Constitution of India is also conducted by the High Court.

3. The highly rigid process of impeachment-Impeachment under Article 124(4) and (5).

The same procedure applies to High Court Judges. Clause (4) of article 124 provides that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The constitutional provision does not prescribe how this investigation is to be carried on. It leaves it to Parliament to settle and lay down by law the detailed procedure according to which the address may be presented and the charge of misconduct or incapacity against the Judge investigated and proved. In America, the Judges of Supreme Court hold office for life. They can, however, be removed by impeachment in cases of treason, bribery on other high crimes and misdemeanour.

K. Veeraswami v. Union of India A five Judges Bench of the Supreme Court held that a Judge of the Supreme Court and High Court can be prosecuted and convicted for criminal misconduct.

The word 'proved' in this provision indicates that the address can be presented by Parliament only after the alleged charge of misbehaviour or incapacity against the Judge has been investigated, substantiated and established by an impartial tribunal. The constitutional provision does not prescribe how this investigation is to be carried on.

4. Powers and Jurisdiction of Supreme Court: Parliament can only add to the powers and jurisdiction of the Supreme Court but cannot curtail them. In the civil cases, Parliament may change the pecuniary limit for the appeals to the Supreme Court. Parliament may enhance the appellate jurisdiction of the Supreme Court. It may confer the supplementary powers on the Supreme Court to enable it work more effectively. It may confer power to issue directions, orders or writs for any purpose other than those mentioned in Art. 32. Powers of the Supreme Court cannot be taken away. Making judiciary independent.

5. No discussion on conduct of Judge in State Legislature / Parliament: Art. 211 provide that there shall be no discussion in the legislature of the state with respect to the conduct of any judge of Supreme Court or of a High Court in the discharge of his duties. A similar provision is made in Art. 121 which lay down that no discussion shall take place in Parliament with respect to the conduct of the judge of Supreme Court or High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge. It is one of the safeguards to protect the independence of judiciary Article 121 appears with a general heading 'Procedure Generally'. Article 124 (4) and (5) appear in chapter IV and it is obvious that Article 121 is a general rule designed to prevent discussion in Parliament about the conduct of a judge of SC or HC.

6. Power to punish for contempt: Both the Supreme Court and the High Court have the power to punish any person for their contempt. Art. 129 provide that the Supreme Court shall have the power to punish for contempt of itself. Likewise, Art. 215 lays down that every High Court shall have the power to punish for contempt of itself.

NareshShridharMirajkar v. State of Maharashtra Supreme Court has asserted that in the absence of any express provision in the Constitution the Apex Court being a court of record has jurisdiction in every matter and if there be any doubts, the court has power to determine its jurisdiction.

Om PrakashJaiswal v. D.K. Mittal Availability of an independent judiciary and an atmosphere wherein Judges may act independently and fearlessly in the source of existence of civilization in society the writ issued by the court must be obeyed. It is the binding efficacy attaching with the commands of the court and the respect for the orders of the court which deter the aggrieved persons from taking the law in their own hands because they are assured of an efficacious civilized method of settlement of dispute.

4. Highlights and Analysis of the Judicial Accountability Bill, 2010

Hereby, the main provisions of the bill have been perused and its limitations have been put forth. Workable

suggestions have also been proposed in order to make the bill viable.

Composition of the National Judicial Oversight Committee and the selection process:

The 'National Judicial Oversight Committee' –a five-member committee will be headed by a retired Chief Justice of India, appointed by the President, and have a serving Judge of the Supreme Court and a serving High Court Judge, both nominated by the Chief Justice of India; the Attorney-General; and an eminent person nominated by the President[27].

It is believed this composition does not adequately provide for the independence of the Oversight Committee for two reasons. First, the judicial members will be appointed by the Chief Justice of India at his/her discretion while the sole non-judicial member and the Chairperson will be appointed by the President at the recommendation of the Central Government, in other words by the ruling party or alliance. This is not a very objective and transparent process of selection of the members of the committee. Second, the inclusion of the Attorney General in this committee is flawed on grounds of conflict of interests. The Attorney General being the first Law Officer of the Central Government may be required to appear before a judge against whom a complaint has been filed before the Oversight Committee of which he/she happens to be a member. So it is not advisable to have the Attorney General on the Oversight Committee[28].

Instead a different scheme for the selection of the Chairperson and the members of the Oversight Committee may be explored. For example, the sitting judge of the Supreme Court to be nominated to serve as a member may be selected by a collegium comprising of all puisne judges of the Supreme Court. The Chief Justice of a High Court to serve as a member may be selected by the collegium of all Chief Justices of the High Courts. The two non-judicial members may be selected by a committee chaired by the Vice President of India, with the Prime Minister, the Chief Justice of India and the Leader of the Opposition on the LokSabha being the other members. This committee could be chaired by a former Chief Justice of India. Such a multiple collegium system could select the members of the Oversight Committee in an impartial and transparent manner.

Another school of thought has suggested a differently constituted five-member committee presided over by a former Chief Justice of India. The senior-most sitting judge of the Supreme Court and the senior-most amongst the Chief Justices of High Courts could represent the higher judiciary in this committee. Two eminent jurists may be nominated by the President of India in order to ensure that the Committee is not monopolised by the judiciary. This school of thought believes that a collegium system can lead to an unhealthy trend of lobbying for being nominated to this committee[29].

Whichever composition that the Parliament may ultimately adopt, the composition of the Oversight Committee must be above reproach and the process of selection so objective and transparent as to ensure the highest degree respect for the institution.

Further, the Bill does not define the terms and conditions of service of those members of the committee who are not serving judges. This ambiguity may be addressed by clearly defining their terms and conditions.

4.1 Refining the structure of the judicial oversight mechanism:

TheBill currently envisages a three-tierstructure for dealing with complaints against judges. The National Judicial Oversight Committee (topmost tier) receives complaints and the materials relating to the motion for the removal of a judge initiated in Parliament. The second tier is the scrutiny panels which will examine the complaint or the materials received. These panels are to be constituted in the Supreme Court and every High Court. Judges serving in the same High Court will scrutinize a complaint against their own colleague. The Oversight Committee may constitute an Investigation Committee for the purpose of investigating the charges against a judge based on a report of the scrutiny panel. This is the third tier. The Bill has not laid down the eligibility criteria for the membership of this committee. Each tier of the oversight structure is required to work according to a time limit specified in the Bill[30].

These multiple tiers will cause confusion and delay in taking an action against an errant judge. Also, it is not conducive that sitting judges of the same High Court scrutinise complaints against their colleagues. Instead the Oversight Committee must be established as a permanently functioning committee that will look into complaints received against all judges of the Supreme Court and the High Courts. This will ensure uniformity of treatment of all complaints and references from Parliament. They may not undertake any other duties for the duration of their membership of this committee. The

26. "Anna Will Talk Only to PMO or Rahul", THE ECONOMIC TIMES,Chandigarh , 23 August, 2011, Tuesday, p.1.
27. Retrieved from http://www.hindu.com/2010/10/06/stories/2010100664441200.htm,http://indiagovernance.gov.in/news.php?id= 158 and http://www.expressindia.com/latest-news/Detailed-code-of-conduct-for-judges-in-new-Bill/557572/.
28. Supra note 8.
29. Supra note 8.

Oversight Committee itself must scrutinize the complaints against judges by evolving its own procedures. If there are adequate grounds for launching an investigation, post-scrutiny, the Oversight Committee may constitute an Investigation Committee which must comprise of at least two serving members of the Oversight Committee. If the accused is a High Court judge at least one of these members must be of the rank of the Chief Justice of a High Court. If the accused is a judge of the Supreme Court, then a least one member must be of the rank of a Supreme Court Judge drawn from the Oversight Committee[31].

Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour': The Clause 3 of the bill seeks to define standards of behaviour for judges. It seeks to give statutory recognition to the norms of behavior as reflected in the "Restatement of Values of Judicial Life". The Bill defines what constitutes conflict of interests such with respect to a judge[32]:

a) permitting close relatives who are members of the bar to appear before him/her;

b) having close association with members of the bar who practice in his/her court;

c) permitting the use of his/her residence by his close relatives who are members of the bar for their professional work;

d) hearing a matter where a close relative or a friend is concerned;

e) publicly expressing his/her views on political matters or matters that are pending before or are likely to arise before him/her for judicial determination;

f) giving interviews to the media about any judgment or order given by him/her;

g) accepting gifts and hospitality from persons who are not his/her close relatives;

h) hearing any matter relating to a society, trust or company where he/she may have an interest or hold shares;

i) speculating in securities or indulging in insider trading;

j) engaging in any trade or business; seeking any undue financial benefit in the form of privilege or perquisite in relation to his/her office;

k) holding membership in an organisation that practices discrimination based on race, religion, caste, sex, place of birth or residence; and

l) having bias in his/her judicial work or judgments on the basis of factors mentioned above.

Schedule1 of the bill includes norms of behavior such as those listed in the Restatement of the Values of Judicial Life, refraining from doing anything that is unbecoming of the high office that a judge occupies, maintaining a degree of aloofness that is consistent with the dignity of one's office and other norms such as punctuality and commitment to work. Any violation of these norms and standards can become a ground for a citizen to make a complaint of misbehaviour to the Oversight Committee or for initiation of the parliamentary procedure seeking the removal of a judge[33].

Should misbehaviour be defined by the statute?

According to one school of thought, the very proposal of defining standards of behaviour for judges violates the principle of independence of the judiciary guaranteed by the Constitution on two grounds. First, Parliament being the authority to recommend the removal of a member of the higher judiciary cannot also define standards of behaviour for a judge. If this is permitted the vision of judges dispensing justice without fear simply vanishes. Second, Article 124(5) of the Constitution contains a limited mandate. It only empowers Parliament to make a law to regulate the procedure for[34] :

a) the presentation of an address to the President seeking the removal of a judge; and

b) the investigation and proof of misbehaviour or incapacity of a judge.

There is no provision in the Constitution under which Parliament can make a law to lay down standards of behaviour for judges. The Constitution Assembly debates clearly indicate that the consensus view was for letting the judiciary evolve for itself a code of conduct rather for empowering Parliament to define it by statute. We believe the National Judicial Oversight Committee is best placed to evolve codes of behaviour for judges from time to time without interference from any other body or authority.

There is another argument against defining misbehaviour by statute. Laying down an exhaustive list for eternity as to what constitutes appropriate judicial behaviour or misbehaviour that must be avoided by judges, is itself restrictive in nature. Such lists cannot possibly provide for the unforseeable future and newer instances of misbehaviour would go unpunished unless the statute were

30. The Judicial Standards and Accountability bill, 2010
31. Supra note 8.
32. Supra note 30.
33. Supra note 8.

amended by Parliament. Instead we believe the National Judicial Oversight Committee should have the power to determine as to what constitutes 'misbehaviour', with reference to the principles outlined in the Restatement of Values of Judicial Life, on a case by case basis and having regard to the particulars of the context and the circumstances. The Committee itself may revise these norms from time to time.

Another school of thought believes that a statute must lay down the minimum standards and norms that are binding on judges while at the same time giving the Oversight Committee the flexibility to inquire into types of misbehavior not included in the Bill or in the Restatement of Values of Judicial Life. Judicial norms and standards are about propriety of behavior and not merely legality of behaviour. In order to allow for this flexibility this school of thought recommends including in the Bill the all important statement occurring at the end of the Restatement of Values of Judicial Life which reads as follows[35]:

"These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but only illustrative of what is expected of a Judge."

Transparency in the conduct of investigations: Clause 29(2)] *of* the Bill mandates the Investigation Committee to conduct its proceedings *in camera* .This is considered to be a regressive step and not transparent. However, the process of scrutinizing a complaint may be undertaken *in camera* as the complaint would be only in the form of allegation which may have been received without any substantial grounds or evidence. There is a need to balance the investigation process with other important public interests such as protecting the reputation of the accused and prevention of defamation or trial by the media. The accused if exonerated must be in a position to command the respect of the public upon resumption of his/her official duties. Another school of thought believes that all proceedings from the stage of receipt of a complaint up to the completion of investigation must be kept confidential for reasons mentioned above. However once an investigation is completed, the findings and the decision to proceed with further action or close the case along with reasons must be placed in the public domain.[36]

Minor measures for misbehaviour not warranting removal of a judge: The Constitution provides only for the removal of a member of the higher judiciary on grounds of proved incapacity or misbehaviour. However not all kinds of violation of the standards or norms of behaviour may warrant removal. In such cases the Bill proposes imposition of minor measures such as issuing advisories and warnings. In instances of serious misbehaviour the accused judge will be first advised to resign failing which a recommendation for his/her removal may be made to the President. However in other jurisdictions a variety of minor penalties are used as disciplinary measures. For example in the USA, judges may be censured in private or publicly or advised to take voluntary retirement. In France minor measures include amongst other things, reprimand which is noted in the service dossier of the accused, displacement, withdrawal of some judicial functions, demotion, non-allotment of work for a maximum of one year duration.[37] It would be rather favourable that the minor measures, if adopted, may be first implemented in the High Courts and monitored for their effectiveness before contemplating their extension to the Supreme Court.

Dealing with vexatious and false complaints: The Bill prescribes very harsh penalties for filing false and vexatious complaints against a judge. The complainant is liable to be sentenced to a rigorous prison term of up to five years with or without fine which may extend up to five lakh rupees. Such draconian penalties must be done away. The prison term must be reduced to a maximum of six months of simple imprisonment and the penalty amount also reduced to a much lesser amount. In fact the punishment should be imposed only when the allegations against a judge are disproved and it can be shown that the allegations were made with malicious intent.[38]

Assets disclosure requirements: Judges will be required to declare their assets and liabilities, and also that of their spouse and children. Under the bill, declaring their assets, judges would be required to file an annual return of assets and liabilities. All the details would be put up on the websites of the Supreme Court and the High Courts.[39]

This provision is seen as a positive step forward in ensuring accountability. However, it needs to be linked to some necessary safeguards to protect the judge and his/her family. Not all assets-related information about public servants is publicly disclosed in other countries. For example, PAN and bank account numbers must be kept confidential as they can be misused. The principal statute or the subsidiary legislation under it must define the parameters of what may be disclosed ordinarily to the public. Further the National Judicial Oversight Committee

34. Id.
35. Id.
36. Id.
37. Id.
38. Supra note 30.

must be empowered to scrutinise these statements based on the necessity of the circumstances such as receipt of a complaint of corruption against a judge.[40]

4. Conclusion

Demands for making the existing system truly just and venerable must be met realistically, bearing in mind the objectives sought to be achieved. The guiding principle should always be this: judicial accountability commensurate with judicial independence. The following suggestions are made herewith to restore public confidence in the judiciary:

1. The first site of change must be in the process of the judicial appointments. At present, the judges of the superior courts are chosen based on undisclosed criterion in largely unknown circumstances. The legitimacy of the judiciary ultimately flows from public support, which cannot be maintained without a transparent and open selection process.[41]

An independent statutory body should be set up for the appointment of judges. The government has recently expressed its willingness to push forward a new law, whereby judges will not be appointed by judges alone, as is the current practice of the collegium system. There is a proposal to set up a National Judicial Commission, which will comprise members from outside the judiciary to appoint, and oversee, the conduct of judges. If passed, the Bill will ensure that judges to the Supreme and High Courts will now be appointed by the Law Minister, the Leader of the Opposition, an eminent citizen chosen by the government, in addition to the Chief Justice of India and two other top judges. But in order for this to be done, an amendment needs to be made to the Constitution.[42]

The role of the appointments body should be restricted to appointments only and it should have no control over the functioning of the judges appointed by it. In order to ensure transparency, the appointment body must be subject to the provisions of the RTI and should be answerable to the President of India.

2. The judges cannot continue to be demi-gods by taking the cover of 'contempt of court' anymore. When an allegation is seen to be frivolous and vexatious, it should be dealt with under the law on defamation rather than under the law on contempt of court.
3. The Judicial Accountability and Standard Bill' must be expedited and as suggested above, the limitations in the bill must be perused and removed. It is the need of the hour that the bill is given enough teeth to check the malady of corruption in the judiciary since in a democracy, no institution which is vested with power can be given unbridled powers.

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Protection of Geographical Indications in India: An Emphasis on the State of Bihar

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ABSTRACT

India with its rich diversity and culture has a potential geographical indication blooming in its every corner, be it an agricultural product, a local dish or a delicate art or handicraft. We can find various such examples ranging from Darjeeling tea to Rosogulla to Madhubani painting. Our country has seen a surge in the protection of different geographical indications in the recent past. The reason behind the same being a two way benefit, both to the consumer, as the tag provides an assurance of quality, and to the manufacturer, or producer, as it facilitates protection of the collective rights of the indigenous communities, ensuring that they reap the benefit of such knowledge that they have preserved and developed, and that it is not locked up as the private property of any individual.

Since the enactment of the G.I. Act, 1999 post the TRIPS Agreement, over 323 G.Is have been registered in the country, and there lies potential for much more. The state of Bihar is not very behind in the race. The road to protection started with the protection of its Madhubani painting, followed by Sujini embroidery, Tussar silk, and more. The protection of G.I primarily depends on adequate awareness about the product, proper development of the product and a collective action by the authorities and the people of the community. The state has numerous blooming products that can be given protection, provided, the requirements are met. Products such as Shahi Litchi, which is amidst the process of recognition, Makhana(gorgon nut), or the very famous dish of littichokha are all potential geographical indications, provided, its proper place of origin can be proved. Thus, proper research needs to be done in the area and the State should look into all such cases and do the needful in order to make its G.I robust and generate business and livelihood for its people.

The paper would aim to discuss the social and economic perspectives of G.I. protection, the requirements and the process of registration as per the Act. It would primarily discuss various G.Is protected in India and mainly in the state of Bihar, and would strive to suggest potential products that can be granted protection.

1. Socio-Economic Aspects of G.I Protection

The justifications of providing intellectual property rights are numerous, right from John Locke's avoidance of labour theory, according to which if an inventor has invested his time and labour, he should be awarded because man's very nature is opposed to labour[1]. Another such justification can be Hegel's personality theory, wherein the work reflects the idea and personality of the creator and hence should be protected. The protection conferred is a negative right in favour of the inventor/author, benefitting a particular individual. This is true in respect of intellectual properties such as patents, copyrights, trademarks, and design protection etc, geographical indication being an exception to the same.

Geographical indication is a collective intellectual property, conferred upon indigenous producers of a particular region. It benefits a whole community and hence has numerous social implications. The idea is to provide protection for GIs, a kind of intellectual property right, which entitles the producers that are located in the designated area to exclude others from using the indication.[2]

1.1 Social aspects of G.I protection:

The concept of intellectual property protection bodes well for the developed countries, since they possess the maximum number of patents and other I.Ps, the same is not the case with G.I. geographical indications are generally developed by indigenous communities preserving and fostering a certain art, handicraft, a food product or an agricultural product. These communities put in a lot of effort and skill into the same and are often naïve about market skills and business tactics and hence are easily duped by middlemen. The recognition of these products as an intellectual property will not only save them from middlemen, but will also provide an impetus for developing these products, which is an integral part of their culture.[3] It also brings the community closer, as the people involved becomes a part of a community and seldom form cooperatives for the same[4]. Worldwide, rural communities have developed typical products based on the interaction

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1. Donald Richards, The Ideology of Intellectual Property Rights in the International Economy, 60REV SOCIAL ECO, 521-41 (2002).
2. Pradyot R. Jena & Ulrike Grote, Impact Evaluation of Traditional Basmati Rice Cultivation in Uttarakhand State of Northern India: What Implications Does it Hold for Geographical Indications?, 40 WorldDev Journal, 1895-1907 (2012) .
3. Refer SanjuktaVikas Co-operative for Darjeeling Tea.
4. KanchipuramKamatchi Amman Silk Society, Sri Varadharajaswamy Silk Society, KanchipuramMurugan Silk Society, Pallavan Silk Society, Aringnar Anna Silk Society. Anna Silk Society, Thiruvallur Silk Society, Vallalar Silk Society, Dr. MGR Silk Society, Dr. KalaignarKarunanithi Silk Society are all co-operative societies for Kanjeevaram Silk Sarees.

between traditional local know how (including selection, production and processing), cultural settings and particular environmental conditions such as the soil and climate. There is exchange and propagation of knowledge and techniques for development of the product, also, it spreads awareness about their rights.

They sometimes get external assistance from certain NGOs[5] and government agencies or departments, in case the product has a huge potential, or if there is exploitation of the product or of the workers. For example, workers in Darjeeling are not even given proper safety equipment and are highly underpaid[6]. Also, there have been certain international movements for the betterment of the producers such as Slow Food[7], a social movement with a network of nearly 100,000 members in 153 countries. They develop activities, projects and events at a local, regional and global level. Another such social movement is La Via Campesenia[8], it is an international movement which brings together over 200 million of peasants, small and medium-size farmers, landless people, women farmers, indigenous people, migrants and agricultural workers from around the world. It advocates small-scale sustainable agriculture as the path to dignity and social justice vis-à-vis corporate agriculture[9]. Thus, we can see the social implications of conferring G.I tag on a product on the communities that develop it. There are numerous economic implications as well, which will be discussed in the next section.

1.2 Economic Perspectives for G.I. Protection:

The economic benefits of G.I protection are self-explanatory. The G.I tag becomes an assurance of quality for the consumers, benefitting the market value of the product. It also increases general awareness about the product. It holds multiple benefits for the producers as well. Along with the tag comes the recognition of the product, which enables the producer to commercialize his product in an efficient way, also it saves the naïve producers who are generally indigenous communities by excluding the middlemen, who generally underpay them.

Products which have a certain specific quality variation involve search costs, i.e the cost incurred to find the desired product. G.I acts as an identification signal for its buyers and hence lowers the search cost for the buyers[10].This can be very useful when it comes to experienced goods such as wine or cheese, wherein the consumers cannot simply ascertain the quality by inspecting the product. Hence, it adds great economic value to the product, benefitting both the consumer as well as the consumer. "GIs have an important bearing on the four dimensions of human development: empowerment, productivity, equity and sustainability"[11]. The legal-economic incentives could then create a virtuous cycle of other incentives to nurture and sustain traditional methods and know-how, which could contribute to intergenerational equity.

2. Protection of Geographical Indication in India

India has been a member of the World Trade Organization since 1995, and it was hence obligatory for India to enact a law in consonance with the minimum standard of protection that has been provided under the Agreement. The country can opt for additional protection than what is provided under TRIPS[12], but to follow the minimum standard was obligatory for member nations. The agreement achieved what the existing intellectual property treaties or agreements couldn't. Firstly, it encompassed different I.Ps within itself, and was not concerned with a particular type of I.P as opposed to Paris Convention[13], or Berne[14], or the Trademark Law Treaty[15], or the internet treaties[16 17]. Secondly, it became obligatory for the majority

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9. Id at18.
10. TeshagnerDagne, The Identity Of Geographical Indications of Geographical Indications and Their Relation to Traditional Knowledge in Intellectual Property Law, 54 Hein online 255 (2012), https://heinonline.org/HOL/LandingPage?handle=hein.journals/idea54&div=12&id=&page=
11. S.Wagle, Geographical Indications as Trade-Related Intellectual Property: Relevance and Implications for Human Development in Asia-Pacific, United Nations Development Program (Jan 2007), http://www.eldis.org/document/A24339
12. TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].
13. Paris Convention for the Protection of Industrial Property, March 20, 1883, 21 UST 1583, 828 UNTS 305.
14. Berne Convention for the Protection of Literary and Artistic Works, Sep. 9, 1886, 1161 U.N.T.S. 3.
Trademark Law Treaty, Oct. 27, 1994, 2037 UNTS 35.
15. WIPO Performers and Phonograms Treaty, Dec. 20, 1996, 36 ILM 76.
16. WIPO Copyright Treaty, Dec. 20, 1996, 36 ILM 65.

of the nations to comply with the minimum standard of protection provided by the agreement, since they were members of WTO.

TRIPS established vital principles such as National Treatment, which, Most Favoured Nation, and the independence of I.P.R.s. It defines Geographical Indication as "*indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."*[18] The Agreement provides protection from misleading or similar representation, or any false indication that it originates elsewhere rather than its original place of origin, directing member nations to prevent the same[19]. The G.I. Act[20] provides protection on similar grounds. The Agreement provides additional protection for wine and spirits.

2.1 Geographical Indication Act and Registration Process:

The Act defines G.I as "*an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."*[21]

The Act prohibits registration of certain G.Is which is likely to deceive, or confuse, contrary to any law, are obscene, generic names, or any false indication that it originates elsewhere rather than its original place of origin, any indication which is likely to hurt religious religious susceptibilities of any section of people.[22]

Chapter-III of the Act talks about registration, it provides that any association, organization or authority representing the interest of producers can apply in writing to the registrar. The application shall contain details of the G.I and it serves to designate the goods as originating from the particular territory, with its inherent natural and human factors. It should also mention the class of goods, the map of the territory, any particulars regarding its appearance, particulars of the producers[23]. The application shall be sent to the Registrar within whose territorial limits the place of business is situated. There shall be an advertisement of the application. Any opposition is to be filed within three months of the said advertisement to the Registrar in the form of a written notice. The Registrar shall serve a copy of the same to the applicant, after hearing both parties and examining any evidence if requires, the Registrar decide whether and subject to what conditions or limitations, if any, the registration is to be permitted[24]. The term of the registration shall be ten years, and can be renewed[25]. However, the Act does not provide for registration to be mandatory. But, it is necessary to institute infringement proceedings, without which the only available remedy is passing off suit.

Chapter-VIII of the Act talks about offences and penalties. The offences listed are falsely applying and selling any G.I, falsely representing any G.I. as registered, and provides remedies in form of punishment (imprisonment), fine, forfeiture of goods and search and seizure in certain cases[26].

2.2 G.I. Protected in India:

When the Geographical Indication Act in India was enacted in September 2003, the Darjeeling Tea Board applied for GI protection of 'Darjeeling' in October 2003. In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a GI[27]. As per the Government website, a total number of 323G.Is have so far been registered in India[28]. More than half the goods registered are handicraft products, one-fourth agricultural products, and the rest being manufactured products, textiles and food items. The trend of GI registration has been mostly upward with the maximum number of products registered in the year 2008 – 2009[29]. Handicrafts were mostly registered over the

17. Supra Note 12, ar-22.
18. Ibid.
19. The Geographical Indications of Goods(Registration and Protection) Act, 1999 (Act 48 of 1999).
20. Supra Note 12, ar-23.
21. Supra Note 20, s- 2(e).
22. Supra Note 20, s- 9.
23. Supra Note 20, s-11.
24. Supra Note 20, s-14.
25. Supra Note 20, s-18.
26. Supra Note 20, s-37-54.
27. SudhirRavindran&Arya Mathew, The Protection of Geographical Indication in India- A Case Study on Darjeeling Tea, Altacit global (2008), https://www.altacit.com/publication/the-protection-of-geographical-indication-in-india/
28. Registered Geographical Indications, Geographical Indications Registry, Intellectual Property India (April 2018, 2018), http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI_Application_Register.pdf

period, but with time there has been an upward in the registration of other classes of goods as well. 'DharwadPeda' was the first food product to be granted protection in 2009[30].

The southern states has a majority share in registered G.I. products, with Karnataka being the forerunner, followed byMahrashtra, Tamil Nadu, Kerala, Andhra Pradesh. The spread of GI recognition is concentrated in the southern states. The trend has been upward, but, there are still a variety of products that have the potential, but are not being applied for. The North East region is a gold mine in terms of natural resources and local culture, and has numerous potential G.I.s in their basket, but, until now 17 products have been registered from the Seven sisters, with Asssam being the forerunner, with 6 products, and Manipur with[31] 4. Also, states like Punjab and Haryana, have only two G.Is, one of which is Basmati Rice which is shared by seven of the northern states, and the other one being 'Phulkari', which is shared by three states[32]. There is need for the states to step up and protect the rights of their communities, so that potential products and their producers are not exploited and underappreciated anymore.

2.3. Geographical Indications in the State of Bihar:

The state of Bihar has rich alluvial soil and is blessed by rivers like Ganga, Son, Gandak, Kosi, etc., which makes it very fertile, and hence a primarily agricultural state. Thus, the state has immense potential for various agricultural and food products to be protected as geographical indications. Also, has a rich culture which includes different handicrafts and artistry. The state is not naïve to the concept of geographical indications, and has had a few goods registered as same. The first handicraft to be registered from the state was 'Madhubani paintings' in 2007. The paintings originated in the Mithila region of Bihar. The knowledge was passed down from generation to generation and the paintings began to adorn the houses of the region. It soon became an integral part of their culture, and became a part of festivals and marriages. It is said that the paintings reflect the hopes and dreams of the women that paint them. The art gained national and international recognition, and has now moved to surfaces such as paper, cloth etc[33].

The state registered three more products in the following year, namely, 'Khatwa' patch work, 'Sujini' embroidery and 'Sikki' Grass work, all of them being handicrafts. Khatwa , or called Applique work in the modern times is a patchwork embroidery which involves applying one fabric on to another to make beautiful patterns and motifs, registered in Sitamarhi and Madhubani districts in Bihar. Sujini embroidery, registered in Muzzafarpur district of Bihar, is a colourful embroidery using threads and layered clothes, it was traditionally made by using old sarees and dhotis to make a sujini quilt for newborns. The Sujini is distinctive for its transformation of a traditional craft into a vehicle for expressing contemporary social and political themes. The Sikki grass craft registered in the Sitamarhi district of Bihar, it involves weaving different products with a golden coloured grass, 'Sikki', found abundantly in the area. Vibrant colours are also applied to make the products more attractive.

Bhagalpur was a city on the ancient silk route. Another G.I that has been conferred protection is the tussar silk from Bhagalpur in 2012. The fabric is very famous and has a well known reputation in the market. Bhagalpur silk, also known as tussar silk, has a place of distinction and pride in the world. Hundreds of artisans in and around Bhagalpur are traditionally fabric weavers. Bhagalpur is also popularly known as 'silk city'.

Recently, three new goods has been conferred G.I. protection in the State on March 28. 2018. 'Katarni' rice is a scented variety of rice prevalent in the State, registered in the areas of Munger and South Bhagalpur. A variety of mango, 'Zardalu' mango, was registered in the district of Bhagalpur. It is a creamy yellow coloured fruit which possesses exceptional fruit quality and an enticing aroma[34]. In case of Magahi pan, the GI tag has been given to the Magahi Betel Growers' Welfare Union of Deori village in Nawada district. The betel leaf is very soft and has a special taste, and is used extensively in the state and adjoining areas[35].

Bihar has initiated steps to obtain Geographical Indication (GI) tag for the Shahi variety of litchi grown in Muzaffarpur district and some other areas, that is in great demand in the international market. Vijoy Prakash, principal secretary for planning and development, said the state is seeking GI

29. Ibid.
30. Ibid.
31. Ibid.
32. Ibid.
33. Madhubani Painting, Cultural india, https://www.culturalindia.net/indian-art/paintings/madhubani.html
34. S.S. Rana& Advocates, Bihar Earns 3 G.I. Tags for Agricultural Products- Katarni Rice, Zardalu Mango and Magahi Paan, Mondaq (April 24, 2018).http://www.mondaq.com/india/x/694914/agriculture+land+law/Bihar+earns+3+GI+Tags+for+Agricultural+Products+Katarni+Rice+Zardalu+Mango+and+Magahi+Paan#linkedincompany
35. SanjeevVerma, 3 GI cheers for Bihar, The telegraph (Dec.2017), https://www.telegraphindia.com/states/bihar/3-gi-cheers-for-bihar-191011

tag, a form of intellectual property (IP) based on geography and tradition that involves some unique means of production, for the juicy fruit as it would benefit the litchi farmers of the state. "Once the GI is granted, we will market the fruit to get a better price for it," he said[36].

These are the different G.I that has been granted protection under the Act. Bihar is midway in its awareness about G.I, however there is potential for much more, provided it is identified and a proper application is to be made, there are numerous handicraft products, food and agricultural products, all that can be included within the ambit of such protection and promote business for the state as well as its citizens. Food products such as 'Litti Chokha' and 'Khaja' and agricultural products like 'Makhana' are a few examples, there is potential at every nook and cranny of the State.

Conclusion

More and more goods are being registered under the G.I. tag in the country, owing to the simplified registration process and protection given under the Act and the firsthand benefits that the people themselves experience. It is not only the product that gains, even the area to which it is specific gets a special recognition. In most of the cases, people are oblivious of the specialty of these places. Hence, it is a win win situation for the product, the people associated and the geographical area where it is produced. At least, on this parameter Bihar has taken significant strides, and is much ahead of several states with seven of its products already registered, and a few in application process. But, the list is not exhaustive and there remain numerous products which possess the right potential. The State should look into all such cases and do the needful in order to make its G.I robust and generate business and livelihood for its people. Proper research should be done to identify potential products, and awareness programs and workshops should be done in such areas. Also, proper authorities should take the initiative for registration process of potential G.I.s. These measures would help include more and more products under the ambit of G.I. protection.

36. Alok Gupta, Bihar Initiates Steps to Obtain GI Tag for Shahi Litchi (2014). Available at: http://www.downtoearth.org.in/news/bihar-initiates-steps-to-obtain-gi-tag-for-shahi-litchi-44644

Causes and Consequences of Human Rights Violation During Arab Spring.

Rajyevardhan Singh & Parth Nandwani*

ABSTRACT

Arab Spring was a series of pro-democracy uprisings that enveloped several largely Muslim nations generally began in 2011, which led to the name. Some experts describe it as a democratic revolution and others call it a civil war, but no matter by what name it is called, it left a significant political and social impact on some Arab countries. The main aim of this study conducted is to analyse the violation of human rights, in some West-Asian countries, which instigated this revolution and whether it was able to curb and alleviate mass violation of human rights and bring about social and political reforms in Arab countries governed by dictators. The aim is to highlight the situation and oppressive conditions which prevailed in pre- Arab Spring era, in West Asian countries, and how the events unfolded and an atmosphere was formed, conducive to a revolution. The consequences of Arab Spring will be discussed in detail to analyse how successful the revolution had been.

Keywords: Revolution, Human Rights, Atrocities, Insurgency, Separatists, Civil War

ARAB SPRING

1. Meaning

Arab Spring was a revolution that began in Tunisia, in the year 2011, and quickly spread to other countries in the Middle East and North Africa. It may be called a series of pro-democracy movement, or simply the anti-authoritarian protests that took place in many countries along with Tunisia, such as, Libya, Egypt, Yemen, Syria, Sudan etc. People in these countries were being suppressed politically and they became victim of many evils that prevailed in those countries such as dictatorship, sectarianism, kleptocracy, poverty, unemployment, inflation, etc. They were exploited by the corrupt leaders who ruled with an iron fist and as a result mass violation of human rights took place[1].

These oppressions and violations led to conditions and environment conducive to a revolution. People in these countries assured of Western backing, soon began to speak out against their respective regimes. The revolution quickly escalated and many leaders were overthrown and change of power took place. In some countries it also resulted in creation of power vacuum.

2. Why the Term Arab Spring?

The term 'Arab Spring' was derived from the term 'Prague Spring' which took place in the year 1968. Prague Spring was a period of political liberalization and mass protest in Czechoslovakia as a Communist state after World War 2. The aim of the revolution in The Middle East was also similar, i.e. liberalization and democracy, and that is why the term 'Arab Spring' was used to project similar movement[2].

Many experts are of the opinion that the term 'Arab Spring' is used merely because the revolution escalated in March-April, 2011.

3. Conditions prevailing in Pre-arab Spring Era

The political environment in many countries in the Middle East and also in North Africa was quite suppressive. People in these countries were denied adequate level of liberty. Equality and Freedom had become a privilege rather than a right. People suffered from oppression that existed and were subjected to inhumane treatment in case they spoke up against it. Such conditions existed more or less in many Islamic countries, like, Syria, Libya, Egypt, Bahrain, Tunisia etc.

3.1 Tunisia

At the time when the revolution began in Tunisia, popularly known as the 'Jasmine Revolution, the country was ruled by Zine El Abidine Ben Ali. He had ruled the country for last twenty three years. During his regime, though the economy of Tunisia grew, yet people had a very low standard of living. 'The education system went down the drain' as quoted by Mrs Hassaini, who had quit her job as a high school[3] teacher. Based on interviews of about 1000 Tunisian adults between 2009 and 2010, the report indicated that despite economic growth, there were very less job opportunities available and people struggled to get even an adequate amount of income[4].

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1. PrimozManfreda, "What is the Arab Spring: An overview of the Middle East Uprisings in 2011," ThoughtCo. January 11, 2019
2. Krauthammer, Charles, 'The Arab Spring of 2005,' The Seattle Times, March 21, 2005
3. Thorne John, 'Pre-revolution Tunisians were growing gloomier,' N World, June 27, 2011
4. Supra Note 3

The country's per capita GDP rose from US$7,182 in 2005 to US$9,489 in 2010, according to International Monetary Fund[5]. However, the wealth was concentrated among the country's richest people[6]. This shows that the wealth of the country was unequally distributed and only the close associates of Mr Ben Ali lived a good standard of life.

Apart from economic inequality, the country also witnessed huge political repercussions, since the time Ben Ali came to power. There were laws forbidding political parties based on ethnicity, religion, region etc. and therefore the only opposition group, i.e. The Islamist 'Nahdah' ("Renaissance") Party was banned and its leaders were either jailed for indefinite period or sent to exile[7]. As a result only one party ruled the entire nation, i.e. Constitutional Democratic Rally (RCD).

Apart from these, even some fundamental freedoms were not granted to the people of the country. For example, press freedom was rigorously censored and suppressed and was allowed to emanate only those information and news which the state sanctioned[8].

Therefore, these conditions somewhere united the people to raise their voice against the regime because they all were suffering under the regime in one way or the other. They all wanted to overthrow Ben Ali and demand reforms in the country but all they needed was the platform to do so. The opportunity came through the Jasmine Revolution which marked the beginning of the Arab Spring.

3.2 Libya

In Libya, under Gaddafi's regime, mass violation of Human Rights took place on a large scale. From the time he came to power in 1969, he always attracted the attention of Human Rights Council and Human Rights Watch because he was popularly known for ruling with an 'iron fist' and executing those who spoke against his regime. The security agencies of the government were mostly used to instill fear in the hearts of the people so that they may not have the courage to criticize the regime.

During the 70s decade, Libya witnessed mass arrests and televised hangings. The security forces arrested those who opposed or who could possibly oppose the regime. When students demonstrated, they were put down violently. Many political opponents were publically executed or they just disappeared[9]. Moreover, even the security forces who carried out atrocities enjoyed impunity for their actions, according to the report of Amnesty International[10].

The popular incidents of violation of human rights which drew everybody's attention were as follows:

1990s: Mass Killing at Prison- in 1993 - the Libyan Army attempted a coup but failed and as a result, Gaddafi began to purge the military periodically. The ones who Gaddafi believed were capable of opposing the regime were replaced by the ones who were more loyal towards Gaddafi. On June 28 and 29, the Libyan forces shot dead more than 1,000 prisoners in Abu Salim Prison. This fact was confirmed by Human rights Watch. Though initially the regime had denied that any such incident had taken place, however, in the year 2004, Gaddafi himself admitted that killings had taken place and the family members of those killed had the right to know as to what had actually happened. Moreover, in the year 2009, the Libyan Secretary of Justice confirmed the fact that killings had taken place and the number of inmates killed was 1,177[11].

2000s: Man freed after 31 years- Ahmad Zubayr Ahmad al-Sanussi, who was accused of having been involved in an attempted coup was imprisoned in the year 1970 but was released in the year 2001. He was kept for most of the time in solitary confinement and became the longest serving political prisoner of Libya[12].

1970s: Televised Hangings and Mutilation of Opposition- in Gaddafi's regime, especially in the 70s decade, use of security forces to put down opponents became a common phenomenon. The security forces used to round up lawyers, students, journalists and anyone who was considered as an enemy of the regime. Gaddafi himself warned that anybody who tried to organize politically would face repression. In a speech on November 9, 1974, Gaddafi said that, "execution is the fate of anyone who forms a political party." As a result, many political opponents were publically mutilated and were executed in front of a large crowd, to warn those who had a similar tendency to oppose the regimez[13].

Gaddafi was amongst the most cruel and inhumane leaders and was often compared with Idi Amin of Uganda. Libyan people were terrorized during his regime. They saw the gruesome fate of those who spoke up against the

5. Supra Note 3
6. Nemsia Hosni, Director, Institut de Sondage et de Traitement de l'InformationStatistique, Tunis, Tunisia
7. www.britannica.com, Tunisia-Government and Society
8. Eric Andrew-Gee, 'Making Sense of Tunisia,' The New Republic, January 17, 2011
9. David Stamp, 'Gaddafi rule marked by abuses,' www.reuters.com, Feb 22, 2011
10. Ian Black, Middle East Editor, 'Libya violating human rights despite new image,' The Guardian, June 22, 2010
11. Supra Note 9
12. Supra Note 9
13. Supra Note 9

regime and feared that they may meet with the same fate. It was only in the 1st decade of 21st Century, after the backing and support of the west, that the Libyan people started to raise their voices against the inhumane regime, though the cost that they paid for such opposition was quite high, however, they were able to eventually suppress the regime and execute Gaddafi, during the Arab Spring.

3.3 Egypt

Egypt was always considered a gross violator of Human Rights. The regime of Hosni Mubarak effectively banned protests and freedom of expression, imprisoned its opponents, after unfair trials and resorted to inhumane activities like torture and forced disappearances. Women and other minorities' groups were also subjected to discrimination.

As far as Rights and Liberties ratings is concerned, Egypt received a score of '6' for Political Rights and a score of '5' for Civil Liberties. These ratings are done by 'Freedom House' an independent watchdog organization that supports the expansion of freedom around the world. The scores are given on a scale of 1-7, with '1' representing high level of freedom and '7' representing lowest level of freedom.[14]

As far as Freedom of Religion is concerned, Islam was the official religion of the state. Though some efforts towards greater religious pluralism were made, however, Egypt still witnessed intolerance at a cultural and religious level[15]. Human Rights Watch also said that Egyptian laws did not allow conversion from Islam to other religions[16].

The Baha'i faith, a religion teaching the essential worth of all religions, and the unity and equality of all people, was banned by a Presidential decree of President Gamal Abdel Nasser in 1960. All Baha'i properties were confiscated including libraries and cemeteries. The Baha'i's were not allowed to hold identity cards and therefore were not able to hold property, attend university, have a business, obtain birth, marriage or death certificate. Apart from this, in the year 2001 about 18 Baha'i's were arrested on suspicion of insulting the state religion. They were detained for several months without being formally charged[17].

As far as women's rights are concerned, they suffered in a patriarchal society. The most evil practice was that of female circumcision. As per a report, about 97% of women aged 15-49 had undergone circumcision, in the year 1995[18]. According to British Medical Journal this issue came to prominence when CNN broadcasted a programme featuring a young girl being circumcised by a barber in Cairo. The Egyptian President after immense international pressure had to ban such practice[19]. However, in many parts of Egypt such practice still prevails. The authorities of Egypt justified this act by saying that such circumcision prevents "moral deviation" by girls and prevents sexual arousal in women. Apart from this, many women who protested against such practice were detained or imprisoned and were subjected to humiliation and forced disappearance[20].

The prisoners also suffered at the hands of the Egyptian authorities. Since the year 1985, about 701 cases of torture in prison have come up. Moreover, about 204 victims have died in prison because of torture and mistreatment[21]. Torture also used to take place in broad daylight and Egyptian authorities used to enter the house of any citizen to mistreat, humiliate or torture them for petty offences. These atrocities carried out by the Egyptian authorities were a clear violation of the people's dignity and freedom.[22]

The Egyptian authorities had imposed Emergency in the state in the year 1981, and since then the Emergency had continued to operate. The authorities violated the freedoms of many people on the pretext of national security. Their freedom of speech was also curbed[23]. The Emergency gave them the licence to carry out atrocities and then exercise their immunity from disciplinary actions, which the state had granted to them. Many people periodically spoke against such an oppressive society but they were silenced violently. They failed, however, to influence the masses to stand up against the authoritarian rule. However, in 2011, the Egyptian people saw an opportunity in the Arab Spring to speak and protest against the authorities in order to bring about major reforms in Egyptian laws and to grant more rights and freedoms to people of Egypt.

3.4 Syria

Like Egypt, Syria too is considered a mass violator of human rights. Especially, in Bashar al-Assad's regime,

14. Freedom in the World, 2011 – Egypt, UNHRC Refworld, May 12, 2011
15. "United States Commission on International Religious Freedom: USCIRF Events: 2005 Testimony: Remarks by Commissioner Prodromou Briefing on "Religious Freedom in Egypt,"" uscirf.gov, October 15, 2017
16. "Essential Background: Overview of human rights issues in Egypt, Human Rights Watch, December 31, 2004
17. International Religious Freedom Report, 2002: Egypt, US Dept. of State, retrieved on March 6, 2015
18. Female Genital Mutilation: A statistical exploration, UNICEF, November, 2005
19. Peter Kandela, "Egypt sees U turn on female circumcision," January 7, 1995
20. "Egyptian Female detainees face serious violations inside El-Sisi Prison," Middle East Monitor, retrieved on March 13, 2019
21. Marwa Al-A'sar/Daily News Egypt, "EOHR calls for investigating 900 torture cases," June 22, 2011
22. John R. Bradley, "Inside Egypt: The Land of the Pharaohs on the Brink of a Revolution," 2008
23. "freedomhouse.org: Freedom of the Press"

Syria has witnessed mass violation of human rights.

Political opponents in Syria were arrested arbitrarily, and after an unfair trial were sentenced to imprisonment for indefinite period of time. According to Human Rights Watch, more than 4,000 political prisoners had been in prison since June 2000[24]. Apart from this, detainees were continuously tortured and killed by the jail officials[25] and human rights activists were also targeted and imprisoned by the Assad regime[26].

Some of the most noteworthy political prisoners who were prosecuted by the Syrian regime, especially in the year 2009-

1. Kamal al-Labwani, was sentenced to 15 years in prison for remarks aimed at lowering the morale of the nation[27].
2. Nabil Khlioui, an Islamist from Deir al-Zour, remained in incommunicado detention for many years without trial[28].
3. Mashaal Tammo, worked for unauthorized Kurdish F. C. group, was killed because it was alleged that being a conspirator against the Assad regime, he was trying to provoke a civil war.
4. Hajib Saleh, was imprisoned because he criticized the government and defended an opposition figure Riad al-Turk[29].
5. Mohannad al-Hassani (winner of Martin Ennals Award for Human Rights Defenders), was accused of imparting false information in order to lower the national morale and was imprisoned for 3 years.[30]

The Sednaya prison consisted of more than 600 political prisoners and reports have suggested that many had been kept well past their legal sentence and around 18,000 prisoners had disappeared, showing signs that Syria may have had mass graves.[31]

As far as freedom of religion is concerned, though the constitution of Syria had granted freedom of religion but the Assad regime tried to impose Sharia law in Syria, suppressing all other religions and specially promoting hatred for the Jews.[32]

The women in Syria constituted 49.5% of Syria's population, however, they suffered because of the prevalence of Sharia law in the country. They were discriminated and early marriage was a normal phenomenon. Moreover, the law made it easier for the husband to divorce his wife but vice-versa it was a lengthy process.[33]

Apart from this, women also did not receive proper education and the dropout rate for women was very high. The literacy rate of females above the age of 25 was 29%.[34]

Crimes like honour killings, forced and child marriage and domestic violence occurred frequently. People were compelled to get their daughters married early because of the harsh living conditions and the fear of losing reputation in the community and also because of other insecurities which existed, including economic insecurity.[35]

As far as Freedom of Movement is concerned, the Syrian authorities clearly violated the Universal Declaration of Human Rights which confers on every individual the right to travel to any part of the country/world. In Syria, the people were prohibited from leaving the country without "exit visa" which the authorities rarely granted.[36]

The freedom of press was also curbed by the regime. Many journalists were arrested and in 2009, the Committee to Protect Journalists named Syria as one of the worst countries for journalists, given the harassment, arrest, restrictions and abuse which the journalists faced.[37]

The conditions in Syria in the last decade were calling for a revolution, because the majority of the people in Syria wanted to get rid of the Assad regime. Moreover, even the sectarian violence that was escalating favoured a revolution. The western countries, especially the NATO, started to arm the rebel groups in order to put up an intense fight against the regime which had fallen out of their favour. All this and the spread of the Arab Spring in other countries helped spark outrage in Syria as well and people

24. Human Rights Watch World Report, 2005; "Syria: End Opposition Use of Torture, Executions," Human Rights Watch, 2005
25. Amnesty international Report 2009, Syria
26. Supra Note 25
27. Supra Note 25
28. Supra Note 25
29. World report 2010, Human Rights Watch, Pg. 555
30. BBC, "Syria jails leading rights lawyer," 23rd June, 2010.
31. Ghadry, Farid N., "Syrian Reform: What Lies Beneath," The Middle East Quarterly, 2005.
32. "International Religious Freedom Report 2007," US Dept. of State.
33. kvinfo.org, "Legal rights- Syria," retrieved on 21st April, 2015.
34. "Table 4: Gender Inequality Index," UN Development Programme, retrieved on Nov 7, 2014
35. Maziak, Wasim; Asfar, Taghrid, "Physical abuse in low income women in Aleppo, Syria," April, 2003
36. Supra Note 31
37. "10 worst countries to be a blogger," Committee to protect Journalists, April 30, 2009.

finally spoke out against the Assad regime and this resulted into a bloody Syrian civil war which included foreign powers as well. However, the Arab Spring was a key turning point in the movement and helped Syrian people, more or less, achieve some reforms in the country.

3.5 Iraq

Though in Saddam Hussain's regime, Iraq witnessed high level of human right's violation, yet those violations were not the cause of the revolution in Iraq. Moreover, more than the revolution it was the sectarian violence that effected Iraq. When Saddam was overthrown in 2003, the power vacuum that was created was filled de facto by Nouri al-Maliki, popularly the government was called Maliki regime. Nouri al-Maliki served as the Prime Minister of Iraq from 2006 to 2014. He was the one chosen by the Americans to become the leader of Iraq. Being a Shia Muslim, he prosecuted the Sunnis (prevalence of Sectarian violence in Iraq) and supporters of Saddam who mainly resided in northern Iraq.

As far as violation of rights of Sunnis is concerned, Human Rights Watch conducted on ground research in 2010, shortly before the revolution began. Many lawyers, religious leaders, victims of violence, and ordinary Iraqi citizens were interviewed and the report suggested that the Maliki regime was no good in protecting the rights of Iraqis, especially the Sunnis in northern Iraq.[38]

As far as rights of women and girls are concerned, the women who enjoyed high level of rights protection and social participation in the 90s, now suffered tremendously in this new regime. Moreover, women were targeted by the militias who promoted misogynist ideologies and were also increasingly victimized in their own homes by their family members. Honour killing was prevalent and the Iraqi penal code also allowed the husbands to take action against their wives in order to keep them disciplined. There was widespread trafficking of women and girls and the anti-trafficking bill was pending in the Iraqi parliament. Women who were victims of sectarian violence and mostly relied on state aid were most vulnerable to abuse and harassment. The widows were also asked to engage in "pleasure marriages" in return for some financial aid[39].

When US invaded Iraq in 2003 and toppled Saddam's regime, at that point of time media freedom improved tremendously and many televisions and radio channels began to pop up. However, this freedom was short lived and soon restrictive laws that were imposed curbed much of the freedom. Apart from this, Iraq was also considered as one of the most dangerous place for journalists. Many extremists time and again started to assassinate the journalists and also bombed their bureaus. Moreover, even the security forces harassed, arrested and threatened the journalists and reporters. This was to ensure that nothing is emanated to the public that might undermine the Maliki regime.[40]

Torture was prevalent during Saddam's regime but it did not end after Saddam was overthrown. The US and British forces tortured many detainees and also handed them to Iraqi security forces despite knowing that there was a high risk of torture. The security forces of Iraq tortured the detainees, especially the supporters of Saddam Hussian (mostly Sunnis), in order to coerce confessions. The security forces and Iraqi interrogators also carried out inhumane acts against the detainees like whipping, burning them with cigarettes, pulling their fingernails and teeth etc. The Iraqi Prime Minister, Nouri al-Maliki even dismissed the reports of HR Watch that such incidents had taken place. The prison by the name of Abu Ghraib was famous for violation of rights of detainees and also for detainees being subjected to inhumane treatment.[41]

The minority groups also suffered in this new regime. Many Iraqis fled when the sectarian violence began in 2006-07 and thousands got internally displaced. Those residing in camps were deprived of basic necessities like clean air and water. Many people lost their jobs and children were deprived of education. The Iraqi government even failed to provide minimal medical aid, in some places.

The minorities suffered because of armed groups promoting intolerant ideologies. Many Iraqis were compelled to flee abroad with no plans to return. The Iraqi govt. failed tremendously to stop the attacks on minority groups like Yazidis and Shabaks and least efforts were made to bring those involved to justice.[42]

The situation that existed in Iraq definitely called for a revolution but instead of a revolution, sectarian violence escalated in Iraq. Though, there was some impact of the Arab Spring on Iraq as well but the conditions which prevail today, the cause of such was the sectarian violence that took place in the last decade. The Maliki regime mainly targeted the Sunnis of Iraq and with the development of Arab Spring in other countries it gave an opportunity to radicalized Sunnis like Zarqawi (member of Al-Qaeda who promoted sectarian ideologies) to provoke Sunnis to rebel against the govt., as a result of which Iraqi forces then had to face a newly formed terror group, i.e., ISIS (Islamic State

38. Joe Stork, "Human Rights in Iraq Eight Years after the US-Led Invasion," Feb 21, 2011
39. Supra Note 38
40. Supra Note 38
41. Supra Note 38
42. Supra Note 38

of Iraq & Syria) led by Abu Bakr al-Baghdadi. ISIS mainly backed the Sunnis of northern Iraq in their fight against the Shia Maliki regime. However, their main motive was to escalate sectarian violence rather than fight for the cause of Iraqi Sunnis. Therefore, unlike other countries, the Maliki regime got support from the western countries because they were opposing a terror organization. Thus, Iraq went on a different path and instead of a revolution for welfare of people, the country became victim of sectarian violence. Even emergence of ISIS never helped the Sunnis in Iraq because mass violation of human rights of Shias (Shias were tortured and killed inhumanely) took place in ISIS controlled areas and therefore the Maliki regime had to retaliate strongly and they started to prosecute the Sunnis and ISIS militias alike, without differentiating. However, the Arab Spring brought about some reforms in Iraq and the regime took some progressive measures but the sectarian violence almost destroyed the hopes of Sunnis and therefore they could not achieve much.

4. The Jasmine Revolution

The Tunisian revolution or popularly known as the Jasmine revolution, officially marked the start of the Arab Spring. The incident which sparked outrage against the Ben Ali regime took place on 17th December, 2010, in a rural town called SidiBouzid, in Tunisia. A vendor by the name of Mohamed Bouazizi was getting ready to sell his fruits and vegetables, when a policeman approached him and slapped and insulted him for selling fruits and vegetables without any licence. Bouazizi was the only bread earner in his family. He initially offered to pay a fine of 10 dinar but the police refused and confiscated his cart instead and also beat him up. A humiliated Bouazizi went to complain to local authorities but even they turned him away. Thereafter, without informing his family, Bouazizi went & stood in front of the provincial headquarters and doused himself with flammable liquid and set himself on fire, that very day.[43] [44]

This incident sparked outrage amongst the public and it quickly grew after some silent protesters in the town were also beaten up by the police. The very next day SidiBouzid witnessed riots in different places, and soon the entire nation started to protest against the regime. This incident had only provided the Tunisians with a platform to rebel against the govt. and they saw it as an opportunity to raise their voices against the oppressive conditions, which they were subjected to. Bouazizi was a victim of such harsh laws and oppressiveness. The Tunisians protested and ultimately Ben Ali, who visited Bouazizi in the hospital in Tunis in order to quell the unrest, had to step down after some weeks & he fled to Saudi Arabia. Even governors of many places like SidiBouzid, Jendouba etc. were dismissed. Though, Ben Ali, after the protests began, had promised to bring about some reforms but the public was in no mood to listen to him and they demanded his removal.[45]

Inspired from the successful revolution in Tunisia, people in Egypt, Syria, Libya etc. also started to raise their voices against their respective governments which had for so long deprived them of their minimal rights, and with the backing of the west they came out on the streets to stage large-scale protests against the autocratic regimes. The people in these countries had to pay a very high price (by losing their lives) and also violation of human rights increased, especially during the revolution, but at the end they were successful in either overthrowing the govt. or bringing about major reforms in their domestic laws, in order to enjoy greater freedom and to exercise numerous human rights.[46]

5. The Arab Spring and Violation of Human Rights that Took Place

When the Jasmine revolution began in Tunisia, it quickly gave way to even larger protests in other Middle-Eastern countries like Libya, Egypt and Syria. By the end of January, 2011, the revolution, called as the Arab Spring, was in full swing in these countries. The people wanted greater freedom and more liberty to enjoy their rights, and protested in different parts of the country constantly, but the govt. was reluctant to grant them the same because of the fear that more rights would make people difficult to handle. When people protested, the respective leaders of these countries feared that they may lose hold on the reins of power and therefore, in order to bring the revolution to a halt, they resorted to violent measures to put down the revolution and as a result many countries witnessed state of emergency, and even greater violations of human rights took place because the rights of the people were curbed further. Many people suffered under the harsh regimes which became harsher during the revolution and the world witnessed large-scale violation of human rights in the Middle Eastern countries.

5.1 Tunisia

In Tunisia, the revolution began when Bouazizi immolated himself in front of a govt. facility. Many people stood up and protested against the oppressive regime, in order to be granted greater freedom and liberty. The causes of the demonstrations apart from Bouazizi's self-immolation were

43. Abouzeid, Rania, "Bouazizi: The Man Who Set Himself and Tunisia on Fire," January 21, 2011
44. AL Jazeera, "Tunisian Revolution," December 17, 2015
45. Supra Note 43
46. Supra Note 43

high rate of unemployment, poor living conditions and lack of political freedom. People protested in many ways across the nation. Protests varied from silent protests to clashes with the govt. authorities. People resorted to many acts in order to show their hatred towards the regime. They used methods like civil resistance, demonstrations, self-immolation and general strikes to protest against the regime. Large anti-govt. protests took place in the capital city of Tunis and also in places like SidiBouzid, Jendouba, Ben Arous and Zaghouan.

The govt. initially came down violently to bring an end to the revolution, which included the use of tear gas to obstruct demonstrators, people even started to electrocute themselves[47] and when protesters became violent, the police started to shoot down the protesters. On December 24, 2010, the police shot dead a man named Mohamed Ammari and also seriously injured another by the name of Chawki Belhoussine El Hadri, who died after few days.[48] Apart from this mass arrests and detentions took place. The Tunisian authorities even arrested rapper El General, whose songs were used by the protesters during the revolution.[49]

Even lawyers were subjected to inhumane treatment for protesting against the regime. AbderrahmanAyedi, a prominent lawyer in Tunisia was tortured by the police after they arrested him for supporting the protesters[50]. Apart from this many lawyers report that they were savagely beaten up by the police, when they were in their custody. The Tunisian authorities also hacked the E-mail and Facebook accounts of all the online activists[51]. The govt. also tried to prevent the media from spreading news about the country wide protests, in order to prevent the protests from escalating further[55].

Despite the efforts of the govt. to stop the revolution, the revolution continued to escalate and finally the regime apprehended that the situation had gone out of control and in order to save himself from execution, Ben Ali and his loyalists stepped down and fled to Saudi Arabia. By the end of February, 2011, the revolution in Tunisia was almost over and Ben Ali's reign of 23 years came to a devastating end. People in Tunisia finally witnessed a major change in the govt. and finally saw themselves moving towards a better and liberal society with greater freedom and high level of rights. Major reforms took place after the revolution in Tunisia.

5.2 Egypt

Egypt saw itself enveloped in a revolution against the Mubarak regime, in order to bring the oppressive conditions to an end and to grant more freedom and liberty to the Egyptian people, shortly after the Bouazizi incident. The revolution began in Egypt on January 25, 2011, and quickly spread across the entire nation. Large-scale protests took place in cities like Cairo and Alexandria. In Cairo, initially, when the revolution began there were clashes between the protesters and security forces. Cairo was considered as "the movement's beating heart"[53] and around two-million people protested in Tahrir Square.[54] The city of Alexandria experienced major clashes and protests between the security forces and the anti-government crowd. The law and order broke down completely. The most unique thing about protests in Alexandria was that, both the communities, i.e. Christians and Muslims protested arm-in-arm against the Mubarak regime. In the city of Mansoura, the protests were so violent that the city was called a "war zone." Protesters were killed nearly every day with 13 dead on January 28th and another 18 dead on February 9th. The number of protesters neared one million in Mansoura, however the city of Siwa was relatively calm but the local Sheiks nevertheless created ruckus.[55]

In the Suez region also there were violent protests. The death toll in the region was high. The online activists called Suez Egypt's SidiBouzid (the Tunisian city where the protests began).[56] Around 4,000 protesters demanded Mubarak's resignation[57] and labour strikes were reported as well[58]. Other cities like Shebin el-Kom, El-Arish, Sohag and Minya also witnessed violence and large-scale protests[59]. Bedouins in the Sinai Peninsula also fought the security forces for weeks[60].

Though Egypt witnessed high level of protests, it also witnessed high level of violation of Human Rights. People

47. Al Jazeera, "Protests continue in Tunisia," December 26, 2010
48. Al Jazeera, "A protester dies after being shot by police, as activists criticise govt. repression of protests," December 31, 2010.
49. Walt, Vivienne, "El General and the Rap Anthem of the Mideast Revolution," February 15, 2011
50. Rifai, Ryan, "Tunisia's Uprising," Al Jazeera, January 23, 2011
51. Supra Note 50.
52. Supra Note 50.
53 Al Jazeera, "The different shades of Tahrir-Anger in Egypt," February 9, 2011
54. Supra Note 53.
55. Sterling, Joe, "Across dusty Egypt, anxiety has filled the air," CNN, February 4, 2011.
56. Dziadosz, Alexander, "Could Suez be Egypt's SidiBouzid," January 27, 2011.
57. "TIMELINE-Protest in Egypt," February 3, 2011.
58. Kirkpatrick, David D., "As Egypt Protests Swells, US Sends Specific Demands," The New York Times, February 8, 2011.
59. Schemm, Paul; Michael, Maggie, "Mubarak leaves Cairo for Sinai as protests spread," The San Diego Union-Tribune, February 13, 2011.
60. Kirkpatrick, David D., "Protest swell in rejection of Egypt's limited reforms," The New York Times, February 8, 2011.

used methods like civil disobedience, civil resistance, demonstrations, riots, self-immolation, strike actions etc. to protest against the regime and on the other hand the security forces resorted to more brutal methods to bring about an end to the protests. Large number of protesters were killed and some like Khaled Saeed even self-immolated themselves in police custody. Even the reporters who tried to cover the events, like Natasha Smith, Lara Logan and Mona Eltahawy were sexually assaulted by the Egyptian police[61]. The Egyptian authorities even imposed a ban on the media to prevent it from inciting people further[62]. By the end of January, 2011, at least 2,000 protesters were confirmed dead mainly because of police brutality[63] and even the HR Watch verified deaths in two Cairo hospitals including 40 in Alexandria and 15 in Suez[64].

Egypt witnessed highest number of civilian deaths during the entire revolution in Mid-East but ultimately the people of Egypt were successful in bringing down the regime, (with the support of their foreign allies after they intervened to fight for the cause of Egyptian people) and Hosni Mubarak was put under trial for his atrocities against the Egyptian people before and during the revolution. The new govt. of Md. Morsi brought about some reforms in the country. Hosni Mubarak was sentenced to life imprisonment by an Egyptian court along with his two sons. People finally saw themselves free from the police state which had for so long deprived them of their basic rights.

5.3 Libya

In Libya the revolution acquired the characteristics of a civil war, with the anti-govt. rebels on one side who were backed by the western countries including NATO, and loyalists of Muammar Gaddafi on other side who were backed by their own allies like Syria. The Libyan people were inspired after the revolution in Tunisia and Egypt bore fruits. They too started to speak against their govt. in order to secure a decent standard of life which was denied to them under the harsh and oppressive regime of Muammar Gaddafi.

The revolution actually began on 13th and 14th January, 2011, in Libya when protesters attacked the police in the city of Bayda and also captured govt. facilities.[65] In January Jamal al-Hajji, writer/politician, was arrested for having different political opinion and also for provoking people to demonstrate.[66] This escalated the protests even further, however, Gaddafi warned the political activists that they would face devastating consequences if they tried in any manner to oppose the regime.[67] Soon by February, 2011, Libya witnessed large-scale protests, unrest and confrontations. People protested in large number in the city of Zawiya against the govt. They started to burn down public properties including vehicles and police stations. When HR lawyer, FathiTerbil, was arrested for inciting confrontations, the crowd clashed with the police in the city of Benghaz[68]. People even started to throw Molotov cocktails at the police and shouted slogans against the regime. In the city of Zawiya and Zintan, the protesters burned down police stations and security buildings and demanded that the Gaddafi regime be brought to an end. On February 18th, 2011, the Libyan police escaped from Benghazi after the crowd went out of control. Even the military withdrew from the city of Bayda, indicating that the protesters had achieved victory in that region.[69]

The rebels or protesters were able to fight against the regime because they were backed by the foreign allies including NATO and therefore they overpowered the security forces in Libya. However, even the regime employed lethal measures against the rebels to bring them down and violation of human rights was at its highest because even the regime was backed by its Arab allies. In the month of February when the movement achieved its highest peak, the country saw itself enveloped in a civil war. The Gaddafi regime came down violently against the protesters. There were incidents of mass shooting at the protesters which alone killed nearly 600 people. Apart from this even the ones who protested non-violently were shot down and also those who surrendered and laid down their arms were killed in police custody. The security forces used helicopters to smoke down the protesters in large numbers. In Benghazi alone around 105 people were killed and another 80 died in Bayda. The security forces also used land mines and cluster bombs in order to get rid of the protesters.[70]

There were allegations of mass rape against the security forces and according to Libyan psychologist Siham Sergewa, around 200 women were raped by the loyalist soldiers in Tripoli and Benghazi.[71] It was also reported that

61. Dan Rivers, "Student Journalist assaulted in Tahrir Square," CNN, June 27, 2012.
62. Tencer, Daniel, "Reports of 'Massacre' in Suez as Protests in Egypt move into third day," January 14, 2011.
63. "Update 1- Death Toll in Egypt's Protests," CNN, January 29, 2011.
64. Carol J. Williams, "Egypt: Rights Advocates Report Protest Death Toll as high as 300," Los Angeles Times, February 1, 2011.
65. Abdel—Baky, Mohamed, "Libya Protests over housing enters its third day," Al-Ahram, January 16, 2011.
66. "Libyan writer detained following protest call," Amnesty International, February 8, 2011.
67. Mahmoud, Khaled, "Gaddafi ready for Libya's 'Day of Rage'," Asharq Al-Awsat, February 9, 2011.
68. "Clash breaks out as Libya braces for 'Day of Anger'," al-Arabiya.net. February 16, 2011.
69. Al Jazeera, "Libya-Live Blog," February 17, 2011.
70. Amnesty International, "The Battle for Libya: Killings, Disappearances and Torture," September 13, 2011.
71. "Psychologist: Proof of Hundreds of Rape Cases during Libya's War," CNN, May 23, 2011.

girls as young as 12 years were also raped by the security forces.

The Libyan forces also used anti-tank mines and anti-personnel mines to blow up the protesters as alleged by HR Watch. They deployed such mines in different locations where they feared violent protests.[72] The forces also shelled civilian areas including hospitals and medical facilities where injured protesters were being taken for treatment, especially in the city of Misrata. They also attacked ambulances with the Red Crescent[73]. Apart from this, the Gaddafi regime also used civilians as human shields in order to protect themselves from the attacks, including attacks from the NATO who was backing the rebels. In order to suppress the protesters the regime also started to intentionally starve the civilians and therefore cut off the food supply.[74]

Muammar Gaddafi's Death

Despite the atrocities committed by the authorities, the Libyan people were able to bring down the regime in Libya and Muammar Gaddafi escaped and disappeared. The support of the NATO and other foreign powers played a crucial role in the movement and contributed significantly towards the success of the revolution. On 20th October, 2011, Gaddafi was found hiding in the city of Sirte, Libya. After an intense fight in the Battle of Sirte, he was captured and was dragged and executed publically. His execution was witnessed by millions worldwide. He was mercilessly beaten and shot several times by the members of the rebel groups.[75] His death was celebrated by the rebel groups and it marked the birth of a new era in Libyan history. After his death, Mustafa Abdul Jalil, the new leader promised that he would bring about some major reforms in the country.

5.4 Syria

Another country that came under the impact of the Arab Spring was Syria, however, Syria was strongly supported by its foreign allies, especially Russia, and therefore the Assad regime was able to handle the revolution effectively. In Syria also, people took to the streets to protest against the oppressive regime, in order to acquire more liberty and greater amount of freedom, but because of the emergence of ISIS in Syria, the regime was not left with any other option but to retaliate violently against the rebels and ISIS militias.

During the protests carried out by the rebels, the regime used all inhumane measures on the pretext that the rebels were being supported by the ISIS militias, and therefore in self-defence, the regime was compelled to take harsh actions against the rebels as well as ISIS. The security forces killed close to 4,000 protesters in Syria and detained many including women and children[76]. The security forces killed many people in the city of Homs and around 40 people in the town of Izraa. Instead of using tear gas, the security forces directly fired at the crowd, killing even women and children.[77] Security forces made use of tanks and armoured vehicles to impose a curfew in the city of Daraa, and in that process around 120 people were killed. They even restricted the movement of the residents and fired at anyone who tried to leave their homes.[78] They placed snipers on rooftops to shoot down anyone who tried to escape. They detained many people in the process, who after their release alleged that they were mercilessly beaten and tortured.[79] The security forces also attacked the city of Banyas, Tal Kalakh and Hama, primarily under the control of rebel groups and ISIS, and detained thousands of people. They also sent tanks to handle the rebellions in the town of Jisr al-Shugur. The city of Hama witnessed the highest level of violence where 250 people died at the hands of the security forces, in just 4 days[80]. The security forces also attacked and killed people in various other places like Bab Sba, Bab Amro and Bayyada.

The Assad regime also arbitrarily arrested and tortured thousands of detainees. According to HR Watch, the security forces detained more than 18,000 people in March, 2011, which also included young women and children. Some were released but many disappeared.[81] The detainees who were released said that they were tortured and the forces employed all sorts of methods to torture them like beating with sticks, electric shocks etc. The detainees were kept in an overcrowded cell in Hama, where they didn't get enough place to even sit. The prisoners were compelled to declare that Bashar al-Assad was their God. Around 110 people died in custody including prominent figures like GhiyathMattar, a 26 year old community organizer from Damascus. The relatives of the dead detainees were compelled to not hold funerals and in some cases were denied the bodies of their loved ones.[82]

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72. Human Rights Watch, "Government used Landmines in Nafusa Mountains," June 21, 2011.
73. Human Rights Watch, "Libya: Government attacks in Misrata Kill Civilians," April 10, 2011.
74. Physicians for Human Rights, "Witnesses to War Crimes: Evidences from Misrata, Libya." Retrieved on February 28, 2012.
75. Martin Chulov, "Gaddafi's last moments: 'I saw the hand holding the gun and I saw it fire'," October 20, 2012.
76. Human Rights Watch, World Report 2012: Syria, Events of 2011.
77. Supra Note 76.
78. Supra Note 76.
79. Supra Note 76.
80. Supra Note 76.
81. Supra Note 76.
82. Supra Note 76.

Some wounded protesters were denied medical assistance and the security forces even arrested people in the hospital who were receiving medical treatment. The forces also opened fire on medical personnel in the city of Daraa. The injured protesters had to hide in mosques and other religious places in order to receive treatment and evade arrest. In September, 2011, HR Watch alleged that the security forces arrested & killed 20 people in al-Barr hospital in Homs, including 4 who were still in the operation theatre.[83]

The forces also arbitrarily arrested activists and journalists including prominent figures like, Rasem al-Atassi, 66, president of the Arab Organization for Human Rights in Syria, Md. NajatiTayyara, human rights activist from Homs. Even women activists were targeted like Dana al-Jawabra, from Daraa and Catherine al-Talli, human rights lawyer from Damascus. Journalists like Suleiman al-Khalidi, a Jordanian national was arrested for reporting on Syria's crackdown. Another Franco-Algerian freelance journalist, Khaled Sid Mohand was held incommunicado for almost 6 weeks. This way the Assad regime tried to prevent the media from publically criticizing the regime for the atrocities carried out by them to stop the revolution.[84]

Though the Syrian govt. faced large-scale protests, they were able to crush the revolt because of the support that they received from Russian forces. However, after the revolt was successfully suppressed, Bashar al-Assad nevertheless promised to bring about some major reforms in the domestic laws and improve the standard of living of the Syrian people.

6. Consequences of Arab Spring

After the Arab Spring came to an end in 2011, the new governments in their respective countries brought about some reforms in order to calm the protesters, which included providing more civil liberties, political rights, ending martial law, ending social evils in the society, banning inhumane practices, giving equal rights to women in economic and social fields, repealing harsh and arbitrary laws, restructuring the economy, investing funds to uplift the level of education, providing medical benefits, drafting laws to protect the minorities etc. However, in some countries, according to Amnesty International, sufficient steps were not taken and more work was needed to be done in the field of human rights.

6.1 Tunisia

In Tunisia, the secret police, which was responsible for mass violation of human rights, was disbanded, however, they were not held accountable for their previous acts[85]. Some steps were taken to grant equal rights to women, which included a rule laid down by the Tunisian Electoral Commission which said that the parties were to field equal number of male and female candidates in election[86]. The revolution imposed multi-party democracy in Tunisia and the first elections were held on 23rd October, 2011. The economy also saw significant changes after the western countries started to invest heavily in the country. The people in Tunisia were granted sufficient number of rights and liberties after the revolution and the new government repealed various suppressive laws and restructured the economy fairly well to ensure equal distribution of wealth across the country.

However, some types of discrimination against women still existed in Tunisia and the country still never had any comprehensive law to deal with domestic violence. Moreover, the country never took any significant steps to protect and deal with around 4,000 refugees, living in camps, in the region of RasJdir.[87]

6.2 Egypt

In Egypt, some progress with respect to human rights were made after the Parliamentary elections which were held on 21st November, 2011. The former officials who were guilty of violation of human right were tried and executed. The SSIS (State Security Investigation Service), which was used by Mobarak as a tool to keep people under control was disbanded. The SSIS was also blamed for mass violation of human rights.[88]

The pace of progress in Egypt was quite slow. Many new laws laid down actually curbed some aspects of human rights. The new Egyptian govt. restricted criticism of the government and also broadened the application of the Emergency laws, which said that the Ministry of Interior was authorised to keep anybody under indefinite detention, without charges or trials, in case the person is perceived as a threat to the government or danger to public order.[89]

Apart from this, the Egyptian economy did see some significant changes and the government took some measures to raise the standard of living of the Egyptian people. The government also took steps to give equal

83. Supra Note 76.
84. Supra Note 76.
85. Bakrania, Shivit, "The Arab Spring and its impact on human rights in the MENA region," October 14, 2011.
86. Supra Note 85.
87. Supra Note 85.
88. Supra Note 85.
89. Supra Note 85.

importance to women in all the fields and banned various age old inhumane practices which were prejudicial towards women. The government also recognized the political parties formed by the minorities and members of minority groups like Coptic Christians were also granted membership of various other parties. Basically, the Egyptian authorities after the revolution did fairly well in the field of human rights, but more or less, failed to stop the sectarian violence that time and again erupted.

6.3 Libya

The new National Transitional Council (NTC), which stated to rule Libya, after the fall of the Gaddafi regime failed to bring about the reforms which it had promised and was initially only focussed on prosecuting the Gaddafi loyalists. Therefore, the violence, more or less continued in Libya, and such violence still exists. Moreover, the intervention by the western countries turned the situation from bad to worse.90

The dark-skinned Libyans and Sub-Saharan African migrant workers were abused by the militias of the new interim government led by Mustafa Abdul Jalil, who did little to protect their rights. The town of Tawergha, where mostly dark-skinned Libyans resided, was emptied after many dark-skinned Libyans were killed while many others fled, fearing prosecution. Those captured were beaten and tortured.91

6.4 Syria

The situation in Syria never improved because the protesters were dealt with effectively. The Assad regime blamed the protesters for aligning with the terrorist organizations like ISIS and Al-Nusra Front, who time and again tried to incite sectarian violence in Syria. Moreover, the Russian armed forces came to Bashar al-Assad's rescue and strengthened his position as the President of Syria. There were incidents of Syrian govt. employing chemical weapons to get rid of the rebels.92

Bashar al-Assad made some offers like constitutional reforms including a new election law and media reforms but never fulfilled such promises. Apart from this, arbitrary detention and torture continued in Syria and such was also condemned by the UN Human Rights Council.93 The ethnic minority group, i.e. the Kurds who reside in north Syria continued to suffer under the regime and were denied Syrian citizenship and therefore couldn't exercise the rights granted by the Syrian govt. They still do not have access to publicly subsidized food or access to education or employment in Syria.94

The situation in Syria is still bad and it has been declared as a war zone by many countries including India and thus citizens are advised to not to travel to Syria. Millions of Syrian refuges have taken shelter in neighbouring countries and also in Europe. The UN identified around 13.5 million Syrians requiring humanitarian assistance out of which 4 million were internally displaced and around 8 million took shelter as refugees outside Syria95. People have fled in order to save themselves from the butchery carried out on large-scale by the Syrian security forces in the war torn country.

7. Aftermaths of Arab Spring

Two significant things happened as a result of the Arab Spring which created more chaos in the Mid-East region, especially in Iraq and Syria, i.e. the emergence of ISIS and proxy war between Russia and United States in Syria, which contributed towards escalating the ongoing Syrian civil war.

7.1 Emergence of ISIS

After the US forces overthrew Saddam in 2003, they chose Nouri al-Maliki to rule over Iraq, who being a Shia Muslim started to prosecute the Sunnis who were supporters of Saddam Hussain. The Sunnis mainly resided in northern Iraq and after the fall of Saddam regime were mercilessly attacked and killed by the Iraqi Shias, who were backed by the newly inserted Maliki regime. Over the years from 2003 to 2011, the Iraqi Sunnis suffered a lot at the hands of the Maliki regime. Meanwhile, Abu Musab al-Zarqawi, an Al-Qaeda operative saw, the growing rift between Shias and Sunnis in Iraq as an opportunity to promote sectarian ideologies, in which he strictly believed. He therefore formed a new branch of Al-Qaeda, named, Islamic State of Iraq and Syria (ISIS), to be led by Abu Bakr al-Baghdadi, who was imprisoned by the US forces when they invaded Iraq but was later released. The ISIS fighters mainly tried to consolidate the support of the Iraqi Sunnis in order to incite them against the Maliki regime and also to encourage sectarian violence in Iraq. The ISIS fighter brutally killed the Shia Muslims and other government officials by beheading them publicly. With the help of Sunni Muslims, ISIS gained control over northern Iraq where the Sunnis resided and consolidated their position in that region. While in power they carried out mass atrocities against the civilians which included employing all inhumane methods to kill innocent people, killing of small children in the name of sect, killing

90. Supra Note 85.
91. "Ethnic Cleansing, genocide and the Tawergha," Human Rights Investigation, September 26, 2011.
92. Nawal al-Maghafi, "How chemical weapons have helped bring Assad close to victory," BBC News, October 14, 2018.
93. "UN Human Rights Council condemns Syria," Voice of America News, August 23rd, 2011
95. "We've never seen such horror: Crimes against humanity by Syrian security forces," HR Watch, 2011.

foreign journalists and burning all the oil refineries and oil wells in northern Iraq.

Finally, the US forces had to intervene in order to get rid of ISIS and after a long battle fought alongside the Iraqi army, they were eventually able to drive them out of Iraq in the year 2018. But from the time they emerged and till they were completely destroyed, ISIS caused some very serious damage to Iraq, in terms of civilian lives lost and other major economic and infrastructure losses, which would take the Iraqi govt. many years to make up for.[96]

7.2 Proxy war in Syria (Russia v. United States)

The idea of Sectarian violence which they put in practice in Iraq, the ISIS wanted to put the same into practice in Syria as well, in the year 2011. Therefore, they created a new unit of ISIS by the name of Al-Nusra Front, which was headed by Abu Julani, a close aid of al-Baghdadi. The Al-Nusra Front was given the task to promote sectarian violence in Syria as well. The Al-Nusra front fighters started to support the rebels against the Assad regime, as a result of which situation in Syria became very complicated. Initially, before the Al-Nusra Front came in the scene, the rebels were being supported by the United States government who wanted to overthrow Bashar al-Assad just like Saddam and Gaddafi. On the other hand Assad asked his ally, the Russian government, to intervene in order to suppress the rebels and consolidate his position as the President of Syria. The Russians did so and saw themselves in confrontation with the US forces. The US forces were meanwhile fighting against the ISIS in Iraq and when ISIS sent Abu Julani to support the rebels in Syria, the US government saw itself trapped. They were fighting against the Assad regime but at the same time couldn't support the rebels completely because the Al-Nusra Front (or ISIS; with whom US forces were fighting in Iraq and also in Syria) was successful in luring the rebels towards them and US forces obviously couldn't support and fight alongside a terrorist organization. Therefore, the US government had to suspend its operations in Syria because the arms which they were supplying to the rebels landed in the hands of ISIS fighters (who supported the rebel groups in Syria) and was indirectly being used against them in Iraq and Syria.[97]

On the other hand, the Russian forces had only one objective in Syria, i.e. to consolidate Assad's position as Syrian President and therefore they attacked the rebels and the ISIS/Al-Nusra Front militants alike. Finally, the Russian forces withdrew after consolidating Assad's position as the President of Syria and after successfully suppressing all rebel groups and jihadists. However, the atrocities carried out by the Assad regime against the rebels cannot be justified, despite the fact that jihadists supported the rebels. The Russian govt. can also be held responsible for facilitating those atrocities by supporting the regime. The atrocities left the whole world shocked and guessing as to what extent the man might go to remain in power and have complete control over Syria.

Conclusion

The world witnessed large-scale violations of human rights in Mid-East region, in the year 2011. Such violations even continued in some countries post-revolution. Many Islamist radicalized groups incited the dissents further and therefore contributed towards more chaos. The mid-east region saw complete breakdown of law and order and many people including women and small children suffered. Moreover, even the foreign powers like the United States and Russia also contributed towards the 'Middle-Eastern Mess.' Instead of bringing about law and order and peace between the fighting groups, they sided with either of the group in order to fulfil their own political objectives. Moreover, the emergence of ISIS and consolidation of position of Bashar al-Assad, further deteriorated the situation in Iraq and Syria respectively and became the cause of the pro-longed civil war which soon followed. Many people died and many were rendered homeless. Humanity suffered a lot throughout the civil war in Iraq and Syria. But at the end of the day the main causes of all the 'middle-eastern mess' were the oppressive conditions which prevailed when the harsh regimes of Muammar Gaddafi and likes, ruled their countries without granting sufficient freedoms and rights to their people and it became difficult for people to survive with their basic rights curbed as a result of which conditions were created conducive to a revolution. The foreign powers tried to capitalize on the situation in order to achieve their political objectives and therefore the situation deteriorated further leading to the 'Middle-Eastern Mess.'

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96. "UN Office for the Coordination of Humanitarian Affairs," February 16, 2016.
97. "The history of Daesh (ISIS)," https://youtu.be/IMgNdZVu2kU
98. Supra Note 96.

World Trade Law: Text, Materials and Commentary (Third Edition), Simon Lester, Bryan Mercurio & Arwel Davies, Published by Hart Publishing, Bloomsbury Publishing Plc, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK.

Prof. (Dr.) R.N.Sharma*

The publisher's note makes it amply clear that they have used many sources for their publication.

The book can be said to be one of the rare book on the subject. It contains text in the form of law relevant material and commentary.

In part one, the author has dealt with the legal and economic aspects of world trade regulations. The author emphasized that why world trade regulations are required and pleaded for free trade and development.

In part two, the author has discussed institutional aspects and the relationship between world trade law, international law and domestic law. The author has discussed multilateral trading system like GATT, WTO, etc.

In part third, the author has provided the wage and means for settlement of disputes in the GATT/WTO. The author has also discussed the important procedure and systematic issues.

In Part four, the author explained in details traditional GATT obligations, MFN and National treatment principle in detail along with the FAQs on the subject.

In part five, the author has discussed bilateral/regional trade agreements along with general exceptions relating to health, the environment, and compliance measures as per Article 20. This aspect has been dealt with suitable examples.

In part six, the author has discussed the remedies available for fair and unfair trade. He has dwelt upon subsidies and counter veiling measures, dumping and anti dumping measures. And the safe guards provided for this.

In part seven, the author has discussed beyond trade in goods like domestics regulations, services , investment, procurement and intellectual property. Under this head, the author has discussed the SPS and TBT agreement, trade in services, trade and investments, TRIPS agreement and procurement by government.

In part eight, the author has explained in details the social policy issues relating to the World Trade. The author has explained the status of developing countries in the multilateral trading system and the difficult being faced by them. He has also explored linkages between trade and social policies like environment, culture, labor standards, human rights and health and safety.

I am of the view that the material and commentary put forth by the author will facilitate that government who are either under developed or developing countries. The language used in the commentary is very effective enabling and understandable by the readers. This facilitates them to take practical benefit out of the material.

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Karlamantilla, Gender Trolling: How Misogyny Went Viral (Praeger 2015). Pp 273.

Sakshee Sharma*

As the title suggests the book is primarily concerned with the different types of harassments that women face while performing day to day routine activities on the cyberspace. Mantilla terms this cyber harassment as 'gender trolling'. As compared to the generic trolling on the internet which is often considered harmless, gender- trolling is exponentially more vicious, virulent, aggressive, threatening, and pervasive. The trolls often get creative and use photoshopped images and videos mostly of sexual nature of the target. More often these trolls take their cause very seriously and are able to reel in many other participants thus creating a mob effect on the target. The victim is often addressed distastefully and abusively on blogs, comments sections, social media platforms etc and graphic Pornographic images of the targets are used. In extreme cases, the targets even receive floods of rape and death threats involving themselves and their family members. There have been many examples where the victims had to relocate of completely change their identities in order to leave behind the traumatic experience of such gender- trolling.

Mantilla has adopted a very interesting approach in this book in bringing forward the true nature and consequences of gender - trolling. Throughout the book every section is substantiated with numerous real life accounts of the victims who had to face the brunt of this internet warfare of gender. Each story helps us to comprehend the damage that such kind of internet behaviour can cause to the victim. Chapter 2 of the book provides an insight into the seven characteristics of gender trolling- 1) Gender-trolling attacks are precipitated by women asserting their opinions online. 2) They feature graphic sexualized and gender based insults. 3) They include rape and death threats- often credible ones- and frequently involve IRL targeting, which adds to the credibility of the threats. 4) They cross multiple social media or online platforms. 5) They occur at unusually high levels of intensity and frequency. 6) They are perpetuated for an unusual duration. 7) They involve many attackers in a concerted and often coordinated campaign. Mantilla makes it a point throughout the book to include the exact offensive messages and language used in every incident mentioned in the book. By doing this, she intends to better put forward to the readers, the gravity of each remark as she feels without that, it is too easy to dismiss the harassments as mere negative comment or insults.

The next part includes the evaluation of the wide range of reactions that women as victims of gender-trolling have to face. Prolonged exposure to offensive insults, graphic and horrific contents, rape and death threats etc., cause many to suffer from anxiety and post-traumatic stress disorder (PTSD). Mantilla points out, that though some women try to stay strong and fight against such attacks, either by reaching out to law enforcement or by using humor and creativity to ignore such attacks against them, in many cases it only prompts the further aggravation of the attacks. She sites many examples where as a last resort the victims were forced to move to another home to protect themselves and their families from the ongoing threats and attacks.

Mantilla very unequivocally claims gender-trolling to be yet another manifestation of traditional misogyny. She points out that gender-trolling is not a new phenomenon; instead it is the encroachment of the internet by the offline misogyny. A general perusal of all the examples mentioned by the author will lead us to accept that gender-trolling happens to women because they are women and for no other reason. In fact, gender-trolling achieves its desired, even magnified effect on its victims because it is a gender based act. The author examines gender-trolling in the context of contemporary misogynistic behaviours like domestic violence, rape and date rape, stalking, street harassment and sexual harassment in the workplace. She claims that like gender-trolling all these acts are pervasive rather than idiosyncratic and are performed in order to abuse women. All the above mentioned behaviours were for a very long time, unacknowledged until the feminists took it upon themselves to bring them out n the open as a recognizable social menace. Similarly, gender-trolling too is quite widespread but largely unseen, ignored and unrecognized. Mantilla quite accurately suggests that naming and clearly defining the act of gender-trolling will be the first bold step towards its recognition as yet another misogynistic behaviour which needs to be countered to preserve social and cultural values.

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While seeking a widespread recognition of gender-trolling by naming and defining it, Mantilla is not oblivious to the backlash that arises against any such movement. Such cultural defence mechanism is not new to any such feminist movement and it mostly comprises of accusations made against those raising their voices for the cause, denial in the form of discounting the seriousness of the phenomena, shifting the culpability through victim blaming, switching the focus on the perpetrator's intention and projecting the perpetrator as the real victim. These multipronged defence mechanisms help ensure that even when women begin to develop a social awareness of a patterned behaviours that is targeting them, they will face significant counter attacks.

In the final chapter, Mantilla lays out a variety of recommendations for the law making agencies, the law enforcement authorities and the victims who are overcoming the effects of such attacks. But first she aspires to bring a change in the cultural values and ideas so as to make gender-trolling attacks on women, unacceptable at any cost. She believes that by bringing this phenomenon into social consciousness, women who grapple with gender-trolling campaigns in future will be less devastated by them.

The book has remarkably projected the issue of gender-trolling along with its various manifestations. The inclusion of substantial number of real life accounts of the victims is a remarkable feature of the book. It helps the reader to have a profound experience while reading such agonizing accounts of gender-trolling attacks and the distressing effects it has on its victims. However, one notable drawback of Mantilla's approach towards the problem is her ultra feminist approach to it. There is no denying that women are majorly targeted in such kind of attacks and they are the worst sufferers, but I believe, recognizing this phenomenon as a gender neutral issue is much likely to raise lesser friction and backlash from the society. It is possible, that the society is much more conductive to the recognition of the problem of harassment on the internet, sans its gendered colour.

Navtej Singh Johar & ors. V. Union of India
WRIT PETITION (CRIMINAL) NO. 76 OF 2016

Anand Singh*

The recent judgment Passed by 5 judges Constitutional bench of Supreme Court of India has unanimously found that S. 377 of the Indian Penal code violates Right to Equality, Freedom of speech and expressions and Right to life and Personal liberty enshrined in Constitution of India. This means regardless of sexual orientation and gender identity, consensual sexual activity between adults is no longer criminal. Bestiality, sex with minors, and non-consensual sexual activity between LGBT persons continue to be criminal. This present decision was appreciated and seems to be very progressive and transformative but after this decision there are many questions arose which need to be answered and which was totally ignored in the present case. A number of thinkers, law experts, social worker and many learned person have expressed opinions to Criticize creation factors were not considered in this decision.

Facts of the case

The Petitioner in the present case, Navtej Singh Johar, a dancer who identified as part of the LGBT community, filed a Writ Petition in the Supreme Court in 2016 seeking recognition of the right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed by Art. 21 of the Constitution of India. Furthermore, Petitioner argued that S. 377 is a violative of article14 i.e. right to equality because there is no intelligible differentia or reasonable classification between natural and unnatural consensual sex, and the term "carnal intercourse against the order of nature" is vague and not defined[1].

Apart from these Petitioner further argued that S. 377 was also violative of Art. 15 of the Constitution (Protection from Discrimination) since it discriminated on the basis of the sex of a person's sexual partner, and S. 377 had a "chilling effect" on Article 19 (Freedom of Expression) since it denied the right to express one's sexual identity through speech and choice of romantic/sexual partner, and S. 377 violated the right to privacy as it subjected LGBT people to the fear that they would be humiliated or shunned because of "a certain choice or manner of living."[2]

The Respondent in the case was the Union of India. Along with the Petitioner and Respondent, certain non-governmental organizations, religious bodies and other representative bodies also filed applications to intervene in the case.

The Union of India submitted that it left the question of the constitutional validity of Section 377 (as it applied to consenting adults of the same sex) to the "wisdom of the Court".

Ratio of the case

The five-judge bench of the Indian Supreme Court (Court) unanimously held that Section 377 of the Indian Penal Code, 1860 (Section 377), insofar as it applied to consensual sexual conduct between adults in private, was unconstitutional. With this, the Court overruled its decision in *Suresh Koushal v. Naz Foundation*[3] that had upheld the constitutionality of Section 377.

The Court relied upon its decision in *National Legal Services Authority v. Union of India*[4] to reiterate that gender identity is intrinsic to one's personality and denying the same would be violative of one's dignity[5]. The Court relied upon its decision in *K.S. Puttaswamy v. Union of*[6] *India* and held that denying the LGBT community its right to privacy on the ground that they form a minority of the population would be violative of their fundamental rights. It held that Consensual carnal intercourse among adults, be it homosexual or heterosexual,in private space, does not in any way harm the public decency or morality. Therefore, Section 377 IPC in its present form violates Article 19(1)(a) of the Constitution[7]. The court affirm that "intimacy between consenting adults of the same sex is beyond the legitimate interests of the state" and laws related to sodomy laws are voilative of Article 14 and 15 of Indian Constitution that it prohibits a gender specific to exercise their rights for theier sexual orientation.

Chief Justice Misra (on behalf of himself and J. Khanwilkar) relied on the principles of transformative constitutionalism and progressive realization of rights to hold that the

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1. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf P.25 Para 26.Visited on 21/10/2019.
2. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf P. 22 Para 21 Visited on 21/10/2019.
3. (2014) 1 SCC 1?
4. (2014) 5 SCC 438
5. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 165para 253(i) Visited on 21/10/2019.
6. (2017) 10 SCC 1
7. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 165 para 253(xvi) Visited on 21/10/2019

constitution must guide the society's transformation from an archaic to a pragmatic society where fundamental rights are fiercely guarded. He further stated, "constitutional morality would prevail over social morality"[8] to ensure that human rights of LGBT individuals are protected, regardless of whether such rights have the approval of a majoritarian government.

J. Nariman in his opinion analyzed the legislative history of Section 377 to conclude that since the rationale for Section 377, namely Victorian morality, "has long gone"] there was no reason for the continuance of the law[9]. He concluded his opinion by imposing an obligation on the Union of India to take all measures to publicize the judgment so as to eliminate the stigma faced by the LGBT community in society. He also directed government and police officials to be sensitized to the plight of the community so as to ensure favorable treatment for them.

J. Chandrachud in his opinion stated that not only must the law not discriminate against same-sex relationships, it must take positive steps to achieve equal protection and to grant the community "equal citizenship in all its manifestations"[10].

J. Malhotra affirmed that homosexuality is "not an aberration but a variation of sexuality".She stated that the right to privacy does not only include the right to be left alone but also extends to "spatial and decisional privacy" She concluded her opinion by stating that history owes an apology to members of the LGBT community and their families for the delay in providing redress for the ignominy and ostracism that they have suffered through the centuries[11].

Conclusion

The Judgement passed by the Hon'ble court was tarnsformative but there are many instances like the health of the Partners were not considered strongly as the consequences of same sex carnal intercourse were ignored few are like, theanal intercourse can eventually lead to fecal incontinence. A February 2016 study concludes: *"The findings support the assessment of anal intercourse as a factor contributing to fecal incontinence in adults, especially among men."*[12] Also Center for Disease Control and Prevention (CDC) just released (August 2016) a new fact sheet on "Anal Sex and HIV Risk". The first statement on the page says, *"Anal sex is the riskiest sexual behavior for getting and transmitting HIV for men and women."* It goes on to say that receptive anal sex is 13 times more risky than insertive anal sex for acquiring HIV infection.[13]

Apart from medical issue that it can be said that this decision was not specially dealing with marriage but if in transformative nature

The Court failed to observe that decriminalizing homosexuality would pose a threat to the institution of marriage protected under Personal Laws, which provided that family was a natural and fundamental unit of society and a necessary basis for social order, and shall enjoy the recognition and protection of the State; and, that*, "every adult had a right to marry a person of the opposite sex, based on the free consent of the parties."* the marriage in Hindu was treated as purea sacramental but if it is permitted in same sex so what about the sole object of the marriage i.e the procreation of children.

8. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 79 para 121 Visited on 21/10/2019
9. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 239 para 78 Visited on 21/10/2019
10. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 270 para 7 Visited on 21/10/2019
11. https://sci.gov.in/supremecourt/2016/14961/14961_2016_Judgement_06-Sep-2018.pdf p. 270 para 7 Visited on 21/10/2019
12. Markland AD, Dunivan GC, Vaughan CP and Rogers RG, "Anal Intercourse and Fecal Incontinence: Evidence from the 2009-2010 National Health and Nutrition Examination Survey," The American Journal of Gastroenterology 111, 269-274
13. Centers for Disease Control and Prevention, "Anal Sex and HIV Risk," http://www.cdc.gov/hiv/risk/analsex.html

Indian Young Lawyers Association & ors. V. the State of Kerala & ors. Writ Petition (Civil) No. 373 of 2006

Neha Singh*

For centuries women in our society had to struggle for an equal representation in public spaces. The struggle has not only been about representation but an ideological battle with the deep rooted norms and customs in patriarchal society that view women in a place of subordination. Against this backdrop, the decision of the Supreme Court in Indian Young Lawyers Association & Ors v. the State of Kerala and Ors ('the Sabarimala case)[1], is indeed path-breaking in terms of constitutional jurisprudence. In a 4:1 majority, the court ruled that Sabarimala's exclusion of women violated the fundamental rights of women between the ages of 10-50 years and Rule 3(b) of the Public Worship Rules was unconstitutional. Justice Indu Malhotra delivered a dissenting opinion and laid down that in a secular polity, it was not for the courts to interfere in matters of religion and the same must be left to those practicing the religion.

Facts:

The Sabarimala case arose out of a petition filed in public interest by a registered association of young lawyers, challenging the Constitutional validity of Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which restricts the entry and offering of prayers by women of 10-50 years to the presiding deity in the Sabarimala temple. These Rules were framed under the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965. This Act was enacted to make provisions for entry of all classes and sections of Hindus into places of public worship. The case before the Supreme Court of India was that Rule 3(b) was ultra vires of Section 3 of the Act and that women of any age could not be excluded from the temple. This same issue had been considered by a Division bench of the Kerala High Court in S. Mahendran v. The Secretary, Travancore.[2] The Court ruled that the exclusion was constitutional and justified, as it was a long-standing custom prevailing since time immemorial. Fourteen years later, this issue was raised again; this time in the Supreme Court, leading to the judgment under discussion, wherein by a 4:1 majority the Supreme Court struck down the exclusion of women of any age group from entry to Sabarimala as unconstitutional.

Issues:

The primary issues dealt by the Court in this case were as follows:

1) Whether the rule that disallows women from entering temples is violative of Article 14 and Article 15(3) of the Constitution on grounds of sex?
2) Whether the practice constitutes an 'essential religious practice' under Article 25?
3) Whether the exclusionary practice based on a biological factor exclusive to the female gender amounts to 'discrimination'?
4) Whether Sabarimala temple has a denominational character?

Ratio of the Case:

The Court delivered four separate opinions: Chief Justice Misra, Justice Nariman, Justice Chandrachud, Justice Malhotra. Justice Nariman & Justice Chandrachud concurred with the opinion of Chief Justice Misra. The dissenting opinion in the case was delivered by Justice Indu Malhotra.

CJI Dipak Misra observed that religion is a way of life intrinsically linked to the dignity of an individual and patriarchal practices based on exclusion of one gender in favour of another could not be allowed to infringe upon the fundamental freedom to practice and profess one's religion. He stated that the exclusion of women between the ages of 10-50 years practiced by the Sabarimala Temple denuded women of their freedom of worship, guaranteed under Article 25(1). Further, he held that the devotees of Ayyappa did not pass the constitutional test to be declared a separate religious identity. He said that they are Hindus. Thus he held that the temple's denominational right to manage its own internal affairs under Article 26(b), was subject to the State's social reform mandate under Article 25(2)(b). Justice Misra interpreted '*classes and sections*' to include the gendered category of women. He concluded that the Sabarimala custom of excluding women is subject to State mandated reform. He also held that the exclusion of women between ages 10-50 by the

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1. 2018 SCC Ker 5802.
2. AIR 1993 Ker 42.

Sabarimala Temple cannot be an essential religious practice. He held that if the *Ayyappana* are Hindus, the practice of excluding women cannot be held to be an essential religious practice.

Justice Rohinton Nariman delivered a concurring opinion. He held that the worshippers of Ayyappa do not constitute a separate religious denomination. Thus he held that the Sabarimala Temple's denominational freedom under Article 26 is subject to the State's social reform mandate under Article 25(2)(b).

Justice D Y Chandrachud held that the exclusion of women between the ages of 10-50 years by the Sabarimala Temple was contrary to constitutional morality and that it subverted the ideas of autonomy, liberty, and dignity. He held that the morality conceptualised under Articles 25 and 26 of the Constitution cannot have the effect of eroding the fundamental rights guaranteed under these Articles. Significantly, Justice Chandrachud also dealt with the argument that the exclusion was a form of untouchability prohibited under Article 17 of the Constitution. He further held that Article 17 is a powerful guarantee against exclusion and cannot be read to exclude women against whom social exclusion of the worst kind has been practiced and legitimized on notions of purity and pollution.

Justice Indu Malhotra delivered a dissenting opinion. She argued that constitutional morality in a secular polity, such as India, requires a '*harmonisation*' of various competing claims to fundamental rights. She said that the Court must respect a religious denomination's right to manage their internal affairs, regardless of whether their practices are rational or logical. She held that the Sabarimala Temple satisfies the requirements for being considered a separate religious denomination. She therefore held that the Sabarimala Temple is protected under Article 26(b) to manage its internal affairs and is not subject to the social reform mandate under Article 25(2)(b), which applies only to Hindu denominations. Note that Article 26, denominational freedom of religion, is subject to '*public order, morality and health*'. Justice Malhotra held that 'morality' (constitutional morality) must be understood in the context of India being a pluralistic society. She stated that the State must respect the freedom of various individuals and sects to practice their faith. She held that the fundamental right to equality guaranteed to women under Article 14 cannot override Article 25, which guarantees every individual the right to profess, practice and propagate their faith.

Conclusion:

The Sabarimala judgment is a tussle between Fundamental Right and Tradition. The verdict gives an equal right to women. Tradition and Culture makes India a rich nation, but these elements need to be balanced with the changing world. If the courts have given their verdict, they must enforce it strictly or revisit it, or else, it will erode the faith of public in judiciary. For a judicial pronouncement to be effective, voices must be raised from within the society. Saner and progressive elements must sensitize the masses towards changing realities, causing changes in the social equations. Therefore, a reformist mindset has to be created to wipe out the prejudices deeply ingrained in the psyche of the society. Otherwise a reformatory law will just remain confined to statute books.

Hence, it can be concluded that when age old traditions are subjected to judicial scrutiny based on modern concept of equality and freedom, it may hurt the sentiments of a section of society but the fear of social strife must not desist us from following the path of Right to Equality and Freedom which are basic tenets of modern day justice system. History is replete with many such instances when the lack of knowledge or entrenchment in age old traditions forced the society of the day to support irrational thoughts and practices. The most glaring example is the trial of Galileo. With acquisition of Knowledge and adoption of progressive outlook, the same society felt ashamed of maltreatment meted out to Galileo.

Therefore, rationality and yardsticks of non-discrimination, equality and freedom which are the cornerstone of modern judicial systems should be the guiding force. After all the law should have an emancipatory impact on the society in general and those who are being discriminated against, in particular.

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CALL FOR PAPERS

PRAGYAAN: JOURNAL OF LAW

Volume 9, Issue 1, June 2019

EDITORIAL POLICY

PRELUDE

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 9 Issue 2 (Dec 2019). 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:

CONTRIBUTION

1. Articles (Maximum 8,000 words inclusive of footnotes and Abstract)
2. Essays (Maximum 4,000 words inclusive of footnotes)
3. Case Comment/Legislative Critique & Notes (Maximum 3,000 words inclusive of footnotes)
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.
   - Deadline: The deadline for submissions of Volume 9 Issue 2 (Dec 2019).

SUBMISSION GUIDELINES

1. Submissions must be in MS Word. The whole document should be in Times New Roman, single column, 1.5 line spacing. A soft copy of the document formatted in MS Word 97 or higher versions should be sent as submission for acceptance.
2. Main Text: Title of the paper should be bold 16 point, and all paragraph headings should be Bold, 12point.
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