Research at DME 2023

Editors:
Prof.(Dr.) Ravikant Swami
Prof.(Dr.) Poorva Ranjan
Dr. Shalini Gautam

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Preface

Research Cell, DME aims to sketch a holistic plan of action for contributions in the field of research, analysis, and academia. One of the important tasks of the research cell is to have a regular publication of books in the multidisciplinary arena. To get a holistic view of the challenges faced by the economy and corporates, it is necessary to do research in interdisciplinary fields. This book is a humble attempt to discover the current trends in the field of law, media, and management

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THE DEGRADATION OF THE FORESTS OF ASSAM- FROM THE MEDIEVAL TIMES TO THE MODERN

Anupama Ghosh and Siddhant Mehrotra

INTRODUCTION

The north-eastern states of India, popularly known as the Seven Sisters are an integral part of India. They are considered to be a major repository of a multitude of flora and fauna. This paper attempts to look into the region of Assam, a prominent part of the Seven Sisters. A major storehouse of rich floral and faunal resources, Assam is also one of the two biodiversity 'Hot Spots' in the country. Part of the Eastern Himalayan Biodiversity Region, the state boasts of favourable climatic conditions and topographical features which have led to a diversity of natural habitats, including forests, grasslands and wetlands.

Since the earliest times, several races, tribes and ethnic groups, have traversed the numerous mountains and hills of the region, and made it their homes. In the present times, the region stands strong as the easternmost sentinel of the country.

In Sanskrit literature, ancient Assam is referred to as 'Pragjyotisha' and 'Kamrupa'. The antiquity of the region is proved by the fact that it also finds mention in the Puranas as well as the two major Indian epics- The Mahabharat and the Ramayana. According to Edward Gait, the word 'Pragjyotisha' or 'Pragjyotishpura' means a start, astrological, bright, while 'Prag' signified former or eastern. Hence, Pragjyotishpur is often interpreted as the 'City of Eastern Astrology'. The Sanskrit word 'Asom' which means unmatched or unrivalled, has been the source of the English word 'Assam'.

Medieval Assam

As mentioned above, Assam had always been a land endowed with extensive geographical features, in the form of mountains and hills, forests, rivers and streams. During the medieval times, the various physical features such as mountains, forests and rivers were identified as markers of boundary. It was only during the times of the English East India Company that the understanding of geographical boundaries came to be based on the demarcations relying on proper surveys or implementing cartographic techniques.

During the medieval times, the dense forests of the region were an integral feature of the topography as well as identity of Assam. Assam withstood the military invasions of the Mughals during the 17th century, and the contemporary Mughal chronicles of the time, attests to the fact that thick forests covered large parts of the region. Mostly these forests were impenetrable and made Assam unreachable. However, these forests did not mark reliable markers of territory. With the need of greater land for agriculture, over the centuries large forest tracts have been cleared. As a result, the forest line has been continuously altering and receding.

Owing to its situation far removed from the major centres of power, the region of Assam had an isolated development during the medieval period. Before the Mughals, unlike other parts of the country, Assam could not be brought under the subordination of any other regional power. The medieval chronicle Tabaqat-i - Nasiri mentions an expedition led by Mohammad bin Bakhtiyar Khalji, which ended in failure, and the region beyond Bengal could not be subdued. The fact that Assam could not be subdued has been highlighted by various local Assamese chronicles, the Buranjis as portraying the military ability and organisational skills of the Assamese. On the contrary, the isolation and insubordination was more due to the geographical situation and physical features of Assam than to the valour and methods of warfare of the local people.

In fact, the various physical attributes of the region played an immensely important role in the peculiar social formation as well as limiting the Mughal expansion in the region later.

Through the earliest histories of the Ahoms- the rulers of Assam, their migration with regard to the topographic situation of the region can be understood. According to various legends, the first king of the Ahom dynasty, Sukapha, had also come across the mountain ranges traversing a route full of forests.

Forests did not mark reliable markers of territory over a period of time. These forests had continuously bore the brunt of the expansion of cultivation. Under the ceaseless action of the human axe the forests have continuously lost their cover altering the physical geography of the region. In Assam along with other parts of the northeast, as the forest mostly abounded on the hill slopes, jhuming as a form of cultivation was rampant. In this, selected forest plots on the hill slopes were cleared by slashing down and burning the jungles. Also as new forest lands were easier to clear as well as more fertile, large tracts of forest lands were being cleared. Thus, the forest line kept on receding as large areas previously under forests were continuously making way for agricultural lands.

Assam has always been described as a land covered with dense forests. Since the medieval times, Assam and other parts of north-east India had been thickly forested, except for a narrow stretch of cultivation on both sides of the Brahmaputra and the Dihing rivers.

The descriptions of the Fathiyah-i Ibriyah, helps one to estimate the vast expanse of the forests of Assam in the medieval times. According to varied descriptions, Mir Jumla had to cut his way through the Kajli-ban forests, during his march from Kaliabar to Kajli. Forests also covered a large expanse of land between Charing and Devalgaon, and from the Ahom capital of Ghargaon to Tipam.

The Persian chronicles are replete with examples of the numerous hardships that the Mughal armies had to contend with in their forward march through these forests. According to the Mughal commander and the writer of the Baharistan-i Ghaybi, Mirza Nathan, the way to the Ahom fort of Ranihat was covered by dense forests which made it impossible for the Mughal army ‘to traverse one stage in less than ten days’. The Mughal armies had to cut their way through these dense forests. Due to the lack of knowledge of the local topography, the succeeding Mughal armies under the command of Mir Jumla, decided to follow the course of the river Brahmaputra. According to Shihabuddin Talish in Fathiyah-i Ibriyah, on their way to Assam from Rangamati, the Mughal armies found high mountains on both sides of the Brahmaputra, which were covered with dense forests of reed and kahkar, through which they passed with difficulties.

The forests of Assam were regarded as the store houses of large varieties of flora and fauna, which had been a major attraction for the Mughals. The most important produce of these forests had been the aloeswood. According to the Dutch sailor who had accompanied Mir Jumla into the Assam expedition, the aloe or the agarwood was one of the most sought after plants in the forests of Assam. The aloe wood was considered such a valuable commodity as the resin obtained from it was used extensively in perfumes, incense and medicines. The Mughals largely procured aloe wood from the Sadiya territory, Namrup, Lakhugarh and the Naga Hills.

The other major attraction for the Mughals in the forests of Assam had been the elephants. The elephants are regarded as the most important article which the forests provided to the Mughal ruling class. They were not only immensely useful in lifting and carrying huge loads, but were also an important component of the military. The various tribes, especially the Morans and the Borahis, helped the Ahoms in the catching and training of elephants. According to the Persian chronicles, the Mughal armies also ventured into the forests of Assam to catch wild elephants.

The Mughal commander Shaykh Kamal, along with his retinue of officers and mansabdars had proceeded to Darrang and Bhurabari for kheda or the hunting of wild elephants. Similar kheda operations were also conducted under Ray Bhalbhadra Das. Elephants became an important commodity of exchange even in the peace treaty of A.D. 1663 which signalled the end of Mir Jumla s campaign in Assam. According to this treaty, apart from the huge presents that the Ahom King gave in terms of gold and silver, a large number of elephants also were a part of the negotiation. The Ahom King agreed to give twenty elephants to the Mughal emperor, fifteen to Mir Jumla and another five to the Mughal commander Diler Khan. The Ahom King also agreed to give nineteen elephants in a period of 12 months in 3 instalments and another 20 elephants as gifts every year.

Thus, it can be argued that since the earliest times, it had been the exploitation of the various floral and faunal resources of the forests that had played an important role in the sustenance of human lives. However, the extent of exploitation of these forests underwent a noticeable change during colonial rule. In the medieval times, the pattern of utilization of the forest resources had remained under check. During the medieval times, cultivable lands were reclaimed from forests and swamps, which were then systematically settled with the surplus population from older habitations. Even the numerous Vaishnava sattras that had assumed much importance in the later part of the 16th century in Assam also took part on their own and independently in the reclamation of forests and wastelands for cultivation.

Apart from the occasional reclamations the forests were continually used by the human communities living in and around them, as they provided important articles of subsistence like timber, bamboo, reeds, thatching grass and canes. It can thus be pointed out that though the forests were exploited in the medieval times; it was in a much controlled and limited way. The utilisation of the forests underwent a marked change with the coming of the Company.

The East India Company

The East India Company had inherited a large storehouse of forest wealth in India. The general assertion that large tracts in the Indian subcontinent had been covered with dense forests since the earliest times was attested by the report of Dr. Wallich, who had been deputed to examine the forest resources of India. Dr. Wallich in his report in A.D. 1827 had declared the forest resources of the country to be unrivalled when compared with those in any other possessions of the East India Company. However, with the expansion of the Company rule in India, these large tracts of lands were denuded of their forest cover rapidly. Not only the earlier community relations and utilization of the forest resources were completely altered by the Company, but the forest were now perceived as a barrier to the prosperity of the Empire.

The large expanse of forests was considered as an obstruction to cultivation and thus, in the decades following the establishment of Company rule extensive forest areas were cleared and brought under cultivation. The dense forests of Assam also came under the action of the human axe with severe rapidity with the onset of the Company rule in A.D. 1826. As elsewhere the extension of agriculture was the chief reason behind the clearing of large forest tracts in Assam. It can be argued that the process of the speedy deforestation in Assam coincided with the discovery of the tea plant in Upper Assam. After exhaustive surveys and research the Company officials concluded that the tea shrub identical to that of China grew rampantly in the hilly tracts of the North-East Frontier and regions of Upper Assam. The discovery of tea plant in Assam opened up new avenues of trade for the Company, by providing it opportunities to compete with the Chinese and partake in the extremely lucrative tea trade.

Attempts were made by the East India Company to bring newer areas under cultivation immediately after assuming power in the province in A.D. 1826. David Scott, the first agent of the Governor General in Council in the North-East frontier had established the Wasteland

Grants in A.D. 1827. According to these grants, the large expanse of forest lands and grasslands, i.e., those tracts of land, which were uncultivated, unsettled and added no revenue to the Imperial government, were termed as Wastelands. It was argued that in order to increase the revenues, it was necessary to bring these wastelands under cultivation. According to the Wasteland Grants of David Scott, it was proposed that wastelands be granted to anyone who would engage to bring such land under cultivation with the primary condition that the grantee would successfully bring into cultivation one-fourth of the allocated area by the end of three years, an additional one-fourth by the end of six years and another one-fourth by the end of nine years, after which the grantee was to be entitled to hold the land in perpetuity on the payment of pargana rates upon three-fourth of the whole allocation.

Throughout the 1830s and 1840s large expanse of forested lands were reclaimed and brought under cultivation. It seems that these grants were made to both Europeans as well as local Assamese people.

It can be argued that over the years, it was the cultivation of tea that emerged as the biggest beneficiary of the Wasteland Grants. The tea planters mostly Europeans under the aegis of the Assam Tea Company formed in A.D. 1839, and with the effective support of the Colonial administration denuded large tracts of lands of their forest cover for their tea plantations across Upper Assam.

Apart from the extension of agriculture, the new ethos of development that had been brought by the Company also had important implications on the forest resources. The new developmental expansion brought by the Company, especially in the field of transport, like the construction of railways and the increased demands of ships and boats of the English navy, increased the economic value of the forests manifold. It can be argued that the process of deforestation greatly intensified in the early years of the building of the railway network after about A.D. 1853. Thus, the utilization of timber which had been on a much limited scale, owing to its use for the construction of houses and implements or as domestic fuels, was completely reversed and large logs of timber were felled and large expanse of forest lands began to be cleared with alarming rapidity.

The economic exploitation of the forest resources reached greater proportions under the Company. While on the one hand large tracts of forests were cleared to make way for agriculture, on the other hand, attempts were also made to evaluate the economic value of the forests and their products as well. Starting from the 1830s, a number of Company officials were deputed in Assam to carry out surveys to assess and catalogue the diverse forest resources. Such important surveys were done by John M'Cosh and William Robinson.

John M'Cosh identified about 90 varieties of economically viable timbers in the forest of Assam. Since the medieval times, most of these timbers had been used for the construction of houses, implements and boats.

The aloe wood or the agar wood had been another important attraction for the Mughals in these forests. According to the surveys conducted by the Company officials, agar wood or Aquilaria agallochum, was commonly found in the lowlands in Assam. Various varieties of timbers suitable for the construction of canoes and boats were also identified in these surveys. Chief among them were the Gmelina arborea and Shorea assamica.

The forests had thus emerged as one of the most important sources of revenue for the Company. But by the 1850s, it was increasingly found out that the forest cover was been denuded rapidly. It would seem that over the decades the process of deforestation had continued unabated. In 1850, the Collector of Kamrup had reported that large tracts of forests in Kamrup covered with sal timber were under threat from woodcutters of Bengal, who had already exhausted the sal

forests lower down the Brahmaputra. The Company had identified the forests of Goalpara in western Assam as the most valuable Government property in the province. The entire tract of about eighty square miles was covered with sal forests; the contents of which were estimated at two and a half million of sal trees, with an annual yield, if properly protected of 25,000 trees.

Large tracts of forest lands also continued to be cleared under the Wasteland tenures that had been introduced earlier. In A.D. 1854, a new system called the Old Assam Rules was introduced. Under this system a grant not less than five hundred acres were made for a full term of ninety-nine years. This also gave incentives to the grantees to clear new lands and bring them under cultivation.

Elephants had been an important attraction of the forests of Assam during the medieval times. In his surveys in Assam, John M'Cosh had found wild elephants to be plentiful, which moved in large herds and were very destructive both to the crops and human lives, and in many instances even entered into the villages. It seems that these elephants that were a much prized commodity during the Mughal times remained so even in the succeeding centuries. According to M'Cosh, a large number of elephants were caught every year in Assam and transported to other regions.

In order to ascertain that the forests and the vast floral and faunal resources it held were not lost completely; the Company strived for a more limited exploitation of these resources. Accordingly, the Company introduced measures through which more and more forests passed under its control. In the process the precarious balance that was maintained earlier, by which the neighbouring human communities used the various forest resources was disturbed. The right of the people on the forests and its resources were now being seriously curtailed. In order to acquire the complete command over the forest resources and to highlight its own rights and interests various forest departments were established throughout the country beginning from the 1860s. The forest department in Assam was established in A.D. 1868.

It seems that the Company wanted the rich forest resources to be put into its use, rather than by the indigenous communities. Thus the exploitation of the forests was brought under a stricter control. As a result, new stages of ownership of the forests were introduced. Thus, the forests began to be divided into a number of categories on the basis of their ownership, like the reserved forests, the protected forests and the village forests.

The reserved forests consisted of compact and valuable areas, well connected to towns, which could lend themselves to what was termed as 'sustained exploitation'. Examples of the reserved forests in Assam can be cited in Kamrup and Goalpara. On the other hand, the village forests were those forests which could be used by the community which was allowed a specific quantum of timber and fuel, giving the people 'only marginal and inflexible claim on the produce of the forests'. The protected forests were defined as those forests which were under the control of the state, however, the control was firmly maintained by outlining detailed provisions for the reservation of particular tree species as and when they become commercially viable, and for closing the forest whenever required to grazing and fuel wood cultivation.

Thus, the forests can arguably be defined as one of the most valuable asset of Assam. It can be argued that the presumption of Assam, especially in the medieval times, as an unknown and impenetrable land owed mostly to its dense forests. Though these forests had supported the indigenous human communities with the various forms of sustenance, their diverse flora and fauna had attracted the Mughals to Assam as well. The economic utilization of the forests was increased much more with the coming of the Company. The interest of the Company was heightened by the prospect of uninterrupted supply of timbers from these forests for their railways and the boat-building ventures. Further, large areas could also be reclaimed for agriculture, and for tea plantations which added special significance of the forests for the Company. It can thus be argued, that since the medieval times till the takeover of Assam by the

Company, and it were the forests which had symbolized Assam. It was these forests that had been the defining and unique character of Assam for the Mughals, while during the rule of the Company they added much value and worth to the region.

The State of the Forests of Assam after Independence and Conclusion

The National Forest Policy 1952 became the foundation for the forestry programme of independent India. In 1962, the Assam government put forth a two-fold agenda for its forestry department, which was based on the continuous procurement of timber from these forests and other minor forest products, and controlling the menace of soil erosion and soil degradation in these forests.

The interaction of the forests and the human communities settled nearby was the focus of the Forest Conservation Act 1980. The Act sought to prohibit all post 1980 encroachments within the forest limits, and also regularized pre-1980 encroachments taking into consideration the provisions of the previous laws.

Assam has a documented forest area of 26,832 sq. km, or 34.21% of its total land area. Reserved Forests make up 66.58% and Unclassified Forests 33.42% of the total forest area, respectively, based on their legal classification.

According to a recent analysis of IRS Resourcesat-2 LISS III satellite data for the months of November 2017 and February 2018, the State has a forest cover of 28,326.51 sq km, or 36.11% of its total area. The State has 2,794.86 sq km of Very Dense Forest (VDF), 10,278.91 sq km of Moderately Dense Forest (MDF), and 15,252.74 sq km of Open Forest in terms of forest canopy density classes (OF). From the latest assessment recorded in ISFR 2017 to the current assessment, the State's forest cover has grown by 221.51 sq km.

The forests of Assam have been the most important resource of the region since the earliest times. The produce of the forests and its relationship with its surrounding human communities have been one of the major aspects in the development and the making of the region. The forests have been the major attraction for the Mughals as well as the English who wanted to exploit the forest produce to the maximum. The over-exploitation of the forests especially under the English East India Company have led the contemporary forest policies after independence to look into ways to exploit the resources, as well as safeguarding it for the future generations, thus aiming to achieve a precarious balance.

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2

CASE ANALYSIS OF VIDYA DROLIA AND ORS. V. DURGA TRADING CORPORATION

Bhoomika Ahuja and Radhika Singhal

INTRODUCTION

The Supreme Court in Vidya Drolia exposited the observations made in Avitel case to address the two major justifications which supported the non-arbitrability of fraud, as were seen in N. Radhakrishnan. The first was the consideration of public policy, which made it imperative for any dispute where an allegation of serious fraud had been made, to be resolved in a public forum, such as a court of law. The matter revolved around the arbitrability of tenancy agreement in question and subject matter of the dispute and the confusion as to who will adjudicate the matter either the court of law or arbitral tribunal. Another aspect which related to the scope and ambit of jurisdiction of the court at the referral stage when an objection of non-arbitrability is raised to an application under Section 8 or 11 of the Arbitration and Conciliation Act, 1996. Section 8 contains a positive mandate and obligates the judicial authority to refer parties to arbitration in terms of the arbitration agreement. While dispensing with the element of judicial discretion, the statute imposes an affirmative obligation on every judicial authority to hold down parties to the terms of the agreement entered into between them to refer disputes to arbitration. The decision has finally brought an end to the previously held belief that an allegation of fraud would be a justifiable ground to refuse to refer a dispute to arbitration.

Facts

In 2016, the appellants (tenants) entered into tenancy agreement with the predecessor title holder with respect to certain buildings. A tenancy agreement is a contract between a landlord and a tenant. It sets out everything that a landlord and a tenant have agreed to about the tenancy.

The tenancy agreement contained dispute resolution clause as Clause 23. In 2012, the tenancy was attorned to the respondent, after which the appellants started paying monthly rent to the respondent (landlord). Since the period of lease was expiring on 01.02.2016, the respondent (landlord) wrote a letter seeking vacating the possession vide letter dated 24.08.2015.

The appellants (tenants) did not complied the same. The respondent (landlord) invoked the arbitration clause under the tenancy agreement.

On 28.04.2016, the respondent filed the present Section 11 petition before the Calcutta High Court for appointment of an arbitrator. On 07.09.2016, the High Court passed the impugned order appointing an arbitrator, after rejecting the appellant's objections on the arbitrability of the dispute.

Issues

I. To what extent does the Court decide the question of non-arbitrability under Section 11 of the Act?

II. Whether tenancy disputes are capable of being resolved through arbitration?

Ratio Decidendi

After the understanding and discussion of several judicial precedents, texts and case commentaries, Justice Sanjay Khanna held that expression 'existence of an arbitration agreement' in Section 11 of the Arbitration Act, would include aspect of validity of an arbitration agreement, though the court at the referral stage would apply the prima facie test on the basis of principles set out in this judgment. The court would insist the parties to abide by the

arbitration agreement as the arbitral tribunal has primary jurisdiction and authority to decide the disputes including the question of jurisdiction and non-arbitrability.

Upon the question of who decides arbitrability, the court held that the ratio in the case Patel Engineering Ltd. on the scope of judicial review by the court while deciding an application under section 8 or section 11 of the Arbitration and Conciliation Act post 2016 and 2019 amendments is identical but extremely limited and restricted and is no longer applicable. The general rule and principle. The principle of severability and kompetenz kompetenz is that the arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability.

Former Chief Justice N.V. Ramanna held that subject matter arbitrability cannot be decided at the stage of Sections 8 or 11 of the Act, unless it's a clear case of deadwood. The Court, under Sections 8 and 11, has to refer a matter to arbitration or to appoint an arbitrator, as the case may be, unless a party has established a prima facie case of non- existence of valid arbitration agreement, by summarily portraying a strong case that he is entitled to such a finding. The court laid down the scope of court to examine the prima facie validity of an arbitration agreement which includes whether the agreement is in writing, contained in exchange of letters, telecommunication etc along with the core contractual ingredients are fulfilled or not and sometimes the test of arbitrability of subject-matter.

CONCLUSION

The Vidya Drolia Judgement establishes a precedent for determining the arbitrability of disputes. Here, the court ensured a smooth and effective arbitration proceeding by limiting the scope of fraud allegations that may have been put forward by the party against the arbitrable resolution of the dispute along with the dispute being suitable for the arbitration. This case will hopefully demonstrate the arbitration-friendly jurisprudence of the Supreme Court and its intent to recognise and promote the arbitral process as an alternate dispute resolution mechanism.

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3

CURBING DOWN OF STUDENTS' POLITICSIN DEMOCRACY: A COMPARATIVE ANALYSIS OF INDIA UK AND USA

Gunjan Agrahari

ABSTRACT

Without the right to free speech, there are no secure rights. Free speech is a fundamental right that must be protected in order to protect all other rights. Student freedom of expression is a necessary precondition for societal freedom of expression. Without respecting and preserving free speech for students might be a danger to civic democracy. Schools must serve as crucial nurseries for our democracy, as well as role models for the appropriate like the right to free expression. We can't expect students to spend the majority of their waking hours in places where they don't have genuine rights to free expression and then grow up to be people capable of exercising and defending democratic values. Students who learn to exercise their right to free speech in school grow up to be adults who are prepared to exercise their right to free speech in civic democracy.

Keywords: Free speech, Civic Democracy, Students Voice, Freedom of Expression

INTRODUCTION

Majority of international human rights treaties recognize the right to free speech as one of the most fundamental freedoms in a liberal democracy. It's a hybrid of the freedom of religion and the freedom of speech. On the other side, censorship is the practice of restricting one's right to free expression, whether direct or indirect, governmental or otherwise. At first glance, this phenomenon appears to be an infringement revealing that it is actually an unavoidable to safeguard the human rights of others. Ensuring that ordinary citizens are not offended by material that most reasonable adults would object to, maintaining public decency, and keeping undesirable material from being "normalized" through entertainment or other forms of dissemination are just a few of the broad sodai purposes of censorship.

On one hand, genuine criticism faces harsh repression, while on the other, hate speech masquerades as free speech. Through these and other means, far-right ideologies like majoritarianism and xenophobia have grown in power around the world.

Even it does so with some acceptable restrictions. To stifle dissent, the ruling party has turned to both of which go well beyond what is reasonable. In the wake of the Citizenship Amendment Act protests in India, many people have taken to the streets to voice their opposition to the legislation, which has been met with a backlash.

The US model, on the other hand, allows practically complete freedom of expression, except where the speaker aims to provoke "imminent lawless action." As a result, hate groups can make the most disgusting statements against certain communities without fear of repercussions. The world is confronted with two significant obstacles to free speech. So, in general, there are two types of threats to free speech in today's environment. First, the existing legal apparatus in most third-world nations, including ours, is insufficient to protect freedom of expression and needs to be updated. Second, free speech is increasingly being equated with an absolute speech in industrialized countries such as the United States.

POLITICAL INTERFERENCE IN THE DEMOCRACY

There, the fight for freedom of expression has devolved from its laudable goal of challenging authority and orthodoxy to a tool for normalizing hate speech and silencing minorities. In a

bizarre scenario reminiscent side has seized free speech. After Prime Minister Boris Johnson referred to women wearing burqas as "bank robbers," there was an uptick in anti-Muslim crimes in the United Kingdom, and similar occurrences occur all around the world.

While the government in India cracks down on detractors, those who share its beliefs are given a pass. As long as the targeted community is a minority, hate speech can be broadcast on national television Even by American standards, yelling "Deshkegaddaro ko, golimaarosaalo ko" at rallies would be regarded unacceptable. We must also be wary of advocating for the opposite extreme. The right to express one is one of democracy's most valuable privileges, but not when it silences or jeopardizes the voices of others. Freedom of speech must not take precedence over freedom of life.

'STAYING AHEAD OF THE CURVE'

Social media has made it possible for everyone to have a voice. Powerful individuals rapidly discovered how to exploit the lack of equality in our digital and physical worlds. Troll armies and flooding tactics (fake news, propaganda bots, paid comments) are currently methods of indirect suppression used in India, in addition to outright suppression of online speech through arrests and local internet shutdowns.

Sticks and stones have always damaged bones, but the year 2020 has demonstrated can be twice as painful. Covid-19, as well as other sources, created a storm of misinformation that resulted in a massive loss of life in the United States.

It used bogus claims to try to sabotage the election process. Thankfully, social media platforms have finally stepped in to combat disinformation after years of inaction. Trump's "disputed" claims were noted on Twitter and Facebook. To combat misinformation and hate speech, social media businesses should adopt unambiguous terms.

Online platforms should make it more difficult for people to spread false information, similar to what Twitter did with Trump's tweets: labelling them and allowing others to share them only if they supplied their own context. Some People are disproportionately targeted online, so businesses must hire enough moderators to ensure that their platforms are used to promote ideas rather than to abuse and harass them. In a university seminar, absolute freedom of expression may function, it damages the less fortunate.

HISTORICAL BACKGROUND

No View: only History

Not only are schools a place for children to learn and grow, but they are also a place where they can meet new people and form friendships. How to socialise students to achieve specified "objectives" is being debated by educators, politicians, and business executives. Progressive education is founded on John Dewey's philosophy, which states that education should be geared toward preparing students for all aspects of democratic participation. It is necessary to be able to think critically and to have the dispositions of efficacy, compassion.

Education for democratic engagement and social and civic responsibility is more important in shaping political beliefs than the manifest curriculum (i.e., education in civics, government, and other social studies courses). Teaching methods rather than course content are what constitute this concealed curriculum. Judiciary's political education can be greatly enhanced by teachers' ability to influence the atmosphere in the classroom. Another part of the concealed curriculum is the school's overall governance climate, which serves as a constant indicator of students' political ideas.

To put it another way, Most of Ehman's "latent curriculum" is based on students' relationships with their peers, instructors, administrators, and members of the local community, as well as with the school's culture as a whole.

In the workplace, family, classroom, or school, all of these studies show that institutions that allow participatory school culture affects some of the most significant components of social responsibility. Despite this, there is still much to learn. In 1997, there were 135 of these.

Since its inception, the school has played the role of an official member of the neighborhood (or communities). Board meetings, parent-teacher groups, etc., as well as plays, performances, fairs, and celebrations are just some of the ways in which community members gather in schools frequently serve as community leaders and active participants in community life, promoting the school and its responsibilities to the outside community. Students attend school functions and get involved in extracurricular activities that don't happen during the school day. They may get a glimpse of their professors outside of their roles as teachers.

It has always been the responsibility of elected school boards to run public schools democratically. While various degrees of authority to make decisions about school management have been granted to appointed and hired professional educators. The level of influence that teachers, parents, students, and members of the community have in making decisions also varies widely. It doesn't matter students can learn about democracy by observing.

Students' educational experiences can be enriched by the fact that schools play a significant role in their communities and are, to varying degrees, democratic organisations. Students' educational experiences—specifically, a school's curriculum—are shaped by these external and internal organisational realities. For example, Berman points to a study showing that children who are taught civics in a didactic manner are not more likely to feel a sense of social duty as a result. How pupils are taught is more important than what they are taught.

When it comes to preserving democratic processes, many people believe that schools should focus on teaching students how to think like scientists, yet the existing educational culture in most of them is built on a scientific management philosophy that emphasises efficiency. Students must learn to follow instructions, adhere to standards, and compete with one another in order to be successful in school. When it comes to classical pedagogy, the instructor has knowledge to impart to the students. For students, it teaches them the importance of assuming passive positions in both their education and in society. In these "closed" educational situations, students learn nothing about democratic processes or how to participate in them. He discovered that closed classroom environments are those in which teachers use authoritarian teaching methods, have complete control over their students' education and curriculum and ignore or present limited viewpoints on sensitive matters. "Open classroom climates promote democratic values and boost efficacy whereas closed classroom climates promote authoritarian values and diminish efficacy," found in his comprehensive review of the political socialisation research. A similar pattern was found by Leming (1992, 148) in his examination of the impact of curricula centred on current events.

They have so recommended new ways of thinking about and practising progressive teaching. Popular education, collaborative learning and problem-posing instructional methods all rely on the idea that students learn best when they take ownership of their own education. Pedagogically, "service-learning" is one approach that calls for such accountability and tries to relate interactive forms of learning to everyday living outside of school.

It is becoming increasingly common for educational institutions in Vermont and across the country to incorporate their educational mission into the lives of their local populations. An NCES study found that "64 percent of all public schools, including 83% of public high schools,

had students participating in community service activities recognised by and/or arranged through the school," and that "32 percent of all public schools organised service-learning as part of their curriculum, including nearly half of all public schools." According to the study, In these "service-learning," "community-based learning," or "curriculum of place" activities, which include students and teachers as well as parents and community members, children are engaged in active learning scenarios while also helping the local community. Effective implementation of these teaching and learning strategies can help students become more fully involved in democratic life in general.

There are several names for the strategies that are employed to link schools and local communities. One of the Annenburg Rural Challenge's goals is to help schools better understand and connect with their local communities by using the term "curriculum of place." Ehman and Berman's "latent curriculum" is not necessarily a goal when it comes to community engagement and the school's formal curriculum, but curriculum of place encompasses this "latent curriculum."

It's a curriculum of place when school resources are made available to the public, facilities are used for community events, and social services provided at the school are made available to local inhabitants. Teachers at Currier Memorial Elementary School in Danby, Vermont, for example, provide a warm welcome to students and families from the surrounding towns of Danby and Mt. Tabor on a regular basis. School administrators have long advocated the idea that a school in a distant community like Danby should develop a variety of ways to serve as a hub for the community." Children and adults alike have a deeper sense of belonging to the same group when this happens, according to her (e.g., the same sense of "place"). Students and faculty gather once a month for a community luncheon. Students greet visitors, assist with meal preparation, and eat at tables with members of the community during the lunch hour. There were about 80 people in attendance at this year's Thanksgiving luncheon. Currier Bulletin, a new community-wide initiative, has received overwhelmingly positive feedback from the public. This is a student-run, principal-assisted publication that comes out once a month. Various school and community events are included here. The "Bulletin" is delivered to every house in the two communities. The principal has received a lot of favourable feedback from the community in these regions where there is no local newspaper. Students at Currier get the chance to interact with people of all ages and see how their school contributes to the well-being of the community.

A place-based curriculum could also involve direct linkages between local communities and social studies or science sections. Students can learn more about their communities through oral history projects, picture retrospections, and environmental studies. Student participation in these initiatives may or may not be required in order for students to demonstrate a direct benefit to their respective communities. The community's historical and cultural life can be improved through sharing oral history projects and photographic retrospectives with local citizens.

There has been a lot of emphasis recently given to "service-learning," a form of place-based education. For the dual purposes of mastering that knowledge and developing citizen skills that support one's active participation in democratic processes, service-learning is a set of pedagogical practises that attempts to synthesise and connect community service experiences to specific spheres of knowledge, as defined by Wikipedia. Following is how the Community Trust Act of 1993 defines "service learning" (SL): an approach to education that encourages civic responsibility and integrates and enhances the students' academic curriculum or those educational components of the community service programme in which the participants are involved; it is coordinated with the community, an elementary school, a secondary school, or a higher education institution.

Service-learning opportunities allow people to learn while doing something they enjoy, unlike "community service." When participating in community activities, encourage students to "reflect" on their experiences. Reflection by students on what they've learned in class and how it relates to their lives outside of the classroom is common. Teachers in Vermont are explicitly tying service-learning to the state's new Standards for Learning.

While some teachers choose to have their students just entertain the elderly residents of Woodridge Nursing Home in Barretown (Vermont), others prefer to have their students actually interact with them. She intended for them to get to know one another. For this exercise, she connected her project to language and communication standards. In preparation for reading to the younger kids, each child chose a favourite simple reader book that included large print and visuals that they would like to share with their peers. They practised and practised until they were able to read clearly and fluently in front of an audience. The kids were given a tour of Woodridge by a representative from the facility before their visit. Age-related issues, such as forgetfulness and hearing loss, were mentioned.

This was followed by a trip to Woodridge, where they read to the high school seniors. Two or three students from each group were partnered with an adult and introduced themselves, read to them, discussed the books with them, and gave them a gift that they had made. After reading aloud to an old gentleman and subsequently exchanging stories about their own dogs, a group of rambunctious young men changed into model citizens. Students reviewed their experiences and wrote about them when they returned to class. According to the teacher, every component of the exercise was linked to the language standards for "listening," "speaking," "reading," and "writing.".

The "Vital Results" of the Vermont Framework were the focus of an oral history project developed by a Vermont sixth-grade teacher at Holland Elementary School in Holland. Recordings of conversations with village elders were utilised by students to construct biographical essays about each elder's life in this rural farming community. They explored the town's educational and economic differences throughout time. Bringing children closer to their elders, teaching them about local history and creating a sense of pride in rural customs are just some of the benefits of the project. This project will serve as a springboard for future interactions between community members and students because it includes a survey of community assets, a rural traditions project taught by community members in the school, and an open school during the summer for all community members, including a computer class and public access to the internet.

These examples highlight the significance of establishing a relationship or partnership as part of a service-learning experience between students and members of the community, schools, and communities. Students and community members gain from one another's shared experiences in a reciprocal connection in which "service" benefits all participants. It's common for students at schools like Barretown and Holland to build relationships with older members of the community.

In some cases, community members can take a more active role in aiding young people's educational experiences. The "Getting to Know You: Connecting Students to the Wisdom of the Elders" collaboration between Peacham School in Peacham, Vermont, Food Works, a local non-profit organisation, and local residents is just one example. Cultural literacy" was used as a guiding principle for this project, which sought to connect pupils with older members of their community. Those behind the project define cultural literacy as the ability to pass on stories, skills, and knowledge from one generation to the next, as well as to raise a person's awareness of their own cultural heritage and foster an appreciation for it. It is also defined as a way to document a community's various cultural customs and traditions, as well as a way to preserve history.

Project designers, instructors, and community members fostered cultural literacy in students by boosting elders' attempts to share their knowledge, skills, and traditions with young people. The activities were organised around themes like "stories and local history" and "crafts and ecology." It was possible for students to draw connections between their volunteer work with the elderly and their academic studies, which resulted in a more engaging learning experience for all students. Pupils could clearly see the fruits of their elders' labours in the form of homemade bread, birdhouses, and lush vegetable gardens.

Through a variety of community service programmes, students were encouraged to reciprocate with their elders. Children read to their grandparents on a monthly basis, there was a "grandparents day," and youngsters shared what they'd learned from each elder at a final celebration. Taking part in these events allowed elders to engage with and learn from their younger counterparts in a meaningful way.

According to project participants, the advantages of the cultural exchange include increased understanding and appreciation between generations; mutual recognition that elders and students are sources of inspiration and knowledge; elders feeling useful, valued and respected; students learning to interact with older people; students and elders feeling connected, building self-esteem; positive community relations; and a relevant and meaningful exchange etc.

Younger children can be mentored by older students in their communities. Students in the 11th and 12th grades at Thetford Academy in Vermont are paired with 1st and 2nd graders in the elementary school for an English programme called "Primary Partners." A variety of classroom activities, including literacy projects and cooperative games, are the focus of the high school students' time spent with the young children. In addition to observing young children and documenting their own progress, the high school students also conduct their own research on child development.

ROLE OF STUDENTS IN A DEMOCRACY

Democracies are governed by their citizens. A large proportion of a country's population is made up of students. Naturally, people have a say in how a country is managed and should continue to have that say. These people are bursting at the seams with energy, enthusiasm, and hope. As a group, students are the nation's youth. Students are often excluded from the political and administrative mainstream. If today's college students don't do their part, the weight of the responsibility will rest on the elderly, who are already carrying a heavy load. Limits can be reached by the elderly.

A democracy is a form of government in which the people have a say. A large percentage of a country's population is made up of students. Naturally, people have a say in how a country is managed and should continue to have that say. These people are bursting at the seams with energy, enthusiasm, and hope. As a group, students are the nation's future. Students are often excluded from the political and administrative mainstream. Young students must take their portion of the responsibility. The elderly have their limits.

Democracy is neither outdated, like monarchy, nor oppressive, like dictatorship. Democracy entails persistent, perpetual vibrations in the nation's political body. It necessitates constant care. A little carelessness may turn it into a dictator's toy. Over-enthusiasm for oneself can generate indiscipline, which can lead to chaos. It has the potential to destabilise the country. Only young students are capable of providing active and unselfish vigilance. They can keep the country strong enough to fend off an aggressive foreign force. As a result, democracy is based on the youth's strength.

Democracy necessitates both vigilance and change. In a democratic setting, progress necessitates creativity in all aspects of human existence, and innovation is the privilege of

educated youth. In a successful democracy, social and economic institutions emerge. As a result, it is critical for young students to participate actively in the democratic process. In this aspect, the old may be a touch conservative. The young, on the other hand, are open-minded. They emphasise individual independence and freedom of thought. As a result, they must be an integral part of the political system in order for democracy to succeed.

It is a sad fact that mafias and criminals rule politics in developing countries. Educated young can stand up to such movements and clean up politics. Thousands of students have given their lives in numerous nations throughout the world to ensure the success of democracy. The Indian government has granted voting rights to eighteen-year-olds. They have already altered the country's political landscape. The young kids' sense of patriotism will make Indian democracy a true success.

While Ambedkar's views on the fruitful debate that took place during the drafting of the Constitution have contemporary relevance, especially considering that legislative adjournments appear to be the norm. Finally, Dr. Ambedkar emphasizes that people should strive for a social democracy based on the ideals of equality, liberty, and fraternity, rather than a mere political democracy.

“If hereafter things go wrong, we will have nobody to blame”, Dr. Ambedkar’s final speech in Constituent Assembly

"Political democracy cannot last until social democracy is at its foundation. What does it mean to be a social democrat? It refers to a way of life based on the ideas of liberty, equality, and fraternity... ...They form a trinity in the sense that separating one from the other undermines democracy's core aim... Liberty without equality would result in the dominance of the few over the many. Liberty without fraternity would result in the dominance of the few over the many. Liberty and equality would not be a natural run of events without fraternity. To enforce them, a constable would be required."

IMPACT OF STUDENT POLITICS

It appears that the endemicity of students being expelled or having disciplinary action taken against them for voicing political opinions contrary to prevailing doctrine would have been a juicy story for the media. Given the lack of such reporting, it is safe to assume that this is not a chronic problem in India, despite our terrible record on free expression.

Meanwhile, in the United States, the Brandenburg v. Ohio (Details and Citations) decision established the gold standard for free expression - at least as far as I'm concerned. However, university campuses in the United States appear to be becoming increasingly hostile to political viewpoints that differ from the dominant worldview. Professors, if my acquaintance is to be believed — and I have no reason not to believe him — take almost sadistic pleasure in unfairly failing students who disagree with their political views. He does, however, intend to insult one of his Marxism-supporting professors.

As a result, it is a paradox. India is not recognised for being a free-speech refuge. However, there is no such unsettling abundance of intolerance of dissenting viewpoints. Anecdotally, one of my teachers holds opinions that could be described as 'liberal' (code for "left-leaning" in today's lingo, admittedly skewed parlance). Mine, of course, are vastly different, if not diametrically so. Nonetheless, he recognises me as a top student (no rodomontade here), gives me various tasks, and holds me up as a coruscant example for other pupils (sometimes bordering hyperbole).

It should be noted, however, that there is a deliberate scepticism, if not outright opposition, to student activity, which is, of course, distinct from just expressing a viewpoint. Personally, I do not hold student activists in high regard; I consider such action to be a waste of time and energy,

as well as an unnecessary source of vocal cord enervation and too cacophonous for my taste. The national government passed laws modifying some aspects of our Citizenship Act in early 2020. Contrary to popular belief, the legislation did not violate our Constitution's provisions. However, because study and meticulous analysis have never been strong points for student activists, they showed up at the protests, as one might imagine, ill-informed.

The university administration forced the students, some of whom were from my class, to write an apology letter and vow that they would not participate in another protest while they were students. I must be honest and admit that I felt an enormous sense of superiority over those "idealistic fools," until caution intervened and reminded me that I shouldn't cultivate a permanent sense of arrogance.

COMPARATIVE ANALYSIS WITH US AND UK:

Strong safeguards for individual political and religious speech are at the heart of the United States Constitution's First Amendment free speech guarantees (Dayton 2019). Because political and religious expression has historically been the principal targets of government censorship, these sorts of speech are best protected. Government officials have always felt compelled to use their positions of authority to stifle dissent and restrict the spread of ideas or information that would jeopardize the status quo. It is up to the audience, not the government, to decide what is accurate and worth repeating, and speakers have the freedom to do so. The First Amendment logically safeguards free speech by providing a wide range of safeguards. But when one person's speech puts the rights or safety of others in jeopardy, free speech is not absolute. "The most strict protection of free speech would not protect a guy falsely shouting fire in a theatre and provoking a panic" (Schenck v. United States 1919, p. 52), as Justice Holmes put it. The Court generally prohibits content-based censorship within an evolving hierarchy of First Amendment protections, with political and religious speech receiving the strongest protections, commercial speech receiving less stringent protection, and obscenity falling outside the scope of constitutional protection (Dayton 2019, supra note 1, at 140). Under the United States Constitution, the Court views freedom of speech as a basic right. Government authorities can only restrict fundamental rights, such as constitutionally protected speech, if they can show that the restrictions are essential to protect a compelling interest. Furthermore, the Court has acknowledged that various standards are required for different kinds of communication. When it comes to general broadcast communications, the Supreme Court has imposed more restrictions. In addition, the Supreme Court has recognised the importance of protecting free speech in a variety of contexts, including traditional open public forums such as public parks and streets, as well as more restrictive is narrowly tailored to achieve that goal.

CONCLUSION

It's not unexpected that censorship has a detrimental effect on the free expression of thoughts and ideas because of its oppressive nature. On a jurisprudential level, Locke's intrinsic right to liberty is routinely thrown into the hands of tyrants. The theory of Mill's Marketplace of Ideas On the other hand, while censorship is an evil, it is not entirely useless, because it is required to ensure that another's, and, in a utilitarian sense, the greatest number of people's, human rights are not infringed or abridged while protecting one's human right to free expression. Thus, censorship can be considered a representation of the majority will for the common good provided it is carried out with a clear objective and purpose, and through the correct channels, such as the due process of law - a law that is fair, just, and reasonable.

As can be shown, a limited derogation from a secured but derogable human right is globally permissible as long as the rules of necessity and proportionality are followed. The same standard should be applied to censorship, which would highlight whether it is necessary or not in specific situations. In this regard, it is important to stress that censorship should be overt, rather than covert. A veiled restriction casts doubt on a state's welfare and democratic

intentions. Because the elements mentioned as prerequisites for deviating from a human right must be met, a direct censorship should be placed on the utterance in question, and no colorability should be attached to it.

If you're going to guarantee the same human rights to everyone, you have to follow the European Court of Human Rights' lead and adopt a "Margin of Appreäation Doctrine," which states that each society is entitled to some degree of latitude in resolving inherent conflicts between individual rights and national interests. This is especially true when it comes to an issue like censorship, which is intrinsically linked to social mores. Then and only then can the proper value and necessity of a restriction like censorship be determined.

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4

DEVELOPMENT OF THE FOREST-DWELLING INDEGENOUS PEOPLES: NEED FOR COMMUNITY BASED CONSERVATION PROGRAMS

Souma B. Sarkar

INTRODUCTION

The forests have been playing a vital role in the life and culture of the Indian tribes, since the time immemorial. A strong bond has been observed between the forests and the tribal population where the forest has contributed significantly towards the economic conditions of the indigenous peoples. Due to the rising ecological pressures as well as the needs in the historical perspective, the tribes have been forced to remain confined to the forests and hill tracts over centuries. For such obvious reasons, forests under the Indian situation, have not only considered to be closely associated with the tribal cultures in a general sense but they are also treated a s cherished home of the indigenous peoples. They are usually born and brought up in the forest environment and since their childhood, forest is inculcated into his inner mind. They show keen interest in both exploiting and utilizing the natural resources and at the same time taking care for the renewal of the natural resources, this ultimately signifies the symbiotic relationship between the forest and the indigenous people.

The indigenous people residing in the forest areas collect minor forest produce such as the leaves, gums, fruits, seeds, herbal plants, broom grass, forest grass which are used both for domestic as well as commercial purposes. They are highly dependent on the natural resources to meet their daily basic needs and hence the destruction of the ecology has a great impact on the livelihood and quality of life. With rising pressure and degradation of natural resources, life has been growing tougher, thereby demanding more and more physical exertion of especially, the tribal womenfolk.

During the recent times, the destruction of the forest resources has become a cause of concern at the international level. It has been clearly realized that forests are commercially important and ecologically indispensible. In order to protect the forest resources, community-based conservation initiatives i.e.; involving the local communities in conservation of the natural resources, have been given importance in the last two decades on different parts of the world including South Asia. The present paper depicts the significance of such efforts for improving the living condition of the forest-dwelling indigenous peoples.

FOREST & INDEGENOUS PEOPLES: a close nexus

During the post-Independence era, India had tried several strategies in the field of the tribal development. However, these development initiatives of the first five-year planning have marginally affected the socio-economic condition of the tribal groups. The condition of the indigenous people has remained more or less the same and in some of the cases it deteriorated even further. A large section of the tribal population still remains below the poverty line. The literacy rate among the tribal population has been quite low compared to the national average. There have been occasional reports of starvation deaths among the tribal population despite there being bumper stocks of food grains in the central pool. Although 7.5 percent reservation has been accorded to the tribal population but they have failed in taking advantage of this “protective discrimination” policy. At the same time, due to lack of entrepreneurship and necessary training, the tribal population could not successfully use the schemes of self-employment given by the Government.

The subsequent plans taken up by the Government largely failed to take into account the actual needs of the forest-dwelling tribal people. The problems of land alienation, adverse effects of

industrialization, destruction of their habitats, etc. In India, the major section of the tribal population is inhabitants of the forest areas or lead a nomadic life barring a few tribes. Most of the indigenous peoples are "ecosystem people", because their livelihoods are solely dependents on the forest resources gathered from the immediate environment. They consider their environment as their source of basic need and shelter. The tribal rely solely on the forest not only to seek shelter but also for the materials required for daily needs such as for food, fuel-firewood, fodder, crop-wastes, cow dung, leaf litter, fertilizers, manure, building materials, timber, herbal medicines etc. Normally they do not destroy forest by exploiting it to the core. Their common needs are by and large limited to the activities for fulfilling their basic needs. They are so much dependent on the forest that they constitute as one of the integral part of the forest eco-system.

Prior to the British rule in India, the forest dwelling indigenous people were self-sufficient and their needs were also very limited. Their main occupation was gathering from forests, agriculture on limited land and animal husbandry. However, due to alienation of tribal lands and deprivation of the forests rights of the tribal during the British rule affected their economy badly. One of the first step for forest conservation was the system of Reserved and Protected Forests established in 1878, and the policy entailed a major takeover of common lands by the state. The colonial conservation and practice was:

(a) Governed by an elitist concern for some grade species and colonial need for timber,

(b) Increasingly relied on exclusion of humans and human activities from the reserved areas, and

(c) Was apathetic to the plight of the tribal and other communities whose livelihood depends on such reserved area.

Therefore, the process of alienation from forests for tribals and other local communities began during the colonial era and the industrial and commercial interests were the main causes behind such alienation. There was an increase in exploitation of the forest resources during the period of Second World War. But after the Independence, the conservation policies and practices failed to break out the colonial roots. In the independent India, the same 'interests' were considered as national interests and same conservation policies continued 'due to increasing demands of both the local and larger economy and the emphasis in state policies for revenue maximization'.

On the other hand, some impractical programmes aimed at the conservation have created more confusion and alienated the tribal from their habitats and culture. 'Even the environmental restoration programs like the establishment of biosphere reserves and animal sanctuaries are acting against the interest of the indigenous population. During the 1970s and later on the interest of wildlife conservation was sincerely pursued by the Government as the national interest and special legal apparatus of creating sanctuaries and national parks were directed towards the fulfillment of the objectives. This step made significant contribution to the alienation of local communities from their natural environment which deteriorated the living condition of the forest dependent tribal to a great extent.

In the meantime, the Indian economy stepped into the new era of economic globalization. This added a new dimension to the problem of tribal development. In the times of economic liberalization, the forest cover was being exploited at a faster rate in the developing countries. The developing nations progressed towards the path of development which totally sidelined the forests and wildlife which in a way affected the natural habitat of the indigenous people to a great extent as there were large-scale encroachment by the immigrants, industries and mine operators and even by the government. Take the example of the Chenchus on Andhra Pradesh:

Once pure hunter gatherers, they are unable to eke out the subsistence… the Sri Sailam Tiger Reserve has displaced a number of Chenchu families. A recent study of Chenchus says that

expansion of the agricultural communities into the main habitat of Chenchus has forced them into the interiors. Once exclusively inhabited by the Chenchu villages have been occupied by the non-tribals making them a majority in their own villages. A few Chenchus unable to eke out their livelihood have migrated to urban areas becoming loaders, rickshaw pullers, rag pickers and even beggars.

There has been rise in urbanization in India. The percentage of living in the urban areas have gone up. All the factors relating to deforestation have badly affected the tribal people and their traditional culture. A social activist of the North-East writes:

Unfortunately, due to rapid destruction of forest, these indigenous cultures are fading away fast. The socio-economic conditions of the tribal peoples have also been subjected to great strain due to deforestation. Consequently, they are facing starvation which was unheard of till the recent past. Many young people have left their villages in search of jobs for supporting their families, however, due to non-availability of jobs in the nearby towns, they have been forced to take labourers job in far-away places like the coal fields in Meghalaya has been exploited by political parties; tribal youths have been misguided to take up arms to improve their status. Unless this situation is controlled, the forests and the local cultures will soon be finished.

COMMUNITY-BASED CONSERVATION: its significance

In order to improve the living conditions of the indigenous peoples dwelling in the forest areas, there is a need for a strategy which will protect the natural environment and would also ensure the flow of economic and other benefits from the natural resources of the indigenous. This kind of a strategy would aid in improving the economic condition of the indigenous peoples.

The protection of the natural forests is an uphill task as the issue of deforestation, which is a major cause of misery to the indigenous people, is closely linked to the menace of poverty and unemployment. The down-trodden sections of the society have no other alternative but to exploit the natural resources in order to earn a living. In the present scenario, the assumption that conservation of forest is only possible through the exclusion of human activities in the forest areas is outdated. The researchers point out that in India, more than two-thirds of the Protected Areas have human habitation and across the world, possibly half the protected areas have human habitation across the world are inhabited. Today there are about 100 million forests dwellers in the country living in and around the forests continue to be an important source of livelihood. Hence, the exclusion of the local communities is not possible at all times.

In the recent years, the researchers have demonstrated that the human activities and desirable levels of biodiversity can co-exist in many situations which is attracting the attention of the policy makers of the world to the mechanism of local community participation for efficient natural resource management. The reason is that since the local forest dwellers are dependent on the forest resources for their livelihood, they would be equally interested in conservation of these resources if they are given the opportunity of using them and are given the responsibility of conservation.

The community-based initiatives are vital for the development of the forest dwelling tribals. It is now well accepted that the strategy for the development of the forest dwelling indigenous people should be multi-dimensional as it should cover all aspects of human life. In order to participate fully for the conservation of the natural resources and to take up responsibility of the same, the role of the forest dwellers who are the subject as well as the object of the initiative is very important. The reason behind this is that if the local tribal communities do not participate then the main purpose of economic upliftment would not be achieved. Their whole-hearted participation would generate benefits for their own welfare in the long run. They are also required to be politically empowered t so that they would be in a position to participate in the management of the natural resources.

The culture of the tribal communities is closely associated with the environment in which they live in. The main reason behind the fading away of their cultural practices is the deforestation and unchecked exploitation of the natural resources. In such a scenario such people are required to conserve their traditional knowledge and culture in addition to learning of the modern resource management skills of the natural resources which would lead to their economic development in a sustainable manner.

Thus, it can be said that both the initiatives of bio-diversity conservation and socio-economic development can be fulfilled if there tribal participation in the community-based conservation programs along with their access to and control over the natural resources. The two important community-based conservation initiatives are Joint Forest Management and Ecotourism.

JOINT FOREST MANAGEMENT:

Joint Forest Management (JFM) consists of a formal arrangement between the forest dwellers and the Government officials of the Forest Department to assist in the protection and regeneration of degraded forests. In way of such an arrangement, the forest dwellers receive a share of timber harvest and also access to non-timber forest produce. They are also allowed to participate in the harvesting and plantation as laborers. The villagers are also allowed to access the forest resources for their daily livelihood. This mechanism recognizes the role of the local community and local bureaucracy as the partners for the conservation of the forests.

Since the colonial period in India, it was felt that the forests are only meant for the public purposes and therefore they must be protected from the use by the local communities. The Forest Department was established for the management and conservation of the natural resources. The Forest Department was established and its rules and regulations were rigidly formulated through stringent Acts and Rules. In the process of such formulation, the local forest dwellers were highly alienated from accessing the forest resources. Such exclusion of the local communities from the forest management led to the large scale degradation of the forest resources.

The Joint Forest Management Scheme had its origin in Arabari, a small research station of the Forest Department located 20 kilometers from the Midnapore town of West Bengal. In 1971-72, A.K Banerjee, the then Divisional Forest Officer, after many unsuccessful attempts to regenerate and protect the forests, realized the cause of the failure of the as due to the heavy dependence of the local people on the forest. The DFO negotiated with the eleven villages surrounding the forest area and sought their cooperation to halt the exploitation of the forest resources. In return the villagers were offered a 25 percent of the share of timber harvest and access to minor forest products. By the mid 1980s, the Forest Department of the Government of West Bengal began encouraging the Forest Officers to go for informal agreement with the villagers and thereby the Forest Protection Committees were formed. The officers were offered awards on the basis of the performance of the forest protection committees which resulted in steady increase in their numbers. In the year 1989, the first formal resolution on JFM was passed in West Bengal. The West Bengal Government formally organized the Forest Protection Committees in 1989.

The 1988 Forest Policy of India recommended that domestic requirements of the local communities should be accommodated as a first priority. In 1990, a significant change was made by the Government through its emphasis on JFM in forest degraded areas. The policy change was due to struggle made by the local communities in taking control over the forest resources. The new forest policy aims at the recognition of the rights of the organized communities over a clearly defined patch of forests. The benefits derived out of such initiatives were offered to the local communities on fulfillment of certain responsibilities. In 1990, responding to the increasing demands for the process of institutionalization of the process of involvement of the local communities in the forest management, the Government sent a circular

to the various State Governments and recommended the adoption of Joint Forest Management. The circular suggested that the resource users would be involved in the conservation of forests and in return they would be entitled to the share of the benefits derived from the forest resources. This initiative created inter-linkages of the conservation to the meeting of the basic needs of the local communities.

The main idea of Joint Forest Management is that the Forest Department personnel and the local people jointly participate in the management of the forest resources. The forest area under a Forest Beat Office is divided into several parts and for each part one Forest Protection Committee is formed taking the rural people as its members. The members of the Committees are appointed by the District Forest Officer in consultation with the relevant Bon-O-Bhumi Sanskar Sthayee Samitee of the concerned Panchayat Samittee. The criterion for the selection of such members would be that they would belong to economically backward areas residing on the vicinity of the forest areas. In 1991, an amendment was made with regard to membership criterion in West Bengal, which accorded recognition to "joint membership". That means if the husband becomes the member then the wife will becomes a member automatically and wither of the two can exercise the right to represent the household at any point.

It has been earlier mentioned that the most critical relationship of the local tribal people and other rural communities with forest is their dependence on the forest resources for subsistence and their livelihood. So, the success of the JFM rests on its ability to meet the demands of the poor local people. 9n case of JFM, the resolution of the Government of West Bengal, forest Department, Forest branch dated 12th July, 1989 had recommended the following major steps to ensure flow of benefits to the local community:

Members of the Forest Protection Committee would receive 25 percent of the usufructs benefits after the agreed to areas had been protected for a predetermined period. The beneficiaries of the programme were supposed to be selected from the economically backward people living in the vicinity of the forests. The members of the FPC would be able to collect various non-timber fire products without having to pay royalties. These include fallen twigs, grass, fruits and seeds. They would receive 25 percent of the sale of cashew nuts and 25 percent of the net proceeds of the sale of the timber poles after every final harvesting. The FPC members would also earn from participation as harvesting as laborers. Apart from that, ongoing benefits include one-fourth of immediate yield of coppicing, multiple shoot cutting and thinning. The villagers would get approved price for depositing the sal seeds and kendu leaves with the West Bengal Tribal Development Co-operative Corporation Limited.

As of now, most the states have come up with their own state orders with regard to JFM thereby laying down rules of participation for the local community in forest management. The last two decades have witnessed rapid expansion in the number of Forest Protection Committees in different parts of India. More than 11.5 million hectares of forests in the country are being managed and protected through 44,493 Forest Protection Committees.

ECO-TOURISM

Another important community-based conservation initiative is eco-tourism. It is a form of sustainable tourism based on nature. The logic behind the concept of ecotourism is that it will create employment for the forest dwelling indigenous people. Food supply, accommodation managed by the local residents and transport services provided by them to the eco-tourists will channel revenue directly to the local population. Therefore, it is expected that they will not destroy the trees and animals of the project site. Realizing its significance in the present world context, the UNESCO had declared the year 2002 as the International Year of Ecotourism.

"Ecotourism" is the buzzword being used to describe a new partnership among the travel industry, tourists and the conservation community to promote and enhance environmental sensitivity through responsible travel.

According to Nelson, the idea of ecotourism is in fact an old one, which manifested itself during the late 1960s and the early 1970, when researchers became concerned over the misuse of natural resources. Hetzer believes that the concept of eco-tourism grew as a culmination of dissatisfaction with the Governments and society's negative approach to development particularly from an ecological point of view.

The Eco-tourism society has defined eco-tourism as 'responsible travel to natural areas which conserves the environment and improves the welfare of local people'. For Fenell, eco-tourism is 'a sustainable form of natural resources based on tourism that focuses primarily on experiencing and learning about nature, and which is ethically managed to be low impact, non-consumptive and locally oriented typically occurs in natural areas and should contribute to the conservation or preservation of such areas. According to Goodwin, ecotourism is, 'low impact nature tourism which contributes to the maintenance of species and habitats either directly of indirectly by providing revenue to the local community sufficient for local people to value and therefore, protect their wildlife heritage as source of income'. Some scholars have included culture in their definition of ecotourism. However, according to Fennell:

Culture whether exotic or not, is part of any tourism experience. If culture was a primary theme of eco-tourism, then it would be cultural tourism. There is no doubt that culture can be part of the eco-tourism experience, the point is however, that it is more likely to be a secondary motivation to the overall experience, not primary as in the case of nature and natural resources.

In the present scenario what is important is to generate substantial income opportunities for the local communities. The concept of ecotourism should be handled carefully in order to generate substantial benefits for the local indigenous people. In these tourist destinations, local youth could be employed as tourist guides after proper training. The food supply to the tourists, accommodation managed by the local residents and transport services provided by them to the eco-tourists will channel revenue directly to the local population. Eco-tourism will give an opportunity to the people in distant areas to sale their products to the tourists. The cultural programs organized by the indigenous communities for the visitors would also ensure a flow of income to the local artists which would thereby encourage them to continue with their traditional art.

There are five most important ways through which revenue can be gained from eco-tourism. These include:

(i) user fees,

(ii) Concession fees (in came of government, fees that are charged to private firms who provide tourists with goods and services e.g. food, guiding etc.),

(iii) royalties (souvenir and t-shirts sales),

(iv) Taxation,

(v) Donation etc.

Therefore, it is necessary to promote and operate Eco-tourism for the betterment of the forest dwelling indigenous peoples.

CONCLUSION

The forests occupy an important position among the natural resources of a country. This natural resource is not only vital for enhancing the quality of environment but also for the economic

progress of the country. In the case of India, natural resources of the forests are a boon for the country as the majority of the tribal population reside in the vicinity of the forest areas. Through the sustainable use of the natural resources, the forest dwelling indigenous people would enhance their socio-economic condition which would thereby generate income for the country at large. The sustainable use of natural resources can be attained through the mechanism of the community-based conservation programs like the Joint Forest Management and Eco-tourism. Through the promotion of these two programs, there would be development of both the local economy as well as the local ecology. The program of eco-tourism should be implemented in the lines of sustainable principle of tourism. Sustainable tourism is nothing but an extension of the concept of sustainable development. The development of eco-tourism in a sustainable manner is a very difficult task to perform. Therefore, if the forests of the country are to be protected and to be developed as a successful eco-tourism destinations for helping the forest dwelling indigenous people, then all the entities involved in the process- the Government, local people, operators, local administration, local panchayats, NGOs and experts of the various educational institutions must come forward and work together.

In such a scenario, efforts are to be made by the concerned authorities to educate the forest dwelling indigenous people about how to generate income from the community-based conservation initiatives. For this purpose, the forest dwelling indigenous people are required to be convinced properly and sufficiently trained which would enable them to have a good financial return which will navigate them towards prosperous development.

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5

GENETICALLY MODIFIED CROPS AND THEIR IMPACT ON ENVIRONMENT

Anjali Panwar and Mehak Goswami

ABSTRACT

So, this paper is based on gm crops which are basically genetically modified crops. The DNA of these crops is modified using genetic engineering methods. This paper includes the historical background of GM crops along with historical research with respect to the topic. The writer of the paper also going to includes the different methods of modifying the crops genetically. Along with this the paper is also going to contain the pros and cons of modifying the crops. The whole research will be based on the scientific research and historical data. food and drug administration of government said that most of the GM crops grown today to help farmers prevent them crop less, the traits found in GM crops are; resistance to insect damage, tolerance to herbicides, resistance to plant viruses. The author of the paper also includes the benefits of farmer's get from GM crops. However, the paper contains the answer of the questions like; Is GM crops actually important for us? Is it hazardous for health? Is it really okay for biodiversity? And many more questions like this. The paper includes all the queries related to GM crop and all the possible questions with the aspect of normal people and with the scientific view of looking the topic. The records of government surveys will also be compared in the topic along with this, the record by which the generation of GM crops in different countries affect their economic condition. Lastly the paper will be concluding by feedback of general public.

(Keywords: Government surveys, Pros and cons, scientific aspects, Economic effects)

1. INTRODUCTION

The first question that comes in our mind after the listen to the word gm crops, is basically Genetically Modified crops is genetically modifying crops which is done by modern biological engineering techniques. In simple words we can say that is a cross breeding of plant to facilitates the different crops in different areas. With the help of these we can generate international breeds of crops in our own country. The word genetic modification, as it is frequently used, refers to the exchange of genes between species through a variety of laboratory procedures for cloning genes, joining DNA segments, and introducing genes into cells. Recombinant DNA technology refers to these methods taken as a whole. The words genetically modified organism (GMO), genetically engineered (GE), bioengineered, and transgenic are also used to describe Genetically Modified plants and the meals made from them. The phrase "genetically modified" is vague and possibly misleading because practically everything we consume has undergone genetic modification as a result of domestication of wild species and numerous generations of human selection for desirable characteristics. This phrase is used because it is the one that denotes the application of recombinant DNA technology the most frequently.

1. Now the Question is How this Kind of Crops Has Been Invented and by Whom?

According .to. Canadian Encyclopaedia,.The article by Cecil w. Forsberb, "The Genetically Modified plants were first noted in the early 1990s. the first commercialized gm crop was a tomato called flavrsavr (resistance to rotting), marked in 1994 by US-based company , calgene."In the middle of the 1990s, Genetically Modified products were first made available in the U.S. The majority of Genetically Modified products currently produced in the U.S. have been modified to be herbicide or bug resistant. The three Genetically Modified products with the biggest acreages are corn, soybeans, and cotton. Since Genetically Modified crops were introduced in the U.S. in the mid-1990s, they have become widely adopted by growers of

several large acreage field crops. This fact sheet explains the technology for developing Genetically Modified crops and describes GM crops currently on the market in the US.

2. The Avrage Data of Genetically Modified Crops from all Over the World

Many G.M. crops have been commercialized. More than 250 hectors of gm plants have been planted annually in more than 20 countries and by the 10 million farmers. The US grows more than a total of 50% of all G.M. crops in the world, the other most important producing countries of G.M Crops are Argentina, Brazil, Canada, India, China, Paraguay and South Africa, Canada accounts for about 6% of the whole world production. Terms of acreage, the most commonly genetically modified crops are soybeans, corn, cotton, and canola as of 2019. In that year, 13.5 percent of all the cotton grown worldwide was genetically modified. The same was true for 48.2 percent of all soybean plants. Because genetic modifications are proprietary, the market for genetically modified seeds and pesticides is heavily concentrated between a few major companies. Monsanto, the biggest player in the genetically modified crop market is based on revenue.

2. HOW PROCESS TAKES PLACE?

Most organisms store their genetic information in the form of DNA molecules in the chromosomes. The order of chemical base in a DNA strand explains with a specific order of amino acids, which are the building blocks of the proteins. Proteins perform many functions in cells and tissues, which are responsible for an organism's characteristics. Because most life forms share this same language of heredity-and due to scientific advances in molecular biology-it is now possible to transfer a gene from one species to another, for example from a bacteria of a plant, and have it function in its new host.

2.1 What is Inserted into a GM Alant?

The inserted DNA fragment has one or more than one gene, which contains the DNA pattern information, explains specific proteins, along with DNA segments that regulate production of the proteins. The inserted fragment also sometimes has a marker gene to easily identify between plants that have incorporated the transferred genes, also known as transgenes, into their chromosomes.

2.2How are Whole Plants Obtained from Plant cells or Tissues?

Insertion of transgenes is generally an inefficient process, with only a small percent of plant cells or tissues successfully integrates the foreign genes. Different strategies are used to specify the small percentage of cells/tissues that have actually been transformed. The next move is to improve those cells or tissues into big plants capable of producing seed. This is done through a way called tissue culture, that is, growing plants on agar or a same medium in the presence of plant nutrients and hormones in specific environment conditions.

2.3 What Happens Next?

The crop developers then started a long series of evaluations to identify that the gene has been incorporated successfully, that it is adopted in a stable and predictable manner, that the required trait is convey to the expected level, and that the plant does not show any side effects. Evaluations are initially done in controlled greenhouses and growth chamber. Once sufficient seed is produced and the appropriate permission is received, experimental plants are grown in field trials. Field evaluations follow strict guidelines that include isolation from related plants to avoid cross-pollination, careful cleaning of planting and harvesting machinery, regular monitoring of crop growth, and checking the field for two seasons after the trial for the presence of volunteer plants that have arisen from seed inadvertently left behind.

3. Advantages and Disadvantages

As we all know that everything has two aspects things are not all in positive neither in negative aspect. The advantages of GM crops are as follows:

1. Productivity of GM Crops

Genetically Modified Crops seed companies promised to raise productivity and profits level for farmers around the world. GM seed organisations had expected Genetically Modified crops to be adopted by farmers because the traits they were incorporating provided direct operational benefits for farmers that could be linked to increased gains for farmers. The components of Genetically Modified crops have argued that the application of Genetically Modified technology would fundamentally improve the efficiency, resiliency, and gains of farming. In addition, GM seed companies argue that the adoption of GM crops helps to reduce the application of pesticides, which has a direct impact on the sustainability of the cropping systems as well as profitability for farmers. Some even have suggested that the production of GM crops creates a halo effect for nearby Non- Genetically Modified crops by reducing pest pressures within regions that are primarily sown to Genetically Modified crops.

1. Herbicide Tolerance and Pest Management

Herbicide tolerance in Genetically Modified crops is fulfilled by the introduction of nobel genes. The control of unwanted crops by physical means or by using selective herbicides is time-consuming and expensive. The most widely adopted Herbicide Tolerance crops are glyphosate tolerant colloquially known as "Roundup Ready" crops. Herbicide tolerant Genetically Modified crops have provided farmers with operational benefits. The main benefits associated with Herbicide Tolerance canola, for example, were easier and better weed control. The development of Genetically Modified Herbicide Tolerance canola varieties has also been linked to incremental gains in weed control and canola yield. Despite all of the weed management options available in traditional canola, significant incentives remained for the development of Herbicide Tolerance canola. The most apparent incentives were special weed problems such as false cleavers and stork's bill, and the lack of low-cost herbicide treatments for perennials such as quack grass and Canada thistle. Mixtures of herbicides can control many of the common annual and perennial unwanted crops in Western Canada, but they are expensive and not necessarily reliable. Thus, canola producers welcomed the prospect of applying a single non-selective herbicide for all unwanted plants problems with little concern for specific weed spectrums, growth stages, tank mixture interactions and/or extensive consultations. Two important Genetically Modified Herbicide Tolerance canola options are widely used in western Canada. Canola tolerant to glufosinate was the first transgenic crop to be registered in Canada. Canola tolerant to glyphosate followed shortly thereafter. The Genetically Modified Herbicide Tolerance canola offers the possibility of improved weed management in canola via a broader spectrum of weed control and/or greater efficacy on specific weeds. The greatest gains in yield attributed to the adoption of Genetically Modified Herbicide Tolerance crops have been for soybean in the United States and Argentina and for Genetically Modified Herbicide Tolerance canola in Canada.

2. Human Health

Genetically Modified crops may have a positive influence on human health by reducing exposure to insecticides and by substantially altering herbicide use patterns toward glyphosate, which is considered to be a relatively benign herbicide in this. However, these claims are majorly based on assumption rather than real experimental data. There are not a lot public studies on the potential human health impacts of the consumption of food or feed derived from Genetically Modified crops. However, the Genetically Modified crops that are commercialized pass regulatory approval as being safe for human use by august competition in authority including the Food and Drug Administration in the US and the European Food Safety Authority in Europe. Improvement of Genetically Modified crops that will have a direct impact on health such as decreased allergens, higher levels of protein and carbohydrates (Newell-McGloughlin, 2008), greater levels of important amino acids, essential fatty acids, vitamins and minerals including, multivitamin corn, and maximum zeaxanthin corn hold much promise but

have yet to be commercialized. Malnutrition is very common problem in the developing countries where poor people rely heavily on one food sources such as rice for their diet. Rice does not contain sufficient quantity of all essential nutrients to prevent malnutrition and Genetically Modified crops may offer means for supplying more nutritional benefits through single food sources such as rice. This not only supports people to get the nutrition they require, but also plays an important role in fighting malnutrition in developing nations Brown rice is one the most known examples of a bio-fortified Genetically Modified crop. Vitamin A have deficiency renders susceptibility to blindness and affects between 250,000 and 500,000 children yearly and is very common in parts of Africa and Asia. A crop like Golden rice could help to overcome the problem of vitamin A deficiency by at least 50% at moderate expense, yet its adoption has been hampered by activist campaigns.

3. Environmental Benefits

For currently commercialized Genetically Modified crops the benefits to the environment as previously pointed out are primarily linked to reductions in pesticide use and to reductions in tillage. Reductions in pesticide use can lead to a greater conservation of beneficial insects and help to protect other un-targeted species. Reduced tillage helps to mitigate soil erosion and environmental pollution and can lead to indirect environmental benefits including reductions in water pollution via pesticide and fertilizer runoff. It has been claimed that growing maize could help to specifically reduce the use of pesticides and the amount of cost of production to some extent.

4. **Disadvantages**

After advantages let's see some disadvantages of GM crops;

4.1 Cross-Pollination

The out crossing of Genetically Modified crops to Non- Genetically Modified crops or related wild type species and the adventitious mixing of Genetically Modified and Non- Genetically Modified crops has led to a variety of issues. Because of the asynchronyof the deregulation of Genetically Modified crops around the world, the unintended presence of Genetically Modified crops in food and feed trade channels can cause serious trade and economic issues. One example is "Liberty Link" rice, a Genetically Modified variety of rice developed by Bayer Crop Science, traces of which were found in commercial food streams even before it was deregulated for production in the United States. The economic effect on United States rice farmers and millers when rice exports from the United States were halted amounted to hundreds of millions of dollars. A more recent example is Agrisure corn, which was approved for cultivation in the United States in 2009 but had not yet been distributed in China. Exports of U.S. corn to China contained levels of corn, and China closed its borders to U.S. corn imports for a period. The National Grain and Feed Association (NGFA) had encouraged Syngenta to stop distributing because of losses U.S. farmers were facing, and there is a going class-action lawsuit on Syngenta in the U.S. Concerns over the safety of Genetically Modified food have played a role in decisions by Chinese officials to decline from Genetically Modified production. Cross-pollination can result in difficulty in maintaining the Genetically Modified -free status of organic crops and threaten markets for organic farmers. The EU has adopted a Genetically Modified and Non- Genetically Modified crop coexistence directive that has allowed nation-states to enact coexistence legislation that aims to mitigate economic issues related to adventitious presence of Genetically Modified crops in Non- Genetically Modified crops.

4.2 Pest Resistance

Regular use of a one pesticide over time leads to the development of resistance in populations of the target species. The extensive use of a limited number of pesticides facilitated by Genetically Modified crops does accelerate the evolution of resistant pest populations. Resistance evolution is a function of selection pressure from use of the pesticide and as such it is not directly a

function of Genetically Modified HT crops for example, but Genetically Modified HT crops have accelerated the development of glyphosate resistant weeds because they have promoted a tremendous increase in the use of glyphosate. Farmers have had to adjust to this new problem and in some cases this had added costs for farmers. The management of Genetically Modified HT volunteers has also produced challenges for some farmers. These are not resistant weeds as they are not wild type species, but for farmers they are herbicide-resistant weeds in an operational. Pink bollworm has become resistant to the first generation Genetically Modified Bt cotton in India. Similar pest resistance was also later identified in Australia, China, Spain, and the United States. In 2012, army worms were found resistant to Dupont-Dow's Bt corn in Florida, and the European corn borer is also capable of developing resistance to Bt maize.

5. Public Opinion about Genetically Modified Foods

Genetically modified foods contain at least one ingredient coming from a plant with an altered genetic composition. Genetic modification, also known as genetic engineering, often introduces new, desirable characteristics to plants, such as greater resistance to pests. Many U.S. crops are grown using genetically engineered seeds, including a large share of the soybean, corn, cotton and canola crop. As a result, the majority of processed foods in the U.S. contain at least one genetically modified ingredient.

Despite the growing use of genetically modified crops over the past 20 years, most Americans say they know only a little about GM foods. And many people appear to hold "soft" views about the health effects of GM foods, saying they are not sure about whether such foods are better or worse for one's health. When asked which of three positions best fits their viewpoints, about half of Americans (48%) say the health effects of GM foods are no different than other foods, 39% say GM foods are worse for one's health and one-in-ten (10%) say such foods are better for one's health.

About one-in-six (16%) Americans care a great deal about the issue of GM foods. These more deeply concerned Americans predominantly believe GM foods pose health risks. A majority of this group also believe GM foods are very likely to bring problems for the environment along with health problems for the population as a whole.

While a 2016 report from the National Academies of Sciences, Engineering and Medicine suggests there is scientific consensus that GM foods are safe, a majority of Americans perceive disagreement in the scientific community over whether or not GM foods are safe to eat. And, only a minority of Americans perceive scientists as having a strong understanding of the health risks and benefits of GM foods.

So this is the possible information of genetically modified crops along with the historical background, process, pros and cons thinking of people, economical issue raised by the writer of the research paper

1. Economic Effect

Bringing a Genetically Modified crop to market can be both expensive and time consuming, and agricultural bio-technology companies can only develop products that will provide a return on the investment. For these companies, patent infringement is a big issue. The price of Genetically Modified seeds is high, and it may not be affordable to small farmers. A considerable range of problems has been associated with Genetically Modified crops, including debt and increased dependence on multinational seed companies, but these can also be combined with other agricultural technologies to some extent. The majority of seed sales for the world's major crops are controlled by a few seed companies. The issues of private industry control and their intellectual property rights over seeds have been considered problematic for many farmers and in particular small farmers and vulnerable farmers. In addition, efforts by Genetically Modified seed companies to protect their patented seeds through court actions have created financial and

social challenges for many farmers. The market for genetically modified crops is largely concentrated, with only a few major participants. In 2020, the top ten market rivals accounted for 47.76% of the overall market. Bayer AG, BASF SE, DuPont, Syngenta AG, The Dow Chemical Company, JR Simplot Co., Groupe Limagrain, Stine Seed Farm, Inc., Calyxt Inc., and Maharashtra Hybrid Seed Company are significant market participants (MAHYCO).

2. Environmental Effect

According to the state research genetically modified crops are the harmful alternative to the environment, genetically modified crops need different herbicides and pesticides which leads to erosion and infertility in the soil, all through these pesticides were as harmful as poisons for human body. The recent research also states that's these herbicides and pesticides are banned in some of the country ass for their harmful effect on humans, but they have been used illegally by most of the farmers and landlords of the fertile area. As according to research these kind of pesticides crops leads to cancer in very such young age. Some studies have suggested that GM crops particularly those engineered for herbicide tolerance may have negative impact on soil health overall environmental of gm crops are might be little confusing there will be more technology in needed for the use of these genetically modified crops so that we can minimize the negative impact of these crop on human health.

6. CONCLUSION

Genetically modified crops are the research of advance biotechnology because of which the cultivation and farming of different crops are possible in different countries and in different cultivation region. This process seems beneficial for upcoming youth and farmer also. The introduction of genetically modifying process of crops helps to accelerate the GDP of a country as these crops are high in market rates and high in demand also. one of the most important things is that the nutrition of these crops remains high. crops like corn are the production of US but now it can also be cultivated in India also. as everything has two aspects on the second other hand gm crops seems a pricey deal for farmers as the genetically modified seed costing double then the normal seed so seen as barrier to the farmers. public opinion also drives in two directions as well people are satisfied with the easy availability of crops their region but also its not clear that these crops are that good for our health or not because the original nutrition of the crops remains same but genetic factors are still different. that is why this topic is still in discussion in USA health care departments. Howsoever for cultivation of these crops the use of herbicides and pesticides is needed but both of these substances can cause cancer in human body which can be count as the disadvantage of the gm cultivation, some of countries put ban on the use of these kinds of chemical but these is a huge profit in all these business so it is not stopped by people properly which is count as illegal activity. In brief we can say this the GM cultivation has both positive and negative effect, it will be better if the use or production of these crops will be limited or narrowed down for the larger benefit of earth and humans.

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6

GEOGRAPHICAL INDICATION: BRANDING THE REGIONAL ECONOMY

Avantika Banerjee

INTRODUCTION

The world as we know is diverse and each locus possess its own identity, language, heritage art, culture and commodity or goods which makes it unique. Often, we identify commodities which are prominent to its belonging. The reason for such prominence of a product to its environment can be several such as its quality, texture, and availability so on and so forth. The product itself indicates its geographical origin and that is how the importance of Geographical indication was realized and protection was extended. Some of the common examples of geographical indications are Darjeeling Tea. It was the first product in India to have received the Geographical Indication tag (GI hereinafter) and till date around 365 products have got the protection.

Article 3 of the TRIPS agreements defines Geographical Indication as "an indication which identifies a good as originating in the territory of a member, or a regional locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin".

The period of 1800's was vital in Europe as it was the period when industrialization actually started and hence many new small- and large-scale businesses mushroomed. Therefore, a need for the protection of the innovative business ideas as well as the other ancillary rights which plays an important role in growth of the business was realized and it was needed to protect the innovations to avoid any sort of overlapping and disputes.

The first international treaty which talks about the protection of GI as an intellectual property was the Paris Convention of 1883. The convention extended protection to intellectual properties like trademark, patent, utility models, industrial designs, and geographical indications. The treaty was originally signed by eleven countries. This was followed by the Madrid Agreement in 1891. The Madrid Agreement primarily talks about the prohibition over the act of falsely implying that the origin of a good is that particular region or country whereas, it belongs to some other place or country in reality. The agreement provides the measure in case such a false act of implication happens. The Lisbon agreement which was signed in the year 1958, revised in 1967 and amended in 1979.The primary motive of the agreement is setting up of a union of nations to protect the "appellation of origin" of products on their own territories of other countries who are in the union of the signatories. For the purpose of the act "appellation of origin" mean a particular region from where a particular product originates.

The GI tag is crucial to every economy. It is a way to put a product on the world map. GI assigned vouches for the quality of good in the area. It gives the much-deserved recognition to the people who rear and cultivate the product whether be an agricultural good or product. A product possessing the GI recognition is always going to valued more than any other.

It is especially crucial to the growing economy like India which has a huge variety of products which are unique some of these products are such that the area in which it is cultivated or made except for that geographical area of know-how of that product is unknown making it a need to protect the product and give it the proper recognition to spread the know-how of the making or cultivation of the product.

Concept of Geographical Indication

The assigning of the GI tag has become a matter of great pride and honour for local cultivators and businesses. When the product is an agriculture goods which possess a GI tag the farmers are motivated to cultivate in the given region. In case the product is a manufactured good the production rate of such good increases. The TRIPS agreement mandates every country to frame laws related to the Geographical indication. Section 3 of the TRIPS agreement gives protection to two degrees of goods the first one is given for 'appellation of origin'. It indicates the place of origin of the particular good and the other one is for any product which according to the laws of the particular country is eligible for GI protection. Development of GI product takes decades to rear, cultivate or manufacture in a particular manner. GI tag assigning is a way to protect the method and value in which the product is being developed.

In India the protection is extended to agricultural goods, natural goods and handicrafts or industrial goods. The application for GI tag assignment can be applied by individual producer, organization or any designated authority. The format for application is give in The Geographical Indications of Goods.

Geographical Indications are the Community Rights

GI are the common wealth intellectual property as they are not granted to a particular individual it recognizes the people who are the 'producers' of the goods. Each and every person who belongs to the particular area to which the good belongs and is related to its cultivation or manufacturing as the case maybe is granted the right to seek protection and extract the optimum value of the good which possesses the GI tag.

Perks of the GI tag

- Increase the value of the good in the overseas market-When GI is assigned to a product it automatically increases its value.GI tag is a way of ascertaining the quality of product is premium. And the buyer is actually buying the best of its kind. The trust factor of the buyer increases after the GI tag factor is taken into account.
- Increase in tourism -If a product is cultured in a certain way whether the good is of agro based or a handicraft good. The natural environment can become a tourist attraction. For example: the various textile and handicraft which have a GI tag the place where they are made are a place of interest for the tourist.
- Promote the agricultural economy of the developing nations -Most of the developing countries are agriculture-based economies. When GI tag is recognized of any product in such an economy the farmers and cultivators are encouraged to grow more of that particular product as they will receive a higher return value for such a product.
- Value addition to the geographical diversity- The products especially the agricultural product or any exotic good which is generally found in a area when they are recognized under the GI tag and the locals are motivated to grow more of the product and if grown in bulk they can have a positive effect on the bio- diversity of the area. Example: teak wood of Kerala.
- Recognizing the effort of the cultivator or producer of the goods: Controlling the duplicity of products is one of the biggest motives behind the GI tag assigning. When a product gains prominence in the market. It is followed by many cheap quality products made available by the competition to be brought the tag of the product.
- Promoting the green economy of the region- The GI tag can be the perfect use for the village economy to be more invested in its green economy. The village economy is heavily dependent on the greens as its primary source of energy and generating monies. So if GI tag is awarded to any of the greens for example: a particular kind of tree or a particular kind of

worm which homes a particular tree of the area which will help in the textile industry. The village community will actually invest towards the said area.

- Corroborate the authenticity of the item – The duplication of quality and expensive goods is no new news for anyone. If the GI tag is not provided the buyers will have a hard time distinguishing the duplicate product from the authentic ones. This happened in India in case of the Darjeeling Tea the other areas near to Darjeeling started producing similar looking tea leaves but they were of a cheaper quality hence there were complaints from the consumers regarding the quality. Since the GI tag has been issued and they have their own dedicated trademark such faultiness has drastically reduced.
- GI tags can create jobs for women – In most developing countries like India. Women do not form the part of the active workforce. But it has been realized that women's financial independence can bring about great changes in the society. In spite of creating a separate source of income. If industries are based to exploit the goods which have the GI tag for example the textile or handicraft industry the female workforce can get instant employment without there being a need to learn some new skill.
- Promotion of small and medium sized Businesses – The key of growth for the developing nations is entrepreneurship. But in the developing economies where people have limited amount of capital to start the business. In that case if the GI tag is valued and there is a national and international market available for its showcase then the small businesses can engage themselves with developing, exploiting and exporting such goods.

International Treaties and Convention on Geographical Indication

One of the earliest steps taken towards protecting the Geographical indication was included in the Paris Convention for the protection of Industrial property in 1883.

Paris Convention for the protection of Industrial Property – The Paris convention does not particularly deal with the laws and protection to GI's but it talks about the protection of all the industrial properties. It includes 'patents, trademarks, industrial designs, utility models, service marks, trade names, Geographical indications, unfair competition in the market'.

One of the most primary obligation under this Act is to give protection to Industrial properties of not only of the citizens but also to the citizens of the other nations. The laws should be similar for both the nationals in a nation which is party to the convention. The Convention also talks about the priority rights in case of patent filing. The term 'Priority filing' is an opportunity for the applicant to file the same patent protection in different nations in order to avoid competition and contradictions. The filing which is done in a subsequent place will be considered to have been filed on the same day. The conventions provide a list of items which needs protection to boost the industrialization and also the guidelines and standards to enact and apply the same.

Madrid Agreement concerning the International Registration of Marks (1891) and Protocol (1989)

The Madrid Agreement talks about International Registration of Marks. The Agreement enabled the protection of one mark in several countries. only people or legal entities from the countries which are parties to the protocol can apply for seeking the protection of a mark in several countries. Along with the GI tags many a times the products also have a trademark under this agreement those trademarks of the products with the GI tags are protected in various countries. The Agreement is a step forward towards the protection of innovation in the businesses even overseas by protecting the trademarks.

Lisbon Agreement for the protection of appellations of origin and their International Registrations (1958)

This Agreement was drafted by the virtue of Article 19 of the Paris Convention for protection of Industrial property. The Lisbon Agreement protects the appellations of origin which means the geographical indications of the country, region and locality where the good originates from or is produced in. The Agreement further talks about the registration of the GI tag by International Bureau of WIPO in Geneva after the product has been duly recognized with the GI tag in the state of origin itself.

The same is also published by the authorities in order to avoid any future confusion about the belonging and origin of the good. After the registration and publication by WIPO the contracting states are under obligation to publish the same in the country itself as a mark of acknowledgement. The acknowledgement by the contracting states of the GI tag is necessary as the WIPO maintains Lisbon Agreement database (Lisbon Agreement, n.d.).All the contracting members of the Lisbon Agreement form a part of the Lisbon Assembly union. The task of Assembly is to modify the regulation.

Need and objective of the Agreement- The importance of Geographical is enormous and various protocols mandate that all the states which have such products should protect them. However only by protecting a good at its place of origin is not enough. A product in order to retain its value and avoidance of duplication should have a worldwide protection for that purpose the Lisbon Agreement was contracted.

TRIPS Agreement and the GI

Section 3 of Part II of the TRIPS agreement talks about the Geographical Indication. Article 22 of the TRIPS agreement talks about the definition of the Geographical indication. GI in the Agreement is defined as 'Geographical indications are, for the purposes of this Agreement, 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' .In the Agreement along with the general protections some additional protections are also granted for the GI. The primary protection in the agreement is given to the public for protecting them against misleading products. The legal protection is provided to any GI tag which indicates any other place of origin than its actual origin measure by the member states will be taken to protect the buyers from the misleading product. The registration of a trademark can be refused if such trademark causes confusion or misleads the buyer regarding the origin of the product. Article 23 of the Agreement talks about additional protection which has been extended to protect particularly wines and spirits and to resolve the question of origin. If a wine or spirit through its Trademark shows a place of origin that is otherwise than its real place of origin such trademark shall not be registered. If the wine is homonymous products protection shall only be extended only by the consent of all the member states and according to their respective laws. There is a recommendation to establish multilateral system for the protection and registration of wine. Negotiations, bilateral and multilateral agreement between the member states has been recognised as a tool for the protection of the GI. Under Article 24 it has been expressly mentioned that there is no international obligation to protect a goo of its GI tag if it is already not protected under the municipal law of the territory in which the good originates.

Laws on Geographical Indication in India

There was a need felt to protect the GI after the various international conventions. The international conventions would only extend the protection only to those geographically significant goods only if they are already protected in their country of origin. In case a country does not have any laws to protect its own GI it still has to extend the GI protection to goods of

other countries if they are so protected in their home countries. In order to fulfill the various obligations under the GATT agreement the government of India enacted the 'Geographical Indications of Goods (Registration and Protection) Act, 1999.It came into force on 15th September, 2004. As of 2021 Karnataka has the highest number of Geographical indications (Republic World.com, n.d.).

The idea of 'Geographical Indication' as discussed in section 2(e)of the Geographical Indications of goods (Registration and Protection) Act,1999 is "geographical indication in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or region or locality in that territory, where a given quality, reputation or other characteristic of such good 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." Under section 2 (f) of The Geographical Indications of Goods (Registration and Protection goods include 'any agricultural, natural or manufactured goods or any goods of handicraft or of Industry and includes food stuff.'

Understanding the Appellation of Origin and GIs

'Appellation of origin' means it indicates where the good has originated from either manufactured. For example, if a good is labelled as 'Made in India' then this is the appellation of the good. This is an indicative protection which is provided to enhance the goodwill of the product in the global market. There is no express protection under the category of 'Appellation of Origin' of good but the contracting parties of the Lisbon Agreement may extend such protection to the goods of other contracting parties. Whereas, GI provide for the overall protection of the good. It also is suggestive of the particular notable attributes of the good for which the GI protection is being extended to the good.

The Act in India to protect the GI is quite comprehensive in nature and includes provisions related to all the aspects of protecting the GI. It is of utmost importance to understand that foe the purpose of the act who will be considered the 'producer' of the good and how the producer's definition is inclusive in nature to enable him to seek protection under the law. Section 2(k) of the Act defines "producer" and it means any person who either produces, processes or packages the good in case the good is an agricultural product. In case the good is a natural good so one who exploits or extracts the natural good and lastly, if the good is a handicraft or industrial good the one who makes and manufactures it will be considered as the 'producer' of the said good. The registration of GI is done by respective registrar of Patents, Designs and Trademarks under section 3(1) of the Trademarks Act 1999. The registrar is appointed by the central government. Under section 9 of the Act there are prohibitions about which GI's cannot be registered the following criteria are stated that the GI should not cause confusion or deceive the public, nothing which is contrary to law can be granted the tag, scandalous or obscene marks also religiously sensitive marks and another good which is not entitled to protection in any court. Any good which is already protected in its origin nation cannot seek protection in any other country. In case the origin of the product is exactly indicating the place of its origin but the 'person' who claim for its protection are not the real producer in that case also the GI tag is denied to such good. Section 11 of the Act states the Application for registration of GI can be give by any association of persons, producer, or the legal authority or organization established by the government. Along with the application the other accompanying documents will include a statement proving the belonging of the GI to a particular region or territory and also its reputation, characteristic and quality for which the tag has been given to that particular good. The class of good to which the GI belongs needs to be stated. Map of the territory to from which the good originates. Particulars regarding the appearance needs to be stated.

After the GI has been recognized of a good it duration of the GI tag is valid for a period of ten years and it needs to be renewed at the expiry of such time period.

It is a mandate to protect every intellectual property from infringement. The GI infringement is protected under section 22 of the Act. It gives the various criteria on the happening or abstention of which may cause the infringement of the GI. The GI can be only said to be infringed only by a person who is not the registered user of that good. The person other than the registered user is said to be infringing the Gi if he uses the GI as an indication or mark in such a way that it indicates the place of origin to be some other place other than the actual place of origin, he is said to be infringing the GI. If the GI is used to promote unfair competition or creates confusion or leads the person regarding the nature, process of manufacture or characteristic of the product then it can be said to be infringement of GI.

Trademark and GI

Section 25 of the Act invalidates the registration of a trademark when it contains the GI. The trademark is invalidated to avoid the confusion in the mind of the consumers regarding the actual origin of the good i.e., the place or territory to which the good belongs.

Penalties on False usage of the GI tag

The GI tag will be said to be applied by the authorized user on a product if the Tag is put on the packaging. The tag is impressed, woven, affixed on the good. When a product has a GI tag and the same is used in advertisement, catalogue, letter head of the business etc. or simply it is shown that the good has a GI tag is directly related to a particular area or territory.

When is the GI Falsely used?

A person who uses the GI tag without the consent of the authorized user or uses a deceptively similar mark. In case a person adds or alters the product with the Gi tag and then sells it would be also categorized as falsification of the original product. The penalty for falsification of the GI tag is punishable with a term from six months to three years or fine not less than fifty thousand but which may extend to two lakh rupees. The penalty is enhanced in the subsequent act of infringement.

GI Tag - a tool to Increase the Cultural value

The GI tag assignment is of utmost importance. GI assignment put a country and the specific product on the map of the world. The globalization of the GI tags has led to the possibilities to share and enjoy the exotic products of a particular region in nay part of the world. The GI tags have not only made the entire process of sharing goods at a global level easy but it has also led to the appreciation of the goods by the different communities of the world. With the GI protection it becomes easier for the producer to send the goods overseas without the fear of duplication and adequate protection. GI does a major value addition in cultural exchange. Today the Cocoa of Ghana forms the major ingredient for the chocolate factory in the USA the Tea enthusiasts of Europe have developed a taste for the Darjeeling Tea. The Indian pottery and Handicraft decorate several walls around the globe and all this is possible because of them being granted the GI tag and the protections extended to the products by the municipal and international laws for the recognition and protection of the Geographical Indication. Since the GI tag gains prominence in the International market for its quality and reputation the ‘producers’ of the goods are constantly under burden to keep up with the quality to enhance the economic value of the good.

The cultural prominence of GI tag was noticed in the Battle of Rosogolla between the state of West Bengal and Orissa. The battle started when in 2015 the state of West Bengal claimed GI tag for the world famous sweet ‘Rosogolla’ but a counterclaim was presented by the state of Orissa. Various evidences were presented and finally it was shown that Rosogolla was invented in Bag bazar area of Kolkata by ‘Mr. Navin Chandra Das’ with the name of Kheer Mohana the

entire battle was crucial because the sweets of Bengal specially Rosogolla are a matter of great pride and savory for both tourists and locals in the state.

Economic Growth and the GI tag

One of the most prime reason for protecting the GI tag under the TRIPS agreement was to give the producer of the good the due of value of the goods. When the goods are protected under various domestic and international laws the country in which the goods originate feels free to export the goods thereby creating and international market for the particular good. For example, there is quite a demand for the Darjeeling tea in Europe and during the Gorkha issue the export felt short and there was a huge demand in the cafes of Paris and London for the Darjeeling tea for the developing economies of the world GI protection of the good and its export play a very crucial role to get a higher economic of what can be gained in their place of origin because of the exotic factor of the particular good.

Significance of GI tag in Agriculture Economies

The conditions for granting of the GI tag is more or less the same in each and every country with a very few exceptions. They generally cover the Agricultural goods, the process or manufactured goods which belong from a particular region or territory and has a distinct feature. The goods are granted the GI tag for their quality and special texture. In most of the developing nations in Asia and Africa agriculture sector significantly contribute to the GDP of the nation. Hence the grant of the GI tag encourages the farmers to cultivate the particular good. The GI tag in itself acts as a promoter and advertises the good. The wide protection to the Agricultural goods has actually as a GI tag has actually globalized the food items from around the world. With the lesser risk of fraud, the GI tagged good has created a good and specifically promotion of such goods have become significantly important those of which form part of the staple diet of the indigenous people as they are cultivated abundantly and most of the farmers grow the staple crop. So, if the GI is granted to those staple crops the farmers will find it more profitable as this will not only create a local or national market but also an international market.

Why GI tags are not a Success story in the Developing Countries?

The goods originating in the different parts of the world to which the GI tag is awarded for their quality and reputation are mainly to encash those goods and give recognition to the 'producers' of the goods. But unfortunately, such is not the case. The obligation under international law to enact the law on protection of Geographical indication although made the member states of the World Trade Organization to enact such a law. But it has merely become an obligation. The states have taken a half- hearted effort in protection of the goods. The Article 24 of the TRIPS agreement mandates for each and every country to protect their goods in the municipal law only then it can claim protection under international law this has led to granting of the GI tags too. Yet, the main perk behind the GI tag ie. Making of an economic advancement for the entire community still remains a farfetched idea for most of the developing economies.

The main reason behind such lag is the minimal effort by the government to promote such goods in the national and international markets. This is again contradictory to the economic growth plans of most of the growing economies in the world today.

The GI tag is the golden key to kick start the rural economies of the developing countries.GI is crucial in the Agriculture sector and also the small manufacturing sector. Both sectors employ the poor people who generally have a limited source of income. The women can be the target employees in this kind of sector specially the handicraft sector as they will only be doing something they have known for generations and there will be no need to acquire new skills which is more often than not a difficult and costly process for these women.

The poor people who work in the fields or small-scale industries and produce such goods should get their due and if the customer base for the exotic goods is created overseas that can become a

game changer. The idea of a self-sufficient and prosperous rural economy is of utmost importance in a developing economy. That can be done by making the most of the GI system.

CONCLUSION

The recognition of the GI tags is a very significant step to protect the goods and give them the due recognition and also recognizing the contribution of the producers and cultivators of the good for the effort they put in making and marketing of the good.

The GI tag has very close relationship to the culture and pride of the territory or region where it is grown. So, it only makes sense that it being protected both under the international and domestic laws. However, the economic and cultural aspect on which the whole rationale of protecting of the GI is based does not seem to fulfill in most of the nations but specifically in the developing nations. Mere creation and application of the law is not sufficient for the GI to gain its prominence. The government should actively participate in the promotion and advertising of the goods. Since the year 2004 when the first GI tag in India was given to the Darjeeling tea no marketing strategy has been created to promote the good. Moreover, the filing and registration process of the GI is quite complex in nature and is not feasible for the indigenous and tribal people. Also, there is no clear indication of price or demand rise of the product on obtaining of the GI tag. The goods not only struggle in gaining recognition in the international market but also have no demand in the national demand. The goods are still just used popularly in the local market so raising the price of the good is not a feasible option for the producers of the good.

Some of the suggestions to enhance the value of the GI tags in India are direct involvement of the product, arranging fairs to showcase the goods from various parts of the country. Investment by the private stakeholders and building a market within the country before going global.

7

THE STUDY OF "MEDICAL TERMINATION OF PREGNANCY (AMENDMENT) ACT, 2021: ISSUES AND CHALLENGES"

Sanjeev Ghanghash and Sandhya Ghangash

ABSTRACT

Medical Termination of Pregnancy (Amendment) Act, 2021 is the revolutionary Act passed by the parliament after viewing many loopholes in the previous MTPA, 1971. Women are given right to terminate unwanted pregnancies by the virtue of the law. In India, the problem of unsafe and unhygienic abortions is at peak. The objective of the research is to understand the norms of the MTPA, 2021. The research has addressed the issues and challenges that have been faced after the introduction of the Act. There are many changes made by the government from the previous Act. The major change that is observed in the new bill is changing the time period for the abortion from 20 to 24 weeks. The impact of the Act will be visible in the upcoming years. Safe and hygienic health care centers are the need of the hour. Previously, unmarried girls were not allowed to abort their pregnancy, in the current amendment even unmarried girls are allowed to abort their pregnancy. Even after making so many changes in the Act, there are many of the issues and challenges that has been recognized by the society regarding the implementation of the Act. The study has focused on the issue and challenges of the MTPA, 2021. For the current study, We have adopted for doctrinal research. Many of the research papers have been scrutinized for the study. Credible and authentic websites have been also looked upon for the recent material. The study has cited many issues of the MTPA, 2021, which can be solved by the way of awareness of the Act as well as contribution of the society.

Keywords: Medical Termination, Abortion Law, Unwanted Pregnancy, Health Law

INTRODUCTION

Women are referred as goddess in India, even in the modern time women are given utmost respect and value to the society. There are many of the special laws made especially for women. "Medical Termination of Pregnancy (Amendment) Act, 2021", is one of the special laws that is made for the beneficiary of women. It is seen that pregnancy is a natural phenomenon by which majority of the women gone through. In the medical term's pregnancy is known as gestation, it is the process by which a human being takes the birth. The process of birth is essential for the entire world. However, there are times when a woman does not want to get pregnant and yet is forced by the laws not to abort the child. There are also times, where a woman has to forcefully give birth to an infant just because the law did not allow aborting the child. It is also seen that a rape victim is also get pregnant and no women wants to raise a child who is born out of rape. For such issues and problem, a separate law has been created. In the following research, there will be a discussion over the "Medical Termination of Pregnancy (Amendment) Act, 2021". The Act has amended the previous Act of MTPA, 1971. There have been many of the issues and challenges that took place while bring the amendment into force. In the upcoming research, in the beginning the origin and development of the Act will be discussed. There are many of the differences that have been observed while comparing the previous Act and 2021 amendment. Similarly, the key difference in the latest amendment will be mentioned as well. In many of the countries it is illegal to terminate the pregnancy, while citing the Act, it will be mentioned under what conditions a woman can terminate her pregnancy. Afterwards, the major issues and challenges observed during the implementation of MTPA, 2021 will be cited. After the deep analysis of the topic, a brief conclusion will be made for the better understanding of the topic.

ORIGIN OF THE MTPA, 2021

The Medical Termination of Pregnancy (Amendment) Act, 2021 is a new version of the "Medical Termination of Pregnancy Act, 1971". The Act was approved by the parliament on March 16th, 2021. After the amendment, the provisions of the recent Act prevailed on the older one. Basically, the Act deals with the basics of rules that how and when pregnancy can be terminated. The amendment has extended the rules and regulations for the abortion. The amendment is another step for a safe and well-being of the women in India. The need of the Act was after the several petitions filed in the court of law for seeking the permission of abortion. In many of the cases, by the time women received the permission to abort; it is too late as per the doctor to abort the child. The lasted amendment opines to broaden the scope of safe abortions for the women in India. The Act also aims to provide dignified, secrecy and autonomous abortion service to the women.

DIFFERENCES IN THE 2021 AMENDMENT

There are many of the differences in the new amendment that are mentioned as the following-

Section 2 of the Act states that: -

"(2) Subject to the provisions of sub-section (4), a pregnancy may be terminated by a registered medical practitioner, —

(a) Where the length of the pregnancy does not exceed twenty weeks, if such medical practitioner is, or

(b) Where the length of the pregnancy exceeds twenty weeks but does not exceed twenty-four weeks in case of such category of woman as may be prescribed by rules made under this Act, if not less than two registered medical practitioners are, of the opinion, formed in good faith, that—

i. The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or

ii. There is a substantial risk that if the child were born, it would suffer from any serious physical or mental abnormality".

The amendment has increased the upper abortion limit from 20 to 24 weeks for a specific group of women. The amendment have given the permission for abortion to " rape survivors, incest victims, and other vulnerable women (such as differently-abled women, minors), among others".

To get the permission of the abortion within 12 weeks of the conceive date, a single doctor's written opinion is required and in the case of 12 to 20 weeks of pregnancy, there are two doctors' written opinion is required.

The bill of 2021, have allowed women certain category of women to go for abortion up to 20 weeks of pregnancy with the written permission of two doctors.

LEGALITY OF TERMINATING PREGNANCY IN INDIA

It is seen that an infant in a women's womb has also the right to life. Hence, it is not allowed for every woman to abort their child. Voluntary terminating a pregnancy deems to be a criminal offence as per the provisions of Indian Penal Code, 1860. However, after the bill it is authorized the women to abort their child after the permission of the doctors on certain grounds. A pregnancy can be terminated up to 12 weeks after getting the opinion of a doctor. Whereas, the pregnancy is of 20 weeks, the permission of two doctors is required. As per the norms of MTPA, 2021 any time, a pregnancy can be aborted when there is a need of saving a life of a woman. It is also permitted to abort the pregnancy where there is a great endanger to the physical or mental health of a woman.

After the permission of the concerned High Court under Article 226 or the Supreme Court of India under Article 32, any women can opt for abortion even after 20 weeks. In the rape cases a woman can seek permission for the abortion after taking permission of the court. The Act also deals with the provisions of vulnerable women, in case of severe foetal abnormalities or critical situations, abortion can be permitted by the court.

SIGNIFICANCE OF THE ACT

There are two types of pregnancy first is wanted and other is unwanted. In the case of wanted pregnancy after 20 weeks where there are severe abnormalities with either the child or the mother, the Act allows the lady to abort the child. As only after 20 weeks of the pregnancy, in the scans fetal abnormalities can be observed. If the medical scan shows and type of defect in the pregnancy, any type of deadly defect in the fetus is allowed to be aborted.

The Act provides permission to the rape victims, underage girls, or sick women to abort their unwanted pregnancy.

In the Act of 1971, unmarried women, whom failed to take oral contraceptive or in cases of failed attempt to use birth control, were not allowed to terminate their unwanted pregnancy. The old provision leads to many of illegal and unsafe termination of pregnancy. The current Act allows unmarried women to terminate their unwanted pregnancies. The Act not only allows terminating unmarried women's pregnancy but also entitled the women to maintain their dignity and privacy.

After observing the case of "**K.S. Puttaswamy v. Union Of India"** stated that reproduction is a personal choice of a person that is guaranteed as per the Article 21 of the Constitution of India, 1950. It was also observed in the case that a woman is entitled for the right to privacy which consists of the pregnancy of a woman.

ROLE OF OF THE MEDICAL BOARD

The medical board that will be formed by the state and union territory administration. The medical board that is formed by the state and union territory administration has the power to decide the seriousness of fetal abnormalities. Only after the permission of the board, a pregnancy can be terminated beyond 24 weeks of the conceive date. The state government has the power to appoint a "gynecologist, pediatrician, radiologist/sinologist and other members to each board".

ISSUES AND CHALLENGES FOR THE IMPLEMENTATION OF MTPA, 2021

Despite of many attempts to the fair and active laws for abortion, still there are many of the issues and challenges that are coming forward.

1. Comprehensive Abortion Care

It is known as CAC, whose definition is "rooted in the belief that women must be able to access high-quality, affordable abortion care in the communities where they live and work". In India, CAC was first time introduced by the IPAS in the year 2000. It refers to the period from conception of the infant to the period of termination of the pregnancy and care and pain management. Even though fifty years has been passed after the introduction of the bill, yet around 56% of the abortions in the country are unsafe and conducted at a very unhygienic places. As per the study of Sneha Kumari and Jugal Kishore "15·6 million abortions (14·1 million–17·3 million) occurred in India in 2015, there were 3·4 million abortions (22%) carried out in health facilities and 11·5 million (73%) abortions were medication abortions done outside of health facilities, and 0·8 million (5%) abortions were done outside of health facilities using methods other than medication abortion".

2. Slow and Late Solutions

There is much liberalization after the introduction of MTPA, 2021 for the abortion of women yet, there are so many problems that are still to be solved by the government when it comes to the implementation of the laws. Taking the experience of "Sonali Kusum, an assistant professor of Law at Tata Institute of Social Sciences (TISS), Mumbai", have questioned the accountability of doctors in the hospitals or the medical board that gives the permission for abortion after 20weeks of the conception.

She quoted that "Although they have extended the time limit, the law does not counter the real problem of women not being able to get the doctor's consent within the due time. It takes anywhere from 2-3 weeks to a month for just one doctor to provide the necessary sanctions," she further quoted that "considering that issue is as sensitive as abortion, the law should have put the onus on the doctors to respond within a clearly stipulated timeframe, preferably in a matter of hours, the law also does not address the situation where the two doctors consulted are of contrasting opinions,"

The major issue of the Act is that women are not getting timely solution for their problems. By the time they receive any reply from the court or board, it is too late for acting any conclusion.

3. Women's Autonomy

The recent amendment claims that it works upon the safe and legal termination of pregnancy. However, the law still prevents women to terminate their pregnancy by their own will. Even after having the right of terminating pregnancy, women have to take the permission of the medical board that takes weeks to answer. Even when the permission of the doctor is not necessary, girls are not able to terminate their pregnancy at their will. By analyzing the interview taken by Media India Group, of Suvidha (name changed) it was seen that even after having the right to terminate the pregnancy, doctors are not allowing her to move for the same. She quoted that "I got pregnant at the age of 23, this year in May while finishing my engineering in a different city than my hometown. I did not know any doctors in that city but, I was aware of the law. It was disappointing to see reputed doctors refusing to terminate, forcing me to bring along my parents and basing their arguments on moral grounds,"

It is seen that even after putting efforts to bring autonomy to the women for aborting the child is still in question. Bringing amendment is a step towards a modern future yet, it is still not visible in the implementation.

4. Underage Girls

It is understandable that any girl who is under the age of 18 year shall not be indulge in any kind of sexual activity. However, in rape cases where a minor girl child gets pregnant and her parents want her to carry the child, what advice or power does the Act is having upon such situation. The Act can give an option to women for getting an abortion but there is no point in the Act that talks about the compulsory abortion. For underage girl child, compulsory termination of pregnancy shall be inserted as even though the parent's forces to carry the child, the state shall not give the permission for the unethical.

5. Lack of Skilled Health Care Facility

It is seen that for terminating pregnancy, there is a need of skillful healthcare centers for safe and hygienic abortion. The MTPA, 2021 provides guidelines for terminating a pregnancy but it does not provide well established health care centers where women can go for the termination of their pregnancy and secure their pregnancy as well. In the rural areas, there is no facility of secure abortion places. There are emergency pills available in the markets, which is a secure way of terminating pregnancy. However, many of the young girls, without the proper knowledge girls take emergency pills with excessive amount. Moreover, in the village area women tries different methods for abortion such as taking herbal medicines, abdominal

massage, insertion of objects in the genitals to kill the fetus. Even after the introduction of the bill, many women still apply these methods which ultimately results in unsafe abortions.

6. Lack of Awareness

Even though the government is making progressive steps for making laws regarding termination of pregnancy, the people are not still aware of the laws regarding abortions. Women often commit suicide with the fear of society of reveling unwanted pregnancies. The scare of being single mother is still a shock in India. Government made laws for the society yet, the common man is not aware of their right to terminate the pregnancy in the due course of time. The hospitals and small clinic do not work as per the legal provisions. Especially in the rural and tribal areas, there is no awareness for the termination of pregnancy, they still adapt for the unsafe methods of abortions.

CONCLUSION

The process of birth is essential for the entire world. However, there are times when a woman does not want to get pregnant and yet is forced by the laws not to abort the child. The Medical Termination of Pregnancy (Amendment) Act, 2021 is a new version of the "Medical Termination of Pregnancy Act, 1971". The Act was approved by the parliament on March 16th, 2021. After the amendment, the provisions of the recent Act prevailed on the older one. Basically, the Act deals with the basics of rules that how and when pregnancy can be terminated. after the bill it is authorized the women to abort their child after the permission of the doctors on certain grounds. A pregnancy can be terminated up to 12 weeks after getting the opinion of a doctor. Whereas, the pregnancy is of 20 weeks, the permission of two doctors is required. Even after the progressive attempts of the government, there are many issues and challenges regarding the amendment for instance, as per the study of Kishore and Jugal, fifty years has been passed after the introduction of the bill, yet around 56% of the abortions in the country are unsafe and conducted at a very unhygienic place. For aborting a child after 20 weeks, there is a need for taking permission of the medical board. By the time, women receive permission, it becomes very late and might become dangerous for the abortion of the fetus and mother as well. Many of the women are not even aware how to contact the medical board which becomes very tough for the termination of pregnancy. Another problem is figured out as the women's autonomy, even after having the right of terminating pregnancy, women have to take the permission of the medical board that takes weeks to answer. Even when the permission of the doctor is not necessary, girls are not able to terminate their pregnancy at their will. It is also quoted that society is not aware about the laws of termination of pregnancy. Many of the women have committed suicide just because of the fear of unwanted pregnancies. If such issues would be solved by the government and society, the efforts of implementing the Act will go waste.

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THE PARLIAMENTARY AND HEALTH SERVICES OMBUDSMAN: SPECIFIC REFERENCE TO HEALTHCARE SERVICES COMPLAINT REDRESSAL IN U.K

Amrapalli Sharma

INTRODUCTION

Ombudsman appeared for the first time in history in the 18th century and had a rapid spread after the Second World War reaching a worldwide recognition. Among the factors on the expansion and gaining importance, there are; "global economic and political crises, the expansion of public bureaucracy due to welfare state practices and the increase in poor practices, positive developments in the order of law and human rights and the transformation of the state through these factors and the restructuring of public administration." As a public agency, the Ombudsman is a complaints-handling body that seeks to eliminate bad administration practises and human rights violations in the bureaucracy. Although the Ombudsman is a Government agency, it has applications in the private sector as well.

STATEMENT OF PROBLEM

The Parliamentary and Health Services Ombudsman is a statutory body in the United Kingdom that oversees complaints regarding maladministration and inefficiency with respect to various Government bodies as well as Healthcare Organizations. The U.K. has been lauded for its Universal Health Care Program. However, it also boasts of a robust complaint redressal mechanism in case of poor or inefficient health services provided to a patient. This task is performed the PHSO. In this paper, we shall discuss the complaints redressal mechanism before the PHSO is detail while delving into the need of an equivalent body in India.

OBJECTIVES OF STUDY

The paper aims to achieve following objectives during the course of research:

- To examine the formative circumstances of the Parliamentary and Health Services Ombudsman.
- To analyse the complaints redressal mechanism before the PHSO in detail.
- To examine the Indian scenario with respect to disposal of grievances related to health care facilities.

HYPOTHESIS

It is hypothesized that the establishment of office of health services Ombudsman has been a positive step in ensuring the Fundamental Right to Health to all the citizens. Thus, establishing an equivalent and specialized Ombudsman would be viable in India.

RESEARCH QUESTIONS

The paper aims to answer following questions during the course of paper:

i. Whether the office of PHSO has enough powers and jurisdiction to discharge his functions efficiently?

ii. Whether the complaints redressal mechanism before the PHSO is efficient?

iii. Whether establishment of a Health services Ombudsman in India is a viable option?

EMERGENCE OF THE INSTITUTION OF OMBUDSMAN IN THE UNITED KINGDOM

The first significant step towards establishment of the office of Ombudsman was taken in 1965 when the Labour Government 1965, presented a White Paper on "The Parliamentary

Commissioner for Administration" to the House; and in February 1966 a formal "Parliamentary Commissioner Bill" was tabled in the House. The Bill was finally approved by the Parliament in 1967 with certain modifications.

The greatest restriction of the British scheme is that the aggrieved citizens are precluded from direct access to the Commissioner; he will receive complaints only from Members of Parliament (MP's) and will report the result of the investigation to them-and, if the injustice has not been remedied by the Government, to the House as well.

THE HEALTH SERVICE OMBUDSMAN

The office of health service Ombudsman was not established until the year 1973. Parliament established three Offices of Ombudsman - one each for England, Scotland and Wales - although all are at present held by one person.

The function of the Ombudsman is to investigate complaints that hardship or injustice has been caused to an individual as a consequence of maladministration, a failure in service or a failure to provide a service which there is a duty to provide. Generally, the major source of dissatisfaction with the system is caused due to lapses in communication either between the staff and the patient or his relatives; or among the staff of the healthcare facilities. It is all the more important to maintain a systematic and transparent communication on the plan of care and the shared understanding of individual duties to be carried out.

Few of the main reasons behind breakdown of the system are:

i. Breakdowns in the super vision of disturbed patients;

ii. Lack of information to carers because of wrong assumptions made by the staff or failure to pass vital information to the colleagues; or

iii. Failure to explain the treatment being given; etc.

The PHSO is there to investigate complaints that people have been treated unfairly or have received poor service from Government departments, other public organisations or the NHS in England. Its service is free and open to every citizen of England. He can make recommendations on how to put things right which could involve acknowledging a mistake, apologising, paying compensation and asking the organization to take action to prevent the same mistake from happening again. The Ombudsman is required to share the information about the work done with the Parliament, as well as the regulators to help improve public services and make the complaint system better. The Ombudsman is accountable only to the parliament while being completely independent of the Government and the NHS.

The Ombudsman is generally the final stage of the complaints system as the complainant is required to approach the local complaints mechanism first.

COMPLAINTS TO THE OMBUDSMAN

Complaints can be made to the PHSO if the NHS or a U.K. Government department has made a mistake or provided a poor service and has not provided a proper response to a citizen’s complaint. The Ombudsman is authorised to look into a complaint regarding any NHS authorized hospital or G.P. Surgery or dental practice along with other Government departments. However, there are certain organizations which are outside the jurisdiction of the PHSO, mainly because they are under the control of some other regulatory authority. These include:

- Members of Parliament
- Healthcare that is not NHS-funded

- Social care
- Local councils
- The police
- Commercial and some contractual issues
- Actions or decisions of judges
- Employment matters.

In circumstances where the Ombudsman is not authorised to investigate the matter, it points the complainant towards the authorised agency to look into the complaint.

Any complaint made by an individual must fulfil the following requirements: -

i. It must be made in writing, and

ii. It must be accompanied by any previous correspondence and evidence to support the matter complained about.

iii. The Ombudsman must be satisfied that the complaint has first been put to the responsible authority, board or trust.

iv. Normally a complaint should be made to the Ombudsman within 12 months of the events at issue, although that time limit can be waived if it seems reasonable to do so.

WHO CAN COMPLAIN

Ideally, the person, who has been directly aggrieved due to the maladministration of the NHS, can approach the Ombudsman. However, here might be instances where the aggrieved person is unable to register his presence before the authorities owing to an underlying mental or physical condition. In such cases, someone else can represent the aggrieved person but only after fully satisfying the Ombudsman that the aggrieved person, if competent to make decisions, is in support of the complaint.

A significant feature of U.K.'s Health Ombudsman's jurisdiction is that even the members of staff can also lodge a complaint with respect to the care provided to a particular patient. The Ombudsman can entertain such complaints on being satisfied that the patient had no one better to be able to represent his grievances. In case of complaints brought to the Ombudsman by the members of the staff, the pre-condition regarding raising the grievance with responsible authority is relaxed. The Ombudsman cannot take cognizance of generalised complaints about levels of service or lack of resources. The complainant must support his complaint against an identified individual with proper evidence.

COMPLAINT MECHANISM

If upon assessment, the Ombudsman decides that there was no failure on the behalf of the organization complained against, or that there was a failure but the organization has already resolved the issue- the same would be explained to the complainant. However, if it finds that the organization has committed a mistake, the Ombudsman may make recommendations to the said organization which include- an explanation, an apology, a payment or any other remedial action. In addition to these, the organization can also be asked to submit a report to the office of the Ombudsman to show what steps has been taken by it to improve from its past conduct.

Generally, it is suggested that the aggrieved should present his complaint to the PHSO as soon as he receives a final response from the organizations he is not happy with. If the complaint is regarding NHS, the maximum time limit for filing a complaint is within one year of when the complainant became aware of the issue complained about. The normal conduct is to not

entertain any complaint beyond the limitation period. However, certain exemptions can be granted after talking to the Ombudsman.

Another major concern that the Ombudsman has before admitting a complaint is whether the complainant has/ had recourse to a legal remedy because according to the law, the Ombudsman cannot look into such complaints that can be solved through the channel of Courts and tribunals. However, certain flexibility can be exercised in this regard too. If it can be seen that there is (or was) a possible legal route to answer the complaint, the Ombudsman will talk to the complainant to get a detailed understanding of his concerns and what he would want to happen. Other factors such as how much it might cost to take legal action, and how long it might take, are also taken into account.

If it looks like legal action would fully answer the concerns, or be able to give the complainant all the results he desires, the Ombudsman may decide in its favour.

MECHANISM IN DETAIL

It is divided into three stages: -

Stage I:

Receipt of Complaint-

On the receipt of a complaint, the authorities run some initial tests like-

- Whether the PHSO has the jurisdiction to look into the organization and the issue complained of;
- Whether the complainant has been through the organisation's own complaints process already.

Generally, the aim is to complete this process within five days of receiving the complaint. If the initial checks show that no further investigations regarding the complaint can be conducted at that time, then the same would be conveyed to the complainant and he is directed to the appropriate authority.

However, if the initial check warrants further investigation, the Ombudsman conveys the same to the complainant which leads to stage II.

Stage II:

Deciding Whether to Investigate into your Complaint-

If the complaint passes the initial checks, the Ombudsman carries a more detailed scrutiny on whether further investigation should be carried out or not. For this purpose, the answers to the following questions are sought:

i. The Complainant-

Whether the complainant has been affected personally or whether he is representing someone else.

ii. Timings-

Whether the complainant made the complaint within the requisite period of time after becoming aware of the issue.

iii. Legal Action-

Whether the complainant has an option to take a legal action.

iv. Jurisdiction-

Whether any other organization is better equipped to deal with the complaint.

v. Action Taken By The Organization Complained Against-

The mistakes alleged to be committed by the said organization and what steps have been taken by it to rectify its errors and respond to the grievances of the complainant.

Generally, the Ombudsman office responds within twenty days after receiving the complaint, as to whether it has decided to investigate into the complaint or not.

After ascertaining the aforementioned questions, the Ombudsman may decide to either carry out an investigation in the complaint or to not move further along. In former scenario, the complainant as well as the organization is made aware of the decision of the Ombudsman, so that the organization has the opportunity to respond to such a proposal. There is also a provision to the effect that if the Ombudsman decides to not look into a certain part of the complaint, the same has to be communicated to the complainant.

In the event of refusal to conduct investigation by the Ombudsman, the Ombudsman is bound to inform the complainant of the reasons and the information on the basis of which such decision was taken. The written copy of the decision has to be sent to the complainant. There is also a provision for the complainant to give feedback and ask for review of the said decision by the authorities.

Stage III:

Investigation-

Ideally, the investigation is sought to be completed within three to six months, however, there might be more complex investigations which might warrant longer period of time. However, such flexibility is an exception and generally, the investigations are completed within the prescribed time- frame.

The Ombudsman commences the investigation by scrutinizing already available information in the form of the complaint as well as the responses of the impugned organization. The Ombudsman may also gather more information through phonetic or face- to- face interviews with the staff of the organization. The staffs at the office of the Ombudsman, who investigate NHS complaints, have a good level of knowledge about the NHS through their training and experience, but are not medically qualified. He may also seek advice from independent, suitably qualified and experienced medical professionals as part of the investigation.

After gathering all the required information, the Ombudsman carries out a detailed evaluation of the same to ascertain what mistakes, if any, were committed by the organization; what was its impact on the complainant or the general public; and whether the organization has taken any steps to rectify its mistakes or not. He also refers to the Principles of Good Administration and Principles of Good Complaint Handling. These set out the expectations from the organisations when they carry out their work and how they should respond when things go wrong.

All this information is instrumental for the Ombudsman to form a provisional view. Within the provisional views, the Ombudsman explains the decision that will be made if no further information is received from either party in the future. This will be to fully uphold, partly uphold or not uphold your complaint.

The following table briefly explains the course of action in each option:

In Case Of Full Upholding Of The Complaint	In Case Of Partial Upholding Of The Complaint	In Case Of Refusal Of Upholding The Complaint
This means that they agree with the complaint. It means that the Ombudsman found that the organisation made mistakes or provided a poor service, and that this has caused the complainant to suffer or affected him in other ways, and that the organisation has not yet put this right.	Sometimes the Ombudsman may find that the organisation did get some things wrong, but not all the things that were complained about. Or the Office might feel that the mistakes that the organization made did not affect the complainant negatively. If this is the case, the Ombudsman might partly uphold the complaint followed by an explanation for doing so.	This means the Ombudsman found that the organisation acted correctly in the first place, or that it did make mistakes but has already done what would be expected from it to put things right for the complainant.

In case the provisional views are partly or fully upheld, the Ombudsman lays out the recommendations that have been decided to be communicated to the erring organization. Generally, the complainant gets two weeks to respond with a feedback or any additional information, after the provisional views have been duly communicated to him.

KINDS OF RECOMMENDATIONS

There is a lot of confusion regarding Ombudsman's functions and powers. The Ombudsman can only recommend the erring organization to make positive changes, he cannot enforce those changes on the behalf of that organization himself.

The following Table lists various kinds of recommendations that can/cannot be made by an Ombudsman:

CAN	CANNOT
Ask the Organization to take action to put things right for the affected person. This could mean getting the organisation to acknowledge its mistakes, render an apology, or pay damages.	Make an organisation: • fire or 'strike off' someone. • pay compensation, in the way that Courts and tribunals can.
Ask an organisation to look again at a decision it has made, but only if it is clear that it made mistakes, acted unfairly, or didn't follow its process when making it.	Make an organisation cancel or change a decision it is entitled to make as part of its responsibilities, or replace its decision with that of Ombudsman's.
Ask an organisation to improve its services to avoid the same things happening again. This can include asking an organisation to review its policies or procedures, guidance or standards.	Make an organisation change its policies or procedures, guidance or standards, or replace these with those of the Ombudsman.

The final stage in the complaints mechanism is the communication of the final decision to both the parties. In certain cases, the Ombudsman may also send a report to the regulator if he requires the latter to keep a check on the action taken by the delinquent organization upon the recommendations.

POWERS

The PHSO derives his powers from the Health Service Commissioners Act 1993, which consolidated the provisions of earlier statutes.

The powers of the Ombudsman for production of document including clinical records, or for summoning any person for giving oral testimony are identical to those of the High Courts. The witnesses have a right to be accompanied by any person of his choice. The person called upon to provide testimony also has the right to be briefly informed about the matter regarding which his testimony is being sought.

The Ombudsman reaches his findings on the balance of probabilities, rather than on the criminal law test of 'beyond reasonable doubt'. He usually upholds around 60% of the grievances accepted by him for investigation. Whenever, an investigation is upheld by him, he generally issues a remedial action which includes giving direction to the NHS authority complained against to- either prepare a clarification of guidance or to issue a reminder or instructions to the staff.

The Ombudsman also keeps a check on the follow up of the action taken in pursuance of his instructions. Generally, the action suggested by him is adhered to because non- adherence of the same can result in an appearance before the Select Committee of Parliament which oversees the work of the Ombudsman.

PUBLICATION OF REPORT

A volume of selected investigation reports is published biannually through HMSO. The main objective behind publication of the report is to delineate the lessons that the NHS could learn from the administrative shortcomings reported in he mentioned cases. While the report maintains secrecy regarding the name of the complainant as well as the individual members of the staff, the same doesn't hold true with respect to the identity of the NHS authority, board, trust or of the hospital in question.

The Ombudsman also publishes an annual report touching upon the key themes and issues, which is submitted to the parliament. The annual reports, coupled with the volumes of selected investigation, are an extensive repository of the experiences of the common man with the health system which must be studied to know how much satisfied individuals are and what problems may arise in the future.

THE INDIAN SCENARIO

Currently, India doesn't have an office of Ombudsman dedicated specially towards handling the complaints of maladministration and poor medical treatment with respect to the health care sector. However, this should not be implied to mean that there is no effective grievance redressal mechanism to complain against the unethical practices and mistreatments at the hands of a registered medical practitioner.

On 8th August 2019, the Central Government enacted the National Medical Commission Act, 2019 so as to constitute a National Medical Commission with the objective to provide an effective grievance redressal mechanism, among other things. The NMC has replaced the erstwhile MCI as there have been many instances of the latter being defunct and incompetent in discharging its duties. Under the 2019 Act, the NMC was formed as an umbrella regulatory body, with some other bodies reporting to it. The NMC has replaced the MCI as India's regulatory body for medical education and practise. States would be required to form their own State Medical Councils within three years under the bill.

All the complaints with regards to a professional or ethical misconduct against a registered medical practitioner are to be directed to the State Medical Council. If the medical professional is dissatisfied with the decision of the SMC, then s/he can file an appeal before the Ethics and Medical Registration Board. The appeal from the decision of the Board lies before the NMC.

Thus it can be seen that there is no equivalent of U.K.'s Health Services Ombudsman in India. The NMC is composed of 25 members who are nominated by the Government, thus leaving a

possibility of bias. In contrast, the office of Ombudsman in U.K. is an independent position which has the freedom to look into variety of medical misconduct. As Right to Health has been laid down as a fundamental right to the citizens in several Supreme Court judgments, a robust mechanism to keep the healthcare system in check is the need of the hour.

CONCLUSION

It can be deduced from the above research that the Parliamentary and Health Service Ombudsman in the United Kingdom plays a vital role in the redressal mechanism with respect to complaints regarding maladministration in the healthcare services. He has been given wide jurisdiction with respect to the organizations as well as the matters he can look into. The complaint lodging system is online and thus complainant friendly. Also, one of the significant and reassuring feature is the involvement of both the parties at almost every stage of the process. It is made imperative on the behalf of Ombudsman that the aggrieved person is kept in loop regarding all the stages at which his complaint is being processed. This instils the confidence in the whole Institution. Recently, there have been efforts in the direction of separating the Healthcare Ombudsman from the office of Parliamentary Ombudsman. India, on the other side, is still novice when it comes to the post of ombudsman and has a long way to go in order to get a concrete understanding of the functioning of the office. However, the Right to Health, being a Fundamental Right of every citizen, calls for establishment of a Health Service Ombudsman on similar lines of U.K.

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9

PRISON ADMINISTRATION IN INDIA WITH SPECIAL EMPHASIS ON PROBATION AND PAROLE

Abhishek Dwivedy

INTRODUCTION

Modern Criminal Jurisprudence recognizes that criminals are not born but made, since when a crime occurs it takes place due to culmination of variety of factors and that a good many crimes are the result of socio-economic milieu. These factors may be social and economic, may be due to erosion of moral values by parental neglect, stress of circumstances or doing a criminal activity in spur of heat of a moment1. So, whenever a criminal activity takes place it's not always that the person so involved had prior intention to commit the crime; thus sentencing such a man to prison term may often embitter him and when he comes out of the prison bars he becomes an enemy of society. Thus, it is absolutely necessary to rekindle him and bring him into mainstream of life. These type of rekindling can be best tried through parole and probation, community service and creative and employment opportunities. Thus probation service is becoming increasingly popular for many reasons, the most important being the economic cost of maintaining offenders in prison.[2]

Probation as a method of correctional service evolved after the criminologists and legal jurists thought of means of reformation to criminals by giving them a chance to prove "their worth" and not confine them to the prison bars. The word "probation" is derived from the latin word "probatus" meaning "tested" or "proved"3. The first Probation officer in this world is said to be JOHN AUGUSTUS, a Boston Cobbler who is regarded as the "Father of Probation" who in 1841 volunteered to assist offenders if the court would release them to his care. As John Augustus was a cobbler operating in and around the courts of Boston, he daily used to watch the court proceedings of the criminals and used to wonder on the alternative methods available for the rectification of criminals other than imprisonment, a method enabling the criminals to rectify their mistakes and lead a normal societal life far away from the dark side of criminal world. John Augustus also had the self-belief that young culprits convicted of criminal offence if sentenced to prison would make them more strong hard and fast criminals by mixing with other old criminals. Thus the entire life of these culprits would be ruined if they are made to stay in jails without giving them a chance to reform themselves or rectify their mistakes. This thinking led John Augustus to formulate the concept of Probation who later in 1841 appealed to the court to voluntarily assist the offenders and lead them to correctional methods if the court would release them to his care.

1. Criminal Justice India Series, West Bengal, 2001, Vol 1, Allied Publishers Pvt.Ltd, New Delhi, p-46
2. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi, p-6-7
3. Ibid

On the contrary what is needed is to treat prisoners therapeutically, so that they may be healed of their criminal activities and become good citizens. To make an offender a non-offender is the purpose of penology. In this background, Probation has a great practical value of socializing the convict and making him a responsible citizen

A compact definition of Probation can be stated as "Probation is a method of treating (correcting) suitably selected offender by releasing him into the community upon certain

conditions prescribed by the court on conviction, before sentencing (offender) generally upon supervision of Probation Officer.[4]

Correctional services like Probation and Parole is also important in the administration of Criminal Justice and in the method of mainstreaming criminals as it is an integral part of the total structure of the punishment system in a contemporary legal world. It also serves as an alternative to imprisonment especially of short-term and has now taken within its purview all the offences except those punishable with death or imprisonment for life. Legal statutes like Probation of Offenders Act, 1958 and the Code of Criminal Procedure, 1973 have made probation a more viable method of dealing with offenders than imprisonment, because the judge is required to record special reasons in the judgement of a criminal case other than capital punishment and imprisonment for life stating why probation is not granted to all the eligible offenders irrespective of their ages.

Probation in the Criminal Justice system postulates a proposition that to a large extent crime is the result of individual pathology- a deviance that can be dealt with through the use of Psycho-social treatment methods. The criminologists who propagate the correctional philosophy of punishment argue that "every saint has a past and every sinner a future". Inspite of these arguments of criminologists, however the basic object of Probation as enlisted in the Probation of Offenders Act, 1958 is the protection of society by preventing the crime through rehabilitation of the offender in the society without curbing his freedom, not subjecting him to rigorous prison life and depriving him of his social and economic obligations. The Supreme Court of India, the apex court of the country has also emphasized the reformatory and rehabilitative aspects of sentencing. Even there are several currents running through the waters of administration of criminal justice in these days and to quote a line from Justice.

4. Dr. Hira Singh, Social Defence (Vision 2020), article available online at http:/www.planningcommission.nic.in/reports/genrep/bkpap2020/21_bg2020.doc. last visited on 16/03/2019.

R.C.Patnaik's judgement in Saradhkar Sahee v State of Orissa [5] "Let not the wind of change pass us without inspiring us".

Correctional services like Probation and Parole is a milestone in the progress of modern liberal trend of reform in the field of penology. It is the result of the recognition of the principle that the purpose of criminology is more to reform the criminal than to punish him[6]. It prevents the turning of offenders into hardened criminal by providing them educative and reformative treatment in the community.

However, the underlying object of Probation and Parole is to stop the conversion of youthful offenders into stubborn criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The system of Probation is in consonance with the present trend in the field of penology according to which efforts should be made to bring about correction and reformation of individual offenders and not to resort to retributive justice.

Prison administration in India is coping up with number of problems since many years i.e. the problems of overcrowding, congestion, increasing proportion of under trial prisoners, inadequacy of prison staff, lack of proper care and treatment of prisoners, lack of health and hygienic facilities, insufficient food and clothing, lack of classification and correctional methods, inefficient vocational training, indifference attitude of jail staff, torture and ill-treatment, insufficient communication etc. Hence, the state of prisons and lockups is a known cause for grave concern. Under trials is one of the category of jail inmates that has been found responsible as one of the important factor behind overcrowding in the jails. They form a major

portion of prison inmates among various types of prisoners. These voiceless people remain in prison pending trial which may or may not lead to conviction. The purpose of keeping under trials in the custody is to ensure fair trial so that they cannot be in a position to influence or induce the witnesses. Long detention of the under trials amounts to violation of human rights. Further this unnecessary detention of under trials causes a number of problems to the other prisoners and to the prison organization as well as discussed above.

"A huge majority of under-trial prisoners are poor. They are denied bail for want of monetary security and thus trials take years. Usually, they have no lawyers, live in pathetic conditions,

5. Saradhkar Sahee v State of Orissa [1985 Cri. L.J., Orissa, p-159]

6. Rattan Lal v State of Punjab [AIR 1965 SC 444, para 11]

they do not have access to adequate medical care, and are likely to be tortured or exploited. The legal aid lawyers and prison officials are also unaware of the existing legal standards many times. The system fails the prisoners at every turn and often times the agencies blame each other for non-performance and unaccountability".

Delay in trial of cases is the paramount human rights issue of under trials. Though all the mechanism, laws and procedures to protect the rights of the prisoners are there i.e. speedy trial system, free legal aid, Lok adalats, investigating agencies, judicial courts, the social institutions or NGOs (like India Vision Foundation), but the problem of over population of prisons due to rising number of undertrial prisoners is still there in creating the stumbling block towards proper implementation of all those mechanisms, laws and procedures.

Criminal Justice Administration

The criminal justice administration is a legacy of the British system. It has four sub- systems. Those being the;

Legislature - Parliament

Enforcement - Police

Adjudication - Courts

Corrections - Prisons

Apart from the Legislation authority, other three are the main functioning agencies for executing the Criminal Justice System in the society. While the police may be organizationally separated from courts and corrections, all other components of criminal justice administration are functionally inter-related. The criminal justice system deals with police, bar, bench and correctional services and hence in aggregative form; all the four sub-systems got a nomenclature of criminal justice administration. However, the success of the Criminal justice system depends on co-ordination among these three wings with one another.

An Indian Penal Code (IPC) defines crime, prescribing appropriate punishments and was adopted in 1860. As a sequel to the IPC, a Code of Criminal Procedure (CrPC) was enacted in 1861 and established the rules to be followed in all stages of investigation, trial and sentencing. This code was repeated and a new code came into effect in 1974. These two codes, along with parts of the Indian Evidence Act, of 1872, form the essence of India's criminal law.

As far as criminal process in case of present study is concerned, it is seen as a screening process in which each successive stage i.e. investigation, arrest, post arrest-investigation, enquiry pending investigation, trial, plea, conviction and punishment involves a series of operations to pass the case towards a successful conclusion.

Chapter-I Origin, Growth and Development of the Probation System

Correctional services like Probation and Parole is an integral part of the total structure of the punishment system in a contemporary legal world. Conceptually, the system of Probation has developed not before the middle of nineteenth century, yet this concept was not unknown in our good old days of ancient Indian civilization.[7] The idea developed more cogently during the latter part of the 19th century and earlier years of 20th century. The origin of the very word Probation is derived from the Latin word "probatus" meaning "tested" or "proved" and the word probation means "I prove my worth". The first Probation officer in this world is said to be JOHN AUGUSTUS, a Boston Cobbler who is regarded as the "Father of Probation" who in 1841 volunteered to assist offenders if the court would release them to his care.

In this chapter the researcher focusses on the growth and development of the Probation system in the administration of the Criminal Justice starting from ancient, colonial and modern period in India as well as in USA and England till the time of John Augustus who is considered the "Father of Probation". The growth of the development of Probation:

ANCIENT PERIOD-

Dr. P.K. Sen, a renowned criminologist in his book Tagore Law Lecture on 'Penology old and new' points out that the idea of releasing an offender after due admonition is not borrowed in India from USA or England[8] but the ancient Hindu Law givers laid down that punishment must be regulated by consideration of the motive and nature of the offence, the time and place, the strength, age, conduct, learning and economic position of the offender and above all, by the fact whether the offence was repeated[9]. All these ideas were envisaged by the Smriti writers as early as 300 B.C. The ancient Smriti writers were aware of the complexities of human nature and duly paid attention to individuality of the offender. The foresights of Smriti writers were remarkable since in their writings there was direct reference.

7. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi, p-6.
8. Sen, P.K., Penology old and new,p-110
9. Supra 12, p-112

of the release of offenders on account of good conduct and integrity of character, which seems to support the modern concept of Probation.

Manu, the ancient law giver in Manusmriti pondered the idea of releasing an offender after gentle admonition[10]. About 2000 years ago, Brihaspati in his Dandabheda Vyavastha referred to admonition as punishment. According to Brahaspati, a gentle admonition should be administered to a man for light offence[11]. Yajnavalkya, laid down that having ascertained the guilt, the place and time, as also the capacity, the age and means of the offender, the punishment should be determined and if possible the man should be released if after putting into observation maintains good character and conduct.

Kautilya, in his Arthashastra advised the king to award punishment which should neither be mild nor severe[12].

In ancient Indian mythology, Vishnu said that King should pardon no one for having offended twice[13]. In Brahmabaibarta Purana, Lord Mahadev pronounced that if people commit offence it is the duty of pious man to forgive him. Even Maurya rulers were in favour of mild punishment. One of the edicts of the emperor Ashoka contains provision for remission of punishment. He advised his officers to examine and reduce punishment awarded to prisoners after due consideration of circumstances which substantially coincides with those mentioned by Smriti

writers[14]. Thus, we found that the philosophy of Probation is not entirely new in Indian Criminal Law and views of our ancient law-givers had support for the modern Probation System.

MEDIEVAL PERIOD-

The administration of Criminal Justice in India during the time of Muslim reign in India up to the advent of British rulers was based on Islamic Criminal Law which did not recognize principles of correctional method or admonition. But we do find traces of principles of probation during Maratha rule and Peshwa period where cases of an offender who committed a crime was not at once awarded punishment but was given a chance to improve himself. The cases include:

10. Sen, P.K., Penology old and new,p-110
11. Das, Shukla , Crime and Punishment in Ancient India, p-57
12. Bhattacharya, Sunil.K, 2000, Juvenile justice-An Indian Scenario, 1st edn., Regency Publication, New Delhi,p- 56
13. Delhi,p-56 17
14. Mandelbaum, David G.,1998, Society in India, Vol-I, Popular Prakashan Ltd, Bombay,p-221

Case of Viswanath Bhatt Patankar[15] - In 1775-76 one Vishwanath Bhatt Patankar was arrested for committing thefts. Since, he was unable to furnish security he was sent to prison. Janardhan Bhatt Bhide, a cousin of Vishwanath Bhatt stood surety for him promising that he would not again commit theft or any other offence.

Case of Janki Lagadin[16] - In 1785-86, one Janki Lagadin was imprisoned at Fort Visapur for charges of adultery. Her father Shivaji Gaikwad prayed for her release. The prayer was granted on his standing as surety for her future good conduct.

The above cited two cases can be said to be the earliest cases of Probation in India.

Colonial Period During The Time Of British Rule-

Although the probation system rooted in ancient Indian Criminology, found its legal recognition for the first time in 1898 in section 562 of the then Criminal Procedure Code (Cr. P.C.- Act XX of 1898). This section was actually taken from the English Probation of First Offenders Act, 1887. Even S.562 was amended by the amendment of CrPC in 1923 which drastically changed the law of Probation in India. The old S.562 did not contain any specific provision empowering High Court as a court of Revision in Probation matters which was granted in new section. Also, under the new section 562 of 1923, a court may grant probation in case of offenders not under the age of 21 years for offences punishable with not more than 7 years and in respect of woman offender below 21 years for offences punishable with death or imprisonment for life. During 1931, the Government of India circulated a proposed draft of Probation of Offender Bills to the then local governments, provinces and princely states for their views. In pursuance of the above suggestion some provinces enacted their own probation laws. The enactments include:

The C.P. & Berar Probation of Offenders‟ Act, 1937.

The Bombay Probation of Offenders‟ Act, 1938 (3) The U.P. First Offenders‟ Act, 1938.

15. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi,p-29
16. Ibid

MODERN PERIOD-

After India attained Independence, a joint committee was set up under the chairmanship of Mr. Hukum Singh17 on the bill to provide for release of offenders on Probation. This bill was presented in front of Lok Sabha on the 25th of February, 1958. The descent views of the Bill were expressed by several members of the Lok Sabha like Rajendra Pratap Singh, Jagdish Awasthi, Yadav Narayan Jadhav,.This bill was finally passed by the Legislature to give shape to an Act called Probation of Offenders‟ Act, 1958 on May 16,1958. The object of the Probation of Offenders‟ Act, 1958 is the protection of society by preventing the crime through rehabilitation of the offender in the society as its useful member without curbing his freedom, subjecting him to rigorous prison life and depriving him of his social and economic obligations. The Act also seems to accomplish this object by replacing punitive approach of punishment with reformatory ones. The Act is also significant in the modern liberal trend of reform in the field of penology. The Act also provides provisions for reformation, social rehabilitation of prisoners, helping prisoners‟ families and in terms of removal of disqualification in employment opportunities[18].

17. Gazette of India, Extraordinary, Part-II, s.37, Dt.11-11-1957.

18. Saini, Kamal, 2000, Police Investigations, 1st edn,, Deep & Deep Publications Pvt Ltd, New Delhi,p-59.

Historical Forerunners of Probation in the Modern Period

JOHN AUGUSTUS- The first Probation Officer in this world is John Augustus who is also regarded as the “Father of Probation”. By profession John Augustus was a cobbler who used to operate in and around the streets of Boston. In 1841 he first volunteered to assist the offender if the court would release them to his care[19]. He first started his work by granting bail to a man charged with being a “common drunkard”. The man was released when he sweared in front of the court that he would never taste intoxicating liquors once he is not prisoned. In this manner Augustus started assisting offenders who came to him seeking relief on account of probation of good conduct, granted by a decree of the Court.

MATHEW DAVANPORT HILL - In Britain Mathaw Davanport Hill was the first person who started the practice of conditional suspension of punishment or Probation[20]. He introduced two elements of probation: (1) lessening of punishment (2) supervision. When Mathew Hill became magistrate in 1841 in Warwickshire Quarter Sessions Court, he suspended even one day jail sentence and used to consider the prior status of the offender.

Chapter-Ii Functioning of the Probation and Parole System in the Administration of Criminal Justice in India

Administration of Criminal Justice is a policy which studies the means by which the volume of harmful conduct in the society can be limited. The subjects of investigation in Criminal Justice includes:

19. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi, p-25

20. Ibid

appropriate measures of social organization whereby harmful activities may be prevented and the treatment to be accorded to those who have caused harm.

However, the last mentioned investigation involves decisions as to which appropriate sanctions can be imposed under Criminal Law, and these range from various degrees of imprisonment down to such measures as probation or mere admonition[21]. Before going through the discussion of the utility of Correctional Services like Probation and Parole in the administration of

Criminal Justice System in India, it is viable that the researcher takes a look at the various reasons for which punishment is inflicted to the offender. The various objects of punishment being:

RETRIBUTIVE

Retributive refers to deserved punishment. The retributionists called it to be the most immediate and animalistic reaction. Often it is found that being dissatisfied with the functioning of law and justice especially of police, people react spontaneously and mercilessly, beat or even kill the criminal apprehended by them[22]. However, a tight crime and justice system on the other hand, can sublimate or suppress this animal feelings aroused.

EXPIATIVE

Expiative is an early and ancient justification of punishment. Earlier, the logic was that a criminal is a source of infection to the society and therefore he deserved to be expiated[23]. The various methods of early expiation that were adopted included stoning to death, putting an iron rod on the back dismemberment of limbs and other severe physical tortures. In Expiation often the criminal is taken as a scape-goat for outletting the outraged feelings created by the offence[24]. However, the penologists are against this form of expiatory punishment. In „ The Universal Declaration of Human Rights", Article 5 it is stated that no one shall be subjected to torture or cruelty or inhuman treatment of punishment. The Universal Covenant on Civil and Political Rights has mentioned in Article 6 that:

- No one shall be deprived of his life arbitrarily
- Death sentence is to be abolished or if allowed should be restricted to some serious crimes

21. Saini, Kamal, 2000, Police Investigations, 1st edn,, Deep & Deep Publications Pvt Ltd, New Delhi,p-153
22. Rajan, V.N.,1995, Victimology in India, 1st edn., Ashish Publishing House, New Delhi,p-502
23. Supra 26, p-504
24. West Bengal Human Rights Commission, 1998-1999 Annual Report, Bhavani Bhavan, Kolkata,p-127.

- There shall be no genocide.
- There shall be right to seek pardon.
- There shall be no death sentence on persons below 18 years or on pregnant woman.[25]

Expiatory sentence in present day world is considered as an act of brutality. Often this type of punishment is an expression of utter internal dissatisfaction and often disproportionate to the crime caused. So, there is the probability of having no rational in the proportion of punishment made to an offence.

DETERRENCE

Punishment is often said to have a deterrent effect on people other than the offenders and it is said that the deterrent aspect of punishment over the non-offenders are more than that of the offenders, so much so, that those who note the offences, are terrified to commit the offence themselves.

However, the deterrent effect of punishment is an observable variable, dependent upon the following six factors:

1) The social structure and set of social values

2) The particular population group.
3) The type of law that the punishment is intended to uphold.
4) The type of severity of the penalty.
5) The degree of certainty of apprehension and punishment.
6) The Individual's understanding of the law and its prescribed penalties as well as his perception of the total situation.[26]

PROTECTION

One of the main objects of punishment is protecting the society from the act of criminals. Most of the philosophy of punishment has been construed on the basis of this thesis. It is believed, that confined within walls, a criminal becomes harmless to the society. The criticism of this theory of punishment being that it has failed to distinguish individual impact on punishment, the psychic pressure of punishment and individual reaction of mass treatment.[27]

25. International Covenant on Civil and Political Rights, Art.6
26. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi,p-15
27. Rajan, V.N.,1995, Victimology in India, 1st edn., Ashish Publishing House, New Delhi,p-87

REFORMATION

The modern attitude to punishment is that it is an individualized treatment process and responses to every individual events of crime. The question therefore is who the offender is and what are his offending phenomenon. Modern criminologists who support the reformatory object of punishment argue that crime is a deviation from a social norm. There are several factors responsible for such deviation, since, when a crime occurs it takes place due to culmination of variety of factors and that a good many crimes are the result of socio-economic milieu. These factors may be social and economic, may be due to erosion of moral values by parental neglect, stress of circumstances or doing a criminal activity in spur of heat of a moment.[28] Reformation and social rehabilitation of criminals are the two important aspects concerning the objectives of punishment in Criminal Justice administration nowadays. These two objectives can best be fulfilled if we effectively try the system of Probation and Parole in Criminal Justice Administration. Indian Government declared 1971 as "Probation Year" in the backdrop of the alarming increase in crime, especially among teenagers and ideological breakers of law. Having regard to the significance of Probation as a potent instrument accepted in all civilized countries for achieving social rehabilitation of the offender and the prevention of recurrence of crime, all serious administrators, judges, jurists, students of criminology and the heads of institutions of social welfare, regard probation as an integral part of social defense and correctional therapy.

The spiritual principle behind probation in the proper functioning of Criminal Justice Administration in India is that "All persons are born equal and no man is born a criminal". God after all has made man in his own image. The great truth which inspires the Probation system is that if a criminal is not born but made, and made by socio-economic circumstances, then it is the duty of the society to treat the individual offender to wean him away from the criminal path. Criminologists have taken the view that it is social neglect and domestic stress, not to speak of prison contamination that makes the first offender a die-hard delinquent[29]. With proper opportunities for rehabilitation and incentives to conform to the needs of social behavior, that the society may hope to salvage the fresh men in the field of crime.

FUNCTIONING OF PROBATION AND PAROLE IN CRIMINAL JUSTICE

Correctional services like Probation and Parole in reality is a compromise between the twin objectives of punishment- the protection of the community and the rehabilitation of the criminal. The success of the scheme lies in the achievement of fulfilling these two social objectives. Of course an offender can be corrected into a normal citizen only if he co-operates in the procedure. So, the active and willing co-operation of the offender has to be enlisted by the agencies in charge of the Probation system, viz- the Court, the Probation Officer and the social organization which may sponsor his case[30]. The vigilant watch over the offender's behaviour during the period of Probation thus become important and also his understanding submission to it. For effectiveness, the application of probation and the follow up, demand the probation officer's activist involvement. The major function that the Probation Officer undertakes include:

28. Criminal Justice India Series, West Bengal, 2001, Vol 1, Allied Publishers Pvt.Ltd, New Delhi, p-46
29. Dr. Hira Singh, Social Defence(Vision 2020), article available online at http:/www.planning commission.nic.in/reports/genrep/bkpap2020/21_bg2020.doc. last visited on 16/12/2005.
30. Mandelbaum, David G.,1998, Society in India, Vol-I, Popular Prakashan Ltd, Bombay, p-82

- Making preliminary investigation.
- Making post-conviction supervision.
- Making friendly behaviour and kind disposition must win co-operation of the delinquent's companions, family and social organization.

The major significance of a person being released on probation compared with a person who has been released from prison is that the social stigma attached to the crime does not remain any longer i.e. the removal of disqualification attached to the conviction. This is guaranteed under S.12 of the Probation of Offenders‟ Act, 1958[31]. Thus, a person released on probation does not suffer disqualification in terms of contesting elections, getting employment either in the private or governmental sector.

Functioning of Correctional Services in the State of West Bengal for Juveniles.

West Bengal had Children Act, 1922 and a Borstal Schools Act of 1928 as also the Central Reformatory Schools Act of 1897. At Behrampur, the headquarter of the district of Murshidabad, there was a Borstal as well as an Industrial School. W.B. also had a reformatory home at Hazaribagh in Bihar. Under Children Act, 1922 Calcutta (now Kolkata) had a children's court where the final trial of juveniles within its jurisdiction was held, but, the juvenile adolescent offenders were produced for the first time in the Magistrate Court, as a result of which the juveniles were kept in the prison instead of Correctional Home[32].

Voluntary agencies working in the state towards juvenile justice administration included:

- Society for Protection of Children in India.
- The Bengal After Care Association.
- The Salvation Army.

30. Mandelbaum, David G.,1998, Society in India, Vol-I, Popular Prakashan Ltd, Bombay, p-82
31. Section 12 of the Probation Of Offenders‟ Act reads: "Notwithstanding anything cntained in any other law, a person found guilty of an offence and dealt with under provision of

Section 3 or Section 4 shall not suffer disqualification, if any attached to the conviction of an offence under such law."

32. Bhattacharya, Sunil.K, 2000, Juvenile justice-An Indian Scenario, 1st edn., Regency Publication, New Delhi, p-155.

After the passing of the West Bengal Children Act, 1959, the previous acts governing juvenile justice administration was repealed. Lately in the year 2000 came „ The New Juvenile Justice Act, 2000". This new Juvenile Justice Act came into force with effect from April 1, 2001. Under S.4 of the said act the whole of the state of West Bengal has been divided into two divisions – South Bengal and North Bengal each having two juvenile justice boards- one at Calcutta and the other at the district headquarter of Malda.[33]

The New Juvenile Justice Act, 2000 categorically also provided that 2 Probation Officers will act for the entire state of West Bengal. The state governmentt is also deeply concerned about the consequent increase of children caught in criminal activities, extending the due purview of the Juvenile Justice Act, 2000 towards all delinquents" up to the age of 18 years[34]. West.Bengal directorate of social welfare has under its control many juvenile homes, a juvenile justice court also runs at the „Office of the additional director of Social Welfare" in Salt Lake.

Chapter-Iii Legal Analysis of Probation and Parole as Means of Mainstraiming Criminals in India

The main statute that governs the system of Probation and Parole in India is the „Probation of Offenders Act, 1958". Imprisonment has become the usual mode of punishment in almost all communities of the world because people believe that almost all purposes of punishment would be satisfied by imprisoning the offenders. But, the Probation of Offenders Act differs from this traditional view. This act is meant for the purpose that prisoners can be reformed by subjecting them to correctional techniques in the prison. Still, many criminologists does not believe in the efficacy of the prison system in reforming hardened criminals. Hardened criminals stand out as a separate category not amenable to rehabilitation and it is always this category which plays the role of converting many ordinary new criminal into hard-core criminals.[35]

Thus, if the ordinary criminals who have not adopted crime as a way of life are kept out of the reach of these hardened criminals; chances for their becoming criminals can be lessened[36].

The probation system believes in the philosophy that ordinary criminals who are below 21 years of age when their conduct and character are malleable may develop a tendency to follow the path of crime if they are allowed to be in contact with the prison system. In case if correctional treatments are applied on them ,there is every chance for them to come back to the normal ways of life[37]. Probation is also governed by S.360 of the Criminal Procedure Code(Cr.P.C.),1973[38]. The apex court of India- Supreme Court,New Delhi has also given important judgements.

33. Criminal Justice India Series, West Bengal, 2001, Vol 1, Allied Publishers Pvt.Ltd, New Delhi, p-230

34. Ibid.

35. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi,p-110

36. Saini, Kamal, 2000, Police Investigations, 1st edn,, Deep & Deep Publications Pvt Ltd, New Delhi,p-45

37. Supra 38, p-111

38. Section 360 Cr.P.C. states the following provision on Probation " Order to release on probation of good conduct and admonition"

In Divisional Officer v T.R.Chellappan[39], the Supreme Court ruled that " the order of release on probation is merely in substitution of the sentence to be imposed by the Court and that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation" The cases disposed of in the above case involved statutory provisions incorporating the principles underlying the proviso(a) to Article 311(2) of the Constitution of India to the effect that if a person has been convicted on criminal charge the disciplinary authority may consider the circumstances and make such orders thereon as it deemed fit.

A Ruling of Supreme Court on S.12 of the Probation of Offenders' Act, 1958-

The Supreme Court has gone further and ruled that S.12 of the Probation of Offenders‟ Act, 1958[40] does not obliterate the stigma of conviction[41]. But apparently to overrule the decision of the High Courts in Divisional Officer v T.R.Chellappan[42] , the apex court reasoned "A perusal of the provisions of the Probation of Offenders‟ Act, 1958, clearly shows the mere fact that the accused is released on probation does not obliterate the stigma of conviction"

Chapter-Iv Effectiveness of Probation and Parole as Better Alternative for Imprisonment and Social Rehabilitation of Prisoners

The problem of social rehabilitation of prisoners is, with the passing of years, assuming larger dimensions in almost every country of the world. This is so because the moral consciousness of human being is more actively manifest in the anxiousness of the society to secure the redemption and rehabilitation of those who by committing less serious offence, have strayed away for the time being from the normal walks of social life. The main aim of social rehabilitation of prisoners can be achieved by any of the following ways:

Parole (II) After- care of released prisoners

PAROLE

Parole is a form of conditional release granted to the prisoners after they have served a portion of their sentences. The conditional release involves a service which includes the control, assistance, and guidance the offenders need as they serve the remainder of their sentences within the free community[43].

39. Divisional Officer v T.R.Chellappan [1976 3 SCC 191]

40. Section 12 of the Probation Of Offenders‟ Act reads:

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under provision of Section 3 or Section 4 shall not suffer disqualification, if any attached to the conviction of an offence under such law."

41. Bakshi Ram case [AIR 1990 SC 1013]

42. Supra 42, p-197

43. Chakrabarti, Nirmal Kanti,1999, Probation Services in the Administration of Criminal Justice, 1st edn., Deep & Deep Publication Pvt. Ltd, New Delhi,p-126

Parole is related to but somewhat different from probation. Like probation, parole also ideally includes treatment in the form of supervision, guidance, and assistance. But while in the case of probation the suspension of sentence is made at the court level without the offender having served any part of the sentence in penal confinement while on the other hand, parole is granted by an executive board or the institution itself only after a prisoner has served a portion of his sentence[44].

AFTER- CARE OF RELEASED PRISONERS

After-care of released prisoners is one of the most effective means to look after the financial and family burden of the prisoners in terms of providing vocational training for creating

employment opportunities of the prisoner and their families[45]. This constitutes one of the most important integral part of correctional programmes of prisoners, since immediately after release from prison an offender has to confront with a lot of social and personal problems, such as loss of family contacts, lack of suitable employment opportunities, and social stigma of prison sentence. It is for the solution of these problems that a discharged offender needs the society's help, care, sympathy and solace. The significance of after-care help being without the provision. For these services, a prisoner in all probability, will find no other alternative and to revert back to the crime.

Despite the usefulness of after-care services, there has been very little progress in this major area of correctional services in India. Some sporadic efforts to render a part of the service to the released offenders have, however, been made in some of the states. Yet, the actual after- care work that has been done so far in this country, falls far from the short of the requirements. Lack of funds, ignorance of the psychological and economic basis of crimes, and general apathy are the major factors standing in the way.

CONCLUSION

The release on probation of good conduct without supervision of probation officer is unjustified and undesirable for it defies the very definition of probation according to which it means conditional suspension of sentence. The violation of conditions of probation leads to its revocation and imposition of the suspended sentence. It implies that there must be someone to watch and ensure the compliance of conditions by the probationers. When there is no one to enforce these conditions, practically it means there is no condition. This is so even in the absence of strong public protest, court supervision or any other controlling authority which can detect and report violence to the court. The Probation system cannot produce expected advantages unless we have a much larger number of courts with time and skill at their disposal. A large number of criminal courts at block and municipal levels to deal with the simpler run of first offender cases can be set up, skimming of the lighter species and leaving the toughest type of cases to the regular, salaried magistrates, leading local men and women with balance and poise, doctors, social workers, professors and workers in Firms and Factories with aptitude and responsibility, may be hand- picked and benches constituted to reflect a variety of experience and talent. This scheme will diversify and strengthen the judicial system, quicken the pace of disposal and involve the community in the social side of the administration of justice. This step will also harmonize the spirit of Article 40 of the Constitution of India[46].

44. Rajan, V.N.,1995, Victimology in India, 1st edn., Ashish Publishing House, New Delhi,p-264

45. Rajan, V.N.,1995, Victimology in India, 1st edn., Ashish Publishing House, New Delhi,p-324

Real realization of the cherished goals of correctional law do call for the close co-operation and co-ordination among all the agencies concerned with the working of probation which is sadly missing for the time being. An honest endeavour in this respect is a crying need of the time, so that the non-institutional treatment cum case disposition method of release on probation of good conduct is put in its proper perspective and modern reformatory object of criminal justice is achieved in letter and spirit, and also the noble wishes of the makers of the act.

46. Article 40 of the Constitution of India deals with „ Organisation of village panchayats": It states that the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

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10

ENVIRONMENTAL SUSTAINABILITY IN THE FASHION AND TEXTILE INDUSTRY: A CRITICAL ANALYSIS OF ECOLOGICAL COMPONENTS AND INTERNATIONAL LEGAL

Farah Hayat

ABSTRACT

The fashion industry is one of the most polluting industries in the world, with significant environmental impacts. The production of clothes involves the use of a large amount of natural resources, such as water, land, and energy. The use of synthetic fabrics and chemicals in the production process further contributes to the degradation of the environment. Textile dyeing is also a significant source of water pollution, with toxic chemicals released into water bodies. The transportation of garments across the world has a significant carbon footprint, contributing to greenhouse gas emissions and climate change. Additionally, the fast fashion trend encourages consumers to purchase cheap, low-quality clothing, leading to a throwaway culture that generates massive amounts of waste. While the adverse effect of the aviation and shipping industry or agriculture have always been highlighted at the international fora, especially by the United Nations (hereinafter referred to as UN), ever since the establishment of the United Nations Framework Convention on Climate Change (hereinafter referred to as UNFCCC) in 1992, but a comprehensive discussion on the harmful effects of fashion and textile industry on the environment largely remained out of focus. It was only in 2018 that for the first time, the Fashion Industry Charter for Climate Action under the auspices of the United Nations Climate Change which contains the vision to achieve net-zero emissions by 2050 was created. This chapter is a detailed discussion on the different types of textiles and how their production and short term use as part of the fast fashion and online shopping culture is hugely adding to the carbon footprint and green house gas emissions. This chapter has also tried to explore the emerging concept of 'biocouture', steps that are being taken by fashion brands to produce sustainably, examination of the evolution of international law committed to reduce the impact of fashion and textile industry on the environment, followed by certain suggestions.

Keywords: sustainability, fashion industry, environment, pollution, international legal framework

1. INTRODUCTION

Fashion industry is among the most global industries for the reason that most nations produce clothing components not only for domestic consumption but for the entire international textile and apparel market. The textile industry provides more employment opportunities for people than any other business segment. In recent years, technological advances in production, societal changes in wealth, growth due to globalization, and market changes at the retail level have increased its ecological impact.

When one thinks about the primary polluters of the environment, the aviation industry and the shipping industry come to mind, but the reality is that the fashion industry consumes more energy than both aviation and shipping industry combined. Fashion industry is actually the second highest pollution causing industry after agriculture but most consumers are unaware that the clothes that they wear are a major cause of environmental degradation. Rather through extensive marketing, fast fashion is promoted amongst the masses. Mindless scrolling through websites such as Amazon, Myntra, Flipkart to name a few, during free time has become a habit for most people which results in frequent online purchases, most of the times of clothes that may not even be required. Through complex algorithms designed and used by Applications such

as Instagram and Facebook, this tendency of excessive online shopping is further perpetuated and a massive rise was seen in this during the COVID-19 Pandemic. This is good for businesses but bad for the environment.

The fashion industry is a significant contributor to environmental pollution and has a significant impact on the planet. It accounts for around 10% of greenhouse gas emissions. According to World Bank estimates, globally 20% of all water pollution is created during the runoff processes of textile dyeing and rinsing of natural (mostly cotton) fabrics. This estimate does not include the other two main processes in natural fiber treatment: mercerizing (dipping the fibers in a hydrogen peroxide bath to make them more pliable) and bleaching.

The production of textiles, especially cotton, is a major source of water pollution. The use of pesticides and fertilizers in cotton production, as well as the large amount of water required for growing and processing the crop, can contaminate water sources and harm wildlife. The production of textiles and dyes involves the use of a variety of chemicals, many of which are toxic and can harm the environment. These chemicals can leach into water sources, harm wildlife, and have negative impacts on human health.

The fast fashion industry produces a large amount of waste, with clothing often being thrown away after only a few wears. This contributes to landfills and the release of greenhouse gases as the clothing decomposes. The production of textiles and clothing requires large amounts of energy, leading to the release of significant amounts of carbon dioxide and other greenhouse gases into the atmosphere. Synthetic fabrics such as polyester, nylon, and acrylic are a major source of microfiber pollution. When these fabrics are washed, tiny microfibers are released into the water and can end up in the ocean, where they are ingested by marine life and can harm the environment.

This is just the tip of the iceberg. The fashion industry is ever growing and ever changing. This means that the challenges it poses to the environment also do not remain constant. A number of fashion brands have taken concrete steps to promote sustainability and reduce the adverse impact of textile production and over-consumption which have been discussed in this chapter. But considering the vastness of the consumer base of fashion industry, it will require change in the consumption patterns of consumers to bring actual change.

2. The Environmental Impact of Fabric Production: Pollution and Natural Resource Depletion

The production of different types of fabrics such as cotton, wool and especially synthetic fibers like polyester and nylon have a significant impact on human health as well as the environment. For example, current trends in active-wear favour the utilization of specially designed manufactured fibers with advanced performance features, as well as a wide range of vibrant colours. Manufactured fibers are “any fiber derived by a process of manufacture from a substance that at any point in the process is not a fiber”. The manufacturing of synthetic fibers and dyes involves extensive consumption of water and causes significant pollution. Workers who handle dyes during the dyeing process may experience skin irritation, chemical burns, and may be at risk of developing lung disease and cancer.

- **Cotton**

The production of cotton has several negative impacts on the environment. Cotton is a water-intensive crop and requires a large amount of water for irrigation, especially in arid regions. This can result in water scarcity for other uses and lead to depletion of water resources. Cotton is heavily sprayed with pesticides to protect the crop from pests, weeds and diseases. This can lead to contamination of soil and water, as well as harm to wildlife and potentially pose risks to human health. Cotton production often involves intensive tilling and plowing, which can lead to soil erosion and degradation. Additionally, the use of fertilizers and pesticides can also lead to

soil contamination and decreased soil health. Cotton production and processing contributes to greenhouse gas emissions through the use of energy-intensive processes, such as spinning, weaving, and dyeing. Cotton production also generates waste in the form of cotton gin waste, which is the remains of the plant after the cotton has been separated from the seeds. This waste can be a source of pollution if not disposed of properly.

Denim is a fabric that is typically made from cotton and has vast market demand but the United Nations estimates that manufacturing a single pair of denim jeans requires a kilogram of cotton and to produce one kilogram of cotton, a considerable amount of water is needed, typically ranging from 7,500 to 10,000 liters. This is due to the fact that cotton is often grown in arid regions. To put this into perspective, this amount of water is equivalent to roughly ten years' worth of drinking water for an individual. Dyeing and finishing denim can be a highly water-intensive process, and the release of untreated wastewater from denim factories can pollute nearby waterways and harm aquatic life. Many chemicals are used in the production of denim, including dyes, bleaches, and finishing agents. If these chemicals are not properly treated and disposed of, they can harm the environment and pose risks to human health. The popular trend of including elastane material in tight-fitting jeans involves using synthetic materials derived from plastic, which makes the resulting clothing less recyclable and increases its overall environmental impact.

- **Polyester**

The most frequently used material in clothing is synthetic polymer polyester, which is derived from petroleum - a non-renewable resource. Essentially, polyester is a type of plastic. The extraction and refining of petroleum to produce the raw materials for polyester production is a fossil fuel-intensive process that contributes to greenhouse gas emissions, air pollution, and climate change. The burning of fossil fuels releases carbon dioxide and other harmful pollutants into the atmosphere, contributing to global warming and climate change. Polyester fibers, which are used to make various types of clothing, require about 70 million barrels of oil per year for production. This material is widely used due to its convenience and practicality, as it is lightweight, durable, and easy to clean. However, despite these advantages, clothing made from polyester has a significantly higher carbon footprint compared to cotton-based clothing. For instance, a polyester shirt produces approximately 5.5kg of carbon dioxide emissions, while a cotton shirt only produces 2.1kg.

Polyester production often involves the use of chemicals such as sulfuric acid, which can pose a threat to the quality of water resources if not properly managed. Spills or leaks of these chemicals into waterways can lead to water pollution and harm aquatic life. Additionally, the discharge of wastewater from polyester production facilities can contain high levels of salts, organic matter, and other contaminants that can have adverse effects on aquatic ecosystems.

Polyester is a type of plastic that can shed micro-plastics when it is washed. Micro-plastics are tiny particles of plastic that are smaller than 5mm in size and can persist in the environment for hundreds of years. These micro-plastics can be harmful to wildlife, as they can be mistaken for food and ingested. They can also enter the food chain and potentially harm human health.

When polyester is discarded, it can take hundreds of years to decompose, leading to the build-up of waste in landfills. This waste can release harmful chemicals into the environment as it breaks down, contaminating soil and groundwater. Landfills also produce methane, a potent greenhouse gas, as organic waste decomposes.

Polyester production is energy-intensive, requiring large amounts of energy to produce the raw materials, heat the chemical reactions, and transport the finished product. The production of polyester contributes to greenhouse gas emissions and climate change through the use of fossil fuels for energy production.

- **Silk**

Silkworm farming is often done on a large scale, and a single outbreak of disease or infestation can quickly spread and cause significant damage to the crop. To prevent this, many farmers use large amounts of pesticides and insecticides to protect their silkworms. These chemicals can persist in the environment for long periods of time and can have toxic effects on wildlife, including birds, fish, and other insects. In addition, exposure to these chemicals by farm workers and nearby communities can be harmful to human health.

Silkworm farming often requires the planting of large amounts of mulberry trees, the primary food source of silkworms. This can lead to deforestation and the destruction of habitats for many wildlife species. In addition, the removal of native vegetation can also have negative impacts on soil quality and water retention, leading to erosion and water pollution.

The process of boiling the silk cocoons to extract the silk fibers generates significant amounts of waste water, which can contain chemical residues and organic matter. This waste water is often dumped into nearby rivers and streams, where it can have negative impacts on aquatic life and the health of nearby communities. In addition, the use of chemicals in silk production can also result in water pollution, as these substances can leach into groundwater and contaminate drinking water sources.

The process of silk production requires large amounts of energy, including for heating the water used in boiling the cocoons, as well as for transportation and processing of raw materials and finished products. The energy consumption associated with silk production contributes to greenhouse gas emissions and can exacerbate climate change.

Many silk producers, particularly in developing countries, rely on low-cost labor, including child labor, to keep production costs low. This can result in poor working conditions, long hours, and low pay for workers, who may also be exposed to hazardous chemicals used in the production process.

- **Linen**

Flax is a water-intensive crop that requires regular watering, especially during the growing season. In areas where water is already scarce, this can put a significant strain on local water resources, particularly if the crop is grown on a large scale. This can lead to water scarcity, which can have far-reaching consequences for local communities and ecosystems.

Flax is often grown using synthetic pesticides and fertilizers, which can have harmful effects on the environment. Pesticides can contaminate soil and water, harming wildlife and other plants in the area. Fertilizers can also contribute to water pollution, as they can run off into nearby rivers and streams. This can have impacts on aquatic life, as well as drinking water for humans and livestock.

Linen production requires a significant amount of energy, from harvesting and transportation to spinning, weaving, and finishing. This energy is often generated from non-renewable sources, such as coal and natural gas, which contributes to greenhouse gas emissions and climate change.

The finishing process for linen often involves the use of chemicals such as bleach, dyes, and formaldehyde, which can be toxic to both the environment and workers. For example, bleach can contaminate water resources if it's not properly disposed of, while dyes can release harmful substances into the air and water. Formaldehyde is a known carcinogen that can cause respiratory problems and other health issues for workers who are exposed to it.

Like any other textile production, linen production generates waste in the form of scraps, off-cuts, and other materials that can be difficult to dispose of in an environmentally friendly manner. This waste can contribute to landfills and other environmental problems, such as litter and plastic pollution.

3. Fast Fashion: What is it and how it's A Major Environmental Issue?

Fast fashion refers to a model of production and consumption in the fashion industry where companies aim to quickly respond to the latest fashion trends by producing large quantities of trendy clothing at a fast pace and low cost. The clothing is typically sold at an affordable price point compared to traditional, higher-end fashion, making it more accessible to a wider range of consumers. This model of production often involves the use of inexpensive, low-quality materials and labor, and relies on a constant stream of new designs and styles to keep consumers interested.

This model of production and consumption has numerous negative environmental and social impacts. The fast pace of production often means that companies cut corners in terms of the materials and chemicals used, leading to the use of harmful substances in the production process. The lower quality of the clothing also means that it has a shorter lifespan, leading to more frequent replacements and contributing to textile waste. Additionally, the reliance on cheap labor, often in developing countries, has led to concerns about worker exploitation and human rights violations in the industry.

Fast fashion has also been criticized for promoting a "throwaway" culture, where clothing is worn a few times and then discarded, contributing to the growing problem of textile waste and further exacerbating the environmental problems associated with the fashion industry. The fast pace of production also means that new styles are constantly being introduced, making it difficult for consumers to keep up and leading to overconsumption and a disregard for the environmental impact of the fashion industry.

One of the key features of fast fashion is its focus on speed, with companies aiming to quickly respond to the latest fashion trends and get new styles into stores as quickly as possible. This often involves reducing the amount of time it takes to design, produce, and distribute clothing, which can result in lower quality and less attention to detail.

Another characteristic of fast fashion is its emphasis on affordability. To keep prices low, companies often use lower-cost materials and production methods, such as outsourcing production to countries with lower labor costs. However, this can result in environmental harm, as many of these production processes can use harmful chemicals, generate significant waste, and harm local communities.

The fast fashion model has also been criticized for contributing to overconsumption and waste. With new styles constantly being introduced and sold at low prices, it encourages consumers to purchase more clothes than they need, and to dispose of them more frequently. This has led to an increase in textile waste, with many clothes ending up in landfills or being incinerated, leading to significant environmental harm.

4. Online Shopping: Friend or Nemesis?

Online shopping can potentially reduce environmental degradation in several ways. First, online shopping reduces the need for individual trips to brick-and-mortar stores, leading to lower emissions from transportation. When people order goods online, the delivery trucks carrying the packages are making fewer individual trips compared to if each person were to drive to a store to purchase the same items. This can result in a significant reduction in emissions from transportation, especially in densely populated areas where there are many stores in close proximity.

Second, online retailers can use technology and data analysis to optimize their supply chains, reducing waste and increasing efficiency. This can include reducing the distance that goods are shipped, using alternative modes of transportation like trains or cargo ships instead of trucks, and reducing the number of intermediaries involved in the supply chain. All of these measures can result in lower emissions and a smaller carbon footprint.

Third, online retailers have the ability to use more environmentally friendly packaging materials and reduce the amount of packaging needed to protect goods during shipping. For example, they can use biodegradable packaging materials, reusable or recyclable packaging, or minimize packaging by using less material or more compact packaging.

Fourth, online retail warehouses and distribution centres can be designed to be more energy-efficient, reducing the carbon footprint of retail operations. This can include the use of renewable energy sources, such as solar or wind power, energy-efficient lighting and heating systems, and efficient energy management systems.

At the same time, it's important to remember that the overall environmental impact of online shopping depends on several factors such as the energy-efficiency of the retailer's warehouses and delivery methods, the distance goods are shipped, and the type of goods being ordered. For example, shipping heavy or bulky items long distances can still result in significant emissions and a large carbon footprint. The more items that are ordered online, the more delivery trucks are needed, which contributes to air pollution and climate change. For example, delivery trucks emit particulate matter, nitrogen oxides, and greenhouse gases such as carbon dioxide.

Moreover, online retailers often use multiple layers of packaging to protect their products during shipment. This leads to an increase in the amount of waste produced and disposed of, as each item may have its own packaging, including plastic bubble wrap, plastic air pillows, and cardboard boxes. In many cases, this packaging is not recyclable, and ends up in landfills or as litter in the environment.

Another issue is that online shopping requires a significant amount of energy to run data centres, warehouses, and delivery trucks. Data centres use a lot of electricity to store and process information, while warehouses use energy for lighting, heating, and cooling.

Furthermore, the production and disposal of electronics used for online shopping, such as computers and smartphones, can result in electronic waste that is harmful to the environment. When electronic devices are discarded, they often end up in landfills where toxic materials, such as lead and cadmium, can leach into the soil and groundwater. This can have negative impacts on both the environment and human health.

Lastly, the demand for new products and packaging materials can lead to deforestation and the destruction of natural habitats. Trees are cut down to make room for crops, or to provide wood for paper products and packaging materials. Deforestation contributes to climate change, as trees absorb carbon dioxide from the atmosphere, and also results in the loss of biodiversity, as animals and plants lose their habitats.

Thus, while online shopping online may result in lower greenhouse gas emissions and a reduced carbon footprint when consumers do not have to make physical trips to retail stores and malls, on the other hand, it does result in a large amount of electronic waste, massive amount of energy consumption and adds to the release of large quantities of carbon dioxide into the environment when delivery agents make multiple trips, free of cost most of the time, to deliver, return or exchange products bought online.

5. Sustainable Fashion: The Biocouture Movement and the Role of Fashion Brands in Manufacturing Environment Friendly Garments

Scientific research on developing sustainable ways and alternatives of textile manufacturing has been rising lately. Kant has endorsed that activated carbon can be used to eliminate effluent, but proposes that a combination of various removal techniques may lead to more effective outcomes. Ratnamala et al. have recommended utilization of red mud, which is a residual substance produced during the manufacturing of alumina. Their research focuses on improving

the absorption capacity of red mud, which is easily accessible, to effectively eliminate Remazol Brilliant Blue dye from water-based solutions.

Many famous fashion brands have taken steps to protect the environment and reduce their impact on the planet. Biocouture is an interdisciplinary field that combines principles from biology, fashion design, materials science, and engineering and make use of living organisms, such as yeast, bacteria, and algae, in the creation of textiles and other wearable materials.

The goal of biocouture is to explore alternative and sustainable ways of producing fashion, which often involves growing living materials in carefully controlled environments and processing them into fibers, fabrics, and other materials. The resulting materials are often unique and have unique properties, such as being biodegradable, self-healing, or photosynthetic.

Biocouture is a relatively new field and is still in its experimental stages, but it has the potential to revolutionize the fashion industry by reducing its environmental impact and offering new opportunities for creativity and innovation. Many popular fashion brands have adopted the biocouture approach as their way forward.

Patagonia is an outdoor clothing brand is known for its commitment to sustainability and environmental protection. They use recycled materials in their products, practice fair labor practices, and support grassroots environmental organizations. Patagonia has launched several initiatives to reduce their impact on the planet. For example, they use 100% organic cotton in their products and have a "Common Threads" program, which encourages customers to repair and reuse their clothing instead of throwing it away. They also offer a "Worn Wear" program, which allows customers to buy and sell used Patagonia clothing.

Levi's has made a commitment to use 100% sustainable cotton in all of its products by 2020 and has launched several initiatives to reduce waste and energy consumption. Such as the Water<Less program, which reduces the amount of water used in the production of their jeans; "Care Tag for Our Planet" program, which encourages customers to wash their jeans less frequently to conserve water; "Closing the Loop" program, which involves using recycled materials in the production of new jeans.

In addition to using more sustainable materials in their products, Nike has launched several initiatives to reduce waste and energy consumption. For example, they have a "Reuse-A-Shoe" program, which collects old athletic shoes and grinds them down to create material for new sports surfaces. They also have a "Green Xchange" program, which allows employees to share ideas and resources to help the company become more sustainable.

Adidas has committed to using only recycled polyester in all of its products by 2024 and has launched several initiatives to reduce waste and energy consumption. They have also established a Parley for the Oceans program, which aims to protect the oceans and their biodiversity. They have a "Process Zero" program, which aims to eliminate waste in their supply chain. They also have a "Better Place" program, which involves working with suppliers to reduce their environmental impact and improve working conditions.

Hennes and Mauritz (hereinafter referred to as H&M), a clothing and fashion company, has taken several steps to protect the climate and promote sustainability in its operations. H&M has committed to becoming 100% circular and climate positive by 2030. In furtherance to fulfill this commitment, H&M has set an ambitious goal to only use sustainable materials in their products and ensure that all waste is reused, recycled or repurposed. To achieve this goal, they are investing in circular economy solutions such as textile recycling, garment-to-garment recycling, and regenerated cellulosic fibers. H&M also collaborates with other companies and organizations to promote circularity across the entire fashion industry.

H&M sources its cotton from more sustainable sources and works with suppliers to reduce the environmental impact of cotton production. This includes promoting sustainable cotton production practices, such as organic farming and water-efficient irrigation methods. H&M also supports the Better Cotton Initiative, which aims to make cotton production more sustainable.

H&M has set a goal to switch to 100% renewable energy in all its operations, including stores, offices, and distribution centers. This includes investing in renewable energy sources such as wind and solar power, as well as increasing energy efficiency in its operations.

H&M recognizes the importance of water stewardship and works to reduce its water usage and improve water stewardship in the communities where it operates. This includes implementing water-saving measures in its production processes, as well as promoting water conservation and protection in its supply chain.

H&M is committed to transparency in its supply chain and regularly publishes sustainability reports to share its progress and challenges with its stakeholders. These reports provide detailed information about H&M's environmental impact, its efforts to reduce that impact, and its progress towards its sustainability goals.

Overall, H&M is taking a comprehensive and multi-faceted approach to protecting the climate and promoting sustainability in its operations. By working to reduce its carbon footprint, minimize its impact on the environment, and promote sustainable practices across its supply chain, H&M is helping to create a more sustainable future for both its customers and the planet.

6. Evolution of International Environmental Law vis-à-vis the Fashion and Textile Industry

In 2018, stakeholders in the fashion industry collaborated with United Nations Climate Change to establish a comprehensive approach to address climate change issues in the broader textile and fashion industry. This effort resulted in the creation of the Fashion Industry Charter for Climate Action, which was unveiled at the COP24 conference in Poland in December 2018 and renewed at the COP26 conference in the United Kingdom in November 2021. The Fashion Charter aims to lead the fashion industry towards achieving net-zero greenhouse gas emissions by 2050, with the goal of keeping global warming below 1.5 degrees Celsius.

The UN further showed its committed to changing the course of fashion, reducing its harmful social, economic, and ecological footprint, and transforming it into a driver of the Sustainable Development Goals' (hereinafter referred to as SDGs) implementation when on July 10, 2018, at the High Level Political Forum on Sustainable Development (hereinafter referred to as HLPF), ten different UN agencies held a side event titled "UN Partnership on Sustainable Fashion and the SDGs" wherein they agreed to set up a UN Alliance on Sustainable Fashion. The President of the Economic and Social Council (hereinafter referred to as ECOSOC), Ms. Marie Chartadová, highlighted the significance of enhancing collaboration and knowledge-sharing, as well as reinforcing connections between ongoing initiatives. The UN Economic Commission for Europe (hereafter referred to as UNECE), which organized the side event, explained how various UN organizations are working on sustainable fashion and how momentum has now built to collaborate on the subject while the UNECE's Executive Secretary, Ms. Olga Algayerova, emphasized the need to "make sustainability the next hot trend" at this moment.

UN Environment took a significant step by choosing to hold the Alliance's inaugural year and officially introduce it during the Environment Assembly in March 2019. The Alliance also seeks to speak with a collective voice to a broader array of stakeholders, including the commercial sector, UN member state governments, Non-governmental organizations, and other pertinent parties. The Executive Director of the UN Office for Partnerships, Mr. Robb Skinner, noted that "greater collaboration will be beneficial to all groups working on challenges relating to the

fashion sector" and working in isolation will not help in accomplishing the SDGs, due to the complexity of the fashion supply chains that run across several underdeveloped, developing and developed countries altogether.

7. CONCLUSION AND SUGGESTIONS

Although there have been some improvements in textile manufacturing processes, it is still necessary to take more proactive measures. Holding corporations accountable for their actions is essential in finding a long-term solution to the issue. Educational institutions can play a significant role in promoting sustainability awareness and social justice among consumers and future professionals. By providing education and knowledge, individuals can be empowered to initiate behavioural changes towards sustainability.

Furthermore, online shopping has a significant impact on the environment and it's important for both individuals and companies to be mindful of this impact. Individuals can reduce their impact by choosing products with minimal packaging, buying from environmentally-friendly companies, and recycling their waste. Companies can reduce their impact by implementing sustainable practices, such as using eco-friendly packaging, reducing energy consumption in their operations, and using clean energy sources. Currently, clothing brands provide on the garment labels the percentage of the different fabrics used in the manufacturing of a certain piece of clothing. Additionally, they may also provide the percentage of the sustainable fabrics used in the manufacturing of the final product to encourage consumers towards buying environment friendly garments.

Lastly, consumers, irrespective of their social status and age group to which they belong, must strive to buy products manufactured in the most sustainable manner and the fast fashion culture should be strongly discouraged. Repetition of same clothes by celebrities and the elite section of the society at different social events should not be mocked upon; rather it should be appreciated and promoted.

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11

RIGHT TO REDACTION OF THE PERSONAL INFORMATION OF THE ACCUSED VIS-A-VIS THE INDIAN CRIMINAL JUSTICE SYSTEM

Farah Hayat

ABSTRACT

Whenever a criminal trial comes to an end, the judgment results either in the acquittal or conviction of the accused. The judgment becomes part of public record as soon as it is published. With the advent and progression of Internet and courts getting more and more technologically advanced, these judgments are published not only in law journals such as All India Reporters (hereinafter referred to as AIR) and Supreme Court Cases (hereinafter referred to as SCC) but also the websites of different courts. Once these judgments are published on the websites, they are almost immediately available on a number of other legal websites, blogs, etc. In all such judgments, the information of the accused, is mentioned and clearly visible which can be easily accessed by the public. This is in consonance with the right to information guaranteed as a Fundamental Right in the Constitution of India which is implicit within right to freedom of speech and expression under Article 19(1) (a). But at the same time, publication of name and personal information of a person accused in a criminal case during trial or even after acquittal, has adverse repercussions for the accused that have yet not gained much attention of legal academicians in India. To study and present these repercussions is the focus of this research. Another important objective of this research has been to examine the legal mechanism with respect to right to redaction of personal data of accused from public records available on the Internet in jurisdictions of some of the most advanced countries of the world with a robust criminal justice system and suggesting the applicability of redaction of personal information as a step in the direction of protection of right to privacy in India.

Keywords: Right to Redaction, Right to Privacy, Right to be Forgotten, Criminal Justice System, Digital Personal Data Protection Bill, 2022

1. INTRODUCTION

Redaction of the name of an accused person from the final judgment is a common practice in many jurisdictions, as it helps to protect the privacy and reputation of the individual. It involves the rubbing off, censoring or obscuring the name, address and any other such detail of a person from the final judgment which otherwise could help the public accessing the data in identification of such a person. This can have significant and lasting negative effects on the individual, including damage to their reputation and potential harm to their employment or personal relationships. If the accused has been acquitted and has been ordered by a competent court to be released if he was in imprisonment during trial, the data of his trial in a criminal case will be available online, reducing his chances of a fresh start in life, personally and professionally, since in the current times, most employers conduct a Google search before short-listing candidates for interview for any job. The mere fact that he was tried for a criminal offence can jeopardize his future prospects of marriage as well.

To mitigate these potential consequences, the practice of redacting the names of accused individuals from final judgments is followed in many jurisdictions worldwide. Some countries have laws or regulations that require redaction in certain circumstances, while in other cases the decision to redact is made at the discretion of the court or a government agency. In the United States, for example, the redaction of names from final judgments is a common practice, especially in criminal cases where the charges against the accused have been dropped or they have been acquitted. Many states in the United States have laws that protect the privacy rights

of individuals, and redaction is often seen as a way to uphold these rights and prevent damage to the individual's reputation.

In Canada, the redaction of names from final judgments is also common practice, particularly in cases involving young offenders or cases where the accused is not convicted. The Canadian legal system places a strong emphasis on protecting the privacy rights of individuals, and redaction is often seen as a way to ensure that these rights are upheld.

Similarly, in many European countries, such as the United Kingdom and Germany, redaction of names from final judgments is a standard practice in order to protect the privacy rights of individuals and prevent harm to their reputation.

However, in India, the law on redaction is at a nascent stage and is more or less limited to the redaction of names of juveniles from court orders and judgments involving a child in conflict with law as per the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as JJ Act) and does not extend to an adult tried under the Indian Penal Code, 1861 (hereinafter referred to as IPC) or any Special Law. Personal records are also made public during the pendency of the trial, obstructing the fairness of investigation, especially in the current times when media trials are so common. These are some important challenges an accused faces during and after trial within the Indian criminal justice system.

2. Right to Redaction- A Facet of Right to Privacy and A Subset of Right to be Forgotten

The right to privacy is a right guaranteed by legal systems of most democratic jurisdictions, either by written law or through legal interpretation by courts. In India, the debate around whether the right to privacy is a fundamental right was a journey that started with the landmark judgment of M. P. Sharma v. Satish Chandra in which the court stated that the Indian Constitution does not recognize the right to privacy as a fundamental right. This decision was made while dealing with the power to search and seize documents. Therefore, according to the court, the concept of privacy is not known to the Constitution of India.

The Kharak Singh v. State of U.P. case dealt with the legality of regulations that allowed authorities to conduct surveillance on suspects. The Supreme Court declared that while there was no fundamental right to privacy, the regulation allowing nighttime visits was unconstitutional as it infringed on people's "personal liberty."

After Kharak Singh, in the case of Gobind v. State of Madhya Pradesh, the Supreme Court recognized the presence of a fundamental right to privacy under Article 21 of the Indian Constitution, marking the first instance where the court acknowledged the Right to privacy as a part of personal liberty in the Indian Constitution.

Finally, in the year 2017, in the landmark judgment of K. S. Puttaswamy v. Union of India, In a unanimous decision, the 9 Judges Bench of the Supreme Court affirmed that the right to privacy was safeguarded by the Indian Constitution as an essential component of the right to life and personal liberty under Article 21.

The "right to be forgotten" is an extension of right to privacy. The technological advancements in the digital domain have made it possible for data to achieve a state of permanence. Any attempt at erasing personal data available on the Internet does not eliminate it completely and the “digital footprints” of data stored online, remains somewhere, in some form, no matter what. Therefore, it is said, “In the digital world preservation is the norm and forgetting a struggle”. Since there is no limit to how much data can be stored on the Internet, it presents itself as a timeless memory which seriously denudes the ability to forget.

The debate around the right to be forgotten as a legally enforceable right created quite a stir when a decision of the Court of Justice of the European Union (hereinafter referred to as CJEU)

in Google Spain SL v. Agencia Española de Protección de Datos (hereinafter referred to as Google Spain) upheld the right to be forgotten of a Spanish citizen, Mario Costeja González. His grievance was that a simple Google search of his name led to links to two different articles by a Spanish newspaper that mentioned his name in regard to a real estate auction connected to an attachment proceeding for the recovery of certain debts, even though the case was fully settled by then. His contention was that the newspaper reports violated his right to privacy. Hence he had filed a case against the company that owned the newspaper, as well as against Google Inc. to get those links erased. The CJEU held that search engines like Google fell within the ambit of the 1995 Data Protection Directive or Directive 95/46/EC (hereinafter referred to as EU Directive) since they fell within the category of data controllers as per the European law. The EU Directive acknowledged the right to be forgotten in recognizing the right of the people to obtain the correction or erasure of any personal information related to them who's processing was against the tenets of the Directive. The Court also stated that an individual's right to privacy was presumed to be over and above the interest that the public may have in accessing that data, unless rebutted.

The Court further stated that a data controller shall be bound to erase any data that is "inadequate, irrelevant or no longer relevant or excessive" and an application has been filed for its removal. Accordingly, the Court ordered the search engine giant Google to erase links of the foreclosure notice in this case. Although in a subsequent judgment in a case filed by Google, the CJEU laid down that the territorial scope of the right to be forgotten, including de-referencing and de-linking by search engines, is restricting to nations within the European Union only.

In this context, right to be forgotten refers to an individual's right to have their personal information removed from online sources when it is no longer necessary or relevant for the purpose for which it was collected. In cases where the right to be forgotten is recognized, individuals may request that online sources remove information about them that is outdated, inaccurate, or that poses a threat to their privacy or reputation. If the request is granted, the online sources must remove the information, including any copies or backups, and may need to redact the information from public records or archives. The right to be forgotten is recognized in the European Union under the General Data Protection Regulation, 2018 (hereinafter referred to as GDPR).

The right to redaction stems from right to be forgotten. While right to be forgotten has a broader scope and application and does not necessarily have to be exercised by an accused in a criminal case but anyone who has justifiable reason to get his personal data removed from online records, right to redaction specifically is about hiding or masking the name of a person who is either undergoing trial or has been acquitted after a criminal trial in a competent court of law from public records. Redaction of the personal details of the accused, such as, name and address from being given out into the media during trial keeps the investigation impartial and does not affect the sanctity of the trial. Whereas, redaction of personal details from judgment acquitting the accused, gives him a new lease on life since his past shall not govern the professional and personal growth and development possibilities in his future.

3. International Practice on Redaction

In the United States, once a person has been acquitted of a crime, their name is typically no longer subject to redaction. This means that their name can be made publicly available and can be reported in the media without restriction. However, there may be exceptions in certain cases where the individual's privacy or safety may still be at risk. In such cases, the judge may continue to order the redaction of the individual's name, or impose other restrictions on the release of information about the case.

Additionally, in some states, laws may provide for the expungement (sealing or destruction) of criminal records for individuals who have been acquitted, to prevent the negative impact of a criminal record on their future prospects. These laws vary by state and the process for expungement can be complex, but the general idea is to protect the individual's privacy and reputation after they have been acquitted. The laws regarding expungement of criminal records for individuals who have been acquitted vary by state in the United States. Some states have laws that allow for the automatic expungement of acquittal records, while others require the individual to petition the court for expungement. In California, individuals who have been acquitted of a crime can petition the court to have their records sealed. The petition must be filed with the court that handled the criminal case, and the process may take several months. In Illinois, the record of an acquittal can be expunged if the individual was acquitted after a trial, or if the charges were dismissed. In New Jersey, the record of an acquittal can be expunged through a court process. The individual must file a petition for expungement with the Superior Court in the county where the acquittal took place. In New York, the record of an acquittal can be sealed after a court process. The individual must file a petition for sealing with the county court where the acquittal took place. In Oregon, the record of an acquittal can be automatically expunged if the individual was acquitted after a trial, or if the charges were dismissed. However, if the charges were dismissed because the individual agreed to enter a diversion program, the record of the acquittal may not be eligible for expungement.

In Canada, the redaction of names of accused persons is a common practice in the criminal justice system to protect the rights of individuals who have been accused of a crime but have not yet been convicted. The redaction of accused names is typically done at the earliest stage of the criminal justice process, such as when charges are laid or when an individual is arrested. This redaction can be done by the police, the courts, or the media. This redaction helps to ensure a fair trial, prevent prejudice against the accused, and protect their privacy rights. However, the redaction of names of accused persons is not absolute. For example, the redaction may be lifted if the accused waives their right to privacy, if the public interest in the case outweighs the interests of the accused, or if the accused is found guilty.

It is also important to note that the redaction of names of accused persons does not necessarily extend to all aspects of a case. For example, the accused' name may be publicly available in court records, in media reports about the case, or in the context of a public hearing.

In Canada, the laws and regulations governing the redaction of accused names are primarily found in the Canadian Charter of Rights and Freedoms, 1982 (hereinafter referred to as CCRF) and various criminal justice laws at the federal and provincial levels.

The Canadian Charter of Rights and Freedoms, which is part of the Constitution of Canada, outlines the rights and freedoms of individuals in Canada, including the right to a fair trial. Section 11(d) of the Charter states that everyone charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing. This section has been interpreted by the courts to mean that the redaction of accused' names is necessary in order to ensure a fair trial and prevent prejudice against the accused.

Other relevant laws and regulations include the Criminal Code of Canada, which governs the criminal justice system in Canada, and the Youth Criminal Justice Act, which applies to young people between the ages of 12 and 17 who are accused of crimes. These laws set out specific provisions relating to the redaction of accused names in the context of criminal proceedings.

It is also important to note that the redaction of accused' names can be subject to different rules and practices in different jurisdictions in Canada, as the administration of justice is a shared responsibility between the federal and provincial governments.

4. Indian Perspective.

The Indian Constitution recognizes the right to privacy as a fundamental right under Article 21, which provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right to privacy includes the right to protect personal information and maintain the reputation of individuals.

4.1 Redaction of Personal Details after Trial has ended

The names of accused individuals may be redacted if they are minors even if they were convicted of committing an offence. In such cases, the names of the accused may not be published or disclosed to the public. But right to redaction does not extend to an adult accused even if he was acquitted when right to privacy is a fundamental right available to all. It is important to note that although right to privacy has been explicitly recognized as a fundamental right, the same legal recognition has not been extended to right to be forgotten or right to redaction.

In the case of Karthich Theodore v. The Registrar General, Madras High Court and Ors. the Madras High Court determined that the right to be forgotten does not apply to court judgments, and there is no legal provision to remove the name of an individual who has been acquitted of all charges. The petitioner had previously been found guilty of violations under Sections 417 and 376 of the Indian Penal Code in 2011, but on appeal, was later acquitted of all charges. However, when someone searches for his name on Google, they can still find the judgment in which he was labeled as an accused, causing harm to his reputation. The petitioner claimed that this violated his fundamental right under Article 21 of the Constitution and asked the court to remove his name from the judgment. The court agreed that the petitioner had made a prima facie case for a violation of his right to privacy under Article 21. However, the court sought the assistance of various members of the Bar to understand the various implications of the issue.

The Court initially believed that the Petitioner had made a prima facie case for relief, but after hearing from various members of the legal community, including an Amicus Curiae, the Court decided that it may not be beneficial for a person to remove their name from a judgment to prove their innocence, especially if other evidence exists in the public domain that pertains to the time when criminal proceedings had commenced and petitioner was undergoing trial.

The Court affirmed that the right to privacy and the right to reputation are both essential parts of Article 21 of the Constitution. However, it also noted that India's legal system adheres to the Open Justice principle, which not only allows individuals to attend court but also grants the public access to court judgments. The Court cited the case of R. Rajagopal v State of Tamil Nadu to support its assertion that once a matter becomes public record, the right to privacy is no longer applicable. The Court also highlighted the fact that judicial orders cannot violate fundamental rights under Part III of the Constitution and that superior courts of justice are not considered State authorities under Article 12. The Court recognized that while judicial orders cannot be removed on the grounds of Article 21 violations, statutory prohibitions are an exception to this rule. Provisions such as Section 228-A IPC, Section 327(3) Criminal Procedure Code, 1973, and Section 23 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) mandate that the identities of rape victims and certain witnesses cannot be revealed. However, these provisions do not apply to accused individuals undergoing trial or eventually acquitted. The only exception is the JJ Act, which mandates the destruction of a child's entire criminal record in certain circumstances. The Court also noted that High Courts are Courts of Record under Article 215 of the Constitution and are authorized to preserve original records indefinitely. Therefore, the Court believes that it is appropriate to wait for the enactment of the Data Protection Act and accompanying rules to establish a uniform standard.

But the Digital Personal Data Protection Bill, 2022 (hereinafter referred to as Digital Bill of 2022) has, on one side, recognized the right to erasure of Data Principal of his personal data, and on the other side, has empowered the Data Fiduciary to "erase the personal data of a Data Principal that is no longer necessary for the purpose for which it was processed **unless retention is necessary for a legal purpose**". The terms "legal purpose" have not been defined or explained in the Bill thus, limiting, almost nullifying, the right to redaction of personal information of an accused from digital public records. Therefore, the Bill can be amended to allow only redacted version of acquittal records to be available for public access.

4.2 Redaction of Personal Details during Trial

While in the Karthich Theodore case, the petitioner sought redaction of his name from order of acquittal, the ambit of redaction should be wider and commence from the very moment an arrest is made till the judgment is pronounced and even after the judgment if it ends in acquittal, especially in case of digital media platforms because television news channels run a news for a few days or weeks perhaps, but what is posted on the internet, remains available practically for an endless amount of time, unless, specifically removed. Moreover, if news has been shared and re-shared the chances of its complete removal are almost zero.

The media may argue that the public has a right to know all of the details of the case, while the accused may argue that redaction is necessary to protect their privacy and ensure a fair trial. But, redaction of personal details of accused does not impinge upon the right to information of the public or freedom of press of the media platforms providing coverage of trial because it does not prevent the media from reporting on the case. However, it does limit the amount of personal information that is made public, which can help to protect the privacy of the accused and ensure that the trial is fair and impartial, especially in the times of media trial. It's necessary to prevent prejudiced investigation against the accused before the trial begins. If the media reports personal details about the accused that may be seen as negative, such as a criminal history or a controversial political affiliation, it's possible that a judge may form opinions about the accused before hearing all of the evidence in court because after all, a judge is also a human being.

Thus, before investigation begins, the decision to redact personal details of the accused from media reports during a trial can be made by the judge overseeing the case. The judge may consider factors such as the nature of the charges, the potential impact of publicity on the accused' right to a fair trial, and the public interest in the case. If the judge decides to redact personal details of the accused from media reports during a trial, the order will typically be communicated to the media outlets covering the case. The media outlets will then be required to comply with the order or face potential legal consequences, such as fines or contempt of court charges.

Overall, the redaction of personal details of the accused from media reports during a trial is an important safeguard that helps to protect the privacy and rights of the accused, as well as ensure a fair and impartial trial. It is significant to note that right to redaction of personal details exercised by accused at the stage of investigation and trial shall be in consonance with the principle of "presumption of innocence until proven guilty" as followed in the adversarial justice system.

5. CONCLUSION AND SUGGESTIONS

Right to redaction is implicit within right to privacy. Not only does it protect the reputation of an accused during trial but also ensures fairness of trial. Further research is still required on whether right to redaction should be available to convicts as well but its applicability to acquitted persons should be undoubtedly part of the Indian criminal justice system. This shall also guarantee the right to be forgotten to accused' whose personal information shall no longer be available for public access online, long after he underwent trial and declared innocent. In the

Karthich Theodore case, the Hon'ble Madras High Court refrained from giving a judgment in favour of the petitioner even after his acquittal due to absence of a statutory provision regarding this in India. This highlights the urgent need for enactment of an appropriate law in this regard that makes provision for redaction of personal details from the judgment of acquittal from public access as well as redaction of personal details of accused during trial. Speedy enactment of such a law is also necessary to reduce cases of media trials.

Accordingly, the researcher has put forward the following suggestions-

- The Digital Bill, 2022 may be amended to include automatic redaction of personal information of accused from court orders available in public domain once he has been acquitted.
- The Digital Bill of 2022 may also be amended to provide right of redaction during trial depending upon the nature of the charges, the potential impact of publicity on the accused' right to a fair trial, and the public interest in the case.

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12

UNDERSTANDING HATE CRIMES AGAINST THE LGBT: A COMPARATIVE STUDY OF INDIA, U.K and USA

Anushka Ukrani

INTRODUCTION

Sanjit Mondal, a 23 years old youth from Kolkata, was picked up by 6-7 policemen and taken to a police-station where he was beaten and harassed. The tied him up, went through his phone, made fun of him and abused him physically and verbally for being gay. He was called a "Chakka", asked if he had a penis, and why he behaves like a girl. He was initially not even allowed to call his family, however later he did manage to contact his family and his sister arranged a lawyer and bailed him out. But he was allowed to go only after a warning to start behaving "like a man". He hasn't been able to tell his parents about the incident, as they wouldn't understand. Mondal described the incident as "harrowing" and that he did not even know his fault. In another such incident, a couple of years back Obhishek Kar, a trans woman was stopped in an alley by two policemen. She was slapped, abused and accused of being a sex-worker. When she tried to report it the next morning, the police officials refused to take her complaints and instead was beaten up by two policemen while everyone else watched. In another incident a mob in manglore, attacked a priest, believing him to be gay

These are not isolated incidents, infact such violence is quite a common occurrence. These incidents truly represent the ordeals of the members of LGBT community and the prejudice they face due to their sexual orientation and gender identity. Despite recent recognition from the supreme court in form of some very progressive judgments, not much has changed for the LGBT community as they continue to face prejudice and lack social acceptance. No democracy would ever encourage violence based on caste, religion, politics or more personal attributes such as sexual orientation and gender identity. It is not just a human rights violation but also disturbs the peace and tranquility in society.

Hate crimes are particularly worse when they target the LGBT as this is a community that already suffers from stigmatisation due to their very sexual identity. Hence, this paper is aimed at: (1) Developing a thorough understanding of Anti-LGBT hate Crimes by discussing its causes, motivation, nature, extent and impact (2) Discussing the position of hate crime laws in India, USA and UK, in order to point out the lack of legal framework for protection against such crimes in India (3) based on the above discussion the paper will attempt to propose relevant reforms for India in this area.

DEFINING HATE CRIMES

The term 'Hate Crime' was coined in 1985, by John Conyers, Barbara Kennelly, and Mario Biaggi and was used in the bill that is now known as Hate Crimes Statistics Act 1990. Though the term maybe recent but what it represents, which is bias-motivated violence or bias crimes, is not a recent phenomenon and has a rather long history. For centuries, Human beings have been targeting other human beings for assaults, injuries and even murder on the basis of certain personal characteristics such as appearance, colour, language, religion and so on.

In India, none of the statutes or precedents have defined the term 'Hate Crime'. However, Black's Law Dictionary defines hate crime as "A crime motivated by the victim's race, color, ethnicity, religion, or national origin" and further states that "certain groups have lobbied to expand the definition by statute to include a crime motivated by the victim's disability, gender, or sexual orientation." Larry Siegel also defines the term on similar lines- "Acts of violence or intimidation designed to terrorize or frighten people considered undesirable because of their

race, religion, ethnic origin, or sexual orientation." The Federal Bureau of Investigation in its Uniform Crime Reporting program defines 'Hate Crimes' as those "criminal offences which are motivated, in whole or in part, by the offender's bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity." In the aforementioned definitions, two words are of prime importance- 'motivation' and 'bias'. Hence, to understand the meaning of Hate crimes, it is important to understand what these two terms mean. Now, according to Oxford learners dictionary, Motivation means "the reason why somebody does something or behaves in a particular way" and Bias as "a strong feeling in favour of or against one group of people, or one side in an argument, often not based on fair judgement." Accordingly, 'Hate Crimes' can be understood as criminal acts driven by prejudice against a person which is based on certain personal characteristics and nothing else. So the perpetrator chooses its victim based on his own personal bias based on one of the characteristics listed above. Thus, In the case of Hate Crimes against the LGBT community, this bias or hatred is based on the victim's gender identity or sexual orientation.

HOW ARE HATE CRIMES DIFFERENT FROM OTHER CRIMES?

Just like other crimes, Hate crimes too require an element of mens rea and acts reus to be fulfilled. However, there are a number of differences between hate crimes and non-hate crimes. Firstly, hate crimes are more likely to be violent in nature than non-hate crimes (84% of hate crimes fall into the category of robbery, assault and sexual assault, whereas only 23% of non-hate crimes are of such nature). Hate crimes are excessively brutal. Secondly, hate crimes are random, senseless criminal acts which are committed by strangers without any logical basis, and thus they are more feared compared to violent acts that have a logical basis. Because these acts are usually committed by strangers against people they have not met before and don't have any connection to, they make anyone a potential target, therefore given rise to people feeling that 'they can be next'. Hence the question arises,

- **Whether hate crimes should be punished differently, than non-hate crimes?** Both UK and USA have prescribed enhanced punishments for hate crime (discussed in detail later), The questions arise whether such punishment is justifiable? In this context fredrick Lawrence believes that hate crime perpetrators should receive harsher sentences than other perpetrators. A society that believes in equality should punish all hate based crimes with enhanced punishments because hate crimes are those that would not have been committed, had it not been for the victim's membership to a particular minority group. The harm caused by these crimes is thus more severe in terms of the emotional and psychological impact (discussed later in detail under the heading of "Impacts"). In addition to it affects not just the victim but also it causes a sense of unease within entire community.

SOCIETAL VIEWS OF LGBT IN INDIA

Historically homosexuality had been criminalised in India under Sec 377 of Indian penal code. Up until its decriminalisation in Navtej Singh Johar v Union Of India, this provision has for long justified the stigmatisation, marginalisation and even abuse of the LGBT community. In a 2016 Youth survey India (participants between the age of 19-34 years), It was found that 61% of the participants felt homosexuality was "wrong", 10% found it "somewhat right", and only 14% found it "right".

The Navtej Singh Johar judgment has had a positive impact on the discourse revolving around sexual and gender identity. A large number of NGOs have been working to sensitise the population about the concept of gender identity and sexuality. However, the LGBTQ community still continues to face stigma and prejudice. For instance, In Manu working in a five star hotel had to quit his job because once his colleagues found out about his sexual orientation they started humiliating him. Even complaining to the manager didn't work because he could do nothing other than telling the employees not to humiliate manu. Similarly even though the

NALSA v Union Of India, SC recognised Transgenders as third gender, and emphasised the need to protect their rights. The Transgender (protection of rights) act 2019, does not comply with supreme court guidelines and fails to guarantee adequate protection to Transgenders. Thus, LGBT community continues to be a target of prejudice, stigma and abuse.

MEASURING ANTI-LGBT HATE CRIMES IN INDIA

In United Kingdoms, the most comprehensive statistical report on hate crimes is prepared for England and Wales based on police records as well as Crime survey in England and Wales (CSEW). The following table is a representation of data from 2011 to 2019 based on police records.

Table 1- No. Of Hate Crimes and Percentage Increase

YEAR	Total no. of hate crimes	Year on year %age increase	Against transgenders	Year on year %age increase	Based on sexual orientation	Year on year %age increase
2011/12	43968		313		4345	
2012/13	43933	-0.07%	364	16%	4241	-2.5%
2013/14	47006	7%	559	53%	4588	8%
2014/15	54868	17%	607	9%	5591	22%
2015/16	65500	19%	858	41%	7194	29%
2016/17	84597	29%	1248	45%	9157	27%
2017/18	100119	18%	1651	32%	11638	27%
2018/19	112637	10%	2333	37%	14491	25%

*Data source Home office

According to this Data which has been released by the Home Office, Hate crimes in UK have almost constantly increased. Hate crimes against the LGBT community have seen an even steeper rise. Particularly, when we focus on long-term increase in the number of hate crimes instead of the year on year increase, the gravity of the situation really comes to light. From 2012 to 2019, hate crimes based on sexual orientation have seen a 233% rise and those against transgenders have seen a 645% rise in just an 8 year span. Now, it has been claimed by the home office that this major rise can be partly attributed to an increase in reporting of these crimes due to increased willingness on part of the victims to come forward as well as improved practices on part of the police. However, this is not true. Looking at the data from CSEW shows that the increase is due to actual rise in the number of such occurrences. It shows a different picture as it relies on different sources. The data is collected from over 55000 households in England and Wales. Based on that, it gives an estimate of the total number of hate crime incidents that may have occurred throughout the year. According to their most recent report over 30000 LGBT people have experienced a hate crime against them in 2018. A study on hate crimes and discrimination against the LGBT community involving over 5000 participants from England, Scotland and Wales released by Stonewall, reveals further how despite changes in the law, LGBT people still are treated far from equals, particularly the transgenders. According to the report 1 in 5 LGBT people and 2 in 5 transgenders have faced some kind of hate crime in the past 12 months.

In USA, the FBI under its Uniform Crime Reporting program prepares the hate crime statistics on an annual basis. The following data from Hate Crime Statistics published from 2011 to 2018 will aptly demonstrate the situation in USA with respect to hate crimes against the LGBT community.

Table 2- No. Of Hate Crimes

Year	Sexual orientation	Transgender	Total
2011	1508	No data	6222
2012	1318	No data	5796
2013	1402	33	5928
2014	1178	109	5479
2015	1219	118	5850
2016	1218	130	6121
2017	1303	131	7175
2018	1404	184	7120

Again the available official data shows the grim reality of how the LGBT community is being treated in society, particular the trans-genders. However, the 2017 report of National Coalition of anti-violence programs has shown a different and in fact worst picture. The report analysed 825 incidents of hate violence, of which 60% are bases on Anti-LGBT bias. So, accurate estimation of the problem at hand remains an issue. UCR data underrepresent the problem on comparison with data from AVP, However, this is still useful as a source of information on general trends, even though in absolute numbers it is not accurate.

Unlike in UK and USA, there is no data collection mechanism in India that records the incidences of hate crimes. National Crime Reports Bureau (NCRB), the government agency which has been tasked with collecting, analysing and reporting crime statistics has been publishing the 'Crime in India' report since 1953, However it does not record cover Hate Crimes. So In order to understand the situation that is persisting in India, media reports and independent Surveys are the only sources that exist. In 2019, Amnesty International India released a report on hate crimes in India based on media sources from 2015 to 2019. According to this report a total of 902 incidents of hate crimes occurred in India out of which 29 were motivated by bias based on sexual orientation and gender Identity. Now, these numbers may not look as worrisome, but this report is largely limited as it primarily relies on media reports and Infact, Aakar Patel, Head of Amnesty International India himself has stated "The data on our website is merely a window to the incidence of alleged hate crimes in India incidents reported are not meant to and cannot provide a comprehensive picture of all the alleged hate crimes that may have occurred." NCRB had collected data regarding hate crimes for its 2017 report, however, this data was not released as it was found to be too unreliable by Ministry of Home affairs." However, an unidentified official stated "t is surprising that this data has not been published. This data was ready and fully compiled and analysed. Only the top brass would know the reason why it has not been published." Thus, the only thing that can be concluded from this discussion is that India completely lacks a data collection mechanism which addresses this category of crimes. The collection of this data is important to enable policy makers in formulating suitable policies to tackle these problems. In addition, in a democratic country such as ours, it is important that people receive this information.

UNDERSTANDING ANTI-LGBT HATE CRIMES

Recent trends have clearly shown, that the judgment in Navtej Singh Johar v Union of India, has decriminalised homosexuality, However, not much has changed for same sex couples in India, in terms of the stigma that they still face. Similarly, NALSA v. Union of India, may have recognised transgenders as 'third gender', the guidelines given by the supreme court remain unimplemented and the transgender population continues to be a constant target of physical and even sexual violence. Clearly, homosexuality is still not socially accepted and there is a lot more required in terms of legal protection. While the paper will discuss the legislative frame-work for the protection of LGBT community at a later point, at this stage it is imperative to discuss the causes, nature and impact of these crimes.

A. Causes and Motivation

There are a number of ways in which Hate crimes against the LGBT community can be explained. In order to under the reason behind commission of hate crimes, it is Important to answer two Questions:

1. Why are Hate crimes committed against LGBT?

Since, we've already established that hate crimes are basically a result of extreme bias or prejudice against a particular community, this section will attempt to provide a social-psychological as well as a structural explanation for such prejudicial attitude against the LGBT against the LGBT.

- **Social Psychological Explanation:** According to this approach criminal behaviour is a learned one which is acquired through social interactions. These theories give several explanations as to why certain people target minorities. Mcdevitt and Levin believed that hate crimes are based on what an individual is taught growing up. Accordingly, perpetrators of hate crimes are socialised in the orthodox and conventional values of the society. For this they build on the, work of Adorno, who in 1950, identified a personality type called the "Authoritarian Personality" characterised by conventionalism, authoritarian submission, authoritarian aggression, anti-intraception, superstition, stereotypy, power, toughness, destructiveness, cynicism, projectivity, and exaggerated concerns over sex. People with severe prejudice towards certain groups that they consider to be weak and unconventional are believed to have this personality type. In 1998, Altmeyer's conception of Right Wing Authoritarianism (RWA) further explored this idea. The idea here is that certain people due to their personal history have an overly submissive orientation towards authority figures, and they strongly conform to conventional societal values, and are prejudiced towards certain minority groups because they view them as deviant and challenging what they consider 'normal'. Research has shown a linkage between authoritarianism and prejudice towards homosexuality, thus confirming Altemeyer's findings. Further, this relationship is both direct and indirect, with gender-role beliefs mediating some of the relationship between authoritarianism and attitudes toward lesbians and gay men, which implies people who show high levels of authoritarianism are prejudiced against homosexuality not just out of their need to mirror authority figures but also because their authoritarianism shapes their gender role beliefs which contributes to their prejudice against the LGBT. Another such theory is the Social Dominance Theory (SDT) which says that those people who desire a higher level of social dominance have a tendency to be more prejudiced towards other groups, considering their 'in-group' to be supreme. Both these theories- SDT and RWA- have been linked to hate crimes against the LGBT population. It has been established that authoritarianism plays a significant part in explaining prejudice towards lesbians and gay men, other than the role played by social dominance orientation and gender role beliefs. Thus, prejudice against homosexuality is a result of multiple ideological contexts- social dominance orientation, the gender belief system, and authoritarian- which help maintain and

develop these beliefs. In conclusion, people with social dominance orientation or authoritarian personality are more likely to have gender role beliefs leading to negative attitudes towards individuals belonging to the LGBT community.

- **Structural Explanation-** Hate crimes against any identity cannot be understood without understanding the structures in society within which they are likely to occur. While emphasising the inadequacy of the Social control theory as well as strain theory (on grounds that it ignores the structural underpinnings of hate crimes) in explaining hate crimes, Barbara Perry formulated the concept of "Doing Difference" to explain hate crimes. She believes that the society is based on certain notions of "Difference" which have be utilised to justify and construct social hierarchies i.e. difference is a social construct. The purpose of difference is to create borders between different categories. It leads to the creation of a dominant norm comprising of characteristics of those with power. Now while this dominant norm is considered ideal, any other way of being is considered deviant. For India, the dominant identity would be that of a brahmin, male, heterosexual, Hindu. These ideas of difference infiltrate society and are thus maintained and are strengthened by its many institutions. One of the most important basis of structural patterns of inequality in society is 'sexuality'. Because historically, there has existed a very traditional notion of masculinity in society, it has created sexual forms/behaviours that are either considered appropriate or inappropriate. Whatever sexual behaviour is outside the ideally accepted norm is considered deviant and is met with stigmatisation and marginalisation. Thus, the process leads to the creation of a dominant group and a subordinate group. The members of the subordinate group sometimes step out of line/place and try to improve their standing in the social hierarchy by emphasising 'what should be'. This tension between the hegemonic and counter-hegemonic actors, leads to hate crimes, in order to suppress the threat to the dominance of the hegemonic group.

Thus, while traditional hegemonic masculinity requires aggression and heterosexuality, it also requires the repression of the challenge represented by homosexuality. Hate crimes against LGBT are a powerful means of maintaining the subordination of this group. Homosexuals are often targeted because of their non-conformity to traditional notions of masculinity. For perpetrators, Violence against LGBT is means to express one's own masculinity as well as to reinforce the masculinist ideology. It can be concluded that the reason behind these acts of hate against the LGBT is the stigma and stereotypes about homosexuality. Members of the community are viewed as a threat to the natural order of things. Their behaviour is seen as challenging traditional and orthodox values and the violence is a means of fighting this threat.

2. Who Commits Hate Crimes Against LGBT and What Motivates Them?

Related to the causation theories discussed above are studies that have provided certain types of perpetrators who are most likely to commit hate crimes. Prior to discussing these types, it must be clarified that there is no single type of person who is most likely to be a hate crime perpetrator. As already noted, there are number of social-psychological and structural causes of hate crimes and in addition, to this there are situational factors at play such as the place, time, alcohol, interpersonal relationships between the victim and the perpetrator and so on. Thus, literally anyone can be a hate crime perpetrator. However a number of studies have revealed a pattern of common traits between hate crime perpetrators.

- **Demographic profiles of homophobic and transphobic hate crime perpetrators:** According to the All Wales Hate Crime Project reported that 100% of transphobic hate crimes and 82% of hate crimes based on sexual orientation were committed by men. Incidents of homophobic hate are 78% of the time carried out by two or more perpetrators. Transphobic hate crimes are however, more likely to carried out by single perpetrators. People who target homosexuals are usually average young men without any criminal record.Another study which was conducted by Karen Franklin on 493 participants revealed

that, a majority of perpetrators on anti-gay violence are young men with most of them being around 18 years old at the time of the incident. Out of the sample of 493, 163 admitted to having indulged in anti-gay behaviour. In Over 50% of the incidents were the act was committed in groups, while in 20% incidents 2 perpetrators were involved And 63% of the victims had no relationship with the offenders. Contrary to this, another study found that very few Hate crimes based on sexual orientation in UK are perpetrated by strangers (Only 15%).

- **Typologies of offenders (Motivations underlying such crimes):** Other than the demographic profiles, a number of studies have laid down 'typologies of hate crime perpetrators' based on their underlying motivation. Beginning with Mcdevitt and Levin since there's has been one of the most prominent research in this area, they have categorised perpetrators into 4 categories based on their motivations:
- **Thrill:** Hate mongers motivated by thrill are merely looking for some fun and excitement at someone else's expense. They are not responding to any invasion in their territory rather they go to outside their localities looking for people that they consider inferior and different. This category accounts for 66% of the offenders. They usually act in groups and most of them participate to gain approval of their friends. LGB are the most frequent targets of thrill seekers since they socialise in particular areas and are thus easy to find. Additionally, they represent a sexual identity that is a threat to traditional masculinity.
- **Defensive:** These types of offenders accounting for 25% of the total are driven by a sense of invasion in their territory. This could mean losing a job, housing or even an affirmative policy of the government. Because they are influenced by the old order of things and are determined to protect it, they view those who are different as a threat. In the past three decades, more and more LGBT people have come out to protest for more inclusive. They have become more visible. However, this inclusion is viewed as a threat by the privileged.
- **Mission offenders:** Accounting for only 1%, this category of offenders believes that they are on a mission to rid the world of evil by disposing off those whom they view as deviant. They view the minorities as sub-humans or even as animals, who are hell bent on destroying their way of life.

Mcdevitt and levin along with Bennett further expanded these typologies by adding a fourth category,

- **Retaliatory:** A lot of times hate crimes occur in response to other hate crimes. Here the respondents feel that someone should pay for the initial hate crime. This category of offenders actually includes the vulnerable groups.

Another important study that needs to be mentioned is the one by Franklin since she specifically focusses on anti-gay violence and hence would be able to give a better picture of hate-crimes against the LGBT. Franklin divides the category of thrill seeking motivation into two parts: Peer dynamics (motivated by desire to feel closer to friends) and Thrill seeking (looking for some fun and excitement). This distinction is important for determining the level of culpability. Offenders from these two categories have no express animosity against homosexuals. There is another important factor:

- **Anti-gay Ideology:** These people demonstrate negative attitudes such as disgust towards homosexuals and that homosexuals spread AIDS. They believe they are justified in their actions as they are responding to the morally deviant behaviour of the homosexuals.

Hate crimes against the LGBT are more likely than other types of hate crimes to be perpetrated by family members of the victims. The above mentioned studies do not capture the intimate

nature of these types of victimisation. Intra-family hate crimes are better aligned with honour-based violence than hate crimes.

- **Honour Based Violence:** LGBT people are viewed as bringing dishonour to their families even by their family members. That is why, Intrafamily hate crimes are driven by the need to protect the family-honour by punishing transgressions in sexuality and gender norms. They are deliberate and strategic in nature and are committed within the household unlike other hate crimes which usually take place in public places.

B. Nature

The Hate offences based on sexual orientation are more likely to be violent in nature than any other type of hate crime. The CSEW survey found that 42% of all such offences against LGB population are violent. Homophobic hate crimes tend to be the most brutal of all hate crimes. They usually also involve an element of humiliation, for instance, the case of Obhishek Kar discussed in the beginning. These hate crimes range from harassment and threatening to actual physical assault and may even extend to homicide. According to the stonewall survey the incidents of hate based on sexual orientation and gender identity involve the following types of offences:

Graph 1: Types of Hate Incidents against Lgbt (In Percentage)

Compared to other hate crimes, research into transphobic hate crimes is fairly scarce. Even CSEW has admitted that the number of hate crimes against transgenders showing up in its survey are so small that they are insufficient to draw any accurate conclusions. However, anecdotal evidence suggests that transgenders are likely to be targets of abuse over 50 times a year. The types of violence faced by transgender community was explored by Rebecca L. Stotzer, where she analysed 49 documented cases of Hate crimes based on gender identity. Her findings are depicted by the following graph,

Graph 2- Types of Hate Incidents against Transgenders (In Percentage)

The above graph shows that hate incidents against Transgenders are more likely to be violent in nature. It can thus be concluded While LGBT as a whole are at risk, transgenders are more likely to be targets of violent crimes than any other category in the group.

C. Impact

Hate crimes that are based on sexual orientation are more likely to cause psychological distress than other forms of hate crimes because here the victim's sexual identity is under attack. Mental health problems are already more prevalent among homosexuals because of the stigma, prejudice and discrimination faced by them, and homophobic hate crimes can further aggravate these issues by causing a sense of insecurity, vulnerability, helplessness and a lack of confidence. Hate crimes have been associated with sucide ideation, sleeplessness, depression, anxiety, and can even cause to victims to restrict their movements and try to conceal their identity. The impact of hate crimes is similar for transgenders too, however, it may be more in cases of transphobic hate because transgenders are more likely to be homeless. Infact, transgender victims of hate crimes are ten times more prone to suicide ideation than any other group. Its impact is worse than other crimes because it not only affects the victim but leaves the entire community feeling vulnerable.

Hence, the severity of impact of hate crimes based on sexual orientation and gender identity is significantly more than other types of hate crimes because LGBT victims are already dealing with stigma due to their sexual/gender identity. In these circumstances law and policy play can play a very significant role.

REPORTING ANTI-LGBT HATE CRIMES

As already discussed the, historical criminalisation of homosexuality, and its resultant over policing by law enforcement agencies, has led to distrust between the LGBT community and the police. This has led to a reluctance on part of victims of homophobic and transphobic crimes to come forward and report incidents of hate against them. The reason most commonly cited by victims of Anti-LGBT crimes is secondary victimisation (i.e. discrimination or maltreatment by criminal justice authorities or other repercussions of 'coming out' publicly). Other reasons include:

- Belief that the incident wasn't really significant and police could not do anything anyways.
- Belief Incident is a personal matter
- Belief that the incident was his/her own fault.
- Took some steps on his/her own to ensure that such incidents does not occur again, and thus doesn't feel the need to report.

Further victims also refrained from reporting incidents of hate crimes because they believed that "it's just something they have to put up with." These fears are well founded as law enforcement agencies have been known, particularly in India to be insensitive towards LGBT. They are intact at times known to be perpetrators of LGBT Hate crimes (Examples of Obhshek Kr and Sanjit Mondal, mentioned at the beginning). A LGBT youth went to the police to complaint against his family for torturing him, instead of recording his complaint they told him that his parents were doing the right thing as he was a homosexual and deserved it. In an initiative by Bidhannagar Police Commissionerate in association with Prathanka, is organising sensitisation training for its personnels with regular sessions. More such initiatives are the need of the hour. Outreach to the LGBT community is important to deal with the issue of non-reporting. Members of LGBT as well as the authorities need to work together to resolve this issue. Since, Non-reporting of hate crime does not just mean that the perpetrator walks away, it also means that we as a society are sending out a message into the world that such hate is acceptable and maybe even appreciable, this problem requires immediate atttention. Better legislations can play a significant role improving victim-police relationship.

Legal Protection from anti-Lgbt Hate Crimes

As already stated, no state would encourage violence as it disturbs public order and tranquility. Secondly hate crimes as explained by Perry are the most severe form of discrimination. Hence, the protection guaranteed against discrimination should be logically extended to these acts as well. lastly, since the severity of the extent, nature and impact have been established, legal protection against such acts is a necessity. Additionally, having their rights ensured will go a long way in improving the relationship of LGBT with law enforcement agencies. In this section, the paper will discuss the legal frame-work of protection against Anti-LGBT hate crimes in India, USA and UK. The rationale behind taking up USA and UK for comparison with India is that both these jurisdictions have quite a comprehensive legislative framework to deal with this issue. More importantly this frame-work has developed over decades in response to major instances of hate motivated violence. Hence, this will not just emphasise the need for legislative action in India but will also be helpful in drawing suggestions as to what kind of policies may be adopted.

Position in India

At present there is no national legislation in India that address the threat of hate crimes. To some extent Sections 153A and 153B of Indian Penal Code 1860, to some extent touch upon the subject but without really specifically referring to hate crimes. Further the protection under these sections does not extend to the LGBT community. The supreme court in Tehseen

Poonawalla v Union of India observed that "Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror….A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings." It also observed that the state is under a constitutional obligation to "foster a secular, pluralistic and multi-culturalistic social order so as to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives." Despite capturing the essence of hate crimes the supreme court while giving directions in this case only focussed on mob lynching wrt cow vigilantism. It failed to recognise individual acts of hate motivated crimes.

Further even though section 18(d) of the Transgender person (protection of rights) Act makes causing harm, injuries or endangering the life, safety, health or well-being, both mental or physical, of a transgender or acts causing physical, sexual, verbal, emotional and economic abuse punishable with imprisonment extending upto 2 years, this is not sufficient or effective. The punishment prescribed by this act is much less than than the punishment prescribed by IPC for similar offences (sexual abuse of a woman under IPC is punishable with maximum punishment being a death sentence, however sexually abusing a transgender under TA is only punishable with a maximum of 2 years). Additionally, even this does not specifically address hate crimes.

In response to the SC guidelines in Tehseen Poonawalla case, only Manipur and Rajasthan have passed Anti-Lynching bills, however these are yet to receive president's assent. Another such bill has been proposed by UP Law Commission and is being considered in Uttar Pradesh. Since, Manipur was the first state to pass such a bill, a critical examination of the bill is necessary.

- **Analysis of Manipur Protection from Mob Violence ordinance, 2018:** The bill is very closely drafted in tune with the guidelines of SC in Tehseen poonawalla case, in the sense that it creates a nodal officer and special courts and even provides enhanced punishments. Section 2(d) provides a very comprehensive definition of 'Lynching'. It includes "any act or series of acts of violence or aiding, abetting such act/acts thereof, whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds." Though it covers all the protected characteristics including sexual orientation and gender identity, thus protecting the LGBT community against mob violence, but it fails to cover solitary hate crimes. Even though we have seen that hate crimes against LGBT are usually undertaken by groups, but there are those also which are committed by a single perpetrator. This restriction of number of perpetrators is arbitrary as what differentiates hate crimes from other crimes is the fact that they are motivated by bias or prejudice. The number of participants is immaterial. Thus, Protection should be afforded against all forms of hate crimes and not just lynching. A very important feature of the act is that it creates a new offence of dereliction of duty for police officers failing to exercise lawful authority to prevent lynching. Such dereliction of duty is punishable by imprisonment extending upto 3 years and fine upto 50000. This is a first of its kind provision in all laws concerning protection of minorities. Lastly, the law imposes a duty on the state to formulate a scheme for establishing relief camps, ensuring rehabilitation in case of displacement and compensation in case of death. however, the law falls short of success in this area, as it fails to provide a more comprehensive framework of gender-sensitive reparation on an atonement model, requiring the state to ensure that the victim of hate violence is assisted to achieve material conditions that are better than what they were before the violence, especially women, children, elderly, disabled and transgenders should be given monthly pensions. But despite these shortcomings, the law has a number of salutary provisions which can be used to build upon by other states and centre to create an even sturdier law to prevent hate crimes.

Position in United Kingdom

The first piece of hate crime legislation in UK came in the form of Crime and Disorder Act 1998 (Hereinafter referred as CDA), in response to the brutal murder of Stephen Lawrence by a group of racially prejudiced people in 1993. However, it only afforded protection against race motivated hate crimes and did not include any other protected characteristics. It wasn't until 2005, that criminal justice act 2003 (hereinafter referred to as CJA) was enacted, that homophobic hate crimes began to be recognised. Section 146 of CJA empowered courts to award enhanced sentences where crime was motivated by prejudice based on victim's sexual orientation. The section requires either hostility or motivation to be proved in offences of homophobia hate. This means motivation (which is anyhow extremely hard to prove in the first place) need not necessarily be proved if there is evidence of hostility. Plus, it requires that hostility towards sexual orientation needs to be only part of the reason for commission of the offence, it can involve other factors too. Similarly, in 2012, schedule 21 of CJA was amended to to apply enhanced sentences for offences that are aggravated by hostility/prejudice on grounds of gender identity, thus bringing transgenders under the protection of section 146 CJA. Even though this act is a significant legislation for development of LGBT rights, it did not create a specific aggravated offence like the CDA does for racial hate crimes. Another significant provision is section 74 of Criminal Justice and Immigration act 2008, which has amended section 3A of public order act 1986 in order to criminalise incitement of hatred based on sexual orientation along with racial/religious hatred. However, the requirements to be fulfilled in order to successfully prosecute for incitement of hatred on grounds of sexual orientation are much higher compared to incitement of hatred on other grounds. Furthermore, the section does note criminalise incitement of hatred on grounds of one's gender identity, thus excluding transgender.

Position in United States of America

The US hate crime laws are a result of the civil rights movement of the 1960s and 1970s, which resulted in the enactment of civil rights act 1968 (Hereinafter referred to as CRA). This act did not directly target hate crimes but was rather meant to protect against the violation of protected rights on the basis of race, colour, religion, or national origin. But it became the statute to punish hate crimes. However, it failed to include sexual orientation or gender identity as protected characteristics, thus leaving out the LGBT.

In 1990, the hate crime statistics act 1985 (hereinafter referred to as HCSA) was enacted the purpose of collecting data on hate crimes based on race, religion, sexual orientation, or ethnicity annually. The act does not prescribe any punishment but rather only requires documentation of hate crimes. Even though it included sexual orientation, it failed to include gender or gender identity. Further it stated "Nothing in this Act shall be construed to promote or encourage homosexuality." It was finally in response to the deaths of James Byrd and Mathew shepherd that Anti-LGBT hate crimes became punishable under federal laws in US.

- **Mathew Shepherd and James byrd, Jr., Hate Crime prevention act 2009:** In 1998, James Byrd, Jr., an African American man, was killed by 3 white men who had offered him a lift. They chained Byrd to the back of a truck and dragged him for 2 miles. The following year, Mathew shepherd, a Gay 21 years old student, was similarly offered a lift, taken to a secluded spot, beaten, tied to a fence, and left for dead. These two incidents led to the enactment of the hate crimes act in 2009. This act created a substantive offence for those acts committed based on animus. The act provides whoever "willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person" is punishable with imprisonment extending upto 10 years, unless death is

caused in which case life imprisonment can be awarded. This act finally amended the HCSA to include collection of hate crimes based on gender identity thus requiring documentation of transphobic hate crimes. The first time transfer hate crimes were covered by UCR was in 2013. The act even goes on to provide enhanced punishment for offences covered under it.

Other than this, there are a number of state legislations that address the issue of Anti-LGBT hate crime. At present there are 23 states and 2 territories in USA that have state legislations enumerating gender identity as well as sexual orientation as protected characteristics. While in 11 states only sexual orientation is recognised as a protected characteristic and 25In 13 states neither of these two characteristics is recognised.

After looking at the framework of legal protection in these three countries, It can be concluded that India is certainly lagging behind. The example of USA and UK clearly shows that even though these legislative action may not have succeeded in completed preventing hate crimes, they have certainly managed to restrict the increase. Now there may be an urge to just pick and apply provisions from these countries, however such an approach may not be suitable. India is very different from USA and UK in terms of its societal structure. While implementing any law these differences have to be kept in view. However, there is nothing wrong in taking inspiration from these commendable statutes, and building on them to create laws and policies that suit India's diversity.

CONCLUSION AND RECOMMENDATIONS

The notion of prejudice against the LGBT is not new. Neither is the concept of hate-motivated violence new. Such prejudice against the LGBT community, as discussed earlier, is a result of conformity to the old order of things. The structure of our society is such that it gives rise to the LGBT being perceived as inferior and subordinate. Because they challenge the traditional norms of masculinity, they are perceived as a threat. However, such intolerance of plurality is not in tune with our constitution or even the most basic principles of human rights. The Indian constitution has, in essence, made a commitment to maintenance of "safety, fairness and fraternity" and this commitment cannot be fulfilled unless hate crimes are condemned. While in India, the framework for legislative protection of all minorities is somewhat weak, it is almost non-existent when it comes to the LGBT. As discussed, due to the lack of remedies and constant ostracism, there is distrust between the LGBT community and the law enforcement agencies. There is no government agency that collects data relating to hate crimes in India. Further there is no union law addressing this issue. From the above discussion of the causes, nature, extent and impacts of hate crimes, it can be concluded that the issue requires urgent attention. Also the comparison between India, UK and USA in terms of their hate crime laws points out the inadequacy of the legislative framework in India. In light of the preceding discussion, the following recommendations are proposed for combating Anti-LGBT Hate crimes in India:

1. Data pertaining to hate crimes should be collected and published by NCRB. Though this data may not be accurate, it is important to explain a general trend. This data will allow evidence based policy-making because as of now policy makers are just working blindly.
2. A national legislation that prescribes enhanced punishment for all hate crimes based on protected characteristics. This is because these crimes cause enhanced harm to the victims as well as the community of the victim. A legislation providing for enhanced punishment, would act as a deterrent factor as has been seen in USA and UK.
3. Such a legislation must not just address mob violence as the supreme court has instructed but also individual acts of hate.
4. This legislation must also focus on the rehabilitation aspect, as victims of these crimes usually belong to poor minority communities. These rehabilitation schemes must address the

mental health needs of the victims along with providing monetary relief. This is because, as discussed, there are severe psychological implications of hate crimes.

5. Police personnels so be sensitised in the concept of sexual orientation and gender identity, so that they are better equipped to address the grievances of LGBT. Community outreach programs should be organised for the LGBT community by law enforcement agencies to foster a healthier relationship. The experience of LGBT with the criminal justice system is usually not pleasant, as has been established. Insensitive and negative attitude of the police makes it difficult for LGBT victims of hate crimes to come forward. This will go a long way in building trust between the LGBT community and the authorities.
6. Finally, during research for this project it was observed that hate crime research concerning LGBT community is extremely scarce in India. Hence, efforts should be made to promote research in various aspects of this issue within the country to inform better policy decisions.

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FROM INTERMEDIARY LIABILITY TO RESPONSIBILITY

Lavanya Bhagra

ABSTRACT

This research paper discusses the evolution of internet intermediary liability theory in India, starting from the landmark case of Ranjit Udeshi v. State of Maharashtra. The case established the strict liability of internet intermediaries in restricting the circulation of obscene material. The paper highlights the changing role of internet intermediaries in India and how they have become an integral part of the online ecosystem. It then analysis the legal framework governing internet intermediaries in India, as the author argue that these laws have put a significant burden on internet intermediaries and have made them responsible for monitoring and filtering user-generated content.

Further the paper discusses the impact of the recent government-ordered blocking of content by internet intermediaries in India. The author reckons that the current system of blocking content lacks transparency and accountability, and the rules for content takedown are vague and arbitrary. This has resulted in the blocking of legitimate content and the violation of freedom of expression.

The paper then concludes that there is a need for internet intermediaries to balance their responsibilities towards free speech and user protection. The legal framework should provide clear guidelines and prevent intermediaries from being held responsible for third-party content thus, a balanced approach is necessary, and the Indian government should revise the legal framework to ensure intermediaries are not overburdened. Intermediaries should adopt transparent content moderation policies to prevent accusations of censorship or bias.

INTRODUCTION

Every once in a while, citizens approach courts demanding that fellow citizens be protected from the corrupting influence of certain kinds of material published online. One such citizen, Kamlesh Vaswani, has asked the Supreme Court of India to require the Indian government to ensure that no online pornography is visible in India. Complying with Mr Vaswani's demand would be impossible without using Internet intermediaries to regulate content. This is because anonymity and the cross-jurisdictional nature of the Internet make it difficult to identify and locate all the people who publish pornography on the internet (especially those in other countries) and make them conform to Indian law. Therefore, the only option before the government is to require Internet intermediaries to ensure that they filter out all pornographic content. This case brings the question of online intermediary liability for obscene content right back to where it all began. Intermediary liability was first acknowledged as a serious issue in India when the judiciary was confronted with Avnish Bajaj v. State also referred to as the 'Bazee.com case', which required it to determine whether an intermediary can be held responsible when it unknowingly and unintentionally facilitates the distribution of obscene content.

By asking for comprehensive removal of pornographic content from the portions of the Internet accessible from India, Vaswani inevitably reopens the Avnish Bajaj question of strict liability for intermediaries.

An intermediary is an internet-based service provider, which provides its users with a platform to upload all and any types of content, ranging from text to videos. Some of the more popular examples of intermediaries would be Facebook, YouTube, Twitter, WordPress and Blogspot. The term 'intermediary' is defined under the Information Technology Act ('IT Act') as follows: " "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers,

web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes".

In India, Intermediaries are accorded a certain level of protection from prosecution for content hosted by them under the Section 79 of the Information Technology Act, and under the much criticized Information Technology (Intermediaries' Guidelines) Rules, 2011 enacted by the Central Government. These rules, which have been highlighted in the following pages, (specifically, Rule 3 (4)) provide for a thirty-six hours notice -and-takedown procedure, under which people can inform intermediary about certain types of actionable content (giver in Rule 3 (2)), and the intermediary is held to be not liable if it is removed within thirty-six hours. Intermediaries are also accorded protections under other legislations such as the Copyright Act.

In 2004, a seventeen years old school boy filmed a sexual act featuring himself and his classmate (also a minor). The video, circulated through mobile phones for some time, eventually ended up listed for sale on Baazee.com. The incident came to be known as the 'DPS MMS 'Scandal'. Baazee.com was a website owned by Ebay, and which much like Ebay, served as an online platform where sellers and buyer could transact. The person who listed the video for sale online was arrested. However, the Managing Director of the company that owned Baazee.com Avnish Bajaj was also arrested. The judgments resulting from his arrest contain the first prominent consideration of intermediary liability by the Indian judiciary. The Avnish Bajaj situation was a classic illustration of the online intermediary liability dilemma. The content under question was exactly the kind of material that ought to be removed from the web immediately. It was circulating swiftly through mobile networks and the Internet. Tracing the many individuals who distribute illegal content using market platforms, email, social networks, peer to peer networks or texting services is very difficult, especially if their numbers are multiplying rapidly. This can be compounded if government agencies find that their target-users are located in other countries that are not subject to the jurisdiction of the national government. User anonymity creates an added layer of difficulty.

Therefore, the legal mechanism focuses not merely on offenders, but also on the middle-man or the intermediary, without whom the wide circulation of this material would not be possible. This is in keeping with the principle that when it is difficult to control offensive conduct through the primary misfeasors, it may become necessary to regulate their conduct through intermediaries. Circulation of the content on the internet is dependent on more than one intermediary. Internet Service Providers such as Hathway, Airtel, and Vodafone help us to physically connect with the Internet. Web-based service providers and platforms such as Gmail, Amazon, Facebook and Wordpress enable us to share content.

STRICT LIABILITY FOR INTERNET INTERMEDIARIES

Although the intermediary liability issue has been discussed extensively in the context of the Internet, the intermediary liability question has gone largely unnoticed for decades in the context of the traditional sale and circulation of books in India. Section 292 of the Indian Penal Code contains intermediary liability: it punishes those who sell, distribute and circulate obscene content. This is similar to the system followed in other countries. However, the law in India is distinct in its application of a strict liability standard to anyone who sells or keeps for sale any obscene object as contemplated under this particular part of the penal code. A bookseller's lack of knowledge that there is obscene content in a particular book that it is circulating may at best be seen as a mitigating factor, but will not exclude liability. The implication of this strict liability standard is that the prosecution does not have to demonstrate that a defendant bookseller had any knowledge of the obscenity of the content of books in her possession. This standard effectively places an obligation on booksellers to check the contents of every book that they sell, to ensure that there are no obscene passages within them. In addition to affecting the volume of books that a bookseller may transact in, zealous implementation of Section 292 would result in risk aversion on the part of booksellers and publishers, and a chilling effect on their willingness to publish books. This would affect authors' access to the public sphere.

RANJIT UDESHI AND THE STRICT LIABILITY REGIME

The construction of third party liability in Section 292 to mean that the third parties are strictly liable has its origins in Ranjit Udeshi. This was a landmark case involving D.H. Lawrence's 'Lady Chatterley's Lover', and is central to any discussion of obscenity law in India. Although the Ranjit Udeshi case has been widely criticised for its application of the Hicklin test, the damage inflicted by its rather outlandish strict liability standard for intermediaries went largely unnoticed. This is a critical judgment not just for the law of obscenity in India, but also for the liability of the intermediaries of obscene content. The Ranjit Udeshi judgment did not confine itself to the question of whether the contents of the book were illegal. It also addressed the question of whether the four booksellers might be found liable for the contents of a book that they imported and sold, even if they had no knowledge of such contents. In this context, the Supreme Court of India rejected the proposition that a book seller's lack of knowledge should be taken into account for liability under Section 292, reasoning that "if knowledge were made a part of the guilty act (actus reus), and the law required the prosecution to prove it, it would place an almost impenetrable defence in the hands of offenders. Something much less than actual knowledge must therefore suffice". Although the Supreme Court in Ranjit Udeshi considered the freedom of expression implications of the obscene content ban, the judgment did not evidence any weighing of the freedom of expression implications of third party strict liability. Some even argue that Section 292 may have been more effectively assailed if the argument focused on the strict liability issue and used it to argue that Section 292 imposed on unreasonable restriction on the freedom of expression.

CONSEQUENCES OF THE STRICT LIABILITY REGIME

This Ranjit Udeshi strict liability standard is what later placed Baazee.com in a very difficult position. The Delhi High Court was bound by the Ranjit Udeshi ruling while considering the potential culpability of Avnish Bajaj, the Managing Director of the company that owned Bazee.com, in the context of the DPS MMS Scandal. The Delhi High Court judgment therefore notes that the "prosecution did not have to prove that the accused had knowledge that the contents of the books being offered for sale were in fact obscene since the deeming provision in Section 292, IPC stood attracted". This was the inevitable consequence given that the intermediaries' immunity did not cover liability under the penal code, and that Ranjit Udeshi had long fixed a strict liability standard in the context of Section 292. Luckily for Avnish Bajaj, the Supreme Court acquitted him on procedural grounds that had no bearing on the strict liability question.

Although the IT Act was eventually amended to offer internet intermediaries some respite from this standard, the strict liability regime continues to apply to book sellers. Fortunately, this has not yet resulted in any prominent prosecution of bookshops in the recent past. However, the Ranjit Udeshi ruling lies dormant and available to any intolerant Indian that wishes to have a bookshop owner charged for a few explicit pages in one among many books.

REPAIRING THE INFORMATION TECHNOLOGY ACT

The DPS MMS Scandal took place before the IT Act was amended. The 2008 amendment of the IT Act has in fact been attributed to the Baazee.com quandary. This amendment is significant. It brought the Indian intermediary liability regime, or more specifically, the safe harbour regime, closer to the international standards. Before the amendment, the safe harbour protection was very limited, extending only to protection from liability under the IT Act, which meant that liability under other statutes like the IPC still left intermediaries vulnerable to prosecution. The 2008 amendment ensured that intermediaries received protection from liability 'under any law for the time being in force'. This has finally excluded the application of the IPC, and has therefore excluded the strict liability regime that is attached to it. The amendment also shifted the burden of proof for the purposes of intermediary liability. Prior to amendment, the intermediary had to prove that "the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention" to avail of the safe harbour protection. However, the amendment has ensured that the intermediary receives safe harbour protection as long as it does not initiate transmission, select the receiver of the transmission and select or modify information contained in the transmission, and it observes 'due diligence' while discharging its

duties. Therefore, the default position post amendment is that the safe harbour applies without evidence to the contrary. It would be up to whoever brings action against the intermediary to prove that it did not satisfy the conditions for protection from liability. Viewed from this perspective, the IT Act lowers the intermediary liability standard in the context of obscene content — it requires 'actual knowledge' (which can be provided to the intermediary via either a government order or a court order) for an intermediary to become liable. Unlike publishers and book sellers who continue to be subject to the strict liability principle under Section 292 of the IPC, Internet intermediaries that meet the conditions listed under Section 79 of the IT Act are now exempt from liability to the extent that they have no knowledge of infringing content.

CONCLUSION

India has seen an evolution in the intermediary liability, from the Supreme Court laying down the strict liability principle for intermediaries in Ranjit Udeshi to shifting the burden of a heavy responsibility on their shoulders. Furthermore, internet intermediaries need to balance their responsibilities towards maintaining free speech and protecting the interests of their users. The author also reckons that the legal framework should provide clear guidelines on the scope of intermediaries' liability and ensure that they are not held responsible for third-party content.

In conclusion, the author emphasizes the need for a balanced approach to internet intermediary liability, which takes into account the interests of all stakeholders. It is recommended that the Indian government should revisit the current legal framework and make necessary changes to ensure that internet intermediaries are not unduly burdened with the responsibility of policing online content, intermediaries should adopt transparent and accountable content moderation policies to ensure that they are not accused of censorship or bias.

The degree of care expected by the use of the phrase 'due diligence' was unclear until the Information Technology (Intermediaries Guidelines) Rules, 2011 were passed, clarifying its meaning. These rules require intermediaries to remove 'grossly harmful, obscene, blasphemous, defamatory, disparaging, harmful to minors and any unlawful content' within 36 hours of receiving actual knowledge that it is being stored, hosted or published on its system. This created a 'notice and take down' regime. The Lok Sabha Committee on subordinate legislation asked that the take down process be clarified and that safeguards be introduced to protect against abuse of process.

Although the current intermediary liability system under the IT Act (even in its new avatar after the Supreme Court's amendments) is far from perfect, the Section 79 safe harbour has brought about a significant improvement by doing away with the strict liability requirement contained in Section 292 of the IPC. If Avnish Bajaj were to be tried for the DPS MMS incident under the present Section 79 of the IT Act read with the Information Technology (Intermediaries Guidelines) Rules, 2011, he would not have to bear with the strict liability paraphernalia. He would instead deal with a regime in which prosecution has to establish actual knowledge of the infringing content, or obtain a court order asking for the illegal content to be removed, under the IT Act framework.

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GENDER JUSTICE

Srishti Balam and Saloni

ABSTRACT

Gender justice is a fundamental human right that encompasses the fair and equitable treatment of individuals regardless of their gender identity or expression. It is a multifaceted concept that encompasses social, economic, and political aspects, and seeks to eliminate discrimination, bias, and inequality based on gender. This research paper examines the concept of gender justice, explores the challenges and barriers to achieving gender justice, and highlights the importance of gender justice in promoting a just and equitable society. The paper also discusses key strategies and initiatives that can be employed to promote gender justice, including legal frameworks, policy interventions, and social and cultural changes. By examining the current state of gender justice and identifying potential solutions, this research paper aims to contribute to the ongoing discourse on gender equality and social justice.

One of the most prevalent forms of inequality is gender inequity, which is present worldwide. Achieving gender equality is essential for creating a fair and just society, and it affects everyone. The issue of gender justice is of significant importance and has vast implications, encompassing a broad and limitless scope.

Swami Vivekananda had aptly remarked:

"Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind."

It is a sad reality that women have been mistreated in every society for centuries, and India is no exception. Despite being revered as Shakti, women in our country face various forms of atrocities throughout their lives. They are viewed as commodities or slaves and are stripped of their dignity and pride not only outside their homes but also within the confines of their households. They are objectified as means of male sexual pleasure and are often reduced to producing children. In society, they are the real downtrodden or Dalits, suffering from discrimination at two levels: their gender and their grinding poverty.

Women are often deprived of economic resources and are dependent on men for their livelihood. Their work is mostly confined to domestic duties, which are unpaid and unrecognized. While more women are entering the workforce in modern times, they are burdened with the double responsibility of working outside the home and managing household chores. They are often considered less productive than their male counterparts and are the first to be dismissed. Their status in the family and society is generally low and unrecognized. From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society.

Challenges and Barriers to Achieving Gender Justice: Despite significant progress made in recent years, achieving gender justice remains a complex and challenging task. There are several barriers and challenges that hinder the realization of gender justice, including:

1. **Discriminatory Laws and Policies:** Discriminatory laws and policies that perpetuate gender-based discrimination and inequality, such as discriminatory family laws, unequal pay practices, and limited access to education and healthcare, pose significant challenges to achieving gender justice. These laws and policies are often deeply entrenched in social, cultural, and economic systems and require comprehensive legal reforms to ensure equality and non-discrimination for all individuals, regardless of their gender.

2. **Harmful Gender Norms and Stereotypes:** Deeply ingrained gender norms and stereotypes perpetuate harmful attitudes and beliefs about gender roles and responsibilities, leading to discrimination and inequality based on gender. These norms and stereotypes limit the opportunities and choices available to individuals, reinforce gender-based violence, and hinder progress towards gender justice. Challenging and changing these harmful norms and stereotypes is crucial in achieving gender justice.
3. **Intersectional Discrimination:** Gender discrimination intersects with other forms of discrimination, such as race, ethnicity, religion, disability, sexual orientation, and others. Intersectional discrimination compounds the challenges faced by marginalized and disadvantaged groups, leading to multiple and overlapping forms of discrimination. Addressing intersectional discrimination is crucial in promoting gender justice.
4. **Economic Disparities:** Gender-based economic disparities, including the gender pay gap, unequal access to economic resources, and occupational segregation, perpetuate gender inequality. Economic empowerment of women and addressing economic disparities are critical components of gender justice.
5. **Violence against Women and Girls:** Gender-based violence, including domestic violence, sexual assault, human trafficking, and harmful practices such as child marriage and female genital mutilation, remains a significant challenge in achieving gender justice. Eradicating violence against women and girls is crucial for achieving gender equality.

The root causes of all the evils practices faced by the women are:

1. Illiteracy, **(2)** Economic dependence, **(3)** Caste restrictions, **(4)** Religious prohibition, **(5)** Lack of leadership qualities and **(6)** Apathetic and callous attitude of males in the society.

From a young age, girls in our society are socialized to be dependent on men. Their existence is always subject to men's protection and control - first, under the protection of their fathers, then under the protection of their husbands after marriage, and in old age, at the mercy of their sons. The patriarchal system in India has made women live at the mercy of men who wield unlimited power over them. To improve the condition of women in India, the legislature enacted a large volume of laws, many of which were passed during the colonial period.

Bangles, which are frequently connected to women, have been utilised as a metaphor for shackles outside of feminist literature. All societies experience gender inequality, which transcends all other distinctions. Gender stereotypes and sexism nevertheless exist in urban subcultures due to the deeply ingrained mentality of male chauvinism, just as they do more explicitly in rural, traditional societies. Simple sex-based dichotomies, together with the corresponding goods and practises, have mainly influenced gender dynamics. The division of labour has mostly been based on physiological disparities between the sexes, which has resulted in men holding power and the formation of gender hierarchies from tribal to agricultural to industrial communities to organised states.

In India, it is thought that throughout the Vedic Era, men and women were treated equally. Women's education was of great importance, especially in light of the works of Patanjali and the Katayana. Women have been mentioned as sages and seers in the Upanishads and the Vedas. But after that, the problem significantly worsened. A few historical customs that demonstrate the gender disparity in Indian society are child marriage, Sati, Jauhar, Purdah, and Devdasis. The core of dysfunctional gender equity is still widespread and manifests today in the form of domestic violence, trafficking, dowry deaths, female infanticide, female foeticide, sexual objectification, violence against women, and sexual harassment at the workplace.

Women were viewed as property in ancient Grecian and Roman society.

Global View on Gender Justice:

Yes, gender justice refers to the achievement of equality between genders in various aspects of life, including social, economic, political, environmental, cultural, and educational. It is a fundamental human rights issue that recognizes the importance of having equal opportunities, rights, and freedoms for all, regardless of gender.

The struggle for gender justice has been ongoing for many years and has been led by various individuals and organizations, including human rights activists, feminists, NGOs, and governments. Although progress has been made, there are still significant challenges that women face, including issues related to globalization, consumerism, and cultural heterogeneity. Additionally, in many parts of the world, women still lack control over their bodies, children, and their lives, which has a significant impact on their overall well-being.

The United Nations has played a crucial role in promoting gender justice globally, with a focus on gender equality and human rights. The Commission on the Status of Women was established in 1946 to promote women's rights, and the Decade for Women and world conferences on women played an essential role in raising awareness and commitment to gender justice. In 1995, the Beijing Declaration and Platform for Action was established to guide the work towards achieving gender justice at the national level.

It is important to note that achieving gender justice requires not only policy changes and legal reforms, but also changes in societal attitudes and behaviours. Education and awareness-raising are important tools in achieving this goal. Women's empowerment, including access to education, healthcare, economic opportunities, and political representation, is also crucial for promoting gender justice.

Furthermore, it is essential to recognize the intersectionality of gender with other forms of discrimination and oppression, such as race, ethnicity, class, religion, and sexuality. Failure to do so can result in exclusion and marginalization of certain groups of women, perpetuating inequality and injustice.

Overall, while progress has been made towards achieving gender justice, much work remains to be done to fully realize this goal. International organizations, governments, civil society, and individuals all have a role to play in promoting gender equality and justice.

Laws in India:

Additionally, there are several other laws and policies that have been enacted to promote gender equality and women's empowerment in India. Some of these include:

1. The Protection of Women from Domestic Violence Act, 2005 - This law provides for the protection of women from physical, sexual, verbal, emotional, and economic abuse within the home.
2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - This law requires all employers to set up an internal complaints committee to investigate complaints of sexual harassment in the workplace.
3. The Maternity Benefit Act, 1961 - This law provides for maternity leave and other benefits for pregnant women.
4. The Dowry Prohibition Act, 1961 - This law prohibits the giving or taking of dowry in marriage.
5. The Prohibition of Child Marriage Act, 2006 - This law prohibits the marriage of girls under the age of 18 and boys under the age of 21.

6. The National Policy for the Empowerment of Women, 2001 - This policy outlines the government's commitment to promoting gender equality and women's empowerment in all areas of life.
7. The Beti Bachao, Beti Padhao (Save the Girl Child, Educate the Girl Child) scheme, launched in 2015 - This scheme aims to address the declining child sex ratio in India and promote the education of girls.

These laws and policies are important steps towards achieving gender equality and women's empowerment in India. However, more needs to be done to ensure that these laws are effectively implemented and that women are able to exercise their rights and live free from discrimination and violence.

Although there are provisions in the Constitution and other laws aimed at achieving gender justice, their implementation has posed challenges. Despite measures intended to address gender imbalance, women continue to face complexities in practice. According to the latest Census, the sex ratio in India stands at 927 females for every 1000 males, and this has been declining over the past four decades, reflecting the dire condition of women in the country. There has been an increase in sex crimes over the years. Factors such as patriarchy, lack of awareness, ongoing subjugation, deep-rooted traditions and customs, male chauvinism, and ineffective enforcement have collectively contributed to the suppressed condition of women today.

In recent times, there has been progress in the Government's efforts to safeguard women through a gradual and incremental approach. One such positive step is the enactment of a law aimed at protecting women from domestic violence. Additionally, the establishment of National and State Human Right Commissions, as well as the National Commission for Women, signifies increased attention being given to gender-related issues.

The Indian Judiciary has taken independent and effective steps towards women's emancipation. For instance, in the case of C.B. Muthamma v. Union of India, the validity of the Indian Foreign Service (Conduct and Discipline) Rules of 1961 was challenged. These rules required female employees to obtain written permission from the government before getting married and allowed for their resignation from service after marriage. The Supreme Court has ruled that such provisions are discriminatory towards women and unconstitutional. The court clarified that it does not intend to impose a universal belief that men and women are equal in all occupations and situations. It recognizes the need for pragmatism in cases where certain employment requirements, sex sensitivities, societal peculiarities, or disadvantages of either gender may require selectivity. However, unless differentiation can be justified, the principle of equality must be upheld.

The Supreme Court has made significant rulings in cases related to women's rights. In the case of Air India v. Nargesh Mirza, the court struck down a provision in the rules that allowed for the termination of service of an air hostess on her first pregnancy, deeming it arbitrary and against civilized society's notions. In Pratibha Ranu v. Suraj Kumar, the Supreme Court held that a married woman has complete control and custody over her stridhan property, and living with her husband and using dowry items jointly does not affect her absolute ownership rights over them. Another landmark judgment was delivered in the case of Gita Hariharan v. Reserve Bank of India, where the court interpreted Section 6 of the Hindu Minority and Guardianship Act, 1956, and held that the mother could act as the natural guardian of a minor during the father's lifetime if the father was not incharge of minor’s affairs throughout his or her life.

In the case of Vishakha and others v. State of Rajasthan, the Supreme Court ruled that sexual harassment of women in the workplace violates their rights to gender equality, as well as their right to life and liberty, which are protected under Articles 14, 15, and 21 of the Indian

Constitution. The court emphasized that the fundamental rights enshrined in the Indian Constitution are broad enough to include all aspects of gender equality, including the prevention of sexual harassment or abuse.

Furthermore, the Supreme Court noted that since there was no specific legislation in India pertaining to sexual harassment at the time, international conventions and norms should be considered. The court outlined certain guidelines to be followed in all workplaces and institutions until a legislation is enacted to address this issue.

In the case of Apparel Export Promotion Council v. A.K. Chopra, the Supreme Court reaffirmed the principles established in the Vishakha case, stating that any attempts of sexual harassment against women constitute a violation of their fundamental rights to gender equality as guaranteed under Article 14 and 21 of the Constitution. The Court also emphasized that international instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration, impose obligations on the state to take appropriate measures to prevent gender inequalities and safeguard the honour and dignity of a woman.

Fundamental Duties towards woman enshrined in the Constitution:

Article 51-A in Part IV-A of the Constitution of India outlines a set of Fundamental Duties that are applicable to every citizen of India. These duties were added through the Forty-Second Amendment in 1976. Clause (e) of Article 51-A specifically addresses the dignity of women, mandating that Indian citizens must renounce practices that are derogatory towards women. These duties are binding on citizens, and should be considered by the Courts when deciding cases, as well as observed by the State when enacting and implementing laws.

Reservation of Seats for Women in Election to Local Bodies

The Parliament of India has successfully implemented reservations for women in the Panchayats and Municipalities through Articles 243D and 243T of the Constitution. Part IX and IX A were added to the Constitution by the 73rd and 74th Amendment Acts, with Articles 243, 243A to 243D detailing the provisions. Article 243D (3) mandates that not less than one-third of the total seats to be filled by direct election in every Panchayat, including seats reserved for women from Scheduled Castes and Scheduled Tribes, must be reserved for women, with seats allotted by rotation to different constituencies. Similarly, Article 243T (3) provides similar provisions for women's reservation in Municipalities. This means that the reservation of 33% of seats for women to hold office and perform public functions at the Panchayat and Municipal levels is in line with the constitutional mandate. As an extension of the 73rd and 74th Amendments, the Constitution (81st Amendment) Bill was introduced in Parliament in 1996 to reserve one-third of seats for women in the Lok Sabha and State Assemblies. However, this bill has not yet been enacted due to political considerations.

CONCLUSION

In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor conditions of women has not been improved and she still faces all types of atrocities and legislature and judiciary somewhat fails to provide respect to women in society. The social engineering through law is still not fully achieved, while some rights enshrined under the enactments are enjoyed and accepted by the society but most of them remain only in papers due to lack of public support. Many evils are still practiced on women such as bigamy, child marriages are still in practice, dowry demands are still on rise, and women are still harassed at their workplaces. Malnutrition and illiteracy are growing at alarming rate, rape and molestation have become daily phenomenon, and moreover still we encourage objectification of women by appreciating cheap songs and advertisements that objectifies women.

The harm caused by objectification of women in popular culture is not just theoretical.

Achieving complete gender justice in a country like India is a complex task. The vast diversity of cultures and subcultures, along with rigid traditions and beliefs, make it challenging. Factors such as lack of education, development, and awareness among women, poverty, weak enforcement of laws, deep-rooted patriarchy, and economic dependence contribute to the oppressive condition of women in society. In comparison, gender hierarchies in Europe and the USA are relatively more balanced.

In these countries, sex equality laws primarily focus on employment and workplace, and they explicitly include transgender individuals and extend rights to the gay and lesbian communities, which is unprecedented in India. Gender development in any sphere is a crucial component of overall welfare and development in any country. NGOs, governmental agencies, UN agencies, and activists have been advocating for gender rights and protesting against discrimination. While there has been progress in securing gender justice, there is still much work to be done.

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PRACTICE OF WITCH HUNTING: SOCIAL AND LEGAL STATUS IN INDIA

Rekha Goswami, Shakti Chaturvedi and Sharat Gopal

ABSTRACT

This article is a study on various aspects of witch hunting and its legal status in India. As witch hunting is a historical concept, it briefs about the background of witch hunting and also the origin of witches and its different ideas in different parts of the world. The study has tried to understand various cases and the reason behind witch hunting. It is an attempt to understand deeply the legal position of such types of crimes and under what law is it dealt. This article also mentions offences and laws under which cases of witch hunting are to be covered and what are the reasons behind witch hunting still being continued.

BACKGROUND

Superstitions have a long history since human existence. Superstition as explained by many is a belief that is not based on reason or scientific thinking. It just explains the cause of an event in ways that are connected to magic or something which is beyond human explanation. Humans have believed in superstition for a very long time. They have followed lots of practices and beliefs according to which there is the existence of supernatural powers which is beyond the understanding of the human brain.

Superstitions mostly come from religion. Not all superstitions are from religion but most of it is. Superstitions even though have no scientific touch, still people believe in them due to equally weird and widely accepted reasons. As earlier mentioned, not all superstitions are religion based; some are based on unfortunate coincidences and associations. For example, the number 13 is not considered a good number and it is likely believed that something bad happens whenever something has that number, like "Friday 13th". It is believed that "13" is an unlucky number.

Some justify it with belief that, Jesus Christ had his last supper and after that, he was crucified. He was the 13th to sit at the table. People believe this superstition to such an extent that, 13 people don't sit together for supper or even for a meeting. Many of these superstitions are based on cultural habits than conscious beliefs. Many of these superstitions have no logic in them. But there are some superstitions which had some logical explanation like that in India, people tie lemon and chilly on their vehicles. In this modern era, it sounds stupid, but back then in the days of bullock carts, this practice had logic in them. Lemon and chilly were tied on the necks of these animals because it was said that due to this scent of lemon and chilly, ants or other creatures didn't attack the animal's legs. This was practiced for the protection of the animal's legs so that there won't be any obstruction in the journey. Now when this practice is followed in this time of modern beliefs, it might be found stupid. One of these kinds of practices or beliefs includes witch hunting. Witch hunting has its harsh and cruel history.

Witch-hunting in very simple terms means hunting people who are labeled as witches. It was a time of 1593 in the German town of Nordlingen and an innkeeper named Maria Holl, found herself accused of witchcraft. She got arrested for questioning and denied the charges. She insisted that she wasn't a witch through 62 rounds of torture before her accusers finally released her. Before she was accused, a few years earlier a woman called Rebecca Lamp in the same town faced the worst fate. She wrote a letter to her husband from jail that she will confess her guilt to get rid of this torture even though she was innocent. After giving a false accusation, she was burned at the stake in front of her family.

Holl and Lamp both had been a victim of witch hunts with many others in Europe and Latin America from the late 15 century to earlier 18 century. These witch hunts were not an initiation by a single authority but started as a phenomenon with a similar pattern that occurred each time.

The word 'Witch' had many meanings but in these hunts, a witch was someone who legibly gained magical powers from a Satin rather than God. This definition of witch spread from the church in Western Europe starting at end of the 15 century.

This belief slowly expanded after the pope said Prof. Henrich Kraman to conduct an inquisition in search of witches in 1485. He went to towns where he faced opposition and local authorities didn't approve of his weird questioning of citizens and as a result, he was forced to leave. Later, he wrote a book "MALLEVS MALEFICARVM" OR " HAMMER OF WITCHES". In his

books, his text argued not just for the existence of witches but also suggested various ruthless tactics and methods for hunting down the people they label as witches to prosecute them. He singled out women as an easier target for the devil's influence, though men could also be witches. His book not only made people aware of witch hunting but also motivated others to write books mentioning their ideas and summons on the danger of witchcraft.

According to these books, witches practices ritual like kissing devil's anus and poisoning over witches targets the devil singles out. But there was no evidence to support all these claims. As the belief in witchcraft got widespread, people started relating every misfortune, bad luck, or loss with a witch crafting such as failed harvest, sick cow, or stillborn child. Community members blames witchcraft and accused each other of being a witch. Many accused were on the fringes of society, the elderly or poor, or social outcasts. But any member of the community could be targeted even occasionally, children.

These from being a social belief and spreading so violently then started being dealt with by a local government. Those suspected of witchcraft were questioned and often tortured and tortured, and more than thousands of innocent people were forced to confess to witchcraft.

Late 17 – mid 18 century, there were many blaming and spreading beliefs on witchcraft among them there were also a few dissents who were against these cruel practices some of them were jurists or philosophers. Later with help of a stronger central government and legal norms like due process, witch-hunting slowly declined. The law which effectively helped was the Witchcraft act of 1735 passed by the parliament of Great Britain which made it a crime for "a person to claim that any human being had magical powers or was guilty of practicing witchcraft" With this, the law abolished the hunting and executions of witches in Great Britain.

However, legally witch crafting was banned but it already got spread widely that it was never possible to vanish the idea of witches from the mind of people.

India also has its idea of witches and hunting. In India, witches are almost all the time women, and a few exceptions are men called Daka. Daka is those men made witches by women or tutored by them. Hence in the end main culprit is women. The concept of witches in India is not modern but is historical, where tribes lived in a matriarchal society. At that time, family affairs were controlled by females and they had more knowledge of herbs and forests than in comparison to men. This created the frustration of the male ego.

Before tribals did not know about female sexuality and reproductive cycles i.e., how women get menstrual cycles so periodically or how can they give birth to other human beings in 9 months and all. So they started considering it as an attribute of some hidden, secret or supernatural power within them, which is misused by some if not all. And they started branding them as witches and the killing of them began.

Witch Hunting in India

In ancient times, witchcraft or "demonology" was a practice sanctioned by Hindu scriptures, according to the book of RN Saletore, “Witchcraft: A study in Indian occultism”, published in 1981. Witchcraft was also mentioned in ancient scriptures like in Rig Veda or other Hindu scriptures which all were taught in Indian ancient Universities.

Even though modernization and the availability of better health and sanitation facilities have changed people's beliefs in these ancient practices but superstition still prevails and particularly among underprivileged communities.

Recently, national-level athlete Debjani Bora in Assam was accused of witchcraft when a local dragged her to a prayer house, and was disgraced and brutally assaulted for being a witch. Also, Aarti Devi, a woman in Bihar accused of witchcraft after a group of children got sick and she was blamed for it. She was beaten and forced to drink urine.

Witch hunting is a practice that has been found prevalent in 12 states of India like Jharkhand, Bihar, Haryana, Madhya Pradesh, Maharashtra, Gujarat, Orissa, Chhattisgarh, Assam, Rajasthan, Uttar Pradesh, and West Bengal.

According to police data published by the Times of India newspaper, “some 123 people were killed by mobs in Jharkhand between May 2016 and 2019”. These people, mostly women, were accused of practicing sorcery, and across the country, “about 134 people were killed for the alleged use of "black magic" in 2016”, according to the National Crime Records Bureau. Also, the NCRB report revealed that “more than 1,700 women were killed for witchcraft between 1991 and 2010” and that is after excluding those unreported cases. In 2015 and 2016 the crime against women and witchcraft is 32% and 27% which violates the right of women.

The state of Jharkhand topped the list with 27 deaths in 2016, although the activists contended that the actual number of witchcraft-related attacks for obvious reasons of cases being unreported, is very high and in several cases, attacks and other punitive actions by the community members are not documented. In 2001, the Jharkhand government passed the "Dayan Pratha (Prevention of Witch Practices) act" or "Anti-witchcraft Act" to protect women from inhumane treatment and give victims legal recourse to abuse. Section 3 to 6 of the "Dayan Pratha (Prevention of Witch Practices) act" talks about the punishment which will be granted if "anyone identifies someone as a witch and tries to cure her or any damage caused to them".

Nevertheless in November 2013, in the state of Jharkhand two women who were a mother and daughter were pulled out of their house by the villagers who took them to a nearby forest and slit their throats after the women's husband died a few years ago, rumors began that these women were witches and were the reason why other children were becoming ill.

Rajasthan is a unique state in India have large diversity whether it is a culture or superstition. In the last few years, the government passed the Rajasthan women (prevention and Protection from Atrocities) Bill, 2006 which makes it illegal as well as Punishable for calling women "Dayan" and a guilty person can be sentenced to prison for a maximum of 3 years and 5000 rupees fine.

There was a case of a woman named Kesi Chandan around 40 years of age, who lived in a small village in Rajasthan and was accused of crafting in 2014. On November afternoon when she returned home from work, she found that her family was locked in the house and the whole village was waiting for her furiously. She was accused of being a witch and doing witch crafting causing them misfortune, and then she was cruelly tortured by beating her, stripping her naked and making her wear a garland of shoes, and parading her over a donkey to the whole village and other neighboring villages. And they also planned to burn her but until then the policeman appeared and rescued her.

It's not only women who are the victim of a witch hunt. In July 2012, an elderly man and his wife were forced to ingest human urine and excrement in Jharkhand for practicing witchcraft, which supposedly resulted in the death of local livestock. Just after a month after this incident, another man was pulled from his house and buried alive for practicing witchcraft. In 2013, in Meghalaya, a state in northern India, where 4 girls became sick and had a dream about snakes as a result of which an old man was forced to eat human excrement and accused of practicing witchcraft.

Later they all came together to punish that man and this action was defended by the village chief by saying that after the girls' health improved.

Bihar was the first state in India to come up with the law in 1999 i.e., the "Prevention of witch (Dayan) Practices act". Later, many states came up with different laws to deal with witch hunting, like in 2005, the "Chhattisgarh Tonhi Pratama bill" was passed in Chhattisgarh to prevent atrocities on women in name of Tonhi. Most recently, in rural Chhattisgarh, a case came before the police where three boys killed two women in their fifties. According to police women were blamed for the death of the father of two boys and the sickness of one's father.

Orissa had also come up with the "Witch hunting prevention act, 2013" which is considered a positive step by the government. A group of villagers in rural Odisha, a state on the east coast, assaulted and forced three people including two women to walk naked through the village and in November 2013, a boy was killed in the same state and police arrested two people accused for killing him for a ritual of sacrifice (Boy Killed for Witchcraft 2013). Also, according to Assam's government, between 2006 to 2012, there have been 105 witch-hunting cases, and the government is planning to come up with legislation to curb the violence. Even west Bengal has failed to establish separate legislation to tackle the problem of witch-hunting.

NHRC issued notices to Odisha's Chief Secretary and DG of police over the state's alleged inaction to prevent witch-hunting incidents resulting in murder and asked two top officers to submit a report. Radhakarta Tripathy, a human rights lawyer, draw the attention of NHRC over the recent murder of 5 persons including a mother and 4 children in the Koida block of Sundargarh district. Also Mr. Tripathy moved to NHRC in 2013, pointing out that 3 women and 1 elderly man were paraded naked by villagers, branding them black magicians in Amapada village in Sundargarh district, despite NHRC's recommendation situation did not improve.

India is a part of various international treaties, conventions, and organizations. These include International treaties, covenants, and laws like UDHR i.e., "Universal declaration of human rights, 1948" which provides for protection against any discrimination and promoted equality before the law; ICCPR i.e., "International covenant on civil and political rights" associated India with it in 1979 and it promotes equality between men and women by ensuring equal rights to both in civil as well as political sphere. Apart from ICCPR and UDHR, India is also part of a convention called CEDAW i.e., "Conventions on the elimination of all forms of discrimination against women" in 1993 and agreed to eliminate discrimination and social cruelty against women.

There is no specific national-level legislation in India to prevent witch-hunting or penalize it. Hence, the provision of the Indian Penal Code of 1860 can be used as an alternative.

Offences Covering Witch-Hunting

As we already know that there is no national-level legislation to deal separately with witch-hunting, different states have come up with different types of legislation for their states. As an alternative to national legislation for witch-hunting, Indian Penal Code and its various provisions are used such as Murder (Section 302), Culpable Homicide Not Amounting To Murder (Section 3040), Attempt Of Murder(Section 307), Voluntarily Causing Hurt(Section

323), Voluntarily Causing Grievous Hurt(Section 324), Rape(Section 376) Or Outraging Modesty Of Women(Section 354). There are also other sections of offenses that are used to add to their culpability like wrongful confinement and abetment.

In like almost every case, victims suspected of being witches are in the end murdered it may be through anyways. Hence these crimes in almost every case lead to the death of the victim. As in the case of Ishwar Attaka And Others V. State Of Orissa (2015), a horrendous crime took place in the village Bheja of Kalyan Singhpur Police Station in the district of Rayagada. The deceased Bhima Rao Attaka was dragged from his house by his co-villagers suspecting him to be practicing witchcraft and tied to the pole of electricity, ferociously assaulted, and later the dead body o the victim was packed in a bag along with stones tied with a plastic rope was thrown inside Nagavali river. While deciding the case Justice S.K Sahoo, said that superstition poisons the mind and mentioned the reality that how superstition in society rules the mind of people and murders and other serious crimes are continuing unabated in the name of witchcraft and appreciated the prevention of witch-hunting act, 2013 by the state of Orissa and held petitioners liable for murder under section 302 and other charges against them. He also mentioned that "lack of proper education, economic development, scientific temper, and mass awareness programs are the cause for superstitions which are violent, dangerous, destructive, harmful and inhuman".

In many cases, Witch-hunting becomes an excuse to hide crimes like rape or outraging the modesty of women. In many cases they for torturing the women accused of practicing witchcraft physically abuse them or drag them into public places making them humiliated and finally killing them. In November 2019, a 23-year-old woman due to her continuous illness was taken by her family members to Bhopas in Ghaneva Village for treatment. For the sake of treatment, he asked the family members to stay outside and called the girl inside all alone. Taking the opportunity, he molested her in the room and didn't stop despite her shouting and begging, when her mother listening to her voice came inside and asked her to stop they burned her hands telling her that she is a witch. Also, the Bhopas beat the family members with sticks. It's just one case but there are thousands of cases where women had been a victim of the evil intentions of these people in the name of witch-hunting.

Witch Hunting Still Continued?

There are various reasons for this witch-hunting to be continued even after everyone became modern, rational, and aware of all superstition. A few reasons are such as-

- **Question of Evidence –**Witch hunting is being continued because of no proof or evidence enough to provide justice to the victim. There had always been acquittal in several cases just because of lack of evidence and such cases like witch hunting where the person is been killed just for being a witch or for suspecting them being a witch. And it is done not by a person alone but by a group or a whole community/village, which leads to no one coming forward to be a witness and resulting in injustice. In the case of Tula Devi & Ors. V. State Of Jharkhand, the court dismissed the case on the basis that the victim has failed to prove that the accused had harmed her and also there was a lack of eyewitnesses.
- **Geographical Reasons –** Geographical reasons and societal pressure result in reporting of only a few incident and that too after a long gap hence it makes witness testimony unreliable, which was a ground for not convicting the accused in the case of Madhu Munda v. State of Bihar. It's never easy to live in a society opposing their ideas norms or beliefs. And when one does so they have to face a social outcast, ignorance, or boycott. So this leads to unreported cases because of which witch hunting is being continued without fear in mind.
- The absence of national legislation has always been a reason for social problems. If any issue doesn't have some law to support or prevent it, it would always remain somewhere in the

corners of society. Witch hunting does not have any national legislation specific to deal with which always causes hardship for judicial officers to provide justice in those cases. To deal with witch-hunting some states have come up with separate laws which are effective in those areas to some extent but few states are still there with no legislation on the issue, which causes witch-hunting to be continued fearlessly by the communities.

- Now, as we read there is no national legislation but there is some existing prevalent legislation to deal with witch-hunting like the prevention of witch practices act, 1999 by the Bihar government; the anti-witchcraft act, 2001 by the Jharkhand government; Chhattisgarh Tonhi Pratama bill, 2005 or Rajasthan women (prevention and protection from atrocities) act, 2006; and few more. But these laws are not as effective as they sound to be. These laws are made to deal with witch-hunting in those areas but it covers not every inch of the problem which sometimes leads to the escape of the accused. These laws are not effectively implemented due to many reasons which may be executive laziness or it may be poor law. Hence this poor implementation can be the cause of witch hunting still being continued in those areas.
- One thing can't be ignored while talking of some crime came out of the belief of society i.e., the greed of people. Witch hunting has become a way to fulfill one's evil intentions. It has always been seen whether be any religious belief or anything it is been misused, similarly, witch hunting is been used to complete evil desires like fulfilling one's revenge or Means to grab property and control over the land. The main thing which is being an obstacle for vanish this practice is that the Whole community is engaged in this belief and it becomes tough to rationalize every member of the community and especially when it comes to the belief they have been engaged in for such a long time. Hence, No comprehensive awareness and educational program happens which becomes effective as expected.

CONCLUSION

Although superstitions have no scientific logic in them, people still follow them. It is due to its very nature of it. People in the early days used to worship anything which they feared, for example, people worshipped thunder as they were scared of thunder and its powers. It was beyond their understanding then which was the reason for their worshipping. The same is the very case with superstitions. They do what they believe and they don't search for the logic behind it until now. Now many people with rational minds are trying to bring reform to society. To stop this practice, people must be educated and must be made to think with a rational mind and with logic. It has always been seen in the majority of the cases, the accused was not seen doing witch crafting but was just believed or suspected of doing so. Few states have separate laws to regulate and put control this, but there is no national legislation to control it in a wide and strict sense. This paper has already discussed the reasons above why this practice is still being continued and it needs serious consideration on all of that. Religion and beliefs are always stronger in our country, no matter how strong or strict the legislations are. Laws are made for the people and can't be administered to them forcefully otherwise they will retaliate and hence, first of all, there is a need to make people understand the reality of this hunting practice and then makes laws that are religiously and politically neutral and also accepted by everyone.

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THE OCEAN OF LAWS FLOODING THE GATES OF OVER CRIMINALIZATION: A CRITICAL ANALYSIS OF DESIRABILITY AND CONSTITUTIONAL VALIDITY OF NATIONAL SECURITY LAWS

Puneet Sharma and Nyasa Sharma

ABSTRACT

The criminal justice system is designed to prevent illegal activities by punishing offenders according to the Criminal Code. However, over-criminalization has become a significant challenge in criminal justice administration. Overcriminalization refers to the excessive use of criminal law to regulate behaviors that do not warrant criminal punishment. This abuse of the criminal justice system's power can lead to negative consequences, including the clogging of the justice system, excessive punishment, and the criminalization of ordinary citizens.

National Security Laws in India are essential to limit the burden on police departments and create special intelligence units, legislation, and procedures to deal with terrorist acts. These laws are necessary for society to address the threat perception India is currently facing. However, the constitutional validity of these laws has been challenged and upheld by the Supreme Court in various judgments to ensure the fairness of recording true and voluntary confessions.

One of the significant concerns with National Security Laws is the risk of abuse or misuse due to the conferred power of investigating officers. The paper acknowledges this risk and highlights the need for safeguards to prevent the abuse or misuse of these laws.

The paper concludes that decriminalizing minor offenses and private morality violations will enable the criminal justice system to focus on protecting persons and property from serious offenses. The criminal justice system's primary purpose is to do justice by punishing the offender, and over-criminalization undermines this purpose. Therefore, it is essential to strike a balance between protecting society and the individual rights of citizens. The paper emphasizes that National Security Laws are necessary to maintain the balance and ensure that the criminal justice system functions effectively.

Keywords: [over criminalization, the criminal justice system, National Security Laws, constitutional validity]

INTRODUCTION

Just about every culture struggles with the issue of crime. The perception has been that crime is a common occurrence. Even a society made up of angelic beings wouldn't be free from breaking the rules of that community. In reality, crime is a persistent phenomenon that evolves along with social change. Throughout society, many groups have diverse and frequently contradictory interests, which causes conflicts that ultimately lead to the frequency of crime. Criminal justice's goal is to deter criminal activity by punishing offenders in accordance with the law. As a result, punishment has been seen as a way to lower the frequency of criminal activity, either by discouraging potential offenders, rendering them incapable of committing the crime again or by transforming them into law-abiding citizens. Criminalization is the term for methods of punishment for antisocial behaviour. We feel secure and have a sense of purpose knowing that the criminal justice system is a fundamental institution of the free society and the liberal state. The two fundamental components on which criminal law operates in the community as a tool of social control are coercion and condemnation. Using punishment, not only denounces the wrongdoing but also coerces someone to follow the law. Due to the concept of over-

criminalization and the uncritical and popular actions of politicians, practitioners, and other social actors, the criminal justice system has recently been criticized for being unprincipled and chaotic. As a result, we are not only dealing with an unprincipled, chaotic, and populist criminal code, but we are also applying it as if it were the primary or perhaps the only means by which the state could carry out its policies. As a predictable result, many prisons have overflowed with inmates and have come to resemble human waste dumps. It has become a matter of concern for many criminologists, that why a welfare institution has gone so wrong as to be deemed a ‘‘lost cause’’[1] used for perverse and immoral ends”[1]

UNDERSTANDING OVERCRIMINALIZATION

Over criminalization is the practice of applying unjustified punishments that have no bearing on the seriousness of the offence committed or the criminal responsibility of the offender. It involves the application of harsh penalties or lengthy sentences without sufficient justification. The criminal justice system may be abused if it is overly criminalized. It alludes to the misuse of state coercive authority through the adoption of criminal statutes. It is, then, a phenomenon that is fundamentally linked to the adoption of criminal laws. Over-criminalization is a complicated, multifaceted topic that calls for several considerations and points of emphasis. Over criminalization includes (1) untenable offences, (2) Superfluous statutes, (3) doctrines that overextend culpability, (4) crimes without Jurisdictional authority, (5) grossly disproportionate punishments, (6) excessive or pre-textual enforcement of petty

1Andrew Ashworth, “Is Criminal Law a Lost Cause?” 116 Law Q. Rev. 225 (2000).

violations. The majority of the various phases of the criminal justice system, including jurisdictional and legislative issues, police use of force, and sentence and punishment proportionality, are all included in the phenomenon of

[1]Douglas Husak, over criminalization: The Limits of the Criminal Law (Oxf. Univ. Press, 2009).

overcriminalization. Because they limit freedom of movement, revoke civil and political rights, and result in the death of a person, punishments have been deemed the most repressive method of social control in the contemporary state. If the use of punishment goes beyond the pale of fairness, the act itself is now highly unacceptable.

CAUSES OF OVERCRIMINALIZATION

I. Interest of the State?

One of the main causes of over-criminalization has been identified as the politics of law and order that political parties engage in in order to garner the largest possible vote bases. The ruling party resorts to over-criminalization in an effort to quell any resistance and ensure that its programs are carried out effectively. Due to the ruling parties' stance, crime in the nation is on the rise, and the severity of punishments has increased as a result. There have been numerous instances of over-criminalization as a result of the severity of the penalties, which have been seen to result in enormous injustices for the perpetrators. It should be mentioned that while some punishments are carried out without any justifications or arguments, their severity is not warranted.

II. Deterrent and Retributive Approaches Toward Crime and Criminal Behavior

Several nations' criminal justice systems strive to reduce crime through punitive and deterrent measures.

The retributive idea of punishment does not view punishment as a tool for safeguarding the well-being of the general populace. According to retributive justice, wrongdoing should be paid back in kind, regardless of the consequences. “It implies that punishment serves as a means of society's protest against the offender's unlawful behavior. In order to prevent offenders from

committing crimes in the future, the deterrence principle calls for the imposition of harsh sanctions on offenders.'' In order to effectively combat crime, many criminal systems have adopted and incorporated the notion of retribution and deterrent into their substantive and procedural laws. In this situation, incapacitation through punishment has been seen as an effective method of lowering crime. This has led to excessively severe penalties that are out of proportion to the wrong that was done. The issue of over criminalization has been made worse by the parliamentarians' attitude.

III. **Over Criminalization as Being Caused by a Professional and Structural Factor**

Over criminalization has been exacerbated by career progression and growth within the legal system. Police and prosecutors seek career promotions just like other professionals in their field of specialization. There is a loophole that results in over criminalization tactics because the system determines who to advance by taking into account the number of arrests and convictions a police officer makes. So, the likelihood of a police officer being promoted increases as more offences are recorded. Likewise, it is critical that judges and attorneys resolve cases as soon as possible because, with so many offences on record, they want to be seen as effective. With regard to the wrongs that go beyond the traditional and most essential elements of criminal law, namely mens rea, the issue of over criminalization is viewed. The issue of over criminalization is also seen in regard to morally repugnant, minimally injurious, and extremely minor offences.

CONSEQUENCES OF OVERCRIMINALIZATION

I. Infringement of Constitutional and Human Rights

The concept of over criminalization has several negative effects. It has diverse effects on various subjects. The broad application of substantive criminal law has a negative impact on people's rights and liberty. The over criminalization principle has been applied imprudently, giving law enforcement total power and omnipotence. They have taken the place of those who want to make arrests and get punished. To extract information from the perpetrators, the police and other law enforcement organizations use unrestrained authority. Some instances of investigatory agencies abusing their authority include torture and physical abuse in detention. Few drivers travel without violating traffic laws around the world, but this does not excuse the penalties meted out to them. Because of this presumption, authorities frequently charge drivers with serious offences even when they haven't committed any crimes "Police have developed the behavior of stopping any driver even without a justified reason because they have been influenced by over criminalization behaviors being practiced within their profession.''

II. **Overcrowding in Prisons**

The idea of over criminalization is directly related to prison overpopulation. More sanctions result from a disproportionate extension of the criminal law. Increased sanctions equate to more incarceration. The end outcome is prison overcrowding.

III. **Biased/Prejudicial Decisions and Unjust Punishments**

Over criminalization encourage poor management and inefficient utilization of a nation's limited resources. The government expends a lot of resources that could be used to promote development in an effort to make a point and punish an act. Extreme over criminalization encourages bad management and improper distribution of a nation's scarce resources. Many governments waste money on ineffective enforcement, gambling, prostitution, and drug usage.

It would be preferable if law enforcement agents used the resources to find other risky criminals, including child molesters and rapists. Law enforcement authorities utilize dishonest and immoral methods to gather fake evidencethat will be used to accuse the perpetrators. Threatening the suspect and the witnesses is a common strategy used by the investigative agency. The sentence pronounced on the basis of fabricated evidence results in biased prejudicial decisions which pave way for unjust /harsh and excessive punishments.

IV. Corrupt Practices

Because law enforcement authorities rely on prejudice, discrimination, and other illegal and dilatory activities to support their claims and accusations, the adoption and application of criminal sanctions that target innocent activity weaken the moral authority of the law inside a nation.

National Security Laws: Need, Desirability & Constitutional Validity

Whenever there is a debate regarding the need for national security laws in our society it always rises an argument about why we need special laws when we already have penal provisions - Indian Penal Code and other laws to deal with the same. Andrew Ashworth suggests that overcriminalization gives rise to the question that "criminal law has lost the cause" which is when we start making laws on every conduct of an offence then we are diluting the rigor deterrence effect. In order to address this first we need to understand why we need special national security laws. Suppose we do not have such special terror laws then the burden of investigation, inquiry, collecting evidence of such terror acts as well as securing a conviction in such cases will come on state police departments. As we all are well aware of the fact that our police officers are already burdened with the investigation of a criminal case as well as maintaining the law and order of the state. If we put such additional responsibility on their shoulder then it may happen that our whole system may collapse and police officer may not fulfill their responsibility in an effective manner and try to complete the investigation in a shoddy manner. We need to understand that they are also human since terrorism offence is an attack on the sovereignty, unity, and integrity of a nation. We need special departments, special intelligence units, special legislation, and special procedure to deal with the terrorism problem. We need those police officers who will be properly trained to handle the investigation and collect crucial evidence of a terrorist act, and these officers do not feel overburdened with a lot of duties and responsibilities put on their shoulders and they put their entire focus on one motive that is how to prevent terrorist offence.

In order to deal with the desirability of such special laws on National Security first we need to understand what kind of threat perception India is facing, then only we can say whether we need special legislation to deal with such a problem or whether we can deal with under normal criminal law prevailing in India.

a. United Nation in its [2]report titled "A more secure world - Our shared responsibility'' recognizes 'terrorism' as one of the six dangers to global security in the 21st century.

b. According to Arun Shourie in his book, 'Medicated' terrorism has caused more harm than war. As per the Government of India report 2004-2005 due to terrorism, we have lost more than 70,000 civilians, 9000 security personnel and almost 6 lakh people have become homeless as a result of terrorism. Budgetary increase in the last 15 years because of terrorism or insurgency activity has been 26 times. Moreover explosive products that cover security agencies confiscated weigh 4800 kg. Only 275 kg RDX was used in the Bombay blast which cause so much destruction which is very difficult to forget, what if all such RDX is used by terrorists then we have a lot of bloodshed of innocent civilians and security personnel.

c. In India, we have seen that over two prime ministers were killed by suicide bombers.

d. Sponsorship from neighboring countries - For example - China is against India's decision in the UNSC for declaring Masood Azhar a global terrorist because China is a friend of Pakistan. China always lent moral, logistic, and financial support to the Pakistan terror act in India. Similarly, we have Myanmar not able to control terrorist activity in their country.

e. Use of AK47s and modern weapons and technology by terrorist organizations across the globe, for example

- terrorists use the internet to plan and coordinate specific attacks like Al Qaeda operatives did for the September 11 attack. In India at the time of the 26/11 terror attack terrorist used communication services not to hack or block the protected information but rather to aid terrorists to carry on an attack and gathering information regarding the place of attack

f. Misinformation support, the misleading idea of AZADI, and ill-informed media reports. For example - youth in Kashmir are misled in the name of Azadi, and they pick up guns, considering themselves soldiers who are fighting for Azadi.

g. It is not just about Islamic radicalization but also Khalistani terrorists who are posing problems for India. Islamic, and Khalistanis are just names used by these terrorists, they are basically misusing these names and interpreting religious tents for misleading people in the name of religion.

Therefore, terrorism is a sui-generis enemy. It has caused us more harm than war. Hence, it becomes necessary for a country like India to have a special security law to deal with the issue of terrorism so that those who commit such acts can be brought to the book and not set free because of the loopholes and lacunae

[2] United Nations, A more secure world: Our shared responsibility – Report of the High-level Panel on Threats, Challenges and Change, U.N. Doc. A/59/565 (Dec. 2, 2004). in the ordinary law. The major objective of such National Security Laws is to create and maintain a secure environment that would enable the nation to provide opportunities to all individuals to their fullest potential.

Moreover, the Constitutional validity of these National Security Laws was challenged from time to time but each time Supreme Court upheld the validity of such laws. For example - in Kartar Singh v. State of Punjab[3] supreme court upheld the constitutional validity of TADA[4] but issue certain guidelines to ensure fairness in recording true and voluntary confessions. We need to understand that the desirability of laws and the constitutional validity of law are two different things. The desirability of law is recognized by the legislature. The legislature is entrusted with the task of making law by the Constitution of India, courts are not the proper forum to decide the desirability of law. Courts must restrict their inquiry only to two questions i.e.

a. Whether parliament is competent to make such a law?

b. Whether such a law is in conformity with Fundamental rights and other provisions of the constitution of India?

THREAT PERCEPTION IN INDIA

Another reason for having such laws is the threat that India is facing is of a very special kind, so we need laws to deal with it. Nowadays every country has a special law. For example - the United Kingdom has the Terrorism Act, of 2000 and 2005, and many more laws to deal with terrorism. Moreover, quantum of parliament in the terrorist case is more in the UK and USA than in India. The quality of laws that are provisioned in the UK is harsher than in India. For Example - Sections 57 and 58 of the Terrorism Act, 2000 (UK) made mere possession punishable. No need to transfer or spread documents in order to make a person liable. Mere possession of such documents is punishable. Is there any such law in India? NO, similarly section 38(1) (2) of the Terrorism Act, 2000 makes it an offence if someone does not inform the police if he/she believes that someone they know is in preparation for the Act of Terrorism. Moreover, a sentence in respect of section 38B is for a term exceeding five years. Is any kind of such provision exist in India?

[3] AIR 1994 SC 1.

[4] Terrorist and Disruptive Activities (Prevention) Act, 1987, Act No. 28, 1987 (India).

ABUSE & MISUSE OF NATIONAL SECURITY LAWS

One of the major arguments of those who oppose such anti-terror laws is that such laws increase the chance of abuse and misuse of such laws because more power has been conferred to investigating officers and executives under such laws. I totally agree with this point as there are cases where there is a misuse of such anti-terror law was reported, but my question is - 'are these special laws only misused? Is it not true that there are cases reported where ordinary criminal laws are also misused by a police officer? If the law is misused then the answer lies in punishing those who abuse it and not in dismantling the law itself. Arms Act, Narcotics Act, and other laws are misused, shall we then repeal all these and let criminals have a free walk in society?

CONCLUSION & SUGGESTION

In my opinion following steps can be taken to stop the misuse of such special laws:

1. Improve mechanisms should be available to citizens to seek redress and hold government officials accountable for human rights abuse. Moreover, such police officers should be made liable to pay compensation to victims out of their salaries.
2. We can eliminate the provision of official immunity in UAPA[5] and other security laws and eliminate the requirement of prior government consent before prosecuting government officials.
3. We should remove restrictions upon NHRC[7] authority to investigate directly the complaints of human rights violation by armed forces and complaints of violation that arises prior to the current one-year limitation period.

Overcriminalization is a phenomenon that covers a wide range of concerns rather than a problem with numerous crimes within the legal system. The purpose of this essay is to draw attention to some of the elements that contribute to over-criminalization, such as political pressure on the legal system, legislative impunity, the inapplicability of the harm principle, systemic corruption, and other structural and professional variables. The loss of a nation's justice system's moral authority, negative social costs experienced by the entire society, increased corruption within the system, improper use of scarce resources, power imbalances, and a deficient justice system are all consequences of overcriminalization that have been identified. All those who oppose such special legislation must realize that the significant jurisprudence behind such National Security legislation is to protect the sovereignty and integrity of India and it is also one of the fundamental duties of every citizen of India. Though every citizen has a fundamental right

[5] Unlawful Activities (Prevention) Act, 1967, Act No. 37, 1967 (India). [7]

National Human Rights Commission of India to speech and expression, right to life, and personal liberty but such right is not absolute, there can be reasonable restrictions on such rights. We must also keep in mind that as much as terrorists keep pace with new technology, certainly India also needs to have and adopt anti-terror legislation. Moreover, we need to understand that these special criminal legislations work on modern criminal jurisprudence i.e. crime control model, where the presumption of guilt operates as compared to the presumption of innocence which is there in classical criminal jurisprudence. Moreover, here the burden of proof is on the accused and this burden is on the higher side, and the efficiency of this system lies in the suppression of crime and quantity which is conviction as compared to quality which is there in the due process model. Therefore, making such special counter-terror legislation is not an over criminalization rather it is necessary for the sovereignty and integrity of India.

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17

PUNISHMENT THEORIES AND THEIR IMPLICATION FOR CRIMINAL JUSTICE POLICY

Puneet Sharma and Surya Prakash

ABSTRACT

As humans started to cohabit, they bound themselves in a framework of the law of land which fundamentally was derived from the practices and customs followed by them. With cohabitation, various types of social cruelty and crime were born out of it but how society felt the right to deal with it also evolved. Sometimes, it was a direct reflection of priorities and other times, it was an example of humanity at play.

Every group of society has their way of dealing with crimes and their punishment. Before the development of civilization, the punishment was often doled out by the victim of a crime as an act of revenge or payback. The concept of "An Eye for an Eye" was prevailing.

However, when civilization becomes culturally and educationally developed, people realised that seeking revenge on each other wasn't a productive way to live. Consequently, a legal code was established for modern criminal justice. The code of Hammurabi became the first legal code which set a legal precedent for different types of crimes and disputes. This is the Code which gave the concept of " innocent until proven guilty" which we still follow in a contemporary legal society.

Over time, based on culture and geographical locations, imaginary boundaries were created and named a country. Each country followed their own penal policies for punishment. Some opted for a liberal form of punishment where as some continued to follow the barbaric form of punishment. In India, a code was enacted named the Indian penal code which deals with the various forms of punishment for different crimes.

In this paper, the researchers have compared the mode of punishment followed by different countries and data which shows the relation between punishment and its impact on crime. On the basis of the data and studies, the researchers have given their conclusion and theory of punishment.

Keywords: Cohabitation, social cruelty and crime, An eye for an eye, Code of Hammurabi, Punishment.

INTRODUCTION

'Every saint has a past and every sinner has a future' – Krishna Iyer J.

When society decided to organise itself socially, politically and constitutionally, various other societal cruelty, malpractices and crimes were born out of it. To control such practices all societies developed their own penal laws prescribing different forms of punishments for different crimes which were generally based on their customs. Commonly, the punishment was intentionally made undesirable and unpleasant as a response to a particular action which was considered wrong in the eyes of the society and had Initially punishment been sometimes administered by the criminal victim as retaliation or vengeance and thus most of the societies followed the theory of retributive punishment. According to the theory of retributive punishment, the purpose of punishment is to satisfy the victim's desire for justice and send a message to Society and set an example that no such crime can reoccur in the future. Historically, for the first time codified penal law was written by Babylonian King Hammurabi, later known as the code of Hammurabi. The 282 provisions of the Hammurabi Code addressed business

dealings and established fines and penalties to satisfy the demands of justice. It is important to mention here that the code of Hammurabi was based on the doctrine of "lex talionis" which means the law of retaliation. The principle it relied on was that of retaliation in kind, to be more specific it was based on the principle of "an eye for an eye". If we look at the past there were various types of punishment being followed by the different dynasties and based on that different theories of punishment were given. Several theories of punishment were followed over time some of the major theories are the following:-

- Retributive Theory
- Deterrent Theory
- Preventive Theory
- Reformative Theory
- Compensatory Theory
- Incapacitation Theory
- Utilitarian Theory
- Multiple Approach Theory

The theory of punishment is a complex and multifaceted field that seeks to understand the purpose, justification, and methods of punishment in society. It encompasses a wide range of philosophical, legal, and social perspectives and has been a topic of debate and discussion for centuries.

At its core, the theory of punishment is concerned with questions such as: Why do we punish people who have committed crimes? What is the purpose of punishment? What forms of punishment are appropriate in different situations? How can we ensure that punishment is fair and just?

Answers to these questions depend on a variety of factors like including philosophical beliefs cultural norms and legal systems about the nature of justice and human behaviour. Some theories emphasize the importance of deterrence and rehabilitation, while others focus on retribution and moral condemnation.

Exploring the different perspectives and theories of punishment is essential for understanding the role that punishment plays in our society and for evaluating the effectiveness and ethical implications of different forms of punishment. In this research paper, we will be looking into the various mode of punishment historically followed in the various period.

ORIGIN OF THE THEORY OF PUNISHMENT

The history of punishment is a long and complex one, dating back to the earliest forms of human society. Punishment has been used for a variety of purposes, including deterrence, retribution, rehabilitation, and social control. Throughout history, societies have used a wide range of methods to punish individuals who violate social norms, laws, or customs.

In ancient civilizations, such as Mesopotamia, Egypt, and Greece, punishment often involved physical forms of harm, such as flogging, mutilation, or execution. In some cases, the punishment was used as a means of publicly shaming or humiliating the offender, such as in the case of stocks, pillories, or public whippings.

During the medieval period, punishment became more codified and institutionalized, with the development of formal legal systems and courts. Punishment during this time often involved harsh forms of corporal punishment, such as the rack, the wheel, or burning at the stake. Banishment, exile, and forced labour were also common forms of punishment.

In the modern era, punishment has become more focused on rehabilitation and reform, with the development of penitentiaries and correctional facilities. Imprisonment has become the most common form of punishment, but alternatives such as probation, community service, and electronic monitoring are also used.

Despite these changes, punishment remains a controversial and contested aspect of criminal justice. Debates continue over the appropriate goals of punishment, the effectiveness of different forms of punishment, and the ethical implications of punitive practices.

PUNISHMENT IN ANCIENT INDIA

In ancient India, punishment varied depending on the social status of the offender and the severity of the crime committed. The legal system in ancient India was largely based on the principles of dharma (righteousness) and artha (material well-being).

The earliest known legal code in India is the Code of Manu, also known as Manusmriti which covers both contemporary criminal and civil legal systems. It prescribed various types of punishments for different types of crimes. Some of the common punishments in ancient India included:

1. **Fines -** Fines were a common form of punishment for minor offences such as theft or assault. The amount of the fine was determined based on the severity of the crime and the financial status of the offender.
2. **Whipping -** Whipping was a common punishment for crimes such as adultery and theft. The number of lashes varied depending on the severity of the crime.
3. **Banishment -** Banishment was a punishment for more serious crimes such as treason or murder. The offender was banished from the kingdom and was not allowed to return.
4. **Imprisonment -** Imprisonment was also a punishment for serious crimes. The offender was confined to a prison or dungeon for a specific period of time.
5. **Death Penalty -** The death penalty was reserved for the most serious crimes such as treason or murder. There were several methods of execution such as beheading, hanging, and burning at the stake.

It is worth noting that the legal system in ancient India was not uniform throughout the country and varied from region to region. Moreover, the implementation of the law also depended on the discretion of the local rulers and officials.

The Dharma Shastras, which set down the rules for the administration of the criminal and civil justice systems, were followed by the ancient Hindu monarchs. These laws covered 18 distinct areas, encompassing both contemporary criminal and civil legal system. Examples of these categories included matters such as gifts, sales, division, bailment, non-payment of debt, contract violations, partner conflicts, assault, slander, livestock trespass, damage to property, and general physical injury.

During Warren Hastings' tenure as governor-general of India, the Pandits of Banaras were commissioned to compile a Hindu code, resulting in the Gentoo code. East India Company printed in London in 1776, it prescribed varying punishments for open and concealed theft based on Roman Law. The former was punishable by fine, while the latter was punished by the judge's discretion of the most severe type of punishment, which involves amputating the hand or foot. Death was the penalty for offences including highway robbery and breaking into houses.

Punishment Under Mohammedan Jurisprudence

It is believed that Mohammedan Jurisprudence derives its source from the holy Quran, Hadis(the saying of the Prophet), Jimma (conclusions drawn from the text of the holy Quran)

and Kiyas (the erudite Scholars' point of view). When we look at the kinds of punishment given during the Mughal period, we can trace that all the punishments given by the then kings were guided by the Mohammedan criminal law. The most authoritative textual explanation of Mohammedan law in India was known as Hidaya law. The Quran, considered to be of divine origin, formed the basis of Mohammedan criminal law. However, its laws were insufficient, with only eighty or ninety verses providing guidance for civil or criminal court proceedings. Additionally, the Sultan wielded criminal jurisdiction over his subjects and administered temporal punishments to offenders. In Mohammedan criminal law, the following punishments are classified for the different offences, namely:

1. Kisas or retaliation
2. Hud – specific penalties for theft, robbery etc.;
3. Tazeer or discretionary punishment.

With the approval of the emperor, the Qazi used to impose physical torture and limb mutilation as punishments. Even for a trivial offence like theft hands were chopped off and in the case of rape with women, their testimony was not considered unless a witness was a man or two women. Thus, the punishments were very barbaric in nature. Thus, Mohammedan law was defective in various other ways like no weightage was given to the testimony of unbelievers.

In India, during Mughal administration which lasted from 1526 to 1857 led to a complex system of law and order, Which included various forms of punishment for crimes and misdemeanours. One of the most common forms of punishment in the Mughal period was a public flogging. Offenders who were found guilty of crimes such as theft, robbery, and assault were often publicly flogged as a means of deterrence. The severity of the flogging depended on the severity of the crime committed. Another common form of punishment was amputation. Offenders who were found guilty of serious crimes such as murder or treason could have their limbs amputated as a form of punishment. This was seen as a particularly severe form of punishment and was reserved for the most serious crimes. The Mughals also used capital punishment, such as hanging or beheading, for serious crimes. The use of capital punishment was reserved for crimes such as murder, treason, and rebellion against the state.

In addition to these forms of punishment, the Mughals also used fines and imprisonment for lesser offenses. The amount of the fine and the length of imprisonment depended on the nature of the offense. Overall, the Mughal period saw a wide range of punishments for crimes, ranging from public flogging to capital punishment. The severity of the punishment depended on the nature of the crime committed, and the Mughal legal system was known for being both complex and highly efficient in administering justice.

After the arrival of the British East India Company in 1600, all these barbaric and inhuman laws during ancient India and the Mughal administration were criticised and abolished by enforcing various other laws and charters. As a result of the introduction of new legal ideas, many definitions and methods of punishment were created. The most often utilized kinds of punishment evolved into fines, payments, and property seizure. Later on, India formed a formal criminal law, covering all aspects of criminal law. This code, known as the Indian Penal Code, was created based on recommendations from the First Law Commission of India, established in 1834 under the Charter Act of 1833, and chaired by Lord Macaulay. The law was adopted in 1862, during the beginning of the British Raj, and has subsequently undergone several revisions, leading to substantial changes in the beliefs and methods of punishment.

A Look at the Theory and Practice of Punishment in Modern India

Punishment is an essential component of any legal system, serving to uphold the law and maintain social order. In India, punishment has undergone significant changes over time, with a shift towards a more progressive and reform-oriented approach.

The theory of punishment in modern India is based on the principles of deterrence, retribution, and rehabilitation. The aim of punishment is not only to punish offenders but also to reform them and prevent them from committing future crimes.

One of the most significant changes in the theory of punishment in modern India is the move away from capital punishment. In 2015, the Indian Supreme Court upheld the constitutional validity of capital punishment but also stated that it should only be used in the "rarest of rare cases." This decision was a significant shift towards a more humane approach to punishment, recognizing that the death penalty is not an effective deterrent to crime.

In addition to reducing the use of capital punishment, India has also introduced new forms of punishment. Restorative justice, for example, is a new approach that seeks to repair the harm caused by crime by involving the victim and the community in the process of rehabilitation. This approach aims to provide a more holistic and community-based approach to punishment, recognizing that crime affects not only the offender but also the victim and the wider community.

Even now there is still no national sentencing standard in place, it is still based on the discretionary and interpretive skill of the judges. In the landmark case of the **state of Gujarat v. Hon'ble High Court of Gujarat**Krishna Iyer J highlighted the essential thrust of the penal policy of the country. He states:

" the dominant objective of punishment should be to re-enact a positive personality out the person convicted for the offence. Prisoner reform and rehabilitation are important matters of public policy. Thus, they accomplish a public responsibility. "

After this case, four major theories of punishment were outlined by Krishna Iyer J, namely:

i. **Rehabilitative Theory:** In rehabilitation theory, the practice of punishment has also undergone significant changes. Prisons are no longer seen as places of punishment but as institutions for rehabilitation and reform. The focus is on providing education, vocational training, and counselling to help offenders reintegrate into society after serving their sentences. The main objective of this theory is to provide better treatment and training to the accused person so that he/she can return to society as a law-abiding citizen. In many instances under the rehabilitative theory of punishment, the accused gets released on probation followed by certain terms and conditions.

ii. **Reformative Theory:** People cohabiting in society, cohabits under a societal contract that they will not encroach upon the right of the other. But whenever any offense occurs in a society it violates the right of the society to cohabit peacefully. In this case, the state tries to establish peace in society by punishing the culprit. This philosophy of punishment contends that the primary goal and objective of punishment should be to reconstruct the accused's personality.

According to the reformative theory, a person who commits crimes does not cease to be a living human being. The theory emphasizes individualism and seeks to transform offenders by re-educating and reforming them. It posits that crime is connected to the criminal's physical or emotional state, as well as the societal environment and circumstances. Accordingly, the criminal is viewed as a patient, and penalization is not intended to torture or harass them, but rather to rehabilitate and reclaim them. There is always some social cause which compels the criminal to do crimes and thus in general cases, there is an inconsistency between the accused and his intention.

When we look at the procedural law of our countries like the code of Criminal Procedure and the Indian penal code, few provisions of them deal with the reformative theory of punishment.

Section 360 of the CrPC allows the court to pass an order to release on probation for good conduct or after admonition. Whereas, section 54 & 55 of IPC deals with the commutation of the sentence of death and life imprisonment respectively.

iii. **Retributive Theory:** The retributive theory of punishment is based on the principle of "an eye for an eye" or "just deserts". It asserts that punishment should be imposed on an offender because they have committed a wrongful act, and that punishment is a form of retribution or retaliation for the harm caused by the offender's actions.

The retributive theory states that the harshness of the penalty should be commensurate to the gravity of the offence. It is also believed that punishment serves as a deterrent to potential offenders, as the fear of punishment will discourage them from committing crimes.

Unlike the punitive reformative theory which seeks to reform offenders, the retributive theory views punishment as a means of satisfying the demands of justice and maintaining social order. It is often associated with a more punitive approach to criminal justice, in which the primary focus is on punishing offenders rather than rehabilitating them.

In the case of **Bachan Singh vs State of Punjab**, the Supreme court of India upheld the constitutional validity of the death penalty and held that it could be imposed as a form of retributive punishment in the "rarest of rare" cases where the crime is exceptionally heinous and cruel. Similarly, the case of **Machhi Singh v. State of Punjab** also dealt with the imposition of the death penalty and established guidelines for its application, considering the crime's characteristics, its surroundings, the offender's character, and his or her history. In another case of the **State of Maharashtra v Sukhdeo Singh**, the Supreme Court held that the purpose of punishment is not only to reform the offender but also to deter potential offenders and satisfy the public conscience.

iv. **Deterrent Theory:** This theory of punishment is based on the belief that people are rational beings who weigh the benefits and costs of their actions before they act. The theory assumes that if the cost of committing a crime is high, people will be less likely to commit crimes. There are two types of deterrence: specific deterrence and general deterrence. Specific deterrence is aimed at preventing a particular individual from committing any crime again by making the punishment for their crime severe enough to discourage them from repeating the behaviour. By creating an example of the penalized criminal, general deterrence seeks to dissuade future offenders from committing a crime, so that others are dissuaded from committing similar offenses.

This theory of punishment is controversial, as some argue that punishment may not always deter crime, especially when the person committing an offense is not rational, or if the penal policy is not swift or certain. Others argue that the use of harsh punishment as a deterrent is a necessary and effective means of preventing crime and protecting society. Ultimately, the effectiveness of deterrence as a theory of punishment remains a subject of debate among criminologists and legal scholars.

IIMPRISONMENT AS A FORM OF REHABILITATION

The Latin verb "preson," which means "to grab," is where the term "jail" originates. The Oxford English Dictionary describes a prison as a location that is suitably set up and prepared to receive individuals who have been legally committed for safe custody while awaiting trial or punishment. The foremost function of all civil societies is to punish the offender. Historically, the Prisons are known to have existed. Its presence can be traced from antiquity. It was believed that the rigorous isolation and custodian measures would reform the offenders. With the development of behavioural science, it began to federalize those reformations of offenders that were not possible through detention alone.

Prison is no ordinary place. Depriving prisoners of their freedom and personal contact with their families and preparing them for a normal life has always been a controversial issue. There are many criminals who are well-behaved and respectable class of society, but driven to crime by impulses of money, provocation or situation. There is another group of convicts who are innocent but should be punished for life due to miscarriage of justice. Of course, such people find it difficult to go to prisons around them and find life inside prisons most painful and disgusting.

The real purpose of sending criminals to the people is to make them honestand law-abiding citizens by instilling a hatred of crime and wrongdoing. But in practice, prison authorities try to reform prisoners by force and coercion. As a result, the change of prisoners is temporary, lasting only as long as they are incarcerated, and after they are released, they become involved in crime. Therefore, the current trend is more concerned with the reintegration of prisoners into normal life in society.

PAROLE AND FURLOUGH AS A TOOL FOR REHABILITATION

Parole

Parole has the dual purpose of protecting society while ensuring the rehabilitation of offenders. The parole system is a great way to let prisoners heal and interact with the outside world. Parole is a legal sanction that allows an inmate to be released from prison for a short period of time to conduct himself or herself in a manner that respects the inmate's conduct and probation after incarceration. Parole can be negotiated at any time after the inmate has served at least one-third of his total term.

Parole is part of the reform process and is expected to give inmates a chance to become legal citizens. Therefore, parole is granted for partial release or reduced restrictions.

As stated in the current prison manual, the main objectives of the trial are as follows:-

a. To enable the inmate to maintain continuity with the family life and deal with the family.

b. To save inmates from the evil effects of continuing prison life

c. to enable the inmates to retain self-confidence and active interest in life.

The grant of parole in India is administered by the rules made under the prison act 1894 and the Prisoner act, 1900. Each state in India has its own rules with some minor alterations from each other. There are two types of parole- custody parole and regular parole. Custody parole is a temporary parole that is limited only to emergency circumstances like deaths in family marriages in family serious illnesses it is of limited time. During this, a prisoner is allowed to visit the desired place and return back to the prison thereof. Whereas regular parallel is granted for a maximum period of one month except in some cases to convicts who have served at least one year in prison meet regular parole is granted on a crown like a) marriage of family members of council b)accident death of family member c)severe damage to property or life of the family of convict due to natural calamities.

Furlough

Generally speaking, the idea of furlough is similar to that of parole, although there are several key distinctions. It is provided in situations involving lengthy incarceration. A prisoner's duration of furlough is regarded as the remission of his sentence. Furloughs are considered privileges that should be given to prisoners on a regular basis for no other purpose than to allow them to maintain their social and familial ties and to offset the negative consequences of a protracted sentence. The concept of furlough is broadly Similar to parole but there are some significant differences. It is given in cases of long-term imprisonment. The period of furlough granted to a prisoner is treated as the remission of his sentence. Furlough is seen as a matter of

right for the prisoner to be granted periodically irrespective of any reason and merely to enable the prisoner to retain family and social ties and to counter the ill effects of prolonged time spent in prison.

In contrast, parole is granted to a prisoner for a specific purpose and is not viewed as a question of nutrition. Even if a prisoner has a strong case and the competent authorities are convinced that the convict's religion will not serve the interests of society, the release may still be refused him or her in the case of a death in the family or a wedding involving close blood relatives.

CONCLUSION

The law must be honest in itself and reformation should be the crucial and modern objective of the penal policy of the country. However, it is an incontrovertible fact that crime in the past decades has increased drastically but at the same time we must not forget that there are various other social reasons which coerce a person to do a crime. Thus, the penal policy of the state should be following the theory of punishment whose purpose is not only to punish the culprit but at the same time to try to establish a constructive and progressive social phenomenon.

The Fifth Law Commission remembering the value of paying crime victims and the provisions in their CRPC that were in effect at the time that made it possible to order the payment of compensation favoured the payment of compensation to crime victims out of the fines imposed on the offenders with the intention of highlighting this provision in the IPC and giving trial quotes substantial power To this purpose, it was suggested that a new section 62 be added to the IPC, giving the court the authority to order, among other things, that the offender pay the victim's compensation in full or in part of the fine that was collected from him or her. A statutory committee headed by a former Supreme Court justice or high court chief justice with expertise in criminal law and members representing the prosecution's legal team, police department, and scientists have also been proposed by the Justice Malimath Committee to develop sentencing guidelines. Additionally, the 20th Law Commission has recommended that the death penalty be abolished for all crimes other than those related to terrorism and war crimes in light of the march of our own jury students, as well as the expanded and deeper scope of the right to life and the predominance of a standard of constitutional morality and human dignity. The legislation commission emphasises the requirement to end the death sentence for all offences other than those connected to terrorism and acts of war. Nevertheless, the legislature hasn't given any of these proposals substantial consideration, with the exception of the mandatory victim compensation plan.

At the same time keeping the pronouncement of Krishna Iyer J in the case of **Giasuddin vs state of Andhra Pradesh** that every saint has a past and every sinner has a future similarly all t is going to cohabit in the same society as a real thus he or she should be given another chance so that he or she can cohabit in the same society contract without any discrimination. In the case where **Ravji Alias Ramchandra vs Rajasthan**, the Supreme Court held that it is the nature and gravity of the crime but not the criminal who is German that the court will fail in its duty to consider an appropriate sentence in criminal proceedings. It is committed not only against the individual victim but also against the society to which the offender and 15 persons belong The punishment awarded for the crime should not be irrelevant but commensurate with the cruelty and brutality the MP with whom the crime was committed must be affirmed. is The enormity of the crime warrants public hatred and should answer society's cry for justice against the perpetrators.

However, despite these progressive changes, in modern India, there are still issues with how punishment is administered. The criminal justice system is often criticized for being slow, inefficient, and biased towards the wealthy and powerful. The use of torture and other forms of abuse in prisons is also a significant concern, highlighting the need for better oversight and accountability.

In conclusion, the theory and practice of punishment in modern India have undergone significant changes, reflecting a more humane, progressive, and community-based approach. While there are still challenges and room for improvement, the shift towards a more reform-oriented approach to punishment is a positive development, providing hope for a more just and equitable society.

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CONFLATION OF RIGHTS OF ACCUSED AND SOCIETAL INTEREST IN MATTERS OF BAIL: A CASE STUDY OF INDIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The paper explores the relationship between the accused's personal freedom and the prevalent issue of bail in criminal law. Although personal liberty is guaranteed by the Constitution, granting or rejecting bail can be a controversial process. Courts are expected to strike a balance between the accused's right to life and personal liberty and society interests, restraining themselves from acting out of vengeance. The standard of the decision- making process is reflected in the argumentation that supports bail decisions. Despite the fact that it is frequently taught that jail is the exception and bail is the rule, the present paper examines Supreme Court rulings to evaluate whether this idea is upheld in reality. Through this examination, the paper aims to provide a critical analysis of the current state of bail in the criminal justice system and to identify areas where reform may be necessary.

Keywords: [Criminal Justice, Criminal Jurisprudence, Accused, Crime, Victim, Bail]

INTRODUCTION

Two distinct criminal justice systems exist globally, namely the Inquisitorial system and adversarial system. “In Adversarial system burden to prove the guilt of the accused beyond reasonable doubt lies on the prosecution and accused is presumed to be innocent. In this system criminal justice system has two main objectives, first is to punish the culprit/guilty and second one is to protect the innocent. In this system judges acts like a neutral umpire and truth emerge from the facts presented by the prosecution and defendant”[1]. In this legal framework, it is the duty of the judge to ascertain if the prosecution has convincingly demonstrated the accused's culpability beyond a reasonable doubt. If the judge determines that the prosecution has not achieved this, then the accused is presumed innocent. This contrasts with the inquisitorial system, where the responsibility of investigating the offense is assigned to the judicial police officer. “In this system it the duty of trial judge to produce the evidence in the trial and he also has the discretion to decide which witness to be called at the time of trial. In this system most of the questioning of witnesses is done by the trail judge”[2].

The Indian legal system follows the adversarial model that emphasizes the importance of due process. Packer has identified specific characteristics of the due process model that make it more acceptable, such as the following:

- The model of due process has been founded as per the principle of legal guilt, which states that an individual can only be considered guilty if their actual guilt has been proven through the proper legal procedures and by authorities who are authorized to act within their given jurisdiction.
- The due process model includes several obstacles and barriers throughout the criminal process to guarantee that no innocent person is mistakenly charged with a crime. Packer compared the due process model to a factory system with multiple quality control checks in place to minimize defects in the final product. The Indian Constitution and Code of Criminal Procedure have several provisions, including Article 22(1),(2), and sections 55A, 57, and 46, that provide various protections during the arrest process to ensure that innocent individuals are not wrongfully prosecuted. These safeguards are in place to prevent wrongful prosecution and ensure that the accused's rights are protected. Because the state holds

considerable power, it has the ability to unjustly arrest someone and deprive them of their personal freedom to go where they choose.

- According to the due process model, the responsibility of proving the guilt of the accused beyond a reasonable doubt falls on the prosecution
- "Due process model operates on presumption of innocence. As per packer presumption of innocence is a direction to the officials that when they will treat suspect they should avoid presumption of guilt."[3]

In India, we adhere to the due process model which entails the presumption of innocence at every stage of the criminal process. As a result, the Indian criminal justice system has put in place measures such as arrest and bail provisions. The system prioritizes the establishment of legal guilt as opposed to factual guilt.

This paper is about bail, and it's worth noting that the Code of Criminal Procedure in India doesn't define bail as a term. Rather, it only defines "Bailable Offence" and "Non Bailable Offence".

As per section 2(a) "Bailable offence means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and Non-bailable offence means any other offence.[4]"

The definition of bail according to the Black Law Dictionary is

"Procedure the release of a person from legal custody, by undertaking that she/he shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court"[5].

Bail can be Seen from two Perspectives

1. One from constitutional framework
2. Another is from statutory framework

Constitutional Framework of Bail

The Constitution of India holds great significance as it forms the basis of the criminal procedure that is followed in India. In essence, the Constitution serves as the foundational cornerstone upon which the entire criminal procedure is built. As such, it is crucial to take into account the relevant constitutional provisions when dealing with criminal code procedures. The examination of constitutional provisions, especially those related to fundamental rights in Part III, is crucial. Articles 19 to 22, which relate to the personal liberty and life of individuals, are of particular significance.

Article 19 of the Constitution includes a range of freedoms such as the freedom of speech and expression, the right to move anywhere in India, and the right to assemble with arms, among others. Nonetheless, it should be noted that the freedoms granted under Article 19 are not unrestricted, and reasonable restrictions apply, as outlined in Article 19(2).

Article 21 of the Indian Constitution stipulates that "No person shall be deprived of his life or personal liberty except according to procedure established by law"[6]. The Indian Constitution's Article 21 is phrased in a negative tone, which implies that no individual can be deprived of their personal liberty or life unless the appropriate legal procedure is followed. The term "State" is not explicitly stated in this article, but it is the responsibility of the State to ensure that its actions do not infringe upon individuals' life or personal liberty. However, private individuals also have a responsibility not to create situations that result in the deprivation of liberty or personal liberty. Additionally, it is worth noting that the term 'person' is used in Article 21, which encompasses both citizens and non-citizens.

Prior to the Maneka Gandhi Judgment, the court's stance was that as long as a procedure established by law was in place, it was adequate, and there was no need to investigate whether the procedure was arbitrary, unreasonable, or violated the natural justice principle. This statement means that the term 'procedure', as used in the Indian Constitution, was interpreted broadly to include any kind of procedure that was established by law, regardless of whether it was fair, reasonable, or violated basic principles of justice.

The Supreme Court redefined the interpretation of the 'procedure established by law' after the Maneka Gandhi Judgment, leading to a shift in our understanding of it. "Now procedure through which person is deprive from his/her personal liberty cannot be any and every procedure rather it must be non-arbitrary, reasonable, fair, principle of natural justice followed in every procedure. While framing the constitution framer of Indian constitution had rejected the American concept of due process because of it is elastic and uncertain. However, by Maneka Gandhi Judgment this concept of due process has been brought back in India"[7].

If we look at article 22 clause (1), ([2][8]) it is more an explanation of/check on the liberty mention in article 21. In order to fully grasp the meaning of the idea of liberty as outlined in Article 21, it is essential to read it in conjunction with the phrase 'procedure established by law'. When considered together, they form a single entity. Upon a person's arrest, their personal liberty is immediately restricted.

The fundamental rights mentioned above are essential to the criminal justice system, and they are all interconnected with one another. Even though the Code of Criminal Procedure doesn't provide a specific definition of bail, it is rooted in the Indian Constitution.

STATUTORY FRAMEWORK

The Code of Criminal Procedure does not provide a definition for the term "bail," but it distinguishes between offenses that are "bailable" and those that are "non-bailable." Section 2(a) states that "Bailable offence means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force and Non- bailable offence means any other offence."[9] The Code of Criminal Procedure outlines provisions related to bail in sections 436 to 440.

The distinctions between bailable and non-bailable offenses can be outlined as follows-

1. A bail bond can be provided to obtain bail as a matter of right in bailable offenses, while in non-bailable offenses, bail cannot be obtained as a matter of right.
2. In the case of bailable offences, the decision to grant bail is not based on judicial discretion, whereas in the case of non-bailable offences, it is entirely at the discretion of the judge. The judge will carefully examine the entire case before deciding to grant bail in non-bailable offences.

It can be argued that the constitutional freedom approach is more suitable in bail matters than the statutory approach. Although the constitutional approach has its drawbacks, as per Article 21 of the Constitution, the state is allowed to restrict personal liberty only if a procedure established by law is reasonable, fair, non-arbitrary, and follows the principles of natural justice. If a person is arrested and refused bail, the state may argue that it has a well-established and fair procedure, which is non-arbitrary, and thus, bail cannot be granted. In such a situation, there may be no other option left for the suspect. Therefore, it is advisable to rely on the criminal justice system approach, which has better judicial precedents.

In regards to granting bail, the court has to consider both the accused's right to personal liberty and society's interests in maintaining peace and stability. The interests of the society include the need for security, harmony, and stability, while the individual's interest lies in the guarantee of

freedom of action, provided it does not threaten the peace and stability of society. The court has to strike a balance between these two conflicting interests. Although a crime may be committed against a specific individual, it is considered wrongdoing against society as a whole. This raises the queson of why the state is responsible for prosecuting the offender instead of the individual who was harmed. The reason is that a crime affects not only the victim but also the collective conscience and sense of security of society. Thus, it is the duty of the state to prosecute the offender and impose punishment. This concept is based on the social contract between the state and its citizens, where citizens agree to abide by the laws enacted by the government in exchange for the state's promise to protect their safety and well-being.

The provisions of bail and bail bonds in criminal matters are dealt with by sections 436 to 450 of the CRPC. The Code of Criminal Procedure does not prescribe a specific amount of security that an accused needs to pay to obtain their release. Instead, the discretion to determine the monetary limit of the bond lies with the magistrate. However, it has been observed that courts often overlook the socio-economic situation of the accused. Courts have been known to set excessively high amounts as bail bonds, making it difficult for indigent defendants to obtain their release. Consequently, a large number of undertrial prisoners continue to be incarcerated instead of being granted bail.It is essential for magistrates to keep in mind that the majority of the Indian population is impoverished and incapable of arranging for exorbitant bail bonds. "According to prison statistic in India 2019, number of under trail prisoner has increased from 323537 in 2018 to 330485 in 2019 (as on 31st December of each year), having increased by 2.15% during this period"[10].

The Supreme Court, in the case of Hussainara Khatoon v. Home Secretary, State of Bihar, observed that the list of undertrial prisoners presented before them indicated that these prisoners had spent more time in jail than the maximum sentence they could have received if found guilty. The court empathized with the situation of poor undertrial prisoners who were often unaware of their right to obtain bail or were unable to afford a lawyer. In many cases, the court rejected the accused's personal bond and demanded a monetary bond with surety as a requirement for obtaining bail. "In this case court recognized the callousness of the legal and judicial system and unjustified deprivation of personal liberty."

The introduction of Section 436A[11] in the Code of Criminal Procedure through the 2005 amendment has a primary objective of setting a limit on the maximum period of detention for undertrials.

SAME COURT BUT DIFFERENT APPROACH

The bail jurisprudence in India is in disarray partly because of the inconsistent rulings by the Supreme Court on bail matters. This has hindered the development of bail jurisprudence in the country. The courts have held that bail should not be denied to an accused solely because society opposes their release on bail. In cases of economic crimes, the courts have recognized the impact of prolonged trial delays on the accused, who may have to remain in jail for extended periods[12].

However, the position of the court in normal criminal cases, such as murder cases, is different from what has been stated above. In situations like these, the Supreme Court prioritizes the interests of society over those of the individual and denies bail to the accused. The court does not place a significant emphasis on the presumption of innocence and is not inclined towards adopting a liberal interpretation of the bail provisions outlined in the Code of Criminal Procedure.

In cases involving national security legislation, the courts tend to follow a purposive interpretation and do not give the benefit of doubt to the accused. In such cases, the interest of the accused is given less weightage than the interest of the state.

CANCELLATION OF BAIL

Cancellation of bail is another important aspect because bail cannot be cancelled as a matter of routine rather proper hearing needs to be conducted and bail should be cancelled only if there exist special reasons to do so. At the time of hearing bail application it is presumed that parties have raised all their objections particularly prosecution raises all points why bail should not be granted. Therefore, when bail was granted it cannot be cancel on pre bail circumstances rather it only be cancel on post bail circumstances.

Bail can be cancel if it was granted by the court after taking into account irrelevant factors or misapplication/violation of procedural or any substantive law or non-application of mind by the court at the time of Granting release on bail to a defendant. In those instances, bail of an accused can be cancelled only by the higher court. Whenever such situation arises then in such cases court will first out whether factor is irrelevant in the light of other factors? Then court has to examine what was the weightage given to that factor at the time of granting bail to an accused?

ANTICIPATORY BAIL

The natural and fundamental right of an individual is the right to liberty. Nonetheless, individuals must also respect the rights of others that are recognized by law, such as the inviolability of their bodies and property. When a person is suspected of committing a crime, they may be arrested and detained, which restricts their freedom. However, bail allows for their temporary release with the condition that they will appear in court for their trial and accept punishment if found guilty.

The principle of bail is based on the fundamental right to liberty, which is recognized in Article 211 of the Indian Constitution. Article 22(2) of the Indian Constitution and sections 436, 437, and 439 of the Code of Criminal Procedure, 1973 provide more detailed information about the practice of bail. In addition, the concept of anticipatory bail has been added to the mix, allowing judges to use their discretion to balance the interests of the accused and the victim by considering the true facts of the case.

DEFAULT BAIL

The Code of Criminal Procedure mandates that an arrested individual must be brought before a magistrate within 24 hours of their arrest. Upon production before the magistrate, the magistrate has the power to grant custody of the accused for a total period of 15 days as per Section 167 of the Code of Criminal Procedure. The custody may be in the form of police custody, judicial custody, or a combination of both, depending entirely on the discretion of the magistrate. It may happen that magistrate grant full 15 days Judicial Custody without granting single day Police custody. In between 15 day custody if grounds of bail are established then accused may be released on bail.

In the course of investigation after initial 15 days custody is over, magistrate is further competent to grant custody for total period of 60 or 90 days including initial 15 days custody. But it will be only judicial custody. If 90 or 60 days of custody of accused has expired but accused is still in judicial custody and police report has not been filled, that is, inquiry has not been started and magistrate has not gain competency under section 309 Code of criminal procedure. And under section 167 Code of criminal procedure magistrate is not competent to grant further custody. If accused is still retained in custody it will amount to illegal detention and violation of principal of natural justice.

CONCLUSION

As former law students, we were taught that bail is generally preferred over imprisonment. However, upon reviewing the aforementioned court judgments, it appears that lower courts may not always adhere to this principle. The Supreme Court has established well-defined bail laws and outlined the factors that lower courts must consider when granting bail. Justice Krishna

Iyer's 1978 Babu Singh v. State of U.P. case emphasized the need for courts to consider both social and individual factors when making bail decisions, even in cases involving serious offenses.

- The previous criminal record of the accused, including any involvement in criminal activities in the past, should be taken into account.
- The accused's social and economic circumstances should be evaluated, including the likelihood that they could influence witnesses.
- To what extent is the accused integrated into the community?
- Can the accused be released on bail instead of being sent to jail?

Although the Supreme Court has issued directions and guidelines in both cases, the problem of undertrial prisoners persists in 2023 and is actually increasing instead of decreasing. It seems that the subordinate judiciary is not fully adhering to the Supreme Court's judgments. Bail is a crucial matter since it is directly linked to an individual's personal liberty. The personal liberty guaranteed by the constitution cannot be easily disregarded. I concur that societal interest is important, however, the courts should consider both the societal and individual interests of the accused when granting bail. While there cannot be a set standard for granting bail as every case is unique, recent bail orders from the High Court indicate that lower courts are recognizing the significance of personal liberty. Instead of focusing solely on the severity of the charges, they are now considering factors such as the accused's social standing, criminal history, and potential for interfering with evidence.

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ANALYZING THE LEGITIMACY AND FEASIBILITY OF PREEMPTIVE SELF-DEFENSE AS A TOOL TO COUNTER GLOBAL TERRORISM IN ASIA, WITH A SPECIAL FOCUS ON INDIA: EXAMINING THE EXISTING INTERNATIONAL LEGAL FRAMEWORK AND ITS IMPACT ON REGIONAL AND INTERNATIONAL RELATIONS

Vaishnavi Srivastava and Tushar Mehra

ABSTRACT

The threat of global terrorism has prompted countries around the world to take measures to protect their citizens and national interests. Preemptive self-defense, which involves using military force to prevent an imminent attack, has been proposed as a potential tool to combat terrorism. However, the legitimacy and feasibility of such actions under international law are subjects of debate.

This paper aims to analyze the legitimacy and feasibility of preemptive self-defense as a measure to combat global terrorism in Asia, with a special focus on India. The study will examine the existing international legal framework on preemptive self-defense, as well as its impact on regional and international relations.

The analysis will include an examination of case studies and relevant legal documents to provide a comprehensive understanding of the issues at hand. The study will also identify potential challenges and risks associated with the implementation of preemptive self-defense as a counter-terrorism measure. Ultimately, this paper seeks to contribute to the ongoing discourse on effective and lawful counter-terrorism strategies in Asia and beyond.

Kewords: preemptive self-defense, global terrorism, international law, weapons of mass destruction, inter-state dealings, technological advancement, Security Council Resolutions, Caroline Doctrine

INTRODUCTION

The horrors of global terrorism are real. Terrorism is not a new happening but the sudden shift in the delivery of the threat has been an agonizing concern all around the world. The employment of weapons of mass destruction like the bomb filled trucks and airplanes by the terrorists has been the central point of debates of national security agendas. In the past, the approaching attack was much more predictable than it is in the present. With the ease in the inter-State dealings at international level and technological advancement, the operation of terrorist's activities has become an unchallenging task and usually the terrorist groups operate in clandestine manner. The horrors of the aftermath of 9/11 compelled the States to re-examine the scope and viability of existing international law dealing with the concept of self-defense. Considering the seriousness of the nature of the prevailing threats many of the States have taken resort to preemptive self-defence as a precautionary measure in order to counteract the horrendous acts of terrorism. The right to preemptive or anticipatory self-defence may entitle a State to unilaterally use force to counter an emerging development which is yet not imminent or alarming but could possibly be a potential threat against that State's peaceful existence. The increasing instances of terrorist attacks against the civilians have been a fundamental concern of most of the States around the world. The present international laws on self-defence i.e., the Caroline Doctrine, Article 51 of UN Charter and the Security Council Resolutions of 1368 and 1373 do not provide clear guidelines as to when a State may resort to pre-emptive or anticipatory action. In the middle of the rising of international terrorism and the process of

discovering measures to counter this threat, the pressing debate has been, that whether preemptive self-defence can be considered as an effective and legitimate measure to suppress and limit the growing evils of terrorism or it will rather erode the restraints on the use of force and would lead to the road to International Anarchy. Many scholars have indulged in plethora of debates regarding the limits and extent to which the use of force and violence can be embraced by the State while warranting the act of preemptive self-defence. Various tests like the Scrutiny test, Necessity test etc. have been proposed by eminent scholars to ensure that when a State acts in anticipation, the said act on the part of the State is justified, valid, viable and that no innocent lives are sacrificed. The invocation of anticipatory self-defence is very much in conflict with the existing international law norms which strongly promotes the peaceful co-existence of the State members however with the sudden surge in the number of the terror bombings by the non-State actors, the States find it more feasible to take precautionary measures in advance by attacking the enemy State which are considered by them as a pertinent threat to the lives of their innocent civilians. The right of self-defence is considered as an inherent right which has always been available to individuals and soon after the emergence of State was made available to them as well. However, the central point of the present argument does not deal with the availability of right of self-defence to the State but when, how and to what extent can this defence be availed. The present paper will primarily focus on the in-depth analyses of the standing international laws dealing with the notion of preemptive self-defence including that of the Caroline Doctrine, Article 51 of the UN Charter, Security Council Resolutions and thereby determining the feasibility, credibility, legitimacy, viability, effectiveness and scope of the preemptive self-defence as a precautionary measure on the part of the State to curb the dauntings of terrorism. The paper will also examine the possibility that whether the right to pre-emptive self defence can take us back to old days when fear and force governed the international relations and the rule of law had no relevance.

RESEARCH OBJECTIVE

The objective of this research is to analyze the legitimacy and feasibility of preemptive self-defense as a measure to combat global terrorism in Asia, with a special focus on India. This study will examine the existing international legal framework on preemptive self-defense and its impact on regional and international relations. The research will also aim to identify potential challenges and risks associated with the implementation of preemptive self-defense as a counter-terrorism measure. By analyzing case studies and relevant legal documents, the research will provide a comprehensive understanding of the issues at hand and contribute to the ongoing discourse on effective and lawful counter-terrorism strategies in Asia and beyond. The ultimate goal is to provide insights and recommendations that can inform policy decisions aimed at promoting regional and international security while upholding the principles of international law.

HYPOTHESIS

The use of preemptive self-defense as a tool to counter global terrorism in Asia, particularly in India, is a legitimate and feasible strategy, but its effectiveness depends on the adherence to the existing international legal framework and the impact on regional and international relations. The implementation of preemptive self-defense measures, in compliance with the international legal framework, can enhance the security of the region and reduce the threat of terrorism. However, its implementation without proper consideration of international law and cooperation may lead to an increase in tensions and conflict, harming regional and international relations.

RESEARCH METHODOLOGY

This qualitative research study will employ a doctrinal approach to analyze the legitimacy and feasibility of preemptive self-defense as a measure to combat global terrorism. The research design will involve a comprehensive review of existing international laws, treaties, legal cases,

and other relevant literature. The primary sources of data will be analyzed using a doctrinal analysis approach to identify the legal framework around preemptive self-defense. The findings of this study will be used to better understand the impact of preemptive self-defense on international relations and the potential for deterring future terrorist attacks. Ethical considerations will be ensured, and the limitations of the study will be acknowledged, including the potential for bias in interpretation and the limited scope of legal documents and cases that address preemptive self-defense.

Meaning and Definition of Preemptive Self-Defence

The term "Preemptive Self-Defence" does not have an exhaustive definition and any such effort to have an exact definition of this term will be a futile effort in my opinion as it an ever-emerging phenomenon. However, many scholars over the years have tried to examine and analyse this particular concept and while doing so have attributed various meanings in this regard. As according to Michael Reisman and Andrea Armstrong in their work titled "The Past and Future of the Claim of Preemptive Self-Defense" have described the right to preemptive self-defence as an entitlement to unilaterally use high degrees of violence without any prior international authorization to basically curb an initial development that is not yet operational or directly threatening but that if allowed to grow can be seen as a potential threat to the preemptor State[1]. Professor Sean D. Murphy in his work "The Doctrine of Preemptive Self-Defense" has said that "preemptive self-defense" is basically the use of armed coercion by a State to counter another State from going after a specific course of action which is yet not threatening but which if allowed to continue could possibly at some time in future result into armed coercion against the first State[2].

According to Robert W. Tucker, a preemptive attack involves an action in which the attempt is made to seize the initiative from an adversary who was either already resorted to force or is certain to initiate hostilities in the immediate future whereas a preventive war initiates the deliberate and premeditated initiation of hostilities at the most propitious[3]. For a very long period of time, the international law regime has supported the idea that nations can legally defend themselves against attacks that have already taken place and not any time before the occurrence of such events. However, in present times we have witnessed a paradigm shift, where many States especially USA have sought a change of process, where the option of preemptive self-defence is considered as a valid recourse in cases where a sufficient threat to the nation's security is perceived on the part of the preemptor State, even if there exists obscurity and uncertainty as to when the actual attack from enemy's end will take place.

In common parlance preemptive self-defence can be understood as an armed attack from one State to another State on a mere belief that an armed attack from the latter State is likely to occur which poses a real threat to the former States security when in reality no actual occurrence of such event has taken place.

Historical Cases of Preemptive Self-Defense in Response to Terrorism in Asia and India

As right explained above Preemptive self-defense is a strategy that involves using force to prevent an imminent attack, rather than waiting for an attack to occur. In the context of counterterrorism, preemptive self-defense has been used to justify targeted killings and other forms of military intervention against individuals or groups suspected of planning or supporting terrorist attacks.

One of the most notable historical cases of preemptive self-defense in response to terrorism occurred in Israel in the 1970s and 1980s. During this period, Palestinian militant groups carried out a series of attacks against Israeli targets, including bombings, shootings, and kidnappings. In response, the Israeli government argued that it had a right to strike preemptively against suspected terrorists to protect its citizens from future attacks.

One such example of preemptive self-defense occurred in 1981, when Israeli fighter jets destroyed a nuclear reactor in Iraq that was believed to be developing weapons of mass destruction. The Israeli government argued that the reactor posed an imminent threat to its national security, and that preemptive action was necessary to prevent the development of nuclear weapons that could be used by terrorists (Watts, 2003).

In Asia, the use of preemptive self-defense in response to terrorism has been more limited, but still notable. In 2008, for example, the Indian government carried out a series of airstrikes against suspected militant camps in Pakistan-administered Kashmir, in what it described as a preemptive strike against a potential terrorist attack (Ganguly, 2011). The Indian government argued that it had credible intelligence indicating that the militants were planning to carry out attacks against Indian targets, and that preemptive action was necessary to prevent loss of life and property.

However, the use of preemptive self-defense in response to terrorism is not without controversy. Critics argue that preemptive strikes are often based on incomplete or unreliable intelligence, and can lead to unintended consequences, including civilian casualties and a cycle of violence. Additionally, some legal scholars argue that preemptive self-defense is not permitted under international law, except in cases where an imminent attack is clearly and imminently about to occur (Dinstein, 2016).

Right of Self-Defence Under International Law Regime

To Determine the scope and limits of the right to use self-defence has been discussed over on several occasions. The Caroline Doctrine, Article 51 of the UN Charter and the UN Security Council Resolutions of 1368 and 1373 which were enforced post 9/11 attacks can be considered as relevant legal instruments to shed some light to articulate the new standards of the contemporary conflict and also to help us determine if any major paradigm shift has taken place in respect to self-defence with the emergence of new kinds of threats.

A. Article 51 of the UN Charter

Article 2(4) of the UN Charter explicitly prohibits and refrains the member States to employ threat or use of force against the other member States. The United Nations primarily focused to develop a world order devoid of any armed conflict, where all the member States can peacefully co-exist with each other. As one of the purposes of the United Nations is to protect the future generations from the scourge of war, the UN Charter calls on the States to resolve their disputes amicably without disturbing the peaceful world equilibrium which was substantially dismantled during the world wars. To further strengthen the stand on the non-use of force and violence, Article 51 validates only such acts of self-defence on the part of the States when the actual armed attack has taken place and not otherwise.

Article 51 reads as:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

A simultaneous reading of both the abovementioned articles i.e., Article 2(4) and Article 51 of the UN Charter stipulates the clear intention of United Nation, that the State's response of self-defence to a situation of the occurrence of an armed attack is strictly limited to the actual existence and presence of physical attack from the enemy State's end and not any time before.

However, with the recent developments many legal experts and international lawyers have adopted a deviated approach and are no more restricted to the literal interpretation of Article 51. They have adopted pragmatic approach to interpret the contours of Article 51 and after analysing the practical consequences of the present international conflicts they have given ways to contrasting interpretations to the traditional meaning of self-defence under Article 51. Muhammad Nasrullah Mirza and Adil Sajid in their work "Use of Force in Self-Defence for Global Peace" makes a comment on the unilateral use of force on the part of the State. As according to them the State can employ unilateral use of force as a self-help measure in response to the existence of imminent threat[4]. Contrasting interpretation of Article 51 has been discussed by Natalino Ronzitti in his work "The Expanding Law of Self-Defence". As discussed by Natalino, according to a particular school of thought the right to self defence cannot only be used in situations when the State has been subjected to an armed attack but also in situations when the attack is imminent[5]. This school of thought primarily focuses on the notion of inherent right of self-defence and declare that not even the UN Charter can take away or abridge the State's right to act in anticipation in cases when the threat is imminent and real. Thus, some scholars assert the fact that Article 51 recognizes and preserves the "inherent right of individual or collective self-defence indirectly.

In reference to the inherent right of the States not being impaired, one can say that Article 51 exclusively focuses on the fact that the right to self-defence can be employed in a particular situation, but it in no way implies that other possibilities are totally excluded or ruled out. The literal interpretation of the Article 51 basically narrow downs the ambit of Caroline Doctrine which provides for the engagement of anticipatory self-defence in situations where the threat to the national security of a State is reasonably believed to be imminent. On the other hand, the pragmatic interpretation of Article 51 by emphasizing on the inherent right of self-defence of a State seems to be more in line with the customary international law principle i.e., the Caroline Doctrine which validates the preemptive self-defence in situation where there exists a real and imminent threat.

Amos N. Guiro in his famous piece of Work "Anticipatory Self-Defence and International Law-A Re-Evaluation" has asserted that the States in order to defend themselves must fight the terrorists before the terrorist attacks and disrupt the State's sovereignty and safety. He further asserts that based on the experience gained over the recent years, the State must act in anticipation or pre-emptively in order to deter the non-State actors to commit the dreadful acts of terrorism. He suggests that active self-defence seems to be the most feasible and efficient tool to counter terrorism rather than waiting for the actual armed attack to 'occur' (Article 51), the State must be able to act anticipatorily (Caroline Doctrine) against the non-State actor. While proposing the re-articulation of International Law on the above-mentioned lines Amos N. Guiora has proposed a process-based 'strict scrutiny' approach to self-defence which will be dealt in detail later in this paper.

B. Caroline Doctrine

The broader interpretation of the right of self-defence validates the attack which is taken in anticipation by the State. The reasoning for the same is that Article 51, through its reference to the "inherent" nature of the right, leaves unabated the pre-existing customary right of self-defence, which allows the anticipatory action[10]. This customary right of Self-defence was framed in the form of a Caroline Doctrine. The coming into existence of the Caroline Doctrine resulted when a vessel used by the Canadian rebels to curb the attacks against Canada was captured and destroyed in American Territorial waters by the Britishers in 1837. Following the incident, the American Secretary of State Daniel Webster requested his British counterpart to prove that the action taken against the Canadian vessel was only a justified act if they had no choice and moment for deliberation but to act instantly while exercising their right of self-

defence. This phenomenon was subsequently endorsed by other international tribunals[11]. The US Secretary of State Daniel Webster following the incident articulated two essential conditions for legitimizing the exercise of pre-emptive use of force under customary international law[12]. Firstly, he Stated that an intrusion into the territory of another State can be justified as an act of self-defence only in those "cases in which the necessity of that self-defence is instant, overwhelming, and leaving no choice of means and no moment for deliberation" and secondly the use of force used in such circumstances should be proportional to the threat existing[13].

Thus both the elements of necessity and proportionality were considered as imperative requirements while validating the use of preemptive force under the customary international law regime. The Caroline Doctrine helped in developing the view that the right of self-defence is not only considered as a permissible idea when the actual armed attack has taken place but also when an imminent armed attack is already underway. Thus, the formula laid down under the Caroline Doctrine reads as below:

a. Firstly, the act of the State can be justified as an act of self-defence if the armed attack is launched, or is immediately threatened, against a State's territory or forces.

b. That there exists an urgent necessity for defensive action against that particular attack.

c. That there is no other practicable alternative than to exercise the right of self-defense.

d. That the action taken by way of self-defence is limited to what is necessary to stop or prevent the infringement[14].

Based on the above discussion, we need to reconceive the concept and various tenets of Caroline Doctrine in the existing international legal system to address the contemporary threats of terrorism.

C. UN Security Council Resolutions of 1368 and 1373

The United Nation Security Council passed two resolutions as a result of the aftermath of 9/11 attacks with a view to counter terrorism. The UN Security Council Resolutions of 1368 and 1373 were also subjected to mixed view and interpretations. Where on one hand few scholars believed that these resolutions did not facilitate and attributed broader reading to the right of self-defence, on the other hand others were of the view that the said resolutions have brought about remarkable changes in the right to self defence regime namely:

a. Both the resolutions have strengthened the inherent right of individual and collective self-defence as recognized under Article 51 of the UN charter.

b. Both the resolutions recognized that the attacks of 9/11 can be constituted as attacks within the meaning of Article 51 of the UN Charter.

c. Readiness to take appropriate steps to respond back to terrorist attacks of 9/11 and to combat all forms of terrorism and was expressed in the UN Security Council Resolution 1368.

d. Adoption of necessary steps was suggested in the UN Security Council Resolution 1373 to combat the terrorist activities whereby early warnings can be given by one State to another State to counter the existence of threat to the latter State’s national security[15].

These resolutions mention the principle of inherent right of self-defence of the State in their preambles itself. While exercising the right of self-defence a State might not require a prior approval on the part of the Security Council and the Security Council itself cannot unilaterally change the Law of the Charter, however the explicit classification of the terrorist threat as an

armed attack under the UN Charter can surely be treated as a step forward in the new articulation of the laws of Self-defence under the International Regime[16].

After going through the detailed discussion in respect of the right to self-defence one can say that while the international legal instruments explicitly grant the fundamental right of Self-defence to States they have failed to provide a sufficiently clear picture as to 'when' this right can be exercised. The right to preemptive self-defence has yet not found an explicit place in the international legal instruments but with the sudden change in ways of interpretation of this right one can say that peremptive self-defence with changing times is slowly building its place in the international law regime may be not explicitly but implicitly where a properly scrutinized preemptive action against a non-State actor on reasonable grounds can be validated depending upon the alarming facts and circumstances of events of the modern-day armed conflicts. Thus, a major paradigm shift has been experienced in the interpretation and exercise of the right of self-defence especially after 9/11 and with the emergence of new threats.

Doctrines and Tests Validating the Right of Preemptive Self-Defence

a. **Bush Doctrine**:

During the Iraq war of 2003, under the administration of President George W. Bush the launch of preemptive military attack on Iraq was justified on the ground that USA has exercised preemptive military strike against Iraq to defend itself from growing threat of terrorism. President Bush in one of his speeches while justifying his stand contented that considering the kind of threat and terror to which USA was exposed by Iraq, USA had a legitimate right to use force in the exercise of its inherent right of self-defence implicit in Article 51 of the UN Charter. He further clarified that after the horrors of 9/11 USA would retain the right to attack any nation preemptively which it deems to pose a serious and imminent threat to the nation's security. The speech delivered by Bush was formulated into a document entitled "The National Security Strategy of the United States of America"[17]. The document asserted that the aftermath of 9/11

had resulted in some extremely horrifying experiences and USA was confronted with some new challenges. USA contended that the world has changed drastically and the employment of weapons of mass destruction and the growing terrorist networks were so alarming and dangerous that it won't hesitate to act unilaterally to exercise its inherent right of preemptive self-defence as and when the necessity arises. The document basically represents a set of new foreign policy guidelines that was adopted by US which placed greater emphasis on military pre-emption, military superiority, unilateral action, and a commitment to extending democracy, liberty, and security to all regions.

This document with new National Security Strategy (NSS) with shifted security environment came to be known as the "Bush doctrine," and it served as the major policy framework for the US invasion of Iraq in 2003[18]. Exponents and the supporters of the Bush Doctrine have disregarded all kinds of criticisms. The supporters argue that the identification of possible hostile targets and a pre-emptive-strike doctrine amount to an operational strategy designed to map and respond militarily to the very different types of violent threat emerging as a result of the war[19]. Such an advance act on the part of the State not only helps in dismantling the menace of terrorism but also creates a deterrent effect to rule out the possibility of such future occurrences. Even after having a widespread rejection of the notion of employing preemptive self-defence against non-imminent threats, the NSS has had made a significant impact on security mechanisms of the nations worldwide. A growing number of States openly began to endorse the legality of preemptive self-defence.

Following the Bali bombing where 80 Australian Tourists were killed in December 2002, Australian Prime Minister John Howard suggested that the provisions regarding self-defence in the UN Charter should be rewritten, since international laws were no longer adequate to confront the threats to national security[20].

b) Strict Scrutiny Standard:

Amos N. Guiro in his famous work 'Anticipatory Self-Defence and International Law- A Re-Evaluation' has proposed a solution to the prevailing problem of terrorism by the adoption of Strict Scrutiny Standard. The strict scrutiny test enables a State to act earlier subject to certain restrictions. Amos N. Guiro has asserted that there are four legs of the strict scrutiny test:

1. Every State has a fundamental right to engage in active self-defence.
2. The State's chief responsibility is to protect the safety and security of its citizens.
3. Operational Counterterrorism should be based on the rule of law, morality in armed conflict and effective policy.
4. The actionable intelligence must be reliable, viable, valid and corroborated[21].

The strict scrutiny test will allow a State to act in anticipation or earlier provided that the intelligence information presented to the court is reliable, valid, viable and corroborated intelligence. It is only when the court is convinced and gives a green signal that the pre-emptive operational counterterrorism to combat or prevent terrorism can be put to execution. As the present international law may have established that the States have the right of self-defence however, they have yet not been successful to determine as to when should a State engage in preemptive self-defence. This particular test promoting pre-emptive operational counterterrorism answers the 'when' part of the present issue. As according to this test, a State may engage in pre-emptive operational counterterrorism soon after they have the judicial authorization. It does so by recommending the adoption of a process necessary to ensure lawful responses to terrorism and thereby legalizing counterterrorism[22].

Operational counterterrorism is a highly complicated and risky task. It is comprised of multiple sources where people are working at various levels. The stakes are extraordinarily high because any wrong decision can result into deaths of innocent life. This is the reason why the strict scrutiny test demands the supremacy of the intelligence information and the stern requirement that it should be judicially scrutinized and authorized so that the stakes of commission of errors go really low. Let us now examine particular operational failures which could have been prevented had the intelligence information provided was subjected to judicial authorization. During 1972 Olympic Games, Israeli athletes were attacked by the Palestinian Terrorist group as a result of which Prime Minister Golda Meir ordered the Israeli foreign intelligence service responsible both for gathering intelligence information and operational counterterrorism i.e., Mossad to kill Palestine Liberation Organization (PLO) members responsible for the attack. The operation was prematurely terminated after a Moroccan waiter, the victim of mistaken identity, was tragically killed[23]. The relevance of the accidental killing of the waiter to the strict scrutiny test is that, had the Israeli Foreign Intelligence Service strictly scrutinized the information and got the judicial authorization regarding the validity and viability of the information this operational error which resulted in the death of the innocent waiter could have been averted.

a. **Necessity Test**:

Necessity has long been considered as the pre-conditions fastened to the right of exercise of self-defence. Irrespective of the fact that it is not explicitly mentioned under Article 51 of the UN Charter still it has grown as a part of customary international law which justifies the use of force against the armed attacks by terrorists. The contemporary customary law has begun to recognize the right of preemptive self-defenses where necessity can assume a very crucial role in the anti-terrorist activities as a result of which the prompt actions on the part of the States as a self-defence measure is justified and validated. Obviously, a State can just not sit and wait for the enemy to attack in cases where there is an imminent threat to that State's national security. Rational Judgement and verified knowledge on the part of the State that certain terrorist

activities pose a serious threat to its security can suffice the State's preemptive action to counter the threat. The prompt action on the part of the State can be justified on the premise that the said act was the necessity of the hour to avert the larger damage that could have had resulted had the State not acted earlier. In order for necessity to assume its rightful role, the States can simply ask for evidence to be produced and positions to be explained on why exactly the resort to force was necessary[24]. A clear example of this test justifying the right to exercise self-defence can be seen in the international response against Al Qaeda operating from Afghanistan. The international community took the view that the Taliban regime did support the terrorists and as a consequence, the necessity of some action against Al Qaeda targets in Afghanistan was not disputed[25].

Instances of Successful Exercise of the Right of Preemptive Self-Defence

The successful execution of Osama Bin Laden, the leader of Al-Qaeda by the US can be considered as the best exercise of the right of preemptive self-defence. Osama Bin Laden, the globe's most wanted terrorist was the founder of the militant Islamist Organization Al-Qaeda and the mastermind behind the various terrorist attacks that had taken place against United States including the terrorist attacks on the World Trade Center on 11th September 2001, Suicide Bombings of the U.S. warship in the Yemeni port of Aden, etc[26]. The US Intelligence received information that Usama Bin Laden was hiding in a walled compound in Abbottabad city of Pakistan[27]. The mastermind behind the dreadful 9/11 was shot dead by the US special forces during a raid. Such an act on the part of the US was not disputed worldwide because it ultimately helped in eliminating the biggest terrorist of all times who was not just a threat to US but to the entire world.

Another successful instance of preemptive self-defence was when India conducted surgical strikes over various terrorist launch pads and bunkers in PoK (Pakistan occupied Kashmir) eleven days after four terrorists attacked and killed unarmed 17 army personnel of the Indian army in Uri district.

As a result of India's preemptive strike, 38 terrorists were killed and various terror camps were dismantled. Indian Director General of Military Operations (DGMO) Lt. Gen. Ranbir Singh said that it had made a preemptive strike against terrorist teams who were preparing to carry out infiltration and conduct terrorist strikes inside Jammu and Kashmir[28].

A major shift in policy was witnessed after the Uri terrorist attack, advocating the elimination of terrorism from the subcontinent. After the terrorist attacks in Peshawar, Modi government had Stated that there is no "good" or "bad" terrorism. After repeated Pakistani intrusions in India such as the Gurdaspur, Pathankot and Uri attacks, Modi too hardened his stance and as a self-defence measure to protect India from the scourge of terrorism allowed the first ever surgical strikes along the Line of Control in Pakistan occupied Kashmir[29]. The said surgical strikes were also conducted with an aim to deter the terrorists.

Arguments for and Against Preemptive Self-Defense

Preemptive self-defense is a controversial strategy that involves using force to prevent an imminent attack, rather than waiting for an attack to occur. In the context of countering global terrorism in Asia, with a special focus on India, preemptive self-defense has been used to justify targeted killings and other forms of military intervention against individuals or groups suspected of planning or supporting terrorist attacks. However, there are both arguments for and against the use of preemptive self-defense in this context.

Arguments for Preemptive Self-Defense

One of the main arguments in favor of preemptive self-defense is that it is a necessary tool to prevent terrorist attacks before they occur. Supporters of preemptive self-defense argue that terrorist groups often operate across borders, making it difficult to track their movements and

activities. Therefore, preemptive self-defense is necessary to disrupt terrorist plots and prevent attacks from being carried out (Pillai, 2013).

Proponents of preemptive self-defense also argue that it is a legitimate use of force under international law. They point to Article 51 of the United Nations Charter, which recognizes the right of states to use force in self-defense in response to an armed attack. Supporters of preemptive self-defense argue that this right extends to situations where an attack is imminent and there is no other way to prevent it (Bellamy & Wheeler, 2014).

Moreover, the argument for preemptive self-defense is based on the premise of avoiding the costs of inaction. Inaction in the face of an imminent threat may result in unacceptable losses to the state, including human lives and material damage. Proponents argue that in such cases, the state has a right to act in self-defense, even if it means taking preemptive measures (Vierucci, 2013).

Critics of preemptive self-defense also point out that it can be difficult to distinguish between preemptive and preventive self-defense.

Preventive self-defense involves using force to prevent a potential future threat, rather than an imminent attack. Opponents of preemptive self-defense argue that this distinction is important because preventive self-defense is generally considered illegal under international law, and the use of preemptive self-defense may blur this distinction (Doyle, 2010).

Focus on India

In the case of India, the use of preemptive self-defense has been a subject of debate and controversy. India has been a frequent target of terrorist attacks, particularly by groups based in Pakistan, such as Lashkar-e-Taiba and Jaish-e-Mohammad. In response, the Indian government has pursued a range of counterterrorism strategies, including preemptive self-defense.

Supporters of India's use of preemptive self-defense argue that it is necessary to prevent terrorist attacks and protect Indian citizens. They point to the 2016 surgical strikes on militant camps in Pakistan-administered Kashmir as an example of successful preemptive self-defense (Khan, 2019).

Opponents of India's use of preemptive self-defense argue that it is illegal under international law and can lead to unintended consequences, such as civilian casualties and a cycle of violence. They also argue that India's use of preemptive self-defense has the potential to escalate tensions with Pakistan and undermine regional stability.

CONCLUSION

The analysis of the legitimacy and feasibility of preemptive self-defense as a tool to counter global terrorism in Asia, with a special focus on India, reveals that while it can be a legitimate and feasible strategy, its effectiveness depends on various factors, including adherence to international law, cooperation with other states and international organizations, and addressing the root causes of terrorism.

One of the key challenges in implementing preemptive self-defense measures is the potential violation of international law. The United Nations Charter allows for the use of force in self-defense only when an armed attack has occurred or is imminent. The concept of preemptive self-defense, therefore, raises questions about the legality of using force before an attack has occurred. The United States' decision to invade Iraq in 2003 on the basis of preemptive self-defense was widely criticized for violating international law and lacked the support of the international community.

On the other hand, Israel has used preemptive self-defense measures to prevent terrorist attacks, which have been largely successful. For example, Israel has targeted terrorists planning to

launch rocket attacks from Gaza, killing them before they could carry out their attacks. Israel argues that its actions are necessary to prevent terrorist attacks and protect its citizens from harm. However, such actions have also been criticized for violating international law and harming civilians.

In India, terrorist threats from groups like Lashkar-e-Taiba have prompted the country to implement preemptive self-defense measures, including surgical strikes across the border with Pakistan. These measures have been controversial, with Pakistan denying the existence of terrorist groups within its borders and accusing India of violating international law. The lack of international support for India's actions has further complicated the situation, highlighting the importance of cooperation with other states and international organizations.

The research also highlights the importance of addressing the root causes of terrorism. For example, poverty and inequality contribute to the radicalization of individuals and provide a fertile ground for the emergence of new terrorist groups. Providing education, employment opportunities, and addressing socio-economic issues can help prevent the emergence of new terrorist groups and reduce the overall threat of terrorism.

While preemptive self-defense can be a useful tool in countering terrorism, its effectiveness depends on adherence to international law, cooperation with other states and international organizations, and addressing the root causes of terrorism. Proper implementation of this strategy can enhance regional security and reduce the threat of terrorism. However, inadequate implementation can lead to increased tensions and harm regional and international relations. Therefore, a comprehensive approach is essential to prevent the emergence of new terrorist groups and ensure long-term regional security.

SUGGESTIONS

Based on the analysis of existing international laws and their impact on international relations, it is suggested that preemptive self-defense should be approached with caution and only used as a last resort in exceptional circumstances where there is an imminent threat that cannot be addressed through diplomatic or non-military means.

1. Emphasize the importance of adherence to international law: Adhering to international law is crucial in maintaining regional and international stability. Preemptive self-defense can be seen as a violation of sovereignty and the right to self-determination of other states, and can lead to increased tensions and potential conflict. It is important for states to ensure that their actions comply with international law, including the United Nations Charter and the Geneva Conventions. For example, the 2003 U.S. invasion of Iraq on the basis of preemptive self-defense was widely criticized for violating international law, which resulted in damage to the reputation of the United States and strained international relations.
2. Strengthen cooperation with other states and international organizations: The transnational nature of terrorism requires increased cooperation among states and international organizations to prevent and counter terrorism. Collaboration can take many forms, including intelligence sharing, joint training and exercises, and developing common strategies and tactics. For example, the U.S. and India have established a Counterterrorism Joint Working Group to share intelligence and expertise in countering terrorism. Similarly, the United Nations Global Counter-Terrorism Strategy calls for international cooperation in combating terrorism through measures such as strengthening border security, disrupting terrorist financing, and developing a comprehensive legal framework to counter terrorism.
3. Address the root causes of terrorism: Addressing the root causes of terrorism, including poverty, inequality, and lack of education and employment opportunities, is essential in preventing the emergence of new terrorist groups. States should prioritize efforts to address

these issues, which will require long-term investments in education, healthcare, and economic development. For example, the Indian government has launched several initiatives to address poverty and social inequality, such as the National Rural Employment Guarantee Act, which guarantees a certain level of employment to rural households, and the Swachh Bharat Abhiyan, which aims to improve public health by promoting cleanliness and sanitation.

4. Encourage dialogue and negotiation: Diplomacy, dialogue, and negotiation can help prevent conflicts and reduce the likelihood of the need for preemptive self-defense measures. States should prioritize efforts to engage in dialogue and negotiation to resolve disputes and promote regional stability. For example, India and Pakistan have engaged in multiple rounds of dialogue over the years to address issues such as the disputed territory of Jammu and Kashmir. While these talks have not yet led to a resolution of the conflict, they have helped reduce tensions and prevent the escalation of conflict.
5. Encourage transparency and accountability: States should ensure transparency in their decision-making processes for implementing preemptive self-defense measures. This will help build trust with other states and promote accountability for their actions. For example, the U.S. government has established legal and policy frameworks to guide its use of force, such as the War Powers Resolution, which requires congressional authorization for the use of military force, and the Presidential Policy Guidance, which sets out the criteria for the use of force in counterterrorism operations.

A comprehensive approach is required to counter global terrorism in Asia with a special focus on India, which includes adhering to international law, strengthening cooperation with other states and international organizations, addressing the root causes of terrorism, encouraging dialogue and negotiation, and promoting transparency and accountability. By implementing these strategies, states can work towards long-term regional stability and reduce the threat of terrorism.

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A CRITICAL ANALYSIS OF MEDIA, POLITICS AND PUBLIC RELATIONS

Neha Bahl

ABSTRACT

Freedom of press and media acts as a bridge between the citizens of a country and the legislature, executive and judiciary. Freedom of press and media in Indian constitution derives its legitimacy from the Preamble and from Article 19(1)(a). The rationale behind the recognition of the freedom of press and media lies in the people's basic right to get informed and to further participate in governance of the nation. With the help of media and press, the citizens get informed about the social, economic and cultural scenario, nationally, internationally and globally, form broader opinions, put forward their viewpoint and thereby actively participate in the functioning of a democratic country. Freedom of press is acknowledged as the fourth pillar or chamber of democracy. But prior to considering the opinions of people, it has to be ensured that the people themselves are well versed with the facts and notions of the relevant event. This is where the functioning of the press and media plays a vital role as the way people perceive certain public matters and events, to a large extent, depends on the way the press and media disseminates the news. Media has always been considered as the helping hand for general public since the time it was introduced.

Here's a nation, one of the founding pillars was freedom of speech and freedom of expression. And yet we have imposed upon people restrictions, on what they can say, on what they can think. And the media is the largest proponent of this, crucifying people who say things really quite innocently.

-Benjamin Carson

INTRODUCTION

There is a role for the media in serving as a watchdog and reporting the facts as they are. It serves as a mirror for the society it reflects back. It only brings in what is going on in the world and holds legislators and the government accountable for their actions. In certain circumstances, the media just presents the findings of the investigative authorities to the public, so that the public may become aware of what is going on around them. As a citizenry, they have a right to know and share their opinions on that specific issue, and the media are just a venue for bringing that voice to the public. Article 10 of the European Convention on Human Rights states that freedom of the press is of the utmost importance. Only "essential in a democratic society," "permissible only to the degree that they relate to a compelling societal necessity," and "proportionate to the aim to be attained" are acceptable exceptions to this freedom. Freedom of press and media acts as a bridge between the citizens of a country and the legislature, executive and judiciary[1]. Freedom of press and media in Indian constitution derives its legitimacy from the Preamble and from Article 19(1)(a). The rationale behind the recognition of the freedom of press and media lies in the people's basic right to get informed and to further participate in governance of the nation.

With the help of media and press, the citizens get informed about the social, economic and cultural scenario, nationally, internationally and globally, form broader opinions, put forward their viewpoint and thereby actively participate in the functioning of a democratic country. Freedom of press is acknowledged as the fourth pillar or chamber of democracy. But prior to considering the opinions of people, it has to be ensured that the people themselves are well versed with the facts and notions of the relevant event. This is where the functioning of the press and media plays a vital role as the way people perceive certain public matters and events, to a

large extent, depends on the way the press and media disseminates the news[2]. Media has always been considered as the helping hand for general public since the time it was introduced, in India Media evolved with Print medium with Times of India being the newspaper of India even before Independence, we can't even imagine what joy people might have felt to receive the news of a free Independent India with it, media further evolved with Radio by the first speech of the first Prime Minister of Independent India being aired on it, it later developed and enhanced with the people being educated with the medium of Radio, farmers listening to shows, students enhancing their personalities by interviews of well-educated personalities, keeping a track on the cricket score board everything other small thing was practised through the medium of media which indeed helped people become more connected to it. With the introduction of cable televisions in India people felt more connected watching News shows, interviews and speeches along with their whole neighbourhood. There was a layer of journalism that was too positive and there was a time when appearing on the media was a thing to be proud of. Earlier journalism involved qualified personals, professionals who reported everything following the ethics of journalism. Media indeed was a boon for the society.

MEANING OF MEDIA TRIAL

After the legislative, executive, and judicial branches of government, the media is seen as a vital pillar of representative government. For Thomas Caryle, media was the fourth pillar. In order for the legal system to function properly, a responsible press is necessary. In addition to reporting on cases and trials, the press exposes the whole administration of justice (police, prosecutors, attorneys, judges, courts) and the judicial procedures to public scrutiny. It is only via a free press that the public may have a greater grasp of the rule of law and the judicial system as a whole. The purifying impact of exposure and public accountability also serves to improve the quality of that system. "Sunlight" as Justice Brandeis once said "is the best of disinfectants, electric light the most efficient policeman. There is a term used in the late twentieth and early twenty-first century to explain how the media's coverage may affect a person's reputation by instilling public belief in their guilt or innocence before or after a court of law decision has been made. Trial by media Extraneous material is especially crucial in high-profile trials because the impartiality of the jury might be compromised, breaking the due process and leading to an unjust trial. Which was before inquiry and public opinion against an accused person is referred to as "trial by media," or "trial by media." As a result, the accused's right to a fair trial is infringed, and the trial is tainted. According to recent history, there have been countless cases in which a defendant has been tried by the media before a court has issued its judgement. Priyadarshini Mattoo case, Jessica Lal case, Nitish Katara murder case, and Bijal Joshi rape case are some of the prominent criminal cases that might have gone unpunished had the media not interfered.

MEDIA TRIALS AND ITS HISTORY

In a word, a media trial is a parallel inquiry conducted by the media into the cases currently being litigated in court. The role of media is to give the general public a recording of the findings in a case so they can be updated with it[3]. The basic purpose of a media trial initially was to broadcast the facts of the case and help the viewers in keeping a track on the decisions of the court whether it is given fairly or not but nowadays on major media outlets, the suspected perpetrator is proclaimed a convicted felon, even though he or she has not been proven guilty. Freedom of the press undermines public confidence in the justice system by allowing them to make judgments prior to the final judgement, and this can even impact jury' decisions. Prejudice might lead the media to ignore the United Nations Human Rights Principle, "Innocent until proven guilty." As a result, our ethos and values system are immediately exposed in the current context of the media's role in question. There were also some infamous cases like the B. Joshi rape case of 2005, Priyadarshini case of 2006, and Jessica Lal's case of 2010, where media had

already declared the accused person as a convict and proved him guilty before the final judgment of the court[4].

PROS AND CONS OF MEDIA TRIAL

To preserve democracy, a free and independent media is essential. If the media will be free and will have the access to broadcasting things without the pressure or influence of rich bureaucrats or politicians who want to curb the reality media will indeed be a boon for the society as it is supposed to be. However, the media's role in covering criminal problems is frequently questioned these days despite its status as democracy's fourth pillar after the legislature, the executive branch, and the judiciary. It is not uncommon for the media to stray outside of their purview and begin interfering with the court's work. When media barges in the judicial rights excessively instead of jotting down and conveying the trial to the public it becomes a conflict whether it is a boon or a curse for an accused. Sometimes the media has gone farther and released material on the basis of assumptions or suspicions about the official investigation's line of inquiry in order to forcefully report and comment on the evidence without first confirming the factual matrix of what is really being investigated. In the process of a fair inquiry and trial, this reporting has put excessive pressure on the parties involved. Let's take a short look at the Trial by Media in India in this perspective.

MEDIA TRIALS v. FREEDOM OF SPEECH AND EXPRESSION

India's Constitution provides the right to free speech and expression under Article 19(1)(a)[5]. When it comes to economic, social, and political issues, freedom of expression plays a pivotal role. Supreme Court of India Justice Venkataramaniah has observed that freedom of the press is at the core of social and political interaction in Indian Express Newspapers (Bombay) (P) Ltd v. Union of India[6], a new role has been adopted by the press as public educators, which is especially true in the developing world, where television and other means of contemporary communication are not readily available to all members of society[7].

The press provides both formal and non-formal education. The goal of the press is to increase public interest by publicizing ideas and facts that the democratic voter cannot make an informed decision without (Government). Public administration is influenced by the news and perspectives of the people, and newspapers are often a source of content that is undesirable to governments and other authorities. The Supreme Court's above declaration shows that press freedom is crucial for the smooth functioning of democracy. Each and every person has a right to engage in a democratic process, and democracy is defined as a government run by, for, and by the people. It should go without saying that participation is mandatory. The free and open exchange of ideas on public issues is necessary if each person may use his or her right to vote in an informed manner. This explains the Indian constitution's position of the freedom of the press. For example, in the case of Papnasam Labor Union v. Madura Coats Ltd.[8] the Supreme Court laid out certain rules for determining whether a statute is constitutional, and they included a few principles that should be kept in mind while considering the constitutionality of a statutory provision[9].

MEDIA TRIALS v. FAIR TRIAL

India's Constitution protects the right to a fair trial as part of the right to life and liberty, which Article 21 of the Constitution enshrines. As a fundamental concept of Indian law, "Right to Fair Trial" states that a trial should not be influenced by external influences. This freedom is protected under Articles 129 and 215 of the Constitution of India and the Contempt of Courts Act, 1971. People in our nation are assumed innocent until they have been proven guilty. This is known as the "presumption of innocence" in the criminal justice system. The media's job is to disseminate the news in an objective manner, which means that they should not pass judgment on any particular issue but instead stick to reporting just the facts. As a result, the print and electronic media are locked in a never-ending battle for readers' dollars and television viewers'

ratings points (TRPs). The Press Council of India instructs the media to refrain from giving the victim, the accused, witnesses, or anybody else involved in the inquiry excessive attention, as well as to keep sensitive material out of the public eye. If a witness is identified by the media, it raises the likelihood that they would become hostile, and the media should not be holding any parallel trials of the case that put excessive pressure on the judge or jury. When it comes to fair trials, the Supreme Court of India has stated that it is reflected in several practices and norms, a fair trial would presumably imply one conducted before an impartial and fair prosecutor in a judicially calm environment. There must be no bias or prejudice against the witnesses, the accused, and/or their case during a fair trial. In the case of Vijay Singhal and Ors. v. Govt. of NCT of Delhi and Anr[10]., the Court ruled that trials are meant to achieve justice, and if there is a struggle between the right to freedom of speech and the right to a free trial, the right to a free trial will prevail. Media has a right to know what is going on in courts and to communicate that information to the public, which helps to build public trust in court proceedings, according to the Supreme Court's decision in Sahara India Real Estate Corporation Ltd. and Ors. v. Securities and Exchange Board of India and Anr., 2012[11].

Even if a trial is accurately and fairly reported, such as in a murder trial, there is sometimes a significant danger of bias in subsequent trials that are not directly related to the current trials. The postponement ensures the fairness of subsequent trials, as well as avoiding the media from showing contempt for them. Criticized in many cases by the courts, media coverage of trials on sub-judice matters has a detrimental effect on the outcome of a single case, as well as on future cases. In their 2010 version of Norms of Journalism Conduct, the Press Council of India also advises journalists not to engage in sensational journalism[12].

IMMUNITY UNDER CONTEMPT OF COURT ACT, 1971

The 1971 Contempt of Court Act protects pre-trial publications from contempt charges. Disturbing or impeding the proper administration of justice in connection with any civil or criminal process that is truly "pending" is considered contempt of court under the Act. This includes any publishing. According to Section 3(2), sub clause (B) of Explanation, 'pending' has been defined. In the case of a criminal proceeding, under the Code of Criminal Procedure, 1898 (5 of 1898) or any other law – (i) where it relates to the commission of an offence, when the charge sheet or challan is filed; or when the court issues summons or warrant, as the case may be, against the accused." The right to a fair trial might be jeopardised by some pre-trial actions, such as media coverage. Publications detailing the accused's criminal past, his general character or his claimed admissions to the police may appear in these publications. In the Aarushi Talwar case, when the press went berserk, speculating and pointing fingers even before any arrests were made, the Contempt of Court Act, 1971, grants protection to the media, notwithstanding the serious threat to the administration of justice. There may be uncontrolled publications if legislation is not intervened by broadening the phrase 'pending' to embrace 'from when the arrest is made' in the 1971 Contempt of Court Act or judicial control via gag orders as used in the United States of America. As a result of these voids, the press is free to publish colourful tales without fear of repercussions. It feeds on the public's anger and the brutality of the crime without responsibility, like a parasite.

INEFFECTIVE LEGAL NORMS GOVERNING JOURNALISTIC CONDUCT:

The Press Council of India was founded by the Press Council Act, 1978, with the goal of "preserving the freedom of the Press and maintaining and improving the standards of newspapers and news organisations in India. To achieve these objectives, it must "ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste and foster a due sense of both the rights and responsibilities of citizenship" and "encourage the growth of a sense of responsibility and public service among all those engaged in the profession of journalism". Censure is also a power of the Council. Section 14(1) of the Press

Council Act, 1978 allows the Council to "warn, reprimand, or penalise the newspaper," or to require the newspaper to "publish the contradiction of the complaint in its next issue," if someone considers that a news agency has engaged in professional misconduct. Since they may only be used after the publishing of news items and do not include significant penalties, their ability to prevent the publication of unfavourable reports is restricted by these methods[13]. By highlighting its flaws, the Press Council was exposed in Ajay Goswami v. Union of India[14]. According to Section 14, the Press Council Act of 1978, the Press Council has no jurisdiction over electronic media and can only issue warnings, admonishments or censures to newspapers or news agencies.

It can only issue declaratory adjudications[15] and can only issue instructions to the responding respondents arraigned before it to publish information related to its inquiry and adjudication. No additional authority exists to guarantee that its instructions and observations are followed and implemented by the errant parties. The Press Council of India has been constrained by the lack of disciplinary authorities it has at its disposal. The Press Council of India has also produced a set of proposed standards for journalistic behaviour to go along with these authorities. To observance of the rules dictates that any criticism of the judiciary be done so with extreme care and secrecy. Reporters are also advised to avoid drawing conclusions from just one side of a story and to speak in a neutral and sober manner at all times, according to these standards. It's important to note, however, that these standards cannot be enforced via the legal system and are thus often flouted. Finally, the PCI is able to use criminal contempt powers to prevent the dissemination of biased media reports. Nevertheless, the PCI is limited to using its contempt powers solely in matters that are still ongoing in civil or criminal court. According to this constraint, pre-trial reporting is not taken into consideration.

REGULATORY MEASURES

It's evident from the foregoing that a court examining the legality of a limitation on a fundamental right granted by Article 19 has a great deal of discretion in the subject. All courts have a constitutional responsibility to assess that laws restricting the media are reasonable and relevant to the stated goals of Article 19 of the Constitution[16]. Some principles and guidelines have been set forth by the Supreme Court in the case of Papnasam Labour Union v. Madura Coats[17] Ltd, which dealt with whether or not Articles 19(1)(a) to (g) of the Indian Constitution were violated by a statutory provision imposing a restriction on these fundamental rights. Supreme Court Justice Frankfurter's opinion in Pennekamp v. Florida[18] was discussed in Arundhati Roy In re the Supreme Court.: "If men, including judges and journalists, were angels, there would be no problem of contempt of court. Angelic judges would be undisturbed by extraneous influences and angelic journalists would not seek to influence them. The power to punish for contempt, as a means of safeguarding judges in deciding on behalf of the community as impartially as is given to a lot of men to decide, is not a privilege accorded to judges. The power to punish for contempt of court is a safeguard not for judges as persons but for the function which they exercise."

In Rajendra Sail v. M.P. High Court Bar Assn.[19], the High Court sentenced the petitioner, a labour union activist, as well as the newspaper's editor, printer, and publisher, as well as a reporter, to six months in jail. They erred when, based on a story submitted by a trainee journalist, they published statements made at a workers' protest by a union activist insulting High Court justices. The High Court's judgement was referred to be "rubbish" and "fit to be tossed in the trash." The Supreme Court of the United States sustained the contempt charge against them but decreased the penalty. There is no one else who may accuse a court of misconduct, bias, or incompetence other than the court itself, the Supreme Court said in D.C. Saxena (Dr.) v. Chief Justice of India[20].

As courts are established by the constitution to administer justice, it is essential that they be protected in order to maintain the independence of the judiciary. We can conclude from the foregoing observations and the judgment that Article 19(2)'s restrictions on the freedom of speech and expression, including freedom of the press, guaranteed by Article 19(1)(a) serve two purposes: first, they specify that this freedom is not absolute but is subject to regulation, and second, they limit the power of a legislature to restrict this freedom of press/media. In other words, the legislature cannot limit this freedom beyond the standards of Article 19(2), and any limitation has to be fair and may only be imposed by or under the authority of a law, not by executive action alone. As a means of ensuring press freedom and raising the quality of reporting, India's Press Council of India was founded. According to the Press Council Act of 1978, the PCI has the authority to "warn, admonish, or censure the newspaper," or to direct the newspaper to "publish the contradiction of the complainant in its forthcoming issue," if a complainant believes that a news agency has engaged in professional misconduct. Since they may only be used after the publishing of news items and do not include significant penalties, their ability to prevent the publication of unfavourable reports is restricted by these methods[21].

In addition to these authorities, the PCI has created a set of journalistic standards. For the press, this means avoiding publishing "inaccurate, unfounded, graceless...misleading or twisted content," which is against these standards. Observance of the rules dictates that any criticism of the judiciary be done so with extreme care and secrecy. Reporters are also advised to avoid drawing conclusions from just one side of a story and to speak in a neutral and sober manner at all times, according to these standards. It's important to note, however, that these standards cannot be enforced via the legal system and are thus often flouted. Finally, the PCI is able to use criminal contempt powers to prevent the dissemination of biased media reports. Nevertheless, the PCI is limited to using its contempt powers solely in matters that are still ongoing in civil or criminal court. This restriction misses the influence that pre-trial reporting may have on the administration of the judicial system.

TRIAL BY MEDIA A THREAT TO ADMINISTRATION OF JUSTICE

An expression that has gained currency in recent decades is "trial by media," which refers to the influence of media coverage on a case, particularly television and print, in an effort to hold an accused person responsible even before his trial and independent of any judgement rendered by a court of law. A fundamental right guaranteed by India's constitution is the freedom of speech and expression guaranteed by Article 19(1)(a). Defamation and contempt of court, among other things, are examples of reasonable constraints on this freedom.

First Prime Minister of independent India Pandit Jawaharlal Nehru said- "I prefer a totally free press with all the hazards inherent in inappropriate use of that freedom than a repressed or controlled press." The concern is that he didn't perceive the risk because he didn't anticipate the press to become engaged in anything that goes beyond its ethical and moral boundaries, and so inhibits the 'administration of justice,' which is the very essence of the natural justice and the rule of law, as well.

IMPACT ON THE SOCIETY AND LEGAL SYSTEM

During a social media trial, citizens do their own research and establish public opinion against the accused before the court ever hears their case. Prejudices are formed in the public and even in the courts as a result of this. Because of this, the accused is thought to be guilty rather than innocent. Not only does it obstruct justice, but it also sends the wrong message to the rest of society.

As a result, the public begins to establish their own judgments rather than depending on the courts. Using social media may have a significant impact on public opinion. It's possible that a judge may be unconsciously influenced by media coverage of material that is not acceptable in the case, which is why it's important for the media to be careful when reporting on inadmissible

evidence. Cases like KM Nanavati[22], where public opinion helped condemn an accused, are a good example of this phenomenon. Constitutional freedom of speech and expression in India is guaranteed by Article 19(1)(a) and permitted by Section 19, which deals with 'Contempt of Court.' Art. 19(2) does not apply to the "administration of justice," yet the definition of "criminal contempt" in Section 2 and Section 3 of the Contempt of Courts Act, 1971 clearly mentions interfering with the administration of justice as contempt. Publications that disrupt or appear to disrupt the administration of justice are therefore considered criminal contempt under that Act, and the provisions of that Act that impose reasonable restrictions on free speech in order to avoid such disruption would be valid restrictions if they were enforced through restitutions.

CONCLUSION

According to this study, I have focused mostly on the right to a fair trial in a criminal justice system with the help of relevant case laws, how a free speech in new-age social and electronic media platforms can affect an accused as well as the trial procedure, as well as the media's mishaps by conducting media trials which indeed shall be a boon for the accused, judicial system as well as the concerned people involved in a trial but end up becoming a curse for an accused. Studying media evolution, what the media trial is supposed to be and what it actually ends up being was a necessary first step in doing this research. In Chapter Two, I have discussed the evolution of media and the legislative framework. The media platforms studied by me are, including print, electronic, and social media, have been studied in by me. In the early days before the word "social media" was coined, individuals still utilized, email, and sites like Orkut and Yahoo Groups to communicate with one another online in small groups. Nevertheless, social media has been an ever-developing sector since the birth of Facebook, Twitter, Instagram, and so on. There is a famous quote that with the invent of social media now we have a journalist and a reporter in every house without a degree. Social media has made it possible for everyone to exercise their right to have an opinion as well as to share it. It also offers findings quickly, is easy to use and provides many channels for a user to express his or her opinion with others through social media. A person may publish images on Instagram, create a blog on Blogger, record video and post it to YouTube - the options for expressing oneself are virtually limitless. The same holds true for electronic media, which pioneered communication before the rise of social media. Even print and electronic media have been compelled to adapt to a new platform because of the quick expansion and ease of social media[23].

The usage of social media has become increasingly common for many news, entertainment, and sports channels, which formerly relied only on broadcasting electronic media[24]. To stay up to current on the newest news items, you may follow the news stations on Facebook and Instagram, as well as their live video page on YouTube, which you can subscribe to. News channels use social media to conduct polls and surveys that enable the voice of the ordinary man be heard and spread around the country, especially in rural areas where access to the electronic media is restricted[25].

Because print media is the first form of communication, the researcher has researched the evolution of media starting from print media, which is still in use today despite the competition from electronic and social media. The chapter also looked at how new technology like the internet, cell phones, computers, and so on have shaped social media. In conclusion, the growth of media has been a boon in almost every way possible. Social media, such as Facebook and Twitter, have made it feasible for people to communicate with one other not only one-way but also two-way. When certain 325 organizations started manipulating the media for their own narrow purposes, media began to see incidents of media trials, false news, sponsored news, and sting operations.

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HUMAN RIGHTS VIOLATIONS IN THE LIGHT OF ELGAAR PARISHAD CASE

Rekha Goswami, Anmol Shrivastava and Avani chaudhary

INTRODUCTION

Every country has its own state of affairs which it has to deal with every day. Some are normal while others may be pretty troublesome as balancing individual rights with the safety of population and the Sovereignty is NOT an easy task to do. To settle the resistance between the rights and the duty in India it has been clarified that NO right is absolute. Yet the contention remains on the fact that whether or not the excessive and draconian rule of preventive detention laws enforced on people are justified or not.

Jurisprudence of UAPA

The UAPA is an anti-terrorism law which is enacted for the prevention of any unlawful activity which may result in the disturbance of peace and safety in the country. The ambit of the application of this act has been kept very broad. Sec. 2(ec) state "person" includes - an individual, a company, a firm, an organisation or an association of persons or a body of individuals, whether incorporated or not, every artificial juridical person, not falling within any of the preceding sub-clauses, and any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses

The approach of this act is wide enough which can entangle any person in its grasp for a reason as vague as possessing a literature or an ideology which is left open for interpretation by the sovereigns. This is one of the main issues with the act as it has kept things open for interpretation according to the situation.The problem gets more serious when we come to the provision in Part III of the Constitution wherein Clause 3 of Art. 22 states that if a person is arrested under a preventive detention law then nothing in the Art. 22 would be applicable to them. In the words of various Judges of Supreme Court under Art. 22 has been considered as 'one of the ugly provisions of the constitution' which neglects the very basic essence of natural justice yet cannot be removed because of necessity.

The basic principle for any law to sustain its constitutional validity is to make sure it passes the test of basic feature on which the Constitution itself is standing which are Reasonableness, Fairness, Non-Arbitrariness and Equity. The preventive law are those laws which do NOT pass the test with flying colours yet the requisite of the country has mandated them to exist.

Misuse

- Stan Swamy was a Jharkhand based Priest and also a social activist who worked in tribal areas of the state in the interest of tribal people. On 1st of January 2018, violence erupted in rally in Bhima Koregaon village in Maharastra. It was alleged that this happened after provocative speeches were made in a celebration on 31st December 2017 in Elgaar Parishad Conclave in Shaniwarwada Pune.
- Various people were arrested including Sudha Bharadwaj, (Social activist and AoR) SurendraGadling, (Nagpur based Lawyer) Hany Babu (Asst. Professor Delhi University). The case was made stringent by charging the accuseds under Unlawful Activities (Prevention) Act, 1967. Prior to his arrest Mr. Swamy stated that he is being targeted because he has been speaking against the policies and laws that the government was making against constitutional imperatives.
- The judicial mechanism was manipulated and left to be a joke to such an extent where whether to give a sipper to drink water from to a 84 y/o sick with Parkinson's disease was

being decided by a special court of law! To keep the case under the vigilance of union government the matter was transferred from Pune Police to National Investigation Agency (NIA).

- Mr. Swamy's lawyers moved to Bombay High Court for an urgent-hearing as his health condition deteriorated drastically. The court wanted to move the date to next day but the Director of Holy Family Hospital, Mr. Ian D'Souza in proceedings informed the court that Mr. Swamy died 1:30 pm the same day due to cardiac arrest.
- The bench was shocked and expressed their sorrow and humility as the matter was one of the most controversial and in lime light of International Community with regards to infringement to Human Rights under Preventive Detention laws.
- Mihir Desai. Counsel on behalf of Mr. Swamy, expressed his disgust towards the NIA and Jail Authorities showcasing the insensitive behaviour of Jail Authority and State towards Mr. Swamy who was an elderly man suffering from Parkinson' and who already had contacted Covid inside jail led to his death. This act is a very shameful, profane and condemnable violation of one's Right to Live. It is worth mentioning that 84 years old Mr. Swamy is the oldest accused of the country under UAPA.
- The accused in the present case hold no criminal background but in fact have been belonging to various philanthropic and social welfare background. Professors, Social Activists, Lawyers are few of the many professions of the accused. It gets quite difficult to comprehend as to why people belonging to such noble profession would turn their head to instigate communal riot overthrow the government.
- While most of the accused who are charged under preventive laws are arrested on firm allegations, there have been various instances where the accused have been given absurd reason to which anyone would scoff.
- The fact that whether or not an old person suffering from Parkinson's disease should be allowed to drink water from a sipper was being adjudicated by the court because of Government's unwillingness reflect how inhumanely the accused have been treated.

The Problem

The main issue of any preventive detention law is the fact that it has to be made so meticulously and balance maintained with precision. If made too loose and flexible it may end up leaving the state in the lurch by not dealing with imminent threat to its sovereignty. If it's made too rigid and draconian it will eventually end up encroaching on the freedom and rights provided to the people and dance on the whims and fancies of handful of people in power.

Our nation have witnessed various repetitive blows when it comes to terror attacks. It would be unjust to state the efforts of the state while tackling with this evil has been in vain. Specially after the strategic actions in one of the most controversial geo-political issues of Kashmir, it's pretty clear that the present government has taken a firm and different approach which is unprecedented. Thus the number of cases under preventive laws has increased as well. But it must be kept in mind that people who dare to speak against the decisions of the government for the sake of criticism and free speech are the most appealing targets when it comes to the misuse of this law.

To think of any government in power always as of an ideal and righteous set of people would be an absurd assumption. Personal and political biases are found in every level of governance and various actions are done to satisfy the same. These actions go unnoticed in the books but they are witnessed by the people and Media.

But the situation does NOT get any better.The duty has been shifted heavily on the shoulder of Media as the 4th pillar on which the constitution is holding its sanctity. But the Media as a institution has been failing to fulfil its duty. Rather than questioning the actions of the government the concerns are the lifestyle of well-known persons and how long it will take for a particular group of people to outnumber the other majority group. The mainstream media must realise the Hobson's choice present in front of them. The duty on their shoulder is grave and unprecedented like never before and rather than pacifying the government, they must adhere to their conduct strictly.

CONCLUSION

The basic principle of procedure of any case under preventive detention law is exactly the opposite of general rule which is innocent until proven guilty. Here a person is seemed to be guilty and he/she has to prove their innocence. It is quite important for us to contemplate whether charging any accused and treating him/her so harshly is valid on the part of state. The preventive laws presently are like raging untamed bulls that keep running in the society on the directions of the government. If these bulls are let maul people like this the whole scene would sooner or later turn into a chaotic and unruly renaissance painting of French Revolution.

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BEING SCHOOL TEACHERS: POLICY AND PRACTICE

Surbhi Arora

ABSTRACT

The most commonly focused areas in the field of education remains what is taught (curriculum) and how it is received (learning outcomes). The very functionality of education has been seen to produce the learning for smooth functioning of the society. It is impossible to not focus on the teaching learning process which makes the foundation of the learning outcome. The paper tries to look into the changes in the education system from pre-colonial to the post –colonial era to the present NPE 2020 where there are drastic shifts can be observed in the understanding of the agency of the learners and that of the teachers. Considerable policies now talk about the perception about the learner as an active participant. The changes in the curriculum and NCERT textbooks after NCF 2005, clearly gives the scope to the learner to construct knowledge rather than rote memorizing the facts. With my training as a B.EL.ED teacher, as well as exposure to the schools in the field of research, I could find the gaps in the policies and the implementation. This paper explores the aspect of the agency of the teacher, that has been ignored by majorly all the documents. The documents that talk about the active participation of the child, and puts the responsibilities on teacher's shoulders, forgets to identify the need of training the teachers for the same. This paper in detail will talk about the agency of teachers-their status and roles, and majorly the need of good teacher education programmes. Though the NPE 2020 talks about a comprehensive four-year teacher education programme, it yet remains silent on the structural support one needs to enrol into the same.

Keywords: School Teachers, Education Policies, Agency and Control

Indian society in the pre-colonial period had the indigenous culture of the GURU-SHISHYA tradition. Where the occupation of the teacher was considered to be a very reputed and respectful contribution to the society. If seen through the lens of the caste system, teaching being a job of the mind, was considered to be one of the highest jobs in the society being performed by the male members of the twice born castes. Teachers as to say, having an ascribed status were at the top in the hierarchy, so having no one controlling their autonomy. Teachers were imparting education to the learners, who too were from the upper castes. Being affiliated wholly by the prevalent caste system, made the whole education system more respectful in the eyes of the members of the society. Teachers were having the autonomy of choosing the text and the syllabus for his learners, unlike today where the curriculum and the text books are 'given' to the teacher. Teacher too had the freedom to choose the time of teaching as per his and learners' convenience, that is again in contrast with today's fixed schooling hours. Moreover, the pace of teaching was also in the hands of the teachers, who could teach according to his own speed and the learner can learn according to his. This had no concept of failing, as each individual child had the freedom to learn according to his own capabilities before moving to the next lesson. The education system of this period also had a great scope of multi grade interaction, as learners of various age groups use to learn together from each other, unlike today's class grade system. The idea was that of the 'gurukuls' and not the fixed boundaries of a school. Also, the presence of teaching and learning of folk arts gave a scope to the learners to learn in their particular context and beyond the textbooks. Teachers and learners being a part of the same social group use to help in contextual learning in the respective 'mother-tongue'. The assessment of the learner and his promotion to the next lesson was on the basis of the teacher's satisfaction with his performance and the self-satisfaction of the learner. On the other hand this

system had the limitation of being restricted to a particular caste group, excluding others. The education system of the pre-colonial period was an empowering one, but was empowering only a particular section (upper-caste male) of the society.

With the change in the government in the colonial period, the education system started changing. The bureaucratization of the whole political system had its impacts on the education system as well. The state now was at the top of the hierarchy which had its control over the whole education system. The idea of WHITE MEN'S BURDEN to civilize the uncivilized was being done in the area of education also. As there was no well-structured system of imparting literacy and numeracy to children in the gurukul system. A structured system of education having Fixed boundary schools with fixed curriculum was established. The new education system was having the pre-decided syllabus designed by the state, of which the teacher was merely a 'passive deliverer'. The learners were in a way trained to get adjusted in the British government in clerical jobs, and so were being trained to 'accept' rather than 'question'. The system considered the learners as 'passive receivers' of what is 'given' to them by the state via teacher. The state prescribed syllabus which was coming down in the form of 'textbooks' gained supremacy over the agency of the teacher. All the questions of 'what to teach, how to teach, whom to teach, and when to teach' which were earlier decided by the teacher as per his own convenience and the convenience of his learners, were now being coming down to the teacher in the name of the syllabus and teaching manuals. It bounded the teacher's autonomy. The pace of teaching which was earlier decided by the teacher was now having a boundation of an academic year. The syllabus that was prepared by the British state was much alien to the learner as well the teacher. Moreover, it too restricted the learning in the mother tongue. The assessment of children was now not in terms of the teacher's satisfaction or child's self-evaluation, but it was based on the reproduction of facts rote memorized from the textbooks, under the examination system, which was heading towards the 'objectivity' in judging all learners through the same lens. Also, treating teaching as any other clerical job for a small amount of salary and no autonomy of actions led to the degradation in the status of the teachers in the society. With the job of teaching, teachers were also burdened with the responsibility of many funds collection, record making, data collection etc. which clearly shows the attitude towards teaching as a passive job having no creativity and effective status.

In the post-colonial period, under the Nehruvian policy with the focus was on the nation building, education was identified as an important tool for building a progressive nation. With an effort of widespread education, there was an urgent need of teachers, which led the nation towards the concept of PARA TEACHERS, hired under the DPEP program. It was an attempt to the growth in the literacy rate, employment, and majorly on the decentralization of the education system. Para teachers hired by the panchayats and Village Education Committee were considered to be more useful because of belonging to the same local context, ensuring accountability to the local education bodies. DPEP's concept of para-teachers were introduced in many states with different names as Shiksha karmi project in Rajasthan, Volunteer teacher scheme in Himachal Pradesh, Shiksha karmi yojana, Education Guarantee scheme, Alternate schooling programme in MP. The teachers were hired with a pre-decided concept of providing them with the IN-SERVICE training, so as to ensure quality education to the learners and the professional development of the teachers. In order to do so, District institutes of education and training (DIET'S) were established which had the role of providing PRE-SERVICE and IN-SERVICE trainings to the teachers to train them professionally for the new approach of teaching by being a facilitator in child's construction of knowledge. The launching of programs like SSA (Sarva Siksha Abhiyan) 2002 to achieve UEE, Operation Blackboard 1986, DPEP 1995 leads to the increase in demand of the teachers, which directly leads to the increase in teacher education programs. This ensured the establishment of 571 DIETs out of 599 districts.

DIET's in its in-service programs train the already appointed teachers, which involved the teaching of child's psychology, updates of the new approaches towards the process of teaching and learning. Particularly speaking, Its application was seen by me during the internship practicum done by me and through the data of my fellow interns, going to various government schools of delhi, which includes St. Francis School, daryaganj, MCD school firoz shah kotla road, Mcd school daryaganj etc. where teachers were not even aware of what in-service programs are. It also can be clearly observed by the data showing the dropout rates, failing percentages, and the classroom interaction. Moreover, the general view of 'teachers in government schools, do not teach' had an aspect to think about and question. Is it actually the will of the teacher to don't teach children? or are they not trained enough to understand teaching as a profession? Are they trained enough to understand their roles as the facilitator of child's learning…? I would like discuss such questions in detail in a while. But before, let's talk about the pre-service training programs in DIET. The pre-service training is a 2-year course after schooling. The admission to the diet course is done through a merit list on the basis of the marks obtained in 10+2. The course involves the study of a language (Hindi), mathematics, arts and craft, and some aspects of child developmental psychology, In the first year and a school internship of teaching learners in the second year.

The curriculum of DIET's pre-service training gives a good impression from the surface level, where it is talking about the study of child's psychology, learning of a language and basic mathematics, and engaging into the arts and craft. I would like to talk beyond this, is this curriculum enough to train an efficient teacher that can be a facilitator as talked about in various documents? Can a 2-year training course, which do not even need a graduation degree, ensures a proper training to produce efficient teachers? Are the grades of 10+2 obtained from various streams (arts, commerce, science etc.), and having no entrance tests and interviews, capable to judge the ability of a person to become a teacher? Is the time span of the course, its curriculum and the recruitment process, sees teaching as a profession? The whole idea of the active learner and the teacher as the facilitator and most importantly teacher training courses (pre-service and in-service trainings provided by the DIET's), were somewhere started being questioned, if not in the practice but in the policies after 1960's. The changes in the theoretical documents were started in the 1960's with the national policy of education, Kothari commission recommendations, national curriculum frameworks, learning without burden and so on. The teaching-learning process in practicality was not experiencing much change as no change was seen in the curriculum design and the textbooks, in terms of both the agencies of the teachers as well as the learners. The changes were seen as per the ideological changes happening in the society with the change of governments, which were reflected in the education system, as can be seen through the 'saffronization and de-saffronization' of the education system, where the teacher were merely the puppets in the hands of the state, passing their political ideologies to the learners, via textbook and curriculum. The changes in the view towards the agency of the learners and that of the teachers were not effectively seen in the textbooks and the curriculum design, which was working with the traditional way of teaching, where teacher was a MEEK DICTATOR in the words of prof. Krishna Kumar. The policies were talking about the changes in viewing the agencies of both the learner and the teacher, having very little focus on the aspect of preparing teachers for the same. This could be seen in some detail in a chronological manner as follows –

The earliest policy formulations emphasized the need for teacher education to be "…brought int o the mainstream of the academic life of the Universities on the one hand and of school life and educational developments on the other" (Kothari Commission, 1964-66). It is indeed a matter of concern that Teacher education institutes continue to exist as insular organizations, even within the University system where m any are located. Recognising 'quality' as the essence of a programme of teacher education,

the Commission recommended the introduction of "integrated courses of general and pro fessional education in Universities…with greater scope for self-study and discussion…and…a comprehensive programme of internship." Subsequently, whi le observing that "…what obtains in the majority of our Teaching Colleges and Training I nstitutes is woefully inadequate…" the Chattopadhyaya Committee Report (1983-85), reiterated the need "…to enable general and professional education to be pursued concurre ntly…" and emphasized that "…an integrated four year programme should be developed carefu lly…(while also making it) possible for some of the existing Colleges of Science and Arts to i ntroduce an Education Department along with their other programmes allowing for a section of their students to opt for teacher education." The National Policy on Education (NPE) 1986/9 2 recognized that "…teachers should have the freedom to innovate, to devise appropriate met hods of communication and activities relevant to the needs of and capabilities of and the concerns of the community." The policy further states that "…teacher education is a continuo us process, and its preservice and inservice components are inseparable. As the first step, the sys tem of teacher education will be overhauled." The Acharya Ramamurti Committee (1990) in i ts review of the NPE 1986 observed that an internship model for teacher training shoul d be adopted because "…the internship model is firmly based on the primary value of actual field experience in a realistic situation, on the development of teaching skills by practice over a period of time." Commenting on how the inadequacy of programmes of teacher preparation le ad to unsatisfactory quality of learning in schools, the Yashpal Committee Report (1993) r ecommended that "…the content of the (teacher preparation) programme should be restru ctured to ensure its relevance to the changing needs of school education. The emphasis i n these programmes should be on enabling the trainees to acquire the ability for self-learning and independent thinking." NCF 2005 has been a major change in Indian education system that moves from a teacher centric approach to the child centric approach. Focusing on understanding and knowledge rather than rote memorizing and Giving primacy to the active learning and a scope to the contextual learning, NCF 2005 talks about using multilingualism as a classroom resource. While talking about the changed aims of education it focuses on the overall development of the child, and a free learning environment. Following the 'top down' approach in language learning, in which the focus is on the comprehension and expression. The learning of language is through a print rich environment and the classroom library. The SYLLABUS document of NCF 2005 talks about the learning of language through the very related stories, poems etc. to the child's life. The role of the teacher is to provide that print rich environment in the class and the school, and teach through the activities of storytelling etc.. where the child can have the aesthetic experience in language learning and can develop interest in comprehensive reading and meaningful writing.

Talking about mathematics as problem solving exercise which involves playful activities while working with shapes, numbers, etc… The prescribed syllabus in the SYLLABUS document of NCF 2005 tries to move from the 'concrete' to 'abstract', where the learners are provided with the themes of patterns, shapes, addition and subtraction through day to day word problems etc.. The role of the teacher is to act as a facilitator and provide a concrete learning activities to the learners to engage and to make mathematics a playful experience in order to reduce the fear of mathematics.

Also when talking about EVS, NCF 2005 and the SYLLABUS talks about the 6 major themes some are, food, shelter, work and play, etc.. where the idea is to make the child feel as a part of its social environment, most importantly bringing in the learner's local context through the folk arts. The teacher's role is to create a sensitized environment for all children coming from various social backgrounds and to ensure a critical mind set of the learners towards the society. NCF 2005 comes down to the change in assessment patterns, where it is an integral part of learning, that involves MLL (multiple levels of learning) approach. It involves assessment

beyond the book, also giving autonomy to the child for a self-assessment. The role of the teacher is to be equipped with various assessment techniques, that has to be used as an integral part of learning in the activity cantered classroom. Moreover, the idea is that teacher understands the individuality of children, who comes from various social backgrounds and have different approaches to the same question. Thus, the teacher should be open to multiple responses to the same question, which is in contrast to the idea of 'objectivity' in judging children's performance in the hierarchy of ranks.

Reflecting back on the questions I raised earlier in this paper, I would like to look into the peculiarities of the document policies. In sync with Prof. Poonam Batra, It can be argued that even NCF 2005 falls short in its understanding of the agency of the teacher. While the focus is on the redesign and altering the perspective and content of the school curriculum, its expectations of the teacher's role continues to be largely prescriptive and often contradictory. While there are several allusions to the role of the teacher in providing "... a safe space for children to express themselves and simultaneously to build in certain forms of interactions[NCF2005: 22] and the need "...to build the capabilities and confidence in teachers to autonomously plan their teaching in response to children's learning" [NCF2005: 19], there are few concrete suggestions of how to integrate this into practice. Apart from making sermonising references such as "teachers need to plan lessons so that children are challenged to think and tryout what they are learning..." [NCF 2005: 20], there is little clarity on the processes and interventions required to build appropriate knowledge, school and society linkages in preparing and supporting practicing teachers. The document somewhere neglects the irony that teachers are also a product of the same education system, where they have learned to rote memorize and use corporal punishments to establish the power dynamics of a teacher over the learners, without a clear guidance and proper training for the teachers to "unlearn" their conditioning and "re-learn" the new approach towards learning is not possible. Thus, Teachers are referred to more as passive agents of the state who are expected to be "persuaded and trained" to magically translate thevisionoftheNCF2005inschools.Researchers have long argued that many teachers have a tendency for example, "...to simply accept poverty as the reason for the absence of many children and to see poverty as an unavoidable and inevitable factor that leads to high absenteeism and dropout rates...teachers see conditions such as that of bonded child labour, migration of children during school, the retention of children for domestic chores...as unavoidable family circumstances that cannot be addressed by any policy or programme..." [Vasavi2000:36].The NCF offers limited direction on how teachers could be prepared to include hitherto excluded social narratives, experiences and voices and make them available in the classroom and more importantly, to respond and resist attempts of short-term ideological persuasions of educational policy-makers to intervene in the teaching-learning process. In doing so, it side-steps one of the central social and political challenges of recent times. Moreover, teaching being an important profession in a society to be a source of change, such acceptation of inequalities by the teacher, will result in the maintenance or the reproduction of inequalities in the societies. As the document ignores the whole topic, it nowhere suggests the way by which teachers can learn to challenge the system. The question again goes to the absence of teacher training courses that includes an in-depth study of the social sciences that can enable critical thinking of the teachers towards the society, so that they can give learners a scope to do the same.

As NCF guides that, "An enabling learning environment (is one) where children feel secure, where there is absence of fear and (which) is governed by relationships of equality and space for equity... often (this) does not require any special effort on the part of the teacher, except to practice equality and not discriminate among children" (NCF 2005:77-78, author's emphasis). This contradicts much of the research done in the sociology of education in India as well as the NCF's own assertion that "...Teachers and children are part of a larger society where

identities based on membership of caste, gender, religious and linguistic groups as well as economic status inform social interaction..." [NCF 2005: 78]. Field observations indicate that "...many teachers accept practices such as child marriage, withdrawal of girls at menstruation and untouchability in school as cultural practices of communities to which they must be sensitive" [Vasavi 2000: 36]. In another study, teachers were found to relate the poor performance of dalit children to their social backgrounds. "Some teachers referred to children as 'good for nothing', stating that 'whatever benefits are provided, these people will not improve': 'even stones would respond but not these kids' [Anitha 2000: 89]. The NCF acknowledges active social exclusion and discrimination around questions of caste, gender, ethnicity and religion, yet expects teachers to be sensitive and informed, who "...should discuss different dimensions of social reality in the class, and work towards creating increasing self-awareness amongst themselves and in the learners"[NCF 2005:51] with little preparation, training and classroom support. The need of a proper training course for the teachers that involves some self development workshops that can help them know their own beliefs and stereotypes, and then which could be challenged through the engagement of teachers with various texts and the children of diversified social backgrounds.

In short the NCF 2005 has left two major gaps in its vision of teacher education. First, viewing the teacher as one who "needs to be persuaded and trained-oriented to the perspective... should have the skills to teach...", rather than as one who needs to be empowered to evolve pedagogies that foster critical thinking within a consciously created democratic environment of learning for all children irrespective of caste, religion, region, community and gender. Second, of assuming that teachers(typically constructed as a homogeneous category) exist in isolation of a sociopolitical context that actively discriminates between people and children from differing backgrounds and that they can be "oriented" successfully to "implement" the articulated new perspective of the NCF.

The dependency of all the document policies, including the NCF 2005, on the DIET programs for the primary school teaching, is again questionable. The course as earlier discussed is a short term diploma course with no graduation degree. As an alternative teacher training course other than DIET, I would like to talk about B.E.L.E.D offered by the Central Institute Of Education of Delhi University. It is a course designed by various educationists namely Prof. Poonam Batra, Prof. Krishna Kumar, Prof Anita rampal and many more. The course has been designed by taking into account the changed policy documents in their understanding of the agency of the learner as an active constructor of knowledge and the agency of the teachers as the facilitators. The course was founded in 1990's and is running in 8 colleges of the university. B.E.L.E.D is a 4 year integrated course, which prepares the teacher to facilitate child's construction of knowledge. It includes various theory courses and practicums that ensure the overall development of the teacher in both professional and social terms as a humane teacher.

I would like to take the course outline of B.E.L.E.D in comparison with the DIET programs, in order to explain the need of a holistic course for a better education system. First, a detailed study of the child's psychology in B.E.L.E.D, make the teacher efficient enough to understand the stages of development in a child's life, and the needs and requirements of each stage. Learning about the holistic view of children in the broad areas of cognitive, physical, moral, and emotional developments, helps in the appropriate lesson planning which will be in sync with the child's needs. The study of human psychology in detail for over 2 years helps the teacher to understand the 'self' as well as the 'others' that helps in the development of a much sensitized and humane perspective. The syllabus also includes the study of psychological impairments, which helps in identifying disorders in the children, as well the methods to deal with them sensitively. This detail study of psychology is absent in DIET courses, that clearly leads to the inefficiency in the training of the teachers as well as their personal growth.

Second, the study of social systems in detail for all 4 years in the name of various papers namely, Contemporary India, Core Social Sciences, Gender and schooling etc.. leads to the in-depth understanding of a teacher about the society. The text and approach used is to present the teachers with the idea of 'multiculturalism' in order to develop an appreciation and sensitization of the teachers towards the working of the social systems. This helps the teacher to identify its own prejudices and stereotypes, and "unlearn" them to form a more egalitarian approach towards the society.

Third, the learning of the core structures of Language Learning helps to understand the stages of language developments and the various language disorders like stammering, stuttering etc.. it also talks about the importance of using multilingualism in the classroom setting where the children are coming with the great resources of mother tongue and language resources. The curriculum of DIET has a language to be learned as in English, or hindi, whereas the curriculum of B.EL.ED has the papers named the 'nature of language' and the 'language acquisition and curriculum', which clearly states the difference in the content taught. Fourth, the papers of studying the basic concepts of education in detail which includes all the philosophical developments in the field of education, provides a sound knowledge to the teacher about the education system. As well as it provides a critical understanding to the teacher to choose the right teaching method for its particular class of students.

Fifth, the papers of Human Resource And Communication and Self Developmental Workshops provide a sound understanding of a teacher of the self. The presence of a lot of practicums makes it different from any other teacher training course which involves 1. Theatre, Craft, Story telling etc.. for being a resourceful teacher. 2. Classroom management, which trains the teacher to handle a huge teacher-pupil ratio of around 50:1 in the schools. 3. Other practicums which involves interactions with the students in each year namely, School Contact Programme, Block Teaching, Observing Children, and Internship in the final year.

The DIET programs lack this in terms of its curriculum design, time span of the training and the teaching methods. The document of the NATIONAL CURRICULUM FRAMEWORK OF TEACHER EDUCATION (NCFTE) 2009, talks about the need and importance of training the agency of the teachers in order to ensure a sound education system. The presence of B.EL.ED as a teacher training program, shows the gradual shift in the education system both in terms of the agencies of the learner and the teacher. Moreover, applicability of TET exams is heading towards establishing teaching as a profession, moving away from the idea of para-teachers. But, on the other hand, DISE in its recent data of the year 2013-14 shows, that only 55.56% of teachers are graduates, and only 71.54 are professionally qualified teachers. This again is a gap between the theory and its practice.

The recent document of NPE 2020, talks frimely about the need of a fullfledged teacher training professional course of 4 years duration, that shall improve on the quality of teachers as facilitators and not just the access of education. The inititate though is not talking about the financial support that may enable students from all social backgrounds to be in teaching profession. This loophole has the capacity of filling the tecaching profession with the upper caste-class representation where other communities remain under-represented. This can have the impact on the inclusive education for all, which the policy is aiming to attain.

I would like to conclude my paper by saying that the agency of teachers is an important factor with that of the agency of the learners. Focusing solely on the learner and changing the curriculum and the textbooks according to the needs only of the learner, will never help in bringing the change. Teacher is an important part of the education system that is in the active agent to address the curriculum as well as the facilitator to the learner. The supported education of teachers is as important as the education of any other profession, in order to ensure an effective education system.

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INDIAN VILLAGES; THROUGH THE LENS OF GANDHI, NEHRU AND AMBEDKAR

SURBHI ARORA

For me, India begins and ends in the villages (Gandhi 1979b:45, in a letter to Nehru written on August 23, 1944.)....the old Indian social structure which has so powerfully influenced our people...was based on three concepts: the autonomous village community; caste; and the joint family system (Nehru 1946:244). The Hindu village is the working plant of the Hindu social order. One can see there the Hindu social order in operation in full swing (Ambedkar, in Moon 1989:19).

Primarily focusing on the writings of Gandhi, Nehru and Ambedkar, the paper tries to study the structure of village societies. It is seen that though for all three the village was the central category to study Indian society and its traditional core culture, they too vary considerably in placing village and its culture in their respective imagined Indian nation. The paper too tries to argue the epistemic difference of the thoughts of all three and its relation to their social identities.

INTRODUCTION

Village societies have always been considered as a good entry point to understand the 'traditional Indian society'. It is taken as a good signifier of the authentic, core traditional culture of India. For social scientists it has been a social, cultural unit that represents the Indian society. The pioneering Indian sociologist and anthropologist, M.N Srinivas argues that "By studying a village, one could generalize the social processes and problems of India" (Srinivas 1955:99). Not just as a methodological entity, it is too understood as an ideological unit for modern Indian study, as in words of Beteille, "Village was not merely a place where people lived, it had a design in which were reflected the basic values of the Indian civilization" (Betelille1980:108).

India being represented through villages is been a matter of study for some sociologists. As Inden has pointed out, that though most other civilizations of the Orient societies too were primarily agrarian economies, it was only India that was essentialised to be a land of villages (Inden1990:30). Also villages have been a part of the subcontinent for time immemorial, it was during the colonial rule and writings of the colonial period that labeled India as a "village republic" (Jodhka 2010:10).

While on one hand Villages were considered to be a site of authentic Indian culture, they too were seen as a mark of backwardness. Incorporating many different tribal and other cultures it was also considered to be uncivilized and far from modern civilized culture. Villages being based on agrarian economy and home based handicraft works were obviously a feature of backward culture in the western evolutionary theory. The British government of course had political reasons for labeling this culture as backward, and most importantly portraying India as a "village republic". It helped them justify their colonial rule, in the name of 'white man's burden'.

The colonial administrative practices fixed many identities for people, namely religion, caste, ethnic group etc and so done for villages. The identity of village as a site of authenticity as well as backwardness which is a colonial construct is well reflected in the writings of the people during the national struggle. Some nationalist leaders celebrated the authenticity and some talked about working on the backwardness, but all considered it as an important aspect to discuss and write. Unlike colonial administration, nationalist leaders did not consider villages as

simply a basic unit that represents Indian society, but a core unit that needed to be reformed, liberated and transformed. Even when they celebrated village life, they did not lose sight of actual state of affairs marked by scarcity and ignorance (Jodhka2010:10). As prof. Jodhka rightly pointed out that, Apart, from having been educated by the colonial system, the middle class nationalist leaders were also got confronted with the villages while their struggle for freedom against the colonial government when they were trying to mobilize the common masses. It is here when there are notions about Indian villages got reformed. The nationalist leaders here started viewing villages which are at core but needs work and reformation.

The colonial era being the period of the advent of industries and modern technologies in India, it is here where the dichotomy of traditional villages and modern cities started emerging. The traditional village which was on the one hand working on the traditional social order and structure, the modern industries came as a broad opportunity to develop. The struggle against the colonial rule was somewhere a struggle against modernity for some people, like Gandhi. Nehru, who worked under Gandhi, too falls apart on this juncture and imagined a modern and developed India. Whereas for others like Ambedkar, the struggle for freedom was as much against the Hindu social order as it was against the colonial rule. He discarded British rule but embraces modernity.

GANDHI'S IDEA OF VILLAGE

Gandhi could really be called as someone who celebrated village as no one did. He talked about villages in majorly all his writings and speeches. Though, he was not born into a village neither had any ancestral village to relate with, most of his social and political philosophy revolves around the idea of village (Jodhka 2010). His idea of village in the beginning came from the secondary source of colonial administration's writings and the local stories. Belonging to a Hindu merchant caste family, he has his major thoughts coming from the socio-religious background he had. In majorly all his writings he celebrated the traditional culture and ethnic identity. For him, villages are the sites in India which reflects the ethnic and traditional culture of the country. He was engaged with the idea of villages from the time he was in South Africa.

Gandhi's idea of village can be read in majorly three themes. First, he talked about villages to establish equivalence with the west. Second, he counter posed village life to the city life, and presented village as a critique and an alternative to the evils of city life. Third, though he praised the village life and its structure, he also identified the loopholes and talked about the ways to reform it.

Initially when in South Africa, he proudly proposed the village structure of caste panchayat as equally efficient as any democracy. In his petition to the Natal Assembly referring to Sir Henry Maine's argument he writes…… "most clearly pointed out that the Indian races have been familiar with representative institutions almost from the time immemorial….The word panchayat is a household word throughout the length and breadth of India, and it means...a council of five elected by the class of the people whom the five belong, for the purpose of managing and controlling the social affairs of the particular caste."(Gandhi 1958:149) Here, Gandhi wasn't talking about every society being equal but it was the Indian society because of its caste structure.

His social and political philosophy both got changes after his shift from South Africa to India. His aim now was to gain freedom from the British rule. In his view, though political freedom can be achieved by overthrowing British government, real freedom can only be achieved by restoring the civilizational strength of India through revival of its village communities. Here he proposed villages not just as a critique but an alternative to the city life. According to him, big cities develop by britishers is a sign of degeneration, "the real plague spots of India" (Parel 1997). He juxtaposes city and village life as the lives belonging on machinery and handicrafts

respectively. He further accuses machinery and modern city life for the sorrow of India and posing the village and traditional life as the source of happiness and peace for the people of India, by writing, "Our country was never unhappy and miserable as it is at present. In the cities people may be getting big profits and good wages, but all that has become possible by sucking the blood of villagers" (Gandhi 1977a:369). Gandhi, also had a major role in changing the course of nationalist struggle upside down, he directed it from being an elite bourgeoisie movement to mobilizing newly emerging middle class peasantry movement.

While he presented village as a better alternative to the city life, he also saw the loopholes pf the village life and talked about its transformation. The flaws were majorly the intervention of modern. Apart from them, he saw untouchability and cleanliness as the features that need reformation. As he was advising villages to stop practicing untouchability, he too advised untouchables to follow cleanliness measures. He favored the 'caste' based panchayat structure of the village and posed it against any system of modern democracy in the speeches he gave in the legislative assembly. For the already existing cities, he didn't talk about their demolition but for them to develop village heart and life to attain real swaraj.

NEHRU'S IDEA OF VILLAGE

Nehru was another influential figure in Indian history. Apart from being an important figure in Indian National Congress, he too became the first Prime Minister of India. Nehru is in a way the catalyst of the developmental scheme India adopted after independence. Unlike Gandhi, Nehru perhaps never identified himself with the village. He was also quite self-conscious about his urban and upper middle class upbringing. He admits in his Autobiography (first published in 1936) that until 1920 or so his 'political outlook' was that of his class, 'entirely bourgeois' (Nehru 1980:49). He too like Gandhi understood Indian village society through the writings of colonial administration.

Nehru understood village society with a functionalist perspective, and sees the functions it performs, here he writes…...The functions of each group or caste were related to functions of the other castes, and the idea was that if each group functioned successfully within its own framework, then society as a whole worked harmoniously. Over and above this, a strong and fairly successful attempt was made to create a common national bond which would hold all these groups together – the sense of a common culture, common traditions, common heroes and saints, and common land to the four corners of which people went on pilgrimage. This national bond was of course very different from present-day nationalism; it was weak politically, but socially and culturally it was strong (ibid: 248). He understood villages as community oriented and democratically organized but on the same hand economically stagnant. He writes... "The aim was social security: stability and continuance of the group; that is of society. Progress was not the aim, and progress therefore had to suffer. Within each group, whether it was the village community, the particular caste, or the large joint family, there was a communal life shared together, a sense of equality, and democratic methods" (ibid: 252).

The more he got closer to the present day reality of the village structure, the more he got critical of it. Unlike Gandhi, Nehru criticized caste system for being exclusionary for the masses. He considered no place for it in the India of his imagination. In 'Discovery of India' he writes, "The ultimate weakness and failing of the caste system and the Indian social structure were that they degraded a mass of human beings and gave them no opportunities to get out of that condition – educationally, culturally, or economically...In the context of society today, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive, and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy, and much less, economic democracy" (Nehru 1946:254).

He further has considered Kisans as the important chunk of population that needs attention. He identified Zamindari system as responsible for the grievances of the peasants in India. And he believes Swaraj would be of little avail if it did not solve the problems of the kisans" (Gopal 1973:82). He claimed that landlordism came with britishers and is a way which stops villagers to work in other fields as weavers, carders etc but only forced to fall back on land for livelihood, which is a big reason of poverty in India. He was in favor of complete land reform by abolishing Zamindari and Jagidari system, by eliminating all the intermediaries from within.

Unlike Gandhi who proposed to revive villages as a solution to the problems of colonized India. Nehru came up with 'industrialization' and 'modernization' as the solution. He views industrialization as inevitable. In his view industries will help in reducing the burden of the land and hence will be good for even those in villages. He proposed that we help the peasants and agriculturalists; industry also is of dominant importance in India. Agriculture can produce wealth but it will produce more wealth (if) more people are drawn from agriculture and put in industry. In fact, in order to improve agriculture we must improve industry (sic). The two are allied (Gopal 1986:566).

On one hand where Gandhi was talking about the reformation of the villages, Nehru was on the other talking of transformation of the village life and its problems by using modern technologies and changing agrarian relations of production. He was in favor of reviving village and cotton industry for the overall progress and betterment of all sectors of India.

AMBEDKAR'S IDEA OF VILLAGE

Of all three, Ambedkar is the one with minimum impact on the masses during the nationalist movement. However, over the years he has grown in stature. Eleanor Zelliot points out that "Ambedkar is the only pre-independence leader who has continued to grow in fame an influence throughout the contemporary period" (Zelliot 2001). Prof Zodhka asserts that the essence of Ambedkar is in his social background. He represents the most backward and downthrown sector of society that is the dalit community. Like Gandhi and Nehru he too received high education from the west, he identified completely with the dalit cause.

Ambedkar is the only one of the three who had lived in the village of Maharashtra in during his childhood. He is only one who had firsthand experience of villages and that too from below, as a dalit child. Through his father was employed into a secular job, he could not escape the problems one has to face being a dalit in Indian society. The financial struggle his family went through can be understood from the fact that out of 14 children to his mother, only 5 survived. Though he grew up being an educated barrister, he never stopped relating with the dalit movement. Perhaps became the sole catalysts for it.

Both Gandhi and Nehru have glorified the Indian past and have talked about its great features which are being spoiled by the advent of britishers. Ambedkar on the other hand has no interest in having the orientalist's view of glorifying the Indian past. Perhaps, he saw Indian civilization as Hindu civilization. He further doesn't see Dalits being part of the Indian society. He asserts that the structure of the villages clearly reflects the Hindu society, where dalits are forcibly pushed to live in ghettos. He writes…The Hindu society insists on segregation of the untouchables. The Hindu will not live in the quarters of the untouchables and will not allow the untouchables to live inside Hindu quarters…It is not a case of social separation, a mere stoppage of social intercourse for a temporary period. It is a case of territorial segregation and of a cordon sanitaire putting the impure people inside the barbed wire into a sort of a cage. Every Hindu village has a ghetto. The Hindus live in the village and the untouchables live in the ghetto (Ambedkar 1948:21-22). For him village is a microcosm of the Hindu society where you can see it practicing in its full swing. He theorizes Indian village as a single unit being divided into two communities of touchables and untouchables. The touchables are the

dominant group having all the resources and power, whereas untouchables are the 'dependent community' which lives on the orders and decisions of the dominant group. In his experience, untouchables is a 'subject race of hereditary bondsmen' lives as per the codes and conducts decided by the dominant community, regarding their habitation, the dress they can wear, the distance they must maintain from the Hindus. They are not allowed to wear any silver and gold jewellery, nor they are allowed to build houses with tiled roofs (Moon 1979,1989).

Majorly his writings are in response to the constituent assembly, where members (who are obviously from upper castes) were aggressively arguing for making villages as the representative secular communities of India. Here ambedkar very strictly argues that village is nowhere near to the concept of Democracy. He asserts that village is a site where exclusion, exploitation and untouchability are practiced at its most. In words of Ambedkar, "village republics have been the ruination of India…What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism?" (Moon 1989:19). His concern obviously emanated from the standpoint of the 'untouchables', for whom recognition of the village as a unit of legal structure of India would have been 'a great calamity' (Moon 1989:19).

When Gandhi and Nehru accepted the western view of Indian society, Ambedkar was even very critical of this picture. He was the only one who presented the real lived experiences of village life and critics its very nature of exclusion. Obviously he rejects the village republics as having its place anywhere in India and claims modern democracy over it. Ambedkar's imagined India is based on Equality, Fraternity, and Liberty which has no place for structures like villages which are essentially discriminating. He further draws a closer analogy between Indian caste system and Marx's analyses of class structure, and asserts Indian caste system as four varnas based on spirit of animosity against each other.

CONCLUSION

The views of all three of them regarding the similar topic of villages in the same time period, varied considerably. The epistemic difference can be traced back to their own social context and place in the social structure. On one hand Gandhi being trained and socialized in a traditional and religious family shows a great agreement to the values of tradition. He supported caste system as a good way of managing society in comparison with democracy. Nehru on the other hand clearly works towards the modern development and considers villages as not a system of progress, he views it as stagnant. He was critical of the caste system but didn't show any hatred towards it. Both Gandhi and Nehru belonged to the higher castes and elite powerful backgrounds. Ambedkar on the other hand who had experienced the system from below completely criticizes it and wants to replace it with modernity. Ambedkar rightly pointed out that upper caste never had problem with the system as it is in their favor and portrays them as good.

Through this epistemic difference in their thoughts, we can now make sense of why for Gandhi villages were the site of Authenticity, for Nehru it was a site of Backwardness and for Ambedkar it was a site of Oppression.

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ERASING DIGITAL MEMORY: RIGHT TO BE FORGOTTEN

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INTRODUCTION

The right to be forgotten, also known as the right to erasure, is a relatively new concept in the realm of privacy law. It refers to an individual's right to have their personal information erased from the internet, including search engine results, social media, and other online platforms. This right has become increasingly relevant as individuals' personal information is now easily accessible and searchable online.

The right to be forgotten has gained prominence in recent years due to the increasing amount of personal information available online. People are becoming more aware of the implications of having their personal information available online, such as identity theft, cyberbullying, and other forms of online harassment. This right provides a mechanism for individuals to request the removal of their personal information from online platforms, which can help protect their privacy and prevent potential harm.

However, the right to be forgotten is not an absolute right, and there are many issues that need to be considered when balancing the right to privacy against other rights and interests. For example, the right to freedom of expression and the right to access information are also fundamental rights, and there may be instances where these rights conflict with the right to be forgotten.

One of the challenges of implementing the right to be forgotten is determining when it should be applied. Some argue that it should only be applied in cases where personal information is inaccurate, outdated, or no longer relevant. Others argue that it should be applied more broadly to include cases where personal information is embarrassing or sensitive, even if it is accurate and relevant. Another issue with the right to be forgotten is the difficulty of enforcing it. With the vast amount of information available online, it can be challenging to ensure that all instances of personal information have been removed. Additionally, there are concerns about the potential for abuse of the right, such as individuals attempting to use it to suppress information that is in the public interest.

Nations are approaching this with the introduction of different laws and regulations for information insurance, and after the European Association presented GDPR this issue turned into the spotlight of the world.

In India, the case of Justice K.S. Puttaswamy v. Union of India highlights the importance of having regulations for data privacy and data protection, and with this, the supreme courts in India recently recognized the right to privacy of the citizens as a fundamental right which acts as a facet of Article 21 of the Constitution of India which enumerates the Right to Life and Personal Liberty. The Supreme Court observed that: the right of an individual to exercise control over his data and to be able to control his/her own life would also encompass his right to control his or her existence on the Internet.

The Right

The right to be forgotten appears in Recitals 65 and 66 and Article 17 of the GDPR. It states, “The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay”, if one of several conditions applies. The ability of people to restrict, erase or remove their personal information on the internet from public reach is ensured

by the Right to be forgotten. The criteria for removing the data from the web are that the data should be misleading, embarrassing, irrelevant, humiliating, or anachronistic. in other words, the right to be forgotten provides the right against the revelation of her information while handling her own information has become unlawful or undesirable.

European Union under the General Data Protection Regulation has recognized the Right to be forgotten as a statutory legal right and has likewise been upheld by different EU and English courts.

The Personal Data Protection Bill, 2019 recognizes the right to be forgotten in India as in India there is no such regulation has been made that accommodates this right. The Bill envisages many changes concerning information taking care and security honors of a person.

The right to be forgotten is the right to have private information about a person removed from Internet searches and other directories under some circumstances. The Court of Justice of the European Union recognized the right to be forgotten in 2014. Yet, that was neither the beginning nor the finish of the history of the right to be forgotten. It should be noted that the legal battle started well before the CJEU's decision and continue to present.

The idea of such a right can be followed long back to the French law which perceives 'le Droit a l'oubli' as generally converted into 'the right of oblivion'.

The origin could be traced back to 2010 in Argentina when the case was presented by Artist Virginia da Cunha involved photos that had initially been taken and uploaded with her consent, but she claimed that her photos were inappropriately connected her photos with erotic entertainment. This case surely was successful in web indexes not showing pictures of the celebrity, however, this decision was on appeal until 2014 when the Supreme Court of Argentina finally ruled in favor of the websites. Virginia Simari, the judge in favor of De Cunha, stated that people have the right to control their image and avert others from "capturing, reproducing, broadcasting, or publishing one's image without permission" This option enables a criminal who has completed their sentence and undergone rehabilitation to object to the disclosure of the details surrounding their conviction and incarceration. As a result, the Data Protection Directive, 1995 of the European Union underwent an advanced development of the declared right to change and integrate itself. According to the aforementioned guidelines, anyone could ask the relevant authorities to erase some data that was publicly accessible on the internet "because of the incomplete or erroneous character of the information"

Around 20 years later, the European Court of Justice ruled in the famous case of Google Spain SL and Google Inc. v. Agencia Espaola de Protección de Datos (AEPD) and Mario González that EU citizens have the right to be forgotten and that their right to privacy outweighs the need for free data movement within the EU. This ruling was requested across the EU, and it was as a direct result of this decision that the aforementioned right found its way paved into thein GDP Regulations, 2016.

Imperative: 'To Forget'

Anybody can get individual pieces of information about someone by entering their name on any web search tool considering the immense measure of data on the web which can cause damage to individuals' reputation in society. Consequently, there may arise a situation where a person does not want his details to be available online anymore for someone else's access and this craving for intangibility has recently emerged as the 'Right to be Forgotten. The right permits a person to move toward a social stage and request to eradicate specific data accessible concerning him/her.

The capacity of the people to restrict, erase, de-connect, or address the divulgence of individual data on the web that is, humiliating, deceiving, insignificant, or chronologically misguided is

properly ensured by the ‘right to be forgotten.’ So basically, the right of people to have their confidential data taken out from the web, sites, or some other public stages under extraordinary conditions.

The current data protection regime in India, as enacted by the Information Technology Act of 2000 and the rules ensuing from it, does not recognize an individual's "right to be forgotten."

fter much debate and judicial inconsistency on the subject, the Personal Data Protection Bill: 2019 PDP Bill), based on the Report of the Justice B. N. Srikrishna Committee, finally seeks to give this right statutory recognition. This right is now formally recognized by the PDP Bill. The Data Protection Bill, 2019, is a proposed law in India that seeks to protect the personal data of Indian citizens. The bill was introduced in Parliament in December 2019 and has been undergoing various rounds of consultation and revisions since then. The bill aims to establish a framework for the protection and processing of personal data in India, in line with global best practices. One of the key features of the bill is the requirement for data fiduciaries to obtain the consent of individuals before collecting and processing their personal data.

The bill defines a data fiduciary as any entity that collects or processes personal data, and sets out specific requirements for the protection of such data. These requirements include ensuring the security and confidentiality of personal data, providing individuals with access to their personal data, and allowing individuals to request the deletion or correction of their personal data.

This is largely inspired by the General Data Protection Regulation (GDPR) of 2016. (GDPR). Section 20 of the PDP Bill allows a data principal to prevent or limit the continued disclosure of personal data in three circumstances: a) the data has served its purpose; b) the data has been destroyed, and c) the data has been destroyed.

The Adjudicating Officers will use the following criteria to decide whether or not to exercise such right: the sensitivity of the personal data, the scale/degree of ease of access sought to be confined, the involvement of the data principal in public life, the relevance of such data to the public, as well as the essence of the disclaimer and activities of the custodian.

Under the PDP Bill, the Adjudicating Officer decides whether an individual should be entitled to practice his "right to be forgotten." That would be the only right made available for in the PDP Bill that presupposes an application to the Adjudication Officer. This also differs from the GDPR's approach, which requires registration for such an exercise of a right to suer to be done with the controller of such data.

Though the 'Right to be Forgotten' is not mentioned in the Sensitive Personal Data Information (SPDI) Rules, there are some judicial precedents in India on the subject. For the first time, the Orissa High Court, an Indian constitutional court, brought to the forefront the issue of an individual's protection of privacy online, endorsing for the regulatory oversight of Article 21 of the Indian Constitution relating to Right to Life and Personal Liberty as a remedy to victims whose conciliatory information was available online.

Disputing bail to an accused of purportedly posting explicit content of a female friend without her explicit approval, Justice SK Panigrahi observed that, despite the accused erasing the obscene material, the victim had no legal mechanism to have the content permanently removed from the host platform's (social media site's) server or the web. "It is also undeniable that implementing the 'Right to be Forgotten' is a difficult problem in terms of expediency and technological nuances." The Orissa High Court, relying on the Supreme Court's decision in K.S. Puttaswamy (Privacy-9J), stated that at the moment, "...there is no statute which recognizes the right to be forgotten but it is in sync with the right to privacy."

In Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd., the Delhi High Court recognized the "right to be forgotten" and "right to be left alone" as an integral part of an individual's existence.

In Sri Vasunathan v. Registrar General, the Karnataka High Court explicitly recognized the "right to be forgotten," albeit in a limited sense. The Court granted the petitioner's request to have his daughter's name removed from a judgment encompassing assertions of marriage and forgery. It was argued that recognizing the right to be forgotten would be similar to initiatives by 'western countries' that uphold this right insensitive cases involving people's 'modesty' or 'reputation,' particularly women.

In Zulfiqar Ahman Khan v/s Quintillion Business Media Pvt. Ltd. and Ors., the Delhi High Court recognized the plaintiff's 'Right to be Forgotten' in an order dated 09.05.2019. The problem arose when the respondent published two papers comprising abuse allegations against the plaintiff during the #MeToo campaign. During the course of the proceedings, the court ordered that the aforementioned articles not be republished. The court also stated that the 'Right to be Forgotten' and 'Right to be Left Alone' are inherent aspects of the 'Right to Privacy.'

In Justice Puttaswamy v. Union of India, Supreme Court Justice Sanjay Kishan Kaul held that individuals have the right to put and remove data from online sources in both tangible and intangible forms. "The right of an individual to exercise control over his personal data and to be able to control his/her own life would also include his right to control his existence on the Internet," Kaul stated.

The right to be forgotten is rooted in Articles 19 and 21 of the Indian Constitution, which do not provide it as an unfettered and unlimited right and thus subject to restrictions such as other fundamental rights, contractual responsibility, public interest and health, archiving, researching, and defending legal claims. Kaul J. ruled that people's past mistakes should not be included as a weapon against them using their digital footprint and that people should be allowed to limit the publication of data about them. The Court relied on the 2016 European Union Regulation (Article 17), which established the right to be forgotten.

Consolation of security can be major provided by the right to be forgotten and can assume a significant part in further developing association and independence. when it comes to the abilities regarding web-based individual information, the state and non-state authorities have a wide range of powers. What gives individuals more control over their enhanced personalities is permitting individuals to assume a sense of ownership of their information. Most internet personal data is irrelevant to public interest contemplations and has undeniably more inborn worth to the individual than culture in general.

The case of “Dharamraj Bhanushankar Dave v. State of Gujarat & Ors.” And “Jorawar Singh Mundy vs. Union of India” highlighted to have regulations as the right to be forgotten in India. With the speedy growing technology, without a trace of an information protection regulation that confines the fundamental Right to erase futile and disparaging confidential information from the web-based space, a huge consideration is been attracted by the 'Right to be forgotten So by this case it is need of great importance to consider the "'Right to be forgotten as a crucial Right" i.e., right to be forgotten should be seen as the need of the hour.

Beyond the Political Spectrum

The concept of the right to be forgotten has elicited conflicting reactions from various jurisdictions around the world. The EU, in particular, has seen rapid development. Along with the EU, the provisions of the United States on the Right to be Forgotten have been discussed.

The European Union (EU) - The European Union has seen several maneuvers to consolidate the Right to be Forgotten. The Data Protection Directive was a European Union directive passed in

1995 to govern the processing of personal data within the EU. It is a crucial part of EU privacy and human rights law. Following that, in April 2016, the General Data Protection Regulation (GDPR) was enacted, superseding the 1995 Data Protection Directive.

Article 17 states that the data subject has the right to request the erasure of personal data relating to them on a flexible basis, including nonadherence with Article 6(1) (lawfulness), which includes a case (f) if the controller's legitimate interests are outweighed by the data subject's interests or fundamental rights and freedoms, which require the protection of personal data. As a result, GDPR Article 17 outlines the circumstances in which EU citizens can practice their right to be forgotten or erasure.

The Article gives EU citizens the right to have their personal data erased if they withdraw their consent to use the data or if the information is no longer appropriate for the purpose for which it was collected. However, the request may be denied in certain circumstances, such as when it contradicts the right to free expression and information, or when it is contrary to the public interest in the areas such as healthcare, scientific or historical research, or statistical purposes. As a result, Article 17 of the GDPR of 2016 provides a comprehensive safeguard in the right to be forgotten.

It can be said that in its operating jurisdiction, it seems to have at least offered a limited right of erasure. The European Court of Justice ordered Google to delete "inadequate, irrelevant, or no longer relevant" data from its search results when a member of the public requests it in Google Spain v. AEPD and Mario Costeja Gonzalez. The ruling, now popularly known as the "right to be forgotten," has been critical in reinforcing the EU's data protection laws and regulations, including the EU's General Data Protection Regulation (GDPR).

The case involved Mario Costeja Gonzalez, a Spanish man who was dissatisfied that a Google search for his name produced a newspaper report from 1998. When Gonzalez propositioned the newspaper in 2009 to have the article removed, the newspaper refused, and Gonzalez then propositioned Google to have the article removed when his name is searched. The plaintiff was successful in court. To exercise one's right to be forgotten and have one's information removed from a web browser, one must fill out a form on the search engine's website.

Google's disposal request process necessitates the candidate to classify their country of residence, provide personal information, provide a list of URLs to be removed along with a brief explanation of each one, and attach legal identification. The form allows users to enter the name for which they want search results removed. If a Web Browser refuses to delink material, EU citizens can file an appeal with their existing data protection agency. As of May 2015, the British Data Protection Agency had handled 184 such complaints, with roughly a quarter of them overturning Google's decision.

Google may face legal action if it objects to a Data Protection Agency decision. The European Union has requested that Google implement delinking requests from EU citizens across all International Domains.

United States of America (US) - The United States of America has a well-developed constitutional system that protects its citizens' privacy. The State of New York was the first to introduce a draught Right to be Forgotten bill A05323 in its State Assembly, titled "An act to amend the civil rights law and the civil practise law and rules, in relation to the creation of the right to be forgotten act." Furthermore, in March 2017, New York state senator Tony Avella and assemblyman David Weprin introduced legislation that would allow individuals to require search engines and online speakers to remove information that is "inaccurate," "irrelevant," "inadequate," or "excessive," that is "no longer material to current public debate or discourse," and that is causing demonstrable harm to individuals.

The bill was written largely along the lines of the European Court of Justice's decision in Google Spain SL v. Agencia Espaola de Proteccion de Datos. To some extent, two important cases, Melvin v. Reid and Sidis v. FR Publishing Corporation, are relevant. In Melvin's case, an ex-prostitute was accused of the murder and afterward acquitted; she then attempted to live a quiet and pseudonymous life. However, the 1925 film The Red Kimono discovered her background, and she successfully prosecuted the producer.

"Any person living a life of rectitude has that right to happiness, which includes freedom from superfluous attacks on his character, social standing, or reputation," the court reasoned. While the plaintiff in the latter case, William James Sidis, was a former child prodigy who longed to spend his adult life quietly and unnoticed, an article in The New Yorker hindered this. The court held in this case that there are limits to one's right to control one's own life and facts about oneself, that there is the decisive factor in publicly available facts, and that an individual cannot completely disregard their celebrity status simply because they want to." Despite these slow improvements, the chances of success of Federal law or a Constitutional Amendment providing for a self-contained Right to be Forgotten in the United States are quite dim, especially given the strong opposition on the grounds that it is inconsistent with the First Amendment to the United States Constitution, which guarantees freedom of speech and expression. It is thus argued that the Right will result in a new method of censorship.

These criticisms, however, are coherent with the recommendation stating that the only documentation that can be excluded at the request of the data subject is content that the user has uploaded.

Reparable Damage

The right to be forgotten can also provide important privacy safeguards as well as play a significant role in publicising agency and autonomy. When it comes to online private information and identity, both state and non-state actors wield considerable power. Allowing people to own some of their private information gives them some oversight over their digital identities. The vast majority of online private information has no significant impact on public interest considerations and is far more valuable to the individual than to society as a whole. Current jurisprudential and governmental developments in this area have been sensitive to this, distinguishing between what is valuable to an individual, what is interesting to the public, and what is in the public interest.

There were concerns that a "overly broad right to be forgotten" would lead to Internet censorship because data subjects could force web pages or websites to erase private details, potentially rewriting history. Individuals should not be defined indefinitely by their past in some circumstances. The Google Spain decision provides some guidance in this regard, recognising the need for relevant considerations - such as the nature and sensitivity of the information, the interests of the state, and the role played by the data subject in public life - to be taken into account when striking a fair balance between the data subject's right and the interests of internet users. Relatively soon after the Google Spain decision, Google received a flood of requests from people seeking to have articles about them eliminated from the search engine. Google’s 2017 Transparency Report provided some guidance on how it has dealt with requests, providing examples of some of the outcomes of requests for erasure. According to one response to a politician's request, "[w]e did not delist the URLs given his former status as a public figure," while another stated, "[w]e delisted 13 URLs as he did not appear to be currently fully involved in political life and was a minor at the time." According to Article 19, binding children to negative elements of their past can "impede their progression and diminish their sense of self-worth."

There are legitimate benefits to the right to be forgotten; however, there are risks associated with the right, particularly around rights enforcement and the negative impact this can have on the right to freedom of expression. In the absence of effective regulatory safeguards, search engines may become the "judge, jury, and executioner" of the right to be forgotten. There are risks in delegating such decision-making authority to a private entity, particularly considering the need to organizations to be effective rights, which has traditionally been reserved for courts. The Electronic Frontier Foundation is concerned that the "ambiguous responsibility placed on search engines" will lead to internet censorship.

The Quest Continues

Often right to be forgotten is considered a violation of freedom of expression given to citizens of India under article 19 of the Constitution. Freedom of Expression is a universal human right that ensures that every citizen can express themselves and their opinions. Article 19(1) (a) of the Constitution guarantees the freedom of speech and expression subject to certain reasonable restrictions under Article 19(2). These limitations permit the State to make regulations and edge-specific principles, guidelines and headings, and directions that complement the law that limits the previously mentioned right. Huge criticism is being faced by the right to be forgotten as it confronted significant analysis through checking the freedom of speech and expression. The right to be forgotten is an inherent aspect of the right to privacy and then again, there exists the right to freedom of speech and expression of general society at large which envelopes in its overlap, the right to information and the right to know.

Freedom of expression will get affected due to the removal of the online substance from the web. citizens won't be able to express their views as they will experience an issue in communicating their perspectives through published articles, books, TV, the web, or some other medium as the overall influence of eliminating the data will move in the favor of the person, whose data has been unveiled. citizens won't be able to express their viewpoints or convictions on a specific matter.

In the case of Shreya Singhal, it was held that restrictions mentioned in Section 66-A of the Information Technology Act, 2000 such as "information that may be grossly offensive or which causes annoyance inconvenience" are vaguely worded and undefined in their scope and hence unconstitutional in nature as all restrictions need to be "couched in the narrowest possible terms. Further, for this situation, the court held Section 66-An unconstitutional on the ground that it chillingly affected the freedom of speech. The author suggests that as Article 19 (1) (a) of the Indian Constitution is subjected to certain reasonable restrictions in Article 19 (2) of the Constitution, there ought to be an amendment through which the Right to Privacy should be included for Article 19 (2) of the Constitution.

One is right to ensure awareness among the citizens towards an individual past event posted on the internet, and this easy access will help readers/viewers to a judge person based on his past acts but can have both positive and negative affect on one's life as this can cause psychological and emotional suffering to one as it'll affect their present life. On the other hand, the restriction will occur on freedom of speech and expressions of the citizens as it will limit their free expression on the internet and it will cause chaos in newscasting. The right to be forgotten in this manner is an exceptionally mind-boggling issue as it carries vulnerability between the right to privacy and the right to free speech and expression.

CONCLUSION

The current study looked at the conception and subsequent evolution of the right to be forgotten in the European Union. The right to privacy is more sustainable in Europe than in India, thanks to extensive jurisprudence on the subject. The right to be forgotten necessitates a balancing of the rights to privacy and freedom of expression. The right to privacy, which is a fundamental right in Europe, has only recently been recognised as such in India.

However, judicial pronouncements have suggested that it is inherent under Article 21 of the Constitution. Despite the fact that the right is now acknowledged, its development has thus far been limited to regulatory oversight against state surveillance. In the nonappearance of any explicit right to privacy and any legislation protecting citizens' personal data on an online forum, the right to be forgotten, if ascertained, would have a weak and insufficient foundation in India. Furthermore, it is argued that India's free speech jurisprudence has emerged well enough to supersede the right to be forgotten.

Many constitutional inconsistencies plague the right to be forgotten, rendering its foundation incompatible in the Indian context. Article 19 of the Constitution protects citizens' freedom of expression and permits an individual to post content on the web about another person as long as it is not prohibited by statutory legislation. As a result, the GDPR's broad definition of personal data cannot be guaranteed by the constitution because it would violate the right to free expression. As a result, the right to be forgotten in its current form would be completely at odds in the Indian context, both substantively and procedurally.

However, it is proposed that the European version of the right could be modified to make it compatible with the Indian Constitution. The Right to Be Forgotten must be established statutorily in Indian law and must apply to both private individuals and the state, as envisioned in the Personal Data Protection Bill, 2019. Furthermore, data protection laws, such as the Information Technology (Intermediary Guidelines) Rules, 2011, which currently provide a weak level of data protection, must be strengthened and specifically worded. An executive body should have the prerogative to balance the right to privacy and the right to free expression in full compliance with Administrative principles against excessive delegation.

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TOURISM AND ITS IMPACT ON ENVIRONMENT

Srishti Balam and Manvi Khanduri

ABSTRACT

The relationship between tourism and environment is a bit complicated as it seems to be. Physical environment, either man made or natural, has been essential for tourism to grow as an industry since a very long time but it also affects the environment in the adverse way. Tourism is a large, diffuse global industry. Impacts of it on environment also differ on a very large scale. From scenic heritage sites to endangered plant and animal species in certain areas. According to this research every situation has two impacts, positive and negative. Sudden growth of tourism industry also has two types of impacts on the environment. On one hand government ensures to maintain these heritage sites and its external environment by creating certain norms and guidelines of how to behave in such places or not to throw garbage anywhere else except the dustbin but on the other hand increase in number of tourists can lead to violation of certain rules and regulations which can directly or indirectly affect the physical environment of the place.

This research will mainly focus on what is tourism, tourism in India, impacts of it on the external environment and the concept of sustainable tourism.

"Tourism is a social, cultural and economic phenomenon which entails the movement of the people to countries or places outside their usual environment for personal or professional purposes."

- UNWTO (United Nations World Tourism Organisation)

INTRODUCTION

Tourism is one of the fastest-growing sectors of the global economy, with increasing numbers of people traveling for leisure, business, and other purposes. According to the World Tourism Organization (UNWTO), international tourist arrivals reached 1.8 billion in 2019, and tourism has been a key driver of economic growth, job creation, and poverty reduction in many countries. However, the rapid expansion of tourism has also raised concerns about its environmental impacts and sustainability.

Tourism has various direct and indirect impacts on the environment, including changes in land use, increased energy and water consumption, waste generation, emissions of greenhouse gases and other pollutants, and cultural heritage degradation. These impacts can have negative consequences on the environment, natural resources, ecosystems, and local communities, and may threaten the long-term sustainability of tourism destinations. Therefore, understanding the impacts of tourism on the environment and developing strategies to mitigate them is crucial for promoting sustainable tourism practices.

What is tourism?

Tourism does not have only one single definition. It can be defined as a business related to transports and holidays or an industry dealing with visitors visiting different places globally. Tourism is a very wide topic to study.

As the leading international organization in the field of tourism, UNWTO promotes tourism as a driver of economic growth, inclusive development and environmental sustainability and offers leadership and support to the sector in advancing knowledge and tourism policies worldwide.

In the 21st century, there is a sudden growth in tourism as an industry. It has become a major source of income for a country. In the modern world tourism plays a vital role in the economic development of a country. Countries with most heritage sites and scenic beauties like Rome, France, etc. tend to gain most of their income from the tourism industry.

Transport innovation was an essential enabler of tourism's spread and democratization and its ultimate globalization. Beginning in the mid-19th century, the steamship and the railway brought greater comfort and speed and cheaper travel, in part because fewer overnight and intermediate stops were needed. Above all else, these innovations allowed for reliable time-tabling, essential for those who were tied to the discipline of the calendar if not the clock.

As Per WTO, Tourism comprises the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes.

Tourism in India

India as a developing nation prioritises tourism industry as a vital source of income of the country. In the budget of 2023, Out of the total INR 2400 crores was allocated to Ministry of Tourism, major portion of the outlay amounting to INR 1742 crore is allocated for development of tourism infrastructure and an amount of INR 242 crore for promotion and branding.

The Ministry of Tourism designs national policies for the development and promotion of tourism. In the process, the Ministry consults and collaborates with other stakeholders in the sector including various central ministries or agencies, state governments, union territories and private sector representatives.

Every year a large number of tourists across the world visit India because of its rich heritage and culture. The stories from ancient times, history behind those scenic monuments attract many visitors globally.

India is famous for its diversity. Every place has its own history and importance whether in terms of spirituality or as in symbols of sacrifices made by the freedom fighters. The ministry of tourism in India ensures to attract a large number of visitors across the world every year through collaborations with different organisations and advertisements in newspapers and magazines as well as social media platforms on global level.

As a measure to boost tourism, the Indian Government implemented a new visa policy in November 2014, allowing tourists and business visitors to obtain a "visa on arrival" at 28 international airports, by acquiring an Electronic Travel Authorisation (ETA) online before arrival, without having to visit an Indian consulate or visa centre. In April 2015, the "visa on arrival" scheme was renamed "e-Tourist Visa" to avoid confusion.

The e-visa facility helped visitors to apply for the visa on the Indian government website online before four to thirty days of arrival. This was a major step taken by the government of India which lead to a rapid growth in the tourism industry. According to the statistics provided by the government of India, tourism have shown an increase to 7.3% that year.

Impacts of Tourism on the External Environment-

Tourism industry has been showing a rapid growth in the industrial sector. It has not only contributed towards the growth of the Indian economy but also generated a lot of employment opportunities for the youth of the country to sustain lifestyle and traditions. People now seek tourism as a career opportunity.

It has effected countries worldwide but despite this the question of what this growing industry does to our environment cannot be ignored. Tourism as an industry has been showing major

changes in the economy of different countries lately but on the other hand it also impacts the environment and the climatic changes we have been seeing around us.

It is believed that every situation has two sides- positive and negative. Tourism growing as an industry also have two aspects, positive is how it affected countries economically and helped people in different economic aspects. But it does have a negative side to it which includes the continuous exploitation of environment in different ways in order to help the tourism to grow as an industry.

Every time an industry starts to flourish the environment is affected simultaneously. It may be possible that sometimes this development happens by not affecting the external environment in a negative way at all but in most of the cases development leads to exploitation of environment on the other hand. It can bring lot of good to regions, but also lot of bad like fast degradation, extinction, and depletion, if not done with the long-term planning and preservation in mind.

1. Depletion of Natural Resources:
Depletion of natural resources has been a growing concern because of the scarcity of resources in many places. Resources like water is particularly misused in the tourism sector.

The over usage of water is not a new problem. Water is the main resource which is used excessively specifically by the tourists in hotels, resorts, etc.

Other resources are also exploited here. The industry involves burning of fossil fuels and production of greenhouse gases on a large scale which automatically contributes in increment of global warming each year.

2. Production of Waste:
This is also a very common problem faced by the industrial sector. We use products like plastic water bottle, packets of food on a vacation but when it comes to waste management most of us don't know about how to or where to dump those waste products.

Solid waste and littering can degrade the ecosystem and alter the appearance of the landscape. Dumping waste in oceans or seas harms marine life and often leads to their death.

3. Pollution:
Pollution doesn't need to be defined as it is the most common problem faced by every country. In the tourism industry emissions from transport and greenhouse gases lead to air pollution which directly affect the ozone layer and because of which the climate shows major changes like global warming. It's like one problem leading to many other problems.

Noise pollution from the transports, water pollution due to dumping or littering of wastes in the marine, etc. are various other types of pollution.

4. Deforestation:
Deforestation is when humans remove or thin forests for lumber or to use the land where the trees stood for crops, grazing, extraction (mining, oil, or gas), or development as the population increases and people migrate.

On one hand Government promotes the concept of afforestation but on the other hand it also does deforestation to improve infrastructure for the development of tourism industry.

It often leads to soil erosion as forests are cleared on a large scale for making space to create heritage sites.

5. Global warming:
Like every other industry tourism contributes it fair share in constant increase of global warming. The constant emissions of greenhouse gases, overcrowded places, etc. can increase global warming.

6. Waste generation:
Tourism generates significant amounts of waste, including food waste, plastic waste, and other types of waste from hotels, restaurants, and recreational activities. Improper waste management can result in pollution of land, water, and air, and can have detrimental effects on local ecosystems and wildlife.

7. Overconsumption of resources:
Tourism can result in overconsumption of resources such as energy, water, and food, particularly in areas with limited resources. This can strain local infrastructure and exacerbate existing resource scarcities, leading to negative environmental impacts.

8. Cultural impacts:
Unmanaged tourism can lead to cultural impacts, such as loss of traditional practices, erosion of local cultures, and exploitation of local communities. Cultural impacts can disrupt the social fabric of local communities, leading to loss of traditional knowledge, values, and ways of life.

Positive impact of tourism on the environment: (solution on how to sustain the environment alongside the development)
Problems such as loss of ecosystems, biodiversity are also increased due to development of tourism industry. If tourism as an industry shows positive growth in the economy of a country, it on the other hand affects the external physical environment as well, mostly in a negative way.

In some cases, this industry also works on creations of forest reserves, zoo, nurseries, etc. which impacts the environment in a good way.

Creation of nurseries and forest reserves help in sustaining flora and fauna of a place which is a good step towards sustainable development of resources.

Tourism and the environment can be mutually supportive. In a number of destinations, tourism helps to ensure higher water quality and better protection of nature and local natural resources. It can generate additional resources to invest in environmental infrastructures and services.

Tourism industry can also contribute in creating a better environment by following the guidelines related waste management, creation of places without clearing forests, creating a system where less fossil fuels are burnt, control the emission of greenhouse gases, and many more.

One way which is recognised by most of the countries lately is sustainable tourism. It is somehow related to the 17 sustainable goals (SDGs). If the industry follows this type of tourism then development can be made without compromising the environmental resources.

While tourism can have negative impacts on the environment, it can also contribute to positive environmental outcomes when managed sustainably. Here are some examples of how tourism can have a positive impact on the environment:

1. **Conservation and preservation:** Tourism can support conservation efforts by generating revenue for protected areas and natural reserves, which can be used for conservation and preservation efforts. Entrance fees, park permits, and other forms of tourism-related revenue can help fund conservation programs, habitat restoration, anti-poaching measures, and other initiatives that protect natural ecosystems and wildlife.
2. **Environmental education and awareness:** Tourism can raise awareness about environmental issues and educate tourists and local communities about the importance of protecting the environment. Responsible tour operators and guides can provide educational opportunities for tourists to learn about local ecosystems, biodiversity, and conservation efforts, which can help foster a sense of environmental stewardship among tourists and local communities.

3. **Sustainable Practices:** Sustainable tourism practices, such as eco-tourism and responsible tourism, can promote environmentally-friendly practices, such as using renewable energy, conserving water, reducing waste, and practicing sustainable agriculture and fishing. These practices can help minimize the environmental impact of tourism and promote sustainable resource management.
4. **Conservation-Oriented Activities:** Tourism can provide opportunities for tourists to directly engage in conservation-oriented activities, such as wildlife monitoring, habitat restoration, and ecological research. These activities can contribute to conservation efforts, raise awareness about environmental issues, and promote scientific research and conservation initiatives.
5. **Economic Incentives for Conservation:** Tourism can create economic incentives for local communities and stakeholders to engage in conservation efforts. For example, community-based tourism initiatives can provide economic benefits to local communities, which can incentivize them to protect natural resources and wildlife habitats, as they directly benefit from the conservation efforts through tourism-related revenue.
6. **Support for Local Environmental Initiatives:** Tourism can contribute to supporting local environmental initiatives, such as beach cleanups, tree planting, and other environmental conservation projects. Many responsible tour operators and tourists engage in voluntary environmental activities as part of their tourism experience, which can have positive impacts on local environmental conservation efforts.

It's important to note that the positive impacts of tourism on the environment depend on responsible and sustainable tourism practices, effective management and regulation, and active engagement of local communities and stakeholders. When done right, tourism can play a role in promoting environmental conservation, awareness, and sustainable practices, contributing to a more sustainable and responsible tourism industry.

The Concept of Sustainable Tourism –

Beautiful natural landscapes or unique flora and fauna are the main drivers of tourism into an area. But when too many tourists visit natural sites, environment and its inhabitants rather suffer from the negative impacts, which easily outweigh all the benefits due to exceeding the natural carrying capacity of a place.

Many countries with scenic heritage sites depend entirely on the tourism industry for livelihood. But as mentioned in above paragraphs, focusing on expanding tourist sites entirely can lead to exploitation of environment on a large scale.

This was an issue in many countries. So the United Nations came up with a concept known as sustainable tourism. This term is related to sustainable development. This concept talks about development of tourism without harming the environment.

In terms of environment, this means “Consumption of natural resources within acceptable limits, protecting biodiversity and making sure that essential ecological processes can take place, while providing a pleasant experience to visiting tourists.”

According to the World Tourism Organization (UNWTO), tourism contributes directly or indirectly to all the 17 goals of sustainable development (SDGs) that were defined together with additional 169 SDG targets to ensure safer future for life on Earth by 2030.

This type of tourism has been gaining popularity lately. Its basic idea is to develop the tourism industry without harming the natural flora and fauna of a place. This can be done by methods like afforestation which means planting trees on a large scale, creation of norms regarding visiting a place which must be followed by the tourists and if not then imposing fines, etc.

These can be some measures to ensure sustainable tourism in a country.

Challenges Faced by Governments in Ensuring Sustainable Tourism:
Sustainable tourism can be effective and the most efficient way to ensure development of tourism without harming the environment but there are still certain challenges yet to be overcome by the government.

Unawareness Among People:
The main challenge faced by the government of a country is the unawareness or lack of knowledge about the concept of sustainable tourism.

Solution:
It can be overcome by introducing organisations to promote sustainable tourism through campaigns in different areas and schools or by advertising through social media platforms, etc.

Lack of Coordination Among the Bureaucracies:
In democratic countries like India different parties have different opinions. Even though the centre is ruled by one party but still the opinion of others also matters. This sometimes becomes a challenge when it comes to making a new law or policy.

Solution:
Coordination among the bureaucratic arrangements is a must when it comes to introducing a new policy or concept. This has to be ensured by the government in order to achieve sustainable tourism in India.

1.Economic support:
Another challenge usually faced by governments it related to the economic aspects involved in introducing a new policy. The concept of sustainable tourism to be followed throughout the country can be expensive. For developing countries like India, it is tough to manage to get enough funds for implementation of a policy like sustainable tourism.

Solution:

This challenge can be coped with the help of creating a separate reserve in the budget for sustainable tourism.

2. Time Consuming:
This usage of sustainable tourism over regular tourism can be a bit complex and time taking process as there are no specific laws guidelines defined.

Solution:
It can be ensured by making guidelines regarding this concept. United Nation World Tourism Organisation has this obligation to make sure sustainable tourism works for every country and if not then provide necessary help to the poor developing countries.

3. Poor Understanding of Sustainable Tourism:
The biggest threat to sustainable tourism is a poor understanding of the concept. Although it has been around for some time, the idea of sustainable tourism still looks pretty complex to many players in the hospitality industry. This is why most of them consider it an additional cost and opt to forego it to optimise profitability.

Solution:
This can be achieved by organising workshops which explain how this concept works and how it can be achieved with the cooperation of every citizen along with various tourism agencies, companies, etc.

These are some challenges faced by many countries (mainly developing countries) in ensuring the use of sustainable tourism over regular tourism.

CONCLUSION

The purpose of this research was to gather information about the concept of tourism and its impact on the environment. Based on the analysis conducted, it can be concluded that the economic tourism plays a significant role in the economic development of a country but just like every industrial development has two types of impacts on the nature, tourism industry also effects the external environment in both positive and negative sense.

To decrease the overbearing exploitation of the environment UNWTO has come up with the concept of sustainable tourism whose main idea is to ensure development of tourism industry without harming the external physical environment.

In conclusion, tourism can have both positive and negative impacts on the environment. Unmanaged and irresponsible tourism can lead to carbon emissions, deforestation, water consumption and pollution, waste generation, and cultural impacts, among others.

However, when managed sustainably and responsibly, tourism can contribute to positive environmental outcomes.

Positive impacts of tourism on the environment can include supporting conservation and preservation efforts, raising environmental awareness and education, promoting sustainable practices, providing economic incentives for conservation, supporting local environmental initiatives, and engaging tourists in conservation-oriented activities. Sustainable tourism practices, such as eco-tourism, responsible tourism, and community-based tourism, can help minimize the negative environmental impacts of tourism and promote environmentally-friendly practices.

To maximize the positive impacts of tourism on the environment, it is important to adopt sustainable tourism practices, implement effective management and regulation, and actively engage local communities, tourists, and other stakeholders in responsible tourism initiatives. By promoting sustainable and responsible tourism practices, we can help protect natural ecosystems, conserve biodiversity, and foster environmental stewardship among tourists and local communities, contributing to a more sustainable and responsible tourism industry that balances economic benefits with environmental protection.

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INTERNATIONAL ENVIRONMENTAL AGREEMENTS ON WATER

Rajinder Kaur Randhawa and Rakshita Mathur

"Water is the driving force of all nature"

- Leonardo Da Vinci

Since time immemorial, humans have lived near water. Water has been the subject of the newest to the oldest wars. Control over water, the seas and the oceans has since generations governed who is the superpower in the world. A substantial aspect of deciding who has the hegemony over the world has been the navy in control of the international waters. Irrigation and the quality of water as well as its ability to support the corresponding soil makes control over the area even more important.

BARCELONA CONVENTION

"The Convention for the Protection of the Mediterranean Sea against Pollution was adopted in 1976 by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea in Barcelona, Spain. It was amended on 10 June 1995 and renamed Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention)."

The convention lines out the following - Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean; Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea; Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea; Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities; Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean; Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration. of the Continental Shelf and the Seabed and its Subsoil; Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal; Protocol on Integrated Coastal Zone Management in the Mediterranean.

One of the most important articles is Article 5 –

"Pollution Caused By Dumping From Ships & Aircraft Or Incineration At Sea

The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by dumping from ships and aircraft or incineration at sea."

The fact that such strictly built laws have been implemented and executed make the Mediterranean Sea an especially liked, favoured and preferred location for tourists and expats alike. The implication of such laws has been discussed in other areas that are member states of the European Union such as the Baltic Sea region.

Article 12 of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities covers "Settlement of Disputes". This contains two provisions – (i) Considering Article 28 (1) of the Convention, where pollution of land resulting from the territory of a Contracting Party may directly affect the interests of other Contracting Parties, the Contracting Parties concerned have a satisfactory solution. One or more of those requests to initiate consultations for finding solutions. (ii) As per the request of any party, issues

shall be placed on the agenda of the next Conference of the Parties to be held in accordance with Article 14 of these Protocols. The meeting may make recommendations for a satisfactory solution.

As far back as 1976, the world knew and cared about environmental deterioration. For this reason, provisions were made for the purpose of preventing and controlling any form of pollution within and around the Mediterranean Sea. Common guidelines, standards and criteria were established, monitoring became an essential part of this drill. Measures to settle disputes as well as means of arranging meetings were also put forth within this Agreement.

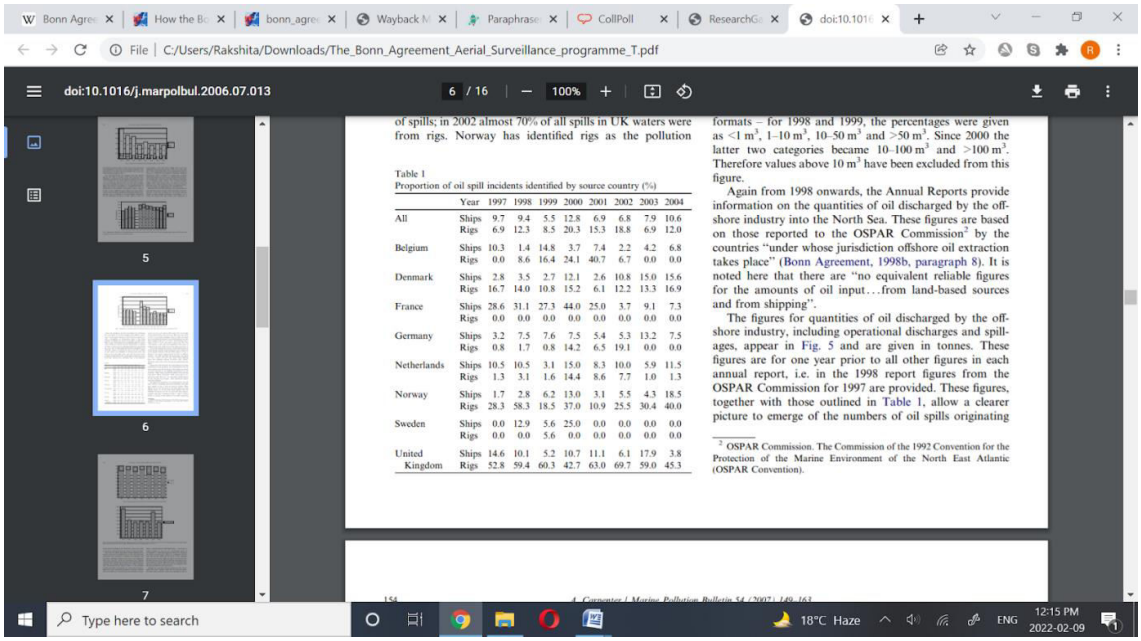
The most significant feature has been the "Establishment of the List of Specially Protected Areas of Mediterranean Importance" in Article 8 of the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean. The SPAMI Lists within the article have proved to be extremely important so as to get efficient and effective results in the protection and maintenance of the Mediterranean Sea.

BONN AGREEMENT

In 1969, eight states bordering the Northern Sea signed the first "Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil". These eight states included Belgium, Denmark, Germany, France, the Netherlands, Norway, Sweden and the United Kingdom Soon after the oil tanker "Torrey Canyon" left Cornwall in 1967 and spilled 117,000 tonnes of oil in the first major environmental disaster in Western Europe. It was not until the 1970s, that the Bonn agreement was activated. After two other major pollution incidents had occurred: the "Ekofisk" blow-out in 1977 and the "Amoco Cadiz" in 1978. Since then, the Agreement has continued to function effectively.

"In addition to the Bonn Agreement, several multilateral agreements function in the North Sea area: between Denmark, Germany and the Netherlands (DENGERNETH); between France and the United Kingdom (MANCHEPLAN); between Norway and the United Kingdom (NORBRITPLAN) and between Belgium, the Netherlands, France and the United Kingdom (QUADRIPARTITE ZONE)."

The Bonn Agreement Rules of Procedure include various general provisions. Furthermore, they include provisions on topics such as - Meetings of Contracting Parties and subsidiary bodies;



Presidency; Secretariat; Voting; Documents; Languages & Observers. It also includes various financial procedures such as – The Financial Year; the Budget; Provisions of Funds; Funds; Statement of Account; External Audit & Decisions Involving Expenditure.

Within the provisions of the Bonn Agreement, the most significant one has proven to be the aerial surveillance. "From 1998 onwards, the Annual Reports provide information on the quantities of oil discharged by the offshore industry into the North Sea. These figures are based on those reported to the OSPAR Commission." The following table shows these figures.

"Analysis of the data provided by the Bonn Agreement Annual Reports on Aerial Surveillance have shown a trend across the whole North Sea region of reductions in the numbers of observed oil slicks, despite both a fourfold increase in the number of flight hours undertaken, increasing levels of night flying when it could be expected that intentional discharges will take place, and improvements in technology including the use of satellite imaging of the region." "The Bonn Aerial Surveillance programme, with its cooperative activities between the 8 North Sea States, has an important role to play in continuing to protect the marine environment of the region. As sanctions for intentional oil discharges increase, and with the introduction of the EU Directive on the protection of the marine environment through criminal law, the Bonn Agreement has a key role to play in monitoring compliance at the regional and international level, and in maintaining the North Sea as a key resource for fishing, aquaculture, tourism and for the very large number of people who live in its catchment area and depend on the North Sea for their livelihoods."

The Bonn Agreement produced a counter-pollution manual. These proved to set an agenda for several of the International Water Agreements to come.

"1.2 The Aims of the Manual

1.2.1 The aims of the Manual are to enable the Contracting Parties: a. to establish quickly, and to run effectively, the operational aspects of a multinational combating operation;

b. to assist the Contracting Parties in their choice of proper combating strategies, including various ways of responding to an incident (or the threat of an incident) involving oil and/or other chemicals spilled at sea; c. to execute the agreed surveillance operations.

1.2.2 The Manual should also assist the on-scene Commanders in their execution of combating operations involving other countries.

1.2.3 Thus the Manual should be considered as a practical tool for use at various command levels in the combating organisations."

This precedent set by the Bonn Agreement of 1983 helped various other International issues on water come to light and in solving them.

Danube River Basin Convention (1987)

Economic conditions in the Danube River basin can be characterized by upheaval and change by its economic and political past. In the 1990s, two recently independent countries of the former

Soviet Union, Moldova and the Ukraine, had joined the list of ten Danubian riparian countries. Conflicts between the different users of the Danube River have existed throughout the Danube's history. Transboundary disputes, in particular, became more acute since the collapse of Soviet authority and the rise of nationalism in the region. These include conflicts over large-scale, technological developments, ethnic hostilities in the former Yugoslavia and persisting issues regarding transboundary pollution and water supply.

The Convention is divided into IV parts and 31 Articles. Part I contains General Provisions including definitions, objectives and principles of cooperation, the scope and the forms of cooperation. Multilateral Co-operation in Part II contains prevention, control and reduction of transboundary impact, specific water resources protection measures, emission limitation: water quality objectives and criteria, emission inventories, action programmes and progress reviews, monitoring programmes, obligations of reporting, consultations, exchange of information, protection of information supplied, information to the public, research and development, communication, warning and alarm systems, emergency plans and mutual assistance. The IIIrd Part is International Commission containing establishments, tasks and competences as well as transition concerning the Bucharest Declaration. Procedural and Final Clauses of Part IV contain validity of annexes, existing and supplementary agreements, conference of the parties, amendments to the convention, settlememt of disputes, signature, ratification, acceptance or approval, entry into force, accession, participation, withdrawl, functions of the depositary, authentic texts and depositary.

Helsinki Convention on Watercourses & International Lakes (March 17, 1992)

Like the Danube River Basin Convention (1987), the Helsinki Convention on Watercourses & International Lakes (March 17, 1992) also has its own preamble. Its preamble is clear in requesting ratifying nations to be "mindful that the protection and use of transboundary watercourses and international lakes are important and urgent tasks, the effective accomplishment of which can only be ensured by enhanced cooperation". Furthermore, it emphasizes "the need for strengthened national and international measures to prevent, control and reduce the release of hazardous substances into the aquatic environment and to abate eutrophication and acidification, as well as pollution of the marine environment, in particular coastal areas, from land-based sources"

The first article of the Convention contains only the definitions. Part I of the Convention, therefore, starts from Article 2, i.e. General Provisions, with Article 3 containing prevention, control and reduction. The fourth and the fifth Articles contain monitoring and research and development respectively; Article 6 contains exchange of information, Article 7 contains responsibility and liability and Article 8 contains protection of information. Part II starts from Article 9 and extends to Article 16. It is made up of bilateral and multilateral cooperation, consultations, joint monitoring and assessment, common research and development, exchange of information between riparian parties, warning and alarm systems, mutual assistance and public information. The IIIrd part is institutions and provisions. It extends from Article 17 to article 28. These Articles contain the following topics – meeting of parties, right to vote, secretariat, annexes, amendments to the convention, settlement of disputes, signature, depositary, ratification, acceptance, approval and accession, entry into force, withdrawal and authentic sources.

These provisions were made at the brink of the disintegration of the Soviet Union. At this time, following at ratifying such provisions were a free choice. Therefore, all countries that wanted to maintain peace within the area ratified this Convention. To this day, the Helsinki Convention on Watercourses & International Lakes that was signed on March 17, 1992 has helped in developing as well as maintaining the areas in question.

Helsinki Convention on the Baltic Sea (April 9, 1992)

The Baltic Sea is an arm of the Atlantic Ocean, surrounded by Denmark, Finland, Germany, Estonia, Latvia, Lithuania, Poland, Russia Sweden and the North and Central European plane. This Convention has been the most important for the following Islands located in the Baltic Sea – the islands located in the region include Usedom, Rügen, Lolland, Gotland, Värmdö, Falster, Lidingö , Kotlin, Saaremaa, Öland, Åland main island, Wolin, Fehmarn, Møn, Hiiumaa and Muhu.

The residence situated in these areas where conflicted as to how to maintain the purity of the Baltic Sea. However, this convention laid out a plan for the people belonging to the countries around the Baltic Sea as well as the islands situated within the region. Over a period of time, countries in Africa started following the same patterns as laid out in this Convention.

Signed in Bucharest in April 1992, this agreement was signed and ratified to please particularly 6 nation states - Bulgaria, Georgia, Romania, the Russian Federation, Turkey, and Ukraine. The main aim of the Convention is to take "Conscious of the responsibility of the Contracting Parties to protect and enhance the values of the marine environment of the Baltic Sea Area for the benefit of their peoples and recognizing that the protection and enhancement of the marine environment of the Baltic Sea Area are tasks that cannot effectively be accomplished by national efforts only but that also close regional co-operation and other appropriate international measures aiming at fulfilling these tasks are urgently needed."

Oil Spill Prevention, Administration and Response

The OSPAR Commission is divided into several parts – (i) the Convention for the Protection of the Marine Environment of the North-East Atlantic, (ii) On the Prevention and Elimination of Pollution from Offshore Sources, (iii) On the Prevention & Elimination of Pollution from Land-Based Sources and (iv) On the Assessment of the Quality of the Marine Environment.

A collage of regional agreements has been negotiated around the globe to commit States to protecting their offshore marine environments by regulating various sources of marine pollution. Ministers of the OSPAR Convention officially established the world´s first network in the high seas, the aim of which was to protect and conserve the biodiversity and ecosystems of the superjacent waters of six representative areas that together covered 286,200 km^2.

"Within the framework of the OSPAR Convention, makes it clear that regional cooperation between the State Parties may be used to address the protection and preservation of the environment."

The OSPAR Convention has arguably had the most impactful repercussions within the European Union. It the most well-known and one of the best-formed Convention of multilateral water agreements in the world among nation states. It has had influence far and wide and continues to do so over all agreements on water.

Rhine River Basin Convention (1999)

The Rhine River Basin Convention was signed on 12 April 1999 by representatives of the governments of the five Rhine bordering countries: France, Germany, Luxembourg, Netherlands and Switzerland and by the European Community.

"The river is primarily used for navigation, industrial and agricultural purposes, disposal of municipal wastewaters, and as a source for hydropower production and drinking water supply. Many parts of its broad network of rivers, lakes and tributaries are used as local recreation areas, and the basin serves as habitat for a large diversity of fauna and flora. The multiple and sometimes competing uses of the river for human activity have contributed to its most severe problems; water quality issues, conservation of biodiversity and an increased occurrence and intensity of floods." "In the 19th and 20th centuries, river engineering driven by flood protection, agricultural land reclamation, and navigation transformed the Rhine from a morphological near natural state to a confined channelized river."

"In the case of a dispute between two Contracting Parties, only one of which is a Member State of the European Community, which is itself a Contracting Party, the other Party shall simultaneously transmit its request to that Member State and to the Community, which shall jointly notify the party within two months following receipt of the request whether the Member

State, the Community or the Member State and the Community together are parties to the dispute."

CONCLUSION

Within this paper we have deeply studied the basic provisions of the Barcelona Convention, (1976), Bonn Agreement (1983), Danube River Basin Convention (1987), Helsinki Convention on Watercourses & International Lakes (March 17, 1992), Helsinki Convention on the Baltic Sea (April 9, 1992), Bucharest Convention on the Protection of Black Sea Against Pollution (April 21, 1992), OSPAR Convention (September 22, 1992) and Rhine River Basin Convention (1999). Some of these agreements and conventions have influenced corporation among nation states all over the world and continue to do so to date. We learn from these conventions, that at an international level it is imperative to cooperate and share the resources available to all. It has been said among large industries that water may gain even more importance in the future as oil and coal are not resources that can be renewed.

These water conventions have shaped the functioning of the world today. They hold great importance and contain lessons that countries throughout the world can learn.

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THE CRITIQUE OF ANTHROPOCENTRISM; A NEW IDEA OF ENVIRONMENTAL SUSTAINABILITY

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ABSTRACT

The leading researches on Environmental Sustainability or Sustainability in general has been restrained to mean sustainability of human species. This idea of sustainability is anthropocentric or human-centered. In this article, the parochial definition of environmental sustainability along with the instrumentalist view of environmental sustainability, that the factors of environment are just for the use of humankind and environmental sustainability should only be sustainability of human beings, has been criticized by comparing the definitions of sustainability provided by experts and organizations like UN and US EPA. Further, this paper has tried to elucidate a comprehensive or biocentric (in environment lingo) idea of environmental sustainability, where all the life forms on the Earth can come under the umbrella of sustainability. The attempt to giving an exhaustive idea of sustainability has been approached with an understanding of different environmental philosophies, from criticism of anthropocentrism to importance of ecocentrism, and analyzing the concept of environmental sustainability in terms of each of these philosophies.

INTRODUCTION

Anthropocentrism in the simplest terms is defined as a belief that regards human beings as the most important life form. Britannica defines anthropocentrism as a philosophical belief which advocates human beings as the most important and central entities in the world. Anthropocentrism says that human life has intrinsic value while other life forms and species are just resources that are to only be used by human kind. Basically, anthropocentrism is the philosophy that human beings are at the center of the ecosystem and every biotic or abiotic and sentient or non-sentient thing has only instrumental value as opposed to former, who have intrinsic value. In the context of environment sustainability, the critique of anthropocentrism is necessary in the contemporary time to change traditionalist view. Anthropocentrism relates to environmental sustainability in a narrow sense. The more this belief of anthropocentrism is commended, the worse it will get for environment because the natural components of environment will only be regarded as instruments or tools to fulfill human needs.

A clear understanding of anthropocentrism is vital in understanding its effect on the environment and environmental sustainability. Environmental sustainability refers to responsibility of preserving and protecting the ecosystem and natural resources for present and future generations. This responsibility has been needing a major consideration in the modern times. It was long believed that the resources of environment were abundant and infinite when the human ecosystem was small. Even though the regenerative and assimilative capacity of the environment were very large in ancient times, the exponential growth of human ecosystem has exceeded these capacities which has resulted in scarcity of resources. The empirical evidence of this claim can be derived from history. During the prehistoric period of Stone Age, human beings were not evolved enough for civilization. Since there was no civilization, there was relatively very regulated use of natural resources as paleolithic humans lived in the wild (in caves or forests) and required less to sustain themselves. As these humans evolved and civilization started to develop, the need for environmental resources increased to sustain this development. From cutting a fruit or two from a tree to taking down several trees and even forests, the natural resources of environment were started being used to make space for

sustaining and developing civilization. This is why as human ecosystem progressed, the apparent infinite environmental resources became finite and in contemporary times the large-scale use of these resources has resulted exploitation of the environment which is clear from deforestation and the increase of greenhouse gases. This is why changing the idea of environmental sustainability has become a cause of great concern in today's times.

THE PAROCHIALISM OF ENVIRONMENTAL SUSTAINABILITY

In 1987, the United Nations Brundtland Commission, defined sustainability as "meeting the needs of present without compromising the ability of future generations to meet their own needs". The definition of environmental sustainability is not much different than the definition of sustainability, but it only considers sustainability of the environment whereas sustainability in general includes economy and society as well. Environmental sustainability, in the most fundamental sense, refers to the concern or action to preserve the environment and its natural resources for present and future generations of humanity. It means the responsibility to use natural resources such as coal, natural gas, water etc. in such a way that it fulfills the needs of present generation without damaging the environment for the future generations. A number of practices has been devised to sustain the environment. Some of these practices include using reusable alternatives, using renewable energy, going paperless which would prevent deforestation, etc. But the problem lies in the parochial view that is associated with environmental sustainability. Often when the concept of sustainability is discussed, it is defined in a very instrumentalist view. For example, the UCLA Sustainability Charter defines sustainability as the "integration of environmental health, social equity and economic vitality in order to create…. healthy and resilient communities for this generation and generations to come". This definition of sustainability implies that the practice of sustaining or preserving the environment should be taken up so that the communities of humans of the present and the future could be resilient and healthy. The meaning of environmental sustainability has been constrained to mean preserving the environment for human beings. It implies that the resources of environment are just for use for present and future generations and it should be preserved with that notion only. This definition feeds to the instrumentalist view that regards the environment as a tool for the human species. Such an instrumentalist view is a harmful notion of sustainability.

This concise meaning of environmental sustainability or sustainability in general can be dangerous. It is restricted in the regards to inclusion of other species. The concept of anthropocentrism helps to understand this exclusivity of the idea of sustainability. Can it really be enough to associate sustainability with preserving the environment for humans only? This anthropocentric narrative leads to conservation of environment not for environment's sake but for the sake of humanity. The belief of anthropocentrism is deeply embedded in the idea of sustainability. For instance, the United States Environmental Protection Agency (US EPA) bases sustainability on a simple principle that everything we need for our survival depends on our natural environment. It is evident from this definition that human-centeredness is foundational in the notion of sustainability. An exhaustive idea of sustainability would emerge by changing the narrative from an anthropocentric view to a biocentric or ecocentric view that considers all the species of the Earth. Defining sustainability in comprehensive terms could be difficult without understanding different environmental philosophies.

ENVIRONMENTAL PHILOSOPHIES AND SUSTAINABILITY

Environmental philosophies are different belief systems that center around nature, ecology, species and environment. It deals with moral relationships between humans and nature as well as the value and moral status of environment and its nonhuman contents. Some of these environmental philosophies are anthropocentrism, biocentrism, speciesism, etc. Some regard humans as the center of the ecosystem while others believe in the importance of all species.

Every environmental philosophy propounds a different idea of sustainability and different criticisms to that idea.

The contemporary idea of sustainability is based around anthropocentrism or human-centeredness. Anthropocentrism is the belief that regard human beings as the most important species of the ecosystem and all the other species are just tools for their use. Anthropocentrism implies that human beings have intrinsic value and other species, sentient or non-sentient, have instrumental value which is why they should be used to sustain human lives. The comparison between instrumental value and intrinsic value is a question that is often at

the frontlines of environmental ethics. Anthropocentrism regards other life forms as instrumental because this belief requires that a society have concept of humanity, assign privilege to it and measure all other beings according to this standard. So a plant's value is judged by its use to humankind. This also means that anthropocentrism compels that humanity should be central to a society, assign a degree of utmost importance to it and judge all the other beings according to this humanity. It proves to be a dangerous belief as the idea of humanity installed in the society is discriminatory to the other beings in the environment. It can be harmful to judge all the other species according to this idea that is, in the first place, developed by humans only. The privilege and importance that is given to humankind, results in ignorance and negligence of other beings in the environment. It can be seen how perilous this notion can be when we look at the extinction of other species on Earth due to development of humankind. For example, one of the reasons for the extinction of Dodo bird (a bird of Mauritius island), is destroying of their habitat for building artificial things such as roads, buildings, etc. These are built to make the human lives easier and develop their civilization at the cost of other species. This is why humanity and the standards set by it to judge the value of beings is very faulty and wrong. Consequently, the idea of environmental sustainability according to the belief of anthropocentrism is very concise and restricted. Preserving environment so that it can be used by humans, not only of present generations but also of future generations, is perilous to other beings.

Environmental ethics deal with the philosophical relationship between human beings and the natural environment. Anthropocentrism gives birth to another type of environmental ethics, known as, Non-anthropocentrism or nature-centeredness. Non-anthropocentrism emerged as a counterargument to anthropocentrism. Non-anthropocentrism refers to a belief that gives the utmost importance to nature. On a general scale, where anthropocentrism assigns moral value to only human beings, non-anthropocentrism assigns moral value to natural objects like plants, animals, etc. In simple terms, non-anthropocentrism is the belief of putting nature first and ahead of humans, which is why it is also called nature-centeredness. A theory of sustainability with a foundation of non-anthropocentric principles would be a virtuous theory but it will be biased against human beings. The instrumentalist view would cease to exist when a non-anthropocentric system is adopted. Defining sustainability in non-anthropocentric view would mean preserving nature and environment at the cost of humans. For instance, this idea of sustainability would require human beings to stop using environmental resources such as trees, water, etc. at their will which would consequently result in perish of humankind. This is why non-anthropocentric notion of sustainability would be disadvantageous and incomplete.

Transcending both anthropocentrism and non-anthropocentrism, is another environmental philosophy known as Ecocentrism. Where anthropocentrism assigns moral value exclusively to human beings and non-anthropocentrism assigns moral value to natural objects, ecocentrism is the belief that assigns moral values to all objects existing in nature, biotic or abiotic and sentient or non-sentient. Ecocentrism is a comprehensive environmental belief. It includes both human beings and other life forms in the environment and ecosystem, from plants and animals to reptiles and amphibians, from bacteria and fungi to even abiotic factors of environment such as

atmosphere, water, radiation, etc. Ecocentrism regards all these biotic and non-biotic and sentient and non-sentient factors of environment and nature as having intrinsic value. It disregards the instrumentalist view of anthropocentrism. Ecocentrism is regarded as an ideal for sustainability as it compels recognition of humanity's moral duties towards nature. An ecocentric view gives intrinsic values to all objects existing in nature which coerces humankind to consider using these ecological objects for their comfort as immoral and install a sense of duty to preserve these organisms and their surroundings. The idea of sustainability in the ecocentric view proves to be exhaustive as it considers all the organisms and their habitat as important and crucial to sustain.

A NEW IDEA OF SUSTAINABILITY

As was discussed earlier, the concept of sustainability arising out of ecocentrism proves to be comprehensive and inclusive. It doesn't value any species more than the other and eliminates any instrumentalist belief against the ecosystem. In a paper published in The Ecological Citizen, titled "Why ecocentrism is the key pathway to sustainability", authors Haydn Washington, Bron Taylor, Helen Kopnina, Paul Cryer and John J Piccolo, argued strongly for ecocentric sustainability. They based their arguments on ethical terms, ecological terms, spiritual terms and in evolutionary terms. Ethically, it was argued that, ecocentrism expands the moral community from only human beings to other life forms on Earth, biotic or abiotic and sentient or non-sentient. It meant that ecocentrism extends respect and care to not only humankind but also to all life and ecosystems themselves. So, sustainability that is based on ecocentric view would prove to be more effective and ideal. Further, importance of ecocentrism in sustainability was argued on evolutionary grounds, stating that human beings or homo sapiens evolved from the ecosystem's rich web of life that connects humans to the ecosystem with a biological kinship. This will make humanity respectful and meticulous with their environment and understand the importance to preserve it not only to sustain themselves but to sustain the ecosystem also.

The importance of ecocentrism in sustainability can be explained in spiritual terms also. Spiritually or religiously, there are many beliefs that regard preserving of nature and environment as a significant practice, and even regard such a practice as necessary for attaining enlightenment. The instrumentalist view that objects of nature and environment are just tools for humanity is disregarded even in religious scriptures. For example, in Jainism, it is believed that enlightenment is earned through non-violence and reducing harm to living things (including plants and animals). This signifies that, Jainism extends the practice of non-violence to animals and even plants. It rejects the instrumentalist view of environment and nature and encourages the ecocentric perspective that living things are equal and have intrinsic value, which is why they shouldn't be harmed. This is ecocentrism as an ideal for sustainability is defended and promoted with a spiritual lens. The last argument that was put forth by the authors (mentioned above) was in ecological context. It was contended that, ecocentrism highlights the fact that all living things on earth are connected in the ecosystem as it sustains life through natural processes, therefore the idea of sustainability should not only work to preserve humanity but also this ecosystem.

These arguments provide reasonings as to why sustainability should be based on ecocentric values and anthropocentrism should be dropped. The inclusive nature of ecocentrism proves to be beneficial both for human beings and the environment in the long run. The key difference between anthropocentrism and ecocentrism, that causes the paradigm shift in the framework of environmental sustainability, is rejection of the traditional instrumentalist view of the environmental sustainability. This instrumentalist view is the result of the assertion of anthropocentrism that other life forms on the planet do not have intrinsic value like human beings, so they should become tools for humanity to use to sustain themselves. Ecocentrism and non-anthropocentrism rejects this view that plants and other organisms do not have intrinsic

value like human beings does. John O'Neil, a professor of political economy, argued on the biocentric view and intrinsic value of organisms other than human beings. He contended that a thing is said to have intrinsic value if it is valued non-instrumentally, which means that if the organism's value is not depended on it being a useful tool. He further contended that anything which has a good for itself, is said to have intrinsic value. For example, in case of plants, water, sunlight, fertile soil, carbon dioxide, etc. are needed by plants to survive, which means they have good for them, so, according to O'Neil, plants can be said to have intrinsic value. Where anthropocentric notion of sustainability states that environment should be preserved so that future generations of humankind can enjoy it as much as the present generation, ecocentric notion of sustainability would work to explain sustainability in comprehensive and exhaustive terms where it won't be for any specific species. Therefore, sustainability, in an ecocentric view can be defined as preserving the environment and nature for human beings, plants, animals and other life forms, sentient or non-sentient and biotic or abiotic, without compromising the ecosystem at large.

CONCLUSION

Ecocentric environmental sustainability means sustainability where environment and nature are preserved for all the species and life forms on Earth, whether sentient or non-sentient and whether biotic or abiotic. It includes preserving these natural resources without compromising and damaging the ecosystem. One such way of doing so is using more renewable resources like solar energy, wind energy, hydropower etc. and less non-renewable resources like oil, natural gas, coal, etc. This is because renewable resources are recurring in nature. These resources replenish themselves on their own. So, using these does not harm the environment directly. Using non-renewable resources in excess, on the other hand, would cause harm to the ecosystem as these are limited (even scarce in contemporary times). For example, natural gas is extracted from the Earth by drilling into the Earth's surface vertically. This damages the ecosystem by disrupting wildlife, damaging lands and polluting rivers and streams. The ecosystem is damaged by these practices. But for this method of using renewable energy to persist and overcome other harmful practices, a shift to a more ecocentric view is necessary for anthropocentrism ignores the nature of these resources. Ecocentrism would also play a role in indicating collective responsibility or responsibility of humanity as a community to be empathetic towards other life forms. For instance, an anthropocentric view would justify deforestation as the individual responsibility of humankind to sustain themselves. But an ecocentric view would compel humankind to realize their collective responsibility towards the forests and tress and reduce practices like deforestation, if not prevent it.

Whereas it is necessary to change the idea of sustainability, ecocentrism becomes an ideal, which creates difficulty in actually following it. Carl Jung, a swiss psychanalyst, said, "Every form of addiction is bad, no matter whether the narcotic be alcohol or morphine or idealism". Jung proposed that addiction to ideals, or idealism, is problematic because ideals are based on perfection and chasing perfection proves to be endless. This is the problem with ecocentrism. As an ideal, ecocentrism becomes difficult to practice in reality. The collective responsibility that it induces often gets dominated by the individualism of humanity. The individual personalities of humans, more often than not, ignore the environment and nature and focus on their individual responsibilities. To give you an idea, using vehicles that emit carbon dioxide causes global warming which harms the habitat of many animals and harms the ecosystem on a large scale. Collective responsibility of humankind would require every human being to cut down on their use of vehicles so that emissions of carbon dioxide and, consequently, temperature of Earth could be regulated. This solution gets overridden by the individual reasoning of human beings to use these vehicles for comfort in day-to-day work. This is why ecocentrism becomes difficult to practice. It requires cooperation from each one of us to realize our joint responsibility towards environment and nature.

To conclude, even if ecocentrism is an ideal, practicing sustainability in the ambit of ecocentrism would be suffice for the time being. What is necessary is the shift from anthropocentric principles of sustainability to an ecocentric principles. Human beings, being the superior life form, have a responsibility to help sustain other inferior life forms. Gautam Buddha talked about this responsibility by using an analogy of a mother and her child. He recited how a mother has a responsibility to take care of her child (an inferior being), even if that child cannot give anything in return to the mother. According to Buddha, it is our duty to take care of things even if we get nothing in return. The realization of collective responsibility towards nature and other life forms and cooperation by human beings is fundamental for the paradigm shift in sustainability.

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INTERGENERATIONAL EQUITY

Bedapriya Lahiri and bhuwan sharma

INTRODUCTION

Intergenerational equity is the concept which defines the main reason behind any environmental law around the globe. It represents widely recognized principle of international environmental law which provides for the preservation of natural recourses and the environment for the welfare of future generations. This concept forms the bedrock of the entire environmental philosophy. The concept of intergenerational equity can be stated as, "every generation holds the Earth in common with the members of the present and with past and future generations." It is a principle of responsibility towards the future generations and it represents duties of present generation as a fundamental concept of international environmental law.

There is a reference of intergenerational equity under most of the treaties and convention held for the environmental preservation and these declarations are followed by various countries around the globe. These treaties also mention the essential concept of sustainable development and to reach such development, there are also sustainable development goals.

There was no mention or discussion related to intergenerational equity before the year 1972. In the year 1972, the most famous Stockholm declaration took place, and for the first time, the concept of intergenerational equity was discussed on an international level and the cardinal principle of intergenerational equity came under the ambit of international environmental law.

The 1972 Stockholm Declaration on the Human Environment stresses on the point that, "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate."

More than 100 states around the globe follows the principles of Stockholm declaration and it is ratified in India and is already applicable under the Environmental Protection Act, 1986.

Since United Nations Conference on the Human Environment, also known as Stockholm Declaration, there have been numerous conventions where the scope of intergenerational equity has expanded and its applicability has been implemented. In 1987 the Supreme Court of India invoked the principle of intergenerational equity as provided in the Stockholm Declaration in concluding that the State must endeavor to protect and improve the environment and to safeguard the country's ecosystems. There have also been cases in India where SC have shown the importance of intergenerational equity through judgements.

SUSTAINABLE DEVELOPMENT GOALS AND INTERGENERATIONAL EQUITY

Sustainable Development Goals (SDGs) looks into protecting the well being of human life. The core objective of these goals is to protect the social and economic well being of current generation while keeping into mind, the perseveration of environment for the future generations. The idea behind implementation of SDGs is to reach sustainable development that meets the needs of present generation and doesn't compromise the ability of future generation to sustain their own needs. It is also followed in recognition that continued ecological health is a necessary condition of human well-being.

It was first thought of during the 1980 World Conservation Strategy. It has a long history but it was put into international consciousness in 1980. The official recognition of SDG's was made in 1987 during the World Commission on Environment and Development, mostly recognized as

Brundtland Commission formed by the United Nations General Assembly. For the first time SDGs were defined and explained as, "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

It was not until the "The Brundtland Report" and the 1992 United Nations Conference on Environment and Development that the term "sustainable development" gained global recognition. Over 7,000 delegates from 178 countries recognized a global need for environmental protection with economic and social development, and called for sustainable development.

Although UN General Assembly clearly adopted Sustainable Development goals in 2015, there is no explicit mention of intergeneration equity in it. There are lots of references to equity in the SDGs, but none of those appear to even include intergenerational equity. They all refer to intragenerational equity, i.e., equity within the present generation.

Intergeneration Equity puts a high importance on the concept of Sustainable Development Goals as both of them has a focus on preservation of natural recourses for future generation while focusing on present generation. Intrageneration equity is the focus of today's generation while intergeneration is the goal that the present generation has to score. Nations around the world have tried their own view of following SDGs but putting a legislative authority behind it seems a heavy task.

IMPORTANT CONVENTIONS AND JUDGMENTS

The world has recognized the importance of intergenerational equity and laid down various principles in conventions and treaties over the past few decades. Some of the principles are mentioned below.

1. Principle 2 of the United Nations Conference on Human Environment, Stockholm Declaration 1972, which was the first of many to discuss intergenerational equity, states that "The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate".
2. Further in the year 1987, the World Commission on Environmental Development, also known as Brundtland Report, laid down a lot of principles. It also mentioned that "Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs".
3. The year 1992 is famous for UNFCC, one of the three conventions held in Rio. "Article 3 frames the concept in terms of the need to "protect the climate system for the benefit of present and future generations of humankind", which is reinforced by the inclusion of sustainable development as a further core principle within the UNFCCC framework." It means that parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities.
4. The Rio Declaration on Environment and Development (1992) states that, "Intergenerational equity embodies care for future generations. It means that the current generation is merely "borrowing" the earth from future generations." It also laid down the principles that "right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."
5. The preamble of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, The Aarhus Convention, 2001, attempted to include both present and future generations by stating that, "Recognizing

that each and every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations"

6. United Nations Climate Change Conference, Copenhagen Declaration 2009 has its main point of discussion as development. It included "equitable social development and social justice".
7. One of the most recent and recognized worldwide is the Paris Climate Agreement adopted in 2015. It recapitulates the principle that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights as well as intergenerational equity." It maintains the continuing relevance of intergenerational equity as a guiding principle shaping climate action, yet its precise conceptualization and implementation measures, beyond the implicit benefits of climate mitigation for future generations generally, remain unclear, even now.

The effect of these conventions has been laid down through case judgments around the globe. Considering India as the main matter in these judgments, some of the judgments are as follow.

1. In the Goa foundation v. Union of India and others, the Supreme Court of India ruled that, "four principles, intergenerational equity, sustainable development, the precautionary principle and polluter pays principle are part of the right to life according to the Constitution. It has also ruled that the public trust doctrine extends to all-natural resources, and that the state is a trustee for the people, and especially for the future generations. The Supreme Court has recognized the intergenerational equity principle (future generations must inherit at least as much as the present inheritance) in the context of conservation of scarce resources like minerals"
2. The International Court of Justice relied on the principle of sustainable development and its intergenerational component in its ruling on the Gabcíkovo-Nagymaros dispute. Taking stock of the normative developments described previously, the Court emphasized that "Owing to new scientific insights and to a growing awareness of the risks for mankind for present and future generations of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development."
3. In M.C. Mehta v. Union of India, the Court concluded that, in the absence of adequate action by the government, "it becomes the duty of the Court to direct such steps being taken are necessary for cleaning the air so that the future generations do not suffer from ill-health."
4. In Rodgers Muema Nzioka v. Tiomin Kenya Ltd, the High Court of Kenya cited the principle of intergenerational equity to grant an injunction restraining a mining company from carrying out acts that would be particularly damaging for the environment..
5. In the case Enviro-Legal Action v Union of India decided in 1996, a full bench of the Supreme court of India observed that "A law is enacted because the law makers and the Legislature believes and contemplates that it is necessary. And it is with this particular view that it is necessary to protect and preserve the environment and save it for the future generations and to ensure good quality of life".

6. The Supreme Court of India ruled in Water Users Association v. The Gov of A.P that, "the granting of irrigation licenses by the authorities must be informed by the principle of sustainable development as defined in the 1987 report of the Brundtland Commission."
7. In Oposa v. Factoran, the Supreme Court of the Philippines accepted that plaintiff could file a petition on behalf of succeeding generations to denounce logging licenses. The Court ruled that "their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned."
8. The International Law Association (ILA), in its 2002 New Delhi Declaration on the Principles of International Law relating to Sustainable Development, recognized that, "the principle of equity is a key component of international law. The ILA stressed that the principle of equity refers to "both inter-generational equity and intragenerational equity".

CONCLUSION

Intergeneration equity is an internationally followed concept that promotes the preservation of environment for the future so that they enjoy the same recourses as the present generation. To follow this principle, there is a need for sustainable development and the goals to reach them. These principles are the core of international environmental law which focuses on protection of environment keeping well being of human life in mind. There is also need to make an obligation on every generation, present as well as every coming one, so that future generation enjoys the same resources as the present one.

OBLIGATION ON FUTURE GENERATIONS

Considering the initiatives taken by present generation in maintaining intergenerational equity, there must be some obligations that the future generation has to follow so that the consistency of the goals reached by maintained. These obligations need to be applicable on the future generation so that hard work and initiatives put forward by current generation, does not go to waste. If we look into the Stockholm declaration in 1972, the current generation would have been the future generation for them. The obligations put onto us are very loose in applicability. The legislative power behind these objectives is being maintained around the world, but still, the countries are focusing more on intrageneration equity rather than intergenerational. Statutory implementation is the basic need for both the generations of the people as it would create an obligation with power to the future generation.

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BETTER ENFORCEMENT OF CORPORATE GOVERNANCE NORMS : ENSURING GREATER ACCOUNTABILITY

Rashmi Khorana Nagpal

ABSTRACT

The Companies (Amendment) Act 2019 was passed by Lok Sabha on July 26, 2019 and has received the assent of the President on July 31, 2019. This Act has been passed to amend the Companies Act 2013. The Companies Act 2013 was passed by replacing "The Companies Act 1956" partially leading to many changes by introduction of Corporate Social Responsibility, One Person Company, etc. The main objective to changes the Companies Act 1956 was to create a flexible and simple formation and maintenance of companies. The corporate governance and increasing transparency was also given significance and weight age. Shortly after the amendment act was announced in July 2019, it was again felt necessary a review should be undertaken and suggested further provisions to ease the constraints on companies. ***The Companies Amendment Bill, 2020*** *was introduced to amend the Companies Act, 2013 with the intent of improving the ease of doing business in India, de-criminalizing various minor offences and regulating producer companies, amongst other aspects. On September 28, 2020, this Bill received the President's assent and was notified in the official gazette on the same date as the Companies (Amendment) Act, 2020.*

Now, the Central Government's final proporation of Covid-19 economic packages included numerous reforms for the corporate sector to facilitate self reliance (Atma Nirbhar Bharat Abhiyan) and ease of living for domestic corporations.

INTRODUCTION

Corporate laws form the bedrock of commercial regulation by governing entry of corporates into the market, regulating their functioning, ensuring accountability to their shareholders, as well as laying down corporate governance norms. The company legislation in India relates back to nineteenth century. Since then, it has been amended several times. Over the last few decades, India has witnessed a significant shift in its corporate governance framework. The Companies Act, 1956 remained in force for a long time, though amended from time to time. Major amendments were made in year 2000 (postal ballot, audit committee, shelf prospectus, etc. introduced with emphasis on Corporate Governance). Amendments in 2002 introduced the concept of NCLT, NCLAT (which faced impediments in form of Court cases questioning their constitutional validity). A stage came where need was felt to replace the voluminous legislation with a new compact Companies Act and Dr. J.J. Irani (the then Director, Tata Sons was appointed the chairman of expert committee) Committee was appointed. The orientation initially was liberalizing the law and making it more user friendly. However, Satyam Scam had its impact on orientation and the focus got shifted a bit so as to retain certain stringencies in the Act. The recommendations of J.J. Irani Committee finally culminated in the form of the Companies Act, 2013. It received the assent of the President on 29th August, 2013. The Companies Act, 2013, applies to the whole of India. It needs to be emphasized here that the Companies Act, 2013 is a rule-based law. "It means that at 'a number of places in this Act' by using the words "as may be prescribed", the Government has retained the power to amend by Ministry of Corporate Affairs itself rather than going to the doors of the Parliament. As rules can be made by the Ministry itself and amended as and when the need is felt. As Sec. 24 of the Companies Act, 2013 specifies power of SEBI to regulate issue and transfer of securities and non-payment of dividend by listed companies or companies which intend to get their securities

listed on any recognised stock exchange in India. So, it is important to know that all the sections of the Companies Act need to be read with corresponding Rules or Regulations as the case may be.

The Companies (Amendment) Act 2019

The Companies (Amendment) Bill, 2019 was introduced in Lok Sabha on July 25, 2019 by the Minister of Finance, Ms. Nirmala Sitharaman. It amends the Companies Act, 2013. The Companies (Amendment) Act 2019 has amended 42 sections in total, whereas the 31 sections were brought into action through the Companies (Amendment) Ordinance 2019 on November 2, 2018. 11 new sections were added in the Act through the Companies Amendment Act 2019. The Companies (Amendment) Act 2019 which came after the "Committee on Review of Offences of Companies Act" Report and further recommendations received by the Ministry of Corporate Affair sought to additionally amend the Act to ensure better accountability and enforcement to strengthen the governance norms and to deal with the minor offences being tried in judicial prosecution which can be dealt by an in-house adjudicatory mechanism.

Issuance of Dematerialised Shares: Under the Act, certain classes of public companies are required to issue shares in dematerialised form only. The Bill states this may be prescribed for other classes of unlisted companies as well.

Re-categorisation of Certain Offences: The 2013 Act contains 81 compoundable offences punishable with fine or fine or imprisonment, or both. These offences are heard by courts. The Bill re-categorizes 16 of these offences as civil defaults, where adjudicating officers (appointed by the central government) may now levy penalties instead. These offences include: (i) issuance of shares at a discount, and (ii) failure to file annual return. Further, the Bill amends the penalties for some other offences.

Corporate Social Responsibility (CSR): Under the Act, if companies which have to provide for CSR, do not fully spent the funds, they must disclose the reasons for non-spending in their annual report. Under the Bill, any unspent annual CSR funds must be transferred to one of the funds under Schedule 7 of the Act (e.g., PM Relief Fund) within six months of the financial year. However, if the CSR funds are committed to certain ongoing projects, then the unspent funds will have to be transferred to an Unspent CSR Account within 30 days of the end of the financial year, and spent within three years. Any funds remaining unspent after three years will have to be transferred to one of the funds under Schedule 7 of the Act. Any violation may attract a fine between Rs 50,000 and Rs 25,00,000 and every defaulting officer may be punished with imprisonment of up to three years or fine between Rs 50,000 and Rs 25,00,000, or both. **Debarring auditors:** Under the Act, the National Financial Reporting Authority debar a member or firm from practising as a Chartered Accountant for a period between six months to 10 years, for proven misconduct. The Bill amends the punishment to provide for debarment from appointment as an auditor or internal auditor of a company, or performing a company's valuation, for a period between six months to 10 years.

Commencement of business: The Bill states that a company may not commence business, unless it (i) files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid for the shares agreed to be taken by him, and (ii) files a verification of its registered address with the RoC within 30 days of incorporation. If it fails to comply with these provisions and is found not to be carrying out business, its name of the company may be removed from the Register of Companies.

Registration of Charges: The Act requires companies to register charges (e.g., mortgages) on their property within 30 days of creation of charge, extendable upto 300 days with the permission of the RoC. The Bill changes the deadline to 60 days (extendable by 60 days).

Change in Approving Authority: Under the Act, change in period of financial year for a company associated with a foreign company, has to be approved by the National Company Law Tribunal. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the Bill, these powers have been transferred to central government.

Compounding: Under the Act, a regional director can compound (settle) offences with a penalty of up to five lakh rupees. The Bill increases this ceiling to Rs 25 lakh.

Bar on Holding Office: Under the Act, the central government or certain shareholders can apply to the NCLT for relief against mismanagement of the affairs of the company. The Bill states that in such a complaint, the government may also make a case against an officer of the company on the ground that he is not fit to hold office in the company, for reasons such as fraud or negligence. If the NCLT passes an order against the officer, he will not be eligible to hold office in any company for five years.

Beneficial Ownership: If a person holds beneficial interest of at least 25% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest. The Bill requires every company to take steps to identify an individual who is a significant beneficial owner and require their compliance under the Act.

Key Highlights: The Companies (Amendment) Act 2020

The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha by the Minister for Corporate Affairs, Ms. Nirmala Sitharaman, on March 17, 2020. The Bill seeks to amend the Companies Act, 2013.

Producer companies: The Act has provided for the introduction of producer companies under Chapter XXIA. Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.

Changes to Offences: The Bill makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.

- Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the Act, and (iii) limits the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.
- **Direct Listing in Foreign Jurisdictions**: The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions. This is particularly beneficial for start ups and specialised sectors such as technology, which are always looking to raise capital from open markets , can now

do so without expanding or migrating to other jurisdictions. Otherwise depository reciepts are the only method to raise capital abroad.

Exclusion from Listed Companies: The Bill empowers the central government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".

Remuneration to non-executive directors: The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.

Beneficial Shareholding: Under the Act, if a person holds beneficial interest of at least 10% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company. The company is required to note the declaration in a separate register. The Bill empowers the central government to exempt any class of persons from complying with these requirements if considered necessary in public interest.

Exemptions from Filing Resolutions: These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from filing resolutions passed to grant loans, or to provide guarantees or security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.

Corporate Social Responsibility (CSR): By way of Amendment, S. 135 of the Act has been amended to provide that if the company has spent excess amount in any financial year, beyond the 2% statutorily mandated Corporate Social Responsibility contribution, then such company can adjust the amount of Corporate Social Responsibility spend in the subsequent years to set-off the excess amount spent. Further, contravention of these provisions would result in penalties. The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.

Periodical Financial Results: By way amendment, new section 129A has been inserted to empower the government to prescribe by rules such class or classes of companies that would be required to prepare the financial results of the company on periodical basis, as prescribed. Further to obtain the approval of Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed. Also, to file a copy with the Registrar within the period of 30 days of completion of the relevant period with such fees.

Benches of NCLAT: The Act has inserted Section 418A which seeks to establish benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified.

ANALYSIS / CONCLUSION

Change, indeed, has been the only constant in the year 2020. The Companies Act 1956 was mostly criticised for being a ‘toothless legislation’ because its penalties were often considered nothing more than a mere ‘cost’ of doing business. In the wake of the Satyam and the 2G scandals, the 2013 Act was introduced with the intent of bringing deterrence—maybe to a point where it deterred the ease of doing business more than it incentivised it. The Companies (Amendment) Act, 2019 aims at clinching efficient accountability and better enforcement with a

view to strengthening the corporate governance norms. The Amended Act seeks to incorporate the amendments suggested by the Companies (Amendment) Second ordinance, 2019 which was promulgated by the President on 21st February 2019. It has also introduced a total of twelve amendments in eleven sections of the Principal Act, apart from the amendments notified by the Companies (Amendment) Second ordinance, 2019.

The Amendment Act of 2020 will certainly help to promote foreign investment by facilitating the ease of doing business. This will result in increase of foreign investment, which will boost India's economy. Various measures such as, the constitution of Appellate Tribunal would provide swifter redressal of grievances in India. The introduction of Producer Companies would also be beneficial for agriculture, handlooms, handicrafts and other related industries.The decriminalization of certain offences would help safeguarding investors against criminal liability for minor non-compliances.

Given the Covid-19 hit to the economy, the Amendment, 2020 relating to the companies law, aimed at improving the ease in business, is a welcome change. A fine balance must be struck between the need to incentivise and the need to deter.

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IMPACT OF SOCIAL MEDIA PLATFORMS ON WOMEN HOME-BASED ENTREPRENEURS IN INDIAN URBAN SOCIETIES.

Iram Rizvi

INTRODUCTION

The role of women in the workforce has undergone a significant transformation in recent years, with women increasingly taking on leadership roles in various industries. However, many women are still unable to participate in the workforce due to family responsibilities, societal expectations, and other factors. Home-based enterpreneurship is a viable alternative resource for such women, providing them with flexible work options that can be easily balanced with their household responsibilities (Muhammad, et.al, 2021). In India, women's traditional role has been that of a housewife. While this role is still important, women are increasingly seeking employment opportunities that will provide them with financial independence. Home-based employment has emerged as an appealing option for women seeking flexible work options that can be easily balanced with household responsibilities Muhammad, et.al, 2021. The concept of home-based employment is not new in India, but it has gained enormous popularity in recent years as the internet and technology have grown. Nambisan, 2016 suggests that digital technologies are changing the nature of entrepreneurial processes, entrepreneurial activities, and the way entrepreneurship is pursued. Therefore, Social media has helped them in their business and the various challenges they face while being available on social media. The present article focuses some of the significant observations about home based ownerships in Indian urban areas.

Home Based Entrepreneurs in Other Countries

Home-based entrepreneurship sector has attracted attention in many countries as an alternative or additional source of income. Many educated and skilled women are unable to work due to domestic responsibilities and home-based entrepreneurship has provided women with a flexible work option that can be balanced with their household responsibilities (Nordin, Mohd Baidzowi & Razak, 2016).The purpose of this research is to look into the home-based employment opportunities available to women staying in high-rise societies in recently developed urban areas. Newly developed areas like Noida, Gurugram, Faridabad, etc and many more serves as a hub for IT and BPO firms (Kulshrestha, 2022). These area are well-planned residential apartments at comparatively affordable prices as compared to the main city. As a result, many educated, technically skilled working in MNCs have shifted to these high rise societies and nearby areas to have a better residential experience (Kulshrestha, 2022). However, some skilled and educated women who are not being able to work as full-time employees or are opting to start their own small scale ventures are turning to home-based entrepreneurship as a viable career option. It might be suggested that home-based women entrepreneurs even are getting alternate working environment in terms of working hours, but might face issues in terms of customer engagement and privacy that might also be explored.

Several studies suggest that the new trading opportunities due to digital technologies like Social media (Huws et al. (2018), online payment systems (e.g., Paypal, Square), and drop shipping facilitate the small entrepreneurs to reach customers without worrying of having a full-fledged inventory. Simultaneously, consumers have increasingly accepted online shopping, transforming 'e-shopping' into a global trend that has come to threaten high-street shopping in many countries (Nathan, et.al, 2019).

An overview of Home based Enterprenuers in India

During recent years India has witnessed impressive growth in e-commerce due to extensive use of digital transaction tools including UPI-based transactions Paytm, Bharat Pay, Google pay and e-wallets like airtel, amazon wallet, and Paytm wallet. These tools of digital transactions are employed by small entrepreneurs as well as medium and large-scale entrepreneurs (Singh, 2019). However, on the one hand when social media platforms and digital transactions have made running a business easier than before. There is less research available to understand the challenges faced by social media platforms and digital transactions for home-based entrepreneurs. The present study can be applied to understand the major challenges faced by home-based entrepreneurs in India and can help scholars research home-based entrepreneurs.

Reasons for opting for Home Based Business over a full-time job

Working in an office for a fixed period may put women with families and children to raise in a stressful situation. Working women with families to raise report more work burnout as compared to men and single women. Moreover when it comes to having own start-up or independent entrepreneurship needs a large amount of capital and staff to run the business. Often situations might arise where women may lack the necessary resources to set up their businesses. Mason et al 2011, Vorley & Rodgers suggest operating a business may be convenient in terms of cost minimisation, does not require a commercial inventory and reduces travel time and expenses. Moreover, Reuschke 2019, states that home-based working provides a better-life balance as well as quality of life especially for women with childcare and other family responsibility by providing flexibility in working.

HBE although in a smaller number than other business setups operate full-time and need engagement similar to a job with fixed working hours. Some of the home-based entrepreneurs started by women have reached popularity across the nation beyond their area of operation. Houston & Reuschke 2016 observed that some home-based businesses once successfully turn into separate business premises. However, home-based entrepreneurship does not necessarily create employment or directly contribute to economic growth. HBBS have smaller employment size and turnover than other SMEs (Mason et al. 2011).

In terms of choice of trades, there is an ambiguity about the most suitable choice that can provide regular income and can turn into business entrepreneurship in future. Among the choice of SME, those in construction, education, transportation, storage, logistics and information and communication, beauty parlours are more likely to be home-based whereas those in finance, and real estate, some jobs require specialized machinery and must be done on location. However, there is a diversity of ideas that can be operated from home, especially after the increase in the usage of telecommunication, digital technologies and success stories of home-based entrepreneurs.

1.2 Digital Technologies Refashioning Entrepreneurship

A new era of entrepreneurship is being ushered in by digital technologies, which are reshaping conventional methods of entrepreneurial opportunities and introducing innovative new business models. Digital technologies are changing the position of entrepreneurial opportunities in the economy, and best practices for pursuing these opportunities are also changing. Schwertner, 2017 suggested that the application of digital technologies has increased flexibility and reduced the constraints of entrepreneurial processes and outcomes. According to studies,(Yang,et.al, (2021), Schwertner, (2017), (Ivanov et.al, 2019) , digital entrepreneurship has a higher social component and more social interactions than traditional entrepreneurship. Relationship capital is therefore even more important for entrepreneurship success in a digital world where it is harder to build trust, gather resources, and recognise opportunities. The ability of digital technologies to quickly form, implement, modify, and re-implement product ideas and business models in repeated cycles of experimentation and implementation is increasing the temporality of entrepreneurship. It also provides the opportunity for rapid scalability.

Digitisation impacts entrepreneurship in several ways. Firstly by creating new opportunities, including shifting off-line business to online, launching new products and services in a digital form, and exploring new opportunities in the market place even for those products that are not themselves digital but leverage digital technology. Pesch & Laudien 2019 state that digital technologies enable hybrid solutions that comprise tangibles and intangible for both manufacturing and services. Sussan and Acs 2017 state that digital technology attracts users and buyers by providing user-intensive business models that provide free content, sharing business models based on unused tangible assets and user-intensive business models that can attract both paid and unpaid customers on the same platform.

Another advantage of digital technologies is providing infrastructure for online payment systems, social media platforms, crowdfunding and digital spaces. Aldrich 2014 states that digitisation has helped entrepreneurs in pursuing more collective and collaborative ways of entrepreneurship. Providing an effective medium of communication and quality market information from customers has helped entrepreneurs to develop superior market intelligence to traditional offline entrepreneurs (Pergevova et.al, 2019).

Business owners now have more opportunities at their disposal because of online platforms. By facilitating connections with a large number of potential customers at low transaction costs and lowering the risks associated with innovation and insignificance, they offer a framework for value creation and value appropriation. Using innovation platforms, business owners can produce related products and services within a digital ecosystem. On-demand services and online retail are two examples of commercial activities supported by transaction platforms. Integration platforms are created by combining transactional and innovational platforms. According to Laudien & Pesch in 2019, implementing digital technologies enables companies, especially service-based businesses, to overcome geographical restrictions on business activity. The relationship between human activity and services can thus be broken down. Small businesses can now expand internationally thanks to digital technologies.

Digitisation has resulted in the democratization of entrepreneurship and has even removed barriers for businesses and even socially marginalised people. However, Martinez et. al, 2018 argue that the social structures available through online activities create offline resource inequality and cannot be regarded as a leveller for entrepreneurial activities.

Home-Based Entrepreneurship and Digitisation

Digital technologies have made it possible to operate a home-based business with fewer constraints, including those relating to visibility and physical location (e.g., digital goods and services, order fulfilment services) (e.g. online marketing). Studies have looked at how digital technologies relate to home-based businesses (Philip, & Williams, 2019). These studies' primary attention is on businesses that operate entirely online and use the internet heavily, which encourages the conversion of offline businesses to online ones. There is less knowledge about how much digital technologies influence home-based businesses and their access to markets abroad. While Mason et al. (2011) study's descriptive findings seem to refer specifically to the emphasis on online and internet trading, other studies with a broader focus on home-based business motivation and operation also emphasise the importance of digital technologies for operating a business from home and as a source of sales. However, these differences in online sales between HBBs and non-HBBs appear to be rather small. HBBs use digital technologies for administration, daily communication, and marketing in addition to online sales and purchases.

fast broadband access is necessary for the majority of corporate activity. Digital connectivity is still a problem for certain isolated rural enterprises and households as it is typically better in commercial business locations than in residential ones. This demonstrates the idea that the 'global village' is geographically constrained.

Pickernell et al. (2013) discovered that e-commerce trading within the SME sector in India has increased over time and is higher among smaller, younger enterprises in the service sector, both in basic services and knowledge-intensive services, and those businesses with expansion ambitions. The report also reveals that e-commerce is employed nationally (across India in their study) rather than internationally for trading with non-local markets. The report also reveals that rather than being utilised internationally to conduct business with non-local markets, e-commerce is used domestically (across India in their study). Although home-based businesses were not examined in the study, considering the nature of Home based Enterpreneurship the majority of which are believed to employ less than ten people. Their disproportionate presence in the service sector may indicate that trading and posting on social media platforms is more significant to HBEs than to non home based owner enterpreneurs. This is further supported by the study done by Folmer and Kloosterman (2017) found that Home Based Businesses (HBBs) have more non-local trade links than non-HBBs in their analysis of cognitive-cultural enterprises.

In some cases it is found that increased e-commerce trade among SMEs was associated with growth orientation and objectives, which contrasts with the turnover and operating the business part-time. In addition, (Ye, & Yang,2020). contends that the urban-rural digital divide is a side effect of the economic development gap in rural and remote locations, which is principally caused by some rural enterprises' lack of expansion plans.

Home-Based Entrepreneurship as a Business Sector

In urban and semi-urban areas, HBEs make up a disorganised portion of the business sector more than non-home-based businesses, but due to their lack of visibility, there have not been much studies that their relevance warrants. Given the role that social media platforms play in removing the barrier of distance, it is important to analyse the growing trends in home-based entrepreneurship, including the degree to which HBEs engage in commercial activities and whether they have more access to markets. It makes some contributions that are discussed in the present study.

Various studies demonstrate a substantial correlation between home-based enterprises and "online" or "internet" firms. Home-based business owners are more likely to rely on social media channels to inform their consumers about the services and goods they offer than they are to be completely inactive (AlArfaj & Solaiman, 2019). Yet, internet transactions are not the only source of income for home-based businesses. Only a small percentage of HBEs get all of their business from social media platforms, while the majority of HBEs have modest internet sales. This confirms the findings of past research that highlight the key benefit of the home-based company industry. In other words, the bulk of entrepreneurs still relies on traditional offline sales while a small percentage heavily rely on social networking platforms.

Although social media platforms make it easier for people to conduct business outside of their own country or even just their neighbourhood, HBEs still encounter difficulties connecting with clients and managing their increasingly long workdays. There is little evidence that this particular sector of entrepreneurship is a sustainable means of earning money, even though HBEs are common in developing nations and emerging communities. There is also discussion about whether they would stay home-based entrepreneurs and whether there are differences between engaging in home-based entrepreneurship and working a regular job, but no appreciable differences were discovered. Whereas other studies have focused on the use of digital technologies in particular for home-based business operations. The use of social media platforms for entrepreneurship might be more advantageous for those who are already well-connected. Moreover, it can also lead to a decrease in business owing to greater competition from other entrepreneurs in the same society who offer comparable services and goods

(Reuschke and Mason 2020). Because of this, only a small portion of home-based entrepreneurs are likely to have been able to capitalise on the growth of digitally active small enterprises.

The benefits and drawbacks of social media platforms are briefly discussed, to contributes to the body of critical writing on the transformative nature of social media entrepreneurship. It has been also discovered that businesswomen using social media for commerce in the domain of home-based businesses are not entirely satisfied. However, there are potential risks to security and privacy, as well as anxiety brought on by the compulsive usage of social networking platforms. The prevalence of conventional offline client engagement and businesses that conduct all of their business online indicates that, at this moment, the overall transformational effects of digital technologies on the character and procedures of entrepreneurship are rather limited. Some researchers suggest that the influence of online marketplaces and business models, such as Amazon and Flipkart, may be substantially less than what some previous studies have claimed Wu & Gereffi (2018). Our research does show that social media platforms are changing the home-based business sector by extending their geographical reach beyond their local areas, though to a lesser extent than suggested in media commentary. The proportion of home-based businesses that derive half or more of their customer reach from social media platforms is higher than that of other small businesses.

Lastly, this study highlights several topics that merit more investigation. Further investigation is required to determine how social media platforms' "pioneering' effects on underprivileged social groups' use of their homes as business spaces are less pronounced than anticipated. Further research is needed to determine why the use of social media platforms by home-based business owners does not reflect geographic variation, specifically because the conversion rate of prospective customers into actual customers is lower than anticipated and because of access barriers to digital technologies.

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31

AN ANALYSIS ON CASH TO CASHLESS ECONOMY TRANSITION IN INDIA

Shweta Arora, Ritika Bora and Anuradha Bharadwaj

ABSTRACT

Consumers now have a variety of alternatives to enter the world of digital payments due to the variety of technological advancement. India's demonetization has compelled all customers and businesses to adopt and develop cashless digital payment solutions. The acceptance of the cashless economy scenario depends on a number of elements, including accessibility, reach, and awareness. In this study, numerous consumers from various regions of India are examined for the variables that led to the adoption of new digital payment technology.

The study demonstrates how consumer behaviour has completely changed as we go from a cash economy to one without it. The paper discusses about the direct impact on how quickly India is moving towards digital transactions and the way ahead for developing the necessary financial and technological infrastructure as well as the need for highling digital literacy among the masses.

Keywords: Cashless; Economy, Demonetization, Digital Payment

INTRODUCTION

Cash gives convenience, makes transactions simpler, and is simple to use and store. India has been using cash transactions exclusively for the last five to six decades of purchasing and selling needs. The use of plastic money, paytm, and other services has increased since November 8, 2016, when demonetization was announced. All of us struggled for a few months to deal with digital payments and the lines outside of ATMs before concluding that everything was in order. Nevertheless, it was only a trailer. For each of us, the transition from cash to digital payments took place between the years 2016 and 2020. Customers can complete transactions or make payments using a variety of alternatives. The convenience, aptitude, and availability of the fundamental needs all influence how consumers choose their payment option. Even so, although still widely used and regarded as the most practical form of payment, non-cash payments are growing quickly. (Dhirendra Gajbhiye^, Nahar, Yangdol, & Thakur, 2022)

As consumer attitudes change and technology is more adopted, the much-discussed "cashless society" is becoming a reality on a global scale. Yet, while certain markets, such those in Sweden, the UK, and other Asia-Pacific (APAC) nations, have adopted cashless payments quite quickly over the last several years, many are still developing extremely slowly. There is no one-size-fits-all model because every market has its own particular set of circumstances. (BYJUS, 2021)

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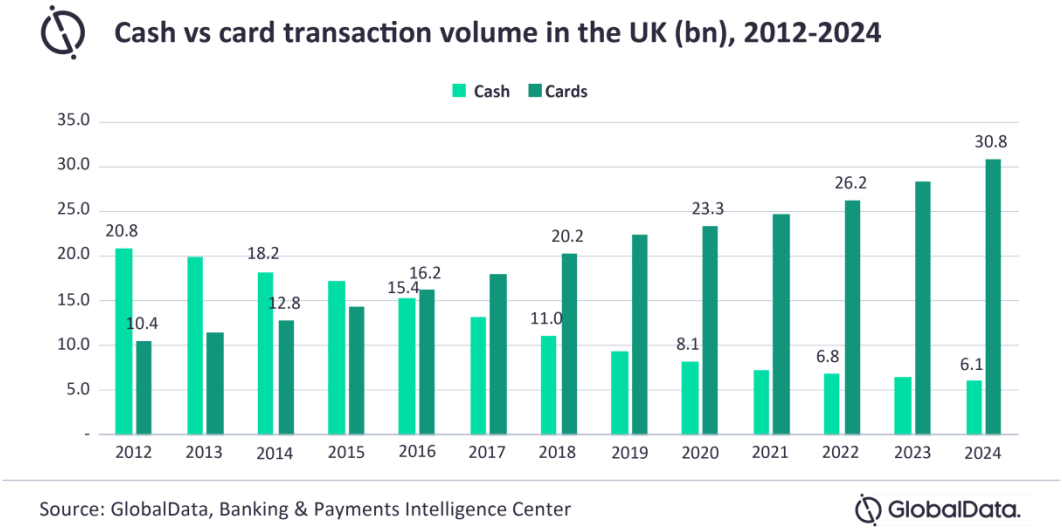
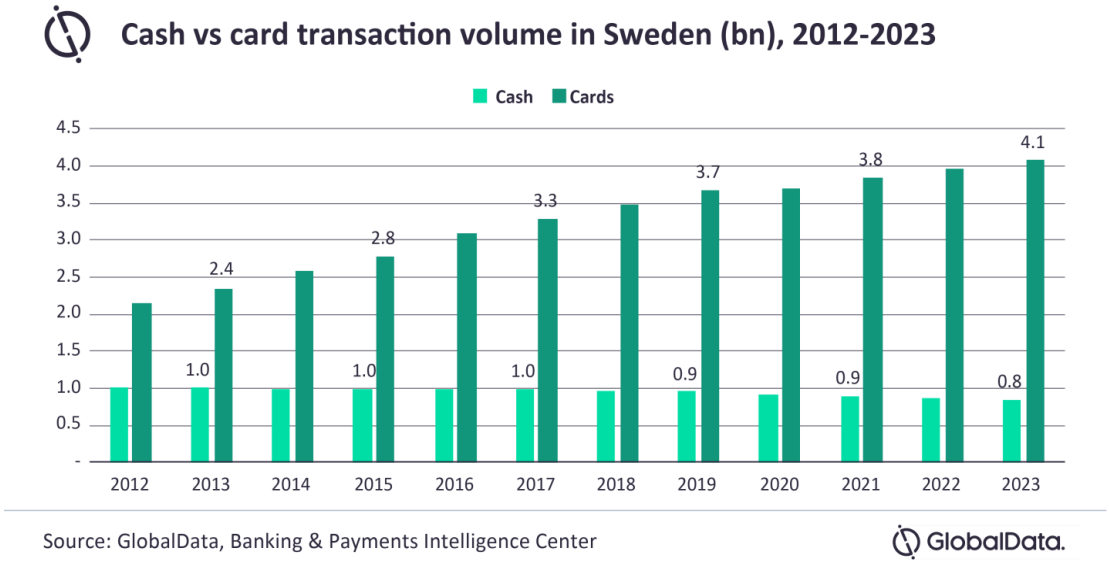


The widespread adoption of NFC payments by customers, particularly contactless payment cards, has been the driving force behind the UK's move towards a cashless society. Meanwhile, Sweden adopted a totally different strategy, making use of its already-existing digital national identification and bank account system known as Bank ID. Swish's mobile wallet was able to heavily rely on Bank ID, which had almost 80% of the Swedish population signed up, to become widely adopted. Swedish consumers were encouraged to adopt mobile wallets relatively immediately by the integration of the two platforms.



A Cashless Economy: What Is It?

A cashless economy is one in which there is no movement of cash within the economy and all payments must be made using electronic methods like direct debit, credit cards, debit cards, electronic clearing, and payment systems like India's Immediate Payment Service (IMPS), National Electronic Funds Transfer (NEFT), and Real-Time Gross Settlement (RTGS).Cashless = Faceless + Paperless

Why Cashless ????

Old habits die hard.

There is nothing permanent except change

Barter system (commodity based) Cash Based Digital Payment

Changing from cash to cashless is necessary right now. Every developed nation has switched to a cashless economy. Money management is just as crucial as earning it. Regardless of the demand, cashless has advantages on a global scale.

1. The spread of counterfeit money can be stopped.
2. Digital transactions are more scalable, responsible, and transparent.
3. A decrease in the cost of making paper currency.
4. It eliminates the risk associated with carrying and shipping large amounts of cash.
5. As there won't be any cash payments and all income and expenses will be tracked, the income tax base will be in a better position.
6. A faceless economy will make money laundering more challenging.
7. A decrease in the price of banking services.
8. Enhances monetary management while controlling inflation.

Is it Appropriate to Switch the Indian Economy From Cash to Cashless at This Time?
India still faces difficulties with the typical faceless/cashless economy because ATM withdrawals still require a debit card in this country. Demonetization and COVID 19 have, nevertheless, sparked the economy's development.

No Turning Around
Lets understand the connectivity of **JAM Cashless**

J – Jan Dhan Yojna

A – Aadhar, the Uunique Identification Authority of India

M – Mobile (Statista, Digital payments in India - statistics & facts India, 2021)

Online transactions and payments have risen during the last three years. According to reports, a number of practical digital transaction methods have been introduced, including the Money-Unified Payments Interface (BHIM-UPI), Immediate Payment Service (IMPS), pre-paid payment instruments (PPIs), and National Electronic Toll Collection (NETC) system. These methods have seen significant growth and have changed the digital payment ecosystem by increasing Person-to-Person (P2P) and Person-to-Merchant (P2M) payments. Existing payment methods including debit cards, credit cards, NEFT, and RTGS have all experienced rapid growth in popularity at the same time. The most popular payment method among users is now BHIM-UPI. e-RUPI, a cashless and contactless digital payment tool, was also introduced by the Indian government. It is anticipated that e-RUPI will play a significant part in the country's efforts to increase the efficiency of Direct Benefit Transfer (DBT) in digital transactions. The creation of DIGITAL INDIA was made possible by all of these payment gateways. (RBI)

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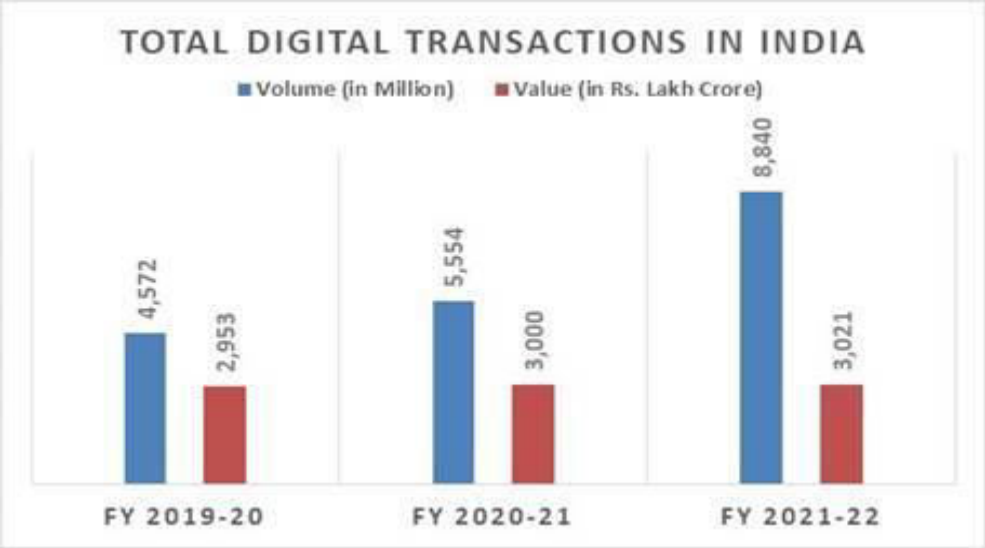
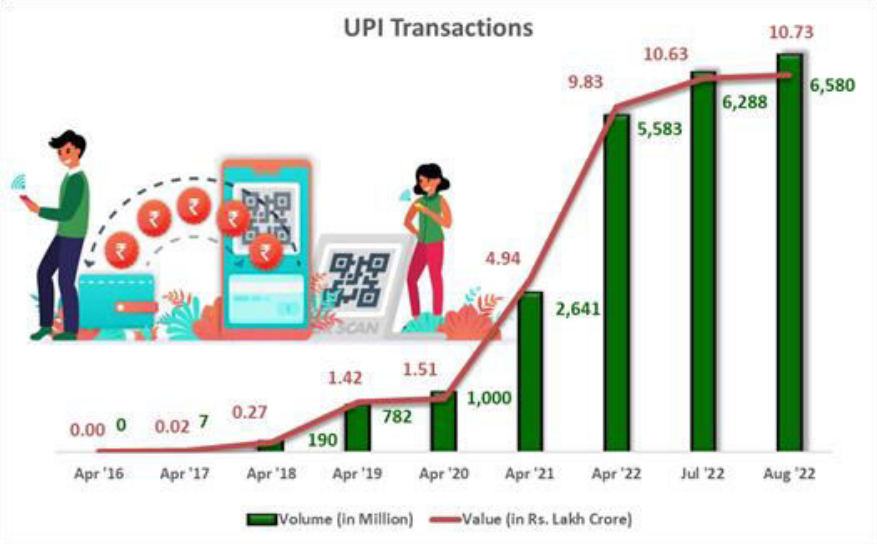


The Digital Payment Revolution : UPI

launched in 2016, has become one of the most well-liked tools in the nation for doing digital transactions. Developed by the National Payments Corporation of India, it is an immediate payment system (NPCI). It integrates different banking services, smooth fund routing, and merchant payments into a single mobile application to run multiple bank accounts. The BHIM-UPI App was introduced by Prime Minister Narendra Modi on December 31, 2016, at the opening of the "DigiDhan Mela," to reinforce and further popularise the interface. (Finance, 2022)

UPI has done much to establish digital payments as a habit and to firmly establish India on the path to a cashless economy. Only in August 2022 did 346 banks have active UPI interfaces, and 6.58 billion financial transactions of almost Rs. 10.73 lakh crores were made. (Insight, 2022)



40% of all digital transactions in India will be conducted using UPI by the end of October 2022. (Report published by the Ministry of Finance, "Transforming India's Digital Payment Landscape," pib.gov.in). As a result, small companies and street vendors were able to conduct faster and more secure transactions, even for modest amounts. This entered the market, quickly gaining popularity as a simple method of money transfer that only requires the simple scanning

of a QR code and requires little physical effort. The COVID-19 pandemic further demonstrated its value as a lifesaver. With the combined efforts of the Indian government and its citizens, the digital payment environment in India has undoubtedly changed. Also, the Indian government is working tirelessly to establish India as a world leader in the field of digital payment systems and to support it in becoming one of the most effective payment marketplaces in the world. By allowing transparent, safe, quick, and cost-effective processes that benefit the whole digital payments ecosystem, rising fin-tech companies will play a significant role in the continued expansion of digital transactions in the future. (RBI, Assessment of the progress of digitisation from cash to electronic, 2020)

The Cracks

- **Digital Inclusion and Acceptance Infrastructure:** Establishing a cashless economy faces significant obstacles due to a lack of suitable infrastructure. Ineffective banking systems, subpar digital infrastructure, inadequate internet access, a dearth of comprehensive digital payment interfaces, and a low penetration of PoS terminals are a few of the problems that need to be fixed. A cashless economy must first transition by increasing smartphone adoption, enhancing internet access, and creating a safe, efficient payments infrastructure.
- **Financial Inclusion -** The most important prerequisite for a cashless economy to succeed is that everyone should be included in the financial system. Every person needs access to banking services, and they all need a bank account with a debit or credit card and internet banking capabilities. Visit the linked article to learn more about financial inclusion.
- **Financial and Digital Literacy —** Achieving financial and digital inclusion is not enough to make the switch to a cashless economy. Also, the available financial and digital tools and how to use them for transactions should be made known to the populace.
- **Cybersecurity -** Identity theft, phishing, and cyberattacks are all quite likely to target digital infrastructure. Nowadays, cyberattacks have advanced and organised, posing a clear and present danger. Creating secure and reliable payment interfaces is thus a requirement before going cashless. Improved attack defences, data protection, addressing privacy issues, vigilant surveillance to detect assaults before they happen, and institutionalised cybersecurity architecture are all included in this.
- **Shifting Behaviours And Attitudes -** The Indian economy still relies heavily on cash due to a lack of e-payment adoption, low digital awareness about e-payment and cashless transaction platforms, and a third factor—the habit of handling cash for convenience. In this situation, raising awareness and encouraging gradual e-payment adoption are the best ways to start changing people's habits and attitudes.
- **The Urban-**Rural Divide While most urban locations have high-speed internet access, semi-urban and rural areas lack a reliable internet connection. So, even though there are more than 200 million smartphones in India, it would still be some time until rural India can do business easily using mobile phones. There is a considerable urban-rural divide that must be bridged in order to enable a cashless economy, even in areas where ATMs, PoS terminals, and bank offices are present. (Sharma, 2021).

CONCLUSION

India needs to take a cue from other developing nations that have reduced their reliance on cash while simultaneously enticing more people into the official banking system. Mobile money has spread considerably more quickly and widely in Kenya than it did in India, which is a well-known success story. Kenyan households with access to mobile money were better able to handle adverse economic shocks (such job loss, livestock deaths, or problems with harvests) than those without.

The future course is obvious:

- Invest in developing the necessary financial and technological infrastructure
- A medium-term plan to increase knowledge of and access to electronic payments, together with a national campaign to promote financial and digital literacy. Focused financial education initiatives can boost account ownership while enhancing money management and financial literacy abilities.• Changing consumer and business attitudes about digital payments is a huge task that the government must take on.
- Implement all essential cybersecurity measures.

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EXPLORING THE EFFECT OF HETERONORMATIVITY ON RELATIONSHIPS

Iram Rizvi, Shweta Arora and Ritika Bora

INTRODUCTION

Heteronormativity refers to the interdependence of gender and sexuality by naturalising sexual attraction towards the opposite gender and promoting heterosexuality. It encourages a hegemonic kind of heterosexuality that upholds lifelong compulsory monogamy and the binary classification of traditional gender roles (Halley & Eshleman, 2016). Other forms of sexual orientation are discarded in preference for a heterosexual romantic partnership or marriage. Therefore, non-heterosexual structures of desire including homosexuality, bisexuality, transgender, intersexuality, and asexuality are seen as a deviation from the heterosexual norm. However, heteronormativity and heterosexuality are not the same things as the former establishes hierarchies among heterosexual relationships just as in non-heterosexual relationships (Tang & Quah, 2017). To understand heteronormativity, and its impact on intimate relationships and outcomes one needs to understand the various factors that reinforce heteronormativity in society. Within this premise, the present essay aims to explore how heteronormativity is experienced as an outcome of race, culture, gender, sexuality and media representation.

MAIN DISCUSSION

Gender in heteronormativity follows a traditional explanation of sex and expects that people follow the rigid gender identity. It strictly adheres to gender binarism and expects every individual to fall either in the masculine or the feminine category identified by the physiology corresponding to the chromosomal sex. In other words, the chromosome in males and females not only provide them with distinct masculine and feminine characteristics but are also responsible for their position and role in society. Such a strict definition of sex given by heteronormativity reinforces the notion of males as naturally dominant and aggressive and females as inherently submissive and nurturing. However, Adrienne Rich (1980) suggests that the sexual desires of women may not be naturally driven by biology but are culturally and socially scripted through institutionalised compulsory heterosexuality (Cranny-Francis, et al, 2017). In other words, several people may be sexually trapped, trying to fit in the script and sexuality prescribed by society and cannot look beyond the paradigms of the acceptable norms. Therefore, heteronormativity reinforces gender binarism and expects people to follow the rigid gender identity.

The propagation of heteronormativity is articulated in movies through compulsory heterosexual romance and glorifying heterotopia offering a blueprint for an appropriate and inappropriate way of living. Studies suggest heteronormativity in movies is imposed as exceptional, powerful, magical and transformative being in hetero-romantic relationships and compulsory heterosexuality through the depiction of men gazing desirously at women's body parts (Gansen & Martin, 2018). In other words, movies promote homonormativity by normalising opposite-gender romances, commodifying the bodies of women as a desirous object of gratification for men. Many movies like ‘Brokeback Mountain (2005)’, Tangerine (2015), Milk (2008) and Moonlight (2016) portray relationships other than heteronormativity directly or indirectly. However, the above-mentioned movies provide space for other relationships, but the themes of these movies are based on the struggles faced by the people who follow non-heteronormative orientations. Therefore, movies impose heteronormativity as an accepted norm by glorifying heterosexual relationships and the struggle faced by individuals facing non-heterosexual relationships.

Heteronormativity has been associated with sexism and sexual stigma associated with sexual minorities based on their divergence from heterosexual gender roles. System justification theory suggests that people find ways of tolerating and justifying the inequality legitimate by endorsing minority stigmatizing stereotypes, myths and ideologies legitimizing hierarchies (Ferrari et al., 2021). In other words, heteronormativity justifies the motive to maintain the legitimacy of the existing forms of social arrangements against sexual minorities. On the other hand, Tatum & Ross, (2020) suggests within the sexual minority can also show high sexism and internalised heteronormativity, when they adhere to traditional ideologies. However, some studies suggest that sexual minorities show resistance to heteronormativity by contradicting the expectation of gender binarism. Therefore, heteronormativity promotes stigma associated with sexual minorities who do not adhere to heterosexual gender roles.

Studies suggest racialization of heteronormativity revolving around the demands and rewards of racial and sexual loyalty. Compulsory heterosexuality a privilege under heteronormativity is regulated and practised in European women to perform white feminine sexuality towards compulsory monogamous unions (Cranny-Francis et al., 2017). Moreover, if European women challenge these expectations they are seen as a violation of whiteness regardless of their intentions. On the other hand, several feminines, queer, disability movements and interracial unions challenge the existing privileged norms of relationship and perceived sexuality race-based heteronormativity (García Johnson & Otto, 2019). However, regardless the social movements and interracial unions between African- European men and women reveal hidden heteronormative expectations of compulsory heterosexuality. Therefore, heteronormativity is encouraged as an accepted norm as a racial privilege and loyalty.

Besides reinforcing the gender identification of individuals, heteronormativity is a socially imposed construct reinforcing compulsory heterosexuality than accommodating other individual preferences. Gill Valentine (2002) suggests heteronormativity is normalised in public space when social norms are established through heterosexual acts like handholding and kissing are accepted as natural while other non-heterosexual sexual manifestations are rendered other (Browne & McCartan, 2020). In other words, heterosexuality is stabilised, normalised and taken for granted in society, while other forms are seen as problematic. The attraction between the male and female in many cases may be due to the genes, and hormonal changes experienced in their body (Ngun & Vilain, 2014). However, Queer scholars argue that naturalised heterosexuality is not biologically anchored and the genes responsible for sexual orientations other than heteronormativity are yet to be discovered. Therefore, a socially imposed construct rather than focusing on individual preferences.

Heteronormativity not only legitimises heterosexuality as a privilege but also normalises mononormativity as acceptable form while stigmatising the other forms, especially in the case of women. Single-parent women especially those belonging to people of colour, and families with several illegitimate children not only are socially marginalised but face more criticism as compared to middle-class two-parent and even same-sex families (Kean, 2017). In other words, heteronormativity views homonormativity ideas as institutional practices that make monogamy appear normal natural and right. Women who raise their children on their own without being in a stable relationship may often feel overburdened, due to entire economic and other responsibilities being imposed on one parent (Nomaguchi & Milkie, 2020). However, the above case might be valid in the case of women belonging to impoverished social systems and by assuming the paramount structure of monogamy, other features of relationships in women are missed.

Heteronormativity promotes discrimination in terms of bullying and stigmatising LGBTQI communities. (Van der Toorn et al., 2020) in their study suggested that discrimination and harassment based on non-heteronormative identities many LGBTQI people are compelled to

hide their identities to avoid prejudice and discrimination. Moreover, prejudice and discrimination are not limited to developing countries while as high levels of discrimination are recorded in highly progressive countries. Governments and legislatures f many countries have legitimised the non-heterosexual orientation of people and have ensured to provide equal rights to people belonging to LGBTQI groups (Human Rights Watch, 2018). However, giving acceptance to the LGBTQI community can be termed as their inclusion in the mainstream which is their right and is far from providing their own space within the heteronormative public sphere. Therefore, heteronormativity stigmatises sexual minorities like LGBTQI and promotes discrimination against them.

Ethnographies of different social and cultural groups suggest that heteronormativity is not the only accepted norm as the contemporary western concept. In many parts of the world, in an ancient tribal community of Mosuo in Tibet where the typical husband-wife relationship is missing both men and women can have as many or few sexual partners as they like and Sambia tribe where homosexuality is institutionalised, and are free from judgement (Booth, 2017). The concept of relationships is even more diverse as observed in many tribes where kinship with the same gender or living as a commune or group is a norm. Although even divergent relationships do exist the men are expected to have a relationship with wives and children, suggesting the same male and female roles being expected (Tskhay & Rule, 2014). However, the women and men have a certain level of the same traditional relations and expectations of bearing their biological children, it is not the same as expected in heteronormativity which legitimises only compulsory heterosexuality and compulsory monogamy. Therefore, the concept of relationships is diverse in many cultures and is not the only norm in contemporary western society.

CONCLUSION

According to the findings of the current study, heteronormativity not only encourages gender interdependence but also normalises sexual attraction to people of the opposite gender. It promotes a hegemonic version of heterosexuality where other forms of sexual orientation are rejected, and lifelong forced monogamy and binary classification of traditional gender roles are upheld. Furthermore, heteronormativity is a socially imposed construct reinforcing compulsory heterosexuality than focusing on individual preferences, normalising compulsory monogamy, and rejecting any other form of relationships. By glamourise heterosexual relationships and portraying the struggle faced by non-heterosexual groups, movies normalise the heteronormative version. As a divergence from the heterosexual norm, homosexuality, bisexuality, transgender identity, intersex, and asexuality are all considered non-heterosexual structures of desire. Influences of heteronormativity in intimate relationships situate them in a hierarchy where men are in charge and women are subordinate. However, in many non-western cultures, other forms of intimacy and relationships are accepted and are even perceived as judgement free.

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OTT STEERING DEMOCRACY OF CREATIVITY IN THE NEW AGE

Pramod Kumar Pandey and Manmeet Kaur

INTRODUCTION

Concepts like news flow and north south divide in the context of communication have been popular topics for debates for decades now. This idea which was initially restricted only to news later engulfed the area of arts and specifically cinema. Political hegemony through ideologically loaded documentaries had already been executed via communication channels like BBC, NATGEO, Discovery and other similar documentary production units. This raised the questions about the democratization of information. Similar questions regarding democratization of cinema as an art was gaining momentum. The large budget films and its control through the diverse ownership patterns was the only reality till the emergence of OTT. OTT has been a welcome step towards the democratization of communication especially the art of filmmaking and is widely contested across the world. Before knowing about the pros-and-cons of the OTT, it is important to know what OTT is. Over-the-top or OTT, as it is popularly known, refers to streaming services that deliver video content through the internet and comprises of platforms like Amazon Prime, Netflix and much more. These platforms have bypassed the traditional channels of communication including the ever-popular cable TV (Cable Broadcasting) and the TV broadcasting system via satellites or other wave systems. OTT platforms have become very popular over the past decade or more, leveraging the popularity of services like Netflix, Amazon Prime, SonyLiv and Disney+. These are just some of the few popular ones that offers content in Hindi, English and other languages. Some are very popular at the regional level due to the local and regional languages like HoiChoi. It has brought with itself plenty of positives that have been responsible for its instant popularity.

OTT is seen as a significant step towards the democratization of communication, especially in the field of filmmaking which is a very specialized art and craft. Firstly, it has allowed independent filmmakers to produce and distribute their content to a wider audience which was a distant dream for plenty of independent filmmakers in the past. They were continuously struggling to get the distributors for their production. Their hopes majorly hinged on film festivals / screenings or small-scale screenings conducted by independent cinema buffs to showcase their artwork. Harrington (1996) claims that "the greatest problem for independent filmmakers is getting their work seen. It's very hard to get films into the market, and when they do get in, it's very hard to get them seen. It's not just a matter of getting into the theater; it's a matter of getting into the consciousness of people who go to the theater" (p. 6). OTT platforms and their presence has been a blessing for the independent filmmakers as they now have a very affordable and possibly an easier way of making their work reach masses.

Other good thing OTT has been responsible for is that OTT platforms have disrupted the traditional distribution model of the film industry, which was dominated by a handful of major studios. OTT platforms have given viewers more control over what they watch and when they watch it, and this has created more opportunities for diverse content to be produced and distributed. "The traditional model is built around blockbusters that are able to generate massive returns for the major studios. With streaming services, that model is broken, and we're seeing an explosion of diverse, high-quality content that would never have been made or distributed under the old system" (Barnes, 2018). This new age concept of OTT has also allowed more specified content reaching a larger audience. Any other model of communication in the past has never been capable of challenging the traditional distribution models that leveraged high control on the people at the top of the production funnel.

Another factor testifying how OTT platforms have transcended the creative filmmaking landscape in the world is how OTT has given more opportunities to filmmakers from diverse backgrounds to tell their stories. When we say diverse backgrounds, it means people with wide ranging experiences. It includes people belonging to a specific ethnicity, different sexual orientation, different faiths, different political views and sometimes absolutely different world views. The traditional distribution models, filmmakers from these aforementioned groups / communities often struggled to find the resources and support they needed to create films and if made, then distribution was a big challenge. OTT has helped in creating a more inclusive environment where filmmakers from all backgrounds will have their stories heard.

A lesser talked about, yet an important factor is that OTT platforms have a global reach making the content reach across globally. Previously, filmmakers needed to traverse complex distribution deals for the release of their films in different countries. However, with OTT platforms, filmmakers find the release of their films globally far easier. It is evident from the fact that we have so many platforms (Indian) also providing content of other languages and countries like Spain, Japan, Mexico and much more. This has opened up new markets and audiences for filmmakers and has created level playing ground in terms of global reach of the content like never before. According to a report by the Center for the Study of Women in Television and Film, streaming services like Netflix, Hulu, and Amazon have provided more opportunities for female filmmakers to direct and produce content (Siddique, 2021). The report further found that in 2019, women accounted for 29% of directors on streaming services, compared to 12% in the traditional film industry. Similarly, the report found that women accounted for 31% of creators on streaming services, compared to 15% in the traditional film industry. This shows the shift in power dynamics and resulting gender based parity in the creative field of filmmaking which has been made possible only because of the rise of OTT. Siddique (2021) further postulates that there has been tremendous impact of over-the-top (OTT) platforms on the traditional filmmaking industry. It discusses how OTT platforms have disrupted traditional distribution models, allowed for more diverse perspectives, and increased competition. However, it also raises concerns about the potential homogenization of content and the exploitation of filmmakers on these platforms. The same idea is echoed in a study by Kozlov et. al. (2020) as it examines the representation of women directors and filmmakers in over-the-top (OTT) platforms in California. The report hints towards increased women contribution in the recent past citing greater involvement of women in the content creation and direction on OTT platforms. The report claims that this was not the case in the traditional filmmaking setup. This indicates greater inclusivity considering that the feminine voice has been almost absent in the creative filmmaking domain.

OTT: Democracy of Communication in True Sense

In the article "The Emergence of Over-the-Top (OTT) Streaming Services and the Changing Global Landscape of Television," Ganti (2018 as quoted in Siddique, 2021) claims that that the advent and rise of OTT services has democratized the world of cinema by offering the opportunity to both, the producers and the audience, with more diverse content and widespread means of distribution. The article further goes on to claim that OTT services have provided a big jolt to the gatekeeping mechanisms that have been existing in the industry for since decades. These gatekeeping points have been the major obstacles in the growth of cinematic creativity and led to the flow of a specific type of content further leading to creative hegemony. It has offered economic opportunities to more diverse voices and viewpoints allowing them smoother entry into the world of cinema. The article further goes on to comment that this democratization has shifted the power in-equilibrium in favor of audience. This was earlier under the control of the traditional media conglomerates. Audience now enjoy greater control over what they watch and how they watch it. Its explanation can be the exploration of technological determinism. Siddique (2021) further opines that the "OTT services offer a wider variety of viewing options

and the ability to watch television and film in a more customized way than traditional television networks, and this has led to greater democratization of television and film" (p. 719). Finally, the author of the article argues that the democratization of television and film through OTT services is likely to continue and expand in the future. The rise of over the top applications like Netflix has allowed for the exploration of topics that are considered taboo by traditional media outlets. These applications have offered a platform for creators to produce content that is not be considered mainstream or advertiser-friendly. These kind of platforms have "become a high-profile producer of programming that is attuned to diverse audiences and that addresses what are conventionally considered taboo topics" (Druick, 2017, p.243). This has allowed greater artistic freedom to the filmmakers and higher and deeper engagement with audiences. Shows like 'Orange is the New Black', 'Dear White People', and 'Big Mouth', which explored topics like sexuality, race, and mental health, have been critically acclaimed and popular among viewers.

"Netflix dramas commit to exploring difficult and often taboo themes, such as sexual violence and mental illness, by offering richer, more detailed explorations of such issues than traditional television dramas" (Wheatley, 2017, p.13).

These shows laid emphasis upon important issues that have been left ignored by the mainstream media and has provided a more nuanced understanding of complex issues. Lobato & Lotz (2016) claim that "on these [OTT] platforms, minorities and marginalized identities are increasingly finding themselves able to make content that they cannot find a home for within the traditional television industry" (p.14).

In addition to this, OTT offers the producers greater artistic freedom and autonomy. By not being beholden to major media companies or advertisers, these content creators have more control over their message and can push the limits in terms of what they address in their shows. Though there have been talks about regulations citing the nature of content and "the policy implications of ‘disruptive technology’ are a recurring issue in debates over OTT television services like Netflix" (Segev, 2016, p.1) but it's contribution in mainstreaming the ignored type of content cannot be undermined. As a result, viewers can enjoy a more diverse range of programming and engage with complex issues in a more critical and thoughtful way. It can be safely assumed that Netflix and similar applications have created space for content that pushes boundaries, allowing more in-depth exploration of taboo topics.

OTT and Production Cost: Albeit Contrary Yet Significant Notions

There are contrasting views on how the Netflix and similar production and distribution platforms are influencing the filmmaking art and craft through impacting the cost related factors. One school of thought is that the entry of platforms like Netflix and others similar ones does not increase the production cost. In fact it contributes towards lowering it. The Netflix and other similar platforms have a very streamlined production structures which makes it possible to produce films at a very low cost but still providing high quality audio visual content. On the contrary, one opinion is that Netflix focusses heavily on the original content and thus it has led to an increase in the amount of money that the actors and the specialist demand. This has, in a way, contributed to the rising production costs across the industry. Another view that supports the postulate that it has brought down the cost is that the shift towards digital distribution and streaming has lowered the cost of content production and distribution. It has thus contributed by lowering the overall cost involved in the production of audio visual content. Another popular notion that takes into account the demand and supply concept of the economic postulates that the increase in competition among the OTT players results in demand for quality content amongst all the noise in the form of unwatchable content. Therefore it becomes pertinent to create high quality content and creating high quality content means subsequent increase in the production cost. It is evident that there is no fixed theory that clearly lays down how the cost of production of films is impacted by the rise of OTT platforms. There is also no clear indication

about the fact that people only like to watch high quality production and if they are ready to pay the cost for accessing the quality content. But the impact it has had in terms of bringing even low cost productions to the fore is undeniable.

CONCLUSION

Over-the-top (OTT) platforms have transformed the media landscape by providing a more democratic platform for creators to showcase their creativity. For filmmakers and artists, these platforms provide a means of distributing their art and craft to a wider audience, while also allowing them to have greater control over the content they produce. This is a scenario that never existed in the times of big production houses who enjoyed a monopoly and creative or (anti-creativity) hegemony. They also controlled the related aspect of film production beyond just the content production and distribution. In fact making of the 'Heros' out of nothing by these production houses and ultra-marketing led to inflated prices and popularity of the actors. This has been completely eliminated and we have new, lesser fancy but better actors as 'Heros'. This has led to a much-needed mainstreaming of previously underrepresented voices in the industry.

Furthermore, OTT platforms have also opened up new avenues for content creation and distribution that were previously unavailable. Thanks to these platforms, filmmakers and artists from around the world can now gain visibility and recognition for their work, regardless of their location or budget. This means, there is production of diverse stories and content and this means more diverse range of opinions being shared and represented.

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EMOJI AND COMMUNICATION: A STUDY OF EMOJI USING HABITS OF YOUNG GIRLS

Ambika Sankar Mishra, **Iram Rizvi and Nity**

ABSTRACT

This paper is an attempt to understand the emoji using habits of young girls while using social media. It has become the need of the hour that, communication should be short, crispy and effective and this has resulted in an increase in symbolic communication. However, in a conservative society like the Indian society, when we are talking about the communication of women or girl, that time, we must understand it that culturally, there are lots of restrictions on what an woman will say or how the young girls will communicate? Thus amidst all the restrictions towards young girls, there is a need to understand to what extent the change in technology has brought changes in their communication or emoji using habits. As pictography and imagery are effective means of communication, that is why this new and changed communication system along with pictures and similar tools. It has adopted symbolic presentation of messages through different symbols. Such symbolic communication has given birth to a new pattern of communication and emojis as a form of communication have evolved as an effective means of communication over a period. Thus while these youth or young girls are communicating through emojis it is necessary to understand how they are perceiving the emojis and how is their using habit relating to it and which factors are affecting their using habits. This study is an attempt to understand the emoji using habits of young girls through social media through a survey.

Keywords: Emoji, Social Media, Meaning, Habit, Behaviour

INTRODUCTION

With the growth in technology, and in the era of social media, people have gone media maniac. which has resulted in the growth of using emojis for the purpose of communication. The modern youth, due to their consistent association with social media platforms like Facebook, WhatsApp, and Twitter etc everyday are consuming a large amount of emojis during their communication in the social media platform. Having mobile phones at hand they have gone addicted to such type of communication and to express their feelings and emotions they are using emojis more and more. Such communication is always culture dependent and meaning of emoji's also vary from culture to culture. Thus, emoji's which have emerged as a new form of language are affecting human communication through social media. But to speak about language, it can be said that, from the very beginning language has remained as a complex system of communication and many times this system also has troubled mankind a lot. It has its own advantages and disadvantages as a tool of communication. if we look into the history of origin of language and different stories associated with it then we will understand the importance of language to make a communication successful or to make it a failure. The essence of the tower of babel story (Hope, 2019) from Genesis 11:1-9 talks about how language as a means of communication is quite complex and how it can create confusion and misperception among the users. Thus the story clearly spells that language as a tool of human experience is quite complex and creates confusion but the same language when gets used in the process of communication proves itself very useful for the process of communication and it makes the process more meaningful. That is why it is very much useful in the process of communication and how it makes the process of communication meaningful that needs to be understood.

LANGUAGE AND COMMUNICATION

To speak, communication as a process of human experience helps in transmission of knowledge, Idea, belief, thought and information. Information is money power and strength and communication as a process has its own requirements to become meaningful. Modern communication experts like Wilber Schramm and Osgood discussing about communication process have said that the process of meaning formulation is dependent on the mutual area of experience of both because the process of encoding and decoding of messages is completely dependent on the mutual area of experiences of encoder and decoder. The connotation and denotation process are dependent on the area of experience of the individuals. In the process of communication connotation and denotation keeps a lot of meaning because according to Saussure, for each object the signifier (Sound/Image) and signified (Concept) play a crucial role in meaning formulation (Lesley, 2019). When we communicate, meaning formulation or signification aspect of our communication, remains dependent on signifier and signified and such meaning formulation is also culture dependent because in the process of signification the relationship between signifier and signified is many times culture dependent. To speak the same thing in a clearer way, we can say it here that meaning formulation and use of language for a specific purpose to convey a specific meaning is dependent upon various aspects and varies from person to person. Thus developing over a long period of time, language plays a crucial role in the process of communication due to its specific contributions in the field of meaning formulation. Though we mostly communicate through words but each word is important. Language as a complex system of arrangement of signs and symbols helps to promote communication among each other in a society. An understanding of the history of development of languages provides a better explanation and helps to understand how over a period of time, the consistent evolution of language has made it a complex system and how such evolution has associated it with different cultures to bring difference in the process of meaning formulation.

2 HISTORIES OF LANGUAGE

Language is the medium through which human communication is possible. A language constitutes a set of sounds and symbols which makes the receiver understand the context of a message more efficiently. According to Fernandez (2018), the number of different words that can be uttered is a fundamental criterion that describes a language epoch. The author (Fernandez, 2018) also says that the number of possible words in a given language is strongly associated with the amount of information that can be conveyed to the audience.

Mufwene (2012) states that the book of Genesis in the Judeo-Christian Bible is one of the most frequently cited examples. Mufwene further says that according to the book, God allegedly gave him the authority to name every being in the Garden of Eden after creating Adam. God and Adam allegedly conversed in some language, the original language, claimed by some scholars to be Hebrew, the Bible's original language. Fernandez (2018) mentioned that according to Bakker et al. (2002), subordinate sentences were invented by Herodotus around 2,500 years ago, who wrote endless sentences and frequently forgot to use them to complete them (technically called anacoluthon).

In a work titled 'The History of Linguistics', Mufwene (2012) mentioned a story often reported in linguistics. The story states that according to Herodotus, Pharaoh Psammetichus I [also known as Psamtik, of the 26th dynasty, seventh century BC] wanted to establish the world's original language and determine the oldest nation. To that end, he assigned two children to a shepherd, instructing him not to let them hear a single word and directing him to report the children's first utterance. After two years, the shepherd reported that when he entered their chamber, the children approached him, extended their hands, and called bekos. After learning that this was the Phrygian word for 'wheat bread,' the Egyptians admitted that the Phrygian nation was older than theirs.

Elman (2000) concentrated on the relationship between genetic evidence and language. The author (Elman, 2000) states that genetic evidence indicates that we are only about five million years separated from the ancestor we share with chimpanzees. He adds that since the 1950s, scientists have known that the information that distinguishes an individual genetically from all other individuals (except possibly identical twins) is carried by DNA (deoxyribonucleic acid) in chromosomes found in every cell of the body. The author also states that since the late 1970s, molecular genetics has provided entirely new methods for determining the relationship between humans to one and other primates.

2.2 CONSONANTS AND SYLLABLES

Consonants and syllables play a significant role in the phonetics of a language. Berent (2017) says that many species rely on vocal patterns for communication, and their structure is frequently constrained, as in human phonology. According to Fuchs and Birkholz (2019), consonants constitute a significant class of sounds that, along with vowels, comprise a language's phoneme inventory. Consonants are found in all languages around the world, with slight variations. Goldsmith (2009) mentioned that Ernst Pulgram's classic monograph on the syllable, published in 1968, began with the wise words, "conscience, courtesy, and caution require that anyone wishing to concern himself with the syllable read all, or at least most, of the enormous literature on it. "Easterday (2019) states that a syllable is commonly thought of as a unit that speakers use to organise sound sequences in their languages. The division of the speech stream into syllables reflects the higher levels of organisation used in the cognitive processes that plan and perceive speech.

2.3 EMOTICONS AND EMOJIS

In contemporary society, different social media platforms play a crucial role in maintaining relationships. The need of getting connected with each other in a very short span of time has increased. Social media users show their feelings through different forms like by liking or sharing the post, tagging friends, commenting on the post, and sending emoticons and emojis instead of typing the same feelings through words but all these things have not evolved in one day. However, they have evolved over a period of time to make the communication more meaningful and effective. Emoticons and emojis have played a vital role in communicating non-verbal cues through online mediums. Bai et al. (2019) pointed out that emojis are commonly used in internet communication as nonverbal cues in Computer-Mediated Communication (CMC). Togans et al. (2021) state that emoticons are text-based representations of faces in text-based CMC. The author further says that these emoticons are made up of a specific combination of keyboard characters that resemble various emotional facial expressions (though there are non-face emoticons, such as <3). For instance, ':)' denotes a happy, smiling face, whereas ':(' denotes a sad, frowning face.

Similarly, kaomoji is a distinct type of emoticon that is especially popular in Japan. Kaomoji are more complex in design than traditional emoticons and often include a more comprehensive range of characters (e.g., (◕‿◕) represents a joyful face). Emojis, like emoticons, have similar functionality but are more refined in their design (Riordan, 2017). Stating the differences between emoticons and emojis, Togans et al. (2021) say that emojis, unlike emoticons, are pictographs created by the Unicode Consortium. As a result, an emoji's appearance is not limited to the characters on a keyboard. However, it can depict various facial expressions with varying degrees of detail (e.g., sweat rolling down one's face, reddened cheeks). The authors' further state that emojis are not limited to faces; some emojis resemble various objects (e.g., national flags, vehicles, food), animals, hand gestures (e.g., thumbs up), and behaviours (e.g., dancing, running) (Togas et al., 2021).

2.4 USAGE OF EMOTICONS AND EMOJIS IN DIFFERENT CULTURES

During the use of emojis many times one single emoji can have multiple meanings depending upon the culture in which it is getting used and similarly for one single meaning, multiple types of emojis also can be used. One single emoji can be used in various cases and depending upon the cultural background the meaning varies. For example, the fire emoji may indicate physical attractiveness, heat, actual fire, etc. Similarly, multiple emoji may be used to mean the same thing. E.g., the heart emoji, heart eyes, or two-hearts emoji may be used interchangeably in circumstances where they are used to indicate love (Gerbner & Nawaz, 2022). Thus different interpretations of emojis may result from differences in individual characteristics, platforms, cultural backgrounds, and contexts (Bai et al., 2019). Some emoji applications are closely related to the cultural background (Park et al., 2014). Jibril and Abdullah (2013) suggest that emojis have a semantic function as well as a visual rhetoric function, and they can convey meaning as an independent expressing modality.

On the role of emojis in depicting different cultures, Aaker et al. (2011) states that apart from representing emotions, the emoji system explicitly contains cultural symbols that may represent a culture's distinct values and beliefs. Kavanagh (2016) investigated the use of emoticons in online blogs by examining blog comments from Japanese and Americans using Brown and Levinson's (1987) politeness theory as a framework and discovered significantly more emoticons in the Japanese corpus than in the American corpus. Kavanagh (2016) found that both the Japanese and the Americans used more emoticons for positive politeness strategies than negative ones. However, Japanese bloggers used emoticons more than Americans to emphasise positive politeness strategies (but not negative ones), despite Japan's reputation as a negative politeness culture. Cheng (2017) says that Chinese users are more likely than Spanish users to express negative emotions through nonverbal cues such as emojis and emoticons.

Guntuku et al. (2019) conducted a study to understand the cultural differences in emoji usage across the east and the west. The authors (Guntuku et al., 2019) concluded that there are relative differences in the usage of emojis and that western users tend to use emojis more than eastern users. Furthermore, distributional semantics discovered that emoji expressions were clustered similarly across cultures (Guntuku et al., 2019).

2.5 EMOJIS AND SOCIAL MEDIA

Social media as a form of communication is of recent origin. However, this form of communication, which is quite faster, provides less time to people to communicate between each other. Thus, the present generation youth everyday consume a large amount of information everyday through the social media. The social media has gone so deep rooted in our life that the era in which we are living can be called as the era of social media. Social media as a platform of communication is omnipresent in present times. It is affecting our family life, social life, political life, educational life, legal life, economic life, mental health and all other aspects of our lives. Similarly, this medium of communication is a democratic, participatory and quicker form of communication. It has already been accepted as a smart form of communication and along with the integration of artificial intelligence technology in the android keyboard while typing for various purposes the mobile phone keyboard itself has started suggesting the appropriate emoji to express proper emotions to make communication meaningful and attractive according to need. Depending upon this, these days, people are celebrating world emoji day on 17th July every year because if you type the word “calendar” on WhatsApp in your mobile phone key board, the suggested emoji will be a calendar with the date of 17th July though after accepting the suggestion the calendar which will appear on your chat, will have the date 24th February. This happens only in case of WhatsApp because it was incorporated on 24th February in 2009. However, the factors which play their role in encoding and decoding also play their role to affect the meaning formulation and use of emojis in case of social media. Thus, multiple

factors have played their role to decide how the young girls should use emojis in their communication to express emotions and to communicate effectively. In present days, emoji-based communication is a dominant form of communication and has gained popularity and importance. These emojis are not only the elements of communication, rather they have their origin in the cultural system also which will affect the perception relating to their use. Thus the study will help to understand the habits of young girls relating to the use of emojis in a social media communication.

3. OBJECTIVES

A. The study is an attempt to understand the emoji using habits of young girls through social media platform.

B. The reason of their using emoji's in different situations

4. METHODOLOGY

For the purpose of the study, survey method using questionnaires was taken into consideration and a total number of 70 Master degree girls from department of journalism and mass communication and English were considered for the purpose of the study using convenient sampling technique. These students were considered because being the students of language and communication, the students of these two departments have a better understanding about emoji and its different aspects. Data used for the purpose of the study was both primary and secondary data. Variables of the study are rate of using social media and awareness about different type of emojis to replace words. The findings of the study are as below.

5. FINDINGS

The question wise results of the study conducted has come out like below

Why do you use social media for chatting?

Sl. No	It is quick	It is convenient	You can communicate according to your wish	Improves relations
1	10	18	40	2

Responding to the question, why they use social media for chatting, 40 respondents replied that , by using social media for chatting, they can communicate according to their wish but 18 respondents told it is convenient and 10 respondents told it is quick and only 2 respondents told that they use social media because it improves relations.

You use chatting mostly with

Sl. No	Friends	Relatives	Family members	Anybody
2	34	1	4	31

Responding about their chatting habits 34 respondents told that they prefer using social media for chatting with friends, 31 told they prefer to chat with anybody, 4 people told they prefer to chat with family members and only one respondent told that social media is a better tool to communicate with relatives.

While chatting, to express yourself better which one you prefer the most

Sl. No	Emoji	Image	Sticker	Text
3	35	1	7	27

Responding to their preference while communicating through social media, 35 respondents said that they prefer using emojis For, communicating with others and 27 respondents replied that they prefer to communicate with text while communicating with others. 7 espondents

said stickers are a better way to communicate through social media and only one respondent preferred images.

Why do you use emojis during a conversation?

Sl. No	Quicker than typing	Expressive	They substitute words, thus no fear of spelling errors	Comfortable to use and highly expressive
4	15	21	1	33

Responding to the question why they use emojis during communication through social media, 33 respondents answered that emojis are comfortable to use and highly expressive whereas 21 were of the opinion that they are expressive. 15 were of the opinion that they are quicker than typing that is why they use them. One respondent was of the opinion that emojis substitute words thus they minimise the fear of spelling errors.

In which situation do you prefer emojis most

Sl. No	If we do not find Proper words	To express an emotion	To communicate faster	To prove that Smartness
5	11	7	51	1

Responding to the question, in which situation they prefer emojis the most, 51 respondents answered that emojis are a better way to communicate faster. 11 Were of the opinion that if they don't find any word, they prefer emojis. 7 were of the opinion that, emojis are a better way to express emotion and one respondent was with the opinion that emojis are a means to prove that the person using emojis is ahead of others.

Do you think emojis create confusion?

Sl. No	Yes	No	Can't say
6	16	42	12

Responding to the question Do you think images create confusion 42 respondents denied emojis as a means of confusion 16 told it creates confusion 12 Where are not sure about whether it creates confusion or not.

Emoji are popularly used in

Sl. No	Formal Communication	Informal Communication	Formal and informal mixed
7	0	38	32

Responding to the question that wheather emojis are popularly used in formal or informal communication, 38 respondents replied that emojis are popularly used in in informal communication whereas 32 respondents replied that it is used both in in formal and informal communication in equal manner.

Is it ok to use emojis in long chatting communications?

Sl. No	Yes	No	Cannot say	Total
8	27	28	15	70

Answering to the next question 27 people agreed to the idea that emojis can be used in long chatting communications and 28 disagreed to this idea 15 were not of any opinion.

Q10 Do you think the use of emoji are increasing due to the rise in social media

Sl. No	Yes	No	Cannot say	Total
9	62	1	7	70

whether the rise of uses of emoji is a resultant of of the increasing use of social media or not answering to this 62 respondents agreed that the increase in the rise of emojis is a resultant of of the increase in the use of of social media One respondent is agreed to the idea and 7 we're not sure about it.

Which social media platform is most suitable for using emoji?

Sl. No	WhatsApp	Facebook	Telegram	All Platforms
10	65	2	1	2

Answering to the question which social media platform is best for using emoji 65 respondents replied that social media platform WhatsApp is best for using emojis to supported Facebook one supported telegram and to told all social media platform can be used for using emojis.

6. DATA ANALYSIS

For the purpose of data analysis the questions along with their answers were divided under certain thematic categories to provide a better understanding of the emoji using habits of the respondents. The thematic criteria were

Social Media Chatting Needs

According to the available responses if attempts will be made to understand the communicative needs of respondents keeping social media chatting in view, then it will be understood that social media is used for chatting prominently by respondents because they feel through this platform they can communicate according to their wish. Few other respondents have answered it to be a convenient platform for chatting and some have appreciated its quickness in communication and a very less amount respondents have preferred social media chatting, considering its effectiveness in improving relations.

Chatting Habits and Content Type

Similarly, an understanding of their chatting habits and content use type we will tell it that, majority of the respondents (34) prefer chatting with their friends however nearly equal number (31) of respondents are of the opinion that they can chat with anybody. While a very small number of people have accepted chatting with family members to be ok, only one respondent has agreed to it that chatting with relatives is also a good idea. In further attempt to understand their chatting habits it was found that majority of them (35) prefer emojis as a better medium of communication where as another section of people (27) preferred texts as their means of communication where as stickers and images were in the next order of preference.

Communicative Needs of Emojis

Talking about communicative needs of emojis most of them were of them were of the opinion that emoji's are comfortable to use and are highly expressive. A little lesser number of people were of the opinion that emoji's are expressive and little lesser to it were of the opinion that they use emojis as they are quiker than typing and similarly the least number of opinion about use of emojis in catting was , emojis are useful because they substitute words and remove spelling error. In further queries answering abut the preference of using emojis the largest number of people answered that emojis are useful as they help communicating faster a few number of people were of the opinion that they help substituting words in difficult situations and similarly though little lesser, some people agreed for about the expressive nature of emojis useful for communication and the least number of opinion was about emoji's being helpful to prove smartness thus useful.

Communicative Nature of Emojis

Similarly, talking about communicative nature of emojis , more people were of the opinion that emojis as a means of communication are very clear and not confusing where as none of the people prefer emojis only for formal communication rather more people preferred it as a means

of informal communication and a little lesr to that agreed to it that emojis can be used , if the communication is of a mixed type including formal and informal then emojis can be used. Similarly more people were of the opinion that emojis are not suitable for long chatting communications.

Communication Platform and Emojis

Responding to questions about the platform and its impacts relating to emoji using habits , a large and noticeable number of people were of the opinion that emoji use in communication is increasing due to rising use of social media. Similarly a noticeable amount of respondents preferred WhatsApp to be the best platform for emoji uses.

7. CONCLUSION

Thus, the study on emoji using habits of young girls reflects it that the use of emojis among young girls is increasing day by day due to the rise in social media use and social media platforms like WhatsApp are the key role player behind such use. The comfortability, expressive nature along with the facility of quick use are reasons behind such rise in use of emojis.Similarly the young girls don't consider emojis as an appropriate tool for long conversations or only formal communications and they feel that communication through emojis is clear not confusing.

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FINANCIAL ASSISTANCE WAYS TO UPLIFT HER STARTUP

Shweta Arora and Ritika Bora

ABSTRACT

Women entrepreneurs have the potential to conquer nations worldwide towards the fulfilment of economic and social development objectives by generating jobs and reducing poverty. But financial literacy is a crucial intangible asset that is necessary for development, success, and a long-term competitive edge. Nonetheless, one of the major obstacles preventing female entrepreneurs' business growth is a lack of financial literacy. Thus, this chapter will make the readers to understand the importance of financial literacy for the success of female entrepreneurs. The various schemes currently the Indian government is running for the upliftment of women in our country. According to many research studies, financial literacy has a significant impact on women entrepreneurs' performance. As a result, it is advised that women entrepreneurs receive group-based, targeted training through appropriate programs to improve their financial literacy.

INTRODUCTION

"There is no limit to what we, as women, can accomplish."

— Michelle Obama.

Women have played a variety of roles; they have been professionals, housewives, mothers, sisters, and business owners. They began working to support their family's needs and trying to become the breadwinner. In India, entrepreneurship is one of the oldest ways to make money. In India, the proportion of female entrepreneurs is rising steadily. India's social and economic demographics have been greatly impacted by women entrepreneurs and their growing presence is quite evident through in various mass media platforms. Women's increased participation in the workforce has created jobs and helped millions of families to escape poverty. Because of their super productivity and well-known leadership abilities, women predominate in modern industries like electronic manufacturing, where they make up more than 50% of the workforce. Their work ethics and remarkable commercial acumen have also highlighted the significance of women in the modern workforce.

Women and their Contribution in Indian Economy

In India, 20.37% of MSME owners are women, making up 23.3% of the labour force. They are regarded as the foundation of the economy. By expanding women's involvement in the labour force, India has the potential to boost the global GDP by 700 billion US dollars, claims McKinsey Global. Women make up a greater proportion of the workforce in manufacturing and agriculture than males do. These industries are frequently credited with raising household income and assisting families. Also, women's literacy rates increased by 8.8% in FY21, highlighting the nation's promising future.

Women-owned enterprises provide the economy a lot of scope. In India, there are 432 million women of working age, and 13.5 to 15.7 million of those firms are held by women. These businesses directly employ 22 to 27 million people. In addition, women are in charge of a lot of businesses. Indian women are self-reliant and highly motivated to launch their own businesses. According to Boston Consulting Group, over the course of five years, start-ups that were formed or cofounded by women bring in 10% greater overall revenue. These start-ups offer a more welcoming workplace environment and hire three times as many women as men. In addition, it is predicted that women-owned firms will expand by 90% during the following five years.

Categorization of women Entrepreneurs in India

Category 1	Established in big cities Having higher technical qualifications Sound financial positions
Category 2	Established in cities and towns With basic or sufficient education Undertaking women services- kinder garden, crèches, beauty parlors, health clinics etc.
Category 3	Illiterate Women – generally in rural areas Financially week Involved in family business like agriculture, dairy, handlooms power looms horticulture etc.

Her Startup

Around 50,000 of the start-up businesses in India are run by women, making nearly 45% of the total. In 2021, the nation saw the greatest number of female-led start-ups become unicorns. The following is a list of significant female-run startups.

Brand	Founder / Co-founder	Date of Establishment	Total Funds Raised	Market Valuation
BYJU'S The Learning App	Divya Gokulnath	2011	US$ 8.5 billion	US$ 18 billion
NYKAA	Falguni Nayar	2012	US$ 148.5 million	US$ 12.5 billion
MobiKwik	Upsana Taku	2009	US$ 380 million	US$ 750 million
zolo	Isha Choudhry	2015	US$ 90 million	US$ 100 million
thrillophilia	Chitra Gurnani Daga	2009	US$ 1.24 million	US$ 4.48 million

Problem Area – Slow growth of Women Entrepreneurs

1. The fact that women entrepreneurs are women is their biggest barrier. Their foundation for achieving corporate success is a particular type of patriarchal culture. Financing the businesses owned by women is seen by the male members as a major risk.
2. Male chauvinism is still pervasive throughout much of the nation. Women are perceived as being weak in every way. Women's admission into business is hampered by the fact that they are not treated equally to men in a culture where men predominate.
3. Women business owners compete fiercely with men business owners who readily engage in promotion and development activities and easily advertise their goods to both the organised sector and their male counterparts. Women business owners ultimately fail as a result of such rivalry.
4. Women's lack of self-confidence, willpower, a positive mindset, and optimistic outlook causes them to be afraid of making mistakes while doing their work. Family members and the general public are hesitant to support their business progress.
5. Women enjoy protection in India. They have even less education, are neither financially secure nor independent, which limits their capacity to deal with the dangers and uncertainties that come with running a company unit.

6. One of the causes of their failure is the antiquated social mindset that prevents women from entering the field of business. They are constrained from prospering and succeeding in the sphere of entrepreneurship by social pressure.
7. Women's mobility in India is far more constrained than that of men for a variety of reasons. They lose all hope of surviving in business due to the laborious process needed in beginning a business and the officials' demeaning attitude towards women.
8. Both in industrialized and developing countries, women are prevented from becoming successful business owners by their duties to their families. Financial institutions discourage women from starting businesses because they think they could one day quit and go back to being stay-at-home moms.
9. Family bonds and interpersonal relationships are more valued by Indian women. Married women must carefully strike a balance between work and family. The support that family members give to women in management and the business process is another factor in a company's success.

What will Drive Women to Start Businesses or Join Workforce – the Motivating Resolution

- **Recognition:** Women entrepreneurs are motivated by recognition in the forms of esteem, regard, admiration, and fame. More than 45% of Indian women in rural areas, according to a poll by Bain & Company, started a business to get attention.
- **Findings:** As compared to start-ups run by males, women deliver a 35% higher return on investment. Women are more likely to launch their own firms due to their capacity to earn higher profits.
- **Satisfying Unfulfilled Needs:** One of the most important components is women's innate need to support their families. Women drive 85% of purchase decisions because they want to give their families a better lifestyle.
- **Education:** With up to 40% of women graduating in the field of science, technology, engineering, and mathematics (STEM), India is among the top countries in the world for producing female STEM graduates. In the realms of science and technology, Indian women are revolutionizing the industry.

Government Motivations to Encourage Women Participation

The funding allocated by the Indian government for women's and children's development would increase by 14% in 2021. In FY21, it has laid aside more than Rs. 30,000 crores ($3.97 billion). Other development initiatives are also included in this budgeted allotment as listed below:

- **Bharatiya Mahila Bank Business Loan**

In spite of their limited financial means, women can now receive affordable loans through the establishment of this sort of business loan in 2017. For women business owners, the program offers loans totaling more than Rs. 20 crores ($2.46 million). For loans under Rs. 1 crore ($0.13 million), a loan without collateral may also be obtained.

- **Dena Shakti Scheme**

Loans under one crore rupees (US dollars) can also be obtained. This program was created for female business owners who wanted to develop their ventures in industries like manufacturing, retail, and agriculture. Loans are offered under the plan at a 0.25 percent lower interest rate than the base rate. The most that can be borrowed is Rs. 20 lakhs ($26,468).

- **Udyogini Scheme**

Loans under one crore rupees (US dollars) can also be obtained. This is for women having a yearly salary of Rs. 1.5 lakh ($1,985) are eligible for this program. It offers up to Rs. 3 lakh ($3,890) loans to women who want to establish a business but lack the necessary funds.

- **Women Entrepreneurship Platform**

This is NITI Aayog's flagship initiative to encourage female entrepreneurship. For the purpose of inspiring women to launch their own businesses, the platform conducts a variety of workshops and educational activities.

- **Pradhan Mantri Mudra Yojna**

The program was designed to provide institutional financing of up to Rs. 10 lakhs (US$ 13,240) to anyone wishing to start a micro or small business, but women mostly used it.

Source: indiaeducationdiary.in

In India, the number of women-owned enterprises is expected to increase by 90% over the next five years, according to a recent research study.

A survey was carried out by the charitable EdelGive Foundation in 13 states and union territories (UTs).

The mapping of these areas revealed around 3,300 women business owners, who were grouped into three groups: manufacturing, retail, and service provision. For the study, 1,235 female business owners were recruited and interviewed.

Interviews were conducted with these business owners' families, coworkers, and clients. Also, in-depth interviews with 20 NGOs that support female entrepreneurs were done.

In semi-urban and rural India, almost 80% of women perceive a considerable improvement in their socioeconomic and cultural standing after starting a business.

Also, it was noted that little of the state-sponsored programs and regulations that support women entrepreneurs are actually being adopted.

Due to the fact that only around 11% of the women entrepreneurs surveyed are aware of these programs, only about 1% of them have utilized the government initiative.

The comprehensive analysis looked at a range of aspects, including social, financial, personal, and familial aspects, in order to better understand the whole journey of female entrepreneurs as well as the roles played by the government, non-profit organizations, and businesses.

The study demonstrates that socio-cultural conditions for women entrepreneurs are improving, but it also reveals that there are still gaps in their access to financial information and resources, as well as difficulties in marketing, technical development, and socio-cultural issues.

The difficulties include not knowing about financial aid and schemes, not having the proper paperwork, thinking that the process of using these schemes is "complicated,".

In comparison to similar enterprises in the US and the UK, which are predicted to grow by 50% and 24%, respectively, women-owned businesses in India are predicted to grow by about 90% in five years.

The report recommends that states carry out meta-analysis to identify their specific needs and objectives and carry out corresponding programs promote goods from women entrepreneurs under a common brand with tax advantages, and provide soft-skills training like accounting.

It also suggests that ambitious business owners formalize and expand their operations through the implementation of HR management and communication, the implementation of awareness-raising and community mobilization projects for moral support, and the establishment of local mentorship program.

Jammu and Kashmir, Uttar Pradesh, Gujarat, Haryana, Rajasthan, Maharashtra, Manipur, Tripura, Daman, West Bengal, Jharkhand, Tamil Nadu, and Madhya Pradesh were among the places where the survey was carried out.

CONCLUSION

In India, simply having a bank account was seen as a significant accomplishment for women. Yet, there are already more than 15.7 million businesses owned by women, and they dominate the startup environment. The potential and tenacity of Indian women are amplified by this dramatic transition. Women are expected to dominate the workforce in India over the next few decades, helping to shape and improve the nation's future. By 2030, it is predicted that 150–170 million employments will be generated by an additional over 30 million women-owned companies. This might transform everything and make the economy's future more promising than ever. In Ahmedabad, Gujarat University's "herSTART," a startup platform for female entrepreneurs, was introduced by India's President, Ms. Droupadi Murmu. According to her, the platform for women entrepreneurs will not only support their efforts to innovate and launch new businesses, but it will also prove to be a successful platform for bringing together women entrepreneurs and other public and private firms.

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SOCIAL MEDIA AND FINE ARTS: A STUDY OF ONLINE PLATFORMS FOR LEARNING ART

Sumedha Dhasmana and Drishya Madhur

ABSTRACT

There was a time when social media was seen as a medium of interaction between people. Over time, it has evolved into something more than that. Social media platforms like Facebook, Instagram and YouTube are popular among all age groups and are now used to share photos and videos so as to gain benefits from them. In modern times, social media is not only limited to communication but it also offers a chance to form and engage in communities. One such community can be referred to as artist community.

There is a majority of population which shows interest in art in various mediums such as acrylic, pencil, oil paints, and with the introduction of digitalization, digital art is approaching at a rapid speed. Youth especially is taking lead into art for various purposes starting for self satisfaction to financial aid to treating mental health. To make it easier for people to understand and learn such art forms, several social media platforms are created with the purpose of learning and teaching art.

These platforms may or may not be paid. Artists from across the world use these platforms as a means to improve their skills in painting, sketching and more. This study will show how successful and popular these social media platforms are in educating youth about various art forms. It will also focus on a variety of reasons for peoples' indulgence in art.

Keywords: Fine Art, Social Media, Mental Health, Skills, Art Online

INTRODUCTION

Early people used art and design as a means to communicate their ideas in a variety of forms. Art is a means via which information is shared. Through art, we can express concepts, knowledge, understanding and emotions that we might not always fully grasp or be able to articulate. It can replace written words or a book. We may express ideas, thoughts, imaginations and dreams that may not be represented in any other way but through the medium of art. Without the aid of the art, we are unable to properly express ourselves. It is safe to say that art is the expression of ideas, emotions, with the creation of certain aesthetic qualities in a two-dimensional visual language.

Art serves as a personal autobiography, historical record, history lesson, and cultural tradition-keeper all at once. The capacity to comprehend historical events and experiences more fully as a result of the documentation that art provides. Art expresses the cultural beliefs, values, and identities of homo sapiens as well as the numerous diverse communities that make up our globe. The painting represents the evolution of our lives and the experiences we have had. Without the use of art, we would be unable to understand or share our individual or collective past.

VARIOUS ART MEDIUMS

Coming from Stone Age where people used to inscribe images on stones which exist till date and tells us beautiful, courageous, emotional and empowering stories of the past. Art has evolved over the time and now several types of art forms have grown in the society. Some of them are extensively used such as:

1.Charcoal Painting:
One of the first drawing media is this one. Organic material in the form of powder is bound with wax or gum to form charcoal sticks. Charcoal can be used to create both delicate and bold, expressive lines. It is advised to use some fixatives on charcoal drawings to preserve the durability of the artwork as this medium is quickly erasable.

2.**Oil Painting:**
In the 15th century, Europe began to acknowledge this old artistic method as a creative medium. Oil paints typically contain linseed oil, which causes them to dry more slowly than other types of paint. The benefit of utilizing oil painting as a medium for art is the lengthy drying period. By adding another layer of paint to the canvas, it gives painters the chance to tweak certain elements of their compositions or completely alter the picture they are painting.

3.Acrylic Painting:
Compared to oil painting, acrylic paints dry quickly, and after they've dried, they become water-resistant. To mimic gouache or watercolours, acrylic paint can be diluted with water before being applied to canvas. Artists can add layers or textures to their acrylic paintings to increase glossiness and give them depth. Or kids can add water to their paintings to create a matte finish.

4.Sketching:
Graphite Pencils- Since the French Revolution, these have been used as a form of expression in the arts. Graphite can be used for outlining, shading, and sketching. You can use graphite pencils with varied degrees of hardness to create excellent art. This is a practical art medium because it enables you to redo your work by erasing sections or the entirety of a drawing.

Coloured Pencils- Since their introduction as children's toys, coloured pencils have evolved into a sophisticated art medium. They attracted a lot of interest and respect in the field of modern art because of the many benefits they provide. Artwork created with coloured pencils is emotive, rich, and radiant. The ability to create works of art that are photographically realistic is also provided by this artistic medium.

5.Watercolor Painting:
For newcomers to the creative world, using watercolour paint as a medium might be difficult. Watercolors are a favourite medium for many painters due to its seemingly limitless colour palette. There is not much you can do to alter the outcome once you put these into practice on paper. However, watercolours give paintings a translucent look and are the best medium for depicting changes in light.

6.Three-Dimensional Art:
People have been making sculptures since the dawn of time utilizing a variety of ideas, methods, and supplies. Along with sculpture, the pinnacle of three-dimensional art, this category also includes installations, performance art, and decorative art.

Wood and stone were the most traditional art materials used to make three-dimensional artworks. These days, you may create authentic works of art from modern materials like glass, foam, and plastic. To translate their artistic vision into three dimensions, artists employ a variety of techniques.

- **Carving**

is the process of removing material, typically wood or stone, in order to achieve the desired shape.

- **Casting**

is the process of creating components of a huge sculpture by pouring a liquid artistic medium, such as iron, into properly crafted moulds.

- **Modeling**

is the process of shaping soft art supplies like clay or plaster after shaping and reshaping them. Different modeling techniques are being used by contemporary artists to produce amazing works of glass art.

- A **sculpture**

is constructed by artists by combining diverse materials and utilizing glue, wire, or welding to bind the components together.

Contemporary three-dimensional art has evolved in recent years. Glass, for instance, is now a popular art medium used in sculpture, installations, and decorative art. The ideas and methods used to make glass art define its type. Hot glass processes are used in numerous glass art forms, including cast, blown, and sculpted glass. As the name suggests, heated glass is used by artists to form it by blowing or casting it into molds.

These are just a few of thousands of pre-existing and new forming art mediums which allow people from distinguished backgrounds and beliefs to scribe their knowledge and emotions in varied ways.

ART FOR SELF SATISFACTION

People of different age groups use different art forms for different purposes. Mostly art is widely used by individuals as a hobby. Hobby can be referred to any activity which is done in leisure time to get relaxation and satisfaction. Art brings calmness, sometimes due to its requirement of precision and sometimes because it is easygoing and does not require any technicalities. Even professional artists often choose to create random brush strokes to gain sanity in their lives. People paint in their choice of medium to fulfill their passion of being artistic.

ART FOR MENTAL HEALTH

Art is now prescribed as a part of therapy and is often used as a medium of meditation. Art is considered to have mind healing properties. Psychologists around the world ask their patients to consider performing art to calm their minds and draw the emotions they are feeling on paper in any medium of their choice. This also gives the doctors a clear indication of how far the treatment has worked for their patients. It gives the patients a chance to paint their feelings and feel relaxed while doing so. Painting helps them distract their mind from stress and anxiety and focus all of the negative feelings on a canvas or paper.

ONLINE PLATFORMS

There are many online platforms for people to learn art in different media in paid and unpaid manner. One can use these platforms to learn from basic to advance level art in any media of their choice. This is a great way to develop creative skills. These influential online platforms would encourage people to enroll in popular art related courses available and are effective in nature. These social platforms include Facebook, YouTube, Instagram, Pinterest, Skill share and much more. Social media has enabled the artists to not be limited to paper but now in the modernized era they can bring their creative art pieces into the light and in front of millions of people browsing online daily. Now the screen is the canvas, especially with growing technology and the introduction of digital art many designers have been able to turn into the spotlight as a result of their hard-work and the power of social media.

BENEFITS OF ART ON SOCIAL MEDIA

These social media platforms not only give artists a space to build their work but also provides learning and teaching opportunities. Online platforms are famous for providing tutorials and guides on almost everything and that covers art as well. Social media platforms such as Facebook, YouTube, Instagram, Pinterest, Skill share allow artists to teach and learn together.

Social media doesn't stop at just one benefit. It also allows artists to earn from their content. Content posted on online platforms like Instagram and Facebook can be sold and bought by potential customers. YouTube works in a different way in paying the content creators based upon the number of views and subscribers. This differs for everyone but is a highly beneficial feature for people looking to earn from social media.

REVIEW OF LITERATURE

Rusyada, Sutiyono (2021) in Art and Social Media: Art Transformation in the Viral Era explained that every aspect of life, including the arts, is constantly in a state of transformation or change. Every generation is subject to transformation, which is a reflection of the advancement of knowledge and the mind. Every industry has seen a significant increase in the use of social media. Social media, as a new form of media, creates a forum for online user interaction. Technology-enhanced art enables ongoing artistic evolution. With the aid of technology, art is no more a thing reserved for a select group of people who have achieved success as artists. Currently, social media is available and provides a new opportunity for artists to rapidly share their works with the public by merely uploading images of them to the site.

Kang, Chen and Kang (2019) in Art in the Age of Social Media: Interaction Behavior Analysis of Instagram Art Accounts identified that over 71 percent of art buyers bought some type of art online last year, a 72% growth in the online art industry from the previous five years. The age of social media embraces art. Of all the social media sites, Instagram has the highest interaction rates, with 48% of art buyers utilizing it. Instagram is a fantastic tool for discovering, promoting, and critiquing art. The new global digital young classes that appear in the early 2010s are characterized by "Instagramism" as its style.

Sharma and Nayyar (2019) in The impact of social media usage in art and culture- a qualitative study examined The use of social media to connect with friends, family, and communities as well as to increase democratic engagement. Through social networking sites, individuals are more linked to one another, but at the same time, social media is also changing how people interact with one another and fostering the emergence of a new subculture. One of the world's most complicated societies is Indian society. The impact of any new invention is something that merits research and analysis because it is comprised of so many different and numerous religions, castes, languages, and artistic expressions. The use of social media has completely changed how individuals interact and communicate online.

OBJECTIVE AND METHODOLOGIES

OBJECTIVES OF THE RESEARCH

1.To study the factors contributing to the motivations to learn art amongst youth.

2.To identify popular online platforms used for learning art amongst youth.

3.To study the degree of engagement of the youth with these platforms.

METHODOLOGY

The researcher has used survey method to understand the various online platforms for learning art. An online survey was used and a questionnaire was prepared for the same. It was sent to individuals who were asked to choose one of the many options provided which relates to their interest in art and gives a clear view of why that certain individual is interested or is not interested in art.

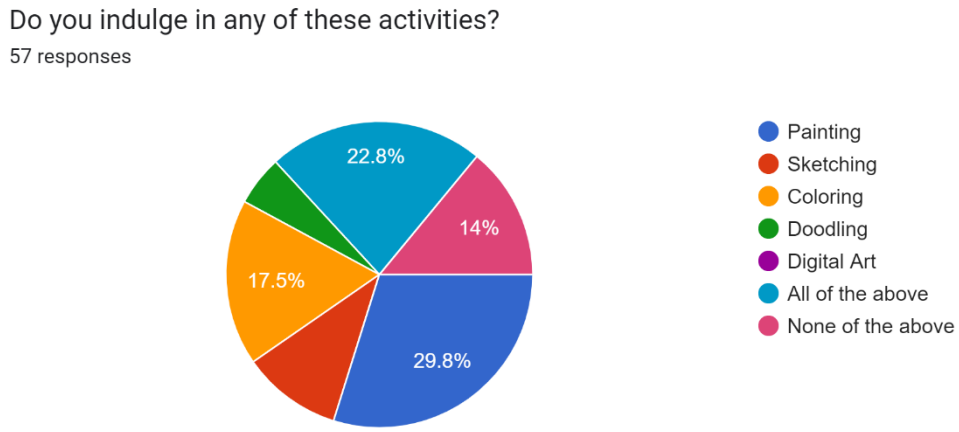
QUESTIONNAIRE DESIGN

The questionnaire was formed while keeping in mind to understand which of the online platforms in the present time is widely used and for what purpose related to art. The questionnaire contains questions about the various art mediums, online learning platforms, purpose of creating art and/or any benefits an individual receive by creating art etc.

SAMPLE SIZE

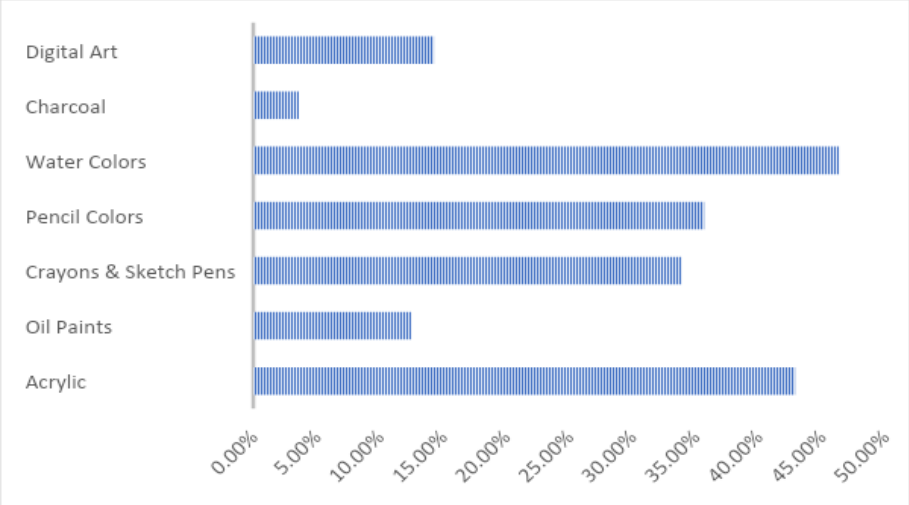
While planning the survey, we estimated the sample size of 200 respondents. We could manage to collect response from 180 respondents where the majority of people belonged from the artist community.

TABULATION AND ANALYSIS



Respondents Indulging in Various Art Activities

When respondents were asked about the kind of art activities they were indulged in, it was identified that they were engaged in different forms of art. 29.8% highlighted that they do painting. 17.5% respondent said that they basically engage in coloring. Moreover, 10.5% respondents were found to be engaged in sketching. A very small proportion 5.3% of the participants do doodling and as much as 22.8% respondents engaged in all these forms of art activities



Type of Art Colour

Respondents explained that they use a variety of art colours in practice. Almost every respondent uses more than one type of colour. This includes 42.9% respondent using Acrylic and 12.5% respondents using oil paints. Crayons and Sketch Pens are use by 33% respondents and Pencil Colours are used by 35.7% respondents. Water colours are used by 46.4% respondents and Digital Art is used by 14.3% respondents. It is however identified that Charcoal is used by a very less proportion i.e. 3.6% only.

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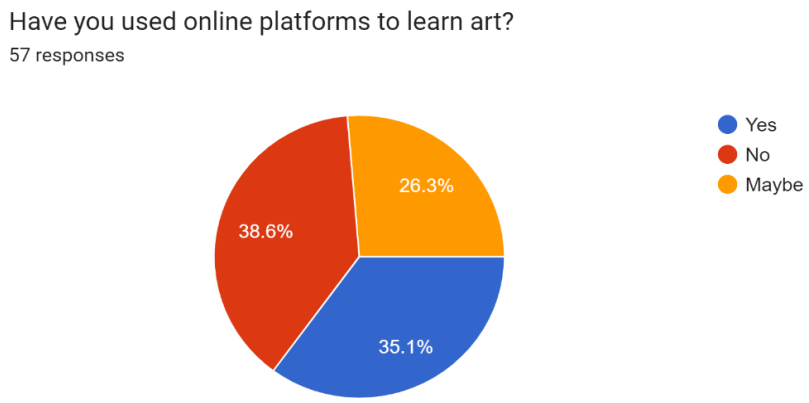
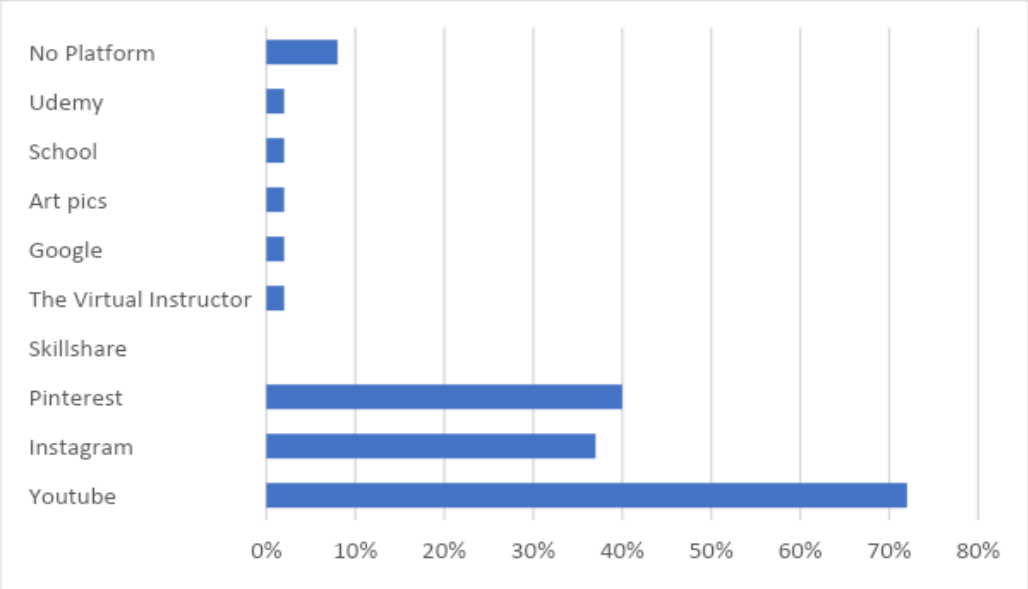


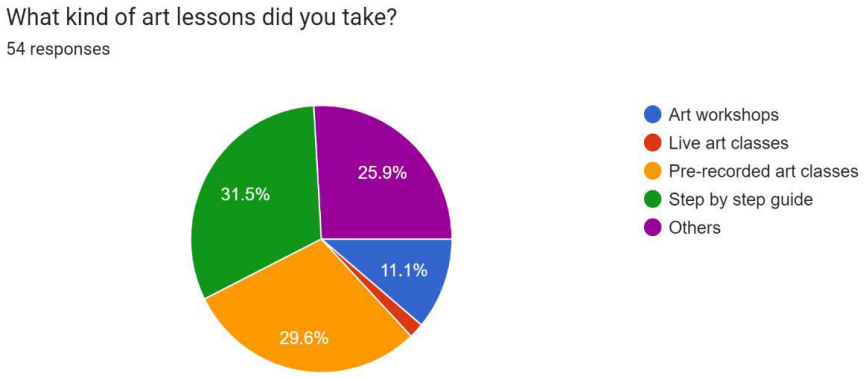
Using Online Platforms in Learning Art

When the survey participants were asked whether they learnt art on online platforms then 35% users identified that they learnt art online only. 26.3% participants identified that online platforms might have helped in learning newer forms of art. However, a considerable number 38.6% said that they didn't learn art from online platforms.



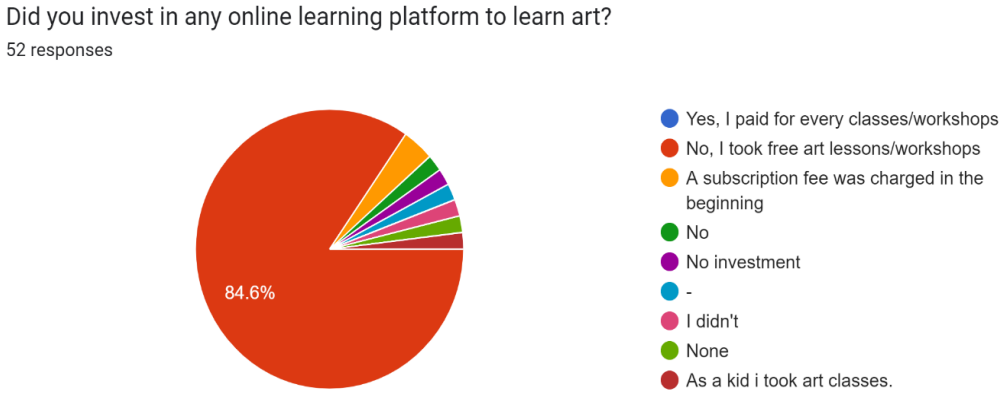
Learning Art through Various Online Platforms

Among those who agreed that they have learnt art through online platform, 72% of the users said that they learnt art online through YouTube. 37% users highlighted learning art from Instagram and 40% from Pinterest.



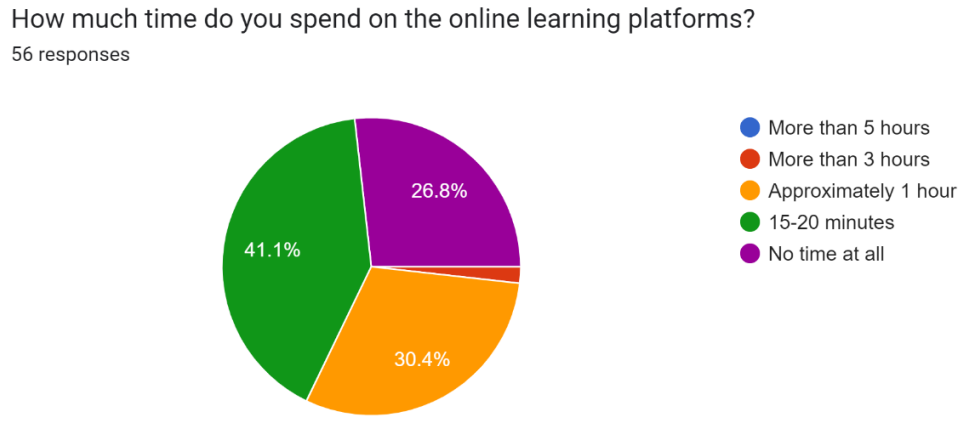
Type of Art Lessons

When respondents were asked about the type of lessons taken by them, then they presented a variety of methods including 31.5% in step-by-step guide and 29.6% going for pre-recorded art classes.



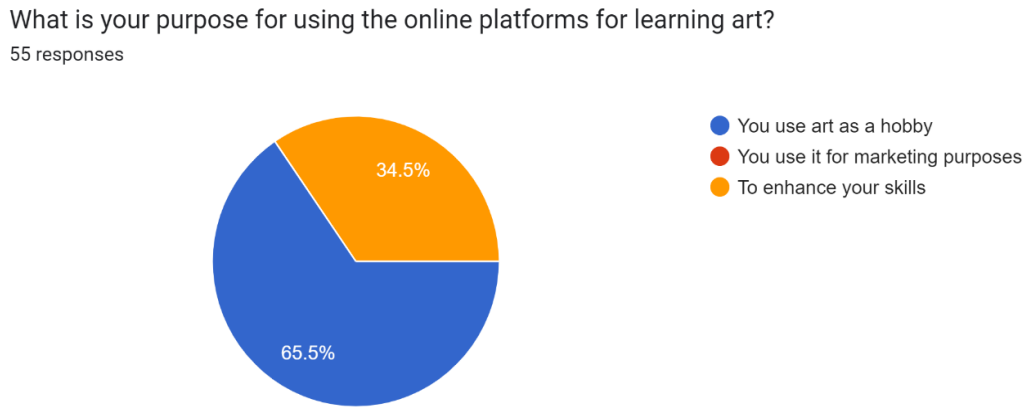
Investing on Online Platforms to learn art

It is identified that the majority of art enthusiasts learn i.e. 84.6% art for free on various online platforms.



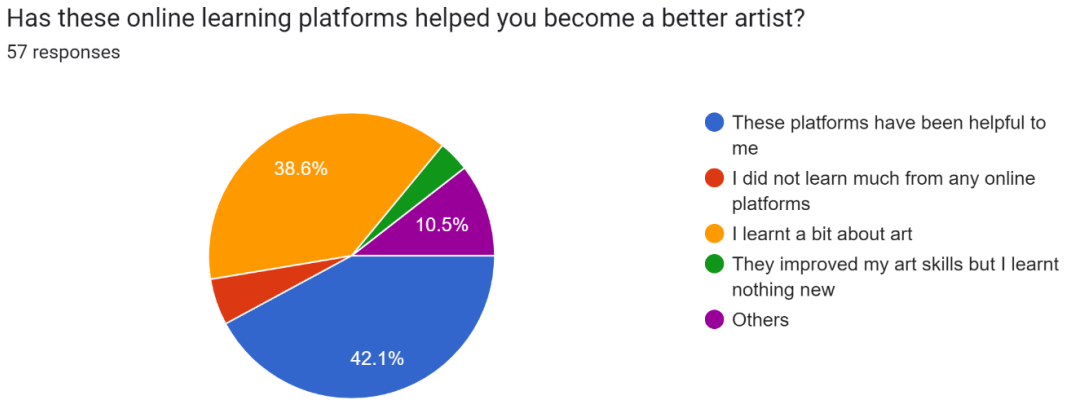
Time Spent on Online Learning Platforms

It is identified that a majority of respondents spend 41.1% approximately 15-20 minutes on online learning platforms and only 2% of respondents share that they spend more than 3 hours on such platforms



Purpose of using Online Platforms in Relation to Arts

Majority of respondents (65.5%) explained that they explore art online as a hobby. On the other hand, 34.5% respondents pointed out that they do it to enhance their skills.



Contribution of Online Platforms in making a better artist

Majority of respondents (42.1%) said that the online art learning platforms have been very useful to them. On the other hand least respondents (3.5%) respondent said that they did not learn much from online platforms.

FINDINGS AND CONCLUSION

- It is identified that the maximum proportion of respondents in this research engage in (29.8%) painting and a significant proportion of the respondents get occupied with a wide variety of fine art forms including painting, sketching, coloring, doodling and digital art.
- Results show that respondents use a variety of art colours in practice. These include Acrylic, Crayons and Sketch Pens, Pencil Colours, Water colours, Digital Art and Charcoal.
- Survey participants not only expressed their interests in online art platforms but as many as 35% users also pinpointed that the learnt art through online platforms.
- YouTube is the most popular platform for learning online art as 72% respondents raised that they learn online through watching YouTube videos.
- Art enthusiast social media users take art lessons in different patterns. They opt for art workshop, go for pre-recorded videos and few other select live art classes.

- It has been analyzed that the majority of users who explore art online are not willing to spend anything and that they learn art online without spending money. The majority spends an average of 15-20 minutes on such platform in a day.
- Online art learning platforms have proved to be extremely useful to those willing to learn them.

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LEADING THE PACK: WHAT DOES HARPERCOLLINS INDIA STAND TO GAIN FROM A PAWTERNITY LEAVE POLICY?

Navya Jain

ABSTRACT

The purpose of this article is to outline the possible benefits that HarperCollins India may accrue by implementing a pawternity leave policy for its employees. Secondary research has been conducted to develop a conceptual relationship between the idea of 'pets as family members' and employer branding'. Using this linkage, relevant demographic trends, industry statistics and examples from the Indian context, the possible benefits of a pawternity leave for HarperCollins India are formulated. Findings suggest that with the growing acceptance of pets as family members, the spike in pet adoptions, the rise of a millennial workforce and a race towards becoming an employer of choice, a pawternity leave policy may be an unconventional way to develop an employer brand in the war for talent. A pawternity leave policy may help HarperCollins India to carve a noteworthy brand image, reap first mover's advantages, provide a unique employment experience, capitalize on key demographic trends by being relevant and enhance health and well-being by allowing pets at work.

INTRODUCTION

The Indian publishing space is fragmented, highly competitive and a lack of industry recognition by the government adds to its erratic nature (Frankfurter Buchmesse, 2014). Still, India offers a lucrative market to publishers, and can be an excitable mixed bag for publishing business. It boasts of a growing population of over 1.31 billion, out of which 18% are youth (15-24 age group) and 29% are aged 14 years or younger, a literacy rate of 72.23% for those aged 15 years or more and a youth literacy rate of 89% (UNESCO Institute for Statistics, 2015). Hence, nearly half (47%) of India's population constitutes individuals aged 24 years or less. 100% FDI in publishing has allowed powerhouse publishers to establish themselves in the Indian markets. Some of the leading multi-national companies in the Indian publishing space are among the "Big Five" Publishers, namely, Hachette, Harper Collins, Macmillan Publishers, Penguin and Simon & Schuster.

Recently, the Indian book market has been valued at rupees 306.6 billion, making it the sixth biggest publishing market in the world, with a projected value of rupees 739.7 billion by 2020; books have been reported to constitute 15% of e-commerce trade, trailing only behind electronics (34%) and apparels and accessories (30%) (Doley, 2017). These numbers have urged all stakeholders to take note of the potential of publishing as an industry in India. Another claim to fame for publishers arises from the recent announcement of a "Pawternity Leave" to employees at HarperCollins Publishers India (HCI). While, majority of the business world was mulling over the amendment to the Maternity Benefit Act and perhaps, some were discussing the non-existence of a Paternity Benefit, HCI surpassed all expectations with its Pawternity leave.

According to reports (Ghoshal, 2017), HCI will allow its employees five working days of paid leave (Pawternity Leave) upon adoption of a pet. Moreover, the company will also allow its employees to bring their pets to work premises in case it is difficult to leave them at home and in such a case, the pet would be kept in a designated area.

Consider the statements made by HCI CEO, Mr Anand Padmanabhan and by HCI HR Head, Ms. Manjula Sreekumaran on Pawternity Leave. Mr. Padmanabhan emphasized that HCI aims

at achieving "the very best of work-life balance" which warrants thoughtfulness about family needs; "pet children need as much attention" and that the number of leaves that can be availed, should not be a point of concern in the decision to start a family. Ms. Sreekumaran aligns this move towards the company's constant endeavor "to make Harper Collins the best place to work for, in every respect." These statements suggest that HCI has extended the definition of family to include pets and incorporated this in their work-life balance initiatives. Pawternity Leave may be utilized to earn repute as an employer of choice. Also, it is clearly seen that business endorses this innovative HR policy.

In light of these events, the primary research objective of the paper was to outline the possible benefits of a Pawternity Leave Policy for HCI. In order to do this, existing literature on the concept of 'pets as family members' and 'employer branding' was reviewed. The researcher attempted at developing a conceptual link between the idea of pets as family members and how that relates to employer branding, thus making HCI's Pawternity Leave policy a relevant and innovative strategy from the company's perspective.

METHODS

Secondary research was conducted during the course of this research work. Secondary data was collected from various research journals, newspaper articles and books pertaining to the subject matter.

RESULTS & DISCUSSION

Pets as Family Members

Pets may be defined as non-human animals kept for primarily fulfilling social, emotional or sentimental purposes for their owners (Serpell and Paul, 2011, p. 297). They have been described to act often as the glue that brings family members together and enhances family cohesion (Cain, 1983). Pets may serve three functions for their owners - projective function (making a statement), sociability function (facilitator of social interactions) and a surrogate function (as supplement or substitute for human-human interaction) (Veevers, 1985). Research also suggests that pets as a possession, are incorporated into the sense of self (Belk, 1988).

Of great relevance is the fact that research evidence has shown that not only are pets included in individuals' definition of family (Buchanan and McConnell, 2017) but, many pet owners regard pets as their children (e.g. Cain, 1985; Veevers, 1985; Robin and Bensel as cited in Belk,1988; Belk, 1996). The presence of pets and family learning opportunities and challenges associated therewith, have been likened to those of childrearing, involving rules, roles, authority, boundaries, communication clarity and problem-solving (Walsh, 2009).

It becomes clear that individuals may perceive their pets to be family members and even treat them like children, thus forming emotional and social bonds with them, feeling responsible for their care and well-being. It is then possible that, similar to a decision to start a family, the decision to adopt a pet may require careful evaluation as to whether or not the individual can devote time towards caring for a pet which pertains to an assessment of work-life dynamics for the individual. Hence, family friendly policies and benefits, perceived support or sensitivity from an employer during major life events may influence the decision outcomes in such a scenario.

Employer Branding

The term employer branding was first coined by Ambler and Barrow in 1996 (Dabirian, Kietzmann and Diba, 2016). Employer branding affords functional, economic and psychological benefits arising out of employment and identification with the employing company (Ambler and Barrow, 1996). Employer branding includes internal and external employer branding. Internal employer branding consists of employees' (insiders') mental representations of organizational

attributes as an employer, whereas, external employer branding consists of non-employees' (outsiders') mental representations of organizational attributes as an employer (Lievens and Slaughter, 2016). Thus, employer branding initiatives become important for internal as well as external stakeholders of a company because they can shape perceptions about the company as an employer.

Employer branding establishes an employer identity and relates to an organization's values, systems, policies and behaviours directed towards generating attraction, motivation and retention of the organization's current and potential employees (Dell and Ainspan as cited in Edwards, 2010). By engaging in proactive strategies for employer branding, an organization expresses a real interest in sustaining a talented pool of current and prospective human resources in order to gain a competitive edge in the market (Biswas and Suar, 2014).

Employer branding has three main aspects that consist of developing the value proposition to be embodied into the employer brand, external marketing of employer brand to target audience and internal marketing of the employer brand (Backhaus and Tikoo, 2004). Key characteristics of a successful employer brand are being known and being noticeable, being seen as relevant and resonant, being differentiated from direct competitors, being seen as fulfilling a psychological contract and unintentionally appropriating brand values that are distinct from tangible offerings (Moroko and Uncles, 2008). Seven critical employer branding value propositions have been identified that current, former and potential employees consider while evaluating employers collectively, namely, social, interest, application, development, economic, management and work/life balance values (Dabirian, Kietzmann and Diba, 2016).

Research in the Indian context has revealed that realistic job previews, perceived organizational support, prestige, organizational trust, top management leadership, psychological contract obligations and corporate social responsibility are capable of influencing employer branding (Biswas and Suar, 2014). The Human Capital Trends 2016 Survey Report in association with NASSCOM (CareerBuilder, 2016) suggests that employer branding is an important challenge in the HR domain with 41% of the respondents stating their eagerness for taking proactive steps towards achieving the title of a "Preferred Employer Brand". Employer branding is seen as a critical pillar that has tremendous impact on the HR function by contemporary Indian organizations (NASSCOM and Randstad India, 2016). Indeed, research suggests that employer branding can have a significant impact on financial and non-financial performance of organizations (Biswas and Suar, 2014).

What does Employer Branding have to do with a Pawternity Leave?

Pawternity leave can be considered as both, a functional benefit, as well as a symbolic benefit of the employer brand that HCI is attempting to market internally and externally. A functional benefit of an employer brand can be understood as the description of objective, desirable employment features associated with being employed at a particular organization, such as salary, benefits and leave allowances; A symbolic benefit pertains to perceptions about the organization's prestige and the associated social approval that potential employees may attain if they are employed at that organization (Backhaus and Tikoo, 2004).

HCI's move can be viewed from the lens of Sustainable HRM, which emphasizes on the preservation of employee productivity and retention to achieve organizational goals and enable long-term viability; (App, Merk & Büttgen, 2012). The rationale is simple, just like a unique selling proposition to a consumer, the organization must aim for a good employee value proposition (EVP) (Barrow & Mosley, 2005). Including Sustainable HRM practices in the organization's EVP would help in balancing the consumption and reproduction of human resources such that competitive advantage may accrue to the organization (App, Merk & Büttgen, 2012).

By incorporating a Pawternity leave for its employees, HCI has demonstrated a socially responsible and progressive approach in terms of its core values towards its human resources that can help it gain recognition as one of the best places to work. It may work as a signal to potential employees, revealing HCI's characteristics as an employer and this may allow them to form their opinions about the possibilities of work experience at HCI (Greening & Turban, 2000) because the employment benefits or advantages so offered by an organization are fairly representative of the organization's values, characteristics and attributes (Edwards, 2010).

Employer branding can help in creating value and influence by managing the employment experience at the organization, which may be a complex mix of features (Edwards, 2010). Employment benefits or features endorsed by an employer brand may fall in one of the two categories – remuneration benefits or experiential benefits (Moroko and Uncles, 2009). While competitors can easily nullify an organization's competitiveness by replicating remuneration benefits (e.g. compensation packages), experiential benefits (e.g. childcare and parental leave, work culture and practice related benefits) may not be so easily replicated. Hence, the Pawternity leave may be understood as an experiential benefit endorsed by HCI's employer brand.

What does HCI Stand to gain from its Pawternity Leave Policy?

1. A brand image with progressive vision, value system, company culture and a future orientation: According to the Indian Workplace of 2022, the Indian workplace of the future may be evenly spread into three types of worlds (PWC, 2014). Key features have been summarized in Table 1.

Table 1: Indian Workplace of 2022

Feature	Green World	Orange World	Blue World
Characteristics & ideology	Social responsibility dominates corporate agenda as social and environmental conscience demands are raised by an organization's stakeholders.	Specialization and collaboration networks dominate as a result of portfolio careers, hiring of diverse resources at affordable rates on adhoc terms.	Capitalism dominates as organizations grow into mini-states, company scale is the key differentiator.
Driving goal	Positive social and environmental impact	Maximizing flexibility while minimizing fixed costs	Profitability, growth and market leadership
Employee value proposition	Ethical values, Work-life balance in exchange for employee loyalty	Flexibility, autonomy, challenges associated with working on short-term basis	Job security, long-term service in exchange for employee commitment and flexibility
HR Role	Brand Custodian	Project Management	Advanced HR Analytics

HCI's move of rolling out a Pawternity leave policy fits into a future workplace of the green world. Work-life balance values have been identified as one of the seven critical types of value propositions that influence the evaluation of an employer (Dabirian, Kietzmann and Diba, 2016). Hence, this move should help HCI in achieving positive assessment as an employer of choice, in the minds of current and potential employees.

2. First mover's advantage: Being the first multi-national company in India to offer a Pawternity leave, HCI may gain a reputation for being innovative and may be viewed as an industry leader; cost and learning benefits may accrue overtime; it may see enhanced customer loyalty (Robbins and Coutler, 2011).

3. A unique employment experience for employees and potential employees: HCI's Pawternity leave may offer a unique employee experience that may not be easily imitable, thus earning it a key element of differentiation as compared to its direct competitors. In a time when companies are facing cutthroat competition and employer branding is on top of HR agenda, this move may play a crucial role in earning a competitive advantage by retaining and attracting talented resources. HCI joins an elite list of companies such as Google (Alphabet), VMWare, Salesforce, GoDaddy and Workday which have pet-friendly policies (Dodgson, 2017). HCI also joins companies such as Mars Petcare, BitSol Solutions and BrewDog that offer Pawternity Leave (Kokalitcheva, 2016).
4. Capitalizing on key demographic trends to stay relevant in its employee relations approach: The youth in India comprises a potential workforce with the average age of an Indian expected to be 29 years by 2022 (PWC, 2014). Millennials are expected to play a crucial role in India's growth, they constitute 30.6% of India's total population and 46.4% of India's working age population which shall remain at 40% of total population until 2037 as per UN projections; 57% millennials are primary wage earners in households (Nayak, 2017).

Also, consider the rise in pet ownership figures in India, from 7 million in 2006 to 10 million in 2014; an average adoption rate of 6 lakhs per year (India International Pet Trade Fair as cited in Shah and Joshi, 2016). Although sufficient literature has been presented in the previous sections that provide evidence of individuals considering pets as family, especially as children and as an extension of the self, such research has not been conducted in India. However, recent reports do suggest these as a similar trend in India where pets have begun to acquire a familial status and social acceptance (Shah and Joshi, 2016).

By institutionalizing a pawternity leave, HCI presents an employer brand that is relevant and benefits of the same may accrue much more in the long-term than the immediate short term. It may earn a favorite spot as a dynamic, fun organization with a strong moral and social compass from the large millennial base which makes a sizeable target for employer branding activities.

5. Benefits from allowing pets at work: Research suggests that the presence of pets at work makes the workplace seem less stressful, more comfortable, providing enjoyable diversion and companionship (Wells and Perrine, 2001). An extensive review of pet friendly workplaces categorizes the benefits of the same as – enhanced attraction and recruitment; improved employee retention; enhanced employee health; increased employee productivity; and positive bottom-line results (Wilkin, Fairlie and Ezzedeen, 2016). Table 2 collates a list of some of the pet friendly workplaces in India (Doshi, 2015; Dutt, 2016). These are mostly small scale companies, startups and technology sector organizations.

Table 2: Pet Friendly Organizations in India

Company & Location	**Pet (No.)**	**Name & Designation**	**Benefits reported**
Hector Beverages (Bangalore)	Dog (2)	Hector Jr. (Chief Explorer) Beverages/Bevvy (Chief Explorer)	Positivity; Stressbuster
Beard Design (Goa)	Dog (1)	Badoni	Stress buster; featured on company website as a team member; Helps in relaxation
PW PR (Mumbai)	Dog(1)	Rio	Provides feelings of being loved and wanted; Smoking breaks turned to Rio breaks

Chattrapati Shivaji Airport (Mumbai)	Dog (3)	Goldie, Pepe, Sunshine	Part of "Angels" project; Help destress fliers;
Pagalguy	Cat (1)	Ginger (Chief Stress Buster), Employee no. 97	Stressbuster
Smitten(Chennai)	Cat(1) Fish(1)	FM	Relaxed vibe at work
Chumbak(Bangalore)	Dog(1) Cat (1) Fish(1)	Hugo Ginger Shiny	Part of team-building exercises, welcome sessions; Icebreakers; Conversation starters
June Software(Pune)	Dog (1)	Mascot	Stressbuster

CONCLUSION

This paper delves into the concept of pets as family members and its application as an employer branding tool for an organization. Reviewing existing literature and making conceptual connections between the concepts, the researcher outlines various benefits that may accrue to HarperCollins India as a result of implementing a Pawternity leave policy, namely, a noteworthy brand image; first mover's advantage; a unique employment experience; capitalization on demographic and workforce trends; enhancement of employee health and well-being.

Indeed, it seems likely that using this unconventional HR policy and marketing it among its stakeholders, HarperCollins India may attain a prestigious position as a leader of the pack. It will always be hailed for its historic and innovative move in the face of the industry's volatility. The paper suggests sufficient relevance of the Pawternity leave policy in light of demographic changes in the Indian workforce and its associated future trends. Presenting existing literature, statistics from India and examples of Indian pet friendly organizations, the review also attempts at generating curiosity among Indian researchers to explore the subject.

While conducting literature review, no relevant research articles focusing on pet-friendly practices in India were found, only newspaper articles on the subject were available. Even in the west, the examination of pet-friendly work practices and their outcomes for the organization and the employees, are not extensively researched, few empirical studies have been conducted and researchers have called for greater research into this domain (Wilkin, Fairlie and Ezzedeen, 2016). This paper is a step towards that direction as it provides a starting point for researchers in India to expand on and empirically test the relationship between pet-friendly initiatives such as a Pawternity Leave and the employer brand of an organization.

It would be prudent to examine the Pawternity Policy and other pet-friendly practices from a work-life balance and employee health perspective, i.e., from a sustainable HRM point of view. In order to maintain relevant people friendly practices, perhaps organizations can consider pet-friendly practices at work. This may be a quick and easy way of catering to the needs of a contemporary workforce after conducting a thorough cost-benefit analysis associated with the same.

This paper has largely focused on the advantages of a Pawternity Leave Policy, however, the cost factor has not been examined. Costs or disadvantages may be allergic reactions, maintenance costs, overall employee sentiments in the organization, their comfort level with animals at a workplace. It is recommended that future research studies adopt an empirical approach and consider the impact of pet friendly practices such as a Pawternity Leave in a holistic manner, evaluating the advantages and disadvantages both.

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CORPORATE SOCIAL RESPONSIBILITY, CUSTOMER LOYALTY AND NEGATIVE COMMUNICATION INTENTIONS

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ABSTRACT

In today's digital age, incidents can go viral at the push of a button and customers can bank on social media's power to voice out their views about the company or its actions. Negative word of mouth and negative publicity can lead to massive dents in a company's brand image that may translate into financial losses. In such a scenario, a company must be conscious of its social, environmental and ethical responsibilities towards all its stakeholders to maintain and improve its market position. How would customers react to a company's action or inaction with respect to its corporate social responsibilities? This quantitative study aims at examining the relationship between Corporate Social Responsibility, Customer Loyalty and Negative Communication Intentions. A sample size of 40 customers was employed for the purpose of this research. The data analysis was conducted using Statistical software, IBM SPSS. The findings of the study suggest that the better the CSR perception among customers, the greater is their loyalty towards the organization. A negative association between CSR and customers' negative communication intentions was observed. CSR perception and customers' loyalty did not predict customers' negative communication intentions significantly.

Keywords: Corporate Social Responsibility, Customer Loyalty, Customer Reactions, Consumer Behaviour

INTRODUCTION

In the cutthroat competition facing organizations today, what sets them apart from the rest of the pack is either the organization culture, its human capital or technology. Corporate Social Responsibility (CSR), too, is one such differentiator that can help an organization carve a special position in the market. In the wake of several high profile cases in the field of business ethics, organizations are now expected to be accountable for all its actions and consequences on the society and the environment at large. Further, there has been a growth in ethical consumerism, which has warranted the development of conscientiousness and ethics at the corporate level (Markovic, Iglesias, Singh & Sierra, 2015).Thus, CSR has become a necessity today and works as a strategic tool for stakeholder management (Maden, Arikan, Telci & Kantur, 2012). It may be defined as the provisioning of funds towards social welfare activities in order to enhance the organization's relationship with its various stakeholders (Barnett, 2007).

There have been numerous cases on business ethics across various industries, whether it was the Ford Pinto scandal that assigned a monetary value to human life and the case was legally settled in 1999; or closer home, Nestle's Maggi Noodles fiasco that led to FSSAI banning the noodles due to high lead content. Most recently, Flipkart has been dragged to court by Sketchers, a US based lifestyle and footwear brand, for allegedly selling counterfeit products of Sketchers (Malviya, 2017). Such cases bring to light the need for CSR. Literature suggests that organizations with greater CSR engagement are perceived more favourably by customers (Bhattacharya & Sen, 2004). When companies fail to recognize the fault in their actions and their damaging consequences, the only recourse left to the customer and the society, is a legal one.

Organizations offering services have to be particularly mindful of their activities. They must manage their customer interactions keeping in mind customers' needs and expectations in order

to deliver outstanding customer experiences (Iglesias, Ind & Alfaro, 2013). Thus, this study is aimed at examining CSR engagement in the e-commerce industry and its outcomes on customers. It has been suggested that an organization's non-compliance to societal norms and values puts its legitimacy at risk, customers may even question such an organization's existence and even initiate government intervention towards legal actions on such organizations (Vo, Xiao & Ho, 2017).

Two relevant customer outcomes were chosen for the study: Customer loyalty and Customer's negative communication intentions. Customer loyalty (CL) can be understood as the customer's desire to maintain a long-term affective relationship with the brand (Chaudhuri & Holbrook, 2001). Customer's negative communication intentions are operationalized through negative word of mouth (NWOM). Word of Mouth (WOM) communications may take place face to face, via phone or mails or any other means (Silverman, 2001 as cited in Goyette, Ricard & Maticotte, 2010). Negative word of mouth (NWOM) simply means the exchange of negative information. It is the act of telling others about one's unsatisfactory experiences (Singh, 1990).

In light of the above, following are the objectives of this study:

1. To examine the relationship between CSR perception (CSR), customer loyalty (CL) and customers' negative communication intentions (NWOM)
2. To examine the prediction of negative communication intentions through CSR perception (CSR) and customer loyalty (CL)

Correspondingly, the following are the research hypotheses:

H1: CSR will be positively correlated with CL

H2: CSR will be negatively correlated with NWOM

H3: CSR and CL will together predict NWOM

METHODS

Participants and Sampling: A combination of snowball sampling and convenience sampling was used to reach out to participants of the study. An online questionnaire was shared with relevant persons who further shared the questionnaire with their known to persons. The targeted sample size was 50, however, 40 participants voluntarily provided responses for the study. It was decided to continue the research with the small sample as this study is a pilot study for a future, larger scale study. Out of 40 respondents, 23 were females, 17 were males. The average age of the sample was 29 years.

Measurement Tools: The following standardized scales were used for the purpose of the study. CSR perception was measured through Corporate Social Responsibility Scale (Carroll, 1999) which has a total of 16 items bifurcated into the following dimensions-customer, employee, community and environment. Customer Loyalty was measured through a three-item scale (Dagger, David & Ng, 2011). Negative word of mouth (NWOM) was measured using a two-item scale (Goyette, Ricard & Maticotte, 2010).

Data Analysis: The data was collated and cleaned in MS Excel and the final data analysis was conducted in SPSS. Pearson Product Moment Correlation was applied to examine the relationship between CSR, CL and NWOM. Multiple regression (Enter method) was used to assess whether or not CSR and CL together predict NWOM.

RESULTS

H1: CSR will be positively correlated with CL

The correlation results are displayed in Table 1. It was observed that CSR and CL are positively, significantly correlated (r = 0.455). The result suggests a moderate correlation between the two variables. Thus, H1 was proved to be true.

Table 1: Correlation between CSR & CL			
		Total_CSR	Total_CL
Total_CSR	Pearson Correlation	1	.455**
	Sig. (2-tailed)		.003
	N	40	40
Total_CL	Pearson Correlation	.455**	1
	Sig. (2-tailed)	.003	
	N	40	40
**. Correlation is significant at the 0.01 level (2-tailed).			

H2: CSR will be negatively correlated with NWOM

The correlation results are displayed in Table 2. It was observed that CSR & NWOM are negatively, significantly correlated (r = -0.343). The result suggests a weak relationship between the two variables. Thus, H2 was proved to be true.

Table 2 : Correlation between CSR & NWOM			
		Total_CSR	Total_NWOM
Total_CSR	Pearson Correlation	1	-.343*
	Sig. (2-tailed)		.030
	N	40	40
Total_NWOM	Pearson Correlation	-.343*	1
	Sig. (2-tailed)	.030	
	N	40	40
*. Correlation is significant at the 0.05 level (2-tailed).			

H3: CSR and CL will together predict NWOM

It was found that the model (variables CSR and CL) predicts NWOM upto 14.7%. However, the model does not predict NWOM significantly as the p value for Regression was 0.053 which is more than 0.05. Hence, the model is insignificant. Thus, H3 was proved false.

DISCUSSION

The study has serious implications for an organization. It is seen that CSR perception among customers has a significant impact on customer loyalty. The study shows that better the CSR perception among customers, the more the loyalty enjoyed by the organization. Indeed, the customer has various avenues of obtaining information these days. There is a plethora of media that can be accessed to analyse the actions and reactions of an organization. Customers no longer sit quietly on the side-lines when they see an unethical or irresponsible behaviour on the part of their favourite brands and organizations. Moreover, within a service industry, such as e-commerce, the fierce competition between the leading players such as Amazon and Flipkart, allows customers to easily switch loyalties, if and when needed.

Further, the average customer now uses a smartphone and is quick to share negative feedback or comments about their experiences if they feel the need to. Given the advent of social media and the power that it grants to each and every user, it would be wise for organizations to also acknowledge the impact of their perceived CSR efforts on negative word of mouth by its customers. If a customer has a substandard experience, he or she is likely to spread the negative

word in his or her communities, online as well as offline. This can damage the organization's reputation. The study shows that there is a negative relationship between CSR and customers' negative communication intentions, i.e., better the CSR perception of an organization, lesser the likelihood that customers will spread negative word about the organization.

Although an organization's perceived CSR efforts and customer loyalty predict negative word of mouth, i.e., the likelihood of a customer sharing negative information about the organization, the prediction is weak and insignificant. It is advised that the findings of this study can be used to develop a large scale study, incorporating more factors for consideration of a better model for the prediction of customers' negative communication intentions.

CONCLUSION

The study has demonstrated the significance of CSR and its outcomes on the customer, specifically for the e-commerce industry. The study highlights the role of customers' CSR perceptions about an organization in the development of customer loyalty towards an organization. The findings of the study suggest that the better the CSR perception among customers, the greater is their loyalty towards the organization. Also, there is a negative association between CSR and customers' negative communication intentions. The better the CSR perception among customers, the less likely are they to spread negative word about the organization. Further, it was observed that CSR and Customer Loyalty do not significantly predict NWOM, however, and more predictor variables need to be added to the prediction in order to make it more helpful for controlling NWOM.

Certain limitations of the study must also be outlined. The study sample was small, however, this research work was meant to be a stepping stone to a larger study and has provided the researcher with valuable understanding of the concepts. Thus, generalization may not be possible at this stage of the research. The research instruments used were self-report measures which can lead to bias.

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VOLATILITY OF INVESTMENT: A PANEL FRAMEWORK

Shuchi Goel

ABSTRACT

Foreign direct investment (FDI) is an important source of obtaining finance from external sources, especially for a developing economy. More than half of the inflows into a developing economy can be attributed to FDI. However, the investment levels did not remained stable over time. In the light of this, the present paper aimed at studying the volatility in FDI for two Asian economies, Singapore and Afghanistan, one each from high income and low income category, respectively, over the period 2001-17. Volatility of FDI had been depicted through deviation from the mean. The results indicated the presence of volatility in Singapore as well as Afghanistan. Volatility seemed to be greater in Singapore.

Keywords: Foreign Direct Investment, Volatility, Investment, External Finance, Standard Deviation

INTRODUCTION

Once thought of as a means of exploitation of the developing economies by their developed counterparts, Foreign Direct Investment (FDI) has come to be regarded as an important source of external finance. FDI refers to a type of cross-border investment made by a resident of a country gaining control over the enterprise's management which is resident in another country (World Bank).

Approximately 60 per cent of the inflows into the developing economies are on account of FDI. FDI was considered important to finance Sustainable Development Goals. The significance of FDI as an important means of external private capital arises due to the huge financial requirements of the developing economies that cannot be met solely through Government's revenue and Official Development Assistance

However, the level of inflow of FDI has not been similar across countries. Some Asian economies, for example, Singapore, has been successful in attracting more FDI as compared to the Least Developed Countries (LDCs) like Afghanistan, particularly during 2001-2017.

In recent times, with the adoption of the Sustainable Development Goals, Sustainable FDI has attracted increased attention. Sustainable FDI refers to the FDI which leads to sustained growth in an economy, promotes social inclusion and sustainable environment.

LITERATURE REVIEW

The impact of FDI has been studied extensively. According to Zhang (2001), FDI tends to improve growth in economies that are characterized by liberal trade policies, better education, stimulate FDI in export oriented sectors and are stable.

In contrast to the positive impact of FDI on growth, there exist a few studies that do not find such a relationship. Kosack and Tobin (2006) and Herzer and others (2007) do not arrive at any significant relationship between the two in poor economies.

FDI is also found to bridge the gap between savings and investment and thus leads to capital formation (Sun, 2002). Some studies talk about the positive effect of FDI on employment (Fu and Balasubramanyam, 2005; Someshu, 2015) where as some point towards the employment reducing effect of FDI (Jenkins, 2006).

FDI into an economy is also found to increase the productivity of labour (Chang and Luh, 2000; Pham, 2008). However, Zhang (2001) states that the link between FDI and higher productivity of labor is not invariably strong.

Although FDI is believed to increase growth, this growth has not been found to be distributed amongst the population of a country. Mold (2004) states that there is no direct association between FDI and decline in poverty.

The negative relationship between volatility and growth of output has been pointed out by Martin and Rogers (2000). The authors state that countries which exhibit greater volatility of growth as well as unemployment tend to experience lower growth rates. The negative relationship between volatility and growth has been supported by Kneller and Young (2001) as well.

To conclude, there exist different strands of literature regarding the relationship between FDI and growth as well as volatility and growth.

OBJECTIVES

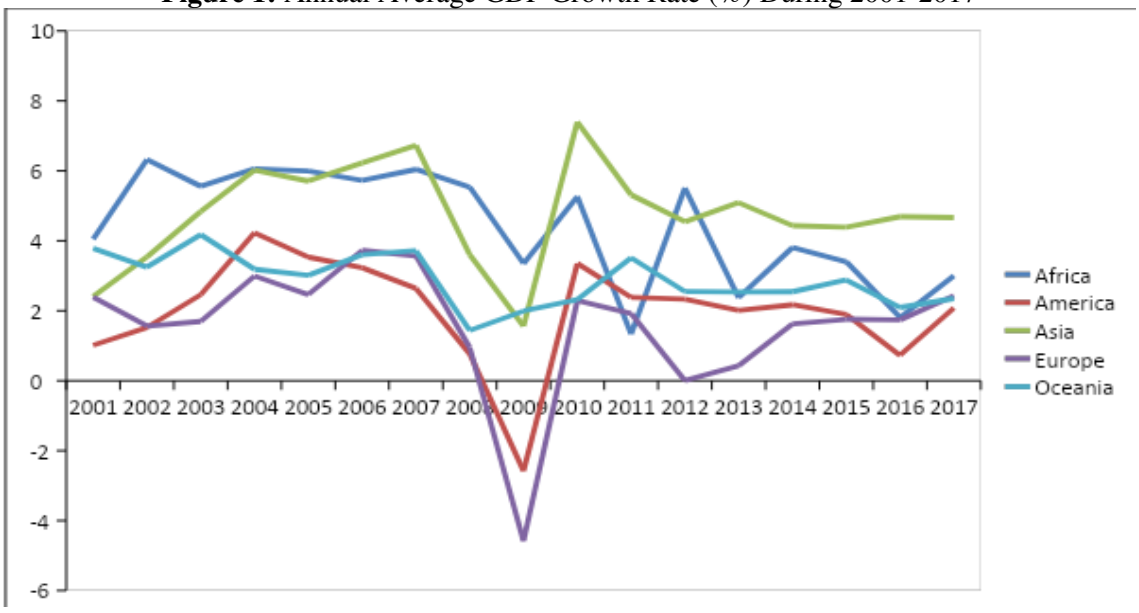
The objectives of the present study are:

1. To depict the volatility of Foreign Direct Investment (FDI) in the chosen sample of countries.
2. Topare the extent of volatility between the countries

DATA AND METHODOLOGY

This study will focus on a panel of Asian countries during the period 2001-2017. Descriptive research methodology using deviation from mean has been used to exhibit the extent of volatility in the FDI.

Figure 1: Annual Average GDP Growth Rate (%) During 2001-2017



Source: UNCTAD

Asian countries have been chosen for this study as Asia has been the fastest growing continent during the 21st century. Asia's GDP (Gross Domestic Product) has grown at an average of 4.77 % during 2001-17, higher than that of Africa, America, Europe and Oceania as shown by Figure 1 above.

Within Asia, one country has been chosen from the high income category, viz., Singapore whereas the other country has been chosen from the low income category, namely Afghanistan. This has been done to facilitate the comparison in volatility of FDI between countries belonging to different income categories. The objectives of the present study have been studied with the help of descriptive research methodology. The data on FDI net inflows (% of GDP) has been taken from the World Bank database.

ANALYSIS

Singapore has witnessed rapid economic growth over the previous 50 years approximately. It became independent in 1965. At the time of independence, it was characterized by low level of education, high rate of unemployment as well as poverty and lack of natural resources.

The growth model of Singapore involved the following:

i. Adoption of export-led industrialization policy, and

ii. Involvement of MNCs in the growth of industrial sector

Thus, Singapore promoted exports and FDI in the early phase of its development. It worked towards implementing these by developing infrastructure, improving education and improved technical skills that were essential for industrialization. It exhibited macroeconomic stability which built confidence of the investors. The adoption of the above two strategies resulted in an increase in the share of manufacturing in GDP from 16.6 per cent to approximately 30 % during 1965-80**.** There occurred a decline in the labour intensive industries. The financial sector of Singapore was already flourishing in the region since the 1970s.

It liberalised its insurance and securities industries towards the end of 1990s and start of 2000s. The banking industry was also opened up to the foreign players. Singapore is still dependent upon exports. Exports contribution in the country's net earnings stood at $268.9 bn during 2009.

With the turn of the century (i.e since 2000 onwards), Singapore witnessed a higher growth in its financial sector as compared to the manufacturing sector. This is in contrast to its experience before 2000, wherein manufacturing sector grew at a higher rate than the financial sector. The net inflow of FDI in Singapore has increased from 17,006,874,669 US $ in 2001 to 63,633,434,111 US $ in 2017.However, as a percentage of GDP, the share of FDI has increased from 19.04759 % in 2001 to 19.64557 % in 2017.

Table 1: Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Deviation
FDI	17	6,157,249,991.390	74,253,027,404.733	41,547,194,380.10273	23,319,366,556.626020

Source: Author's calculations

The average FDI received by Singapore has been 41,547,194,380.10273 US $ during 2001-17. The highest FDI received is 74,253,027,404.733 US $ whereas the minimum has been 6,157,249,991.390 US $. However, the variation in FDI was also high. It was 23,319,366,556.626020 US $ during this period.

Foreign players were offered complimentary assets by Singapore like adequate infrastructural facilities, efficient labor force, fiscal benefits, etc. The objective of the Economic Development Board (EDB) was to attract the foreign players. The skills of the labor force were improved regularly so as to keep the competitive advantage of the nation unchanged. Singapore has aimed at providing supportive business environment like offering tax breaks to the foreign investors. Appropriate policies by the Government and its location advantage have helped Singapore in becoming the centre of foreign investment. It has an efficient and non-corrupt government (Brown and Tucker, 2010).

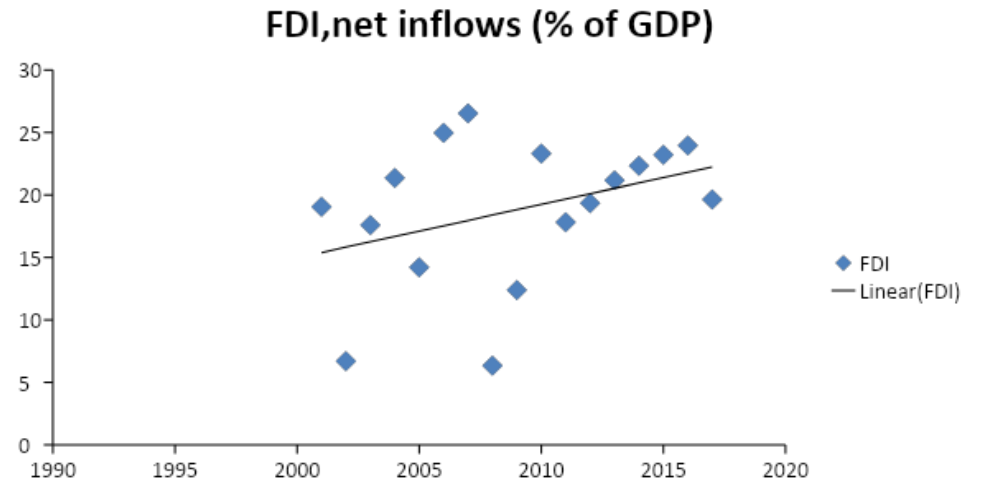
Specifically, adequate infrastructural facilities, education and institutional quality have been the factors behind Singapore's success in attracting FDI. Good infrastructure like roads, airports, proper housing as well as transport facilities aided in attracting overseas investors.

A person can start a business in Singapore in 2.5 days. It ranks 6 out of 190 countries with respect to ease of starting a business (Doing Business, World Bank, 2017). With respect to the ease of getting credit, Singapore ranks 20. Easy trade across borders is an important aspect that leads to FDI in an economy. Unnecessary documentation, taxing customs processes and unsatisfactory infrastructural facilities impede international trade. Singapore ranks 41 on the indicator 'ease of trading across borders'.

In terms of educational achievement, adult literacy rate has increased from 82.9 % in 1980 to 97.05 % in 2016 (World Bank). It stood at 5th position in terms of reading and ranked 4th on the mathematics and science scale (http://www.oecd.org/pisa/46643496.pdf, OECD, PISA 2009 Database). It has also created a successful setup for industrial as well as vocational training. For redeveloping Singapore, 'Economic Review Committee' was set up in 2001. An important suggestion that the committee arrived at was to negotiate more trade agreements. Prior to 2000, its significant trade agreement was limited to being a member of ASEAN. Since 2000, Singapore has negotiated a number of trade agreements with the objective of developing itself as a global trade hub. It signed an Economic Partnership Agreement (EPA) with Japan on 13th January 2002 which came into force on 30th November 2002. This agreement aimed at boosting the economic partnership between Singapore and Japan. This was planned to be achieved through greater intra-regional trade as well as investment. As a result of this agreement, the investment received by Singapore saw an increase by nine times in 2007 as compared to 2002. Singapore signed another investment treaty with Australia on 17th February 2002 which came into force 28th July 2003. One of the key components of this agreement was to make the investment environment in Singapore better for the Australian investors. The agreement, among other things, also specified the adoption of National Treatment to the Australian investors. However, the provision of National Treatment was subject to certain exemptions. National Treatment refers to treating a foreign investor at par with the local investor. Promotion of investment into Singapore was one of the objectives of another Free Trade Agreement (FTA) signed by Singapore with United States on 6th May 2003. It came into force on 1st January 2004. This is the first agreement for free trade that has been signed by US with an Asian country. According to this agreement, the foreign investors were to be granted Most-Favored Nation status as well as National Treatment. Financial transfers were permitted any hindrance. In the Asia Pacific region, the third largest FDI undertaken by US was in Singapore in 2006. Cumulative position of direct investment by U.S in Singapore increased from $51.1 billion during 2003 to $60.4 billion during 2006.

Some other investment treaties that were signed by Singapore during the period of the current research study include Korea-Singapore FTA, China-Singapore FTA, GCC (Gulf Cooperation Council)-Singapore FTA, Costa Rica-Singapore FTA, Singapore- Turkey FTA, etc.

Figure 2: FDI, net inflows (% of GDP), Singapore



Source: World Bank. Retrieved in January 2019.

Net inflows of FDI, as a percentage of GDP, over the period 2001-17 is shown in figure 2. The FDI net inflow is represented on the vertical axis and the horizontal axis represents the years from 2001 to 2017.

FDI into Singapore was 19.05 % during 2001. However, a major decline in FDI occurred in the following year and it fell to 6.7 %. Having experienced the Asian crisis in 1997 as well the dot com crisis that followed soon after, there was a slump in the growth witnessed by Singapore. Another major decline in the FDI occurred in 2008. FDI amounted to 6.35 % of GDP in 2008. This was the time when the economies were suffering due to the impact of the global financial crisis. The trend line in figure 2 reveals an upward trend in the net inflows of FDI in case of Singapore. In other words, the FDI net inflows have increased during the time period under consideration. However, FDI net inflows have not shown consistency over time.

Table 2: FDI Volatility, Singapore (2001-17)

Year	FDI Net Inflows (% of GDP)	Deviation from Mean
2001	19.04759	0.230927
2002	6.696944	-12.119724
2003	17.57853	-1.238133
2004	21.35968	2.543016
2005	14.19766	-4.619008
2006	24.9828	6.166137
2007	26.52121	7.704539
2008	6.347067	-12.469601
2009	12.38055	-6.436121
2010	23.2956	4.478929
2011	17.81216	-1.004512
2012	19.33073	0.514066
2013	21.17945	2.362778
2014	22.32225	3.505587
2015	23.2147	4.398033
2016	23.97085	5.154180
2017	19.64557	0.828906
	Average = 18.81667	

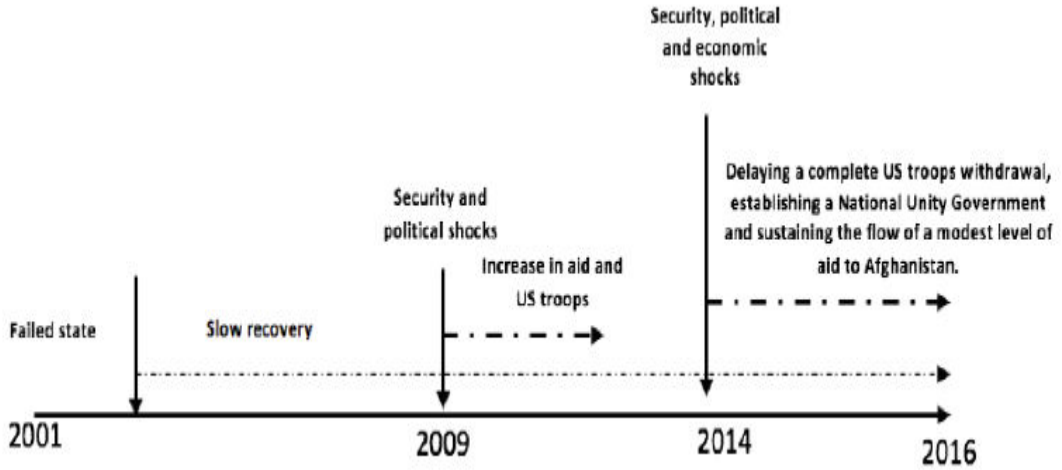
Source: Author's Calculations

The average FDI net inflow (% of GDP) into Singapore during 2001-17 has been 18.81667 %. Table 2 represents an interesting picture regarding the FDI net inflows in Singapore. FDI inflow was below the average level during 2002, 2003, 2005, 2008, 2009 and 2011. It has not remained stable and has shown fluctuations over time. The column labeled 'Deviation from Mean' shows the volatility in the FDI inflows into Singapore. Volatility of FDI is higher during 2001-10 as compared to the later period '2011-17'. In particular, FDI inflow was more volatile during 2002, 2006, 2007, 2008, 2009 and 2016. FDI volatility was low during 2001, 2003, 2004, 2011, 2012, 2013 and 2017. Moreover, FDI inflows have shown an increase from 2012 to 2016 and have remained above the average level. The highest FDI inflow occurred in 2007 and the lowest in 2008.

Thus, despite the fact that Singapore is a developed economy, it has still experienced volatility in the inflows of FDI. One possible reason to explain this phenomenon is that due to being a global financial centre, Singapore is highly exposed to external events. Thus, any changes in the economic environment of the other economies lead to a direct impact on their FDI decisions. As a result, the amount of FDI received by Singapore gets affected. Apart from the high income country namely Singapore, the present study focuses on a lower income country as well namely, Afghanistan.

Afghanistan suffered immensely due to more than 20 years of war. Afghanistan was characterized by a weak state during late 2001. The cost of conflict was estimated as $240 billion (World Bank, 2004). As a result of the war, the socio economic dynamics of Afghanistan got altered which made the task of nation building difficult to achieve. Building a stable and a functional economy were the immediate objectives. The figure 4 below presents a timeline of major events witnessed by Afghanistan during its transition since 2001.

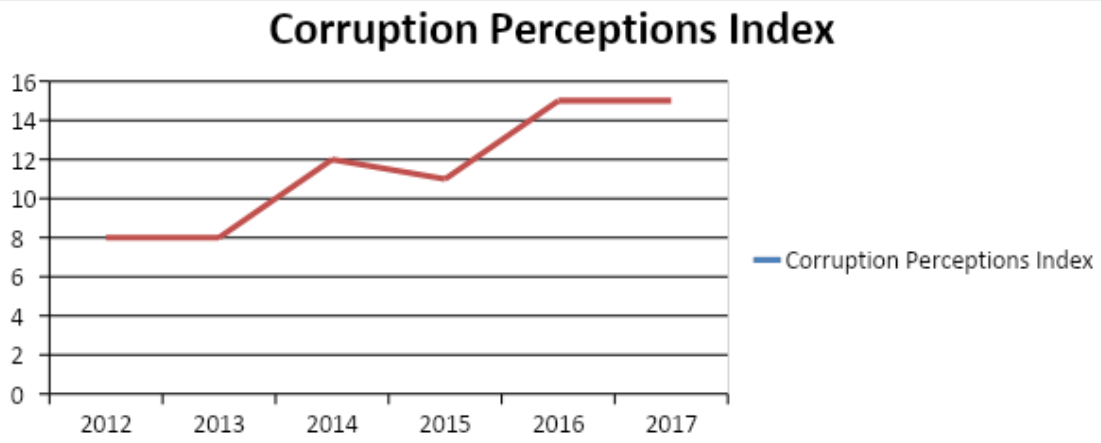
Figure 4: Transition in Afghanistan since 2001



Source: B. Nematullah (2018)

Afghanistan experienced political changes during the late 2001. With the ushering in of the new government and receipt of foreign aid, few important reforms were introduced. Public financial management system and few important state institutions like health, education, judiciary, etc were brought under the ambit of reforms. Public service delivery was also improved. Consequently, it exhibited an improved economic performance during 2002-05. The performance again deteriorated post this period due to the diversion of US's support and as a result, instability increased.

Figure 5: Corruption Perception Index, Afghanistan (2012-17)



Source: Transparency International

Despite being a resource rich country, the resources remain under utilized. The size of the informal sector is huge. However, opium industry dominates the informal sector that has led to corruption. Although the corruption has reduced during 2012-17, Afghanistan still remains one of the most corrupt economies (Figure 5).

Despite of betterment in the capacity of state institutions after 2002, the state still remains weak. Weak government institutions and poor infrastructure made investing in Afghanistan very risky. Moreover, poor security in the country also had an adverse impact on investment and doing business by increasing the costs of the same. As a result, the foreign direct investment has remained low and volatile. There was a steady increase in the FDI inflow during 2002-05. However, there was a sharp decline in it after 2005.

However, some improvements have also been identified since 2002. Due to the support of the international community, the confidence of the private investors and people in general was lifted. Investments in sectors like telecommunication and services were notable. Afghan Wireless and Roshan are the two telecommunication companies that made significant investments in Afghanistan. Since 2002, there has also been an improvement in the provision of public services. There has been an increase from 9% to 57% during 2002-12 with respect to access to places providing healthcare within one-hour walk (B. Nematullah, 2018). The number of students enrolled in school also increased from 1 million to 9 million during 2002-13 (B. Nematullah, 2018). Roads and electricity provision was also enhanced. However, the quality of these services is poor and they are not very sustainable. Despite efforts aimed at improving the conditions in the country, Afghanistan is still not a resilient economy. In the past, it has been vulnerable to shocks, both internal as well as external. External shocks, however, have had a major effect on its stability as well as economy as a whole.

To promote foreign direct investment in the economy, Afghanistan has entered into various agreements and treaties with other countries. One of the agreements includes Trade and Investment Framework Agreement (TIFA). TIFA was signed by Afghanistan in 2004 with US. Another important agreement is Afghanistan Pakistan Transit Trade Agreement (APTTA). APTTA was signed in 2001. Afghanistan is also a member nation of SAFTA (South Asia Free Trade Area) as well as SAARC (South Asian Association for Regional Cooperation). It has also signed bilateral investment treaties with Germany, Iran and Turkey in 2005, 2006 and 2004, respectively.

Table 5: Descriptive Statistics

Descriptive Statistics					
	N	**Minimum**	**Maximum**	**Mean**	**Std. Deviation**
FDI (Current US $)	17	680,000	271,000,000	105,689,086.8	82,193,331.23

Source: Author's calculations

As shown in table 5 above, the average FDI received by Maldives has been 105,689,086.8 US $ during 2001-17. The highest FDI received is 271,000,000US $ whereas the minimum has been 680,000US $. The variation in FDI was 82,193,331.23 US $ during this period.

Figure 6: FDI, net inflows (% of GDP), 2001-17, Afghanistan

Source: World Bank. Retrieved in January 2019

Net inflows of FDI, as a percentage of GDP, over the period 2001-17 is shown in figure 6. The FDI net inflow is represented on the vertical axis and the horizontal axis represents the years from 2001 to 2017. The percentage of FDI inflow in Afghanistan has been less as compared to both Singapore and Maldives during this period. The highest FDI that Afghanistan attracted was 4.318674 (% of GDP) in 2005. The first decade of 2000s witnessed a higher inflow of FDI, averaging approximately 1.7685 % of GDP. On the other hand, the average FDI inflow stood at approximately 0.3759 % of GDP during 2011-17. The level of FDI inflow into Afghanistan has been lower as compared to both Singapore and Maldives during 2001-17. While the highest FDI received by Singapore during this period was 26.52121 % and 15.26593 % in the case of Maldives, it is only 4.318674 % in Afghanistan. Further, the trend line in figure 6 reveals a downward trend in the net inflows of FDI in case of Afghanistan. In other words, the FDI net inflows have decreased during the time period under consideration.

However, FDI net inflows have not shown consistency over time. The average FDI net inflow (% of GDP) into Afghanistan during 2001-17 has been 1.195169 %. Table 6 shows that FDI inflow was below the average level during 2001, 2008, 2009, 2011-17. It has not remained stable and has shown fluctuations over time. The column labeled 'Deviation from Mean' shows the volatility in the FDI inflows into Afghanistan. Volatility of FDI is higher during 2001-10 as compared to the later period '2011-17'. In particular, FDI inflow was more volatile during 2001, 2004, 2005 and 2006. As compared to Maldives, FDI inflow has been more volatile in Afghanistan during 2001-17. This can be explained by the high level of insecurity and instability in Afghanistan.

Table 6: FDI Volatility, Afghanistan (2001-17)

Year	FDI Net Inflows (% of GDP)	Deviation from Mean
2001	0.027624	-1.167545869
2002	1.211	0.015830103
2003	1.261005	0.06583593
2004	3.536112	2.34094282
2005	4.318674	3.123505027
2006	3.372252	2.177082513
2007	1.916833	0.721663352
2008	0.395986	-0.799183749
2009	0.449327	-0.745842135
2010	1.197069	0.001899135
2011	0.29098	-0.90418938
2012	0.276695	-0.918474082
2013	0.238407	-0.956762705
2014	0.208455	-0.986714621
2015	0.880258	-0.314910998
2016	0.48071	-0.71445992
2017	0.256494	-0.93867542
	Average=1.195169	

6. CONCLUSION

This paper is an attempt to look at the volatility in the levels of foreign direct investment. For this purpose, two Asian countries have been studied during the period 2001-17; one from the high income category, namely Singapore and one from the low income category, namely Afghanistan. Descriptive research methodology has been used to analyze the objective. The analysis shows the presence of volatility in FDI inflows in case of Singapore during 2001-17. As compared to Singapore, FDI inflow has been less volatile in Afghanistan.

- Author's Contribution: The author conceived the study and its design along with data collection, analysis and interpretation of results as well as preparation of the manuscript.
- Conflict of Interest: Author states no conflict of interest.
- Funding Acknowledgement: Author states no funding involved.

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ROLE OF NGOS IN PROTECTION OF ENVIRONMENT

Anukriti Gangwar, Anamika Chauhan and Navya Jain

ABSTRACT

The protection of environment is a pressing issue. Every person, organization and institution has an obligation and duty to protect it. The government machinery alone cannot effectively cope-up with the task of pollution control until supported by the masses. It essential for the masses to participate in pollution preventive measures. Public interest litigations have successfully demonstrated that responsible and concerned NGOs and public spirited individuals can bring about significant pressure on polluting industries for adopting pollution control measures. There are more than 3 million NGOs and most of them are focused on Air and water pollution. They played very important role in conservation of natural resources and environmental protection. Among the fundamental objectives of NGOs is to act as a catalyst in bringing about local, national and international initiative and community participation towards overall improvement in quality of life. It would also help the government to obtain relevant information for promoting and facilitating the implementation of major environmental programs. NGOs can encourage people to have more sustainable lifestyles and promote judicious use of resources. NGOs create awareness among the public on current environmental issues and solutions, protect natural resources and call for the equitable use of resources. They help in transferring information through newsletters, brochures, articles, audio visual aids, organizing seminars, lectures and group discussions for creation and promotion of environmental awareness. They help villages, administrative officials, in preparation, application and execution of projects on environmental protection. This research paper outlines the important role that can be played by non-governmental organizations (NGOs) in helping to tackle environmental issues in India.

Keywords: NGOs, Environment protection, Social services, Awareness, Environmental issues

INTRODUCTION

Non-governmental organizations are commonly referred to as NGOs, are usually non-profit and sometimes international organizations, independent of the government. The primary objective NGOs is to provide public service. They embrace a wide array of agencies within and across different countries of the world. At their broadest, NGOs are simply agencies or groups, which are different from government bodies. However, NGOs are distinctive as there is a voluntary component in the concept of NGOs and also because they do not operate for profit.

Man's concern for natural environment has always been a point of consideration but the serious concern about the issue of resource depletion and degrading environmental ecosystems began after the Second World War, when industrialization started vigorously. Tackling environmental problems thus, becomes critical. The protection of environment and conservation of resources has emerged as a focal point of debate and deliberations among nations. The international debate and concern for ecology has now become the watchword. As concern for environmental problems rises, government institutionalizes the environmental issues through new legislations and regulations.

Environmental NGOs typically take up causes related to the environment such as Climate Change, Air Pollution, Deforestation, Ozone Layer Depletion, Waste Management, Biodiversity and Land Use, Energy, Conservation, Environmental degradation, Land Degradation, etc. Some of the prominent examples of Environmental NGOs working in India areGreenpeace India, Awaaz Foundation, Centre for Science and Environment, Goa Foundation,

CERE India, Conserve, Foundation For Ecological Security, Exnora International, Goa Foundation, WWF India and Winrock International India.

India is the world's second most populated country in the world with a population of 1.32 Billion (2017). India has to take immediate action to slow and reverse environment degradation and work towards Environmental sustainability. As per the World Commission on Environment and Development, sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs (1987)(Role and impact of environmental NGO's on environmental sustainability in India, 2012). Environmental Sustainability deals with maintenance or improvement to the quality of environment for long term. The aim of this research paper is Role of environmental NGOs in protecting environment. This paper will tell you all about ENGOs and how NGOs take steps in protecting our environment. This research paper is based on the secondary data.

LITERATURE REVIEW

The government cannot achieve success in its efforts towards environmental protection without support from the masses. This is where NGOs play a significant role, by takeing steps to educate the people and engage them in environmental campaigns across the country, . They are an important vehicle for mobilizing public support and commitment towards raising awareness for and working towards environmental protection.

NGOs aims to increase public awareness on science, technology, environment and development (Badruddin 2015). The aim is protection of environment which includes conducting widespread environmental educational and training programs, awareness among women, teachers, youth, tribal for the purpose of promoting conservation, encouraging the use of non-conventional energy sources such as smokeless 'chulas' and campaigning for air pollution. Recently there was a news piece stating that breathing in the Indian capital was like smoking 50 cigarettes a day. Air borne particles and toxic chemicals that make up smog, have chocked the 19 million residents of the metropolitan area.. Delhi's Chief Minister went as far as to call Delhi a "gas chamber". During this period, medical and health experts including doctors, trainers, all recommended people to stay indoors and reduce physical activity outside their houses. This is a crisis that repeats each year due to several factors such as crop(stubble) burning in adjoining areas of Delhi, vehicular emissions, industrial processes, etc. There have also been attempts at understanding the reasons for Delhi's Smog by various groups and the Delhi Government has tried innovative ideas such as Odd-Even Car Formula to restrict vehicular emissions.The methodology taken by environmental NGOs in India such as CEE(Centre for Environmental Education) Center For Science And Environment (CSE), Kerala Sastra Sahitiya Parishad, Kalpvriksh, Narmada Bachao Andalon, world wide fund for nature India, Tata energy and research institute (TERI), AWWAZ foundation. Environment NGOs is one of the best and strongest group in upbringing the changes in environmental law and regulations in NGOs. Through a lot of activity like campaigning, programs, publication, poster etc. are making people aware about environment and its issues. Through this sustainable development can be achieved.

Over the past quarter of a century and especially during the past few decades, there has both a rapid growth in the no. of NGOs involved in the development and activities such as disaster management and relief, development, public health, rehabilitation, environment protection etc. (Agarwal , 2008).The protection of environment is a pressing issue. Every person, organization and institution has an obligation and duty to protect it. Environmental protection encompasses not only pollution, but also sustainable development and conservation of natural resources and the ecosystem. Today, the necessity of environmental awareness and enforcement is more demanding and urgent than ever before. Despite provisions in the Indian constitution providing for environmental protection and other statutory provisions, the main cause for environmental degradation is a lack of effective enforcement of various environmental laws(Agarwal , 2008).

NGOs are conducting education and citizen awareness programs, and experimenting in areas which are difficult for government agencies to make changes. These NGOs are campaigning against the use of polybags, and also against the toxic chemical colours that are used during Holi, depletion of the earth finite energy resources, provide sanitation, health and hygiene. The methodology has been used for achievement of environmental NGOs' objectives with special reference to WWF (India) in which nature conservation and environmental protection education and awareness is done. CLEAN INDIA (community led environment Action network) is concerned with action programs like paper recycling, energy conservation etc. and there are programs and campaigns for the household. TERI (INDIA) is the project which is called as the growth with resources enhancement of environment and nature. SHULAB INTERNATIONAL, NGOs have played an active role in the protection of environment in India. These NGOs have been successful in protecting the environment to a great extent, which results in the betterment of environment in past few decades.

ENGOs are the safeguards of the environment they usually look after the causes of climate change, air pollution, deforestation, ozone layer depletion, waste management, degradation. There is a growing coordination between UN agencies and NGOs in all areas such as policy making, human rights, peace and disarmament, environment issues.(Sandher and arora,2012). This study highlights the role and impact of ENGO on environmental sustainability and make aims for improvements in their working that are to elucidate the proposed model for ENGOs which include education training, environment research, environment monitoring, air or water pollution, waste management, toxic and chemical waste, saving wild life etc. and to sensitize on the ethical issues faced by ENGO. The methodology used were PIL (public interest litigation) one of the potent tool increasingly used by the ENGOs, and to enforce environmental law and the use of RTI (right to information act 2005) provides power in the hand of the ordinary citizens and ENGOs collaboration. It is absolutely essential that environment. The proposed model highlights the important elements such as RTI, PIL, media, collaboration with government and industry which if used potently will help the NGO to meet its set objectives of environmental.

Water which is one of our most precious natural resources has always been the concern of these ENGOs(Hashim, Amran, Yusoff, Siarp, Mohamed, Hussein and Jeng; 2010) . Non-government organization (NGOs) in Malaysia are non-profit organization run by volunteers and have many roles is to protect the environment non-governmental organizations (ENGOs).

Sonnenfeld,2010 and not believe that the emergence of ENGOs is to engage in sustainable development. The mission of Malaysia's environmental NGOs is to enhance the environmental sustainability and create awareness for water conservation amongst the general public, research on water issues, water education in schools and practice water saving society and do workshops on water and helping government draw up plans and programs, protection of natural heritage and biological diversity. The methodology used is water watch penag (WWP) Malaysia nature society (MNS). This research explores environmental issues related to water which has been one of the major concerns an overview of the activities and roles played by ENGOs do not act on their own but in public sphere. And they can form the missing link between government and the people. ENGOs do not offer comprehensive solutions to some of the problems they may increase public awareness about the state of their environment.

The success of India's environmental programs depends greatly on the awareness and consciousness of the people. A national environmental awareness campaign has been launched to sensitize people to the environment problems through audio-visual programs, seminars, symposia, training programs etc. (A.Chitrai 2003). The aims were developing civic and environmental consciousness among the public organization about civic amenities and sanitary facilities, pollution of waterways, maintain the waterways of city leanly, control pollution and

launched a major projection growth with resources financement of environment and nature has rigorously estimated the reduction in India's key natural resources. The methodology is used citizen's waterways monitoring programs (WAMP). Community sanitation projects, environmental training institute, TATA research Institute, corporate social Responsibility. Commercialization of NGOs has no doubt led to their rapid growth. A code of conduct should be involved to evaluate and rate the NGOs and initiative should come from within the NGOs sector. The Insurance Regulatory and Development Authority (IRDA) is working on evolving a regulatory frame work to NGOs.

METHODOLOGY

Many of the research paper have been written on the topic - role of NGO's in protecting the environment. There are large number of NGOs in India and other countries that are mainly working for environmental, protection, conservation, and awareness. The number of these NGO which are involved in environmental protection in our country is more than in any of the developing country. The government is viewing NGOs not only as agencies that will help them to implement their programs, but also as partners shaping policy and programs. By reviewing some of the existing research paper we had work on our research paper. Not only this we have also used secondary data that is we have surf websites for the same, we have gone through many articles in the newspaper.

DISCUSSION

Our environment is appertained to all and we collectively have responsibility towards its safety and conservation. It's a tow way obligation for not only the government bur we all. We must constantly work to safeguard it from the proliferating damages. These NGOs without asking for a single penny aware the masses through their brochures, newsletter. Etc. so that a greater no. gets involved in there. Not only theirs but our mission of armouring the environment. So that we can lead a robust life ahead.

CONCLUSION

This research paper explores environmental issues related to the role of NGOs in protecting environment. NGOs plays an important role in protecting the environment. It is necessary as well because no legal body can achieve the objective of environment protection without any public participation or public support which NGOs helped them to achieve. The important elements such as RTI, PIL, media, collaboration with government and industry which is used potently and helped the NGOs to effectively meet the environmental objective. Commercialization had no doubt led to rapid growth of the environmental NGOs.

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IMPACT OF COVID ON FOOD BEHAVIOUR AND CONSUMPTION IN INDIA

Roli Wadhwa

ABSTRACT

The year 2020 will be marked as a watershed year due to the widespread outbreak of Covid19. The pandemic has had a major impact on our life whether professional, social or personal. We have been introduced to terms like Lockdowns, Quarantine, Social Distancing, which we unaware about. A very significant impact has been on our food habits as well. Consumption patterns and food behaviour have been impacted due to Covid 19.

Through this paper, an attempt has been made to analyse how Covid 19 has impacted the food behaviour and consumption in India and other parts of the World. For this, an extensive analysis of the existing literature has been done. This will help us in understanding the food consumption patterns and behaviour and also extrapolate how it will be impacted in future which further that guide the marketing strategies of the marketers.

***Methodology**: The paper will be exploratory in nature and undertake in-depth study through papers published in various journals.*

***Major Findings**: The paper will able to present whether there is an impact of COVID on online food delivery. In addition, the paper will also present the challenges for the online food industry in the times to come.*

***Implications**: The study will help us to understand the customer behaviour and preferences during the Covid 19 scenario and shall guide the marketers to undertake strategies accordingly.*

Keywords: Food Delivery, Covid, Pandemic, Consumption, Food Technology, Online food delivery, F&B aggregators, platform-to-consumer delivery, good safety & hygiene, FSSAI, consumer care, COVID-19, coronavirus, pandemic, global isolation, social distancing, business opportunities.

INTRODUCTION

The year 2020 has not been great year for all. The invasion of Covid 19 has affected lives all across the world. Shaking hands was a wonderful way of greeting is now seen as a precarious one due to the fear of transmission of virus. This year introduced us to concepts like – Lockdowns, Quarantine, Social Distancing etc which could not have been imagined. Though these times have taught us to remotely work and maintain a work like balance with the new WFH concepts. It has also made us lonely being socially distant from our workplaces and friends. Spending most of the times at home, many of us have honed their culinary skills as well. Covid 19 has had a major impact on our life whether professional, social or personal. A very significant impact has been on our food habits as well. Consumption patterns and food behaviour have been impacted due to Covid 19. This is the very objective of this paper. Through this paper, an attempt has been made to analyse how Covid 19 has impacted the food behaviour and consumption in India. For this, an extensive analysis of the existing literature has been done. This will help us in understanding the food consumption patterns and behaviour and also extrapolate how it will be impacted in future which further that guide the marketing strategies of the marketers.

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Online Food Delivery Market in India

Food has a very essential place in our lives. When we are joyous, we like to have special savouries. When we are sick, we need to have proper nutritious food to recover properly. Such is the importance of food. With the advent of technology and fast paced lives, online food delivery has gained traction. The online food delivery market is growing in tandem with evolving lifestyles and changing habits. With hectic work schedules and increasing disposable incomes this segment has been on a constant rise. According to Research and Market Report on "Online Food Delivery Market in India 2020", the market shall grow at a Compound Annual Growth Rate (CAGR) of 30.55 percent (based on revenues) in the 20202024 period. Owing to the huge potential of the market, the marketers can strategies to increase their marketshare in the ever growing market. According to the same report, as of 2019, millennials accounted 63 percent of the consumers of this market. This is owing to the greater disposable incomes among households and more technology savvy urban population. In urban areas, there is an increasing trend of working women. With both the partners earning incomes, there is a natural increase in incomes. Also, since women are a part of the workforce, they are spending lesser time at home and in kitchens. This change in lifestyle has given greater autonomy to women and made them independent. At the same time, it has made it more profitable for the online food industry as people spend lesser time cooking food at home.

In 2019, Zomato and Swiggy have been the key players in the online food delivery market with Zomato having a user base of 38 percent and Swiggy having a user base of 27 percent. High acceptance of online food delivery in Tier I and Tier II cities have helped these companies to grow.

However in 2020, Covid impacted most of the industries, including the restaurant and hospitality industry. According to Statista, as of May 2020, the frequency of ordering food online in India post the lockdown has gone down drastically, with a 65 percent population not opting for restaurant food. Though, according to several recent reports by Times of India and Hindu Business Line, the food business in India has picked up and is back to pre-covid levels.

Research Methodology: This paper is exploratory in nature. Therough this study, papers from recognised journals shall be analysed using keywords online food delivery, food aggregators, online food consumption, Covid 19 etc. The study shall also include published articles from standard websites and newspapers. The study shall include an indepth analysis of the existing literature. Thereafter, the important findings from these studies shall be summarised. The researcher shall conduct qualitative study and no quantitative tools shall be used.

The main objective of the research paper:

1. To have in-depth understanding of online food delivery in the Covid Scenario
2. To identify if there is any change in consumption pattern during the Covid period and point the reasons for the transition.
3. To suggest strategies for the marketers for market consolidation in the Covid scenario

REVIEW OF EXISTING LITERATURE

The Covid has impacted all over the world. Studies have been conducted all over the world to analyse the consumer sentiment.

According to (Hassen et. al 2020), a study was conducted in Qatar to analyse the immediate impact of Covid 19 on consumer attitudes, behaviour and interactions with food. The results pointed out that there are several changes in behaviour and food interactions of people in Qatar. People are opting for healthier diets, developing culinary skills, preferring home food due to safety reasons and there is a upsurge in online grocery purchases. In another paper (Laguna, et.

al. 2020), an analysis was made by studying the impact of lockdown on food priorities among Spanish customers. The analysis showed that during lockdown the Spanish consumers preferred healthier foods (vegetables and pasta). Also, foods like nuts, cheese and chocolates were consumed to uplift moods during the uncertain times. Food delivery applications are widely used in China. In a study by Celik & Dane 2020, the authors have statistically concluded that before the outbreak of Covid outbreak there was a preference for meat and bakery products but after the outbreak the first and second preferences were fruits and vegetables in Nigeria. This marks a shift from cost and health causes of preference to quality and health. In a paper by Chang, there has been a positive impact on Covid 19 on online food purchase in Taiwan. There has been increase in demand for fruits and vegetables, grains and frozen foods.

In paper by Ali 2020, optimism and innovativeness have a positive influence on online food delivery ordering services while insecurity and discomfort have negative influences.

During these Crisis times, people do not feel comfortable in opting for Dine in restaurants. The profitability of the hospitality industry has been hit badly especially during the lockdown period. Therefore, in the unlock series announced in the country, the restaurants have followed very strict hygiene and preventive measures – frequent sanitization, mandatory wearing of masks and gloves, allowing limited number of customers at a particular point in time, implementing social distancing and special trainings of employees for enhanced hygience protocols. According to the paper (Gursoy et. al., 2020), consumers are willing to pay extra amount of money for enhanced hygience protocols

Lockdown in India has lead to major changes in the lifestyle and habits among people. The paper points out that hygiene has assumed topmost importance followed by work from home concept, digital learning, online shopping etc. (Narayanan et. al. 2020)

(Mehrolia, S et. al. 2020) suggest that during the Covid outbreak in India, online food delivery (OFD) was preferred less. High threat was perceived and there was less benefit from online food delivery services. According to Chang & Meyerhoefer 2020, online food delivery services have acted in public interest by reducing the contact between shoppers and retail stores. The COVID 19 pandemic has led to a sharp rise in online business (Dannenberg, P et al 2020)

The paper tried to examine how the online food tech aggregators can sustain their business models in the Covid period. As per the study in which 109 food lovers were interviewed. About 99 % of the respondents agreed that hygiene was the most imperative factor and there is a need for more stringent hygiene protocols for checks and balances. (Munshi, A., & Singla, A. R. 2020)

According to the paper (Anita Goyal and NP Singh 2007), the young Indian consumers prefer fast food for fun and change but home food is the first choice. The important parameters for them is taste and quality (nutritional value) followed by ambience and hygience. An exploratory study on Mcdonalds and Nirulas showed that there was a need to provide additional information about nutrition and hygiene inside the kitchens

Vikas Gupta and Shelley Duggal 2020 suggests that perceived benefits and perceived risk have an impact on online food delivery applications which implies that a decrease in risk perception and an increase in benefit perception will positively influence their overall attitude towards these applications

Covid has altered the minds of the Consumers. pBased on the study on 201 consumers gathering their perceptions, it was concluded that food quality plays an important role for customer satisfaction which in turn promotes customer loyalty. Also, safety measures implemented by the businesses will lead to customer retention in the long run. (D' Souza 2020)

Smartphones have played a key role in implementing social distancing with people having gamut of apps at their disposal – video conferencing, food and drinks, social media, medical, health and fitness etc (Wanga H et. al. 2020). According to a study done in South Korea (Hwang, J. et. al 2020), Covid 19 has played a moderating role in the field of drone delivery services.

In a paper (Zhao and Bacao 2020) the factors determining consumers continuous use during Covid 19 include satisfaction, trust, perceived task- technology fit and social influence. These factors have impacted consumers usage of these apps during the pandemic period.

In a paper Kim et al (2021), Covid impacted contactless food delivery positively using drones.

FINDINGS

Based on the analysis of several papers, there are some key changes in Food Behaviour and Consumption through online food delivery services. Covid has impacted the lifestyles of people by changing their routines. After the onset of Covid, people prefer staying indoors and are working from the comfort of their homes. Technology has played an important role in social distancing (Wanga H et. al. 2020). Through the use of smartphones, life can has been easier for a variety of purposes education, social media, medical etc. The restaurants should focus on their mobile applications since technology has been important for social distancing.

The Covid has impacted food behaviour and consumptions. From the review of literature, it can be seen that there is a lot of focus and awareness on hygiene (Narayanan et. al. 2020). After the starting of the unlock series, many restaurants undertook measures like frequent sanitisation, wearing of masks and gloves, social distancing measures etc. Customers are even willing to pay extra for more hygiene protocols (Gursoy et. al., 2020) There is a need for more stringent checks and balances (Munshi, A., & Singla, A. R. 2020) The focus on hygiene and food quality will lead to customer retention in the long run (D' Souza 2020) Customer perception is extremely important, their perceived risk and benefit impacts choices

(Vikas Gupta and Shelley Duggal 2020). Therefore, there is a need for better communication of the food hygience protocols and practices so that the perceived risk is lesser. Researchers done in several parts of the world – Spain, Qatar, Nigeria point that there is a presence for healthier diets and nutritious food. With the pandemic, people are most focussed on maintaining their health

CONCLUSION

From the paper there are several points to which the marketers must take cognizance while forming strategies. Due to Covid, there has been an increased importance of health and hygiene. There must be greater focus on the nutritional values and food quality and this must be communicated to the customer to impact the perceived risk and benefits. Also, the food hygiene measures must be taken up at all levels – whether restaurant or online food delivery mechanisms to ensure safety to promote customer loyalty.

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REVIEW OF VIABILITY OF GREEN BUSINESSES IN VARIOUS SECTORS OF INDIAN LANDSCAPE

Swaraj Manchanda

ABSTRACT

Climate change, environment protection is a major question for the world economy today. Melting glaciers due to Global warming, excessive use of plastic and insufficient recycling options, air, water and noise pollution, excessive deforestation, increasing Carbon emissions have led to increasing temperatures worldwide, deterioration of natural resources, threat to water bodies making them unfit for human consumption and so on.

Amidst these issues, many nations including India have now started promoting the ideas of Green businesses. These are such businesses that use eco-friendly technology to make their products, their inputs and outputs both are recyclable and reusable and these business houses give unique organic and environmentally sustainable output to society which is good in all aspects. These businesses are becoming profitable opportunities for investors like Angel investors, Venture Capital funds, etc.

Though these businesses are becoming the latest trend of investments, still they also face some challenges. Firstly, Lack of adequate finance from govt and private sector banks. Secondly, rural green businesses lack marketing and tech support to flourish well. Thirdly, these business houses provide organic and environment friendly products which are not priced cheaply in comparison to inorganic products. Thus consumers don't buy such products in huge quantities and thus these business houses don't earn the revenue they need to sustain.

In this case study, we shall try to analyze different green business ideas that have emerged in the nation, challenges faced by such green business houses, their short run and long run viability in Indian Landscape.

Keywords: Green businesses, Viability, Environment, Climate change, pollution.

OBJECTIVE OF THE STUDY

1. To analyze viability of various green business ideas in Modern India
2. Challenges faced by such business houses and their owners
3. Financial sustainability and prospects of such business Ideas in current scenario

INTRODUCTION

Today people comprising the consumers, stakeholders, businessmen are aware of the fact that our planet has limited resources and most of them are non-renewable in nature. People are very well aware of the climatic conditions which are changing every year and issues like Ozone Layer depletion, Global Warming, air, water and land pollution. All these changes in Earth's atmosphere are happening because of human's activities only. Most of the businesses are seeking only to make such products which are profitable, with good specifications, look attractive status symbols so that consumers readily buy them. And in this race, nature is losing its wealth.

Despite this competition, some business houses have started adopting green and clean ways of producing their products, effectively disposing of their waste materials without harming the environment, reducing their reliance on non renewable energy resources, reducing their carbon footprint and emissions, etc.

Some brands in this pursuit include Tata, Mahindra, ITC, etc.

But the question here arises whether these green businesses are viable in the long run? If businesses focus on environmental concerns and change their production methods according to the environmental needs, will it be good for their earnings and profitability? Or Will it just give them a good brand name without any impacts on their profits. The current case study attempts to answer these questions using the available research based data.

REVIEW OF LITERATURE

India is well known for its natural resources and gifts. It is known for its forests, big sanctuaries, rivers, culture, traditions and more. But due to advancements in technology, globalization, and interlinkages with other countries these resources of the nation are facing continuous threat of depletion. Many species of animal and plant kingdom have already got extinct because of these changes. To preserve the environment many business houses in India are promoting environment friendly methods and practices of production and this has given rise to the concept of Green Business Ideas.

Haldar(2019) in her research points out that the green business houses can operate throughout the nation only when the entrepreneurs right from the inception of their business, have the mentality of being green and eco friendly in every aspect of business may it be the marketing, may it be the finance, may it be technology procurement, production set up, human resource procurement or anything. The idea of being green and environment friendly should be the long term vision and mission of the business right from its start.

Haldar (2021) in another research mentions the existence of Green entrepreneurs in renewable energy and power in the state of Gujarat. The idea of promoting green entrepreneurs in the power and energy sector will be a lot more beneficial as renewable energy resources ensure infinite supply. Haldar has clearly stated that Hydel, solar, wind and hydel power represent green and clean power sources as they cause no pollution, no emission of dust and harmful effluent into the environment. Due to lack of extensive research data available on Green Energy, Haldar conducted a cross case analysis approach on three entrepreneurs operating in the Renewable Energy sector through their interviews. As per the research, it was found that these business houses provide numerous benefits in the form of large scale employment, investment on welfare of handicapped workers, deployment of green and renewable energy resources, huge revenue generation in the long run and excellent sales turnover. But, there are certain challenges like High Cost of production in the initial years, slow profit generation, bureaucratic controlling, Insufficient foreign capital. Also the Gujarat power sector is dominated by certain big brands like Adani Power, Reliance, etc. which get Govt support very easily in comparison to these small scale entrepreneurs making it tough for them to thrive longer. But after the introduction of online approvals, digitalisation, paperless operations, this situation is expected to improve.

Similarly, Bhatnagar(2022) in his research article pointed out that India is following Sustainable Development Goals 2030 in order to attain environmental, social and economic sustainability and thus the Govt of India is encouraging the idea of Green Businesses with Green Finance. This idea is encouraging many startups to adopt green and clean production techniques and make eco-friendly products only.

As per the research article, Rani Srinivas (a former Tesla employee) has set up an enterprise called Zero 21 Renewable Energy solutions which manufactures Electronic conversion kits to convert CNG/Diesel/Petrol driven Autorickshaws into electric vehicles.

This is the first time that a converter kit for three wheelers has been introduced. This kit is manufactured at their plant in less than 3 hours. This kit has been approved by the International Center for Automotive Technology (ICAT). Also they have invented an electric vehicle named Smart Mule Passenger Car that can carry up to 1 tonne of load and gives a good mileage of

around 30 MPH. Owing to the rise of the electric vehicle segment and trend for being pollution free, many such entrepreneurs are blooming nationwide.

Big Brands are already there in this race like Mahindra, Tata, Hyundai, Honda which are making electric vehicles (Cars and two-wheelers) at a large scale now. But small entrepreneurs still need govt and institutional support to compete with such brands as such entrepreneurs lack affordable finance, advanced production technologies, access to short term and long term credit, brand recognition and loyalty from consumers.

Chaklader (2015) collected data for 50 companies from the ET500 report. They found that mostly large scale companies and MNCs are more environmentally conscious and follow measures to reduce air, water and land pollution than small businesses.

Some prominent names of green companies include Adani Green. This is a part of Adani Group which is engaged in generating clean and green energy in the form of solar, hybrid and wind power in India. The company has generated 5, 711 Million units of power using renewable sources (Solar, Wind and Hybrid) in 91 locations across 12 states of India. Also, they have been able to reduce carbon emissions by 5.2 Million tonnes.

Another name in the green business segment is Gravita India The company is engaged in recycling used Lead-acid batteries, aluminum scrap and other metal scraps. These reused and recycled products are further used in manufacturing Automobiles, Machineries, Heavy engineering products and the company has a customer base across 50 global locations across Europe, Asia, America, Antarctica, etc. This clearly shows that they are going to be financially sound and sustainable for so long.

The businesses which are following such Green and clean practices are also able to reduce their monitoring and agency costs because they are following the environmental norms and rules on their own without any intervention of shareholders or promoters in any way. This voluntary compliance satisfies the stakeholders automatically. Also based on data provided by previous research, all companies do not fully disclose the details of their being environmentally sustainable in clear and concrete terms. The environmental practices are not disclosed properly and transparently as they are unsystematic, piecemeal, inadequate, voluntary and just to complete the formalities. Hence full compliance is still questionable.

Though there are many laws and regulations in India related to environment and natural resources protection like Wildlife (Protection) Act, 1972, Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Energy Conservation Act, 2001, National Green Tribunal Act, 2010, etc. But the majority of the stakeholders are still unaware of these laws and Rules. Hence they are not able to question the companies whether they are adopting the production systems to comply fully with these norms and whether they are fully disclosing compliance in their Financial and Annual reports or whether they are disclosing what they feel suitable and adequate as per their management's discretion.

Considering the climate changes and India's conventional production methods, many companies are now becoming Green in their production, operations and business setups. Example Major Groups like Tata have adopted measures of being sustainable. They are using sustainable packaging techniques and containers for their agricultural products. They are also converting waste material into fertilizers and adopting hydel power, solar power and using biofuels in their production processes to save non renewable energy sources. The group is also using and exploiting the waste materials like Fly-ash, and waste generated in Road construction for some of their agricultural and consumer products.

Similarly the initiative of ITC named E-choupal has integrated the fragmented system of agriculture in the nation through an interconnected network of computers. This network has created an efficient supply chain, removed the hassles created by multiple intermediaries, made

farmers self-reliant and aware about the impact of their practices on the environment. Today it is the largest network of computers and modern agriculture systems in Rural India. Through this Initiative, ITC has been able to generate good profits, low cost operations and better prices for farmers. This initiative has touched and transformed the lives of 4 million plus farmers of India and has enabled them to earn 50% more earnings. The ITC e-choupal initiative provides real time information about weather and market prices of agricultural commodities to farmers across the country and that too in their local language. The system is managed by the farmers themselves who are also called Sanchalaks. The click and Brick model helps farmers use the latest ICT tools along with high speed internet at the best thus enabling them to increase the sales of their products at better prices, procuring farm inputs at reasonable costs, eliminating the need of multiple intermediaries and distributors. This has revolutionized agricultural sector in India

Similarly, "Greener India" by Godrej is an initiative in which they believe that environmental sustainability and being Green and clean is a part of their whole value chain. They have invested in robust technologies to analyze their carbon emissions, environmental footprints from the beginning of the operating cycle i.e. procurement of raw materials and inputs to sale of finished goods. Their goals of sustainability range from being completely environment friendly in their practices and methods to being more energy and water efficient in their operations. Since the inception of the project around the year 2011, the company has successfully reduced its greenhouse gas emissions by 55%, reduced specific water deterioration and consumption by 40% and even made it better, reduced wastages and diversions by 64% from landfills method of disposal, reduced energy consumption by 40% and also meeting 55% of their energy requirements by Renewable sources. From being a conventional wooden furniture maker to becoming a profitable green products manufacturer, Godrej has proved that being environmentally sustainable is financially sustainable too.

Ali et al (2017) describe that green businesses have 5 types of innovation models which can make them financially sustainable and competitive as well:

1. **Green Supply Chain Management (GSCM)**-
This is an integrated concept of transforming the entire supply chain and making it more eco-friendly, environmentally sustainable by altering the production setup and focusing on upstream flow of resources, innovation in raw materials, inputs, production techniques and methods, components, products and services.

2. **Take-Back Management (TBM)-**
This refers to the producers' responsibility of waste management using take-back methods which involve downstream use of the product. This entire model includes responsibility of manufacturers, retailers, consumers and recyclers towards proper waste management and disposal considering the health of natural resources.

3. **Cradle to Cradle- (C2C)-**
focuses on creating, designing and developing waste free products that can be easily integrated in and with biodegradable processes. Cradle to Cradle focuses both upstream and downstream in the value chain. Its a combination of Green Supply Chain management and Take back management.

4. **Industrial Symbiosis- (IS)-**
is a systematic way to create a more sustainable and integrated industrial economy. While applying this model entrepreneurs identify such business opportunities that tap the underutilized resources (including materials, energy, water, capacity).

5. **Functional Sales**-
This involves a combination of products and services. Provider just allows the consumers to use the product and pay according to usage. Consumers dont have to buy the product but pay per unit of consumption. This method encourages consumers to consume less for incurring lesser charges and producers to ensure long life span of their offering.

Ali et al (2017) also mention the positive impact of solar PV and wind power generation plants. They not only provide an infinite power supply for millions of years to come but they lead to lower mortality rates, lower morbidity rates for humans, and also provide the benefits associated with more innovations, and more financial benefits in terms of lower cost of power, lower health risks for workers employed in power generation as compared to thermal coal based power plants (though initial investment and setup costs are high but economies of large scale benefits come at later stages once the set up is established and fully operational.

A difference between Green Information technology (Green IT) and Green Information systems (Green IS) has also been highlighted. Firms should use Green IS in place of Green IT. Green IT just means using technology to store, retrieve and transmit the information about business using Eco-friendly technologies, green ways of communication. But Green IS is a broader term. It means employing integrated, interconnected and interlinked set of softwares, hardwares, Information technologies, tools and strategies and policies to create an environment that promotes environmental awareness, awareness of sustainable development among all stakeholders like society, shareholders, employees, and management along with fulfilling their goals of profits, maximization of sales, market share. Green IS involves setting standards for power consumption, improved manufacturing practices, proper data center design, waste management and sustainable operations.

Firms that employ Green IS will initially incur investment costs, but future returns on the investments shall compensate all the costs and provide long term profitability, growth, goodwill, better stock prices and returns to investors, reduced wastages of non renewable and exhaustible resources, more safe environment for workers, and better standard of living in terms of quality and organic biodegradable products.

For promoting a green eco system in the commercial world, financial collaboration between startup promoters and big brands is also visible in India. This is yielding good results as well. Raina (2022) in her news article for Inventiva, mentions such startups. One of them is Ather Energy. Founded by two engineers Tarun Mehta and Swapnil jain in 2013 in Bengaluru, firm specializes in making electric Two-wheeler scooters Ather 450X and Ather 450 plus. They have also built a network of electric charging stations across 38 locations in India named Ather Grid. The startup has received seed stage funding from Angel investors like Sachin and Binny Bansal of Flipkart, Tiger Fund (A venture capital Fund), Hero Motocorp. All these have invested millions of dollars in the venture in different stages and making it one of the most successful startups making electric vehicles.

Not only the electric vehicle category, but there are several business segments where such collaboration results in financially sustainable Green business models. Some names of such startups which are supported by big brands include Phool (a startup involved in recycling waste flower petals discharged from temples after worshiping, to make incense sticks, incense cones and vermicompost; this was founded by two young men- Ankit Aggarwal and Prateek Kumar and owned by Kanpur Flowercycling Pvt. Ltd of Kanpur City, UP), Zunroof (a solar power panel manufacturing firm founded by Pranesh Chaudhary and Sushant Sachan; firm has built 30,000 + designs for solar panels and installed at more than 10000+ rooftops of various enterprises and households for using solar power).

RESEARCH METHODOLOGY

For conducting the research, detailed literature review of various secondary sources like research papers and scholarly articles from Google Scholar, secondary data from News Articles, Websites, Blogs have been done. Secondary data has been reviewed in detail for understanding the financial and environmental aspects of Green Businesses.

FINDINGS

The existing research and literature review clearly indicates that mostly big brands have adopted such technologies and practices that are more environment friendly, sustainable and greener. Tata, ITC, Godrej, Mahindra, Gravita India have been able to become environmentally and financially sustainable in all their production stages, waste disposal, use of energy sources, manufacturing of products by adopting modern eco friendly technologies. They are focusing on reducing carbon emissions, saving non renewable energy resources. But not all companies are doing that because being greener and clean requires intensive and dedicated investment of huge funds, dedicated mission of reducing carbon footprint, proper planning, proper waste management systems and a thought towards social responsibility. This investment and planning requires a considerable long time frame as well to become fully operational and successful. Thus being green is still a dream for many companies in India.

Also, Some startups are also emerging in contemporary India that have proved that being green is financially sustainable as stated by Bhatnagar (2022) in their research article but such startups are those which deal with products related to agriculture, basic necessities, power and fuel based products like Vehicles and others which impact environment or take inputs directly from environment. Companies manufacturing technology based products that require use of plastic materials are trying to make it more recyclable, reusable and less polluting for the environment still they are not able to become fully green and clean.

Being green and environment friendly impacts short run profits, liquidity, and operational efficiency which makes this idea look financially unsustainable if we have short term vision. But if the company aspires for long term growth, shareholders and stakeholders satisfaction, goodwill, brand image, sustainable development, inclusive growth, organic products then being green is definitely financially sustainable.

LIMITATIONS OF THE STUDY

Data has been taken from secondary sources so inaccuracy and misreporting can be there. Data has been taken from existing research papers and news articles hence the limitations of the existing research studies affect this research as well. Also the facts which are published may or may not reveal the exact level of success achieved by the green business ideas.

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Research at DME 2023

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