ISSN.0973-3280

BANGALORE UNIVERSITY LAW JOURNAL

UGC approved Refereed Journal

VOL : 9 NO. 2

JULY 2019

[PUBLISHED IN SEPTEMBER 2021]

Vol. 9 No. 2

BANGALORE UNIVERSITY LAW JOURNAL

UGC approved Refereed Journal

CITE THIS VOLUME AS 9 BULJ 2019 (2)

This Journal is published by

University Law College & Department of Studies in Law,

Bangalore University, Bengaluru

Price of single issue : ₹ 200/-

CALL FOR CONTRIBUTIONS

Bangalore University Law Journal is a biannual publication. Contributions to the journal are invited in the form of articles, notes and case comments.

Contributions should be typed in double space on one side of the A4 size paper and should also be sent by rewritable CD. It may also be sent through email-id buljulc2020@gmail.com

The Editors, Publishers and Printers do not claim any responsibility for the views expressed by the contributors and for the errors, if any, in the information contained in the journal.

The subscription amount may be sent to the following address along with D.D drawn in favour of Finance Officer, Bangalore University, Bengaluru.

BANGALORE UNIVERSITY LAW JOURNAL

C/O PROF. DR. SURESH V. NADAGOUDAR

Principal and Chairman

University Law College & Department of Studies in Law

Bangalore University, Bangalore

BANGALORE UNIVERSITY LAW JOURNAL

University Law College & Department of Studies in Law

Bangalore University,

Jnanabharathi Campus, Bengaluru - 560056

EDITORIAL NOTE

Research is an important aspect of the academic life of a teacher. The ever changing socio-legal dynamics present an opportunity to all the teachers to undertake research by writing scholarly articles on several issues and there by contribute in furthering knowledge and promote future research.

It has been a long standing desire of the faculty of University Law College & Department of Studies and Research in Law, Bangalore University to have a journal of its own and we are happy that it is fulfilled with the blessings of Jurists, Senior Professors and Former Principals of University Law College, Bangalore University, Bengaluru.

The BULJ is a peer reviewed journal inviting scholarly articles from faculty and scholars across the country. We hope this issue of BULJ would benefit the readers.

Prof. Dr. Suresh V. Nadagoudar
Principal and Chairman
University Law College & Department of Studies in Law
Bangalore University, Bangalore

CONTENTS

AVAILABILITY OF *QUIA TIMET* ORDERS AGAINST THE POWERS OF THE SPEAKER OF THE ASSEMBLY - A CRITICAL ANALYSIS

-Prof. Dr. V. Sudesh*

INTRODUCTION

In a parliamentary democracy under the Constitution of India, the law-making power is vested in the lawmakers, i.e., the members of the Parliament or the State legislatures, as the case may be.Lawmakers have the freedom to express their opinion on any subject matter in enacting laws. In this regard, parliamentary practices and the Rules made thereunder protect the rights of the members of both the Parliament and State assembly houses as the case may be.It is the Speaker of theHouse, who is also a member of the House, who has the power to control and regulate the entire proceedings in the House during discussions and debates. The Constitution of India and the established practices have given a special status to the Speaker. The Speaker acts as the Presiding officer and is the custodian of the House's rights. Powers have been given to the Speaker to regulate the Business of the House. The Speaker is the authority to interpret the rules of the House, and his decision becomes final. Several of the Speaker's decisions become rules of precedents and guide the future proceedings of the House.

NEUTRALITY OF THE SPEAKER

The Speaker of theAssembly been given a constitutional status. The Speaker/Deputy Speaker are the officers of the State Legislature. Article 178[1]of the Constitution of India provides for choosing two members of the Assemblyto be respectively Speaker and Deputy Speaker. The manner of election of Speaker is provided under the rules made in this regard by the State legislature. A member once elected as Speaker of the Assembly becomes a neutral party irrespective of the political party from which he is elected as a member of the Legislative Assembly. Opinions are divided on the question as to whether, once a member of the State Assembly is elected, as

---

* Professor, University Law College & Department of Studies in Law, Bangalore University-56.

[1] Constitution of India, Article 178: The Speaker and Deputy Speaker of the Legislative Assembly- Every Legislative Assembly of a State, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Speaker, he must resign from the political party he represents to maintain neutrality and enhance the reputation of the Presiding officer. In this regard, the only instance of a Speaker of the House resigning from the membership of the political party is that of Dr.Neelam Sanjiva Reddy. Upon being elected as the Speaker of Fourth Lok Sabha, Dr. Neelam Sanjiva Reddy, resigned from the membership of the Congress Party.[2]Indeed maintaining neutrality as a Speaker even after quitting from party affiliations is a challenging task, as stated by *Baroness Boothroyd*[3],

"When you have been committed all your adult life to the ideals and policies ofone party, impartiality is a quality that you have to work at. But if you cannot putaside partisanship, you have no right to even think of becoming a Speaker".

POWERS OF THE SPEAKER

An interesting case on the powers of the Speaker arose in 1968 in the Punjab Legislative Assembly in the case *of the State of Punjab v. Sat Pal C Dang & Ors*[4], which tested the supremacy of the power of the Speaker. The facts of the case are interesting. The Speaker of the Punjab Assembly adjourned the Assembly for two months on 7th March 1968, under the Rules of Procedure and Conduct of Business, due to the Assembly witnessing rowdy scenes. The adjournment of the Assembly put a premature end to the Budget session, and thereby no money could be drawn from the Consolidated Fund, and no expenditure in the State could be incurred after 31st March of that year. Meanwhile, the Governor of the State on 11th March prorogued the Assembly and dispatched the copies to the Secretary of the Assembly and the Speaker and other members of the House. Further on 13th March, the Governor promulgated the Punjab Legislature (Regulation of Procedurein Relation to Financial Business) Ordinance, 1968. An important provision of the ordinance was section 3, which stated that *the sitting of either House of Legislature was not to be adjourned without the consent of the House until completion of financial Business*.

---

[2] https://speakerloksabha.nic.in/former/Nsanjivareddy.asp last visited, 5/07/2021

[3] Former Speaker of the House of Commons of the United Kingdom (1992-2000), Quoted by Harsimran Kalra,Public Policy Scholar @ 2013, The Hindu Centre for Politics and Public Policy.

[4] AIR 1969 SC 903

On 14th March 1968, the Governor summoned the Legislative Assembly under Art.174,[5] fixing 18th March for its sitting, and directed the Assembly to consider the Estimates of Expenditure, the Demands for Supplementary Grants, and two Appropriation Bills. The Assembly Speaker on 18th March, after considering certain other matters, ruled the House was prorogued not on the 11th but on the 18th March and that by his earlier ruling dated 7th March, the House stood adjourned for two months. However, after some commotion on the said day, the Assembly kept functioning with the Deputy Speaker in the Chair. The Appropriation Bills were adopted and certified as Money Bills by the Deputy Speaker and were sent to the Legislative Council.The following critical questions, having impact on the powers of the Speaker of the Assembly were raised for consideration by the Court in the case:

(1) The ruling of the Speaker given on 18th March was not open to challenge in courts.
(2) The further proceedings in the Assembly were illegal and
(3) The two Bills certified by Deputy Speaker as Money Bill were ultra virus because the Speaker and not the Deputy speaker has the power to certify Bills as Money Bills to the Legislative Council and the Governor.

After looking into the various constitutional provisions in this regard, the Court held on each of the questions as follows:

(1) That on the 18th March,the Speaker was faced with a valid ordinance binding on the Assembly, including the Speaker, under Art.209. Therefore, the Speaker was powerless, and the fresh adjournment of the session without taking the mandate of the Assembly by the majority was null and void.

(2) The continuance of the proceedings under the Deputy Speaker was valid,complying as it did, with the promulgated by the Governor. Therefore, the financial Business transacted before the Assembly had a legal foundation.

---

[5] Article174 of the Constituion: Sessions of the State Legislature, prorogation and dissolution(1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.(2) The Governor may from time to time(a) Prorogue the House or either House;(b) dissolve the Legislative Assembly

(3) Art.199 (4) requiring the Speakers certificate cannot be viewed as mandatory, but only as directory in view of the inconvenience causedto the State and the public at large, that may be caused by holding the provision imperative and not directory. If the Constitution provides for the Deputy Speaker to act as the Speaker during the latter's absence or to perform the office of the Speaker when the office is vacant, it stands to reason that the Constitution could never have reposed a power of mere certification absolutely in the Speaker and the Speaker alone. Further Art. 212(1) provides that the validities of proceeding in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

Thus, from the above, it may be summarised that the Speaker of the Assembly, though holds supreme power of running the Business of the House, is nevertheless bound to follow and accommodate the exercise of power by other Constitutional functionaries such as Governor and the Deputy Speaker. The Court would have the power to intervene in case of violation of the procedure in circumstances where, the public interest is involved, such as passing a valid ordinance and the budget.

THE ANTI-DEFECTION LAW AND THE POWER OF THE SPEAKER

The Hindi language phrase *Aaya Ram Gaya Ram* was synonymous with Indian politics to refer to elected representatives shifting their party affiliations frequently after being elected to the House as members. It all started after a Haryana MLA named Gaya Lal changed his party affiliations three times on the same day in 1967. Often these defections were done on promised reward, bringing instability to the ruling party. In order to prevent such frequent change of party affiliations after getting elected on a party ticket, the Anti-defection law by way of insertion of the Tenth Schedule into the Constitution was brought in the year 1985. The Tenth Schedule was inserted to Articles 102(2) and Article 191(2) of the Constitution of India[6] , by

[6] Article 191 in The Constitution Of India 1949
191. Disqualifications for membership
(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State
(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
(b) if he is of unsound mind and stands so declared by a competent court;

way of the fifty-second amendment to the Constitution of India and the following clause was added:

"(2) *A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule*."

It is relevant to mention here that the President or the Governor, as the case may be, decides on any question that may arise in regard to whether a member of the House has become subject to disqualification mentioned in the various clauses of Articles 102/191, except under clause (2) referred above. However, after insertionof clause 2 to articles 102/191, the Speaker is empowered to decide on disqualification petitions under para 6 of the Tenth Schedule[7]. Under the rules framed by virtue of para 8 of the Tenth Schedule, any member of the House may tender a petition to disqualify a member under the Tenth Schedule. Such a petition has to be adjudicated by the Speaker. The TenthSchedule provides the following grounds for disqualification:

Para 2(1)...a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or
(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such

---

(c) if he is an un-discharged insolvent;
(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
(e) if he is so disqualified by or under any law made by Parliament Explanation For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule

[7] Para 6. Decision on questions as to disqualification on ground of defection.— (1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final...

voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

Finality attached to the decision of the Speaker under Para 6 by barring the jurisdiction of courts under Para 7 and the lack of prescription of the time limit under the Tenth Schedule, within which the Speaker has to decide the disqualification petition has attracted judicial scrutiny.In 1992, in *Kihoto Hollohan's case*[8], the Apex Court, by citing several earlier cases, struck down Para 7 by observing that though the Speaker is the final arbiter in a disqualification petition never the less it does not exclude Court's intervention under articles 32, 226, 227, 136 under the Constitution. The Court's observation was as follows, *"Paragraph 6(1) of the Tenth Schedule, to the extent, it seeks to impart finality to the decision of the Speakers/Chairman is valid. But the concept of statutory finality embodied therein does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, male fides, non-compliance with Rules of Natural Justice and perversity are concerned...The Speaker's decision disqualifying a Member of a House under paragraph 6(1) of the Tenth Schedule is not immune from judicial scrutiny. It is a nullity liable to be so declared and ignored."*

QUIA TIMET ORDERS AGAINST THE SPEAKER

It is a general trend in litigations seeking enforcement of a pre-emptive order by a Court against imminent danger to the parties' rights, popularly known as an injunction order. *Quia Timet* Orders are like anticipatory bail obtained on the imminent danger of arrest by the police. A discussion on *Quia Timet o*rders may be traced to the case of *Kuldip Singh v Subhash Chander Jain and Ors*[9] wherein the Court stated that *"A quia timet action is a bill in equity. It is an action preventive in nature and a specie of*

[8] 1992 Supp (2) SCC 651

[9] (2000) 4 SCC 50

precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action, the Court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process."

In the above the case the Court has referred to the *Fletcher v. Bealey*, [10]to explain a *quia timet* order, by quoting the following words of Pearson J*, 'it is not correct to say, as a strict proposition of law, that, if the plaintiff has not sustained, or cannot prove that he has sustained, substantial damage, this Court will give no relief; because, of course, if it could be proved that the plaintiff was certainly about to sustain very substantial damage by what the defendant was doing, and there was no doubt about it, this Court would at once stop the defendant, and would not wait until the substantial damage had been sustained"*

In light of the above understanding of the *Quia Timet Orders*, it is relevant to examine whether such order may be directed against the power of the Speaker in relation to his decision on the disqualifications petitions. The simple question is whether the Speaker may be directed by the Court to act upon the disqualifications petitions filed under the Rules framed under the Anti-defection law by a q*uia timet* order of the Court*?*

It may be noted that the Tenth schedule does not fix the time within which the Speaker is bound to decide on a disqualification petition(s). The delay in the action of the Speaker allows the defected members to continue to enjoy the House's membership and be part of the ruling party Ministers. Such a situation negates the objective of Anti-defection law as stated by the Court, "*the main purpose underlying the Constitutional (Fifty-Second Amendment) Act and introduction of the Tenth Schedule is to curb the evil of defection which was causing immense mischief in our body-politic"*[11] Therefore, whether the Courts can interfere by directing the Speaker to act on the disqualification petitions has been a question in several cases.

Through the separation of powers between the three organs of the government, the Constitution of India ensures the independence of each institution of governance. Therefore, it may be stated that courts cannot

---

[10] (1885) 28 Ch D 688, [1885] UKLawRpCh 24

[11] *Kihoto Hollohan's case* supra

interfere in the powers of the Speaker, especially under the anti-defection law.It may also be argued that since the Speaker acts as quasi-judicial authority deciding upon the rights of the parties, he is bound to act within a reasonable time.In several cases, before the courts,the issue came up to be discussed.In one of the earliest cases,*Kihoto Hollohan v. Zachillhu*,[12] the Supreme Court stated as follows:

"Having regard to the constitutional scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen; and no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

Following the above case the Court in *Jagjit Singh v State Of Haryana & Ors,*[13]the Court observed, "*The Speaker, while exercising power to disqualify members, acts as a Tribunal and though validity of the orders, thus, passed can be questioned in the writ jurisdiction of this Court or High Courts, the scope of judicial review is limited as laid down by the Constitution Bench in Kihoto Hollohan v. Zachillhu.*. Further, *the orders can be challenged on the ground of ultra virus or malafides or having been made in colourable exercise of power based on extraneous and irrelevant considerations. The order would be a nullity if rules of natural justice are violated. The requirement to comply with the principles of natural justice is also recognized in rules made by the Speaker in exercise of powers conferred by paragraph 8 of the Tenth Schedule.*"

Further commenting on the position and power of the Speaker, the Court observed, "*Undoubtedly, in our constitutional scheme, the Speaker enjoys a pivotal position. The position of the Speaker is and has been held by people of outstanding ability and impartiality. Without meaning any disrespect for any particular Speaker in the country, but only going by some of events of the recent past, certain questions have been raised about the confidence in the matter of impartiality on some issues having political overtones which are decided by the Speaker in his capacity as a Tribunal. It has been urged that if not checked, it may ultimately affect the high office of the Speaker.*"

---

[12] Supra note 7

[13] Writ Petition (civil) 287 of 2004, decide 11 December, 2006.

Reiterating on the earlier held view the Court in*Speaker Haryana Vidhan Sabha vs Kuldeep Bishnoi & Ors,*[14]the Court stated that*, "It is only after a final decision is rendered by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution that the jurisdiction of the High Court under Art.226 of the Constitution can be invoked*." However it is notable that Court also added a time limit for disposal of the petition by observing that, "*The Speaker shall dispose of the pending applications for disqualification of the five MLAs in question within a period of three months from the date of communication of this order."*This trend of setting a time limit was again set out in *Orissa Legislative Assembly v Utkal Keshari Parida.*[15]

In several decisions, the High Courts in India, have restrainedfrom directing the Speaker to act upon the disqualifications petitions under the Tenth schedule following the ruling of the Apex court in *Kihoto Hollohancase.*[16]

Notwithstanding the Anti-defection law, Indian politics has witnessed defection in several States in India for example between the years 2016-2020, the MLAs in the States of Karnataka, Madhya Pradesh, Manipur, Goa, Arunahcal Pradesh, etc. have switched parties forcing the ruling party Government to lose power. Such a situation not only questions the efficacy of the Anti-defection law but also the role of the Speaker in deciding on the disqualifications petitions under the law in a time bound manner. In many cases the High Courts and the Supreme Court were petitioned to intervene in powers of the Speaker under the Anti-defection law. Commenting on the power of the Speaker, the Court in the *Kihoto Hollohancase observed that, "The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable*."

The availability of *quia timet orders* against the powers of the Speaker of the House was once again discussed by a Five-bench judge of the Supreme Court in the case of *Keishan Meghachandra Singh v Manipur Legislative Assembly case*[17](Manipur Assebly case).Similar to earlier trends in India

[14] (2015) 12 SCC 381
[15] (2013) 11 SCC794
[16] Supra note 7
[17] 2020 SCC online SC 55

politics the Manipur Assembly election produced an inconclusive result as none of the political parties were able to secure a majority to form the Government. In the instant case the Respondent no 3 contested as a candidate nominated and set up by the Congress Party and was duly elected as such. However, immediately after the declaration of the results, Respondent No.3 along with various BJP members was sworn in as a Minister in the BJP-led government. As many as thirteen applications for the disqualification of Respondent No.3 were filed before the Speaker of the Manipur Legislative Assembly between April and July, 2017 stating that Respondent No.3 was disqualified under paragraph 2(1)(a) of the Tenth Schedule.Since no action was taken on any of these petitions by the Speaker, one T.N. Haokip filed a writ petition being Writ Petition (C) No.353 of 2017 before the High Court of Manipur at Imphal, in which the Petitioner prayed that the High Court direct the Speaker to decide his disqualification petition within a reasonable time.

On 08.09.2017, the High Court stated that as the issue of whether a High Court can direct a Speaker to decide a disqualification petition within a certain timeframe is pending before a Bench of 5 Hon'ble Judges of the Supreme Court the High Court cannot pass any order in the matter, and the matter was ordered to be listed so as to await the outcome of the cases pending before the Supreme Court.

One of the question to be determine by the Supreme Court was, whether, in the facts and circumstances of the case, the Speaker of the House can be said to have failed to discharge its duties as enjoined in the Tenth Schedule to the Constitution of India to decide the petitions?

The Court very categorically reiterated its earlier view held in the *Kihoto Hollohan case*[18] by stating that *quia timet action* would not be available against the Speaker of the House prior to making a decision. The following is the observation of the Court,

"110. In view of the limited scope of judicial review that is available on account of the finality clause in Paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e. Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a quia timet action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be

[18] Supra note 7

made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence."

The Supreme Court also stated that the Speaker/Chairman though exercises judicial power in deciding upon the disqualification petitions under the Tenth schedule, judicial review should not be exercised at any stage prior to making of a decision by the Speaker/Chairman. The only exception warranting *quia timet* actions, as stated by the Court would be in the case of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence.

CONCLUSION

Parliamentary procedure and practices have accorded the Speaker of the House a privileged position. A great duty is bestowed by the Rules for the Speaker to perform his duties and exercise his powers for an effective functioning of the House. The public perception of the Speaker of the House is that of an unbiased master. Nevertheless, since the Speaker of the House is mostly elected from among members of the ruling party, there is always an element of bias in the exercise of the discretionary powers by the Speaker. The Anti-defection law tests the neutrality of the Speaker in taking action under the Tenth Schedule. Therefore, the Supreme Court in[19](Manipur Assembly case) observed that,[20] "*It is time that Parliament have a rethink on whether disqualification petitions ought to be entrusted to a Speaker as a quasi-judicial authority when such Speaker continues to belong to a particular political party either de jure or de facto. Parliament may seriously consider amending the Constitution to substitute the Speaker of the Lok Sabha and Legislative Assemblies as arbiter of disputes concerning disqualification which arise under the Tenth Schedule with a permanent Tribunal headed by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism to ensure that such disputes are decided both swiftly and impartially, thus giving real teeth to the provisions contained in the Tenth Schedule, which are so vital in the proper functioning of our democracy."*

Finally it may be stated that the judicial activism in the area of the power of the Speaker has rather been limited keeping in view the spirit of the concept of separation of powers.

---

[19] 2020 SCC online SC 55

[20] Ibid

CRITICAL ANALYSIS ON MOB LYNCHING – LEGAL ISSUES AND CHALLENGES FOR A SECULAR AND DEMOCRATIC INDIA

- Prof. Dr. N. Dasharath *

INTRODUCTION

Historically India is known all over the globe for preserving Constitutional Values, peace, inclusive democracy and secularism.India was not disturbed by any untoward violence though sometimes in our history there was darkness due to hatred by some dominant groups leading communal violence. Yet India is known for unity in diversity in the world.

In the recent times, we have been hearing about "Honour killing, Mob lynching" and attacks on Women, Muslims, Christians, Dalits, Adivasis, etc., due to misconception of facts and situations. This ultimately led to hatredness, Communal violence and even upto causing death.

Lynching is a modern form of mob-violence wherein people are differentiated on the basis of religion, race, caste or ideology that they follow.Thus the act of lynching is anti-secular in a secular country. Secularism is the basic structure of our Constitution, any act of lynching or otherwise is absolutely against the spirit of our Constitution.

The author of this article discuss the legal issues such as cow transportation, cow theft, slaughtering of cow and cattle, child kidnapping, religious violence due to hatredness, inter-religious marriage, etc.,

Further the author also analyse the laws relating to the aforesaid issues pursuant to our Constitution, Central and State legislations such as anti-cow slaughter legislations, provisionsof The Karnataka [gram swaraj and panchayat raj] Act, 1993, the Municipalities Act, 1964, the provisions of Indian Penal Code (IPC), Cr.P.C., and the judicial response to the act of lynching.

* Professor and Dean, Faculty of Law, University Law College and Dept. of Studies in Law, J. B. Campus, Bangalore University, Bengaluru – 56.

CONCEPT OF LYNCHING

Law is a mightiest sovereign. In *Krishnamoorthy v. Sivakumar and others*,[1] theSupreme Court held that the majesty of law cannot be taken casually and leave it to an individual or group of individuals for its enforcement.

It is worth to quote a brilliant statement made by Mr. Benjamine Franklin on freedom of speech and the press. He said, "Freedom of speech is a principal pillar of a free government, when this support is taken away, the Constitution of a free society is dissolved and tyranny is erected on its ruine"[2].

Pluralism and tolerance are essential virtues and constitute the building blocks of a truly free and democratic society. Martin Luther King Jr. once said "Law may not be able to make a man love me, but it can keep the man away from lynching me"[3]. Yet another renowned leader of Rastriya Swayamsevak Sangh, Shri. Mohan Bhagwat said that "the lynching is a biblical practice, alien to Indian tradition. There is no word of lynching in Indian languages except in Bengali language called as 'gunadholai' in reference to lynching for pick – pocketing"[4].

The word 'lynching' is originated in USA in mid18th century. Historians believe that the term was first used by Plantin Charles Lynch to describe it as 'extra judicial authority' assured by crowds against African – American communities.[5]

The 42nd Constitutional amendment inserted the word 'Secular' in the preamble of our Constitution. It is respectfully submitted that the word 'Secular' was present in the adopted constitution.[6] In Article 25(2)(a) reads that 'the state cannot be prevented from making any law for regulating or restricting from making any economic, financial, political or other Secular activity which may be associated with religious practice'. The addition of the

---

1 *Krishnamoorthy* v. *Sivakumar and others* (2015) 3 SCC 467)

2 Benjamine Franklin on freedom of speech and the press, reported in Pennsylvania Gazette, 1737

3 Speech delivered to the audience at SMU's McFarlin Auditorium on March 17, 1966.

4 Mohan Bhagwat, Chief of the Hindu nationalist organization Rashtriya Swayamsevak Sangh (RSS)

5 Plantin Charles Lynch, Virginia planter, politician, and American revolutionary

6 26th November 1949, draft Constitution of India.

word 'Secular' in the preamble has denoted that Secularism is one of our Constitutional Values.

American Constitution does not contain the word 'Secular',yet there are no violence on the basis of the religion etc. According to the author of this article, lynching is a form of individual or mob violence against the spirit of pluralism, diversity and Secularism.

CAUSES FOR LYNCHING

The causes of lynching are rise of cow vigilantism, silence of political class, rumours of child lifting, etc., Lynching is not only limited to religious hatred but also hatred towards Dalits, Christians, Muslims, inter religious love married couples and of course due to police silence and political incitement.

According to the statistics revealed by Centre for study of society and secularism (CSSS)[7] from the period January 2011 to 31st July 2018, 109 mob attacks which include 78 dead and 174 injured. Out of 78 people killed, 32 were Muslims, 21 Hindus, 6 Dalits (SC's), 2 ST's and 17 whose community is not specified.Similarly out of 174 injured people, 64 were Muslims, 42 Dalits, 21 Hindus, 6 Adivasis and 41 whose community has not been specified.

These figures show that most of the people targeted by the mob lynching were Muslims and Dalits.Apart from these killed and injured people, 39 out of 109 incidents are related to rumours of child-lifting, 39 to cow vigilantism and 14 to alleged inter-religious male-female friendship / relationship.

Hence the author respectfully submit in nutshell that no one oppose vigilantism in society but vigilantism in the pretext of moral or social policing by taking the law into their own hands and spread violence in society due to the acts of mob violence or lynching is highly condemnable.

LEGAL RESPONSE FOR ACTS OF LYNCHING IN INDIA

There are already provisions existing in Indian PenalCode,1860 such as

Sec.34 - Common Intention

Sec. 147 – Rioting

---

[7] Centre for study of society and secularism (CSSS) from the period January 2011 to 31st July 2018, http://www.forwardpress.in, CSSS Team, August 13, 2018

Sec. 149 – Unlawful assembly

Sec. 505 – Creating or promoting enmity, hatred or ill-will between classes leading to punishment of 3 years.

Punishment for acts of lynching may be invoked from IPC sections

302 – Punishment for murder

304 - Punishment for culpable homicide not amounting to murder

307 - Punishment for attempt to murder

323 - Punishment for voluntarily causing hurt

334 - Punishment for voluntarily causing hurt or provocation

325 – Punishment for voluntarily causing grievous hurt

143 - Punishment for unlawful assembly

147 - Punishment for rioting

149 - Punishment for unlawful assembly with common object

153A - Punishment for promoting enmity between different groups on grounds of religion, race, caste, sex, place of birth, language, residence, etc., and doing acts prejudicial to maintenance of harmony, offence committed in place of worship.

Criminal Procedure Code(Cr.P.C) provisions

Sec. 41A - power of police officer to arrest persons without the order or warrant of magistrate

Sec. 43 – arrest by a private person

Sec. 129 – power of police to disperse mob

Sec. 223(a) – There is no present codified law against lynching in India, however Sub-section (a) of sec. 223 of Cr.P.C, 1973 contains the provision for persons being charged for an offence jointly when they are accused of the same offence committed in the course of the same transaction which is applicable on two or more people.

Lord Macaulay once said "I believe that no country ever stood so much in need of a code of law as India, and I believe also that there never was a country in which the want might be so easily supplied".[8]

Therefore the author humbly submits that the existing legal frame work in IPC and Cr.P.C of our country are capable to address the acts of mob violence/lynching. The only fact remains is lack of enforcement of the said penal and procedural provisions.

---

[8] M.C. Setalvad, The Common Law in India, 27 (Stevens and Sons ltd, London, 1960)

Furthermore there are some provisions under The Karnataka Gram Swaraj and Panchayat Raj Act, 1993 R / w Sec. 110 relating to nuisance in Panchayat areas and Sec. 110A impose duties and responsibilities on panchayat members[9] dealing about the duties and responsibilities of panchayat members in this regard. Similar provisions are there in Karnataka Municipalities Act, 1964.

The bills relating to protection and prohibition of lynching passed by the Rajasthan and West Bengal legislative assemblies in the year 2019, if enacted into law will not serve any purpose due to the lack of enforcement of laws by the police administration. The said bills provide for imposing fines without severe punishment.

So also any effort for enacting a central law in the matter of lynching may also turn futile in case if the law enforcing authorities donot implement the provisions of such central law. Moreover there is no "Social bill" amongst the dominant groups for the bringing a central law for prohibition of lynching in society.

CRITICAL ANALYSIS OF THE JUDGEMENT DELIVERED BY SUPREME COURT IN THE CASE OF "*TEHSEEN S. POONAWALLA* V. *UNION OF INDIA*"[10]

Thanks to the judgement of the Hon'ble Supreme Court for holding that vigilantism is a threat to pluralism and secularism. Further the judgement condemns any act of or form of lynching in society.

The judgement rightly observes that the two fold objects of lynching are:

1. Lynching usurp the authority of administration of justice
2. It deprives the constitutional fundamental rights of the citizens.

The critical part of the judgement is – the judgement does not acknowledge and caution the dominant group for encouraging their ideology for supporting lynching. Further the judgement does not acknowledge the biased role of the police in preventing lynching.

---

[9] Sec.110A (f) promote equality by not discriminating against any person and by treating people with respect regardless of their race, age, religion, gender (sex) or disability;

[10] Tehseen S. Poonawalla v. Union of India, (2018) 9 SCC 501

CONCLUSION AND SUGGESTIONS

Long ago our national poet Kuvempu said "whatever you be, you be first a human being". Incident of Farkhunda Malikzada, a 27 year old women attacked by mob for wrong allegations against her for burning Quoran, Mob violence happened. One M.P. from Kabul Province Constituency said, "killing Farkhunda is neither a male or female issue, it is a human issue".

Unless and until the mind-set, emotions, excitement is controlled and removed from the minds of the dominant groups, whodonot change their thinking towards committing acts of lynching, it is highly impossible to contain and put an end to the act of lynching in society.

It is evident when one observes carefully, the act of lynching that took place on April 16th 2020 when 3 members, including the driver of a car and 2 members one aged 70 years and another aged 35 years belonging to 'Shri PanchDashnam JunaAkhaara' in Varanasi, Uttar Pradesh where brutally killed by a mob of Adivasis who anticipated that the three persons travelling in the car were thieves for abducting children from the village of Dahanu taluk of Palghar District of Maharashtra state. The said act of lynching was highly condemned across all the circles of people in society[11].

Inspite of the guidelines of the Supreme Court, which emanate from its acknowledgement of this heinous crime, to deal with the dehumanising menace, the number of mob lynching reported has increased. This is possible owing to the instrumental use of the lynching to exercise control, demonstrate power and marginalise the less dominant Hindus, Muslims, Adivasis and Dalits.

In view of the above conclusion, the author put forth suggestions as under:

1. There should be constant awareness about morals, values of Indian Society by eminent religious, social leaders and likeminded politicians in each and every district and taluk places about the consequences of the acts of lynching in society.
2. The awareness should be a people's movement with fullest support of both print and electronic media for prohibiting the acts of lynching in society.

[11] https://thewire.in/rights/three-men-lynched-in-maharashtra-two-from-nomadic-tribe-bjp-leaders-push-communal-angle

3. Most importantly there should be a law enforcement system without any bias, ill-will, fear or favour with an impartial mind for preventing the occurrences of lynching in society.
4. There is a need for proactive judicial decision making with efficient lawyers and a well-accepted witness protection programme. There should be speedy disposal of criminal cases leading to offences of acts of mob lynching by the judiciary from the lowest Court to the Supreme Court of India.

One of the important duties of the citizens under Article 51A(e) of our Constitution reads as "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women". The said duty should be made known to the people through constant awareness.

TRIPS WAIVER - IF NOT NOW, THEN WHEN?

- Prof. (Dr.)Bismi Gopalakrishnan*

INTRODUCTION

Ever since the TRIPS Agreement was adopted in 1994 as part of the World Trade Organization, we have witnessedan aggressive approach towards human rights[1]. Right to health is enshrined in international law,[2] and as a corollary state parties have a positive duty to ensure its progressive realization; it is pretty common that intellectual property routinely trumps over the right to health and other economic, social, and cultural rights.

---

* Dean Faculty of Law, Professor and Head, School of Indian Legal Thought, Mahatma Gandhi University, Kerala

[1] For Details See, *Laurence R. Helfer*, *Human Rights* and *Intellectual Property*: Conflict or Coexistence?, 5 Minn. Intell. Prop. Rev. 47 (2003)

[2] Article 12 of The International Covenant on Economic, Social and Cultural Rights (ICESCR) reads"..The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness Art 12 reads, Thus under the International Covenant on Economic, Social and Cultural Rights, which most countries have adopted, everyone has the right to "the highest attainable standard of physical and mental health." The United Nations Committee on Economic, Social and Cultural Rights, which monitors state compliance with the covenant, has stated that: The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health…"The 2016 United Nations Secretary-General's report on access to medicines recognised disjunctures in law, policy and practice in relation to the right to health and international trade, especially with regard to conflicts between intellectual property rules and public health objectives. See also , Report of the United Nations Secretary-General's High-Level Panel on Access to Medicines: Promoting innovation and access to health technologies (September 2016) http://www.unsgaccessmeds.org/final-report

Despite the Doha Declaration on TRIPS and Public Health2001[3], which reaffirmed flexibilities in TRIPS[4] to accommodate access to medicines,

[3] In 2001, WTO Members adopted a special Ministerial Declaration at the WTO Ministerial Conference in Doha to clarify ambiguities between the need for governments to apply the principles of public health and the terms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In particular, concerns had been growing that patent rules might restrict access to affordable medicines for populations in developing countries in their efforts to control diseases of public health importance, including HIV, tuberculosis and malaria. The Declaration responds to the concerns of developing countries about the obstacles they faced when seeking to implement measures to promote access to affordable medicines in the interest of public health in general, without limitation to certain diseases. While acknowledging the role of intellectual property protection "for the development of new medicines", the Declaration specifically recognizes concerns about its effects on prices. The Doha Declaration affirms that "the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health". In this regard, the Doha Declaration enshrines the principles WHO has publicly advocated and advanced over the years, namely the re-affirmation of the right of WTO Members to make full use of the safeguard provisions of the TRIPS Agreement in order to protect public health and enhance access to medicines for poor countries. See, WTO MINISTERIAL CONFE RENCE Fourth Session Doha, 9 - 14 November 2001 WT/MIN(01)/DEC/W/2 14 November 2001 See also https://twn.my/title2/wto.info/2020/ti201020.htm

[4] The Doha Declaration refers to several aspects of TRIPS flexibilities , including the right to grant compulsory licenses and the freedom to determine the grounds upon which licences are granted, the right to determine what constitutes a national emergency and circumstances of extreme urgency, and the freedom to establish the regime of exhaustion of intellectual property rights**. Compulsory Licences**The TRIPS Agreement allows the use of compulsory licences. Compulsory licensing enables a competent government authority to license the use of a patented invention to a third party or government agency without the consent of the patent-holder. Article 31 of the Agreement sets forth a number of conditions for the granting of compulsory licences. These include a case-by-case determination of compulsory licence applications, the need to demonstrate prior (unsuccessful) negotiations with the patent owner for a voluntary licence and the payment of adequate remuneration to the patent holder. Where compulsory licences are granted to address a national emergency or other circumstances of extreme urgency, certain requirements are waived in order to hasten the process, such as that for the need to have had prior negotiations obtain a voluntary licence from the patent holder. Although the Agreement refers to some of the possible grounds (such as emergency and anticompetitive practices) for issuing compulsory licences, it leaves Members full freedom to stipulate other grounds, such as those related to non-working of patents, public health or public interest. The Doha Declaration states that each Member has the right to grant compulsory licences and the freedom to determine the grounds

prices of many life-saving diagnostics, therapeutics, vaccines, and other medical products continued to remain out of reach of most governments and their people. The world had witnessed this in HIV/AIDS[5], avian influenza (H5N1), and (H1N1). With COVID-19, history is repeating itself[6].

Physical distancing, face coverings, testing, tracing, and therapeutics can mitigate the spread of the virus. However, the risk of outbreaks and disruption to economic and social life will[7] probably remain until effective vaccines are administered to large portions of the global population.Several COVID-19 vaccines[8] have now been authorized or approved for human use,

---

upon which such licences are granted.**Parallel Importation.** Parallel importation is importation without the consent of the patent-holder of a patented product marketed in another country either by the patent holder or with the patent-holder's consent. The principle of exhaustion states that once patent holders, or any party authorized by him, have sold a patented product, they cannot prohibit the subsequent resale of that product since their rights in respect of that market have been exhausted by the act of selling the product. Article 6 of the TRIPS Agreement explicitly states that practices relating to parallel importation cannot be challenged under the WTO dispute settlement system. The Doha Declaration has reaffirmed that Members do have this right, stating that each Member is free to establish its own regime for such exhaustion without challenge. Since many patented products are sold at different prices in different markets, the rationale for parallel importation is to enable the import of lower priced patented products. Parallel importing can be an important tool enabling access to affordable medicines because there are substantial price differences between the same pharmaceutical products sold in different markets. See, https://twn.my/title2/wto.info/2020/ti201020.htm

[5] At the beginning of the 1980s before HIV had been identified as the cause of AIDS the infection was thought to only affect specific groups such as gay men in developed countries and people who inject drugs. The HIV virus was first isolated by Dr Francoise Barre Sinoussi and Dr. Luc Montagnier in 1983 at the Institute Pasteur. In November that yeat WHO held the first meeting to assess the global AIDS situation and initiated international surveillance. It was then that the global health community understood that HIV could also spread between heterosexual people through blood transfusions, and that infected mothers could transmit HIV to their babies. For Details See, Dr Young-Soo Shin How far have we come on AIDS? WHO 27 November 2018

[6] A crisis like no other, An Uncertain Recovery WORLD ECONOMIC OUTLOOK UPDATE , JUNE 2020(IMF)

[7] https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(21)00306-8.pdf

[8] **Around the world, there are now 99 COVID-19 vaccine candidates undergoing clinical trials and 184 candidates in pre-clinical development.** When candidate vaccines make it to human clinical trials, they first go through phase 1 trials primarily to test the vaccine's safety, determine dosages and identify any potential

side effects in a small number of people. Phase 2 trials further explore safety and start to investigate efficacy on larger groups. Phase 3 trials, which few vaccines ever make it to, are much larger, involving thousands or tens of thousands of people, to confirm and assess the effectiveness of the vaccine and test whether there are any rare side effects that only show up in large groups. The final stage, phase 4 trials, is conducted after national regulatory approval and involves further monitoring in a wide population over a longer timeframe as a form of post-marketing surveillance (pharmacovigilance). The World Health Organization (WHO) lists candidates at various stages of clinical trials **The important vaccines on roll are MODERNA (USA)**RNA VACCINEThe final trial results confirm this vaccine has a 94% efficacy, and the data has been sent to regulators around the world. The vaccine has been developed by Moderna, in Cambridge, Massachusetts, and funded by the National Institute of Allergy and Infectious Diseases (NIAID), which is part of the US National Institutes of Health. The vaccine was tested in phase 1 trials on volunteers at the Kaiser Permanente Washington Health Research Institute in Seattle. Moderna has run phase 2 trials on participants of a wide range of ages and started phase 3 trials in July 2020. The final trial enrolled 30,000 healthy people from across the United States. In February, a phase 4 trial was launched as part of a national cohort study in collaboration with the Danish Ministry of the Interior and Health. **ASTRAZENECA/UNIVERSITY OF OXFORD (UK)**VIRAL VECTOR VACCINE.The ChAdOx1 vaccine, developed by the University of Oxford, has a vaccine efficacy of up to 90% and has been granted emergency use authorisation by the European Medicines Agency as well as national regulators in the UK, Argentina, India, Mexico, Brazil and Pakistan. Although the efficacy is slightly lower than the Moderna and Pfizer vaccines, it is fridge-stable meaning that it can be easily transported anywhere in the world. It was also found to be 100% effective against severe disease. It was tested in phase 3 clinical trials with more than 10,000 people from across the UK, including children and older people. The vaccine was also tested in Brazil, the United States and India and South Africa In February 2021, a phase 4 trial was launched as part of a national cohort study in collaboration with the Danish Ministry of the Interior and Health. In March 2021, the University of Oxford registered a further phase 1 trial in the UK with 30 adult participants to investigate the delivery of its ChAdOx1 vaccine using a nasal spray. ChAdOx1 is currently being delivered by intramuscular injection as part of the UK's national rollout. By using a different technique that administers the vaccine to the site of infection, researchers at Oxford intend to investigate whether this results in enhanced protection, especially against transmission and mild disease. **PFIZER/BIONTECH (GERMANY)**RNA VACCINEIn December 2020, the UK became the first country in the world to approve this vaccine and began rolling out an initial 800,000 doses at the start of the month. BioNTech, working together with Pfizer, started testing its BNT162 vaccine in humans in global trials, initially in Germany, and then started trials in the USA. BioNTech has also entered into a € 100 million debt financing agreement with the European Investment Bank in order to scale-up the production of the vaccine in Europe. On 27 July 2020, it announced

with many more in the late stages of clinical development. Yet having licensed vaccines is not enough to achieve global control of COVID-19: they also need to be produced at scale, priced affordably, allocated to all across the globe[9].

But to what extent is the current production, affordability, availability, and deployment in tune with the basic tenets of the right to health and social justice? Who will get COVID 19vaccines[10], drugs, and technologies, and

---

the launch of a phase 2/3 trial with 30,000 volunteers in the USA and other countries including Argentina, Brazil and Germany. In September, it said it would expand its phase 3 US trial to 43,000 participants. At the start of October 2020, BioNTech and Pfizer started recruiting for a phase 3 trial in South Africa and by early November had reported promising interim results. In its final efficacy analysis, its data showed a vaccine efficacy rate of 95% (even in adults over 65 years efficacy was more than 94%, which is reassuring as older people don't always have a strong immune response to vaccines).**SINOVAC (CHINA)**INACTIVATED VACCINESinovac conducted phase 3 trials involving volunteers in Brazil, Indonesia and Turkey. Although it is not yet approved by regulators, shipments have already arrived in Indonesia, ready for rollout. A report in July said that the Chinese government has given the Sinovac vaccine emergency approval for limited use. The city of Jiaxing has reportedly offered the vaccine to health workers and other high-risk groups for US$ 60. The company began phase 4 trials in February 2021. For details See, https://www.gavi.org/ While Covaxin the Indian made vaccine is an inactivated vaccine which means that it is made up of killed coronaviruses, making it safe to be injected into the body. The vaccine, produced by Hyderabad-based Bharat Biotech in collaboration with the Indian Council of Medical Research (ICMR) and National Institute of Virology, Pune The Sputnik V vaccine was created at the N.F. Gamaleya Research Center for Epidemiology and Microbiology Ministry of Health of Russia. The COVID-19 vaccine Sputnik V (Gam-COVID-Vac) is an adenoviral-based two-part vaccine against the SARS-CoV-2 coronavirus.

[9] Oliver J Wouters , Challenges in ensuring global access to COVID-19 vaccines : production, affordability, allocation and deployment *https://www.thelancet.com* ›

[10] List of companies with vaccine /vaccine candidates which, as of February 3, 2021Anhui Zhifei Longcom Biopharmaceutical Institute of Microbiology / Chinese Academy of Sciences (protein subunit) (Government institutions or state-owned enterprise / laboratory in China) 2. AnGes / Osaka University / Takara Bio (DNA) 3. AstraZeneca / University of Oxford (non-replicating viral vector) 4. Bharat Biotech (inactivated) 5. Biological E Limited (protein subunit) 6. BioNTech / Fosun Pharma / Pfizer (messenger RNA) 7. CanSino Biological Inc / Beijing Institute of Biotechnology (non-replicating viral vector) 8. Clover Biopharmaceuticals Inc / Dynavax (protein subunit) 9. Covaxx / University of Nebraska (protein subunit) 10. CureVac (messenger RNA) 11. Gamaleya Research Institute (non-replicating viral vector) 12. Inovio Pharmaceuticals / International Vaccine Institute (DNA) 13.

when? [11] Will they be affordable, and will there be enough medicines, vaccines, and medical products including diagnostic kits, medical masks, and other personal protective equipment and ventilators, go around? The answer is not at all easy because the root of the problem is not science but the structural inequality in global health due to the restrictive approaches of intellectual property.

A suspension of pharmaceutical monopolies, even temporary, is what the world needs. It would mark a crucial turn in the right direction, in this moment of exhaustion and panic. It is nobody's case that a patent waiver is a magic wand that will solve all the production problems, affordability, availability, and deployment in the immediate future.However, current inequalities in access are morally untenable and profoundly detrimental to human health and wellbeing.

Health is a human right, and it should never be a hostage to the patent rights of innovators. Vaccines must be administered in every country to symbolize hope for overcoming both the pandemic and the inequalities that lie at the root of so many global health challenges. TRIPS regulatory barriers will not bring back the countless lives that were lost. As the Covid-19 pandemic aggressively advances, is there any iota of hope to believe that the planet will sway away from monopoly medicine and embrace a new planetary health system?

WAIVER OF INTELLECTUAL PROPERTY

In October 2020,[12] India and South Africa, two of the countries hardest hit by the pandemic, formally petitioned the WTO to suspend Section 1

Institute of Medical Biology / Chinese Academy of Medical Sciences (inactivated) 14. Johnson & Johnson (Janssen) / Beth Israel Deaconess Medical Center (non replicating viral vector) 15. Medicago Inc / GlaxoSmithKline / Dynavax (virus-like particle) 16. Moderna / National Institute of Allergy and Infectious Diseases (messenger RNA) 17. Novavax (protein subunit) 18. Research Institute for Biological Safety Problems (Kazakhstan) (inactivated) 19. Sanofi / GlaxoSmithKline (protein subunit) 20. Serum Institute of India / Max Planck Institute (live-attenuated bacteria) 21. Sinopharm / Beijing Institute of Biological Products (inactivated) 22. Sinopharm / Wuhan Institute of Biological Products (inactivated) 23. Sinovac Pharma (inactivated) 24. SK Biosciences (protein subunit) 25. University of Hong Kong (replicating viral vector) 26. Vector Institute / Rospotrebnadzor (protein subunit)

[11] At the time of writing, it is reported that just 5% of the total population in India, have received at least two vaccine dose

[12] On 2 October 2020, South Africa and India submitted a joint communication to the TRIPS Council at the WTO, titled “Waiver from certain provisions of the TRIPS

(copyrights and related rights), 4 (industrial design), 5 (patents), and 7 (protection of undisclosed information) of Part II of the TRIPS Agreement.[13] The plea was for all members because it created "barriers to the timely access to affordable medical products"worldwide.[14]

The four-page proposal[15] requested WTO members to waive these four categories of I.P. rights – patents,copyright industrial designs, and undisclosed informationunder the Agreement of Trade-Related Intellectual Property Rights (TRIPS) until the majority of the world population receives effective

---

agreement for the prevention, containment and treatment of COVID-19". The proposal requests a waiver to be granted to WTO members so that they do not have to implement, apply or enforce certain obligations related to COVID-19 products and technologies under Section 1 (copyrights and related rights), 4 (industrial design), 5 (patents) and 7 (protection of undisclosed information) of Part II of the TRIPS Agreement.

[13] *https://www.wto.org › docs_e › legal_e › 27-trips_03_e*

[14] IP/C/W/669 2 October 2020 (20-6725) Council for Trade-Related Aspects of Intellectual Property Rights https://docs.wto.org › Pages › directdoc › W669. See also, TRIPS waiver proposal A compilation of Statements and Reports , See Third World Network *https://www.twn.my*

[15] (IP/C/W/669) on 2 October The proposal stated that members of the global community are facing "exceptional circumstances" due to the rapidly spreading SARS-CoV-2 virus which causes the COVID-19 disease. So far, more than 35 million people have been infected with the COVID-19 all over the world, with more than one million people having lost their lives due to the pandemic. India and South Africa have requested the TRIPS Council to recommend, "as early as possible, to the General Council, a waiver from the implementation, application and enforcement of Sections 1, 4, 5, and 7 of Part II of the TRIPS Agreement in relation to prevention, containment or treatment of COVID-19."The request made by India and South Africa seeks to drop the "standards concerning the availability, scope, and use of intellectual property rights" concerning "copyright and related rights", industrial designs", "patents," and "protection of undisclosed information"- which is increasingly becoming the major route for not disclosing information concerning novel therapeutics and medicines. "The waiver should continue until widespread vaccination is in place globally, and the majority of the world population has developed immunity, hence we propose an initial duration of [x] years from the date of the adoption of the waiver," See , Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19. Communication from India and South Africa (2 Oct 2020) IP/C/W/669 https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf& Open=True (accessed 14 May 2021). See also , TRIPS waiver proposal A compilation of Statements and Reports *https://www.twn.my*

vaccines and develops immunity.[16]Both the countries submitted that the proposed Waiver would be applicable only to relation to prevention, containment or treatment of COVID-19. It did not suggest a waiver from all TRIPS obligations, nor did itindicate a waiver beyond what is needed for COVID-19 prevention, containment, and treatment [17]

WHY WAIVER?

Waiver refers to Permission granted by WTO members allowing a WTO member not to comply with regular commitments. [18]Waivers have time limits and extensions have to be justified.

---

[16] https://www.mahpsa.org/wp-content/uploads/2021/06/MiCoSA-Migrants-the-Covid- 19-vaccineOccasionalPaper-June2021.pdf

[17] The waiver proposed by South Africa and India was presented and discussed on 16 October at WTO TRIPS Council meeting. During the session, Kenya and Eswatini joined South Africa and India to become official cosponsors to the proposal and nearly 100 countries welcomed and showed support overall for the waiver, while nine WTO members, including the EU, did not support the proposal. List of supporters and opponents of the TRIPS waiver proposal on 16 October: - Cosponsors: Eswatini, India, Kenya, South Africa - In full support: Argentina, Bangladesh, Egypt, Indonesia, Mali, Mauritius, Mozambique, Nepal, Nicaragua, Pakistan, Sri Lanka, Tunisia, Venezuela, Holy See, UNAIDS, WHO - Welcomed and supported the general need for further discussions: Chad (least-developed countries (LDC) Group), Chile, China, Colombia, Costa Rica, Ecuador, El Salvador, Jamaica (African, Caribbean and Pacific countries (APC) Group), Nigeria, Philippines, Senegal, Tanzania (Africa Group), Thailand, Turkey - Opposed or did not support: Australia, Brazil, Canada, EU, Japan, Norway, Switzerland, United Kingdom, United States.https://www.globaljustice.org.uk/wp-content/ uploads/ 2021/02/ uk_parliamentarian_briefing_-_trips_waiver_a4.pdf

[18]The waiver proposal of India and South Africa involves key provisions of TRIPS Agreement such as those in "relation to the Berne Convention", "computer programs and compilation of data", "rental rights," "term of protection," "limitations and exceptions," and "protection of performers, producers of phonograms (sound recordings) and broadcasting organizations."As regards industrial designs, India and South Africa are seeking the waiver for "requirements for protection," and "protection." On the "protection of undisclosed information," India and South Africa requested the waiving off Article 39 on protection of undisclosed informationIn the most important section of the TRIPS Agreement on patents, India and South Africa asked for a waiver for "patentable subject matter," "rights conferred" "conditions on patent applicants," "exceptions to rights conferred," "other use without authorization of right holder," "Article 31bis", which is an amendment to Article 31(f) that was included following the Doha public health agreement of 2003, "revocation/forteiture," "term of protection," and "process patents, burden of proof https://www.wto.org › thewto_e › glossary_e › waiver_e

In the past few months, we have seen that IPRs do come in the way of scaling up the production of test kit reagents, ventilator valves, N95 respirators, therapeutics, fluorescent proteins and other technologies used in development of vaccines [19]

[19]The majority of COVID-19 laboratories in the Netherlands work with equipment made by pharmaceutical corporation Roche and depend on the company for supplies of the testing reagents, the liquid buffer needed to run the tests. A shortage of this buffer is one of the reasons why the Netherlands was not able to carry out mass testing for COVID-19 during the early stages of the pandemic in late March.Despite the shortage, Roche initially refused to provide the recipe for the buffer, blocking labs from quickly making their own solution and ramping up their testing capability. Following public pressure, and after the Dutch Health Minister suggested issuing a compulsory license on the buffer formula and the European Commission started to investigate Roche for possible abuse of its market position, Roche agreed to release the buffer recipe for others to make. Again South Africa faced challenges accessing key chemical reagents for COVID-19 diagnostic testing due to proprietary protection on the machines and the reagents.. 2 Medical equipment: In Northern Italy, patent holders threatened producers of 3D printing ventilator valves with patent infringement lawsuits. N95 masks that offer much better protection than surgical masks have hundreds of patents on them by the multinational company 3M, and other entities. To address the short supply of N95 masks, in March 2020 the Governor of Kentucky in the United States even called on 3M to waive their patents so that more manufacturers can start producing masks. IPR acted as a barrier to treatment techniques also . Preliminary data have demonstrated that primary and secondary patent applications have been widely filed or granted for some of the antiviral and monoclonal antibody therapeutic candidates, such as AT-527 and baricitinib, including in developing countries. The pharmaceutical company Regeneron also obtained a US patent on the experimental REGN10933 + REGN10987 monoclonal antibody therapy, which only expires in 2040. Regeneron has chosen to only partner with Roche, and has shown no plan to license the IP or transfer technology to monoclonal antibody producers in developing countries who can scale up supply and reduce the prices of these monoclonal antibody therapies. Vaccines: Industry and some institutions claim that IP is not an issue for COVID-19 vaccine access. However, when alternative vaccine producers independently developed 13-valent pneumococcal conjugate vaccines (PCV13), Pfizer's aggressive patenting strategy compelled a South Korean company to stop its development and delayed the availability of more affordable alternative versions of the pneumonia vaccine for children. MSF found that patents have also been applied for or granted across the entire vaccine development, production and delivery process. These patents increase uncertainty and costs, delay competition and keep prices high for low- and middle-income countries, hindering people's access to important vaccines. Others have published similar findings. IP issues, including patents, can be a barrier to cheaper vaccines entering the market WTO COVID-19

The proposed Waiver is likely to have two crucial trigger effects[20].

Firstly, it would remove barriers to access to Covid-19 drugs, vaccines, and other treatments. Relaxing TRIPS would enable developing countries with insufficient or no manufacturing capacity to freely import pharmaceutical products. Sans patent linkages in the regulatory process, emergency approvals would be readily available to generic producers of patented medicines. It will allow for easier technology transfers, less strict licensing terms, and increased access of vaccine manufacturers worldwide to raw materials needed to make and deploy vaccines.

Secondly, the related effect would be to make processes and products adopted by countries to vaccinate their populations immune from claims of illegality under the I.P. law.

One must also consider that since the pandemic started, patent claims have been filed across the globe but are yet to be published fully because of an 18-month procedural embargo under international and national patent rules.

Suppose these and other therapeutic candidates show efficacy. In that case, the current situation will compel countries to depend on patent-holding corporations' determinations of where to supply, at what price, and whether they will allow multiple producers to meet the global demand[21]. In a pandemic, delivering universal and affordable access to critically acute medical treatments should not be left to monopoly market forces. Therefore the Waiver can provide expedited legal certainty and clarity to enable competent manufacturers to develop and supply these potential treatments without the fear of expensive litigation. TRIPS waiver, in short, is a powerful remedy to protect peoples' rights to life, health, and an adequate standard of living.

---

[20] TRIPS waiver proposal Myths, realities and an opportunity for governments to protect access to lifesaving medical tools in a pandemic See, *https://www.twn.my*

[21] Already the pharmaceutical corporation Gilead Sciences has set a negative precedent early on in the pandemic by patenting and licensing a COVID-19 medicine – now being delisted by World Health Organization (WHO) due to lack of efficacy – in a manner that excluded nearly half of the world's population from accessing alternative suppliers at a lower price.https://www.transcend.org/tms/wp-content/uploads/2021/02/MSF-COVID_TRIPSWaiverMythsRealities_Dec2020.pdf

Moreover, most Covid vaccines and allied medical products are currently concentrated in high-income countries; production by middle-income countries has been happening through licensing or technology transfer agreements.[22] Ramping up production capacities will be a lengthy process [23] .

The I.P. waiver will result in the large-scale manufacture of therapeutics, diagnostic kits and equipment, and vaccines.This is because a waiver from the WTO would remove intellectual property obstacles and allow more countries to manufacture diagnostics and treatments, thereby reducing prices locally. It may not be a silver bullet for vaccines since western pharmaceutical companies would have to voluntarily share their know-how and technology. In addition to giving up their intellectual property;however, it would certainly build up the moral pressure for them to do so.The proposal for a TRIPS waiver by India, South Africa, Kenya, and Eswatini (formerly called Swaziland) secured strong support from developing countries.[24]

---

[22]Aanchal Magazine , Prabha Raghavan Explained: Intellectual property waiver for Covid-19 vaccinesThe indian Express , May 11, 2021 8:43:46 am

[23]The International Federation of Pharmaceutical Manufacturers & Associations (IFPMA) has pointed to other "real challenges" in scaling up production and distribution of Covid-19 vaccines. These include trade barriers, bottlenecks in supply chains, scarcity of raw materials and ingredients in the supply chain, and the unwillingness of rich countries to share doses with poorer nations.The scarcity of raw materials has been a growing issue for ramping up production; several manufacturers have been relying on specific suppliers, and alternatives are limited. Also, countries like the US had blocked exports of critical raw materials used in the production of some Covid-19 vaccines using regulations like the American Defence Production Act.This led to a delay in the production of Covid vaccines by some companies in India. Mahima Datla, managing director of Biological E, which is making the J&J vaccine in India, had said US suppliers have told global clients they may not be able to fulfil their orders because of the ActVaccine makers such as Adar Poonawalla of Serum Institute of India (SII) had said that the use of the DPA had blocked exports of plastic bags, filters, and certain media used in the production of its version of the Novavax vaccine. On April 25, the White House said the US had identified sources of "specific raw material" that were "urgently" required for the manufacture of Covishield, SII's version of the AstraZeneca vaccine, and they would be "immediately" made available for India See, https://twn.my/title2/wto.info/2020/ti201020.htm

[24] In a Tweet posted on 17 October, the director-general of the World Health Organization (WHO), Dr Tedros Adhanom Ghebreyesus, welcomed the proposal tabled by South Africa and India "to ease international and intellectual property agreement on COVID-19 vaccines, treatments & tests in order to make the tools available to all who need them at an affordable cost.""Ending the pandemic starts

JOURNEY OF THE WAIVER PROPOSAL

During the marathon debate over TRIPS waiver, the members aired different opinions regarding the Waiver

They formed three different blocs[25]

1. WTO Members who supported the proposal, the vast majority of which were least developed and developing countries[26]
2. WTO Members who expressed their rejection of the text, the vast majority of which were developed countries [27]
3. WTO members who welcomed the proposal but asked for further clarification on some points, particularly regarding the possible economic impact of the Waiver, said they were consulting with capital to make a more informed decision[28].

Responding to the questions/concerns raised by the U.S., the E.U., and other developed countries, the South African delegate stressed that the

---

with collaboration," he said, suggesting that the WHO had launched the "COVID-19 Technology Access Pool in May, inviting countries to share data, knowledge and intellectual property on vital, life-saving health products in the fight against the coronavirus."The Joint United Nations Programme on HIV/AIDS (UNAIDS), UNITAID, the Drugs for Neglected Diseases initiative (DNDi), the Geneva-based South Centre, Medecins Sans Frontieres (MSF) and other international civil society organizations including Third World Network strongly supported the TRIPS waiver proposal on grounds that it would accelerate efforts by developing countries to collectively fight the COVID-19 through creating requisite capacities for manufacturing the vital PPEs (personal protectI've equipment) including face masks, therapeutics, and vaccines. See, https://twn.my/title2/wto.info/ 2020/ti 201020.htm

[25]https://www.keionline.org/34235

[26]Tanzania on behalf of the African Group, Chad on behalf of the LDC members, Bangladesh, Sri Lanka, Pakistan, Venezuela, Honduras, Nepal, Nicaragua, Egypt, Indonesia, Argentina, Tunisia, Mali, Mauritius and Mozambique

[27]European Union, United States of America, Switzerland, Norway, Australia, Canada, Japan and the United Kingdom , joined by Brazil; US constantly emphasized the importance of innovation during the COVID-19 pandemic for safe and affordable medical solutions The EU stated that it doesn't see IP (intellectual property) as a barrier, maintaining that other factors such as health infrastructure and lack of materials are more relevant. It emphasized its medicines initiative for further liberalization of medical products in the face of the COVID-19 pandemic that as caused more than a million deaths around the world, the person said.

[28] Nigeria, Philippines, Turkey, Ecuador, China, Thailand, Senegal, Jamaica, Colombia, Costa Rica, Chile and El Salvador .

protection and enforcement of intellectual property are not absolute. The diplomat noted that Article 8 of the TRIPS Agreement recognizes that countries adopt necessary measures to protect public health.[29]

DETERRENTS OF THE WAIVER

The problem with the TRIPS Agreement is that it is a double-edged sword; it acts on two fronts.[30]

On the legal front, the TRIPS Agreement is burdened with stringent provisions that would make it almost impossible for any developing country to adequately use the flexibilities in it , including the compulsory license provision.

And on the second front, the powerful members such as the U.S. and the E.U. exert an enormous pressure, including "arm-twisting" behind the scenes[31] if any developing country wants to avail of the compulsory licensing and other flexibilities.The argument that these countries cannotproduce vaccines speedily goes against earlier moves towards a patents regime for

---

[29] The COVID-19," according to the South African delegate, "constitutes an unimaginable global pandemic which requires swift and bold action" and "the COVID-19 is far from over and there is no certainty as to when effective vaccines will be available in sufficient quantities to ensure equitable access…..We explained the rationale for our proposal and believe that our proposal demonstrates the existence of exceptional circumstances that justifies our request for a waiver decision, with clear terms and conditions governing the application of the waiver," South Africa argued. Further, the proposed waiver does not imply any change of the substantive treaty obligations, the South African delegate said, arguing that the "waiver only temporarily suspends their operation for a period to be agreed by Members and thus will be time-bound." South Africa further clarified the date on which the waiver will continue to apply until widespread vaccination is in place globally, and the majority of the world's population has developed immunity.

[30] https://donttradeourlivesaway.wordpress.com/2020/11/24/third-world-network-reports-on-20th-nov-2020-trips-council-discussion-on-the-waiver-proposal-initiated-by-india-and-south-africa/

[31] Ironically, Brazil, which has now allied itself with the US against the waiver, was the first country to stand up to the US coercive tactics in 2000, when Brasilia launched a global movement against intellectual property rights (see the WTO US-Brazil IPR dispute no. 199). Brazil had passed an industrial law that established a "local working" requirement for the enjoyment of exclusive patent rights.In the face of the international civil society movement and other pressure groups, the US quietly climbed down and withdrew its dispute panel request at the WTO, the negotiator said.

generic drugs. Experts said the same reasoning can be used now for the production of vaccines.[32]

The initial journey of waiver proposal was strewn withstonewalling tactics by developed countries, especially the United States, the European Union, Japan, and Switzerland[33] .However, theG20 leaders reflected the concerns raised by the proponents of the TRIPS waiver.[34]

---

[32] "They will question the capacity and quality. But a number of companies from different countries have said they are ready to produce, and quality can always be assessed. Between 1972 and 2005, India had adopted process patenting rather than product patenting, and built up a huge generic industry. If western companies are interested in contracting Indian companies for manufacturing their vaccines in India, then how can they say you do not have the quality to produce on your own?"

[33]At the meeting, a US delegate said intellectual property rights (IPRs) encourage innovation and R&D, as well as manufacturing and access to medicines around the world, emphasizing that these core features are necessary for the global community to help and develop new medicines.The US delegate said that IPRs are not an obstacle for addressing the pandemic and, if anything, they motivated countries to find treatment and medicines. The delegate argued that the joint proposal to waive off provisions on patents, copyrights, industrial designs, and undisclosed trade secrets in relation to the prevention, containment, and treatment of COVID-19, would be broad and be an unprecedented step.The US described the waiver as a departure from the past WTO agreements, suggesting that the proposal "does not identify any specific measures for which it is requesting, instead, it says the waiver is meant for waiving TRIPS provisions for PCT (prevention, containment and treatment)".It argued that the waiver appears to be diametrically opposed to the G20 ministerial statement of 20 March, which states that "we agree that the emergency measures designed to tackle COVID-19 must necessarily be targeted, proportionate, transparent and temporary and that they do not create barriers to trade and disruptions to global value chains."Based on the G20 ministerial statement, the US posed several questions such as whether the proponents could explain how the waiver is a proportionate response to COVID-19, and whether the proponents could explain how members determine that their measure is related to prevention, containment and treatment of COVID-19, and so on. The US also sought to know from the proponents whether their measure is targeted against the COVID-19 pandemic during the implementation of the waiver.The US delegate acknowledged government funding running into tens of billions of dollars for the development of therapeutics and vaccines but suggested that the governments do not manufacture the drugs or vaccines. The US said pharmaceutical companies take enormous risks for developing these medicines, arguing that they need to be supported through strong IPR protection.According to the US, intellectual property has not been an obstacle in addressing the pandemic but rather has motivated global efforts to find treatments and cures. "Given the need to provide access to the entire global population, limits to manufacturing capacities and supply chain issues are currently

the most significant concerns especially for vaccines," the US said.Japan argued that if "IP (intellectual property) (is) not properly protected, it will reduce investment in the medical field, especially in the Infectious Disease area.""It will also introduce a risk factor for the development of medical technology (which) will be hindered and essential products may not be developed in future crises," .Japan said that the proponents did not explain the basis for their proposal and why the current IP framework is not working, noting that companies and researchers are working to ensure access to effective medical products. The European Union underscored the need for "a coordinated and multilateral public action to focus resources on the development of safe and effective therapeutics and vaccines to ensure rapid expansion of production of such vaccines and therapeutics as well as to ensure growth and equitable distribution including in low- and middle- income countries, safeguarding access for vulnerable populations across the world. "Given the success stories of Pfizer and Moderna, which have developed vaccines for the COVID-19, the EU said that "these results show that the intellectual property system as a framework that provides incentives and the foundation for stakeholders to invest and innovate has delivered." The EU said that "the proposed waiver would put in question the ongoing investments and efforts undertaken by researchers to develop the vaccine at an unprecedented speed." The waiver "could also undermine the ongoing public-private collaboration on the equitable access to affordable Covid-19 vaccines around the globe," the EU said, without providing any concrete evidence.The EU reluctantly agreed that "even though we do not foresee IP becoming a barrier to treatments or vaccines against Covid-19, we agree that members need to prepare for all eventualities in the times of crisis." The EU said that "this is why domestic legal frameworks should properly reflect the flexibility provided by the TRIPS agreement such as the possibility of issuing acompulsory license including for production for export to vulnerable countries that lack production capacity or including fast-track procedures that can be used in health emergencies. "Brazil, which had fought against IPRs in 2000 joined forces with the US and chose to raise questions that are almost similar to the ones raised by the US delegate to stall progress on the waiver Brazil sought precise responses to its questions, including on issues such as the rationale for including industrial designs in the proposal.Brazil, which is the second largest country in terms of the number of COVID-19 deaths, sought to know from the proponents the cases in which a waiver on copyright could be pertinent for preventing, containing or treating Covid-19.Contrary to its earlier industrial law and positions taken at the WTO against IPRs, Brazil sought to know from the proponents how members are facing legal and institutional difficulties when using flexibilities. Even before finalizing a decision on the waiver, Brazil sought "to hear from the proponents whether a waiver could reveal instead to be cumbersome and difficult to implement considering that most members would have to submit it to their national parliaments and (for) them to delve into the specific rights in each of the IP domains that would fall into the scope of the measure." , See Third World Network *https://www.twn.my*

On the other hand, the proponents of the Waiver offered concrete evidence to demonstrate that intellectual property is a barrier to access vaccines, treatments, or technologies in the global response to COVID-19.[35]

---

[34]At a virtual G20 leaders' meeting on 22 November, German chancellor Angela Merkel warned that "progress was slow", saying that "she would raise the matter with the global vaccines alliance GAVI)," "We will now speak with GAVI about when these negotiations will begin because I am somewhat worried that nothing has been done on that yet Speaking at the same G20 leaders' meeting, the French President Emmanuel Macron urged his G20 counterparts to "go further and faster" in supporting poorer nations by donating doses, forging industrial partnerships and even sharing intellectual property

[35]Kenya, for example, said that "the narrow emphasis on maintaining intellectual property to increase resources for pharmaceutical companies, disregards the fact that rapid development of COVID-19 diagnostics, therapeutics and vaccines is the sum of public funding and global collaboration. According to work done by several think tanks, Kenya said that global committed funding was $9.1 billion for COVID-19, while pharmaceutical companies received both funding commitments for research and development totalling more than $3.9 billion (excluding funds identified as purely for manufacturing).Kenya noted that the affected countries have shared digital sequence information and relevant public health information to enable researchers to track the evolution of this novel coronavirus and support the R&D (research and development)"The current monopoly-based model of R&D puts the fruits of a collective effort into a single company, allowing it to dominate the market, dictate supply and charge high prices with governments and taxpayers once again footing the costs of the medical product," Kenya said. "The co-sponsors," said Kenya, "do not believe that such an outcome is in the interest of a solidarity-based collaborative approach to address COVID-19."Kenya said it is wrong to say that there is no evidence that intellectual property is a barrier to accessing vaccines, treatments or technologies for the COVID-19, suggesting that "cases involving potential intellectual property infringements emerged early on in the pandemic revealing the complex legal implications of producing copies of life-saving medical products or parts thereof as well as impact on access." Kenya cited the example of the Gilead patent for Remdesivir, saying that Gilead has blocked access to generic alternatives until 2031.Arguing that "ad hoc, non-transparent and unaccountable bilateral deals that artificially limit supply and competition cannot reliably deliver access during a global pandemic," South Africa said "these bilateral deals do not demonstrate global collaboration but rather reinforce "nationalism", enlarging chasms of inequality."It pointed out that, for vaccines, "bilateral deals are being signed by pharmaceutical companies with specific governments but the details of these deals are mostly unknown." While these bilateral agreements "are for manufacturing of limited amounts and solely supplying a country's territory or a limited subset of countries," many companies have not signed any agreements to expand manufacturing and supply, meaning that during the time of vaccine development when such supply bottlenecks could have been addressed, companies

CHALLENGES IN USING ALTERNATIVES

As expected, developed countries, particularly the United States, the E.U., Japan, Canada, and Switzerland, opposed the adoption of the proposal and stalled the efforts of the vast majority of WTO members to take measures to scale up production. The opposition predominantly centered on three grounds. [36]

First, the often-cited argument that such measures will act as a disincentive to innovation for the pharma industry. The second argument is that existing flexibilities in the TRIPS agreement are good enough to address vaccine accessibility, and therefore, there is no need to waive TRIPS obligations. Thirdly, developed countries argue that there is no shortage of

---

are refusing to share intellectual property in a responsible fashion, South Africa said. "This (attitude of the pharmaceutical companies) turns countries against each other to compete for supply in lieu of working together to defeat the pandemic," said South Africa, citing the example of the Pfizer/BioNTech vaccine, which has been "pre-booked by developed countries representing 14% of the global population, and no public commitment has been made in support of sharing its COVID-19 vaccine knowledge, technology and related intellectual property to boost supply, reduce price and enhance equity." Citing the pronouncements made by Moderna, which has developed the m-RNA vaccine for tackling the COVID-19, on the premise that it will not enforce its "COVID-19 related patents against those making vaccines intended to combat the pandemic," South Africa said "the global pandemic response cannot be dependent on the possibility of such ineffectual, ad hoc announcements."South Africa said "voluntary licenses offered by patent-holding pharmaceutical corporations also tend to exclude millions of people from access to more affordable treatments." It cited the example of Medicines Patent Pool licenses that normally exclude many developing countries and high-income countries from being supplied under the licenses. South Africa said many of the monoclonal antibody candidate therapeutics such as tocilizumab, bevacizumab, and even the Regeneron's monoclonal antibody treatment, which has just been granted license for emergency use authorization, pose huge problems due to the disparity in access unless concrete steps are taken to address intellectual property barriers.With regard to diagnostics for the COVID-19, said South Africa, mass testing for the COVID-19 in Netherlands could not be done because of heavy dependence on Roche equipment and supplies of the liquid buffer to run the tests.South Africa argued that "emerging intellectual property disputes already threaten the development and supply of COVID-19 medical products." In one dispute, Regeneron and vaccine developers Pfizer and BioNTech are facing a lawsuit from Allele Biotechnology and Pharmaceuticals alleging that their coronavirus products were developed using Allele's mNeonGreen fluorescent protein without the company's permission, South Africa pointed out.

[36] https://twn.my/title2/unsd/2021/unsd210203.htm

COVID-19 medical products, and existing arrangements like COVAX facilitate access.

The first argument is not tenable especially taking into account the nature of the pandemic. It must be accepted that for COVID-19, the search for an effective treatment or vaccine is a global effort involving multiple actors – it is not the result of the pharmaceutical industry's efforts alone it is a joint multi-stakeholder effort. Governments and public funding agencies worldwide have poured billions of U.S. dollars of public money into supporting COVID-19 R&D, especially for drugs and vaccines. [37] Moderna and Pfizer-BioNTech Astrea Zeneca have received huge public funding for their research and production.When public money is involved, Governments must attach strings to guarantee that, if COVID-19 medical tools prove safe and effective, they are available to everyone. Some conditions may have been linked to Pharma companies, but none of it goes far enough to ensure that I.P. rights assigned to companies benefiting from taxpayer money do not abuse such rights down the line.

The second argument is that existing flexibility in the TRIPS agreement like compulsory licensing,Art.31bis mechanism,voluntary licensing are good enough to address vaccine accessibility. Therefore, there is no need to waive TRIPS obligations.The problem with the flexibilities in TRIPS Agreement is that it is a double-edged sword; it acts on two fronts.

On the legal front, the TRIPS Agreement is burdened with stringent provisions.[38]it is almost impossible for any developing country to adequately use its flexibilities, including the compulsory license provision, which are sovereign state authorizations that enable a third party to make, use, or sell a

[37]Both Moderna and Pfizer-BioNTech vaccines have received huge public funding for their research and production The German government provided $375 million to BioNTech to develop the vaccine technology. Similarly, Moderna received 100 percent funding for vaccine development from the US government. It seems that governments have spent $93 billion on COVID-19 vaccines mainly through advanced market commitments. See, Proof of Public and non-profit funding for the research, development, and production of leading vaccine candidates (as of February 3, 2021) Oliver J Wouters , Challenges in ensuring global access to COVID-19 vaccines : production, affordability, allocation and deployment *https://www.thelancet.com*

[38]https://donttradeourlivesaway.wordpress.com/2020/11/24/third-world-network-reports-on-20th-nov-2020-trips-council-discussion-on-the-waiver-proposal-initiated-by-india-and-south-africa/

patented product without the patent holder's consent. And on the second front, the political one, the influential members such as the U.S. and the E.U. exert an enormous pressure, including arm-twisting behind the scenes if any developing country wants to avail of the compulsory licensing and other flexibilities[39].

Flexibilities like compulsory licensing, Art.31bis mechanism,voluntary licensing [40] were never designed to address a health crisis like the COVID-

[39] India faced this when India's first ever compulsory license was granted by the Patent Office on March 9, 2012, to Hyderabad-based Natco Pharma for the production of generic version of Bayer's Nexavar, an anti-cancer agent used in the treatment of liver and kidney cancer. It was established in the Bayer vs Natco case that only 2% of the cancer patient population had an easy access to the drug and that the drug was being sold by Bayer at an exorbitant price of 2.8 lakh INR for a month's treatment. Warning and chilling effect tactics from Big Pharma followed. The joint letter to US President Joe Biden in March by pharma companies including Pfizer and AstraZeneca — saying eliminating IP protections would undermine the global response to the pandemic is also the extension of the pressure tactics. Big pharma continue to ascertain that eliminating protections would not speed up production. To our dismay we can find people like Bill Gates expressing reservations against tweaking IP rules and sharing Covid-19 vaccine technologies The argument that these countries do not have the capacity to speedily produce vaccines goes against earlier moves towards a patents regime for generic drugs. A number of companies from different countries have said they are ready to produce, and quality can always be assessed. Between 1972 and 2005, India had adopted process patenting rather than product patenting, and built up a huge generic industry. If western companies are interested in contracting Indian companies for manufacturing their vaccines in India, then how can they say India does not have the quality to produce drugs on her own?" Without naming the US and the EU, the South African delegate suggested that, "Political pressure from two delegations that oppose the waiver proposal have taken action to ensure that countries do not use compulsory licenses."The South African delegate cited the EU IP enforcement report of 2020 issued before the COVID-19 pandemic that "put a number of developing countries, including India, Indonesia, Turkey, Ecuador, under the spotlight of criticism for their laws allowing the use of compulsory license if patent holding companies do not fulfil the obligation of supporting production of medicines locally."In a similar vein, the USTR's Special 301 report issued during the middle of the COVID-19 pandemic, inveighed against countries who improve their laws on compulsory license or make use of compulsory license

[40] Criticizing attempts to tout "voluntary licenses" as the solution for COVID-19, the South African delegate observed that "IP rights can be exercised by their owners to decide on whether to grant a license or withhold from licensing the technology, designs and knowhow required for manufacturing or for further developing the

19 pandemic. Many countries lack the institutional capacities to utilize such flexibilities. Compulsory licenses are issued on a country by country, case by case and product by product basis, where every jurisdiction with I.P. would have to issue compulsory license. [41]

This will practically make collaboration among countries for developing and manufacturing medical products (where different components are sourced from different countries) extremely onerous. Several countries – Chile, Indonesia, Colombia, Egypt, India, Malaysia, Russia, Turkey, Ukraine, El Salvador – have come under intense pressure for their law or their use of compulsory license.[42]

---

products required for COVID-19.""By enforcing exclusive rights backed by IP, such as patents, pharmaceutical companies slow down research and innovation," the South African delegate argued.More so, "the use of restrictive voluntary license terms limits the catching up and innovation made by generic competitors," the South African delegate said."Nine months into the pandemic, voluntary approaches have proven to be insufficient," South Africa said, suggesting that "despite receiving significant public funding of at least US$70.5 million, Gilead has signed secretive bilateral licenses for Remdesivir (a therapeutic for COVID-19 treatment) with a few generic companies of its choosing that excludes nearly half of the world's population from its licensed territories.""Much of Gilead's supply has also been reserved for very rich nations. As a result, to date, most developing countries have barely received any supply of Remdesivir and the prices of Remdesivir are also prohibitively high," the South African delegate noted."On the other hand, to date not a single company has committed to the voluntary Covid-19 Technology Access Pool of WHO," South Africa said."In cases where companies have made such commitments to issue voluntary licenses, the lack of transparency of license agreements for products to treat COVID-19 is substantial," the South African delegate argued, emphasizing that "these initiatives are ad hoc and are not a sustainable way of addressing IP barriers."Besides, "such companies can limit the production, quantity and export of products produced under license to certain geographical areas thereby excluding large parts of the world population.""Non-profit undertakings are time-bound, while such companies will decide when they think the pandemic is over," the South African official argued."If we are serious to address access issues, production cannot be concentrated in the hands of only a few manufacturers; in order to scale up production, governments have a critical role to play," the South African official said.

[41]https://donttradeourlivesaway.wordpress.com/2020/11/24/third-world-network-reports-on-20th-nov-2020-trips-council-discussion-on-the-waiver-proposal-initiated-by-india-and-south-africa/

[42]Ibid

Further, Article 31bis mechanism established to support countries with insufficient or no pharmaceutical manufacturing capacity has even in regular times been widely criticized for its cumbersome procedures. The mechanism includes specific labeling or marking of products, special packaging and/or special coloring/shaping of products, making it practically meaningless. The procedure is used only once, since its inception in 2006, itself testifies to the difficulties associated with its use.

Again understanding of TRIPS flexibilities is usually in the context of patents. However, various types of intellectual property rights, i.e. patents, copyrights, industrial designs, and trade secrets, pose a barrier towards an effective response to the COVID-19 as the pandemic requires access to various commodities involving multiple I.P. rights. Flexibilities in other categories of IPRs than patents are less understood and implemented before.[43] Therefore, options available to Members through existing TRIPS flexibilities are limited.

The third argument that there is no shortage of COVID-19 medical products, and existing arrangements like COVAX are good enough to facilitate access stands on the shaky stand. The COVAX [44]facility, established last year by the WHO with the Geneva-based GAVI and the Coalition for Epidemic Preparedness Innovations for ensuring equitable supply and distribution of the vaccines globally, is also insufficient compared to the Waiver. COVAX is only short-term, limited access to vaccines, and is not sustainable in the medium and long term.[45]

---

[43]Ibid

[44]The COVAX facility was established last year by the WHO with the Geneva-based GAVI and the Coalition for Epidemic Preparedness Innovations for ensuring equitable supply and distribution of the vaccines globally. Dr Tedros offered the most disturbing statistic of vaccine distribution: "More than 39 million doses of vaccine have now been administered in at least 49 higher-income countries. Just 25 doses have been given in one lowest-income country. Not 25 million; not 25 thousand; just 25."

[45] Several difficulties would arise from the COVAX for example wealthy nations representing just 13 percent of the world's population have already cornered more than half (51 percent) of the promised doses of leading COVID-19 vaccine candidates. This creates significant uncertainty for universal access.Again the EU together with some other wealthier nations and regions, have already pre-booked more than 51% of the global supply capacity of the potential future COVID-19 vaccines – leaving a limited share for developing countries and least-developed

Let's take a close perusal of the existing bilateral agreements that have been signed to date. They contain restrictive terms and conditions that reinforce vertical control of technology-holding companies, artificially limit production and supply to constrain global supply options, and are mostly un-transparent with governments and the public learning about the limits imposed post-facto, if ever[46].

Most of the existing bilateral agreements to produce COVID-19 vaccines are contract manufacturing agreements. The contracted entity manufactures on behalf of a licensor.The Licensor maintains full control over thetechnology, production volume, and where and at what prices vaccines may be supplied. Although contractors may help ease some production pressure in the short term, the model cannot guarantee sustainability because contractors have no legal rights to produce and supply the concerned technologies worldwide independently.

It is also observed from publicly available information that the technology holder maintains control over the vaccine component in some agreements.This prevents the licensee from manufacturing the vaccine component, creating dependency on the technology holder to supply the vaccine component while others contain territorial restrictions [47].

The World Health Organization (WHO) launched the COVID 19-Technology Access Pool (C-TAP) initiative, calling pharmaceutical companies to commit to transparent non-exclusive global voluntary licensing. However, this initiative has been rejected by global biopharmaceutical companies. The voluntary bilateral contracting approach is the preferred choice of pharmaceutical corporations holding the technology. It allows them

---

countries. It is this conduct that has created huge uncertainty to the guarantee of universal access to COVID-19 medical tools and products.

[46] For instance, Astra Zeneca almost entirely relies on one manufacturer in India, which it has licensed, for the supply of its vaccine to low and middle income countries including the COVAX Facility, and consequently billions of people are now primarily dependent upon the vaccine supplies from one company in India.

[47] These agreements also depend on the willingness of the technology holder to license at all and as such are failing to mobilise global manufacturing capacity and diversifying supply options, on transparent terms that prioritize boosting global supply of the vaccine components and the final product. For instance, Moderna and Pfizer have yet to enter into license agreements with developing country manufacturers allowing for technology transfer and manufacture to supply developing countries.

to control production and supply to markets, which they consider lucrative for their future profits[48].

WAIVER PROPOSAL JOURNEY AHEAD

The TRIPS Council met again in December 2020 [49]with nodecisions taken due to the opposition of developed countries and pharmaceutical corporations.

Despite the calls from many stakeholders, [50] the TRIPS Council has not been able to adopt the TRIPS COVID-19 waiver proposal by consensus to

---

[48] An example of this expectation of future profits is Pfizer‘s stated intention to shift some production to manufacturing booster doses for rich countries even while some low and middle income countries have not had an initial vaccine and to raise its vaccine price to an estimate $150-175 per dose in what it considers the post-acute-pandemic phase.

[49] Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19. Communication from India and South Africa (2Oct2020)IP/C/W/669 https://docs.wto.org/dol2fe/Pages/SS/ directdoc.aspx? filename=q:/ IP/C/W669.pdf&Open=True (accessed 17 May 2021). See also Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization (1994) (TRIPS). See revised TRIPS waiver text of 21 May 2021 at https://www.keionline.org/wpcontent/uploads/W669Rev1.pdf 98 ‘Statement from Ambassador Katherine Tai on the Covid-19 Trips Waiver’ (5 May 2021) - https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassadorkatherine-tai-covid-19-trips-waiver 99 J Bosse, H Y Kang, S Thambisetty ‘There is more to the story than vaccine patents’ The Conversation (7 May 2021) https://theconversation.com/trips-waiver-theres-more-to-the-story-than-vaccine-patents-160502 100 Joint Statement of Co-Sponsors to the TRIPS Waiver (17 May 2021) https://www.pmindiaun.gov.in/ public_files/ assets/pdf/Cosponsors'_Joint_Statement_17_May_2021.pd f 101 Ibid. See revised TRIPS waiver text of 21 May 2021 at https://www.keionline.org/wpcontent/ uploads/W669Rev1.pdf . Undisclosed information of commercial nature, such as trade secrets, are protected under Art. 39 of TRIPS, “except where necessary to protect the pu

[49] See revised TRIPS waiver text of 21 May 2021 at https://www.keionline.org/ wpcontent/ uploads/W669Rev1.pdf

[50] For example , NGOs worldwide, trade unions, E.U. parliamentarians, senators, Nobel laureates, individuals, former ambassadors,the World Health Organization, Canadian Centre for Policy Alternatives, Amnesty International Public Health Association Australia African Commission of Human and Peoples' Rights Global Development Policy Center's Working Group on Trade Treaties and Access to Medicines, U.N. Human RightsExperts H.E. Archbishop Ivan Jurkovič,

date. The opposition of the United States, the European Union, and other high-income countries have been enough to block the Waiver's progress even to the stage of text-based negotiations.

The delay has been created, in part, by requests from countries such as Canada, Australia, and Chile for evidence that the Waiver would accomplish the goal of facilitating additional vaccine manufacturing and help resolve the current shortages.

Even as it has languished in the TRIPS Council, the Waiver has steadily gained support from countries across the global south. It is now co-sponsored by 57 countries, as well as the entire Africa Group and Least-Developed Country Group at WTO[51]. However, in May 2021 U.S. announced its limited support for the TRIPS waiver. This announcement has garnered a positive response in many quarters and was soon echoed worldwide, with the E.U.,New Zealand, and France expressing more willingness to negotiate.

Achieving agreement on the proposal has been made more difficult by the lack of personal negotiations between the proponent WTO members and the opposition. Under the TRIPS Council's rules of procedure, where the TRIPS Council cannot decide by consensus, the matter at issue shall be referred to the General Council for decision, and voting by ballot at the TRIP Council is not applicable. The critical importance of the TRIPS Council adopting such a waiver, however, is of such a degree that it would be worth looking into whether the TRIPS Council can negotiate and adopt such a decision by consensus through virtual or hybrid modalities as an exceptional measure

SOME ADDITIONAL STEPS

In addition to Waiver, every government has to think of how to scale the production of vaccines. As regards mounting of production before this pandemic, there were no existing networks of contract manufacturers for several of the leading vaccine candidates that feature novel technologies, including those relying on mRNA delivery platforms.[52] Additionally, the

---

Permanent Observer of the Holy ,Chilean House of Representatives Resolution UNAIDS, UNITAID

[51] https://systemicalternatives.org/2021/04/07/america-is-back-and-its-ominously-reviving-the-crisis-riddled-wto/

[52] https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00306-8/fulltext

volume of needed vaccines places pressure on global supply chains for inputs, such as glass vials, syringes, and stabilizing agents. A successful solution to the production bottleneck would probably require widespread technology transfer to expand manufacturing capacity. [53]Currently, few countries have the domestic ability to rapidly-produce COVID-19 vaccines on their own and instead will need companies to actively share knowledge, technology, and data with domestic manufacturers.

Some of the lead developers of COVID-19 vaccines have collaboration agreements with manufacturers in middle-income countries—AstraZeneca has such agreements with the Serum Institute of India, Fiocruz in Brazil, mAbxience Buenos Aires in Argentina, and Siam Bioscience in Thailand; Johnson & Johnson has an agreement with Aspen Pharmacare in South Africa; and Novavax with the Serum Institute of India—although the terms of these partnerships, including the extent to which the licensed manufacturers can negotiate their own supply arrangements with countries, is unclear. [54]

Mechanisms are also needed to ensure the affordability and sustainable financing of COVID-19 vaccines in low-income and middle-income countries, home to about 85% of the global population. Even in high-income countries, it is essential to ensure access to COVID-19 vaccines for poor and marginalized people.Companies have gradually disclosed their prices to countries of different income levels, with marked variation in the lowest price per course. Some companies which are benefiting heavily from public-sector investments have pledged to sell their vaccines globally at low prices. Other companies are charging considerably more, with some companies setting prices among the highest of any in existence for vaccines. Some manufacturers are also planning to sell COVID-19 vaccines at a premium in private markets in Bangladesh, Brazil, and India. There are concerns that wealthier patients in these countries might gain quicker access to vaccines through these markets than poorer patients will. Multiple factors could be driving the observed variation in prices. These include, for example, differences in technological platforms and the associated development and manufacturing costs; the amount of public funding that developers received; companies' approaches towards licensing and the establishment of production networks; the extent to which COVID-19 vaccines fit into pharmaceutical companies' overall profit-making strategies; the presence of intellectual

---

[53] Ibid
[54] Ibid

property rights; funders' demands and political pressure on companies to keep prices low.[55]

WAIVER IF NOT NOW, THEN WHEN?

The vaccine is nothing but a public good. But in the current scenario, it is considered as a private commodity and controlled by an oligopolistic market, dominated at present by a small number of vaccine makers, including Pfizer/BioNTech, AstraZeneca/Oxford, Johnson & Johnson, Moderna, Curevac, as well as Sputnik (Russia), Sinovac (China) and Covaxin (India). Many of the manufacturers have refused offers by experienced producers, such as Teva, to collaborate by manufacturing more vaccines[56].

Let us contextualize within their broader social, economic, and political context rather than critiquing the TRIPS waiver proposal in formalistic legal terms. We must ground such suggestions in the reality that each day we do not have global equitable access to vaccines, the health, economic and social implications of COVID-19 will worsen, and in effect, more lives will be lost.[57] To achieve global equity in vaccine access, we must scrutinize I.P. law as it operates alongside other legal/regulatory protections/systems and finds solutions in tandem with addressing excessive pricing, lack of transparency, and inequitable distribution[58].

Current inequalities in access are morallyuntenable and profoundly detrimental to human health and wellbeing. Vaccines must be administered in every country[59]as a symbol of hope for overcoming both the pandemic and the inequalities that lie at the root of so many global health challenges. Scientific, legal, logistical, and TRIPS regulatory barriers will not bring back the countless lives lost. A suspension of pharmaceutical monopolies, even temporary, is what the world needs. It would mark a crucial turn in the right direction, in this moment of exhaustion and panic. People or profit, it is high time to decide.

---

55 Supra n,52

56 Supra n.21

57 Siva Thambisetty et al , The TRIPS Intellectual Property Waiver Proposal: Creating the Right Incentives in Patent Law and Politics to end the COVID-19 Pandemic LSE Legal Studies Working Paper (forthcoming, 2021)

58 Ibid

59 India can think of quick actions to lessen the inequality gap. For example in the case of Covaxin, the Government of India is a co-owner of all the rights including the right to apply for patents

TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS: ISSUES IN PROTECTION IN INDIA

*-Dr.Valarmathi**

INTRODUCTION

Every country is blessed with natural heritage which is considered as the asset of a nation. Bio-diversity may be in the form of culture, agricultural knowledge, dance and music forms, paintings sculptures, food, spices, medicines, textiles, traditional designs etc., India is said to be rich in medicinal plants, Ayurveda, Siddha and Unani medicines are said to have been in practice from Vedic times. It is the form of knowledge which was acquired by our ancestors by a process of trial-and-error procedure and arrived at a result which has been transferred from generation to generation. This knowledge which is enjoyed by a community as whole is called as Traditional knowledge. It has been observed that all the inventions and the cultural contributions were never was considered to be subject of commercialization as a result it was enjoyed by every individual without any restrictions. Traditional Knowledge and the cultural, spiritual and the ways of life are inseparable as all these have become part of life of people. As far as indigenous knowledge is concerned, they are the valuable asset of a particular community which has been cherished from generations together. Traditional knowledge not only has benefited the people but it has also helped the society at large. It is considered as a source for many inventions of life saving drugs. Traditional knowledge is the outcome of several years of hard labour, intellectual results of people. In the present scenario it has contributed to commercial development. Value of traditional knowledge has been realized by people and also the unlawful means by which it can be acquired from these innocent sections of society. The present situation of converting everything into economic benefit has become threat to the traditional knowledge as it has been taken away without consent of the holders of traditional knowledge and also not sharing any benefit arising out of that knowledge.

NEED FOR PROTECTION OF TRADITIONAL KNOWLEDGE (BIO-PIRACY)

Present challenges are that the fruits of the traditional knowledge should be prevented from misappropriation by unauthorized persons, as well as steps to be taken to protect, respect, and the knowledge has to be secured to

*Professor of Law, CMR School of Legal Studies, Bangalore

be enjoyed by the future generation as well the benefit to be given to owners of traditional knowledge and Indigenous knowledge. Traditional knowledge holders are also facing so many difficulties like survival as there is change in life style, development plans and other activities have forced them to lose their original place of habitat, migration etc. This in turn would result in our future generation losing the opportunity of acquiring the knowledge and it will be irretrievably lost at one point of time. Therefore, the need of the hour is to secure the knowledge which is in store with our elders and also those community members. Till recently it was not realized that Traditional knowledge is an important knowledge which has to be considered as valuable asset and a subject matter to be protected and it is also a subject matter of theft. Developing and least developed countries are facing new challenges from the developed countries as there is increase in commercial exploitation of the traditional knowledge by the Multi-National Corporations. There is also accusation from the developed countries that developing countries are committing theft of Intellectual properties.

Pharmaceutical sectors are the one which are gaining huge economic benefit by misappropriating the traditional knowledge relating to medicines. India learnt a bitter lesson after turmeric and basmati rice case controversy and also the need for specific legislation to protect our traditional knowledge.

Bio-piracy means where wrong patents were given by the developed countries for traditional knowledge which has been in public domain from time immemorial. Some of bio-piracy cases are, Patent for use of turmeric in wound healing was granted to two Indian Nationals at the University of Mississippi Medical Center (USPTO). India got it revoked by providing documentary evidence that it has been in public domain for more than thousands of years. European Patent Office had granted patent to U. S Corporation W.R. Grace and USDA for a method of controlling fungi on plants by the of a hydrophobic extracted neem oil. International NGO's and representatives from Indian farmers opposed the grant of patent and were successful in revoking the patent application. Most seriously contested case was Basmati rice controversy where patent was granted to a firm Rice Tec Inc. India had to fight a long battle to prove that Basmati rice and its lines are geographical indications and traditional knowledge of Indian farmers.

INTERNATIONAL INSTRUMENTS AND NATIONAL LEGAL SCENARIO

Berne Convention for the protection of Literary and Artistic works 1886, protects sources of traditional knowledge in the form of literary & artistic works from being infringed. ILO Convention on Indigenous & Tribal People, 1989, it confers certain rights on the indigenous and tribal people and also obligates the member states to respect the cultures and spiritual values and their relationship with land and territories

UN Convention on Biological Diversity 1992, this is considered as a first multilateral treaty which recognises the indigenous and local communities' role in protection and conservation of biodiversity and also their rich traditional knowledge practices, it insists on sharing of benefits on genetic resources utilization.

UN Convention to Combat Desertification,1994, (UNCCD) provides for the protection of traditional knowledge in the ecological environment and there should be sharing of benefits if it is commercially utilized. In 2004 United Nations Conference on Development, had adopted the Sao Paolo Consensus which raised the issue stating that there was lack of recognition of Intellectual property rights for the traditional knowledge. Even though there are huge economic gains are there in the International trade.

UN Declaration on the Rights of Indigenous People, 2007, Its object is to recognize indigenous peoples right to enjoy all the freedoms collectively or individually, also use and transmit their traditions, knowledges to the future generations. It also recognizes their right to preserve and protect the medicines and vital medicinal plants animals and minerals.

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001 extends protection to the traditional knowledge plant genetic resources for food and agriculture.

Nagoya Protocol on Access to Genetic Resources and Benefit Sharing,2010, main objective is fair and equitable sharing of the benefits as to the providers and users of genetic resources. to maintain greater certainty and transparency. It creates incentives to conserve biological diversity. FAO Food and Agricultural Organisation,1948, WIPO, is promoting genetic improvements in the traditional plants. It has also taken the initiative of

developing innovative projects to protect the traditional knowledge, conservation of bio-culture a sustainable development of agro-ecosystem.

India being signatory for most of the conventions have enacted many laws, Indian Patent Act, 1970,Sec3(p) inserted by Patent (Amendment)Act, 2002 protects from duplication of traditional knowledge. Amended added Sec 10(4)- Patent Specification is required to show the source and geographical origin of any biological material used in the invention. Biological Diversity Act, 2002. It has the main object of conservation of biological diversity, sustainable utilization and equitable sharing of the benefits arising out of genetic resources. Geographical Indication of goods (Registration and Protection) Act, 1999 has the object of exclusion of unauthorized persons from misusing geographical indications, to protect consumers from deception, add to the economic prosperity of the producers of those goods and in turn promote goods bearing Indian GI in the export market. [1] Act, Protection of Plant Varieties and Farmer's Rights Act, 2001, protects the plant varieties, the rights of farmers and plant breeders.

MEASURES TAKEN TO PROTECT TRADITIONAL KNOWLEDGE

In order to preserve and protect the traditional knowledge from unlawful exploitation the concept of collection of the available sources on various aspects of traditional knowledge and secure it in the form of digital library was evolved. CSIR and Ayush took up the project of collecting data from various languages and document them. The main area of misappropriation is medicinal plants like Ayurveda, Siddha medicines and Yoga. In order to check the misappropriation and bio-piracy of traditional knowledge India has evolved a measure, Traditional Knowledge Digital Library (TKDL). The object is to collect all the information which is available in various modes and languages with are related to traditional knowledge will be translated into major languages and retained in the form of digital data. As a result, it is easy to know, and to prove in case of any of violation and for other countries who have signed the agreement to access the information, patent examiners can have an access to TKDL before granting patent. If sources are already found, patent application will be rejected by that country.

---

[1] Dr.B.L. Wadhera, Law Relating to Intellectual Property Rights, 457 (Universal Law Publishing, Haryana, 5th edn, 2015).

As per latest information so far 2,50,000 formulations used in traditional knowledge in the field of medicine especially Ayurveda, Siddha, Unani has been recorded.[2] The information was collected from 359 books of Indian system of medicines It has 34 million formatted data. The information available in the TKDL is translated into 5 languages English, Japanese, French, German and Spanish.[3] Patent examiners can have access to this data before deciding on granting patent in India and other countries to decide on novelty and inventive step.

Indian Traditional Medicine System is classified and structured into 25,000 subgroups which includes Ayurveda, Unani, Siddha and Yoga.[4] It was found that nearly 239 applications filed for patent was either withdrawn, set aside or amended based on 'prior art'. 200 patent application as to pharmaceutical filed by Great Britain, China, Spain was either withdrawn or set aside or amended as they failed to prove the basic test of novelty and inventive step[5]. Indian government has shortlisted around 1500 asanas and video graphed about 250 and classified as Traditional knowledge. India was also successful in foiling the attempt of UK based Lab filing for patent for a medicinal composition containing turmeric, pine bark and green tea for treating hair loss. Colgate-Palmolive consumer goods giant has made an attempt to get the patent for a mouthwash formula containing herbs extracts (clove oil, blast pepper and spearmint) to cure oral diseases. Patent application was rejected on the ground of traditional knowledge in India. An attempt of Germany Co. to sell under Khadi Trademarks for a range of Indian-origin products, India was successful in setting aside the patent application on the ground of prior-art. As most of the information on the traditional knowledge is found in Sanskrit, Tamil, Urdu, Hindi and Arabic the patent examiners of foreign country cannot have access nor understand the language, but after the constitution of TKDL India was successful in preventing 2000 wrong application being filed relating to Indian medicine.[6] Another important initiative taken to protect the traditional knowledge at village level is local

---

[2] Traditional Knowledge Digital Library, available at "http://www.tkdl.res.in/tkdl/langdefault/common/Abouttkdl.asp?GL=Eng" (last visited on March 9 2021)

[3] https://www.wipo.int/meetings/en/2011/wipo_tkdl_del_11/about_tkdl.html (last visited on, March,9 2021)

[4] https://www.csir.res.in/documents/tkdl (last visited on March 12, 2021)

[5] https://pib.gov.in/PressReleasePage.aspx?PRID=1693143 (last visited on 12, March 2021)

[6] https://www.csir.res.in/documents/tkdl (last visited on 12, March 2021)

school, college teachers, students and NGO's have joined hands in collecting the people's knowledge on biodiversity, the mode of usage and the methods adopted for conservation and sustainable use of it. This information is compiled and stored in the form of computerized data base so that it can be accessed by the governments, public and industry in case of any controversy as to title or prior art. [7]

RELATIONSHIP BETWEEN TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS

Traditional knowledge has wider significance as it involves food, agriculture, culture, designs, crafts, biological diversity, human rights and economic rights of the holders of this knowledge Traditional knowledge is to some extent available in the form of written text and most of the information is passed on orally from generation to generation by practice as a result it is difficult to protect under the IPR laws. The main objective is to protect the individual and community in possession of these valuable asset from being unlawfully exploited, misappropriate not only in that country but from every part of the world. Therefore, some countries developed sui generis systems to protect them. Traditional folklore, pottery ceramics, textile compositions, carpets musical works has economic values, these cultural heritages of indigenous and local communities can be protected under copyright and performances of singers, dancers and be protected under its related rights. Trademarks can be extended to various kinds of arts prevailing in these communities. Information relating to various kinds of medicines, paintings etc., can be protected under the trade secrets. Traditional Knowledge holders have a right to decide whether to share their information or not. It can be considered as a trade secret of that section of society. Indigenous people possess and enjoy the knowledge collectively as result it can be protected under Geographical Indication Act as for as the products manufactured, cultivated etc. traditional woven carpets, furniture's, leather ceramics, garments, wooden objects ex, 'chicken kadhai' of Lucknow is considered as Industrial Design. Geographical Indication identifies the source, the unique qualities of the product. Farmers with new variety of plant variety or seeds are protected under the Plant Varieties and Farmer's rights Act. It is necessary to understand that Indigenous knowledge is part of Traditional knowledge and it is not the same. Indigenous knowledge belongs to a particular section of

[7] Utkarsh, G., Documentation of Traditional Knowledge: People's Biodiversity Registers (PBRs), Foundation for Revitalization of Local Health Traditions (FRLHT), India. Available at: http://www.ictsd.org/dlogue/2002-04-19/Utkarsh.pdf (visited on March 18,2021 at 10.30 am)

society and Traditional knowledge belongs a wider section of society. But both the knowledge has to be protected.

According to an estimate it is stated that the global herbal market size will increase from US $ 83 billion in 2019 to US $ 550 billion by 2030.[8] As there is increase in the health issues, people with health conscious are preferring natural herbal medicine. As the awareness among the people as to benefits of natural herbal medicine is increasing there is high demand and boost in the natural herbal medicine market.

INITIATIVES TAKEN BY VARIOUS COUNTRIES TO PROTECT THEIR TRADITIONAL KNOWLEDGE

An agreement was signed to share the benefits with the traditional healers in Samoa who had the knowledge to prepare drug from mamala tree, prostratin an Anti-AIDs compound which had the qualities to cure AIDs. The bark of this tree is used for treating Hepatits, based on the tribal medicinal knowledge of the kani tribe in Kerala, an herbal medicinal plant Arogyapaacha drug called" Jeevani" was prepared and benefit sharing arrangements are made. The Seri people of Mexico are well known for the crafts work which they have developed based on their traditional knowledge and are represented by Arte seri as their mark. They used Olneya Tesota tree for this purpose. They demanded Trademark protection and it was granted. To protect the plant varieties of Portugal farmers, Portugal passed a law, for more than 3000 Traditional Chinese medicine, China granted patents in the year 2001. [9]

INTELLECTUAL PROPERTY ISSUES

As far as traditional knowledge is concerned the knowledge or information is scattered everywhere and every person is having one or other valuable information or knowledge which is required to be collected and secured in the form of data. But the issue is most of the information is passed on from generation to generation orally and there is not much written data it has become a difficult task to ascertain the people with the knowledge as well as to collect the data. Many people who had the knowledge have died without

---

[8] https://www.globenewswire.com/news-release/2021/02/16/2176036/0/en/Herbal-Medicine-Market-Global-Sales-Are-Expected-To-Reach-US-550-Billion-by-2030-as-stated-by-insightSLICE.html (last visited on April,7,2021)

[9] WIPO, Intellectual Property and Traditional Knowledge, 2005, available at https://www.wipo.int/edocs/pubdocs/en/tk/920/wipo_pub_920.pdf (last visited on March 8th 2021)

passing it on to their legal heirs nor they have recorded in a written form. Plant genetic resources, traditional medicines, trade secrets are the various rights which has to be protected under Patent, Copyright and Trademarks Act. Traditional Knowledge has huge economic value as for as developing countries are concerned. Pharmaceutical sectors are the major exploiters of ethnobiological expertise of the indigenous people and make huge profit without even sharing anything with these people. There are also instances were there is excessive collection of biological samples from its inhabiting region. If it not checked there is threat of that particular species becoming extinct.

There is a need to protect traditional knowledge from being misappropriated by the developed countries without the benefits being shared with the resource providers. Indian Patent law clearly provides that any application filed for patent which is related to conventional knowledge in public domain will not be granted patent on the ground that there is no novelty and inventive step. It has been made compulsory to disclose the source and the geographical origin when biological resources have been used in the invention to specify it clearly in the specification. Another issue is there is no specific legislation to protect trade secret or any sensitive information possessed by the indigenous people.

SUGGESTIONS

1. The value of traditional knowledge to be recognized, respected and encouraged by all.
2. The person with traditional knowledge should be honored and consideration to be paid for the information shared.
3. There are still so much knowledge and information hidden in indigenous and local community people which has not been identified as traditional knowledge therefore an in-depth research has to be done to ascertain it
4. Still now for bio-piracy only solution is rejection of patent granted but a severe punishment in the form of heavy compensation should be imposed on the infringer so that it creates a fear in the minds of person who has intention to commit an act of bio-piracy
5. Indigenous people should be provided with awareness as to their rights and the remedies available in case of infringement

CONCLUSION

Traditional knowledge has gained recognition and its importance to a country's development has been realized by all the developing countries and

they have taken various measures to protect as well check bio-piracy to great extent. but it is just an initial step taken we have to adopt various methodology to collect the data which is still not brought into lime light. Many of the local communities have lost their identity due to change in the environment and the various development activities carried out by the country which has resulted in their displacement from their original habitat. Steps has to be taken to identify these communities and collect the information retained by them as trade secret from generations and in turn provide them with economic benefits. India has taken the initiative of creating a traditional knowledge digital library which has curbed to great extent the bio-piracy cases and also successful in rejecting the application filed for registration on the traditional knowledge. This is only first step but we have a long way to go. It is the responsibility of each one of us to secure and protect our traditional knowledge.

FUNDAMENTAL HUMAN RIGHTS OF WOMEN'S REPRODUCTIVE HEALTH: AN ANALYSIS FROM THE PERSPECTIVE OF GENDER BIAS

-Dr. Janhavi S S*

INTRODUCTION

A Woman is the mother of the race and the future of all generations women constitute one-half of humanity, and they are the pilot around which the family moves.[1]Women are considered foundation of the human society from every angle without the active and significant role of women no family can be imagined. Thus they are the base stone of a nation, family being authority of it.[2] Down the ages women have been accorded a low status in the society and they have been treated as secondary citizens. Indian constitution has given equal rights to its citizens and recognizes that there would not be discrimination based on the casts, religion and sex.

In Indian society from the time immemorial the sex disparity or discrimination prevails. Women suffer subordination of men in every sphere of life. They hardly can enjoy the human rights in male dominative society. Still in reality, it is found that the women's status is secondary in society. It gets reflected through various development indicatorsWomen's Reproductive health is one such area.

Health is one of the important indicators that throw light on society's attitudes towards women. Declaiming sex ratio, increasing number of sex-selective abortions, declining nutritional status of women of all age groups is alarming rates of violence against women are some issues of concern.[3] This has led to a low priority being accorded to their health needs moreover women have think that their family is first and of themselves later. So they often neglected their own health in favour of that of their family.Women rarely go for preventive health check-ups and often "live with their health

*Assistant Professor, Department of Studies in Law, Karnataka State Open University, Mysore, Karnataka

[1] Anjana maiyra Sinha, Wome in a changing Society, Ashish Publishing House, New Delhi, 1993, p-139

[2] Jyothi May Mandal, Women and Reservation in India, Kalpaz publications, New Delhi, 2003, p-605

[3] Bishnu.c Bari.k Pushpesh Kumar S Sarode, Gender and Human Rights, Marratives on Macro-Micro Realites Ramat Publications, 2010, p-107

problems", without seeking medical help. This lack of awareness as well as indifference contributes their myriad problems.[4]

INTERNATIONAL CONVENTION REGARDING WOMEN HEALTH

The world health organization points out that about half of all women and two-thirds of the pregnant women in developing countries likeIndia (excluding china) suffer from nutritional anemia. Anemia also common among poor women in relatively developed countries.[5]A recent study in a Madras Hospital revealed that out of 1013 women whose data were analyzed, only 23 were in good health, while the rest had some health problems. It shows that women rarely go for preventive health checkup and often "live" with their health problems, without seeking medical help. This lack awareness as well as indifference contributes to their myriad problems.[6]

Now question arises what are reproductive health rights? In 1968 at Teheran conference, it was for the first time that the delegates attempted to define reproductive health rights. But, after that till the International Conference on Population and Development (ICPD) in 1994, there was not much question on reproductive rights of the individuals. This conference developed the contents of the reproductive health rights. It stated that the reproductive rights go hand in hand of certain human rights.

These rights are right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have information and means to do so to attain the highest standard of sexual and reproductive sexual health. It also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.

Further the Beijing Conference(1995) continued the IPCD through on reproductive rights directly into the platform of Action. It states that "good health is essential to leading a productive and fulfilling life. It farther states that the human rights of women include their right to have control over body and decide freely and responsibility on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination and violence.

---

[4] Supra note 1
[5] Ibid
[6] Supra note 1

In 1997 Article 12 of Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) clearly stated that women's rights regarding health. It recognized access to health as a basic right. It further says that the state should ensure universal access for all women to a full range of high quality and affordable health care, including sexual reproductive health services.

World Health Organization and United Nations International Children's Funds (UNICEF) are the part of United Nations (U.N) made the declaration at Alma Ata in 1978 that is health for All of 2000 but till now we are not able to achieves this. Most of the nations including India have signed this Alma Ata Declarations. Thus, Health is now a fundamental human right for all of us.[7]

DEFINITION OF HEALTH

WHO defines health as a state of complete physical mental and social wellbeing is essential for leading productive life. Attainment of the highest level of health is the most important social goal before all the societies in the world. Each of us entitled to health as a human right. Health is a wide social issue.[8] Reproductive health is very important for women, if women reproductive health will be good then our future generation will be having good health status and that will lead to empower our nation.[9]

What is Reproductive Health?

1. Capacity to reproduce, acceptable methods of family planning of their choice and access to infertility services.
2. The ability to have best chance of having healthy infant.
3. Access to safe and affordable abortion services.
4. Services and care of sexual and reproductive health problems.
5. The right to information about contraception, pregnancy, disease or the implications of coerced sex.

Reproductive health is very important for women, because of her good reproductive health she can produce a healthy child and she can live better life that will lead to decrease infant mortality rates and maternal mortality rates, even the less cases of RTIs and STDs. So if her reproductive health is good

---

[7] Anuradha mathu, Gender and Development in India, Kalpaz publications, Delhi, 2008, p-305

[8] Ibid, p. 307

[9] Supra note 7

then she can lead our nation to be healthy and that will increases our nation's economic, social and GDI will increase and also women states will increase.[10]

Population growth was viewed as improve standard of living means to enhance the pace of economic development population growth should be reduced.Similarly, the policy base for promoting family planning and reducing fertility was its potential to improve the health of mothers and children.[11] Policy makers recognized that fertility can be reduced not just by promoting contraceptive use but also by rising the age at marriage of women and making abortion services easily available. Therefore abortion was made legal through the Medical Terminations of Pregnancy Act of 1971. Other key factors determining a couple's fertility behaviors were identified as the health and survival of infants and children[12].

Sex determination and subsequent sex selective abortions are hazardous to the health of women in our society. The increased indiscriminate use of sex determination test by unskilled persons might result in high infection, sepsis and even death of pregnant women. They also result in deterioration of women's health due to increased blood loss, weakness and psychological trauma, therefore, Pre-Natal Diagnostic techniques Act, 1994 was enacted to prohibit the sex selection and stop the female foeticides.[13]

DISCRIMINATION OF WOMEN AND HEALTH ISSUES

Good health is important to everyone. Discrimination against females takes various forms. Daughters are breast fed less frequently and for a shorter duration than sons. They also receive less quality of food and less nutrition's food. Women members of family receive less attention regarding medical treatment during illness. They are brought health center at the later stage and less money is spent on their treatment. All these results in stunted growth of anemiaand weakness.

Legal age for men is 21 years but for women marriage is 18 years, in many familiesespeciallygirls in tribals and villages married much earlier. Due to this pregnancy is imposed on the very early even when their bodies are not developed enough to bear the responsibility of motherhood. The cycle of repeated pregnancies, abortion (Natural or induced), deliveries and rearing

[10] Ibid, p. 306-38
[11] Ibid
[12] Ibid, p. 317
[13] Ibid, p. 318

pregnancies leaves her drained of energy and vitality. The poor health of women has its effect on the next generation. Due to mothers underweight and weakness infant mortality rate is high in India.[14]

There is an urban bias in the country's healthcare infrastructure. Hospitals and clinics are disproportionately concentrated in centers to the literal neglect of rural grease. On the face of weakening public healthcare in the country and increasing privatization, it is usually the urban elite which get timely and competent care.[15]

As we know that empowerment of women is also related to her reproductive health status because as we all know that health is wealth. The empowerment of women has been recognized as a basic human right and also as imperative for national development, population stabilization and global wellbeing. Reproductive and sexual health rights are essential for the empowerment of women and to all quality of life issues concerning social, economic, political and cultural participation by women.[16]

Good health is important to everyone. When state deprives people of their liberty it takes on a responsibility to look after their health. It is unethical to classify prisons as a single group for providing medical facilities. Each prisoner should be given adequate medical care as his/her body demands[17].Those who are imprisoned retain their fundamental right to enjoy good health both physical and mental and they retain their entitlement to a standard of medical care which is at least equivalent of that provided in wider community. Administrators have the responsibility to provide medical care and to establish conditions which promote the wellbeing of prisons.

REPRODUCTIVE HEALTH AND GENDER BIAS

Indian Constitution has given equal rights to citizens and it recognizes that there would not be discrimination based on the caste, religion and sex.[18]The area of reproductive health includes both men and women. But

---

14 Ibid, p.319

15 Laxmidhar Chouhan, Women the law, A Mittal Publication, New Delhi,2007p-121

16 Dr. Karthikeyan, Human Rights-Problems & solutions Gyan Publishing house, New Delhi, 2005 p-68

17 Ibid, p. 200

18 Bishnu C. Barik. Pushpesh Kumar. Usha S Sarode, Gendr And Human Rights, Naratives on Macro-micro Realities, Rawat Publications, 2010, p-107

reproductive health rights of men and women need to be talked separately. Especially in the Indian culture the women's reproductive rights needs to be discussed as the women are considered as secondary citizens.Thus, the reproductive rights of women not only include the rights on their own bodies and freedom to decide the time and number of children, but to get good health services also which would cater to their health problems, and all women should have access to these services.[19]

Thus, the women were forced to use contraceptives without giving detailed information about their side effects, etc., and incorrect information also deprived the women from the expected results from the contraceptives. Further, the use of contraceptives was suggested to have male foetuses means it is used to control the birth of female babies.[20]

Under rural women study no women undergo operation if she has only daughters, even if they are not willing to have more pregnancies. While some women reported that they have to opt for re-canalization if the husband decides to have more sons. Through the women were aware that they rights face health problems like backache, disturbance in menstruation cycle, white discharge and weakness, they had to accept the operations as the men wanted them to have it.[21]

The data on the Medical Termination of Pregnancy (MTP) also shows that the women are forced to opt for MTP along with tubectomy. Thus the women who want to have medical termination of pregnancy in case of unlimited pregnancy are forced to have tubectomies also and thus they are not able to have control on their fertility by using other spacing methods.Most of the family planning shows that in India all health services are geared towards the population control, considering women as targets. Several studies conducted in different parts of India have released that there is large scale morbidity among women due to reproductive health problems.[22]

Majority of the women do not complete the treatment, as the prescribed medicinesare not brought fully, follow-up visits are not made and referrals to

---

[19] Bishna c Bark, Pushpesh Kumar, usha. S Sarode Gender and Human Rights-Narratives on macro-micro Realities, Rawat Publication, Bangalore, 2010, P-108-10

[20] Ibid, p. 112

[21] Ibid, p. 113

[22] Ibid, p. 116

other services are not done. Poor women consider government hospitals as the cheapest source of treatment, the services are very inadequate to cater to reproductive health needs of the women.

In Government Hospitals health staffs have the pressure of completing target of tubactomies, as such they neglect the complaint made by the women like painful menstruation, heavy discharge, white discharge, uterus prolapse, STs, anemia etc. In addition that health staff reflected strong gender and casts bias. The women from so called lower communities were not physically checked. The illiterate and very poor women were greeted with the harsh language and they were also asked to keep some distance from the doctor. The practices of taking bribe and corruptionfurther kept the women away from the treatment or forced to discontinue from treatment. [23]

The present Reproductive and Child Health programme is mostly preventive in nature. It also focused more on maternal health and neglected several other reproductive health complaints. The present health services cannot provide treatment to several complaints reported by the women. But at the same time women's access to private curative health services becomes difficult when it comes to spending more money. Due to globalization & privatization the state investment in health sector is declining. The drug prices are rapidlyincreasing which is resulting in reduced access of poor to private services.[24]

Multiple role and marital status have a sound impact on women's health. But among all other reasons of poor health of women, one leading reason is poverty. Lack of basic necessitates, isolation from information, deep rooted customs and religions which gave birth to superstitions and many more such things.

It is quite known, that reproduction dominates women's health problems. The WHO estimates that 50,000 women die every year from causes related to pregnancy. Many women die during abortion or child birth.The sex ratio remains adverse for women among all religious groups and in rural as well as urban areas. Now days we come across unbelievable figures about HIV positive women. Sexually transmitted diseases (STDs) force one to have a serious thought on women's health. Women are at risk of HIV infection for

---

[23] Ibid, p. 118
[24] Ibid, p. 119

many reasons. Biologically, women are more vulnerable because of the greater mucus area exposed to the virus during penile penetration.[25]

HIV overwhelmingly affects women and girls, even sexual and reproductive health initiatives has focused only on the unmarried young couples, however emerging evidences suggests this assumption is not tenable. They are of the opinion that the young married women are at a risk of HIV, because married women who have neither the negotiating power nor the skill to safeguard their sexual health and an exploited within the institution of marriage, early marriage also enhanced young women's HIV risk, however, presumably because married women have less negotiating power and more sexual exposure.[26]

Health is man's most precious possessions. It influences all his activities and shapes the destiny of people. Without it, there can be no solid foundation for man's happiness. Health is considered a fundamental Human Right and worldwide social goal. The goal of health nowcalls for not only the cure or alleviation of diseases. Rather it looks beyond to strive.

CONCLUSION

Health is considered as a fundamental human rights and enjoyment of the highest standard of health is one of fundamental rights of every human being. This modern concept of health places stress not only on the individual but his relationship with the family and community.

Reproductive health is the right of women to be informed and to have access to safe, effective affordable and acceptable method of family planning of their choice for regulation of fertility which are met against the law.Right of access to appropriate health care services that will enable women to go safely through pregnancy and child birth and provide couples with the best chance of having health infant. For this all women should have access to health and education and need to be given regarding reproductive health and even awareness for that amongst women, their families and communities.

Gender-based violence is one of the most prevalent human rights abuses. 52% of ever-married women have suffered from spousal violence and 15% of pregnant women have experienced gender-based violence

---

[25] Ibid, p. 348.

[26] Sistla Ramu Devi Pani, Social Security for women, Association of Indian universities, New Delhi 2014, p-2017

during pregnancy. Lack of access to SRH services further increases the likelihood of loss of life. Amina is one of these women. With the generous support of Canada, UNFPA is working that no women should suffer the loss of a child due to gender-based violence or an inability to access SRH services.

STATUS AND CONDITIONS OF POLICE PERSONNEL IN INDIA: HUMAN RIGHTS PERSPECTIVE

Dr. N. Sathish Gowda*
Ashoka Naika B.G**

INTRODUCTION

The police personnel are a systematic and disciplined body of persons empowered by the State to enforce the law to preserve the lives, liberty and possessions of citizens and prevent crime[1]. The police personnel have a major roles and responsibilities to protect the human rights of citizens and maintain law and order. In a Socialist and democratic country like India needs democratic policing and requires the police to create the security environment which best promotes democracy and good governance. Police forces are usually public sector services, funded through taxes[2]. Law enforcement is only part of policing activity. Policing has included an array of activities in different situations, but the predominant ones are concerned with the preservation of order.[3] A Police force may also be referred to as a police department. Police Service, Constabulary, gendered, crime prevention, protective Services, law enforcement agency, civil guard or Civic guard members may be referred to as police officers, troopers, sheriffs, constable, ranger's peace, officers or Civic/ Civil guards. Police personnel are one of the most important functionaries of the society and police are expected to be the most accessible, interactive and dynamic organisation of any society. The police personnel must preserve and advance the principles of democracy and be able to win the confidence of the people.

The biggest challenge for police is restoring balance in the perception of people regarding law and order. Another challenge is understanding the enormity of various types of crimes in the city. But in spite their hard work

* Associate Professor, University Law College & Department of Studies in Law, Bangalore University, Bengaluru

** Research Scholar University Law College & Department Studies in Law Bangalore University Bengaluru

[1] *"The Role and Responsibilities of the Police"* Policy Studies Institute. p. xii. Retrieved 2009-12-22

[2] Walker, Samuel (1977) "*A Critical History of Police Reform: The Emergence of Professionalism*" Lexington, MT: Lexington Books. p.143.ISBN978-0-669-01292-7

[3] Neocleous, Mark (2004) "*Fabricating Social Order: A Critical History of Police Power"* Pluto Press. pp. 93–94. ISBN978-0-7453-1489-1

and dedication, polices are looked at with disdain by the common public. According to the National Crime Records Bureau, between 2010 and 2015, 591 people died in police custody. People criticize those police personnel for their brutality, and bribe and abusive behaviour, such as the "short-cuts" of refusing to register crime complaints to reduce caseloads, and building cases on coerced confessions rather than collection of evidence etc. Further, public allege that Police brutality hampers human rights in every manner and many police officials who wrongly use their powers on public without any authority. Few reports also say that the effects of human rights violations by the police has a multi-dimensional impact in eroding public confidence, hampering effective prosecutions in court, isolating the police from the community, resulting in the guilty avoiding sentence, and the innocent being punished.

Why does this perennial blame and distrust of the police continue even 75 years after independence? Further, before blaming police personnel for violation of human rights of general public, is it not the duty of the State to know the reasons for above mentioned blame and allegations against police personnel particularly, below the rank of Assistant Sub-Inspectors and constable who spend maximum time in the respective police stations to ensure law and order in the society. If State ensures human rights of police personnel by providing all facilities and creating good atmosphere in their workplace by implementing series of recommendations made by the various committees constituted by the respective appropriate government, then the issues of violation of human rights of public by the police personnel will not be arisen.

In this background, an attempt has been made in this article to emphasize and contextualize the human rights of police personnel and examine the status and conditions of police personnel in their workplace. Further, it also discusses constitutional guarantees and various committees' recommendation in brief to ensure better status and conditions to preserve their human rights and issues relating to implementation.

POLICE ADMINISTRATION IN INDIA

Under the Constitution, Police is a subject governed by States[4]. Therefore, each state has their own police forces. The centre is also allowed to maintain its own police forces to assist the states with ensuring law and

[4] Entry 2, List II, Schedule 7, The Constitution of India, 1950.

order.[5]Therefore, it maintains seven central police forces and some other police organisations for specialised tasks such as intelligence gathering, investigation, research and record-keeping, and training.

The primary role of police forces is to uphold and enforce laws, investigate crimes and ensure security for people in the country. In a large and populous country like India, police forces need to be well-equipped, in terms of personnel, weaponry, forensic, communication and transport support, to perform their role well. Further, they need to have the operational freedom to carry out their responsibilities professionally, and satisfactory working conditions (e.g., regulated working hours and promotion opportunities), while being held accountable for poor performance or misuse of power.[6]The Constitution provides for a legislative and executive division of powers between centre and states.[7]

STATUS AND CONDITION OF POLICE PERSONNEL

The basic pathology, which makes Police personnel always on duty and may be employed in any part of the district.This makes police cruelty possible;police personnel concern sometimes stem from the sense that neither the public nor higher police authorities respect values their service. Exposure to challenging situations is part of the job of a police officer. The Police force in India work under very severe constraints and the overall work environment of police, particularly of subordinates andmiddle rank officers, is dehumanizing and de -intellectualizing. The Police personnel who are obliged to protect and uphold the human rights of others are themselves the victims of the violation of their human rights in the form of undue long working hours, leave problems,denial of family life, social life, delayed promotion, inadequate infrastructure, poor salariesetc[8].

Further, lowest grade police officers particularly, constables have been facing series of problems in the respective jurisdictional police departments. They have no stipulated hours of work, their low salaries, absence of weekly offs, irregular working hours, and alleged physical and mental abuse by their

---

[5] Entry 2 and 2A, List I, Schedule 7, The Constitution of India, 1950.

[6] "Public Order", Second Administrative Reforms Commission, 2007 and"Police Organisation in India", Commonwealth Human Rights Initiative, 2015,

[7] *States:* Entries 1,2 and 4 of List II, Schedule 7, Constitution of India, 1950; *Centre:* Article 355 and Entries 2,2A,5,8,65,70 and

[8] Dr Usha.ConceptualizingHuman RightsofPolice.2007.Volume No.2. The Indian Police Journal P-45.

seniors who also made them 'orderlies' at their homes, having to their personal works such as mop their floors and water their gardens etc.[9]This really brings down the spirit of work culture of lowest grade officers. As a result, they start behave in rude manner with the public. Further, because of vacancies of constable posts, present staffs only do the double work to manage day to day office work, which causes stress on them.

STRENGTH OF CONSTABLES IN THE STATE OF KARNATAKA

Details of sanctioned and actual	*Karnataka Strength of civil and District Armed Force*	*Strength of State armed Force*	*Total strength of State Police (civil and armed)*
Sanctioned	94,478	12575	107053
Actual	64,909	8837	73,746
Vacancy	29.569	3738	33307

Civil Police per lakh population sanctioned-154.34 Actual-106.04; Total Police per lakh population; sanctioned -174.88 and actual-120.37. Civil Police per 100 sq km of area; sanctioned 49.26 and actual 33.84. Total police per sq km.[10]

OVER BURDEN ON POLICE PERSONNEL AND ITS EFFECT ON HEALTH

Generally, police particularly lower rank of police personnel person has to deal with many situations which lead to stress and weakness. Stress in a police officer can lead todisturbed their sleep which affects the health of the individual as well as his efficiency inwork. The irritation may lead to complaints from citizens regarding police behaviour prone toanxiety. A police officer has to deal with many traumatic incidents which can have a great impact on their mental health. Probabilities of emerging gastrointestinal problems like stomach ulcers or loss of appetite. All the time Increased risk of developing serious health problems. Countrywide, 74% of police station staff and 76.3% of SHOs(police station house officer) felt that the present working conditions impact their health. Police Personnel reported health

[9] https://www.deccanchronicle.com/nation/current-affairs/020616/html reported on 2nd June 2016 (accessed on May 2020 at 5.30.p.m)

[10]Five-year recruitment plan of police constables was sanctionedwhen Dr. Ajai Kumar Singh was the state's director general and inspector general of police in Karnataka State.

issues such as a hypertension, psychologicalstress, restlessness, fatigue, asthma and respiratory problems, gastric trouble, and body aches, as pera2014reportbytheBPRD[11].

Every single second police individual in the national capital region complained ofhealth issues, but only around about half (47%) of those with complaints sought any kind oftreatment. The utmost common healthiness problems were metabolic and cardiovascular(36.2%),musculoskeletal(31.5%) andvision-related(28.1%)[12].Extra, 73% of police personnel informed that their workload is taking a peal on their physicaland mental health. Around 84% said their duties leave notime for their families[13].

HUMAN RIGHTS AND POLICE PERSONNEL

Louse Hankins asserts that 'every human being in every society, is entitled to have basic autonomy and freedom, respect, and basic needs satisfied.[14] Jack Donnelly defines human rights as 'the rights of man', literally rights that one has because one is human.[15]Maurice Cranston defines a human right as 'a universal moral right, something which all members everywhere, at all times ought to have, something of which is owning to every human being simply because he is human'[16] Similarly, Weisberg opines that the premise of current International law is that these rights are inherent in every human person. They are not given to people by the state, and the state cannot deprive people of their rights. [17]

Universal Declaration of Human Rights,1948 mandates that all human beings are born free and equal in dignity and rights[18] and everyone has the right to just and favourable conditions of work. It further states that everyone who works has the right to just and favourable remuneration for himself and his

---

11 PRD"DataonPoliceOrganisationsinIndiaasonJanuary1,2015

12 A study published in 2018 in the "*Indian Journal of Occupational and Environmental Medication"*.

13 A study by Common Cause and Loctite, a non-profit and athink-tank, respectively, based in New Delhi.

14 L.Henkin; "Introduction" in The International Bill of Rights (1981).

15 J.Donneny; Universal Human Rights in Theory and Practice 7 (2003)

16 M. Cranston; What are Human Rights36 (1973). See also J. Donnelly, The concept of Human Rights (1985).

17 L.S. Wisberg Introductory Essay, in Lawson, Encyclopaedia of Human Rights, xix(1996)

18 Article 1 of Universal Declaration of Human Rights, 1948

family, and an existence worth of human dignity.[19]Further, it emphasises that everyone has the right to rest and leisure, including reasonable limitations of working hours and periodic holidays with pay. [20] International Covenant of Economic, Social and Cultural Rights, 1966, recognizes the right of everyone to enjoyment of just and favourable condition of work, which ensure in particular a decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays.[21]All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[22]The Vienna Declaration, 1993, says that all human rights and fundamental freedoms are for all and the universal nature of these rights is beyond question.[23]

Police personnel are Government servants who are, in principle, entitled to the same human rights as any other citizen. They do not give up their basic rights by signing up to the police services. The humane conditions of work are the key to the efficient and effective working of the policeman. To ensure that the police personnel respond positively to the needs and demands of the community they serve, it is imperative that their working conditions are such that the conditions themselves do not become irritations and a cause of tension, for securing their human rights will undoubtedly enable them to protect, help and reassure the people of India in a better way.[24]

POLICE PERSONNEL AND THE CONSTITUTION OF INDIA

Under the Constitution of India, the police personnel come under a state governed subject. As a State subject listed in List II of the Constitution's Seventh Schedule, the police system is governed by the Police Act, 1861 and numerous state statutes. Each state government has the authority to establish its own police force under the Police Act. As a result, it is the state's constitutional duty to provide an impartial and effective police force that will aid in the protection of the people's interests.

---

19 *Ibid*, Article 23
20 *Ibid*,Article 24
21 Article 7 of International Covenant of Economic, Social and Cultural Rights, 1966
22 *Ibid*, Article 10
23 Article 1 of the Vienna Declaration, 1993
24 Dr. Usha Tandon "C*onceptualizing Human Rights of police"* 2007 The Indian Police Journal Volume . No.2

The Constitution of India guarantees fundamental rights to all citizens irrespective of their employment position. Under the Constitution of India, Parliament by law can restrict or abrogate the fundamental rights of police personnel to ensure the proper discharge of their duties and the maintenance of discipline among them[25]. Even under International Covenant of Economic, Social and Cultural Rights, 1966, does not prevent the State to imposelawful restrictions on members of the armed forces and of the police in their exercise of this right[26].Does it mean that State can take away the rights of police personnel without any reasonable classification and providing basic facilities to discharge their duties and functions effectively and efficiently to ensure public peace and tranquility in the society. The authors observe that without observing the standards such as dignity of profession, health issues of professionals, salaries, working hours, leave problems,denial of family life, social life, delayed promotion, inadequate infrastructure, excessive work due to job vacancies of same rank, how can state abrogate or restrict basic fundamental rights available to Police personnel particularly lowest grade officers?. Police Officers superior in rank are conferred with additional privileges and constitutional safeguards under the Constitution of India rather than the Subordinate rank Police Personnel's officials such as the female constables, head constables and Assistant Sub Inspectors. They neither enjoy the privileges nor constitution safeguard. Overall, looking at these perspectives one can come to the conclusion that there is a intense violation of

---

[25] Article 33 of Constitution of India, "Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,— (a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

[26] Article 22 of International Covenant of Economic, Social and Cultural Rights, 1966, Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

human rights standards as ensured by the Constitution of India and International conventions on human rights.

Article 21 of our Indian Constitution ensures not to connote mere animal reality or continued drudgery through life. Ithas a much wider meaning which includes the right to live with human dignity, right tolivelihood,right to health, right to pollution-freeair, etc. Right to life includes right to be protected in dangerous situations with the equipment.

RIGHTTO LIVE WITH HUMAN DIGNITY

The Geneva Conventions explicitly prohibits "outrages upon personal dignity[27]. The ICCPR begins its preamble with the acknowledgment that the rights contained in the covenant "derive from the inherent dignity of the human person."The basic spirit of our Constitution is to provide each and every person of the nation equal opportunity to grow as a human being, irrespective of race, caste, religion, community and social status.

Police personnel are alsohuman beings; neitherthe public nor higher police authorities respect their values their work joining a police department does not mean one must sacrifice their right to leave with human dignity. If apolice officer means he can't accept that people shout at me, disrespect, throw a stone, etc.,even police personnel also havetheright to leave with human dignity.

In *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi and Others*[28] Supreme Court observed that, "The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

RIGHT TO FAIR AND GOOD WORKING CONDITION OF POLICE PERSONNEL

Police Personnel are in a very unique position. They work with people who break the law and abuse other people's human rights. Another aspect of human rights which is equally important for police agencies is the fact that police officers are also human beings, and therefore, also have basic human

---

[27] Article 3 of the Geneva Conventions

[28] AIR 1981 SC 746, and *PUDR* v. *Union of India*, AIR 1982 SC 597

rights that should also be respected and protected. An example would be the right of police officers to have good working conditions. This also includes the right of all Police to be treated with respect and without discrimination regardless of rank; position; age; sex; social, religious or ethnic background and ability and disability. The working condition encountered by the Police Personnel vary greatly based on the factors such as location, staffing levels and also on number of incident reports. The work often proves to be both physically and mentally demanding when compared to other jobs.

Therefore, reasonable working hours, rest periods, paid holidays, adequate remuneration, health, and safetyregulations are important issues in working places. Everyone has a right to "just and favourable conditions of work", the object of Article23 of the Universal Declaration of Human Rights, 1948 states that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment without any discrimination, has the right to equal pay for equal work and everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, along with the social protection" which is added to the document. In addition to this, Article 24 adds up to the point by providing everyone the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Our country being a member of many treaties and Conventions such is indebted to uphold the human rights of all its citizens, including itspolice personnel. Similarly, the object of the Article 42 of the Indian Constitution mandates the state to afford "just and humane conditions of work". Which directly speaks about the improvement in pay scale, limited working hours, remuneration and promotions which are necessary aspects of police reforms.

RIGHT TO HEALTH OF POLICE PERSONNEL

Stress and work pressure in police departments specially for constables working in traffic and other police stations will affect badly their health. long working hours,absence of weekly offs, irregular working hours, excessive work, sleepless night duties, alleged physical and mental abuse, dealing many traumatic incidents which canhaveagreatimpactontheirmentalhealth and disturb their sleep. The daily life of police is filled with criminals, crimes, fights etc. On top of that they do not get time to refresh and recharge. This leads to frustration, anger and hatred towards their duties. Limiting their work hours to 8-hours with weekly off will help them to do justice to their work.

Constitution provides accessibility of health facilities and services for all, without discrimination irrespective of their employment position.

Article 21of the Indian Constitution has been interpreted to accommodate health right as fundamental right where state is obliged to provide necessary healthcare services to its citizen. Articles 42[29] and 47[30] of the Directive Principles of State Policy enshrined in Part IV of the Constitution provide the basis to evolve right to health and healthcare. Providing Accessibility and qualitative health facilities and services for all, without discrimination is one of the important constitutional duties of the State. Underlying determinants of health" includes:

- Safe drinking water and adequate sanitation;
- Safe food;
- Adequate nutrition and housing;
- Healthy working and environmental conditions;
- Health-related education and information;
- Gender equality.

In *State of Punjab and Others* v. *Mohinder Singh,*[31] Court observed that, "It is now a settled law that right to health is integral to right to life. Government has a constitutional obligation to provide health facilities." Similarly, the Court has upheld the state's obligation to maintain health services.[32]. In *Vincent Panikulangara* v. *Union of India*[33], the Supreme Court on the right to health care observed that, "Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. Attending to public health in our opinion, therefore is of high priority-perhaps the one at

---

29 "Provision for just and humane conditions of work and maternity relief- The State shall make provision for securing just and humane conditions of work and for maternity relief"

30 Duty of the State to raise the level of nutrition and the standard of living and to improve public health- The State shall regard the raising of he level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health

31 AIR 1997 SC 1225 9

32 *State of Punjab* v. *Ram Lubhaya Bagga* (1998) 4 SCC 117.

33 AIR 1987 SC 990:

the top."In *Consumer Education and Research Centre* v. *Union of India*[34], and *Kirloskar Brothers Ltd.* v. *Employees' State Insurance Corporation*[35], the Supreme Court held that right to health and medical care is a fundamental fight under Article 21 read with Article 39(e), 41 and 43.

Considering the Constitutional mandates and judicial directions,it is the duty of State to minimize the work hours and over burden on police personnel and establish good environment in the police stations to ensure good health of police personnel.

FREEDOM FROM DISCRIMINATION

International human rights law is binding on all States and their agents, including law enforcement officials Human Rights is a legitimate subject for international law and international scrutiny. Law enforcement officials are obliged to know, and to apply, international standards for human rights. Nodiscriminationrecruitmentprocedures,workingconditions,promotionspractices,equalpayformenandwomen,dismissalpractices,and harassmentin the work. Constitution of India ensures right to equality to everyone irrespective of their employment and position.

COMMITTEES ON POLICE REFORMS AND HUMAN RIGHTS

Bringing and implementing police reforms not only ensures human rights of police personnel but also minimize the harassment of public by the all officers in Station. Judiciary has directed government to constitute committees to study the status and conditions of all police officers.

In *Prakash Singh* v. *Union of India*[36], the Supreme Court handed down a landmark decision that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order. This suggests that key government officials have yet to accept the rule of law or the urgency of undertaking comprehensive police reform, including the need to make police accountable for widespread human rights violations. The Indian government also has yet to recognize the immediate need to improve the working and living conditions of low-ranking police. In *Vineet Narain & Ors.* v. *Union of*

---

[34] (1995) 3 SCC 42
[35] (1996) 2 SCC 682, AIR 1996 SC 3261,
[36] AIR 1 (2006) 8 SCC 1

India & Anr[37], this Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments. Therefore, inorder to overcome bring reforms and to make accountable the police personnel there are various committee which were appointed and there reports which are as follows;

A. NATIONAL POLICE COMMISSION (NPC)

The Commission was appointed by the Government of India in 1977 with wide terms of reference covering the police organisation, its role, functions, accountability, relations with the public, political interference in its work, misuse of powers, evaluation of its performance etc. This was the first Commission appointed at the national level after Independence. The Commission produced eight reports between 1979 and 1981, suggesting wide ranging reforms in the existing police set-up.

The recommendations made by the NPC remained unimplemented due to various reasons. There was strong resistance to the idea of police reforms due to the vested interest of politicians and bureaucrats in retaining the control and superintendence over the police organization.[38]

B. RIBEIRO COMMITTEE[39]

The Ministry of Home Affairs, Government of India, set up a Committee on Police Reforms in pursuance of the Supreme Courts direction [40]

---

[37] (1998) 1 SCC 226

[38] Indicative of the deeply entrenched resistance to police reform is the fact that a letter written on the subject in April 1997 by Shri Indrajit Gupta, the then Union Home Minister to the Chief Ministers of all States exhorting them to rise above narrow partisan or political considerations and introduce police reforms on the lines recommended by the NPC failed to produce even a single response

[39] The Committee has referred to the "concern of the successive Ministers in the Ministry of Home Affairs, Government of India about the implementation of the NPC Report…"7 This concern, according to the Committee, is reflected in the letters sent by Shri Rajesh Pilot, Minister of State in the Ministry of Home Affairs in July, 1994; Shri Inderjit Gupta, Union Home Minister in April 1997 and by Shri L.K.Advani, Union Home Minister in May 1998 to the Chief Ministers of all States/Union Territories, urging them to take action on the recommendations of the NPC. The Committee has tried to convey an impression as if the Central Government has been keen to bring about police reforms on the lines suggested by the NPC, but the State Governments have not shown even an inclination to consider the subject. This impression is ill founded

[40] Writ Petition (Civil) No. 310 of 19963

and the references of the Committee are:

a. To review action taken to implement the recommendations of the National Police Commission (NPC), National Human Rights Commission (NHRC) and the Vohra Committee.

b. To suggest ways and means to implement the pending recommendations of the above Commissions/Committee.

c. Consider and make recommendations regarding any other matter which the Government may refer to the Committee or which the Committee considers necessary in this behalf.

C. PADMANABHAIAH COMMITTEE

The Committee was set up by the Ministry of Home Affairs, Government of India in January 2000. The Committee did not have any representation from other sections of society or public. The report was submitted by the Committee to the central government in October 2000. Till recent times, the report has not been released before the public. There was no consultation with public or civil society organisations when the Committee was appointed and it is not considered necessary to publicly debate the report on a subject.

D. MALIMATH COMMITTEE[41]

The Committee recommended 158 recommendations after examining several national systems of criminal law, especially the continental European system, which proposed a shift from an adversarial criminal justice system, where the respective versions of the facts are presented by the prosecution and the defence before a neutral judge, to an inquisitorial system. It suggested the setting up of a State Security Commission, as recommended by the NPC, to insulate the police from political pressure.

---

[41] Malimath Committee was headed by Justice V.S. Malimath, former Chief Justice of the Karnataka andKerala High Court**s.** This Committee began its work in 2000 when it was constituted by the Home Ministry. The Report related to the criminal justice system in India was submitted to Deputy Prime Minister L.K. Advani, who was also in charge of the Home portfolio, in 2003.

E. POLICE ACT DRAFTING COMMITTEE

The Committee[42] has endeavoured to put forth a comprehensive Act that could ensure effective policing in both urban and rural areas and drafted a new model Police Act to replace the 1861 Police Act.

F. SUPREME COURT DIRECTIVES

The directives of Supreme Court dispensed a series of measures that were to be undertaken by the government to ensure the police could do their work without worrying about any political interference. Court issued seven directives to state police forces including setting up State Security Commissions, Police Establishment Boards and a Police Complaints Authority.

G. SECOND ADMINISTRATIVE REFORMS[43]

It recommended amendment to the existing legislations and noted that the police-public relations were unsatisfactory and suggested a range of reforms to change this. New directives on police reforms and reviewed states progress in the implementation of the 2006 directives

H. JUSTICE J.S. VERMA COMMITTEE

It was constituted in the wake of the brutal gang rape in Delhi, submitted a comprehensive report on Amendments to Criminal Law. The Committee regretted that "the Supreme Court's judgment of 2006 in *Prakash Singh's c*ase giving certain directions for the autonomy and improving the quality of the police force remain to be implemented by all the governments" and emphasized that "action in this behalf does not brook any further delay". In Chapter XII of the Report, which deals exclusively with Police Reforms, the Committee expressed the view that "ensuring full compliance with this

---

[42] The Ministry of Home Affairs, Government of India, having visualized the long-felt need to replace the 145-year old Police Act 1861, set up a Committee of Experts, under the Chairmanship of Dr. Soli J. Sorabjee, in September 2005 to draft a new Police Act that could meet, inter alia, the growing challenges to policing and to fulfill the democratic aspirations of the people. The Committee comprised six nonofficial Members and four ex-officio Members, besides a full-time Secretary. The Commonwealth Human Rights Initiative (CHRI), which has been advocating reforms in the police, was invited by the Committee to be a non-official Member. The Committee's time was extended up to October 31, 2006.

[43] The Second ARC was setup by the Government of India on 31 August 2005 under the Chairmanship of Shri M. Veerappa Moily with the mandate to suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.

judgment across all of India is of utmost priority to national welfare; including the welfare of women and children and towards the weaker sections of the community", and urged "all states to fully comply with all six Supreme Court directives in order to tackle systemic problems in policing which exist today".

Despite recommendations from these committees, no substantial changes have been seen. The Supreme Court in 2006 also came up with a landmark judgment in the *Prakash Singh* Case, where the court made seven-point directives to the Centre and State governments. Unfortunately, the committee recommendations have not seen the light of the day. It reflects the lack of political will on the part of bureaucracy to implement the order. Neither the politicians nor the bureaucrats want to lose their control over the police. This problem of lack of clarity in control also lies in The Police Act of 1861, which is silent on 'superintendence' and 'general control and directions.[44] This enables the executives to reduce the police to mere tools in the hands of political leaders to fulfil their vested interests

CONCLUSION

The police force in India work under very severe constraints. The overall work environment of police, particularly of subordinates and middle rank officers is dehumanizing and de intellectualizing, and families of police personnel usually feel neglected. As a result, the police work exacts a heavy toll from the wives, children and relatives of police personnel. Article 7 of International Convention on Economic, Social and Cultural Rights, 1966 and Article 21 of The Indian Constitution recognizes the right of everyone to enjoyment of just and favourable conditions of work, which ensure in particular a decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holiday with pay, as well as remuneration for public holidays. They do not give up their basic rights by signing up to the police services. The human conditions of work are the key to the efficient and effective working of the policemen. To ensure that the police force respond positively to the needs and demands of the community they serve, it is imperative that their working conditions themselves do not become painful and a cause of tension for them.

---

[44] Mohan, Garima and Navaz Kotwal, "State Security Commissions: Reforms Derailed," Commonwealth Human Rights Initiative (2011).

The constraint of budget is one of the factors that can affect many areas of the police organizations, leading up to situations that inevitably harm police effectiveness, such as: lack of skills, caused by insufficient training; lack of appropriate or insufficiency of equipment, and lack of logistic support, which deteriorates their operational capacity and affects the police officer's motivation; as well as low pay, which in the same way leads to lack of motivation of personnel, and as a reflection makes the police service less attractive for recruitment of personnel.[45]

The central government launched the POLNET (Police Tele communication Network) project in 2002 to connect the country's police and paramilitary forces through a satellite-based communication network that will be substantially faster than the current radio communications system. However, audits have revealed that the POLNET network is non-operative in various states. Both the federal government and the states contribute to the modernization of state police forces. This money is often used to improve police infrastructures, such as building police stations and purchasing weapons, communication equipment, and vehicles. However, the under-utilization of money has remained a recurrent issue.

Moreover, the political interference is manifested in appointments, transfers and promotions of police personnel which affect their initiative and efficiency. Both the central and state police forces are under the supervision and control of political executives, according to the police statutes. Police priorities are constantly changed at the request of political leaders. This obstructs police officers' ability to make professional decisions, leading to biased performance of tasks. This leads to a lack of accountability of the police and to a misuse of power to abide by the political ideologies.

Further, the police personnel are expected to present a superman image, who can do anything, in any situation. This superman image of policeman makes it difficult for him to be fully even a man. They do not mind if they are getting long work-hours, less salary, no promotion, bad service conditions etc., as within the stern system, they have taken care of themselves by getting 'wet posting' or sensitive posting which may generate money for them but, at the same them constitute evils in uniform. No one bothers to understand the severe limitations within which a policeman has to operate. Training

---

[45] http://www.unafei.or.jp/english/pdf/RS_No60/No60_20RC_Group1.pdf. (Accessed on 12th January, 2021).

standards are very low and do not take into consideration the use of modern technology. Workload again is one of the major reasons for the inefficiency of Police. A number of police specific research studies have identified and then classified stress producing agents among police personnel. Lower grade officials, according to the study are more emotionally exhausted than Top officials. The lower rank officials are under more stress followed by the Top officers. It may be due to increasing responsibility with rise of organizational hierarchy because of their multidimensional role and complex work environment. Therefore, there is a need to conceptualize and contextualize the human rights of police force, so that the true upholders of the rule of law do not remain deprived of their basic rights.

SUGGESTIONS

1. The major recommendations of the National Police Commission have remained unimplemented, if implemented in true spirit, it upholds the human rights of Police Personnel as mandated in International Conventions and Part III and Part-IV of the Constitution of India, it could go a long way in improving the performance of one of the most vital institutions of the country

2. The Indian police can be redeemed by a mix of radical reforms and affirmative action. The preservation of human rights and dignity should be the very corner stone for a robust police organization.

3. It is the duty of government to allocate adequate funds to implement the recommendations of committee on police reforms in order to ensure human rights of the police personnel.

4. Removal of political interference is the most important criteria. The Japanese police system should be followed, which is based on political neutrality and democratic control, as it is built in such a way as to ensure absence of arbitrary and political interference.

State legislation must take into consideration the guidelines which were suggested by the Supreme Court in the case of *Prakash Singh* v. *Union of India* and respectively prepare their laws and guidelines. [46]The guidelines

[46] Guidelines of the above-mentioned case:
   a. Every state should establish a state security commission to set policies for police operations, review police performance, and ensure that state administrations do not exert undue influence over the police.

serve to enhance the efficiency of the police system in the country and to some extent solve the problems that are faced by them at the present point of time.

b. Police complaints authorities should be established at the state and district levels to investigate complaints of serious misconduct and abuse of authority by police officers.
c. To enable a faster investigation, better competence, and stronger public relations, separate the investigative and law enforcement officers.

LEGAL FRAMEWORK PERTAINING TO FEMALE FOETICIDE – AN ASSESSMENT

-Dr. JyothiVishwanath*&
Mrs. Jyothi K. M**

INTRODUCTION

"There can be no spirituality, no sanctity, and no truth without the Female Child."[1]

With a consistency comparable only to the world's ability to change daily, humanity undergoes evolution. Politically, economically, and particularly socially, changes throughout the contemporary world are unavoidable and, at best, only understood in part. Amidst many changes that threaten the global community's future, demographic changes have caused increasing concern of late.Populations, most notably in impoverished areas of the world, are expected to grow astronomically in subsequent decades, resulting in an unprecedented youth bulge in many developing countries. China and India, presently two of the world's most densely populated countries, are especially affected by this rapid population increase. Yet despite impending threats of mass starvation and economic downfall resulting from widespread poverty and overpopulation, sex-selective abortion and female infanticide are undoubtedly most threatening to populations in India.[2]

Female infanticide and female foeticide is a threat to the human race. Violence against women exists in various forms in all societiesfemale foeticide and female infanticide all extreme manifestation of violence against women. Female foeticide is perhaps one of the worst forms of violence against women. A woman is denied her most basic right - the right of life enshrined in the article of the constitution of India. Elimination of the girl child through selective elimination of female embryos orfetusesis an age-old phenomenon. It neglects the fundamental right to equality guaranteed under articles 14 and 15 of the constitution, female feticide has joined the fray and is

---

* Associate Professor, University Law College & Department of Studies in Law, Bangalore University, Bengaluru.

** Research Scholar, University Law College & Department of Studies in Law, Bangalore University, Bengaluru.

1 Female Foeticide: A Jurisprudential and Constitutional http://shodhganga.inflibnet.ac.in/bitstream/10603/123356/9/09_chapter3.pdf (accessed June 18, 2019).

2 Sex-selective Abortion, Female Infanticide, And Their http://www.schoolinfosystem.org/ pdf/2012/07/crev.pdf (accessed June 18, 2019).

increasing with every passing day.[3] Lack of ethics in certain pockets of the medical profession has only aggravated the situation, the most disturbing is the continued discrimination against the female child at various levels though because of some awaking through freedom, equality, and empowerment of women, things seem to be changing. Even today, the birth of a girl child in the family is not celebrated as done when the boy is born. Gender equality demands that the birth of a girl, especially the second one in the family, should not be viewed as a moment of grief and sorrow.[4]

In India, history speaks that the women are considered as a divine forcebut the multi-cultured Indian society places the women ina different position. Thus, there is no uniform status of women in Indian society. However, civilization showed the overall upliftment of woman's position.Though relevant to each other, the practices of female infanticide and sex-selective abortion are not the same. Most principally, sex-selective abortion takes place during gestation while female infanticide occurs within days or hours of a baby's life. Regardless of the differences, both female infanticide and sex selective abortion are acts of gendercide which is the deliberate and usually brutal killing of a person or persons based solely on their gender.[5]

We are proud to be an Indian, and we are celebrating 24thSeptember as the International Girl Child Day. When we are celebrating and enjoying the development and Empowerment of woman, still this heinous offence of 'Female Foeticide' and Infanticide is being committed in our own country before us and we are handicapped because we are not taking any effort to prevent this offence or to remove it from our society.

The system of foeticide is an ancient phenomenon and it has recorded millions of sex selection deaths in our ancient history. It is an undeniable fact that India stands one among the top five countries in the world where the crime rate of female infanticide and foeticide is rampant. Where ever the female infanticide and foeticide is more, it reflects the low status of woman in that particular country. It is the most cruel and harsh demonstration against a female by the dominating male society. It is specifically connected with

---

3 Female Infanticide And Female Foeticide - New Man Publication,http://newmanpublication.com/admin/issue/Articale/3%20New%20Man%20Publication-%2 (accessed June 18, 2019).

4 Supra note 1

5 Supra note 4

abortion based onsex selection with anaim to remove the femalefetus and curb the population of the girl child.Several studies have reported high preferences for son in different states of India. The recent improvement in medical technology and easy availability of sex determination test hasresulted in a high incidence of female foeticide. Availability of abortion services in privatenursing homes has exacerbated the incidence of abortion as well as selective sex abortionsin India.[6]The introduction of new technologies cannot be restricted or barred in any country. The only possible solution is to prevent the exploitation of these technologies. Different countries have come forward and have endeavored for collective efforts that incite improved living standards for women over the planet. Several treaties and conventions acknowledge and endorse the equal status of women.[7] Biased behavior against women was the main agenda of varied treaties and conventions, as they deemed the practice of female foeticide deplorable globally. Thus this paper aims at analyzing the Indian Laws and other International Conventions which are enactedto eradicate the crime of female foeticide.

DEFINITION: FEMALE FOETICIDE

One of the most common and simple mechanisms of eliminating the girl child is 'Female Foeticide'. The term "foeticide" is a combination of the Latin words *fetus*and *caedo*which means to kill an unborn child.[8]'Foeticide' means the destruction of the fetus at any time before birth. Foetus means an unborn human from after the third month of pregnancy until birth.[9]It is the act of undermining the sex of the child in the mother's womb and ifit is found to be a female; to get the same aborted. 'Female Foeticide' is the termination of the life of a fetus in the womb because its sex is female. The term "selective sex abortion" is preferable to the term foeticide, since it points to both of the ethical evils inherent in this practice.[10]

---

6 http://iipsindia.org/pdf/05b01achep1.pdf

7 Dr. Pooja Gupta, *Female Infanticide And Female Foeticide - A Curse For Society*, New Man International Journal of Multidisciplinary Studies (ISSN: 2348-1390)

8 Krushna Chandra Jena, Female Foeticide in India: A Serious Challenge for the Society, Orissa Review December2008 Available at URL: http://orissa.gov.in/e-magazine/Orissareview/2008/December-2008/engpdf/8-17.pdf

9 lexicon Webster, Dictionary, Delier Publishing Company, 1986, p. 359

10 https://sites.google.com/site/agirlnationspride/home/main-reasons-for-female-feticide

MAGNITUDE OF PROBLEM IN INDIA

India is the most dangerous place in the world for a girl child to be born. It estimated that more than ten million female fetuses had been illegally aborted in India. Researchers for theLancet journal based in Canada and India stated that 500,000 girls were being lost annually through selective sex abortions.

This process began in the early 1990s when ultrasound techniques gained widespread use in India. There was a tendency for families to continuously produce children until a male child was born. The Government initially supported the practice to control population growth. The Preconception and Prenatal Diagnostic Techniques (PCPNDT) Act was passed in 1994, making sex-selective abortion illegal. It was then modified in 2003 holding medical professionals legally responsible. However, the PCPNDT Act has been poorly enforced by authorities.[11]As per the most current data released by the United Nations Department of Economic and Social Affairs (UN-DESA) data for 150 countries over 40 years shows that India and China are the only two countries in the world where female infant mortality is higher than male infant mortality[12] in the 2000s.

Even as the world celebrates the International Day of the girl. 'India doesn't seem to be the best place for a girl child'. Feticide cases increased by 19 % over 2010 to 132 cases in 2011, most of which wereregistered from MadhyaPradesh, followed by Chhattisgarh and Punjab, says a ministerial report. The three states together reported 56 %of the feticide cases in a year. The Ministry of Statistics and Programme Implementation in its latest report on the State of Children says that three million girl children have gone missing in 2011 compared to 2001.Earlier studies have said, five lakh girls a year or 2,000 go missing daily in India due to female feticide in families,where one girl child already exists, the chances of second girl being born are as low as 54%. In a family with two female children, the chances[13]of a third girl being born are 20%.

---

[11] Female Infanticide Free Essay Sample - New York Essays, https://newyorkessays.com/essay-female-infanticide-2/ (accessed June 18, 2019).

[12] Un-desa Data Revealed Higher Female Infant Mortality Rate .., https://www.jagranjosh.com/ current-affairs/undesa-data-revealed-higher-female-in (accessed June 18, 2019).

[13] Kounteya's 'even The Goddess Isn't Free', https://timesofindia.indiatimes.com/ blogs/plumage/kounteyas-even-the-goddess-isn (accessed June 18, 2019).

FEMALE FOETICIDE: CAUSES AND EFFECTS

In India, the causes of female foeticide and infanticide are multifaceted by many authors like Venkatachalam, Aravamudan, Harris-White, Jain, George, Pande, and Malhotra. The important causes of female foeticide are revealed by studies made by these authors are as follows[14]:

Son *mania*: Indian society is patrilineal, patriarchal, and patrilocal. Among the Hindus, the reproductionand heredity beliefs are governed by the laws of Manu. Following this law, Hindus believe that a man cannot attain redemption unless he has a son to light his funeral Pyre. Besides religious consideration, economic, social, and emotional desires favor males, as parents expect sons but no daughters to provide financial support, especially in their old age.

A girl as a "burden": The evil of dowry system has led to a belief that daughters have to be protected and sufficientfinancial resources have to be accumulated to support the marriage of the girl. Boys, on the other hand, are considered as assets, who fetch a fabulous dowry for the parents. This hascreated a stereotype notion of a girl as a "burden" on the household.

Education and the gender skew: Contrary to the popular belief, Gita Aravamudan's research shows an adverse link between education and gender skew. The more educated a women are, the more likely she is to actively choose a boy, assuming that she decides to have one child. The only educated women likely to keep daughters are very independent minded. Educated men, especially in the business class, also want to have sons to carry on their business[15].

Marginalization of women in Agriculture: Although women contribute far more to the agricultural production, they are by far largestgroup of landless laborers with little real security. Modernization of agriculture alleviates the burden of tasks that are traditionally men's responsibility leaving women's burdenunrelieved. In some regions, the bias has led to a shift from subsistence food (often women's crops) to cash crops (often men's

---

[14] Dr. Vasudev P. Iyer, *FEMALE FOETICIDE AND INFANTICIDE IN INDIA,* Episteme: an online interdisciplinary, multidisciplinary & multi-cultural journal Bharat College of Commerce, Badlapur, MMR, India, Volume 2, Issue 4 March 2014, BCC-ISSN-2278-8794

[15] http://www.indianexpress.com/news/law-to-cover-new-techniques-of-sex-determination/761343

crops). The systematic marginalization of women in Indianagriculture has led to an increase in violence against women, including the epidemic of femalefoeticide.

Misuse of technology: The tests like Amniocentesis and ultrasonography, which were originally designed for detection of congenital abnormalities of the fetus, are being misused for knowing the sex of the fetusto abort it if it happens to be that of a female (Patel, 1984). Thus, female foeticide and infanticide are receiving fillip through misuse of technology, done surreptitiously with the active connivance of the service providers.[16]

Weak implementation of laws: The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, prohibits the determination of sex of the fetus. It also provides for mandatory registration of genetic counselingcenters, clinics, hospitals, nursing homes, etc. However, the implementation of the law is weak, and it has not been used to the fullest. The focus has beenonly on the registration of the number of ultrasound machines and not on the actual act of abortions of female fetuses. Furthermore, in several cases, the accused have not been booked under relevant sections of the Act.

INDIAN LAWS FOR ERADICATING FEMALE FEOTICIDE

Due to all these causes and implications of female foeticide, many laws have been passed from time-to-time to control this menace.India passed its first abortion-related law in 1971, the so-called Medical Termination of Pregnancy Act, which made abortion legit in almost all states of the country, but it was particularly made for the cases of medical risk to the mother and child conceived by rape.[17] The law had also established physicians who could legally perform the abortion in the said scenarios. But the government had not considered the possibility of female foeticide based on technological advances. Due to this reason, this law proved to be highly ineffective.[18]During the 1980's, sex screening technologies in India was easily accessible to the common people. Due to this reason, a large number of reports started pouring in about the abuse of the sex screening technologies. Considering this problem, the Government passed the Pre-natal Diagnostic Techniques Act (PNDT) in 1994. This law was again amended due to various reasons and it

---

16 Supra note 5

17 Laws Against Female Foeticide In India - Ipleaders, https://blog.ipleaders.in/laws-female-foeticide-india/ (accessed June 18, 2019).

18 http://www.allresearchjournal.com/archives/2015/vol1issue6/PartC/1-6-20.1.pdf

finally became Pre-Conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act in 2004. Its main goal was prevention and punishment of prenatal sex screening and female foeticide.[19]

Many important changes were made in the PCPNDT Act, 2004. It brought ultrasound and amniocentesis under its ambit. It also led to the empowerment of the Central Supervisory Board and the formation of State Level Supervisory Board. The rules, regulations, and punishments are made more stringent.Despite all these changes, it has been said that the implementation of this act has turned into a farce. It has been nearly two decades since the law came into force and despite this, not many changes have taken place in the society. Despite rulings given by the Supreme Court and various High Courts to make the existing law an impediment, the courts have shown their hesitancy in sending the offenders off to jail. The convicts in many cases have been let off only by a mere warning by the judge which has led to a mass negative reaction from the legal fraternity as well as social and academic activists. Lawyers and activists have unanimously demanded stringent punishment for the guilty while also fixing the accountability of the competent authorities handling the cases of sex detection.[20]

INTERNATIONAL CONVENTIONS FOR ERADICATING FEMALE FOETICIDE

According to the United Nations, rigorous efforts for striking vigorously against female foeticide can be made only if collective strategies are adopted. The enormous effort made by various countries across the world to curb the issue of foeticide concludes that there is a uniform opinion of every country to eliminate the evil practice and simultaneously recognize the rights of the girl child.

The various international measures undertaken to control and eliminate the immoral practice of female foeticide are as follows: -

(i) Charter of United Nations (1947): United Nations has supported the rights of women from the very existence of its Charter. The Charter of the United Nations was a foundational treaty, which was signed at San Francisco on 26thJune 1945. Fifty original member countries signed the

---

[19] http://indiatoday.intoday.in/story/law-to-curb-female-foeticide-turns-into-farce-pndt-act/1/455255.html

[20] Supra note 7

Charter of the United Nations. It was the essential treaty which bound all its members by its Articles. At present, there are 193 countries, which are members of the United Nations. The Charter primarily promotes and encourages total respect for human rights and basic standards with no sort of refinement in sex, language or religion. The Charter came into force on 24thOctober 1945. The United Nations established a Global Policy framing body, exclusively for gender equality, which would help in the advancement of women by promoting women empowerment. The preamble of the Charter states that it values the pride and worth of a human and guarantees measure up to rights for men and ladies. The Charter is a constitutional text of the International Court of Justice, which was brought into being by the United Nations. According to the Charter, there are no restrictions on the qualification of men and ladies to take an interest under states of fairness in its subsidiary organs. The Charter also promotes stability and wellbeing for peaceful and friendly relations, which are based on equivalent privileges of men and women. Equality in a high standard of living, employment and social development is the prime factor of the Charter of the United Nations.

The United Nations has described female infanticide as the most horrifying practice, which violates the principles of gender equality. It has been increasingly acknowledged worldwide and now has a new partner in female foeticide. Numerous steps have been taken to restrict the negative use and consequences of sex selection and foeticide. According to the convention on rights of the child, a child is defined as a human being, which does not necessarily include the human fetus.

United Nations Economic and Social Council (ECOSOC) is one of the most important organs, which coordinates the economic and social work of the United Nations. It was established on the principles of the United Nation's Charter. There are various issues that are discussed and debated in the council. At present, the Economic and Social Council is comprised of 54 member states of the United Nations. The concern of female foeticide was also reflected amongst the numerous social and economic issues. The Council stated that there was a stunning decrease in the sex proportion of countries like India, China etc. The practice of female infanticide and foeticide is an old tradition and a very renowned notorious concept in various developing countries. According to the council, female foeticide is an act, which brutally kills the female foetus as male preference is in demand. This is an aggregate infringement of human rights.The council and the member states of the United

Nations condemn the evil practice of female foeticide and also prohibit discrimination against women who gives birth to female offspring. The council also recommends that the nations who are facing the concern of female foeticide should prohibit or restrict the misuse of medical technology. The council encourages all its member states to establish laws, which will prohibit the brutal practice of female foeticide and also make sure that such laws are implemented and strict action is taken against people who practice this barbaric act. The council also recognizes the significance of NGOs, which support young women who give birth to a girl child, by providing them with food and other support. The council has also highlighted the concept of adoption, when it stated that charitable organizations should provide opportunities to mothers to leave their child in the care of responsible guardian by the adoption process.

(ii) Universal Declaration of Human Rights (1948) (UDHR): The Universal assertion of human rights was embraced by the United Nations General Assembly on tenth December 1948. The establishment of UDHR was a result of the destruction caused in the Second World War. As the Second World War ended, the United Nations was formed an all the nations decided that they will never allow any such circumstances which create conflict in the world. The UDHR was a supplement added to the UN Charter, which guaranteed to protect the rights of every citizen around the world. The draft of UDHR was considered by the General Assembly and was reviewed the draft declaration to prepare a Bill of Human Rights. The sought declaration was formally drafted by the drafting committee, which was appointed — the committee consisting of 18 members from various political and cultural backgrounds. The final draft of the UDHR was sent to all UN member states and was finally termed as a Genera draft.

According to the UDHR, every human should be secured against torment or pitiless and cruel debasing treatment. A practice like female foeticide is termed as a cruel practice which deliberately murders the human fetuses. With killing there one other issue connected with it. The emotional torture and degrading treatment a woman has to undergo while she is pregnant as she is constantly pressurized to give birth to a male child. Many people also go to the extent of having continuous pregnancies and simultaneous abortion till they get a male child women's health is never taken into consideration. Inhuman treatment should be considered as a criminal act and should be punishable. Many people consider such treatment necessary as this keeps

control on women physically and emotionally. This also means that others also control her unproductive rights. Such treatment leaves no moral identity of a woman, as she has to be dependent on male members of her family to take decisions about her life and body. The UDHR believes that with strict rules and regulations with sever the right of every woman to take control of her life and whether she should give birth to children.

(iii) International Covenant on Civil andPolitical Right (ICCPR) 1966: The convention has made strong efforts to frame rules and set up guidelines for just and the human condition for every individual in the world. The convention purposes all its member states to legislate such laws, which punish and provide a legal remedy for violation of all the rights. The right provided by laws should not discriminate on the grounds of race, religion, language sex, birth, or another status. This provision makes it clear that the convention strictly condemns all those who practice the tradition of female foeticide. The convention provides all the right on an equal basis amongst men and women. According to the International Covenant of Civil and political rights, rights to freedom of thought and religion cannot be limited even at the time of emergency. The practice of female foeticide if allowed can violate most of the principle in this convention as well as the Universal Declaration of Human Rights no doubts right to equality and freedom from all forms of discrimination is prescribed and protected by various provisions of the International Convention on Civil and Political Right.

Under Article 2 (1) of the Convention, it is the duty of every state party to respect and ensure to all its individual all the rights provided by the Convention without any segregation on the premise of dialect, religion, sex social cause, birth status.This means that the right to take birthis equally distributed between men and women. Every child has a right to take but abortion though legal in many countries do not include the brutal practice of female foeticide. Therefore even if there is a provision to exercise the right of abortion. Simultaneously killing of a female fetus should be prohibited, as it is the right of every individual to be born. The killing of female foetus violates and discriminates human rights. The same is also prohibits under the convention.

Article 26 of the International tradition on common and political rights every individual is equivalent in the witness of the law and is qualified for equivalent security of law. The tradition expresses that law shall prohibit all

forms of discrimination based on race, sex, color, sex, language, birth order, etc. The article mentions that no discrimination is to be based on sex and birth order. This means that this article devaluing of women does not support the practice of female foeticide, and discrimination of female fetus clearly violates a girl right to be born. All the reasons given by the traditional mindset of people is not supported or tolerated by the convention. Thus, the practice is condemns as it violates every aspect of the right to equality under any state law or the International law, treaties, conventions, organisations etc.

(iv) **International Covenant on Economic, social and cultural rights (1966) (ICESCR):** The convention on economic, social, and cultural also focuses on the right to equality for every citizen. The convention also promotes the right to life and strongly condemns the attitude of traditional mindset where many girls are undesirable and unwanted. Such a mindset leads to the practice of infanticide and foeticide. According to the convention, a strong legislative reforms on protection is required to emphasis on all the supportive policies framed by the United Nations. The convention examines the essential elements that are required to encourage the empowerment of girl child. The principle framed for the gender equality also focus on the socio – the economic right to a girl child. The convention states that the world needs to change its social policies and laws on gender equality and this can be achieved only when the institutional amendments target towards the elimination of segregation and brutality against young girls. The issue of discrimination against the girl child also requires a strong human right approach to tackle various issue related to women.

The United Nations has made various efforts to fight against female foeticide. The convention on civil, political, economic, social, and cultural rights of an individual also mentions the seriousness of the issue of discrimination against women. The only efforts lacking from the United Nations is to frame separate convention or treaty for female foeticide as other issues can be tackled, but this issue is of prime importance hence the very existence of girl child is in danger. The efforts made should also focus on the implementing rules and laws for better living and imposing the standard of living for girls. This in town shall promote the "Save the Girl Child" format and help in the elimination of such practices.

(v) **Convention onthe Elimination of All Forms of Discrimination against Women (1979) (CEDAW) :** Declaration on the elimination of

Violence against Women[21] states that violence against women as the most brutal and inhuman behaviour, which demonstrates a hideous side of humanity. The violation and discrimination against women are often carried on in the name of culture, religion,and tradition. These harmful practices ultimately make women feel inferior in all the phases of society. The girl has always been more vulnerable to socialdiscrimination and gender inequality in the country around the world. The low status of women is the main cause ofselective sex abortions.

CEDAW has framed various principles, which prove to be certain guidelines to be followed by countries. According to CEDAW gender equality can be guaranteed if laws are framed, keeping in mind the various discrimination women have to undergo. The law should be madeto eliminate this discrimination. Laws makers also should try to make the women participate in various decision-making sectors at all levels. Alongwith right, the lawmakers should also ensure to provide women with security and safe environment so that she feels protected towards herself. The laws should be made strict enough to punish offenders who practice the various forms of discrimination against women.Thus the concept of female foeticide is regarded as the ridiculous crime and discrimination against women. According to CEDAW, such practices are required to be focused on as they are carried on in a private realm,i.e. home, family as well as publically like workplace harassment. Therefore the entire focus is on all forms of discrimination that a women girl faces. The guidelines help the countries to rescue women from such discrimination and give them an equal opportunity to participate in public life.

(vi) Convention on the Right of the Child (1989) and its Optional Protocol (2000) : Many countries that are member party to the Convention on Child Rights have framed these constitutional laws by adopting the principle elements of the United Nations Conventions on Right of the child. This makes the law of every country stand in line/ stand parallel with the convention on Right of the child. The convention consists of various articles and provisions, which mentions that the rights and freedom are to be enjoyed equally. The conventionmentions that every group, every society, men, women and particularly children should be protected and assisted on various rights and also educate the society

[21] Volume Iv - Pdf Free Download - Docecity.com, https://docecity.com/volume-iv-rackcdncom.html (accessed June 18, 2019).

about the different rights of children and their duties towards children. The convention states that it is very important for every child to give up in an environment where he/ she is showed with loves, happiness,and understanding. Every child should be given an equal opportunity to be born and live an individual life in society with peace, dignity, and freedom tolerance. This need to extend particular care and special attention to children has also been stated in the Geneva Declaration of the Right of a child of 1924. According to the declaration of the Rights of a child with physical or mental immaturity or disability needs more attention and special safeguards alongwith legal protection. Such protection is to be provided before and as well as after birth. As children are considered as to be the future of the Society. Their right to take birth should be based on equality as a balanced sex ration, and equal balanced development of both the sex will decide the progressive graph of any country. This can happen only if girls also are given equal opportunities to line and birth in our society.

The old orthodox tradition towards female children stands as a hurdle to shorten the gap between the sex ratio. This leads to an imbalance in society's structure. Every solution to the issue of female foeticide should be planned to change the social structure. So the laws and other policies made by member states of the United Nations should keep the guidelines in mind and accordingly implement the required laws in their respective country. The International convention should make efforts to overcome such destructive customs. The International conventions should encourage medical practitioners common men, legal professionals to focus and promote humanities and scientific approach so that such practices can be prevented and monitored on a regular basis to balance the sex ratio of every country. The punishment which is to be decided by International laws should be strict enough for others to realize the devaluing a girl child is a hideous crime and punishable under the law — denying a girl "Right to life" which is the very first right given to every child by the United Nations in the convention on Right of the child.

CONCLUSION

Through many mediums, awareness about female foeticide is being spread throughout the nation. Let it be plays, soap operas, mass awareness programs, ads, endorsement by various celebrities, BetiBachao campaign,

rallies, posters, etc. Everyone is trying to spread the message everywhere. Despite all these efforts, the sex ratio of our country is not improving.[22]

According to the 2011 Census, there are approximately 110 boys behind 100 girls. This shows that we have wrecked the sex ratio of our country. We can blame the government, the NGO's or the society as a whole for all we like but till the time the common man does not understand the value of a girl child, this problem will not be solved. The people of this country need to understand that every action reacts. Due to rampant female foeticide, the demand for girls for marriage has increased in the whole country. Due to this reason, flesh trade has increased. In one way or the other, it is the female who suffers. We need to understand the importance of a female. After all, they constitute one-half of society. They should be given the same preference and respect which a male gets in society.

[22] Laws Against Female Foeticide In India - Ipleaders, https://blog.ipleaders.in/laws-female-foeticide-india/ (accessed June 18, 2019).

EUTHANASIA: A LEGAL DICHOTOMY BETWEEN DEATH WITH DIGNITY AND SANCTITY OF LIFE- AN OVERVIEW

-Dr. Chandrakanthi L.* & Lokesh Naika **

INTRODUCTION

The etymology of the word "dignity" has its roots from the Latin term, "dignities"[1], that denotes worthiness and nobility. Primarily the word "dignity" is attributed to humans, animals and, even, objects.

A deeper introspection of the word 'dignity' reveals that there cannot be a pure antonym. The closest words that stand opposite to 'dignity' are, 'indignity' or 'undignified'. Rather, 'Anipathy' has a closer nexus to the word'dignity' rather than the aforesaid two antonyms.

The word 'Antipathy' cannot be understood merely by its literal definition rather it is a feeling, a position through which jurisprudence has evolved and is continuously evolving. The father of Jurisprudence, Jeremy Bentham, describes 'Antipathy' as not just the deciding factor of legalese but an influential crux over the morals of men[2].

Bentham defines 'Antipathy' in six distinct parts - repugnance of sense, wounded pride, individual resistance and power, confidence in future, desire of unanimity and last but not the least envy. He further ascribes 'Antipathy' as a contributing factor for generating the feeling of sympathy in the society, all culminating in the theory of pleasure and pain[3].

Thus Dignity being co-related to pleasure andpain explains the present predicament in assessing the severity of legal expositions crossing the uncharted territories of subjective opinions and feelings and thereby curing

---

* Associate Prof. University Law College & Dept of P.G. Studies in Law, Bangalore University-56.

** Research Scholar, University Law College & Dept of P.G. Studies in Law, Bangalore University-56.

1 Available at https://www.lexico.com/definition/dignity (Accessed on 20.06.2021)

2 Available at http://fs2.american.edu/dfagel/www/Philosophers/Bentham/principlesofMoralsAndLegislation.pdf(Accessed on 20.06.2021)

3 "Euthanasia – A dignified end of life!", Goel Varun, International NGO Journal Vol. 3 (12), pp. 224-231, December, 2008

something that cannot be perfectly defined in literal terms, as 'pleasure' and 'pain' cannot be assessed in words and figures, especially when it affects not just a person but their near ones and all of their psyche.

It is therefore necessary to address the conundrums of 'Euthanasia'. A subject that encompasses various determinants that includes self-determination, privacy and liberty.

MEANING AND DEFINITION OF EUTHANASIA

The English philosopher Sir Francis Bacon coined the term 'euthanasia' early in the 17th century. Euthanasia is derived from the *Greek word 'eu'*, means 'good' and *thanatos* means 'death,' . Therefore, it was signified early as "good or "easy" death.[4]Euthanasia is defined as the administration of a lethal agent by another person[5] to a patient for the purpose of relieving the patient's intolerable and incurable suffering.[6]

Euthanasia has been further defined as 'active' or 'passive'. Active euthanasia refers to a physician deliberately acting in a way to end a patient's life. Further there are three types of active euthanasia:Voluntary(performed at the request of the patient); Involuntary or mercy killing (there was no request, but with the intent of relieving his pain and suffering; non voluntary(performed even though the patient is not in a position to give consent.[7]

The House of Lords Select Committee on Medical Ethics defines euthanasia that "a deliberate interference undertaken with the express intention of ending a life, to relieve intractable pains and agonies".[8]

Crawford says that 'icchamrtu' or 'spiritual death' in Indian context to be synonymous with a "good death," i.e., the individual must be in a state of

---

4 Nadeau R. Gentles, Euthanasia and Assisted Suicide: The Current Debate. Toronto: Stoddart Publishing Co. Limited; 1995. Charting the Legal Trends; p. 727.

5 By physician under strict guidelines for details see Vinod K. Sinha, S. Basu, and S. Sarkhel,Euthanasia: An Indian perspective, Indian Journal of psychiatry, 2012 Apr-Jun; 54(2): 177–183.

6 Decisions near the end of life. Council on Ethical and Judicial Affairs: American Medical Association. JAMA. 1992;267:2229–33.

7 Yount L. Physician-assisted suicide and euthanasia. New York: Facts On File, Inc; 2000.

8 House of Lords, Report of the Select Committee on Medical Ethics, 1994.

calm and equipoise. Further, he surmises that to ensure such a noble death, the concept of active euthanasia would not be unacceptable to the Indian psyche.[9] However, the view of Crawford has been criticized claiming that "spiritual death" or "iccha mrtu" can only be possible when the evolved soul chooses to abandon the body at will, but cannot be equated with mental tranquillity as it is at a higher level of consciousness.[10]

It is pertinent to note herein that the interests of the patient and their near ones must be taken into paramount consideration as pain is always subjective. The conundrums of Euthanasia encompasses not just the legal ramifications upon the person's demise but also an introspection upon a human being's right to die. Either allowing suffering patients with no respite to choose their course of treatment that would eventually lead to a peaceful death or persons in charge of such patients who can take such decisions for alleviation of pain and for allowing the patient to die with dignity, peacefully.

This would lead to the next perplexing argument of whether the process should be hastened or awaited for a final confirmation and also whether the question of voluntary and passive Euthanasia can be decided on the whims of the patient or their guardians.

Thus the question of dignity, alleviation of pain and the outreach of consent has to be carefully treaded upon whilst drafting the legalese for Euthanasia, all while respecting the fundamental right of a human to die with dignity.

There have been innumerable commentaries upon this subject and both the sides, those who favour and those who do not, all agree upon one thing- 'pain and death cannot be quantified'. As it is this lack of quantification of the aforesaid, the state of recognising 'dignity in death due to Euthanasia' remains unanswered by law.

To circumvent the fears of administering Euthanasia, both voluntary and passive, competency has to be determined. Competency has to be decided on case to case basis after multiple hearings. There should not be an iota of criminal intention behind administering Euthanasia to such persons and

---

[9] rawford SC. Dilemmas of life and death: Hindu ethics in a North American context. Albany, New York, USA: State University of New York Press; 1995. p. 113.

[10] Firth S. End-of-life: A Hindu view. Lancet. 2005;366:682–6.

further apt deterrence should be kept in tune with such circumstances of abuse being brought out into light.

In relation to recognising the a person's right to 'die with dignity', it is rationed that such a right derives from the common law right to self-determination and the constitutional right to privacy. Fundamentally, the word 'dignity' has yet again to be ascertained in its fullest sense and only then can the legalese be drafted to such circumstances.

PRINCIPLE OF SANCTITY OF LIFE

To understand 'dignity' and 'death' it is pertinent that the word' life' has to be analysed. The 'sanctity of life', an ancient principle of Judeo-Christian and Hippocratic traditions describes the same as life is a 'Gift from God'[11].

The Abrahamic religions, more particularly Christianity believes that Human beings are created in the image of God and hence life has to be cherished and respected. Further, in non-religious circles, sanctity of life, denotes that utmost respect has to be given while treating a human life.

It is asserted that, while individuals clearly do have some rights regarding their medical treatment, these rights are not sufficient to override community interests in preserving life and our society's respect for life.

According to Ronald Dworkin, an averment is made thereto that the instinct of deliberate death is a savage insult to the intrinsic value of life, even when it is in the patient's interest. He expresses his revulsion of the practise suggesting that choosing premature death is the greatest possible insult to life's sacred, fundamental and inherent value[12]

Coming to bioethical literature, it is clarified that the doctrine of the sanctity of life is roughly the claim that all human life is of equal intrinsic value. Except in the cases of legitimate defence of others' lives, it is always intrinsically wrong to take human life. The majority of the arguments stems from the hereunder distinct formulations:

---

[11] Available at http://www.flowingfaith.com/2017/02/life-is-a-gift-from-god.html (Accessed on 26.06.2021)

[12] Hospice Or Hemlock: Searching for Heroic Compassion, Constance E. Putnam, (2002), 1st Edition, Praeger publications, London

1. That as life is a gift from God, it is to be cherished.
2. All human beings are to be valued, irrespective of age, sex, race, religion, social status or their potential for achievement.
3. The deliberate taking of human life is prohibited except in self-defence or the legitimate defence of others.
4. Human life is a basic good as opposed to an instrumental good, a good in itself rather than as a means to an end.[13]

EUTHANASIA AND SANCTITY OF LIFE

The supporters of Euthanasia maintain that though they believe in the basic sanctity and dignity of life, when it comes to alleviating the pain and suffering of a human being with no respite other than a peaceful death, Euthanasia is actually a move which respects sanctity of life.

This philosophical introspection adds the concept of what constitutes ‘humane’ or ‘humanity’ in the mix of dignity and ‘death’.

For the supporters of Euthanasia, death with dignity, as opposed to a life of pain and suffering, is more humane. The question of quality of life and the sanctity of life becomes a controversial topic embroiled in this issue, as such contentions seem to be concerned more with the quality of life than its sanctity.

Thus if such contentious issue be allowed and the extremely low quality of life of a terminally ill patient out-weights the very sanctity of that life and justifies his or her "mercy" killing, then, such reasoning, admits that quality is more important and that sanctity is tantamount to saying that individuals who have a lesser quality of life than us have a life which is less sacred.

By the aforesaid reasoning, an example can be made thereto of people leading comfortable lives in developed countries or elsewhere in the world and that their lives are more precious than those of the starving kids in Ethiopia who have an abysmally low quality of life and a very painful existence.

If such individuals started demanding "voluntary" euthanasia, saying that their suffering was unbearable, it is unfathomable to think that Euthanasia

---

[13] Kurt bayertz, ‘Sanctity of life and Human Dignity’, Journal of Philosphy and medicine, (1996), Vol 52, pp-kluwer Acadmic Publisher, 1996

can be administered to them. Further, a paralytic comparing himself to an acute cancer patient or a chronic diabetic comparing himself to a kidney patient who requires frequent dialysis and the like would mean that there is no justification in attributing 'dignity in death' to 'quality of life'.

Further, the societal implications of physician-assisted suicide are grave, as is the potential for misuse. The right to die could become a duty to die, with patients feeling pressurized into requesting euthanasia. Patients might choose to die not because they cannot bear physical pain anymore, or because they don't want to live, but because they decide that the financial and emotional burden that they are placing on their families and loved ones is not worth it. The society as a whole cannot appear to be condoning such practices by legalizing them.

The principle that it is always morally wrong to intentionally kill an innocent human being entails two discrete components. On the one hand, it asserts that the taking of life violates the 'sacred value of human life'. This view is central to the ethical stance that euthanasia is fundamentally wrong. On the other hand, however, the principle assumes a normative truth in relation to medical practice at the late stages of life: that doctor does not intentionally kill patients in their care.

In Life's Dominion[14], Ronald Dworkin attempts to reformulate the way society thinks about the moral and legal issues surrounding death. He argues that debate over euthanasia has become intractable because of confusion as to the moral dimensions of the problem it poses. Linking it to the parallel issue of abortion, he presents a sustained argument that euthanasia must be seen as a question not of 'whether', but 'how', we value the 'sanctity of life' 'the intrinsic, cosmic importance of human life itself'.

Proponents of voluntary euthanasia also contend that physician assisted suicide is already practiced by countless doctors across the world, it's just that it's never reported. Therefore, the argument goes, by legalizing euthanasia we would actually be reducing the potential for misuse because such a process would then be subject to close scrutiny with strict guidelines. But if there are doctors who play God already, although it is illegal, given a freer hand, there

[14] Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom, Ronald Dworkin, 1st edition, (1993) Vintage Publications, New York

might be doctors who could even more severely misuse their powers. A physician has a job to perform, and that is to save lives; just like a lawyer who has to defend his client even if he knows that his client is guilty, a surgeon cannot pass a value judgement on a patient's quality of life. A surgeon has to do everything he or she can to preserve that life.

DEATH WITH DIGNITY

Death is the final chapter of a human's life. Religious texts state that a dignified death will be something earned. Someone who lives a good life, lives virtuously will die in that way. Law is alien to religion as it takes the intrinsic principles of society and values into consideration. A dignified death is not left to the wishes of Gods; rather, law ensures that a human would die with dignity.

"Death with Dignity" does often signify simply a death without indignity. Deeper notions of dignity factors in people's ideas of death with dignity and self determination. From antiquity, death and dignity have been discussed in detail, a good example of the same would be Nicomachean Ethics[15], wherein, Artistotle, captures both the importance of minimising indignity, and the deeper sense in which dignity is something that belongs to someone and has developed with him or her. This leads to question whether Death with dignity is only for what is in a persons' control as people will often not die with dignity. Proponents of the value ethics theory state that the lack of dignity arises from within; it is a character fault.

Law ensures to its fullest extent that death with dignity will be, like life with dignity. The potential for dying with dignity may be lost in those who lose their reasoning capacities—for example, through dementia-inducing illnesses. Similarly, unbearable (and uncontrollable) pain or other suffering may undermine someone's ability to reason and to choose and, hence, to die with dignity.

Law comes to save in that regards as health care professionals can help in a patient with no respite, to a death without indignity. This would involve ensuring that, they respect people's autonomy and use of human reason andwould also involve removing barriers to dignity that can be removed, such as controllable pain.On these occasions, health care professionals are making

[15] Available at https://plato.stanford.edu/entries/aristotle-ethics/ (Accessed on 26.06.2021)

an indirect contribution to death with dignity.In the end, however, his strength of character was, he had a death with dignity in the face of indignity. Indeed, perversely the indignities enabled him to demonstrate his dignity[16].

LEGAL INTERPRETATION OF EUTHANASIA IN INDIA

Before going to analyse the law and judicial interpretation, it is important to be noted here that the Medical Council of India, in 2008 at meeting of its ethics committee opined on euthanasia that "Practicing euthanasia shall constitute unethical conduct". However, on specific occasions[17], it shall be declared by a team of doctors. Such team shall consist of the doctor in-charge of the patient, Chief Medical Officer / Medical Officer in-charge of the hospital, and a doctor nominated by the in-charge of the hospital from the hospital staff or in accordance with the provisions of the Transplantation of Human Organ Act, 1994.[18]

There is no law in India to allow or declare the legitimacy of euthnasia in India. In 241st Report of Law commission of India titled "Passive Euthanasia – A Relook", it was recommended to legislate a law on the issue of passive euthanasia. Based on the same the Medical Treatment of Treatment of Terminally Patients (Protection of Patients and Medical Practitioners) Bill was drafted and submitted to the Ministry of Health and Family Welfare (Directorate General of Health Services-Dte. GHS) June 2014. Thereafter, meetings were held under the chairmanship of special director general of health service and with various experts and under the chairmanship of Secretary, Ministry of Health and Family Welfare, on May 22, 2015 to verify the Bill and finally the expert committee had proposed formulation of legislation on passive euthanasia.[19]

One of the earliest cited case laws that relates to the 'Right to Die' is the case of ***Cruzan v. Director, Missouri Department of Health***[20], which was decided by the US Supreme Court.

---

16 Allmark P., 'Death with Dignity', Journal of medical ethics, Volume 28(4), pp 255-257, available at https://www.jstor.org/stable/27718927

17 Withdrawing supporting devices to sustain cardio-pulmonary function even after brain death.

18 Medical Council of India New Delhi. Minutes of the meeting of the Ethics Committee held on 12th and 13th February. 2008

19 Shikha Mishra and Uday Veer Singh, EUTHANASIA AND ITS DESIRABILITY IN INDIA, ILI Law Review Summer Issue 2020, p.214

20 111 L Ed 2d 224 : 497 US 261 (1990)

It was the first of its kind ever heard by the United States Supreme Court wherein the Court had heard vehement arguments on the concept of 'Right to Die'. It was held that due to the advancement of modern medical technology pertaining to medical science and respiration, a situation was created wherein the dying process of the patient was unnecessarily prolonged causing distress and agony to the patient as well as to the near and dear ones and, consequently, the patient was in a persistent vegetative state thereby allowing free intrusion.

Though it ruled in favour of the State of Missouri, reasoning that the removal of life support of a patient required clear and convincing evidence, various advance health directives were passed and laid the foundations for further cases in this regard, domestically as well as internationally.

Chiefly, the Court had interpreted the hereunder and formulated certain directives:

1. *It had conclusively established that the 'Right to die' was not a right guaranteed by the US Constitution*
2. *It laid down rules and regulations between third parties and patients/incompetent persons*
3. *It established that State's interests superseded an individual's right to refuse treatment*

Coming to India, in the case of ***Aruna Ramachandra Shanbaug v. Union of India and others***[21] for the first time the Indian Courts recognised and legalised Passive Euthanasia.This development with this landmark judgment. Refusing mercy killing of the patient in this case, lying in a vegetative state for 37 years, a division bench laid down the strict guidelines for passive euthanasia which included the decision to withdraw treatment, nutrition, or water established that the decision to discontinue life support must be taken by parents, spouse, or other close relatives, or in the absence of them, by a "next friend" though the high court. The Chief justices of the high courts, on acceptance of such plea, would constitute a bench, the bench would appoint a committee of at least three renowned doctors to assist the bench.[22]

---

[21] (2014) 5 SCC 338 and also see The Telegraph. 2011 Mar 6th;

Otherwise, in India, euthanasia is a crime. Section 309 of the Indian Penal Code (IPC) deals with the attempt to commit suicide and Section 306 of the IPC deals with abetment of suicide – both actions are punishable.

In the case of ***Kharak Singh v. State of U.P. and others***[23]***, Gobind v. State of Madhya Pradesh and another***[24] and also in the case of ***People's Union for Civil Liberties v. Union of India and another***[25]*,* it was held by the Apex Court time and again that the concept of sustenance of individual autonomy inheres in the right of privacy and also comes within the fundamental conception of liberty.

To understand the sanctity of life, one has to understand the quality of life, this has been elucidated in the case of ***State of Himachal Pradesh and another v. Umed Ram Sharma and others***[26]wherein the Court had observed that the right to life embraces not only physical existence but also the quality of life as understood in its richness and fullness within the ambit of the Constitution.

A line was drawn between the Right to life and the Right to life a forced life in the case of ***Maruti Shripati Dubal v. State of Maharashtra***[27], wherein the Court had held that

"..on the analogy of the rights conferred by different clauses of Article 19, one may refuse to live if his life, according to the person concerned, is not worth living. One may rightly think that having achieved all worldly pleasures or happiness, he has something to achieve beyond this life. This desire for communion with God may rightly lead even a healthy mind to think that he would forego his right to live and would rather choose not to live. In any case, a person cannot be forced to enjoy the right to life to his detriment, disadvantage or disliking."

Eventually, it had concluded that the right to live of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life. The ambit of Article 21 will not encompass or construe to include within itself the Right to Die as Article 21 guarantees protection of life and liberty and not its extinction.

---

23 AIR 1963 SC 1295
24 (1975) 2 SCC 148
25 (1997) 1 SCC 301
26 AIR 1986 SC 847
27 (1986) 88 Bom LR 589

In ***Gian Kaur v. State of Punjab***[28], the Constitutional Bench, held that

"..to consider the question of constitutional validity with reference to Articles 21 of the Constitution. Any further reference to the global debate on the desirability of retaining a penal provision to punish attempted suicide is unnecessary for the purpose of this decision. Undue emphasis on that aspect and particularly the reference to euthanasia cases tends to befog the real issue of the constitutionality of the provision and the crux of the matter which is determinative of the issue.."

In addition to above in ***P. Rathinam N. Patnaik v. Union of India***,[29] A two judge bench of the Supreme Court held that a person has a right not to live a forced life and attempt to suicide is not illegal.

At present, in the very recent case ***Common Cause Society v. Union of India***[30] the Supreme Court introduced the introduced the concept of 'LIVING WILLS'. *Living will is a document that allows a person to make decisions in advance with regard to what course of treatment he wants in case he gets seriously ill in the future and becomes unable to take decisions.*

CONCLUSION

Today, life can be prolonged by artificial means due to medical science progress. It may indirectly making to suffer terminally and remaining as costly affair to the families of the patient. Like any other nation in the world, India has proponents and opponents of euthanasia. It has become a major ethical question in the modern medical science in India. Though, Indian legislature legislate a law on euthanasia, concerns for its misuse remain may be remained as a major issue.

---

[28] (1996) 2 SCC 648

[29] AIR 1994 SC 1844 at 1868

[30] (2018) 5 SCC 1.

IDEA OF ENVIRONMENT UNDER ANCIENT INDIAN WRITINGS – AN ANALYSIS

-Dr. Aravinda H.T.*

INTRODUCTION

India has the long tradition of protecting and worshiping the nature. The land, trees and even animals are placed on a high pedestal since Vedic times. According to ancient Indian mythology "God sleeps in minerals, walks in animals, thinks in man, swims in fish, flies in birds, sings in wind, and damage to any part of environment is like injury and insult to God."

The Saints, Sages and Maharshis and Philosophers of Ancient India lived in forests and mountains where they meditated and expressed in the form of Vedas, Upanishads, Puranas and Smritiswhich gave respect to nature and environmental harmony and conservation,

Forests, Wild life, and more particularly trees were held in high esteem and held a place of special reverence in Hindu theology. The Vedas, Puranas, Upanishads and other scriptures of the Hindu religion gave a detailed description of trees, plants and wild life and their importance to the people.

The concept of environmental protection is an age old idea imbibed in the Indian cultural ethos since time immemorial. *'Paryavaranam'* is a Sanskrit word for environment that was prevalent in ancient India.[1] Indian Ethos since Vedic period till the modern era depicts Indians awareness about importance of environmental protection and conservation of natural resources.

VEDIC APPROACH TO ENVIRONMENT

The idea of environmental protection and conservation of natural resources can be traced to Vedic civilization where worship of nature appears to have originated and the Vedic views revolve around the concept of nature and life.

---

* Assistant Professor of Law, Visveswarapura College of Law, K.R.Road, VV Puram, Bengaluru - 04

1 Ms. Rajani Rao U, "Environmental Awareness in Ancient India", *International Journal of Life Sciences Research*1(2014) *available* at; http://www.researchpublish.com/download.php?.Environmental%20Awarene (last visited on 07/08/2015)

The ancient Vedic literature encompasses a holistic attitude of the cosmic vision in a poetic way. Veda appears to impose obligations on the society and individuals to worship nature through worshipping trees. The worshipping of *Vanaspathi,* tree having thousand branches is considered as worshipping the entire creation.[2]

The **Rig Veda** highlighted the potentialities of nature in controlling the climate, increasing fertility and improvement of human life emphasizing intimate kinship with nature.[3]In Rig Veda, one *AranyaniSukta* is addressed to the deity of forest and *OshadhiSukta* cautioned that they should not be destroyed. It acknowledged air (*vayu*) as one of deities and mentioned that "Let wind blow in the form of medicine and bring me welfare and happinessand that it has medicinal value. Animals and birds have also been accepted as part of nature and environment It has also been warned that animals should be safe, protected and healthy"[4]

The**Yajur Veda** emphasized that the relationship with nature and animals should not be that of dominion and subjugation but of mutual respect and kindness.[5]It is said that no person should kill animals, but being helpful to all and by serving them, should obtain happiness.[6]

The **Atharvana Veda** considered trees as abode of various gods and goddesses. It talks about the relation of plants with earth, It says "the earth is keeper of creation, container of forests, trees and herds"[7] It considered the plants as important life forms on the earth.During the Vedic period, cutting of live trees was prohibited and punishment was prescribed for such acts. Atharvana Veda explains aboutthe importance of forest conservation and preservation and protection of trees particularly trees like "*Parijath, Banyan* and *Peepal.*"[8]

---

2 Shashi Tiwari,"Origin of Environmental Science from Vedas" 4 (2004)*available* at: http;//www.sanskrit. nic.in /svimarsha/v2/c17.pdf (last visited on 03/05/2013)

3 S. Shanthakumar, *Environmental law - An Introduction* 127 (Surya Publication , Chennai, 1st edi. 2001)

4 S C Shastri, *Environmental law* 4 (Eastern Book company, Lucknow,5th edi. 2015)

5 B.N.Tiwari, "Hindu Culture and Ecology" in Gautam sharma (ed), *Environment, man and nature*23-27 (Reliance: New Delhi, 1989)

6 *Id*. at 27

7 *Supra* note 5

8 *Supra* note 3

Ancient Indian seers and scholars advocated wise use of water even though India is blessed with perennial rivers and heavy rainfall. It was found in western part of Rajasthan during ancient period houses were constructed in such a way that each had a roof top rainwater harvesting system.

Several Vedic hymns are prayers maintaining balance in the functioning of all aspects of nature and it is argued that some of those ideas expressed in them resemble modern principles relating to conservation of resources. For instance the 25th Principle of Rio declaration talks about how "peace, development and environmental protection are interdependent and indivisible."[9] Ancient Indians believed that ecological balance is dependent on actions, good or bad, of individuals and society.

The Vedic culture emphasized conservation of five species of trees, namely, *Banyan, Peepal, Ashoka,Lela* and *Nevada*. The *Banyan*is a self generating plant associated with fertility and longevity. It is the abode of Lord Shiva and it is shady, healthful and medicinal. The *Peepal* is perhaps the most sacred of all trees in India even today. It was also insisted that every village must have a small jungle where in apart from the above five trees others are grown and protected, and this obligation can be compare to modern concept of social forestry

UPANISHADS

Upanishads explains about the*Panchabutas* (air, water, fire, earth, and space) and their importance.It considered fish as god of ocean which is called as *Matsya*and also as first living creature on the earth. *Hanuma*,the king of monkeys in Ramayana is portrayed as god and symbol of strength.[10]

It prohibited the killing of cow, stated killing of cow as a sin because it is worshiped for giving milk and cow dung which has medicinal value. Further,it stated that the birds are the vehicles of god and goddesses and trees like*Banyan, Tulasi*are worshiped thinking that they are sacred and god lives in

---

[9] Rio Declaration was passed in United Nations Conference on Environment and De elopement, (UNCED) was held from 3rd to 14th June 1992 at Rio De Janeiro, Brazil. It focused on developing a global framework for addressing environmental degradation through sustainable development.

[10] Ashok A, Desai, *Environmental Jurisprudence* 23 (Vikas Publishing House, New Delhi,, 1998)

them.[11] The *Yagna'signiting* the sacred fireinvolved animal killing on large scale which is opposed by Upanishads as anti environmental activity.[12]

MANU SMRITI

The Code of Manu prohibits the killing of animals and it was observed "no person should kill animals. One should be helpful to all animals and by serving these one would obtain happiness"[13]

This ancient Indian literature based on the form of forest and the purpose it served, classified the forests broadly into 3 types namely *Mahavana, Tapovana* and *Srivana.* The *Mahavana* and *Tapovana* abounded in flora where saadhus, sanyasis and rishis were running *Gurukulas*. Manu Smriti known as the first systematic treatise on Hindu law[14] has prescribed various punishment for destroying trees and plants.*[15]*

From the above, one can understand that environmental protection has been an important facet of Hindu way of life. It appears that the civilization of Mohenjo-Daro, Harappa, and Dravidian civilization lived in consonance with its eco-system and their small population maintained harmony with the environment.

YAJNAVALKYA SMRITI,

It has declared cutting of trees and forests as a punishable offence and has also prescribed a penalty of 20 to 80 pana.[16]It is mentioned that killing of animals is against basic tenet of Hindu way of life-Ahimsa (non-violence); therefore, having deep faith in the doctrine of non-violence, it was felt that God's grace can be had by not killing his creatures and killing of mute animals and birds is a sin.[17]

It is said that "the wicked persons who kills animals has to live in GhorNarak (hell-fire) for the days equal to the number hair on the body of the

---

11 Iqbal Ali Khan*, Environmental Law* 21 (Central Law Agency, Allahabad, 2nd edi, 2006)

12 *Id.*at 22

13 *Supra* note 5 at 6

14 *ManuSmriti,*XI, 64,65; IV,56.

15 *Supra* note 11 at 24

16 *Supra* note 7 at 26

17 Yajnavalkya smriti, Acaradhyayah VI80 Vishnu Purana, III B 15, Manu smriti, V 45.

animal".[18] The Hindu society was thus conscious of adverse environmental effects caused by deforestation and extinction of animal species.

SRIMAD BHAGAVATAM

In Srimad Bhagavatam,it has been rightly pointed out that a man who with exclusive devotion offers respect to sky, water, earth, heavenly bodies, living beings, trees, rivers and seas, and considers them as a part of the body of the Lord attains the state of supreme peace and god's grace.[19] It is stated that forests and other components of nature, animals stood to human beings in a relationship of mutual respect and kindness,[20]

It pointed out that one should look upon deer, camels, monkeys, donkeys, rats, reptiles, birds, and flies as their own children, and not to distinguish these from their own children.[21] It strictly prohibited the killing of birds and animals.

CHARAKA SAMHITA

Charaka Samhita has considered the destruction of forests as the most dangerous act for humanity and its welfare. It is mentioned that the destruction of forests is most dangerous for the nation and for human beings. *Vanaspati* (vegetation) has direct relationship with the well being of the society.

Due to the pollution of natural environment and the destruction of Vanaspati, many diseases crop up to ruin the nation. Only *Vanaspati* with medicinal qualities may enhance the nature and cure diseases of human beings.[22]

Charaka Samhita also mentioned specifically air pollution as a cause of many diseases. The polluted air is mixed with bad elements. The air which is against the virtues of season, full of moisture, speedy, hard, icy, cool, hot, harmful, terribly roaring, colliding from two or three sides, bad smelling, oily, full of dirt, smoke, sand and steam, creates diseases in the body and is

---

18 *Supra* note 7 at 28
19 *Supra* note 7 at 27
20 *Supra* note 4 at 128
21 *Srimad Bhagavatam*, VII, 14.9.
22 *Charaka Samhita*, Vimanusthana, III,

polluted.[23] Similarly, the Charaka Samhita also prohibits the use of unwholesome water.[24]

Yajnavalkya Smriti and Charaka Samhita gave many instructions for the use of water for maintaining its purity.[25]

VISHNU SAMHITA

In Vishnu Samhita, it is observed that "he who for his own pleasure, kills harmless beasts, should be regarded as dead in life; such a man shall know no happiness, here or hereafter. He who desists from inflicting pain on any animal either of death or confinement is really the well wisher of the creatures; such a man enjoys extreme felicity".[26]

PURANAS

Puranas stated that trees are worshipped as *Varikchary Devta* (tree deity) with prayers, offerings of water, flowers, and sweets and encircled by sacred threads. Planting of tree is also regarded as a sacred religious duty and work of great virtue. *Matsya Purana* has regarded plantation of one tree equal to I0 sons.[27] It is also mentioned in *Padmapurana* that "One tree is equal to ten sons."[28]

According to *Varaha Purana*, "one who plants one *Peepal*, one *Neem,* one *Ber*, ten flowering plants or creepers, two pomegranates, two oranges and five mango trees will not go to hell."[29] Therefore, cutting of trees and destruction of flora was considered a sinful act.

KAUTILYA'S ARTHASHASTRA

The Mauryan period was the most glorious chapter of the Indian History from environmental protection point of view.[30] It was in the this period that we find detailed and perceptive legal provisions found in *Kautilya's Arthashastra* written between 321B.C and 300 B.C.

---

23 *Supra* note 5 at 6. For more information see*Charaka Samhitha* 3.6 (1)
24 *Supra* note 5 at 6
25 *Supra* note 4 at 128
26 *Supra* note 7 at 29
27 *Supra* note 5 at 5
28 *Padmapurana,*.44.455
29 *Varaha Purana,* 172.39.
30 Kailas Thakur, *Environmental Protection Law and Policy in India* 104 (Deep & Deep Publication, New Delhi,1999)

The necessity of forest administration was relied in this period and the process of administration was actually put into action with the appointment of superintendent of forest and the classification of forest on a functional basis.[31] The State assumed the functions of maintenance of forest, regulation of forest produce and protection of wild life during Mauryan reign.

Under the *Arthashastra* various punishment were prescribed for cutting trees, damaging forest, and for killing animals, fish, deers, etc.[32] For cutting the tender sprouts of trees in city parks that bore flowers or fruits or yielded shade, the fine was 6 panas, for cutting small branches 12 panas and for cutting stout branches 24 panas. For destroying trunk the fine prescribed was the first amercement and for uprooting the tree the middle most amercement. Similarly, for cutting of plants which bore flowers or fruits or provided shade forests of hermits and trees or pilgrimage or of cremation grounds the fine imposed was half of the above fine. Whereas the destruction of trees at the or boundaries of that which were worshiped or in sanctuaries entailed a penalty double the above fines [33]

The superintendent of forest was authorized to cause forest produce to be brought in by 'guards in produce- forests'; to establish factories for forest produce and fix adequate fines and compensation for damage to any productive forests. Spies in the guise of traders were entrusted with a duty to ascertain the quantity and price of the royal merchandise obtained from forests.[34]

With regard to protection of wild life, there were prohibition on killing of animals and birds. The officer in charge (superintendent of slaughter house) was authorized to impose a fine up to 1000 panas on those who were found guilty of killing deers, birds and fish declared to be under state protection.

Care was taken that animals from reserved parks or protected areas if found grazing in a field, were to be driven out without being hurt or killed, after intimating the forest officer. For causing injury to them, fine was

---

[31]V.K.Gupta, *Kautilyan Jurisprudence*155-156 (Oxford University Press, New Delhi. 1987)
[32]J.B.Lal, *India's forests; Myth and Reality*15-17(Natraj Publication, Dehradun, 19989)
[33]*Supra* note 32 at 155
[34]*Supra* note 32 at 155

imposed. Wild life in sanctuaries enjoyed complete protection from being killed except when they turned harmful.[35]

The *Arthashastra* also prescribed punishment for causing pollution and uncivic sanitation. It provided that the officer in charge should punish those who threw waste on the roads by $1/8^{th}$ pana, for causing muddy water $1/4^{th}$ pana and if both acts were committed, the punishment should be double. If faecal matter is thrown or caused to be piled up near temple, well or pond, sacred place or state buildings then the punishment was to be increased gradually by one pana in each case. For urinating in such places the punishment prescribed was half of the above punishments.[36]

The regulation of human activities in the interest of protecting environment and conserving natural resources were developed during Mauryan period. Several offices were created for enforcement of norms relating to environmental protection. The details relating to this aspect is explained by *Kautilya's Arthashastra*. Firstly, *Suvarnadhyaksha* was responsible for exploring minerals, mining, processing, producing trading and conserving resources. He was primarily required to set up factories for processing gold and not to allow unauthorized persons to produce gold and other metals.[37] Secondly, *Kuppyadhyaksha* was required to procure forest product and convert them into useful products.[38]*Seetadhyksha* was involved in collecting seeds of all kinds, flowers, fruits, vegetable, roots and other products. He was in charge of regulating agriculture. For Mauryas most important forest product was elephants and Kautilya unambiguously specifies the responsibilities of officials in respect of protecting and preserving Elephant forests.[39]

Kautilya in *Arthashatra* laid down certain norms relating to conservation of forests. Firstly, state to maintain forests and said "Rulers shall

---

[35]*Supra* note 4 at 130

[36]*Supra* note 4at 129

[37]Namita Sugandhi, "Between the Patterns of History: Rethinking Mauryan Imperial Interaction in the Southern Deccan " 91 (2008) *available at* https://en.wikipedia.org/wiki/Maurya_Empire (last visited on 30/06/2013)

[38]Velayutham Saravanan, "Colonial commercial forest policy and tribal private forests in Madras Presidency 1792-1881" *The Indian Economic Social History Review* 34 (Sage Publications, 2009)available at: http://www.sagepublications.com (last visited on 24/08/2015)

[39]*Ibid.*

not only protect forest produce, elephant forest but also set up new ones. Forests shall be grown, one for each forest produce and factories for goods made from forest produce shall be erected, and foresters working in the produce forests shall be settled there".[40] Secondly, selling, certain trees and plants without approval of authorities was made punishable and penalties were levied for cutting branches, destroying trunks and uprooting trees.[41] Thirdly, the Superintendent of forests shall fix adequate fines and compensations to be levied on those who cause any damage to productive forests except in calamities. Fourthly, for the purpose of protection of wild life the Superintendent of slaughter house was empowered to punish those persons killing certain types of wild animals, deer, lions, birds, or fish which are declared to be under state protection.[42] It can be said that seeds of certain modern wild life conservation originated during Mauryans administration. Lastly, the Superintendent of slaughter house was empowered to levy fee for hunting those wild animals not prohibited from hunting

ASHOKA'S PILLAR EDICT

The environment conservation, as it existed during Mauryan period continued until the end of Gupta Empire.[43] For example, King Ashoka,[44] in Pillar edict had expressed his viewpoint about the welfare of creatures in his state. He prescribed various pecuniary punishments for killing animals, which included even ants, squirrels, parrots, red headed ducks, pigeons, lizards and rats as well and cut down the consumption of non vegetarian food from royal palace He encouraged reforestation/afforestation and extended free medical facilities to animals beyond his empire.[45]

---

40 *Supra* note 32 at 155

41 *Ibid.*

42 Sunil Sen Sarma, "Contemporarily of the Perception on Environment in Kautilya's Arthasastra",41*Indian Journal of History of Science* 33 (1998) available at: http://www.new1.dli.ernet.in/data1 /upload / insa/INSA_2/ 20005 a5d_37.pdf (last visited on 18/06/2015)

43 The environment protection prevailed during Mauryan period continued more or less unaltered in subsequent reigns until the end of Gupta Empire in 673A.D. The prohibitions for forest destruction and animal killing were announced by other Hindu King including King Ashoka

44 King Ashoka the Great was an Indian emperor of the Maurya Dynasty, who ruled almost all of the Indian subcontinent from c. 268 to 232 BCE. He was the grandson of the founder of the Maurya Dynasty, Chandragupta Maurya.

45 R.Thapar, *Ashoka and Decline of the Mauryas*264 (2nd ed. 1973)

King Asoka's 5th Pillar Edict prohibits killing of certain species of animals and birds. Firstly, birds and animals such as Cakravaka-geese, Swans, Nandi mukhas, Pigeons, Bats, and Ants shall not be killed. Secondly, fishing was prohibited on certain days in a month. Thirdly, on certain days cattle and horses are not to be branded.

Further it taught the need for environmental education and therefore it is asserted that foundations for modern environmental protection were firmly laid in during Ashoka's period,[46]

CONCLUSION

The above discussions show that Hindu worship of trees and plants has been partly based on utility and partly as a religious duty and mythology. Gradually, tree and plants became religious objects and objects of worship. Further, Hindus were advised to treat all other species just like their own children.

Even since Vedic time the main motto of social life was not only to protect the environment but also to maintain the ecological equilibrium and live in harmony with the nature. Ancient Indian writings prove this argument.

To understand the present day legal system for environment protection and conservation of natural resources, it is important to look into the past Indian traditions and practices of protecting the environment. Therefore, it's better to look into the ancient writings which give information about norms of environmental protection prevalent in ancient India and it is believed that this will help us in understanding the present law and policy.

---

[46] Daniel H. Henning, "A Manual for Buddhism and Deep Ecology" (Buddha Dharma Education Association,2002) *available at*http://www.buddhanet.net/pdf_file/deep_ecology.pdf (last visited on 16/12/2012).

KNOWLEDGE OF CONSTITUTIONAL RIGHTS AMONG STREET CHILDREN: A CASE STUDY OF MYSURU DISTRICT

-Bhagyalakshmi*
& Maruthi, T.R. **

INTRODUCTION

Children are one of the most valuable resources of a country. In the present day itis acknowledged everywhere that children are the future citizens. This suggests that children are the seeds of human race.Subsequently, to develop an ideal and a strong human race, it is basic to take care of and protect the children from their very birth.[1] Adolescence a very fragile and delicate phase of human development, and therefore it should be ensured and supported for the harmonious growth and progress of the character and personality of the Children.[2]Even the child centered human rights jurisprudence additionally has emerged as another dimension to playroles for child development and growth through social engineering.[3]

There is a huge vacuum inauthentic information about the quantity and types of streetchildren. It is exceptionally difficult to find acorrect number of streetchildren in any nation. These are the childrenstruggling for their right to survive and in that process they need to confront numerous problems and obstacles. But one common characteristic is observed among these children, for example their physical detachment from their families in most of the cases of such children.[4]Nagaseshamma, opines that nations do not have the vital resources and adequate welfare services to put together recovery and government assistance administrations for the streetchildren.[5]

---

* Research Scholar, Department of Studies and Research in Law, University of Mysore, Mysuru

** Professor: Department of Studies and Research in Law,, University of Mysore, Mysuru

1 BajpaiAsha(2006), Child Rights in India, Oxford University Press, New Delhi,P.40

2 Das BorboraRupa (2012). Delicate Childhood Needs Careful handling, Voice of Matri, Advocacy for Child Rights, Volume-1, P. 51

3 Gopalkrishnan B. (2004). Rights of Children, Avishkar Publishers, Rajasthan, P. 56

4 Bose A. B.,(2003). The State of Children in India Promise to Keep, Manohar Publishers & Distributors, New Delhi, P-305

5 Nagaseshamma S., (2010). Street Children of India A Socio-Legal Study, Anmol Publications Pvt. Ltd.,New Delhi, at P. 2

There can be no doubt that children are among the most weak and vulnerablegroup from our society. Yet, there are a couple of individuals from our society who would prefer not to give any significance to the privileges of children. As indicated by such individuals it isnot important to perceive suchprivileges for the children'. For the full growth and progress of personality and character, rights are a basic necessity. In this manner, the individuals who need rights are like slaves and they can never turn into their own sovereign. Rights are vital and important for all people including the children. For the children, rights likewise incorporate some ethically critical values, for example, affection and love, sympathy, friendship, etc., since the children have lesser abilities and strength when contrasted with the adults; they need special security and care. In our society, essentially two arrangements of rights are accessible one set for the adults giving those occasions to practice their power and another set giving insurance to the children and simultaneously holding them under the protection of theadults.[6]

Human rights are the essential and absolute rights which each individual should have on the grounds that the person is a human being.[7] These rights are generally fundamental for acknowledgment of human potential and improvement. Subsequently, basic liberties comprise of those rights which are inalienable in our inclination and without which we cannot live as human beings. These rights are an essential part of our everyday life and activities. Without these rights, nobody can succeed and become perfect. Therefore if these are not accessible or given any validity to the children, then they will not have the option to grow and progress completely in future.

Consequently, with a goal to decrease the various plights and difficulties of streetchildren and to highlight them in the mainstream society, various steps have been taken both at the national and international platforms. Perhaps the one of the earliest step taken in such a manner is the Geneva Convention IV and the other additionalprotocols which incorporated and explained numerous standards contained in the Hague Convention uniquely

---

6 Sharma Ajay Kumar(1995). Human Rights Violation of Street Children and Child Labour in India, Human Rights in India Problems and Prospectives, Deep & Deep Publications New Delhi, P. 187

7 Singh Subhash Chandra (2007). Right of Child, Serial Publication, New Delhi, P. 85

accommodated the protection of Children.[8] In spite of the presence of a lot of legaland non-legal measures to ensure the protection of children in various conditions including the streetchildren, their rights are not being completely given its due attention and it therefore important for the governmental agencies and policy makers to make sure that the street children and the various segments of the society have sufficient awareness on the various articles and laws regarding the children in special reference to the street children.

In the present study an attempt is made to find out the extent of knowledge regarding constitutional provisions towards child rights among street children. It is hypothesized that the street children being left out without much education, will have low knowledge/awareness about child rights.

METHODOLOGY OF THE STUDY

PARTICIPANTS

The study comprised of 300children among which 170 were boys and 130 were girls, and was randomly selected from 9 taluks of Mysuru district.

TOOLS USED

- Demographic data
  The demography data comprised of name, age, sex, religion, caste, information about their parents/guardians, their income, number of days they work and other such similar questions.
- Structured schedule
  A structured schedule consisting of knowledge on various constitutional provisions, acts and commissions

PROCEDURE

The first author personally visited 9taluks in Mysuru of the Karnataka state to collect the data from street children. After taking the permission from the respective authorities, the questionnaire consisting of the demographic data and structured schedule was administered to a total of 300 respondents. Before administrating the questionnaires, they were assured of confidentiality. They were asked to answer all the questions. In case of difficulty in understanding the item/s, in order to get good response they were made clear in their local language. Sometimes enumeration job was done by the first

[8] RajawatMamta(2002). Burning Issues of Human Rights, Kalpaz Publication, New Delhi, P.78

author. Once the data were collected, they were scored, fed to the computer and subjected to statistical analysis. The data were analyzed using, one way analysis of variance. Tables 1, 2 and 3 provides the Frequency and percent values on various family related factors leading to street children and results of chi-square tests

RESULTS

Table 1

Frequency and percent knowledge of street children on various provisions/acts regarding child rights and results of test statistics

Sl No	Provision/Acts	Responses		Gender		Total	Test statistics
				Boys	Girls		
1	The state shall provide free and compulsory education to all children of the age of six (6) to fourteen (14) years	Know	F	101	99	200	X^2=33.33; p=.001 --------- *X^2=9.29; p=.002*
			%	59.4 %	76.2 %	66.7 %	
		Don't Know	F	69	31	100	
			%	40.6 %	23.8 %	33.3 %	
2	No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment	Know	F	3	2	5	X^2=280.33; p=.001 X^2=0.23; p=.879
			%	1.8%	1.5%	1.7%	
		Don't Know	F	167	128	295	
			%	98.2 %	98.5 %	98.3 %	
3	Health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.	Know	F	0	0	0	$X^{2=}$0; p=0
			%	0%	0%	0%	
		Don't Know	F	170	130	300	
			%	100.0%	100.0%	100.0%	

Sl No	Provision/Acts	Responses		Gender		Total	Test statistics
				Boys	Girls		
4	Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.	Know	F	1	0	1	X^2=296.01; p=.001 *X^2=0.77; p=.381*
			%	0.6%	0.0%	0.3%	
		Don't Know	F	169	130	299	
			%	99.4%	100.0%	99.7%	
5	Any parent to provide opportunities for education to his child or as the case may be ward between the age of six (6) and fourteen (14) years".	Know	F	2	2	4	X^2=284.21; p=.001 *X^2=0.73; p=.786*
			%	1.2%	1.5%	1.3%	
		Don't Know	F	168	128	296	
			%	98.8%	98.5%	98.7%	

From the table it is clear that only in the case of provision- 'The state shall provide free and compulsory education to all children of the age of six (6) to fourteen (14) years' 66.7% of the selected street children knew about it and remaining 33.3% of them didn't. Chi-square test revealed a significant difference between responses (X^2=33.33;p=.001) confirming that majority of the street children had the knowledge. When association between gender and responses it was found that girls had higher knowledge on the provision than boys.

In the case of remaining provisions the knowledge of the street children for 'No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment' was only (1.7% X^2=280.33;p=.001), for 'Children are given opportunities and facilities to

develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment' the extent of knowledge was 0.3%, (X^2=296.01;p=.001) and for 'Any parent to provide opportunities for education to his child or as the case may be ward between the age of six (6) and fourteen (14) years' the extent of knowledge was only 1.3% (X^2=284.21; p=.001). In the case of provision – 'Health and strength of the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength' none of the child knew about this. All the chi-square values obtained for 'know' and 'don't know' were found be highly significant, having 'don't know' responses significantly high.

Table 2
Frequency and percent knowledge of street children on various rights regarding child rights and results of test statistics

Sl no	Rights	Responses		Gender		Total	Test statistics
				Boys	Girls		
6	Right to Equality	Know	F	0	3	3	X^2=288.12; p=.001
			%	0.0%	2.3%	1.0%	
		Don't Know	F	170	127	297	*X^2=3.96; p=.047*
			%	100.0%	97.7%	99.0%	
7	Right against discrimination.	Know	F	0	3	3	X^2=288.12; p=.001 ---------- *X^2=3.96; p=.047*
			%	0.0%	2.3%	1.0%	
		Don't Know	F	170	127	297	
			%	100.0%	97.7%	99.0%	
8	Right to personal liberty and due process of law	Know	F	0	1	1	X^2=296.01; p=.001
			%	0.0%	0.8%	0.3%	
		Don't Know	F	170	129	299	*X^2=1.31; p=.252*
			%	100.0%	99.2%	99.7%	
9	Right to being protected from being trafficked	Know	F	0	1	1	X^2=296.01; p=.001 -------- *X^2=1.31;*
			%	0.0%	0.8%	0.3%	
		Don't Know	F	170	129	299	
			%	100.0%	99.2%	99.7%	

	and forced into bonded labour						*p=.252*
10	Right to weaker sections of the people to be protected from social injustice and all forms of exploitation etc.	Know	F	0	0	0	$X^{2=}0$; p=0
			%	0%	0%	0%	
		Don't Know	F	170	130	300	
			%	100.0%	100.0%	100.0%	

When the analysis was done for knowledge of specific acts on child rights, it was found that a large majority of the children lacked knowledge on the specific rights. Only 1.0% of each of them knew about 'right to equality' (X^2=288.12; p=.001) and rights against discrimination (X^2=288.12; p=.001). Further it was found that only 0.3% of them knew about 'Right to personal liberty and due process of law' (X2=296.01; p=.001) and 'Right to being protected from being trafficked and forced into bonded labor' (X^2=296.01; p=.001). None of them knew about 'Right to weaker sections of the people to be protected from social injustice and all forms of exploitation etc'. Gender-wise significant associations observed for 'Right to Equality' (X^2=3.96;p=.047) and rights against discrimination (X^2=3.96; p=.047), where girls had better knowledge than boys. However, for rest of the acts no significant associations were found between gender and extent of knowledge on those acts.

Table 3

Frequency and percent knowledge of street children on various commissions regarding child rights and results of test statistics

Sl no	Provision/ Acts	Responses		Gender		Total	Test statistics
				Boys	Girls		
11	Role and functioning of NHRC	Know	F	0	0	0	$X^{2=}0$; p=0
			%	0%	0%	0%	
		Don't Know	F	170	130	300	
			%	100.0%	100.0 %	100. 0%	
12	Role and functioning of SHRC	Know	F	0	0	0	$X^{2=}0$; p=0
			%	0%	0%	0%	
		Don't	F	170	130	300	

		Know	%	100.0%	100.0 %	100. 0%	
13	Role of functioning of National Institute for child protection (NICP)	Know	F	0	0	0	$X^{2=}0$; p=0
			%	0%	0%	0%	
		Don't Know	F	170	130	300	
			%	100.0%	100.0 %	100. 0%	

None of the child had knowledge regarding role and functioning of National Human Rights commission (NHRC), State human rights commission SHRC and National Institute for child protection (NICP).

MAJOR FINDINGS OF THE STUDY

- On the whole, 66.7% of the street children knew about *'The state shall provide free and compulsory education to all children of the age of six (6) to fourteen (14) years'* and girls had higher knowledge than boys
- Only 1.7% of the children knew about age related employment provision, and none of them knew about the abuse of health and tender age
- Only 0.3% of the children had the knowledge regarding freedom and dignity of the children and youth and 1.3% of them knew about parental responsibilities to provide education
- 1.0% of each of them knew about 'right to equality' and 'rights against discrimination 'and girls had more knowledge
- Only 0.3% of them knew about 'Right to personal liberty and due process of law' and 'Right to being protected from being trafficked and forced into bonded labor' and none of them knew about protection from social injustice and exploitations
- Knowledge of street children on various commissions-NHRC, SHRC and NICP, regarding child rights was totally nil

There are similar studies found which support the findings of the present study.In India, poverty is high and the support from the government is very restricted, so children frequently are used as a means of family income.[9] Hence, even with a legitimateconstitutional fundamental right that denies childlabor, there has been an alarmingincrease in the number of working streetchildover the years.Humphries in his research found that, "Although child laboris hard to document, an alternative way of curbing child labor is by

[9] Segal, U. A. (1999). Children are abused in eastern countries: A look at India. International Social Work, 42(1), 39–52.

requiring school attendance".[10] UNICEF's State of the World's Children report expresses, "The childrenliving in around 49,000 slums in India are invisible."[11] Such vaguestatisticsshow that it is without a doubt hard to find the exact number of working streetchildren particularly when the basic count is inaccurate in the country.

Each child has a right to family environment, care and protection. In any case, when a child's biological family is unable to care for the child, substitute family based care and protection should be organized. [12] In the underdeveloped nations like India, the vast majority of the children cannot gain access to right to family environment, care and protection. Among those children, streetchildren are generally affected by the absence of a family environment. Different alternative family care arrangements are available nowadays and those are non-institutional services. A portion of those are adoption, sponsorship programs etc.[13]The children who are denied of adultcare and protection, particularly who have lost their parents and relativesshould have an opportunity to get the advantages of these alternate family care arrangements. But in reality, very few such children get the advantage of these arrangements.

The street children generally work in informal sectors where they need to fight with various types of challenges and obstacles. Additionally, they are financially exploited by their employers. The services they give are practically equivalent to that of the adultemployees. In any case, for a similar nature of work, they are paid equally as the adultemployees simply because they are children. In this manner their privilege against financially exploitation is being violated each day. However, no strong voice is brought up for these children. The Supreme Court focused on the importance of children' welfare and furthermore held that the children should be engaged with appropriate working conditions and healthy environments[14]

---

[10] Humphries, J. (2003). Child labor: Lessons from the historical experience of today's industrial economies. The World Bank Economic Review, 17(2), 175–196

[11] Save the Children India, & PwC India. (2015). Forgotten Voices: The world of urban children in India. New Delhi, India: Author.

[12] BajpaiAsha(2006), Child Rights in India, Oxford University Press, New Delhi,P.40

[13] Ibid.

[14] Krishna Sumi(1996),Restoring Childhood, Learning, Labour and Gender in South Asia, TheCommonwealth Human Rights Initiative, New Delhi, Konark Publishers Pvt. Ltd., P. 71

Apart from this, even the street children who are rescued and become prisoners of various childwelfare organizations from the government including shelter homes, observation homes etc., are exploited in every manner possible. The abusers are usually the staff members from those organizations and institutions and in many case the outsiders with whom the staffs closely knowing exchange forfinancial gains or other advantages.[15]

We can clearly state that the knowledge of constitutional rights among the street children were alarmingly very low and this causes many unwanted consequences by adults and individuals who have selfish agendas to misuse and abuse such innocent children. There has to be major awareness campaigns and programs initiated by both the governmental and the non-governmental organization to increase the awareness of the various rights towards the street children. Media can be utilized to its fullest to reach out such rights and make sure that they are reaching to the maximum number of individuals in the country. By doing this the consistent increase in the cases of street children can be reduced as they will know when the adults or their employers are misusing them.

[15] Bose A.B.(2003),The State of Children in India Promise to Keep,Manohar Publishers &Distributors,New Delhi,p.287

MEDIA AS A FOURTH PILLAR OF DEMOCRACY AND ITS IMPLICATIONS ON GOOD GOVERNANCE IN INDIA: AN ANALYSIS OF FACTS, ISSUES, POLICIES

-Dr. Sneha Balaraj*

INTRODUCTION

Social media is most excellently understood as a collection of various kinds of online content, which share participation, openness, conversation and connectedness among the individuals and communities. With positive awakening and recognition of rights, freedoms and liberty of the individuals, most of the nations underwent the political transformation into democratically ruled governments. The emergence of new forms of social media during the first decade of the 21st century has transformed the ways in which many people communicate and share information.

Social Media offers an array of opportunities for the political actors, political institutions and the public to interact with one another. Early conceptions of digital democracy as a virtual public sphere or civic commons have been substituted by a new technological optimism for democratic regeneration based upon the collaborative networking characteristics of social media. The social media are elementary elements through which institutions and citizens connect in democratic processes and public deed all over world. Indeed, social media, and the World Wide Web more commonly, have democratised access to participation in political action, providing ever-greater numbers of individuals with opportunities to become involved in civic empowerment and participatory democracy. New technologies have lowered barriers to participation and cultivated political ties ahead of the traditional barriers of time and place. On the other hand, the Social Media has authorized citizens a superior degree of selection over their information consumption and social ties, potentially leading to "cyber-Balkanization," or the creation of separate, mutually hostile online social spaces within a society.*Social Media and Democracy* focuses on the responsibility of social media in precipitating civic engagement and on their potential to augment participatory democracy.

Modern existence has seen growing concentration to the concern of new media technologies and development. Wireless communication and the gradual diffusion of greater broadband capacity, highly developed mobile

* Assistant Professor, St. Joseph's College of Law, Bengaluru-560 025

technologies and the communications and information-processing authority of the Internet is being disseminated to all realms of social life, just as the electric grid and electric engine disseminated force in industrial society. It has definitely been acknowledged that social media is playing a more and more significant and noteworthy role in social, economic and political development. The direct or indirect consequences of this escalating significance are now deliberated at high-level political meetings and between heads of state. In other words, the concern of social media and its position in social development in general is no longer merely a question that refers to one territory or associated to a particular sphere, but it has become present in different spheres as a powerful factor of change transforming into new mass self-communication. Viewed on a global level, the issue of, and application of new media have escalating significance due to newest revolutions in planet. As social and political unrest continues in some countries, new media may become a commanding instrument for attainment of particular goals.

Public opinion had the form of common sense. It was diffused through people in the form of prejudices, but even in this turbidity it reflected "the genuine needs and correct tendencies of common life[1]. It was shaped in discussion after the public, through debate, learning and information, had been put in a position to arrive at a considered opinion.

Due to the parliamentary democracy which emerged to some extent due to the public sphere, the public opinion reigned but did not govern. With the help of parliamentary discussion, public opinion makes its desires known to the government, and the government makes its policies known to public opinion[2].

However, eventually, Habermas tracked the decay of the public sphere as an institution with industrialization and the rise of the mass popular media. As he puts it:

"...the mass media have on the one hand attained an incomparably greater range and effectiveness — the sphere of the public realm itself has expanded correspondingly. On the other hand people have been moved ever further out of this sphere. The more people's effectiveness in terms of publicity increased, the more they became accessible to the pressure of certain private interests, whether individual or collective. Whereas formerly the press

---

1 Habermas 1991 "The structural transformation of the public sphere": 188

2 Ibid

was able to limit itself to the transmission and amplification of the rational/critical debate of private people assembled into a public, now conversely this debate gets shaped by the mass media to begin with."[3]

SOME BASIC FEATURES OF THE CURRENT MEDIA TRANSFORMATION ARE WIDELY UNDERSTOOD

1. New technology and connected practices, facilitate networked, many-to-many, and mobile communications
2. Online networks support both structured interactions among people and more open-ended participation in a range of activities
3. Traditional barriers to cultural production and transmission are now much lower
4. These changes are playing a critical role throughout the world, in developing as well as post-industrial societies, in democracies and in more autocratic regimes

The ubiquitous increase of new media has facilitated cultural changes but also changes in political expectations and practices. Of the many political activities that are moving online, some are principally significant for reshaping the scenery of political life. The norms and practices that could be identified as shifting the political background under the label "participatory politics."

The conceptualization of politics extends beyond the electoral focus that often dominates literature about political participation and includes a broad array of activities undertaken by individuals and groups to influence how the public sets agendas and addresses issues of public concern. We include electoral activities (such as voting or campaign work), activism (protest, boycotting, and petitions), civic activities (charity or community service), and lifestyle politics (vegetarianism, awareness raising, and boycotting) in our definition.

This broad definition is necessary for a few reasons.

- First, it acknowledges that several of the struggles to shift public attention to new issues or frames and to challenge the balance of power in public life take place outside of traditional institutions of civic and political life[4].

---

[3] Ibid

[4] Ginwright 2009, Delgado and Staples 2007, Flanagan and Gallay 1995

- Second, this broad definition permits appreciation of the political consequences of phenomena at the crossroads of culture and politics. Legal and institutional structures are vital for considerate political affairs, but their operations are inhibited and shaped by the surrounding socio-cultural context, whether one labels that context as "civil society" or the "public sphere".
- Finally, a broad definition of politics is to identify changes in where and how people work both to define issues of public concern and to exercise power in relation to them. The shift entails a association away from civic and political engagement that turns around issues and activities defined and structured by elites and state institutions and toward a range of more direct forms of lifestyle and expressive politics.

Research on learning and participatory culture has highlighted four core sets of practice within the current digital media-scape. Young people are using media to:

- **Socialize**(by blogging, podcasting, or forwarding links)
- **Collaborate** (by working together with others to fabricate and share information via projects, such as Wikipedia)
- **Construct**(by producing and exchanging media via platforms like YouTube and Flickr)
- **Connect**(through social media, such as Facebook or Twitter, or through online communities, such as game clans or fandoms).

To conceptualize participatory politics as interactive, peer-based acts through which individuals and groups seek to exert both voice and influence on issues of public concern through the following types of activities:

- **Exploration.** Members of a population enthusiastically track information about issues of public concern. Participants seek out, collect, and analyze information from a wide collection of sources. They also often confirm the authenticity of information that is circulated by elite institutions, such as newspapers and political candidates.
- **Conversation and feedback.** There is a elevated scale of dialogue among society members, as well as a practice of weighing in on issues of public concern and on the decisions of civic and political leaders. This might include voicing one's standpoint at a meeting, discussing politics with others, commenting on blogs, or engaging in other digital or face-to-face efforts to interrelate with or provide feedback to leaders.
- **Transmission.** In participatory politics, the flow of information is shaped by many in the broader community rather than by a small group of elites.

This might include sharing information about an issue at a meeting of a religious or community organization to which one belongs or posting or forwarding links or content that have civic or political intent or impact.

- **Fabrication.** Members not only socialize information but also create original content (such as a blog or video that has political intent or impact) that allows them to advance their perspectives.
- **Recruitment.** Members of a community rally others to help achieve civic or political goals. This might comprise working to recruit others for a grassroots effort within one's community, or reaching out to those in one's social network and beyond on behalf of a political cause.

This set of practices embraces the association from agenda-setting to opinion formation and action taking which are at the core of all political life, but they comprise participatory versions of each of those rudimentary steps. Those who engage in agenda-setting, opinion formation, and action-taking through methods like the ones described above contribute in "participatory politics." The more that people connect in participatory politics, the more we should expect to see a cultural shift in expectations about how to approach politics and about what is possible through politics.

PARTICIPATORY POLITICS IN THE DIGITAL AGE

With the resources of "participatory politics" gradually more available, we see growing opportunities for youth-and for civic actors generally- to exert agency in the public sphere, both as individuals and within communities of tradition. By circulating content, they can influence what others are exposed to. When people are particularly concerned, outraged, or committed, they can observe on broadcast content, write and distribute statements, or remix content to make a point. Drawing on social and often digital networks, youth, as individuals or as combined communities, can also expand their admittance to audiences and opportunities for mobilization with less reliance on elite-driven institutions such as political parties or major interest groups and organizations. That said, participatory politics can, of course, commence new hierarchies and leverage other types of elite-driven institutions (for example, venture capital-backed companies), and so dynamics of exclusion as well as expansion are key to understanding emerging modes of citizen engagement.

CRITICAL IMPLICATIONS FOR EXPANDING ROLE OF MEDIA

Firstly, an analysis is made thereto on the changing interaction of Citizens to Institutions and Elites. Herein, the institutional, or, elite-driven politics, extremely planned group actors—political parties, news

organizations, social movement organizations, national civic organizations, lobbyists, and special interest groups—drive national conversations about which issues deserve concentration; they also organize the options for action and mobilize citizens. Even activities conventionally designated as "extra systemic" politics— protests, boycotts, and petitions—depend on social movement organizations and dedicated leaders if they are to gain traction.

Secondly, the practices of participatory politics propose new routes to manipulate in the political realm, predominantly for those outside of conservative elite groups. They also offer new pathways into political participation, thereby requiring us to re-conceptualize the developmental pathways into civic and political engagement available to young people. This involves re-examining the kinds of socializing experiences that are likely to lead youth (and others) to commit to civic and political engagement, clarifying the literacy that are necessary for success at participatory politics, and identifying the types of support that will be necessary for engagement of this kind.

And finally, the fact that appointment in participatory culture appears to provide a pathway into engagement in participatory politics underscores how significant it is to employ definition of "politics" that are broad enough to capture the points where culture and politics intersect. Practices emerging in the cultural realm may well evolve to play an important role in the political realm. As types of activity and practice move from one domain to another, we also see transformations in the relationship of political activity to social and cultural spheres.

RISKS ASSOCIATED WITH NEW MEDIA

1. First, there is a risk relating to the practice of examination.
2. Second, there are risks relating to dialogue and feedback, transmission, and fabrication. For example, the need for short powerful, spreadable messages may encourage simplification of complex and nuanced issues.
3. Third, there is a risk related to recruitment itself, namely that, in the context of an increased reliance on expressive politics, political actors will cease to develop full understandings of the differences between voice and influence, perhaps contenting themselves with expression itself when they might also have achieved influence if they had focused on more traditional modes of political involvement.

POLITICAL PARTIES PUBLIC POLICY AND PARTICIPATORY DEMOCRACY

Worldwide political parties are changing towards more participatory models of policy development. Participatory models of policy development are those in which a broad population, such as party officials, members, supporters and even external groups, have influence in policies proposed and advocated by a particular party. These can comprise aamplearray of topics, from the national budget and economic development to education and health care; from infrastructure and transportation to childcare and parental leave; from private sector development and jobs programs to even a party's core values and beliefs.

WHY CONSULT ON POLICY

Political parties accept inclusive models of policy development for a diversity of reasons. Some parties cite values or ideologically based reasons for including members and citizens in policymaking. Others are more sensible, pointing to the fact that consultation often delivers stronger, more relevant policy options. Policies on health care, for example, which have canvassed the opinions of experts and practitioners in medical services, along with those of health care consumers, are more likely to be pragmatic, meaningful, and able to be implemented.

- Consultations reinforce the skills of the party's legislators and officials to deal with chief policy issues and legislative matters. Consultations on policy can be good preparation ground for a party's members of parliament on how to work with the legislative process.
- Democratic and participatory internal processes make stronger political parties, more capable of dealing with concession, debate, and coalition-building. Consultation processes also help to construct stronger relationships between parties and their members and/or supporters.
- Policy development creates opportunities for political parties to include women, minority communities, young people and under-represented social and economic groups in decision making

CHALLENGES TO POLICY CONSULTATION

Political practitioners looking to implement consultative policy development processes should be conscious of the following challenges:

- Inclusive policy development processes take time, which must be planned for. Some policy issues move so rapidly they do not permit for a deliberate consultation process to take place, so not every decision can be taken using broad consultation.

- In addition to being participatory, consultative policymaking can also be combative as different stakeholders within the party contend for supremacy on policy outcomes. This is a natural tension which must be expected and managed.
- Overly academic or cumbersome consultation processes can lead to 'consultation fatigue' in which stakeholders are fewer enthusiastic to contribute because the work is too burdensome and boring, or is not rewarding.
- The outcome of consultation processes can occasionally be unclear when stakeholders have no firm view on a policy, widely disparate views, or insufficient information.

OVERVIEW OF PARTICIPATORY POLICY DEVELOPMENT

There is a diversity of options for how a political party addresses policy development in its official rules, which characteristically take the form of statutes, bylaws or a constitution.

From there, party statutes tend to take an approach in which one of the following structures dominates policy development, which can very loosely be described as offering a low, medium or higher degree of detail on the process.

1. Statutes designate who has the authority to be concerned in policy and to what degree, but do not outline a specific process.
2. Statutes institute specific bodies with the accountability and authority for policymaking and a general sequence for the process.
3. Statutes characterize a general process by which policy is made and allocate a specific role for each stakeholder, including the national party leadership, any policymaking body, local party branches and individual members.

SOCIAL MEDIA : POLITICAL IMPLICATIONS FOR PARTICIPATORY DEMOCRACY

Social media are fetching ever more admired among politicians and their organizations as a means to broadcast political messages, learn about the welfare and requirements of constituents and the broader public, raise funds, and build networks of support. These activities over and over again take place on confidentially run social networking sites that allow political figures and institutions to communicate with the public in unmediated, high-profile fora.

Social media are also used as campaign tools. For example, in 2009, the US presidency campaign Obama for America (OFA) drew on a database of approximately 13 million email addresses, an active community blog, and a digital network of volunteers to raise money, encourage voter turnout and support a grassroots approach to election campaigning.[5]

Social media are being used by citizens to connect with the public, influence decision- makers and hold legislatures and governments to account. Social media are used to educate the public about the work and values of parliaments, with the need for reinforcing public trust and interest in parliamentary governance. Parliaments also employ social media to engage citizens in public policy debates. For example, the UK Parliament is experimenting with online consultations that allow the public to share their responses to specific questions on a topic under examination by a select committee. Participants can view and counter to the contributions of other participants if they wish, allowing for citizen-to-citizen as well as citizen-to-representative exchange.

POTENTIAL BENEFITS OF THE POLITICAL USES OF SOCIAL MEDIA

It is hard to draw firm conclusions at this early stage about the impact of social media on political processes and representative democracy. Nonetheless, a numeral of potential benefits and risks has been credited to the political applications of these communications technologies.

SOCIAL MEDIA MAY FOSTER GREATER PLURALISM IN POLITICAL DISCOURSE

Social media offer anyone with Internet access an opportunity to disseminate their ideas; some argue that they promote pluralism in political debate. By this view, social media ensure that mainstream media sources no longer monopolize information channels. In turn, new issues and ideas that might otherwise be ignored by the mainstream media can receive public attention.[6]

However, given their varying levels of expertise, individual users have unequal access to the full potential of social media as a publishing platform. For example, users with online marketing skills, access to Web analytics software,

---

[5] Micah L. Sifry, *"The Obama Disconnect: What Happens When Myth Meets Reality,"techPresident*, 31 December 2009

[6] Organisation for Economic Co-operation and Development [OECD], "Participative Web and User-Created Content: Web 2.0, Wikis and Social Networking," 2007, p. 65.

and technical knowledge can ensure that search engines direct Internet users to particular websites instead of others.[7]

Similarly, established political parties and organizations have the resources to maintain a professional, well-executed online presence. Some argue that imbalances in online resources may simply replicate existing imbalances in more traditional communications resources, further entrenching the difficulty experienced by poorly funded political actors when they attempt to participate effectively in public discourse.[8]

SOCIAL MEDIA MAY FACILITATE CITIZENS TO BECOME MORE EFFECTUAL POLITICAL ACTORS

Some people dispute that social media remove barriers to collective action and empower citizens to influence and monitor the work of policy-makers by offering a low-cost and, in some cases, more individual and convincing means of raising funds, spreading information and recruiting supporters from a broad range of backgrounds. In addition, some note that, by enabling people to connect across long distances, new information and communication technologies, including social media, have been instrumental in the growth of transnational political movements.

MEDIA MAY FABRICATE TRUST IN PUBLIC INSTITUTIONS

Social media permit citizens to interrelate with public institutions in an informal and interactive manner, some dispute that social media are personalizing politics and bolstering the public's faith in governing institutions. This point of view is supported by a US study of online town hall meetings, which found that personal online communication with members of Congress had a significant and positive influence on constituents' opinions of their representatives. Moreover, such communication enhanced the likelihood that a personality would become more politically engaged and that he or she would vote for the candidate. Similarly, others argue that these kinds of online

---

7 Ross Ferguson and Barry Griffiths, "Thin Democracy? Parliamentarians, Citizens and the Influence of Blogging on Political Engagement," *Parliamentary Affairs*, Vol. 59, No. 2, 2006, p. 368.

8 Tamara Small, "parties@canada: The Internet and the 2004 Cyber-Campaign," in *The Canadian General Election of 2004*, eds. Jon H. Pammett and Christopher Dornan, Dundurn Press, Toronto, 2004, pp. 207-9; and Stephen Ward and Thierry Vedel, "Introduction: The Potential of the Internet Revisited," *Parliamentary Affairs*, Vol. 59, No. 2, 2006, p. 210.

exchanges may remedy the perception that public institutions are "overly rigid, unresponsive, and out of step with contemporary society."[9]

The term "digital divide" is used to refer to the role that differences in access to and knowledge of Internet technologies play in determining one's likelihood of participating in online politics.

SOCIAL MEDIA MAY ASSIST LEGISLATORS TO IMPROVED REPRESENT CITIZENS, AND GOVERNMENTS TO BETTER SERVE THE PUBLIC'S NEEDS

Social media recommend low-cost and user-friendly means of conducting an ongoing discussion between citizens and their representative figures and institutions, some argue that social media will grant decision-makers a more complicated understanding of the public's interests and needs. Proponents of this view suggest that this improved understanding will lead to higher quality policies and programs.

However, as renowned earlier, those who at present contribute in social media-based political exchanges may not be delegate of the general population. As such, the needs and interests they express may not serve as an accurate gauge of public opinion. In addition, as some argue, these new communications technologies will not necessarily alter who is represented or the means and frequency of representation in governing institutions and policy processes.[10]

SOCIAL MEDIA MAY CONNECT YOUTH IN THE DEMOCRATIC PROCESS

Young people in Canada demonstrate low levels of trust and interest in political institutions and representatives, and are less likely to vote and join political parties thanprevious cohorts of young Canadians. Because young people are avid users of social media, these technologies are often discussed as one possible means by which young people may become more engaged in the democratic process. Proponents of this argument also note that young people expect immediacy and interactivity when communicating, an assumption that

---

[9] Jeffrey Roy, E-Government in Canada: Transformation for the Digital Age, University of Ottawa Press, Ottawa, 2006, p. 82.

[10] André Blais and Peter Loewen, "Youth Electoral Engagement in Canada," Elections Canada, 2009; Mary Pat MacKinnon, Sonia Pitre and Judy Watling, "Lost in Translation: (Mis)Understanding Youth Engagement - Synthesis Report," Canadian Policy Research Networks, 2007.

might be better accommodated by social media tools than by the complex, bureaucratic communication channels of many governing institutions.[11]

POTENTIAL RISKS OF THE POLITICAL USES OF SOCIAL MEDIA

There are numerous risks involved in the usage of Social Media in light of the present Political climate. The same are elucidated as follows:

- **SOCIAL MEDIA MAY MAKE IT FURTHER COMPLICATED TO CONTROL AN INDIVIDUAL'S OR INSTITUTION'S PUBLIC IMAGE.**

Social media proffer users numerous opportunities to arrive at a large audience with criticisms of political figures and institutions. Because so many different social media outlets exist, it can be difficult to identify and address attacks on one's reputation that are published via these channels.

A recent Supreme Court of Canada decision suggests that defamation law must account for comments published on social media platforms. In *Grant* v. *Torstar Corp*, the Court ruled that:

"The traditional media are rapidly being complemented by new ways of communicating on matters of public interest, many of them online, which do not involve journalists. These new disseminators of news and information should, absent good reasons for exclusion, be subject to the same laws as established media outlets. I agree … that the new defence is available to anyone who publishes material of public interest in any medium."

Even so, it can prove complicated to prosecute individuals for making insulting statements online, since many people use social media without revealing their identities. Although no such legislation exists in Canada, recently an Australian court ruled that those who publish observations on an election on social networking sites are required to reveal their postal codes and actual names. Such legislation may make it easier for defamation law to be applied to social media users.

- **SOCIAL MEDIA MAY PRESENT OPPORTUNITIES FOR "SYNTHETIC LOBBYING"**

Some fear that well-crafted and executed social media campaigns led by special interest groups can control online exchanges with political figures and institutions to the point where decision-makers are misled about the actual

---

[11] Robert Barnard, "Decoding Youth Engagement," Presentation delivered at the Library of Parliament's Youth and Democracy Dialogue Session, Ottawa, September 2009.

extent to which ideas shared via these campaigns are representative of a widely held point of view. Such advocacy tactics are often referred to as "synthetic lobbying." That said, synthetic lobbying occurs even without social media. For example, coordinated letter-writing campaigns have long been a constituent of politics and the policy process, and policy-makers have developed mechanisms of identify and addressing these organized campaigns to ensure that they do not gain a perverse influence over the policy process.

- **POLITICAL INSTITUTIONS MAY NOT HAVE THE ESSENTIAL RESOURCES TO USE SOCIAL MEDIAEFFICIENTLY**

Some argue that the use of social media hassle unnecessary time and resources. Others argue that, just as social media were adopted swiftly in the marketing world because of their low cost, so too can they be used by public figures and institutions without significant expenditures of time and money. A number of practices may make it easier for political figures and institutions to meet the expectation that their social media accounts remain regularly updated.[12]

- **THE USE OF SOCIAL MEDIA BY PUBLIC INSTITUTIONS MAY LEAD TO A "SURVEILLANCE STATE"**

By monitoring the information shared by citizens on social media sites, policy-makers and representatives can gain a better understanding of citizens' interests and needs. For example, in the United Kingdom, the Cabinet Office monitors popular social networking sites to learn about citizens' opinions on public services. Social media monitoring is also being used to help states tackle organized crime and terrorist networks. Whatever the potential benefits, some express concern that this type of monitoring will lead to a "surveillance state" in which the data shared by citizens via social media - including sexual orientation, religious belief, political affiliation and other sensitive information - is monitored and used in ways that breach privacy rights. In addition, some fear that the political institutions collecting this data may not be capable of storing it securely[13].

CASE STUDY ON SOCIAL MEDIA AND DEMOCRACY: FACE BOOK AS A TOOL FOR THE ESTABLISHMENT OF DEMOCRACY IN EGYPT

Modern years have seen escalating concentration being rewarded to the concern of new media technologies and development. Wireless communication and the gradual dissemination of greater broadband

---

[12] BBC News, "Social network sites 'monitored,'" 25 March 2009. Chadwick

[13] SandfordBorins, "Is IT Transforming Government? Evidence and Lessons from Canada," in *Digital State at the Leading Edge*, eds. SandfordBorins et al., University of Toronto Press, Toronto, 2007, p. 371.

capability, highly developed mobile technologies and the communications and information-processing power of the Internet is being disseminated to all realms of social life, just as the electric grid and electric engine distributed energy in industrial society. There has definitely been acknowledgment that social media is playing a more and more significant and noteworthy role in social, economic and political development. The direct or indirect consequences of this growing significance are now deliberated at high-level political meetings and between heads of state. In other words, the concern of social media and its function in social development in general is no longer simply a question that refers to one territory or related to a particular sphere, but it has become present in different spheres as a powerful factor of change transforming into new mass self-communication[14].

At the time when press and media emerged and gained its potency as influential tool for prominence public opinion that in its turn enabled persons to manipulate the state power somehow, people regularly realized the power of information. And the stronger the traditional media got, as a way to express public opinion, the more controllable it got. However, as almost always, the craftier one think he is, the more complicated a conflicting side gets. Media is no exemption. Trying to get a way to raise their voice, people start seeking alternative channels for transmitting information. That's what happened in Egypt in 2011.

The Egyptian revolution was solitary of the radical changes that happened during the Arab Spring – a sequence of revolutions in Arab states in 2010 – 2011. Today the notion of Arab spring is familiar to many and while some start to forget those events, their consequences are still developing. The Arab spring started with Tunisian unrest that began on December 17, 2010 after Mohammed Bouazizi, a 26-year-old fruit and vegetable seller, set himself on fire after police confiscated his cart because he did not have a permit. After he died from his injuries, protests quickly spread nationwide making people more and more decisive in demanding the current government to resign elect a new one and solve long lasting problems of high unemployment, corruption and food crisis as well as lack of freedom of speech[15].

---

[14] Castells "Communication Power" 2009:58-71

[15] Spencer "Visual research method in social sciences" 2011

In Egypt, 82-year old President Hosni Mubarak had done enough, during his 30 years term, to lose public support and caused a enormous wave of unrest that quickly spread all over the country and resulted in turning the main square in the capital into the battlefield[16]. For almost 60 years, Egyptians have celebrated Revolution Day on July 23, to honour the day in 1952 when Gamal Abdel Nasser and the Free Officers overthrew the monarchy to institute a republic. Starting from 2012, the nation celebrates Revolution Day on January 25 – the first day of the mass protests that forced Hosni Mubarak, the country's president for 30 years, from power. 30 years of one man rule, wide spread corruption, patronage, nepotism, economic reforms that did not benefit most Egyptians, but that nonetheless contrasted sharply with the almost complete absence of political change. Thus, for decades Egypt has been hiding major problems that caused poverty, high prices, social exclusion, elite enrichment, unemployment and corruption in the country. The underlying reasons were always there until a catalyst, the Tunisian revolution, triggered the Egyptians[17].

Beginning in the mid-1970s, in an effort to bolster his legitimacy both at home and abroad, then Egyptian President Anwar al-Sadat began to liberalize the political system. He allowed opposition parties to gain some representation in the country's elected assemblies. As long as the ruling political party maintained its two-thirds majority and its control over the real levers of power, the Egyptian opposition could competition elections and maintain a limited presence in parliament. When Mubarak came to power, he sustained to follow the same formula with few adjustments. However, over the last five years, the Mubarak regime began to infringe this implicit agreement, by imposing renewed constraints on the ability of political parties to organize and contest elections. Moreover, the state heavily manipulated the 2010 parliamentary elections in favour of the NDP, successfully denying all opposition groups any representation in the parliament. Needless to say that papers and TV channels were under strict manager of the government. All these events regularly but surely led the country to the revolution. After the state's harsh prosecution of Islamists in the 1990s, youth activists began to express their grievance through a new production of protests open to members of all ideological backgrounds. One such movement was Kefaya, which has

---

16 Thomas and Hardy "Reframing resistance to organisational change" 2011

17 Chebib, Sohail "the reasons social media contributed to the 2011 Egyptian revolution": 142

attracted legions of previously apolitical youth[18]. In 2008, youth activists from Kefaya formed the April 6 Movement in solidarity with textile workers who were planning a strike for that date. The movement attracted 70.000 members on Facebook, making it the largest movement in Egypt of all time[19]. Members of both the April 6 Movement and Kefaya were behind the creation another popular Facebook group, one supporting Mohamed El Baradei, the former head of the International Atomic Energy Agency (IAEA). But possibly the most important Facebook group arose in June 2010, when the activists associated with El Baradei campaign created a Facebook page called "We are all Khaled Said" in memory of a young man who was beaten to death by police officers in Alexandria. It is quite clear that before the revolution, Facebook was quite popular and powerful channel for information in Egypt. Perceptibly, for unknown reasons it was underestimated by Mubarak's government, since there was no attempt to ban or hack any Facebook group. By the end of 2010, Egypt's youth activists had succeeded in bypassing many of the long standing constraints on political life in the country. All they needed to see their mission to the end was a final, triggering event – and that was gathering momentum some 1300 miles away in Tunisia[20].

Thus, following the Tunisian revolution, a revolution in Egypt began. According to Habeeb, Egypt's underlying social, demographic and economic problems, combined with a political system which endorsed little room for legitimate opposition, created conditions that proved ripe for unrest. Rumours that elderly President Mubarak was laying the ground for his son, Gamal, to succeed him became a further source of frustration and resentment.

With the rapid overthrow of Tunisia's President Ben Ali in January 2011 serving as an incredible inspiration, Egyptian activists — mostly young, urban, and college educated — launched a nonviolent protest movement that grew rapidly. From the very beginning of the revolution there was nothing related to unrest shown on TV and in newspapers? Quite rationally people turned to social media, to Facebook in particular, exchanging with the information of protest organisation. Quickly the anti-Mubarak protestors numbered in their millions and the Egyptian military, the back bone of the regime's political power since the 1952 revolution and an institution whose principal concern is security and order, refused to act against the protesters.

---

[18] Shehata The effects of digital media on political knowledge and participation in election campaigns"2011: 142

[19] Ibid.

[20] Ibid.

Faced with this opposition from his erstwhile colleagues, Mubarak begrudgingly resigned[21]. With the presidential elections held on 23-24 May, with a runoff in June, one may assume that revolution in 2011 leads to overthrowing of the authoritarian regime at minimum and heading towards more democratic[22].

In Egypt while traditional media was blocked completely by the state, Facebook was almost the only place where people could share the news and ideas. The fact that the system was really a mean for transmitting information alternatively to traditional media is also reinforced by the desperate desire of the government to block it.

Another feature of Facebook, debate in the hypothetical framework, was its ability to unite. Public sphere, according to Habermas, was a constructive place, where people can together achieve common goals.

Coming from different social classes, different regions of the country and with different backgrounds, people sharing the individual view of the events were united and acted together. Facebook allowed people to organise. Therefore, Facebook can assist at least overthrowing of the non-democratic government and quite probable setting a democratic regime. Of course, the role of other media in Egypt was also important.

CONCLUSION

Participatory politics in the digital age generate a lot of potential for civic and political contribution in the public sphere. They facilitate persons to tap enormous stores of information, believe diverse views, converse with potentially huge audiences, organize others, and work collaboratively for social change, all exterior of official civic and political organizations. As Light's chronological examination suggests the power of any generation's "new media" for assisting youth civic and political rendezvous may be due more to its status as new, unfettered, and low cost.

As we see major institutions (media companies, political parties, corporations) figuring out how to harness and make use of modern technology as well as escalating battles over possession and parameter of the Internet, we see potential for this communication technology to come under tighter

---

[21] Ibid
[22] Ibid

control. Against this backdrop, the need to intensify our theoretical and experimental considerate of the changes now occurring is all the more pressing. In Barber's words, "the pleasures of participation, the fellowship of civic association, and the autonomy, self-governance, and enlarging mutuality of continuous political activity."

LAW RELATING TO BIO-MEDICAL WASTE MANAGEMENT IN INDIA: AN ANALYSIS

-Dr. Shobha K *

INTRODUCTION

Health is a fundamental right of every citizen in India. Providing health service, which is enshrined under directive principles of state policy paved the way for the establishment of health service in the public and private sector and also increased to covera several of rural and urban patients. Health services provide to patients in hospitals, nursing homes, clinics, blood banks, dispensaries etc. many laboratories and diagnostic centres are also operating for pathological and diagnostic tests, all these institutions during the process of treatment generate huge biomedical waste some of these waste is hazardous. Proper disposal is necessary for megacities, to neither prevent environment pollution nor create any health hazard. It became a need of the hour to regulate the disposal of biomedical waste hygienically. Accordingly, Bio-Medical Waste (Management Handling Rules) 1998 was framed.

BIOMEDICAL WASTES AND ITS IMPACT

Biomedical waste means any kind of waste generated in the course of diagnosis, treatment or immunisation in health care facilities, research activities, and laboratories such as the rubbish containing human tissues, body fluids, excreta, unused drugs, swabs, sharps, disposable syringes and sticky bandages etc. considered as biomedical waste.[1] Further Bio-Medical waste can be classified into different types such as animal waste, Biological laboratory waste, Human anatomical waste, human blood and body fluid waste, sharps are considered highly hazardous health care waste those are needles, syringes, razor blades, lancets, scalpels, precision knives, broken glass, pipettes, test tubes, microscope slides, blood vials other items cuts or punctures. Pathogenic microorganisms[2] are responsible for an infection to occur cannot be identified at the time a waste item is generated in the hospital, but through sharps puncture, abrasion or cut in the skin may make way to enter the human body. All individuals coming into proximity with hazardous health care waste are potentially at risk from exposure to a hazard nearly 60%

---

* Guest Faculty, University Law College and Department of Studies in Law, Bangalore University, Bangalore

1 Dr. Lilly Srivastava, *Law and Medicine* 275(Universal publishing co pvt ltd, New Delhi2nd edn., 2013).

2 Pathogenic-causing or capable of causing disease*available at:*www.merriam-webstar.com, (Last modified July 29, 2019).

of workers are unaware of needle prick injuries risk and precautionary options available to them.[3] There is estimation worldwide 85% is a general and non-hazardous waste, and the remaining 15% is hazardous and infectious. As per the World Health Report, 16 billion injectionsare administered every year. Recently developing countries have reduced injections with contaminated needles and syringes. Despite this precaution 33800 new HIV infections and 315000 hepatitis C infections are recorded in the year 2010. Health care workers experienced one needle stick injury from a needle used on an infected source patient has the risk of 30%, 1.8% and 0.3% respectively of becoming infected with HBV, HCV and HIV[4]. In 2015, a joint WHO/UNICEF[5] assessment found that 24 countries had adequate systems of place for the safe disposal of health waste[6]. Other remaining member countries are under risks and also responsible for the release of pathogens and toxic pollutants into the environment. An untreated sharp waste leads to contamination of ground and surface water if those landfills are not properly constructed. Schedule, I (Rule5) of Bio-Medical Waste (Management and Handling), Rules 1998 categories waste category type and treatment and disposal option. Sharp wastes are treated by way of disinfection chemical treatment, autoclaving, microwaving, mutilation and shredding. Recently, there is wide practice incineration of the waste, but due to inadequate and unsuitable materials used in incineration results in the spread or release of high metal content that is lead, mercury and cadmium considered to be metal in nature lead to leaching and groundwater get polluted. Air pollution takes place due to the emission of CH4, CO2 odours in hazardous medical waste, soil pollution occurs due to accidental spills of hazardous healthcare waste at the time of transportation,and also we find a disturbance in the ecosystem because of contaminated food which disturbs food chain. Because Bio-Medical waste and sharp waste is a health hazard. In April 1995, the Ministry of Environment and Forest was alert to check the hospital wastes disposal system. It proposed to enact Biomedical waste (Management and Handling Rules)1998 under

---

3 *Available at*: http:www.pdf drive.com/ undefined (Last modified July 29, 2019).

4 HBV-hepatitis B virus, HCV- hepatitis c virus, HIV-Human immunodeficiency virus, *Available at*: (www.merriam-webstar.com, Last modified July 29, 2019).

5 World Health Organization, United Nations International Children Emergency Fund.

6 *Available at*: http://www.who.int/news-room/Fact-sheets/ detail/health-care-waste (Last modified July 29, 2019).

umbrella legislation of India that is environment protection act[7] enacted after the Stockholm declaration as India is a signatory to this convention.[8]

INTERNATIONAL AGREEMENT AND CONVENTION

The Basel Convention is the most comprehensive treaty on the trans-boundary movement of Hazardous Wastes and their Disposal.Basel convention has 170 member countries as parties objectives to protect the environment and human health against adverse effects due to hazardous waste disposal.Basel convention specifically refers to Y1 and Y3[9] and category of hazardous wastes and its features. Further secretariat of the convention has developed thecomprehensive document and technical guidelines on sound management of biomedical and healthcare wastes[10]. Further Bamako convention states the prohibition of imports of hazardous wastes within Africa. Article 5 and annexe C of Stockholm convention provides to reduce or eliminate the production of POP's[11], and guidelines were framed to the government of member parties to promote best available techniques and environmental practices for new incinerators within four years after convention comes into force[12]. UNEP 2006[13] also released to deal with health care waste. United Nations committee of experts on dangerous goods 2009 prevents bulk transportation of dangerous goods. Aarhus convention of the United Nations economic commission for Europe ensures environmental rights as well as human rights for present and future generations. Further guidance is available under the policy paper of WHO which suggests government organization to adopt strategies and principles for sustainable management of health care waste[14]. The International solid waste association is recognized as an international, independent and non-profit making

---

7 According to the Section 6, 8 and 25 of the Environment Protection Act 1986 government of India framed Bio medical waste (Management and Handling) Rules, 1998.

8 The United Nations Conference on Human Environment was held in Stockholm, Sweden from June 5-6 in 1972.

9 Y1- clinical wastes from medical care in hospitals, medical centers and clinics. Y3- waste pharmaceuticals, drugs and medicines.

10 Dr. Nanditha Adhikari, *Law and Medicine*, 494(Central Law Publications, Allahabad, 4th edn.,2015.)

11 Persistent Organic Pollutants are a kind of chemical that remains in environment for long time it can damage human health as well environment. These POP's are released from medical incinerators and other combustion processes.

12 Supra 10, p. 495.

13 United Nation Environment Programme 2006.

14 Supra 10, p. 497

association, working in the public interest to promote and develop sustainable waste management worldwide[15]. All the above discussed international agreements and conventions are specifically relevant to the handling, storage and transportation of hazardous wastes from health care centres as precautionary and preventive steps. Member countriesshould be taken into account of these international instruments while framing policy and legislation on the safe management of biomedical waste.

INDIAN LEGAL POSITION AND JUDICIAL RESPONSE ON BIOMEDICAL WASTE

National-level studies are not done in India to know the quantity of hospital waste produced each day per bed, but studies have been carried out at local or regional levels in various hospitals roughly about 1-2 KG waste is generated per bed per day.[16] If these wastes are not disposed ofproperly, it is considered to be a public nuisance under section 268[17], 280[18] and 291[19] of Indian penal code. There are also other provision which penalizes contraveners for the situation which either causes, or destroys, or diminishes the value or utility of any property, or affects the property injuriously as provided under sections 426[20], 431[21] and 432[22] of the Indian Penal code.

---

15 Ibid, p. 499.

16 supra note 1, p. 274.

17 Public Nuisance- A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the people in general who dwell or occupy property in the vicinity, or must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. Cited in Justice Rajesh Tandon, *Indian Penal code*, 312 (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.)

18 Punishment for public nuisance in cases not otherwise provided for- whoever commits a public nuisance in any case not otherwise punishable by this code, shall be punished with fine which may extend to two hundered rupees. Justice Rajesh Tandon, *Indian Penal code*, 312 (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.)

19 Continuance of nuisance after injunction to discontinue- Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be puinished with simple imprisonment for a term which may extend to six months, or with fine, or with both. Justice Rajesh Tandon, *Indian Penal code*, 312 (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.)

20 Punishment for mischief-whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both. Cited in Justice Rajesh Tandon, *Indian Penal code*, (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.).

Otherwise means that if any person who generates, collects, receives, stores, transports, treats, dispose or handles bio-medical wastes in any form shall be treated as a contravener of the above penal provisions[23]. Along with penal provisions under Indian penal code government of India showed its efforts to solve the problem of handling, management and disposal of biomedical waste by framing biomedical waste rules 1998 is applicable to an occupier or operator of authority, who generate, collect, receive, store, transport, treat, dispose or handle biomedical waste in any form[24] . The duty of the occupier of an institution is that they should take all steps to ensure effective methods of handling biomedical waste without any adverse impact onhuman health and the environment[25].Rule 6(2) lays down segregation, and container labelling of Biomedical waste should followby schedule II[26] and III[27] before storage,

---

[21] Mischief by injury to public road, bridge, river or channel-whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge navigable river or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. Justice Rajesh Tandon, *Indian Penal code*, 604 (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.).

[22] Mischief by causing inundation or obstruction to public drainage attended with damage- whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine or with both. Justice Rajesh Tandon, *Indian Penal code*, 603 (Allahabad Law Agency, Faridabad (Haryana) 24 Edn 2008.).

[23] Supra note 1, p. 275 cited in Ragunath patnaik, "Bio-Medical Waste Management and the process of Environmental Governance" 24 Central India Law quarterly 322(2001).

[24] Rule 2 of BMW rules cited in http://www.pccdaman.info/pdf/BMW/BMW-notification 1998 pdf visited on 31/7/2019.

[25] Rule 4 of BMW rules cited in http://www.pccdaman.info/pdf/BMW/BMW-notification 1998 pdf visited on 31/7/2019.

[26] Schedule II states different colour plastic bags for disposal of waste , yellow colour coding plastic bag consist of waste category 1,2.3 and 6 mentioned under schedule I that is human anatomical waste, animal waste, microbiology and biotechnology waste, soiled waste, solid waste. Red colour coding type of container must carry category 3,6,7 waste that is microbiology and biotechnology waste, soiled waste, solid waste. Blue /white translucent plastic bag must carry category 7 waste those are waste sharp, solid waste. Black plastic bag for disposal of waste must include category 5,9,10 type of waste those are discarded medicines and cytotoxic drugs, incineration ash, chemical waste. Cited in

transportation, treatment and disposal. Further schedule IV[28] specifies the procedure and content of labelto transport biomedical waste for treatment outside the premises. State pollution control board and pollution control committees for union territories shall be the authority for grant renew, cancel or suspend the authorisation for every occupier of the institution are prescribed under rules[29].bio medical waste rules are mandatory for standards for treatment and disposal of biomedical waste under schedule V.[30]

ROLE OF JUDICIARY

In *Dr BL wadehra v. Union of India*[31] a writ petition was filed under article 32[32] of the constitution of India for violation of fundamental right under Article 21[33] right to clean and healthy environment to the residents if Delhi and New Delhi. Supreme Court of India issued directions to municipal corporation and committee of Delhi and New Delhi to perform statutory duties, in particular, the collection, removal and disposal of 350 tons of garbage and other wastes everyday which remains uncollected. The affidavit filed on behalf of the government of the national capital territory of Delhi says that there are 13 hospitals with incineration facilities which are not sufficient for disposal of biomedical waste. The court on September 15, 1995, passed an order with a final date after which "not a drop of garbage is to be seen anywhere in the city of Delhi on early morning each day, and in meanwhile the whole garbage collection work shall be completed" Overnight and the city is to be left absolutely clean for the residents for their use. The further court

---

http://www.pccdaman.info/pdf/BMW/BMW-notification 1998 pdf visited on 31/7/2019.

27 Schedule III provides label for biomedical waste container/bags as biohazard and cyto toxic along with instruction "handle with care" and non-washable in prominently visible form. Cited in http://www.pccdaman.info/pdf/BMW/BMW-notification 1998 pdf visited on 31/7/2019.

28 Label mentions about day, month, year, date of generation of wate, waste category number, waste class, waste description, senders name and address and receivers name and address. Cited in http://www.pccdaman.info/pdf/BMW/BMW-notification 1998 pdf visited on 31/7/2019.

29 Rule 7 and 8 of Bio medical waste Cited in http://www.pccdaman.info/pdf/ BMW/BMW-notification 1998 pdf visited on 31/7/2019.

30 Standards for incinerators, autoclaving, liquid waste, microwaving, deep burial.

31 AIR 1996 SC2969 : 1996 AIR SCW1185 : (1996) 2 SCC 594 cited in Law and Medicine, Dr. Lilly Srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg. 275.

32 Article 32

33 Article 21

issued direction for disposal, to install incineration or another alternative method for all hospital with 50 beds. All India institutes of medical sciences, New Delhi, Municipal Corporation of Delhi and New Delhi Municipal Corporation were made responsible for issuing notices to all private hospitals in Delhi to make their own arrangements for the disposal of biomedical waste. Central pollution control board state pollution control boards should regularly send their teams for inspection to ascertain the collection, transportation and disposal. In *Ratlam Municipality v. Vardhichand*[34], *MC Mehta v. Union of India*[35], *Consumer Education and Research v. Union of India*[36], *MC Mehta v Union of India*[37], *Almitra Patel v. Union of India*[38] attention was drawn from B.L Wadehra case indeed this case is considered to be landmark judgment in the disposal of Biomedical waste.

CONCLUSION AND SUGGESTIONS

The government of India has taken its active participation in the international declaration, convention and revealed its interest in enacting and implementation of laws for protecting human health and the environment from biomedical hazardous substances in regional and local levels. Further, we can trace sufficient amendments to biomedical rules in the year 2000, 2016, 2018and also 2019 according to the needs of the people for effective implementation of Biomedical waste rules. But still, we can identify some of the shortcomings in the existing rules.

---

[34] (1987) 4 SCC 463: AIR 1988 SC1037: JT 1987 (4)
SC 630. Cited in Law and Medicine, Dr. Lilly srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg 275.

[35] AIR 2000 SC 1256: 2000 AIR SCW 924: (2002)n2 SCC 697. Law and Medicine, Dr. Lilly srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg 275.

[36] AIR 1980 SC 1622 : 1980 CRLJ 1075: (1980) 4 SCC 162 Law and Medicine, Dr. Lilly srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg 275.

[37] AIR 1998 SC 2340: 1998 AIR SCW 2311: (1998) 6 SCC 60. Law and Medicine, Dr. Lilly srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg 275.

[38] (1995) 3 SCC 42: 1995 AIR SCW 759: AIR 1995 SCC: 922 Law and Medicine, Dr. Lilly srivastava, second edition 2013, Universal publishing co pvt ltd, New Delhi pg 275.

According to Rule 6(5),[39] it permits to store biomedical waste by ensuring the waste that does not affect human health and the environment. In the matter of biomedical waste, such a kind of permit shouldnot be allowed because pathogenic microorganism cannot be prevented after a prescribed 48 hours.Properdisposal (schedule I of biomedical waste rules 1998) is required to prevent infectious diseases. There is a need to make this particular rule more stringent because in the name exception in the rule authorized person should not show his negligence in waste disposal.

As per Rule 6(6)[40] instructs the municipal body to dispose of treated biomedical waste and non-bio medical,solid waste (tubings, catheters, intravenous sets). As solid waste is plastic products after its disposal in the pits of municipal sites, it leads to soil pollution because plastics are non-degradable substance. So instead of dumping into sites or pits if there are alternative methods for recycling or reuse of these products, it can utiliseproperly.Treated biomedical wastes are dumped into pits where there is a need for the application of precautionary principle, because still, we are unaware about the consequence of leaching processleads to groundwater pollution after dumping of waste in municipal sites.

From all these observations, it can be said that we can't point out a particular occupier or municipal body for proper disposal because disposal can be done only on or inside the earth. In the name of development, man has invented many hazardous substances without knowing about upcoming consequence, and he is unable to give an exact solution for environmental problems. It is the fundamental duty of every individual to save mother earth.

---

[39] No untreated Bio-medical waste shall be kept stored beyond a period of 48 hours. Provided that if for any reason it becomes necessary to store the waste beyond such period, the authorized person must take permission of the prescribed authority to take measures to ensure that the waste does not adversely affect human health and environment.

[40] The municipal body of the area shall continue to pick up and transport segregated non bio medical solid waste generated in hospital and nursing homes, as well as duly treated bio medical wastes for disposal at municipal site.

TOWARDS RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT "MAPPING OF EDUCATION THROUGH THE PRISM OF CONSTITUTIONAL TRANSFORMATION"

-Deepa M. Patil*

INTRODUCTION

"Right to Education" becomes the Fundamental Right after 55years of adoption of the Constitution,by the Amendment in 2005, incorporation of Art. 21A which confers free and compulsory education from the age of 6 years to 14 years of age and the remaining content of right is elected to the regulations made by the law. This Fundamental Right was bought in to force through special legislation in 2009 Right of Children to free and Compulsory Education Act. And no of the policies is made for the implementation. Thus it could be understood that the right become the real enforceability not by making a simple legislation, which also needs additional policies formulation for the enforcement. Most importantly as stated by Dr. Amartya Sen in his caveat reiterates that the need for comprehensive policy and program for the action that can supplement the legislation. Which means legislation is necessary but not sufficient means of implementing the fundamental right to education. It is clear that policy formulation is indispensable not only from the point of view of legislative process but also from the point of view of implementing that right. It follows therefore that State should develop a comprehensive policy and programs that will guide all action taken by the State in the field of school education.[1]

The Recommendation of Constitutional Review Commission is extremely useful in this context.The Commission recommends that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the Constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.It also recommended that the Planning

---

* Assistant Professor JSS's Sakri Law College Hubballi, [Research Candidate KSLU Hubballi]

1 Dr. Niranjanaradya & Aruna Kashyp, *The 'Fundamentals' of the Fundamental Right to Education in India* 6(Bangalore: Centre for Child and the Law, NLSU)

Commission should devote the section of socio-economic right including the right to education in all its plan.[2]

The Fundamental rights can be implemented through the help of legislation and the legislation can be effectively enforced through the policies. In modern days the policies played important role in implementation of the goal and objects of the legislature.In this article the importance of policies in the implementation of the Fundamental rights (specially right to education) is discussed.

Through this article the attempt is made to trace the development of concept of education in the Constitutional provisions, as well discussion of special legislation and the various policies for the implementation of Right to Education is made. The focus mainly remains on how the Right to education is implemented and what the qualitative changes are brought into the realm of education through the various policies.

IMPORTANCE OF RIGHT TO EDUCATION

Indian civilization is known for its rich heritage and great contribution to the human life. Importance of education was known in India from ancient period. The main aim of the education during the Vedic period was to realise the self rather than gaining of knowledge or personal satisfaction.

---

[2] The National Commission to Review the Working of the Constitution was set up by Government Resolution dated 22 February, 2000 under the Chairmanship of Justice M.N. Venkatachaliah. The terms of reference stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The Commission submitted its report in two volumes to the Government on 31st March, 2002. Available at: http://interstatecouncil.nic.in/ncrwc/ (visited on 16/10/2020 at 13.20)
Chapter 3, Fundamental Rights, Directive Principles and Fundamental Duties", report of National Commission to review the working of Constitution, Value 1. Department of legal affairs Ministry of law, Justice and Company affairs the Government of India 2002, at Paras 3.20 1-2, 3.30. 1-2 available at: http:// lawmin.nic.in/ncrwc/finalreport/volume1.htm,(visited on 14/09/2020)
The Commission has stated that it will examine the working of the present provisions in the Constitution as well as the applicable laws and practice and consider how better these objectives may be achieved. (see Press Note of the Commission dated March 23, 2000)

As stated by Swami Vivekanada, "Education is not the amount of information that we put into your brain and runs riot there, undigested, all your life. We must have life-building, man-making, character-making assimilation of ideas. If you have assimilated five ideas and made them your life and character, you have more education than any man who has got by heart a whole library. If education is identical with information, the libraries are the greatest sages of the world and encyclopaedia are the greatest Rishis."

A man without education is equal to animal. Education is essential for not only for the development of the individual personality it is essential for the realization of his consciousness and to help him to become the complete person. In the democratic country like India only the education can establish the informative and transformative government. Education and educated citizen is very essential for the development of the community, society and the nation. Education is a powerful tool for preparing our citizens in the knowledge society. Education will amalgamate globalization with localization, enabling our children and youth to become world citizens, with their roots deeply embedded in Indian culture and traditions.[3]

The most important and urgent reform needed in education is to transform it, to endeavour to relate it to the life, needs and aspirations of the people and thereby make it the powerful instrument of social, economic and cultural transformation necessary for the realization of the national goals. For this purpose, education should be developed so as to increase productivity, achieve social and national integration, accelerate the process of modernization and cultivate social, moral and spiritual values."[4]

EVOLUTION OF EDUCATION IN INDIA

Before the 19th century in the ancient and medieval India, the education was a privilege available only to a chosen few. The education was considered as religious content and it was provided in the elitist medium of instruction which leads to the lack of social inclusiveness and practice of social

---

[3] "Ministry of Human Resource Development National Policy on Education 2016 Report of the Committee for Evolution of the New Education Policy" p.1 https://www.academia.edu/36230895/Ministry_of_Human_Resource_Development_National_Policy_on_Education_2016_Report_of_the_Committee_for_Evolution_of_the_New_Education_Policy_Government_of_India (visited on 25/02/2020 at 21:33)

[4] Report of the University Education Commission (Dr. S. Radhakrishnan Commission), 1948-49

exclusion.[5] During the Buddhism and Jainism period the education got its new dimension, education was no longer conferred to any particular group or class of society this may be called as common education for all. During this period two well-known University *Takshila* and *Nalanda,*were established and contributed in many field science, art, mathematics,astronomy, physics, chemistry, medical science and surgery, fine arts, mechanical and production technology,civil engineering and architecture, shipbuilding and navigation, sports and games. Indian scholars like *Charaka* and *Susruta, Aryabhata, Bhaskaracharya*, *Chanakya, Patanjali* and *Vatsayayna* and numerous others made seminal contribution to world knowledge.[6]

'During the Mughal period the rulers did not make any significant efforts to universalise the existing educational system, but tried to spread Islamic principles, laws, and social conventions education in India'. Any Muslim could acquire education at a '*Madrasa'* and all higher education was imparted in Arabic by *Moulvis*. The *Maktabas* and *Madrasas* were first confined to Muslims, but later, Hindus and Muslims had begun to study each other's language. Both the Hindu as well as Muslim educational institutions in pre-British India gave a greater thrust to religion than other matters.[7] It further aimed at the achievement of material prosperity.[8]One of the mile stone of Mughal education system was that the education institutions are made open to the every one irrespective of few class or communities.

IMPORTANT POLICIES FOR EDUCATION DURING BRITISH PERIOD

When British came to India as trades later became administrator, they realised the importance of common education for their smoother administration system. And they replaced Indian traditional system of education with the help of Christian missionaries which started providing common education to all in along with the preaching Christianity among the

---

5 Supra note 1, p 3

6 Supra note, p. 2 https://www.academia.edu/36230895/Ministry_of_Human_Resource_Development_National_Policy_on_Education_2016_Report_of_the_Committee_for_Evolution_of_the_New_Education_Policy_Government_of_India (visited on 25/02/2020 at 21:33)

7 History of Education Policy in India, doc http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000033SO/P000300/M013097/ET/145258955205ET.pdf p. 3, (Date of visit 26/10/2018 at 19:14)

8 N. Jayapalan, *History of Education in India* 40 (New Dehli: Atlantic Publishers and distributors, 2000.)

Indian natives. One important result of the great efforts by missionaries was to stir up governments both in England and in India to realise that it was their duty to do something for the education of the people under their rule. The Charter of 1698 clearly stated that it was the duty of English ministers of religion to give education along with their primary duty of spreading the Gospel. But the East India Company had realised the political significance of a policy of religious neutrality and therefore refrained from carrying out the directions of the Charter of 1698. However, the Company encouraged educational activity by establishing schools with liberal grants-in-aid.[9] Thus number of schools were established by the British Government. Some of the British commission played important role in the evolution of education policies in India such as: Charles Grant and William Wilberforce,[10]The Wood's Despatch of 1854,[11] The HunterCommission 1882,[12] Report and the Sadler Commission' 1917,[13] Sri Gopalkrishna Gokhale [14]

---

9 History of Education Policy in India, doc http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000033SO/P000300/M013097/ET/145258955205ET.pdf p. 4 ,(Date of visit 26/10/2018 at 19:14)

10 Missionary activists made recommendation to the East India Co for spreading the education in India. The main object of the recommendation was to promote Christianity and Western literature. The British Parliament added a clause in 1813 charter that Governor-General-in-Council less than one lakh for education and allowed the Christian Missionaries to spread their religious ideas in India https://www.jagranjosh.com/general-knowledge/development-of-education-during-british-period-in-india-1445314601-1(Date of visit 30/08/2020 at 20:00)

11 The main recommendation of committee was to establishment of organised system of education from primary to university, regional language education was promoted and it was also recommended to establish at least on primary school in every District or provide grants to the existing schools.

12 The main recommendations were that for establishment of primary schools at regional level as well as it should be provided in mother tongue, the establishment of school at backward area, and importance also given to the co-curricular and practical subject. The local authorities were given responsibility, freedom of selection of books, decide the school hours and holidays according to the local needs.

13 Which acknowledged the neglect of in India, mark the early genesis of right to education in India.

14 In 1910 for the first time in Indian history made the resolution for the free and compulsory primary education throughout the country. And also made recommendation to establish separate Department at the Central Government. But it was passed in the year 1917 in the name of Shri Vittalbhai Patel Known as the Patel Act18.

Hartog Commission 1929[15] Abbot and Wood Report, 1937[16] Sargent Plan 1944.[17]

British Education creates consciousness in the society which started reacting for the nation's quest for freedom and choice of best mode to attain the same. The great leaders of freedom movement realised the fundamental role of education in attainment of independence and its significance in the development of the nation in all its perspective. To attain free and compulsory uniform education to mass irrespective of their caste, class and sex to create active and aware citizenry,many of the Freedom fighters made the lot of efforts and struggled for it and made important contribution to national education before independence. This journey also lead to fight like *Gopal Krishan Ghokale, Raja Ram Mohan Roy, Pt. Madam Mohan Malviya,Mahatma Gandhi*[18]*, Dr. B. R. Ambedkar*[19]*, Jyothirao Phule, Arvindo* and other freedom fighter advocated for universal education. The Wardha Scheme of Education, 1937 [20]and the Sargent Scheme of Education 1944, can

---

[15] This commission gives more preference to the primary and mass education as compared to the secondary and University education. And also recommended for the four years' duration of primary education. Highlighted the problem of wastage and stagnation in education at the primary level. It recommended the policy of consolidation instead of multiplication of schools. There should be qualitative development and rural uplift must be the object of primary education. Liberal and scientific curriculum must part of primary education. https://www.civilsdaily.com/prelims-spotlight-important-british-commissions-and-committees/ (visited on 30/08/2020 at 20:20)

[16] Emphasises on scientific curriculum and well organised primary education. Teacher training and vocational education also got importance in the report. Along with the academic development art, physical trainings were also become part of the school.

[17] Made the recommendation for creation of separate Department for education at State as well as Centre. The age was fixed for every stage of education like Pre-primary, Primary and Secondary, also recommended for the mother tongue education till high school level. Educational provision is made for the physically and mentally handicapped children.

[18] Gandhiji formulated the scheme of Basic Education seeking to harmonize intellectual and manual work. Through which the independent self-reliable nation can be established.

[19] Ambedkar emphasized the need of proper and compulsory education to the children, then only it was possible to relieved from the drudgery work.

[20] With the inspiration of Mahatma Gandhiji article in the Harijan many of the educationist who took part in the freedom straggle started thinking in that

be said to be the landmark developments in the history of free and compulsory education in India. In the Wardha Scheme of Education many of the educationalists, national leaders, Social reformers and Education ministers of the provinces took part. Which gave rise to the fundamental concept of "Basic education" and advocated its importance, the Sargent Scheme can be said to be the first attempt to formulate a National Education Policy. Having the dream of providing upright education for ideal citizenship, with the psychological, physical and spiritual development. The scheme also wants to establish the society which is free from the evil and defects. All these developments paved the way for the recognition of primary education as a fundamental among masses and is essential not only for the individual development but overall development of the nation as a whole.

INTERNATIONAL INSTRUMENT FOR REALISATION OF RIGHT TO EDUCATION

The natural, harmonious and progressive human development can be constantly achieved only through the proper education. The systematic education can only create a perfect personality of the individual, and that complete knowledge is major instrument of conversion of the wealth and which is reason for the growth of nation. To attain overall development of human resources the efforts were made in the national as well as international level. Establishment of UNESCO in 1945, UDHR in 1998[21], ICESCR[22] are the major instrument to recognize right to education as human right. Along with these agreements no of international treaties are played important role in realisation of educational right for complete development of human resources.

POLICIES FOR IMPLEMENTATION OF RIGHT TO EDUCATION

After independence in 1947 to establish educated society, the State has set up two important goals, (1) to provide Universal free and compulsory education to all and (2) develop all primary education institutions. For the attainment of these goal two committees were established for conduct the surveys for assessing the possibilities of providing primary school within the easy walkable distance from the home of every child. The committee has in the chairmanship of Shri. G. Ramachandran conducted the survey and submitted its report in 1956. As a result, National Institute of Basic Education

---

line.Accordingly they called All India National Conference on 22nd and 23rd October 1937. That Conference also known as Wardha Education Conference.

21 Art.26 state about the educational rights.

22 Art. 13 and 14 of International Covenant on Economic, Social and Cultural Rights guarantees about the free and compulsory education to all.

was established in 1956. Later on the National Council of Educational Research and Training was set up as autonomous organisation in September 1961[23]. Along with this no of commissions and committees were established to reconstruction of education in the independent India. Later commissions Universal Education Commission[24]and the Secondary Education Commission,[25] the recommendation made by these commissions played important role in the field of education after independence.During the period of *Jawaralal Nehru* the Resolution on Scientific Policy was undertaken for the development of technology, science and scientific research was received special emphasis. Primary education really got its reconstruction only after the end of Third Five Year Plan. On the advice of Government in 1964-66 another commission[26]was established for the national pattern of education and on the general principles and policies for the development of education at all stages and in all aspects.[27]Regrettably, in reality it was found that first legislature has totally ignore and failed to implement the aspiration of Constitutional framers. Even though goal was specially mentioned in the Constitutional provisions due to lack of political interest and aspirations there has been gross violation of the children rights. After analysing government statistics Central government in India do not appear to have focused on education as a national priority. Between 1951 -55 public expenditure on education was less than 1% of the total domestic product(GDP) of India. During 1955-56 the first time more than one percent of total GDP spent on education but this figure stayed between 1% to 2% and till 1979.[28]After the study of national annual budget by Dr L. C. Jain a social activist noted that during 1951- 61, Article 45 'lay under a lid' there was "not to be found a passing reference to education let alone to Article 45 in the budget

---

[23] A. Biswas, and S.P. Agarwal, *Development of Education in India- A Historical Survey of Educational Documents before and after Independence*837(New Delhi: Concept Publishing Company,1994)

[24] (1948-49) the Commission was established to develop the higher and technical education.

[25] (1952-53) the Commission was established to develop the secondary education.

[26] Indian Education Commission also known as Kothari Education Commission.

[27] The Commission has observed that the existing system of education is unrelated to the life and there is a wed gap between it and national development. it also recommended that education must be related to the life, needs and aspiration of the people.

[28] Department of Education, Government of India, Selected Educational Statistics 2000- 2001 http://www.education.nic.in/htmlweb/ edustats-03.pdf

speeches."[29]It was increasingly evident that even three decades after the time limit set in Article 45, neither the Central Government not the various State Government were making much progress towards the attaining the goal set out by the draftsmen of that provision of the Constitution.[30]

In 1968 the first official Policy[31] was made by the Indian government for the development of primary education and try to implement it common school system to strength and access to the education and pave the way to social development. But due to lacking of detailed strategy, legal force, financial and organisation support the policy could not properly have implemented.The goal set by the drafts men of the Constitution need to be achieved by 1960, because of many factors this target again revised to 1970, then to 1976, again in 1988 present targeted to adopted in the policy frame after 65 year plans in 1990.

Matters did not improve significantly over next three decades. After the emergency an important change occurred in 1976, when, the education was added to the concurrent list after removing it from the State list.[32]The Educational Right has been reinforced by new 20point program and announced by Prime Minister in 14th January,1982.[33]These moves were made to give more power to Central Government in the matter of providing educational services on the national basis, but it did not result in any marked changes in the immediate aftermath.

---

[29] L.G.Jain, "Are Our Budget Makers Faithful to the Constitution? A Tour of Budget, 1947-2001", National Centre for Advocacy Studies,2001.

[30] Vijayshri Sripati and Arun K. Thiruvengadam, *Constitutional Amendment Making the Right to Education a Fundamental Right*, 152 Constitution, Vol. 1, ch. 3 (2002), http://lawmin.nic.in/ncrwc/finalreport/v1ch3.htm(last visited on 14/10/2020)

[31] The National Policy on Education 1968: A system of 12 years of School Education, popularly known as 10 + 2 system has been adopted. The 10 years' school is considered in three segments primary, middle and secondary. The primary and Middle together constitute elementary education.

[32] Constitution (Forty-second Amendment) Act on Indian Parliament, Dec 18, 1976, http://ondiacode.nic.in/coiweb/amend/amend42.hmt. (Last visited on 14/10/2020)

[33] "Point 16 of 20 point programme reads as follows: Spread universal elementary education in the age group of 6- 14 with special emphasis on the girl, and simultaneously involve students and voluntary agencies in programs for the removal of adult illiteracy "

The National Policy on Education 1986 (revised in 1992) the Resolution stressed the role of education in promoting national progress, a sense of common citizenship and culture, and in strengthening national integration. The policy envisaged a National system of education which implies that " up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparative quality."[34]The policy also states that "Sports and Physical education are an integral part of the learning progress, and will be included in the evaluation of performance . A nation- wide infrastructure for physical education, sports and games will be built into the educational edifice."[35] The policy also stress on the introduction of Yoga for the integrated development of body and mind.it is also stated that special cash incentives must be provided to the achievers in the extra-curricular activities especially Yoga and Sports. With all these objects also this policy not discussed about the shifting the free and compulsory education from non-enforceable right (DPSP) to enforceable one (F.R). Along with the national policies various state government brought different schemes for implementation of the education as a basic right. In 1990 Government has come out with the goals for universal primary education by 2010. The goal of universal and quality education is mainly emphasised by the Supreme Court in two historical judgments in 1993.[36]

As the result of these developments in 2002 the Indian Parliament enacted 86th Constitutional Amendment Act inserted Art. 21 A and Art. 51A (k) and amended Art.45 in the Constitution. As a follow up legislation in terms of Art. 21-A of the Constitution of India, the Parliament enacted Right to Children to Free and Compulsory Education Act 2009 (RTE), which came in force on the 1st day of April, 2010.[37] The Act is a landmark in the history of

---

[34] NEP Draft 2016. https://www.mhrd.gov.in/sites/upload_files/mhrd/files/nep/Inputs_Draft _NEP_2016.pdf (Last visited on 3/3/2020)

[35] NEP 1986 cited at 8.20 p.143,144
Available at: https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/v npe.pdf (Last Visited on 20/07/2020)

[36] Mohini Jain Vs. State of Karnataka AIR 1992 SC 1858; (1992)3 SCC 666 and Unni Krishnan Vs. State of Andhra Pradesh AIR 1993 SC 2178; (1993) 1 SCC 645

[37] Report of the Committee on Development of a Policy Framework for Implementation of the Right of Children to Free and Compulsory Education ACT 2009 in Schools in the NCT of Delhi. March 3, 2010
National Council of Educational Research and Training Aurobindo Marg, New Delhi
http://righttoeducation.in/sites/default/files/Report%20of%20the%20Committee%

education related legislation in India. The Act introduces a revolutionary change in enforcement of primary education in India. However, it was not made possible to implement the law as it was dreamed out by the legislature.

There are many important objects intended by the NEP 1986 were not supported by any legislations. It was only after the adoption of the National Plan and Action for Children,2005 which took policies mainly on the pre-primary education.

National education policy 2016 emerged as a result of past experience and the concerns and imperatives, that have emerged in the light of changing in national development, goals, societal need as well as dynamic of local National regional and global realities and changes including thinking learning need of children youth and adults.

Inspired by the thought of the father of the nation, policy bring into focus the role of education, in inculcating values, providing skills and competencies of citizens, and enabling them to contribute to the nation well-being. It recognises long-term economic growth and the development of the nation critically depend upon quality of products of the education system and that an education system built on premises of quality and equality is central to sustainable development and to achieving success in emerging knowledge economy and Society. The main vision emphasises that the quality education creates the enabled children and youth to become global citizens, with their deep rooted tradition and culture, which is main reason for the amalgamation of globalisation with the localisation.[38]

The National Education Policy 2020,was adopted on the basis of the recommendation of the committee for drafting the National Education Policy (Chair: Dr. K. Kasturirangan) 2019. This policy provides for the restructuring of education system.

Foundation Stage; Three years (3yrs – 6yrs) pre-primary, and two years 1st and II Standard (at the age 6yrs-8yrs).
Primary Stage: class 3 to 5 (at the age of 8yrs-11yrs)
Middle Stage: Class 6 to 8 (at the age 11yrs-14yrs)
Secondary Stage: classes 9-12 (at the age 14yrs- 18yrs)

20on%20development%20of%20a%20policy%20framework%20for%20implementation%20of%20RTE school 0NCT delhi.pdf

[38] Some Inputs for Draft National Education Policy 2016 http://www.languageinindia.com/oct2016/Inputs_Draft_NEP_2016_1.pdf

The main aim of the policy is to achieve Foundational literacy and numeracy, reforms in curriculum (which must develop the skill of critical thinking, discussion and analysis based learning), Medium of instruction (Vernacular or regional language must be medium of instructions until the completion of grade 8.), ensure universal coverage and inclusivity, Assessment of the Students(not only through the examination), effective governance of School (school complex concept must be introduced, Which must include all the stages of education), School regulation (done through self-regulation in along with the accreditation system), and Teacher training and management(their potentiality must be enhanced through proper and periodic training. And a national curriculum framework for teacher education will be formulated by the National Council for teacher education in consultation with the NCERT).

CONSTITUTIONAL PROVISIONS AND RIGHT TO EDUCATION

The framers of the Indian Constitution were well aware of importance of educated people in realisation of democracy. It took lot of discussion in the CAD regarding the enforcement of educational right but due to economic instability after independence it was finally decided to incorporate these provisions in non-enforceable part of the Constitution,[39]for that reason only in framing of Art 45[40] (draft Art. 35) they put the time limitation of ten years, unlike any other Directive Principles. In another Article 41[41] also secures educational right in accordance within the economic capacity of the State. The Constitution is also contented with innumerable other provisions that have a bearing on education.[42] Art. 46[43], Art. 47.[44] But in accordance with the

---

39 C.A.D Vol. VII., New Delhi: Lok Sabha Secretariat, 538 to 540 (2003)

40 Art. 45 reads: "The State shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of fourteen years."

41 Article 41 reads: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of underservant want."

42 Anuradha Saibaba Rajesh, "The Fundamental Right to Primary education in India: A Critical Evaluation", Indian Journal of International Law, Vol (50)1-4 issue 2010, p 91-111

43 Art. 46 reads; "The State shall promote with special care the educational and economic interest of the weaker section of the people, and in particular, of the Schedule Caste and Schedule Tribes, and shall protect them from social injustice and all form of exploitation."

44 Art. 47 provides- Duty of the State to raise the level of nutrition and the standard of living and improve public health.

Art.37,[45] Directive principles cannot be enforced in the Court of law as a matter of right. Furthermore, in the realm of fundamental rights as provided and protected in the part III of the Constitution in Art.28[46] and Art.30[47] educational rights. There was another important debate was taken place among the framers of the Constitution about whether education shall be shifted either the Union or concurrent lists so that central government would enact laws on education.[48] Along with these provisions the citizens can perform Fundamental Duties as provided in part IVA[49] of the Constitution only he is well equipped with the proper education. In modern days many of the International Laws and treaties, conventions and agreements put the more responsibilities on the different nations who were parties to the contract must try to implement the same. Accordingly educational rights also got more importance by the different agreements and Art,51(c)[50] of the Indian Constitution imposes responsibility on the Government to implement the same. All the above provisions of the Constitution clearly indicate a commitment to giving Indian children in this freedom and dignity and recognising their essential contribution to building a democratic nation.[51] In 1993 after two historical judgements [52], there was presser on the government

---

45 Art. 37 reads: "This provisions contained in this Part shall not be enforceable by any Court ……."

46 Art. 28 provides freedom as to attendance as religious instruction or religious worship in certain educational institutions.

47 Art. 30 grantees: Right of minorities to establish and administer educational institutions.

48 Maulana Asad who was the first Union Minister of education strongly opposed living the education enter into the States. He also argued that it was necessary to give this power to the central government so that uniform or National standard for education would be established. However, the other members of the constituent assembly believed that India is multi linguistic country and which requires the decentralization of education policy through which every State can develop their script and culture. Education in mother tongue only the Mode to achieve the object. See Granville Austin, "The Indian Constitution: Cornerstone of a Constitution" London: Clarendon Press 1966.

49 Ins.by the Constitution (Forty-second Amendment) Act 1976, s.11 (w.e.f. 3-1-1977)

50 Art.51 (c) provides, "Foster respect for International Law and treaty obligations in the dealings of organized people with one another."

51 Shantha Sinha, Emphasizing Universal Principles towards Deepening of Democracy Actualising Children's Right to Education" 2569 Economic and Political Weekly June 18, 2005,

52 Mohini Jain Vs. State of Karnataka AIR 1992 SC 1858; (1992)3 SCC 666 and Unni Krishnan Vs. State of Andra Pradesh AIR 1993 SC 2178; (1993) 1 SCC 645

to make the education as a fundamental right. As a result of this through the Constitutional mendment in 2002 and Art. 21A was incorporated and made the education from 06 years to 14 years as a fundamental Right, and also amended Art. 45 of DPSP, and Art.51 (A) (K) of Fundamental duties.

All the effort of the law making in along with the Constitutional Amendment for recognising education as a fundamental right can be achieved through the proper policies in this respect. The role of policies in realising this fundamental right can be done only through sincerity, commitment and proper policy measures. The pandemic situation in Covid- 19 made the Fundamental Right to education as a myth rather than the real. More than half population of the students, especially, economically backword class, socially backward class and rural class students are deprived of the online education or distant education because of lack of facilities like gadgets, internet, electricity and like aspects. The online education made more work pressure on the teacher and made the student more abusive. They become irregular, low attention, fear of technology, and more attached to the gadgets, less active physically as well as mentally. It is the responsibility of the State to bring such scheme and policies which enable them to handle such unexpected situation without any difficulty. And the students should not have deprived of their enjoyment of Fundamental Right to Education.

CONCLUSION

As observed by Pt. Jawaharlal Nehru "Children are like buds in the garden. They should be carefully and lovingly nurtured, as they are the future of the nation and citizens of tomorrow." It must be aim and duty of the both Central and State government give more priority should be given to education, which is basic and essential for the realisation of all the Fundamental Rights as well as democratic aspects. In all the budget reserved fund must be allocated for the implementation of education laws and policies. Achievement of universal free education is the real attribute to the Nobel souls of the Freedom fights as well as Makers of the Constitution. As stated by Swami Vivekanada, "The goal may be distant, but one should be awake, arise and stop not till the goal is reached."

A CRITICAL STUDY ON EXCEPTIONS FOR EXTRADITION OF FUGITIVE CRIMINAL

-S.B. Boregowda*

INTRODUCTION

The extradition law is a special branch of the law of criminal procedure. It deals with criminals and those accused or convicts of certain crimes with an intention to bring them to the system of criminal justice. The consensus in international law is that a State does not have any obligation to surrender an alleged criminal to a foreign State, as one of the principles of sovereignty is that every State has a legal authority over the people within its borders. It is true that there is no rule of international law, which imposes any duty on a State to surrender a fugitive, but since most countries desire the right to demand such criminals of other countries they have signed extradition treaties. Through by extradition treaties state surrendered the criminals to another State, therefore extradition is considered as an important tool to punish the criminal and bring back the fugitive offender before the judiciary. The object of this article is to: first, whether the rule of extradition is applicable universally; second, whether exceptions are there for extradition; third, whether the law of extradition is applicable to all types of crimesand lastly, to draw some conclusions on the future of the rule of extradition in potential new universal law.

MEANING OF EXTRADITION

Extradition is generally a matter of bilateral treaty. It has been held that there must be a 'formal treaty' not simply an agreement or notification. Extradition treaties provide a defined legal frame work for the return of fugitives between countries. Extradition treaties have provided the means to demand the surrender of suspected or convicted criminal from another State in which he has taken shelter. Extradition treaties confer a right on certain countries to ask for the persons who are alleged to have committed certain offences on their territories will be handed over to them for prosecution. The countries have the discretion power to refuse. Modern civilization demanded extradition as a rule and, as such, various treaties between States were concluded. In the early period, there were bilateral treaties but in global age it extended as multilateral treaties.

Extradition practice is based on international co-operation in criminal matters. Such practice is usually laid down treaties. At the time of enter into treaties both states can accept and adopt certain conditions for surrender of

*Research Scholar, DOS in Law, University of Mysore

criminals. At the time of extradition of criminals, parties of the treaty should perform their function according to such stipulations mentioned in the treaty. For what types of crimes both states are agreed to extradite the criminal's, for such crime only extradition treaty is applicable not for other crimes. In modern era on the basis of reciprocity or bilateral treaty only criminals are extradited. Because we are in contemporary era also, we don't have international Law regarding extradition. Extradition treaty is one of the most important essential conditions for surrender of criminals. When there is no universal law for extradition, then States can free to adopt different type of conditions in extradition treaty. But what are its conditions or stipulations are adopted by states for extradition of criminals, some of the conditions are helps to fugitives to flee from the punishment. Lot of issues are there in the extradition treaties, because of these issues criminals enjoying their life in abroad. What are the issues are there in extradition treaty it can be discussed under the heading of essential ingredients or conditions for extradition.

In *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra*[1], Justice P. Sathashivam observed that "extradition is the process whereby under a concluded treaty one State surrenders to any other State on its request, a person accused or convicted of a criminal offence against the laws of the demanding State, such demanding State is the competent authority to punish or try the alleged offender. Though extradition is granted in implementation of international commitment of the State, the procedure to be followed by the courts in deciding, whether extradition should be granted and on what stipulations, is decided by the municipal law of the land. Extradition is founded on the broad principle that it is in interest of civilized communities that criminals should not escape from the punishment and it is accepted as a part of the comity of nations that one State should assist to another State to bring back that criminal before judiciary". Especially in civilized era the practice of extradition plays a vital role to punish and bring back the fugitive before judiciary. One of the main objects of extradition is extradition acts as a warning to the criminals that they cannot escape from punishment by fleeing to another State. Because extradition has a deterrent effect. In global era extradited the criminals on the basis of bilateral treaty only and several States adopted the rule that without extradition treaty does not surrender the criminal who is physically present on its territory. Now a day's extradition is possible only when there is a bilateral treaty between the countries. Therefore, bilateral treaty is one of essential condition for extradition and treaties are regarded as

---

1 (2011) 11 SCC 214

the most important sources of international law. Extradition is generally a matter of bilateral treaty. It has been held that there must be a 'formal treaty' not simply an agreement or notification. Extradition treaties provide a defined legal frame work for the return of fugitives between countries. Extradition treaties have provided the means to demand the surrender of suspected or convicted criminal from another State in which he has taken shelter. Extradition treaties confer a right on certain countries to ask for the persons who are alleged to have committed certain offences on their territories will be handed over to them for prosecution. The countries have the discretion power to refuse. Modern civilization demanded extradition as a rule and, as such, various treaties between States were concluded. In the early period, there were bilateral treaties but in global age it extended as multilateral treaties. Extradition practice is based on international co-operation in criminal matters. Such practice is usually laid down treaties. At the time of enter into treaties both states can accept and adopt certain conditions for surrender of criminals. At the time of extradition of criminals, parties of the treaty should perform their function according to such stipulations mentioned in the treaty. For what types of crimes both states are agreed to extradite the criminal's, for such crime only extradition treaty is applicable not for other crimes. In modern era on the basis of reciprocity or bilateral treaty only criminals are extradited. Because we are in contemporary era also, we don't have international Law regarding extradition. Extradition treaty is one of the most important essential conditions for surrender of criminals. When there is no universal law for extradition, then States can free to adopt different type of conditions in extradition treaty.

EXCEPTIONS TO EXTRADITION

Every State exercises its jurisdiction over all the persons living in their territory but when a person after committing a crime may flee away to another country for saving himself. In such situation from where that criminal has escaped, that State is helpless to exercise its jurisdiction to punish the wrongdoer. This event is very vital for maintaining peace and order. In such cases, peace and order can be maintained in the State through by international assistance between the States.

In this situation the rule of extradition plays an important role to bring back the fugitive before judiciary. But certain exceptions are there for extradition of fugitives, such as

(a) Political Crime
(b) Religious Crime

(c) Military Crime
(d) Rule of Speciality
(e) Double Criminality
(f) Its own nationals

POLITICAL CRIME

If the offence is political in nature then requested State can refuse to extradite the fugitive criminal because, it is one of the mandatory ground for refusal of extradition. Accepted principle of international law is that offence of political character is one of the grounds for denial of fugitive criminal. It is in conformity with the writings of scholars and the practice of states as manifested in their treaties. The majority of bilateral treaties and all multilateral conventions and drafts contain a provision exempting, in mandatory or in permissive form and subject to various limitations, political offence from their operation. If the political offence itself is questionable then it should be decided by requested State because criminal took shelter in its territory and extradition proceedings will start according to the laws of requested State. Similarly, a great numbers of the national States also confirm the proposition that persons accused of political offences shall not be extradited[2]. Numerous States in their domestic or municipal law confirm the propositions that person accused of political offence shall not be extradited. The Indian Extradition Act-1962 also deals with offence of political character. Generally, a political offence is one committed with the object of altering the State government or encouraging it to alteration its rule. The Indian Penal Code and Criminal Procedure Code do not recognize nature of political offence as a category of offence. It does not mean that political offence is unidentified in jurisprudence. But in extradition matter nature of political offence is one of the exceptional grounds for extradition. Universal accepted principle that political offence is one of the exceptional and compulsory grounds for refusal of extradition. Before the French revolution the term political offence was unknown to the society and the practice of international law. During 19th century the principle of non-extradition of political offenders was gradually acceptance. It is the firm attitude of the U.K, Switzerland, Belgium, France and the United States that principle has become general. Even in British period also political offence was also one of the mandatory grounds for denial of extradition. When India got independence from the Britishers, Government of India enacted the Extradition Act in 1962. Even in

---

[2] Sathyadeva Bedi, "Extradition in international law and practice", vol-2,Discovery publishing house, New Delhi, 1st ed, 1991, p-373.

that statute also offence of political character is one of the exemption ground for refusal of extradition[3]. Section-31(1) (a) of the extradition Act, 1962 provides that there should not be surrender the fugitive criminal if requesting State requests to requested State to surrender of fugitive criminal for political crime or try to punish the offender for character of political offence[4]. Even in global era also worldwide several States accepted principle that criminal should not be surrendered if he committed a political crime. Article 3 of the Model Treaty on Extradition, 1990 provides Mandatory grounds for refusal. In Model treaty on Extradition, 1990 provides that extradition will not be allowed if the crime for which extradition is demanded is regarded by the requested State as a crime of a political character[5]. Requested State refuses to surrender the criminal if requested State thought that what the request made by the requesting State for extradition it has the purpose of punishing a fugitive criminal on the account of race, religion, nationality, ethnic, origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons[6]. It means requested can refuse to extradite the fugitive criminal because if requesting State requests to requested State to surrender the fugitive criminal for the purpose of punishing on the ground of political opinion, sex, race, nationality, etc. therefore political offence is one of the mandatory grounds for exemption from extradition. In modern era several States contain the provision regarding political offence in their internal law. State of U.K. adopted the phrase "offence of political character" in extradition Act-1870 and the same concept

---

3 Sec-31 of the Extradition Act, 1962 provides restrictions on surrender.

4 Sec-31(1) (a) of the Extradition Act, 1962 provides if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character.

5 Art-3(a) of the Model treaty on Extradition, 1990 provides if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature. Reference to an offence of a political nature shall not include any offence in respect of which the Parties have assumed an obligation, pursuant to any multilateral convention, to take prosecutorial action where they do not extradite, or any other offence that the Parties have agreed is not an offence of a political character for the purposes of extradition;

6 Art-3(b) of the Model treaty on Extradition, 1990 provides that nationality, ethnic, origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons.

is used in the Extradition Act, 1989[7]. After independence Government of India enacted Extradition Act in the year of 1962 and the concept of political offence has been inserted in the statute. Related to identify the political crime different criteria has been adopted:

a) The intention of the Offence
b) The Situations of the crime
c) It embraces definite crimes only, eg, sedition or attempted sedition
d) That the action is focused against the political association, as such, of the demanding State
e) To commit a political offence, there should be some political unhappiness
f) In political offence but except insurgent and terrorist acts[8]

Earlier to the French revolution, 1789 the Political offence was unidentified in international law. It was incidentally due to the French revolution political criminality slowly undertook a modification. During the 19th century the principle of non-extradition of political criminals was gradually presumed. It is outstanding to the method of Switzerland, UK, Belgium, United States and France that the norm has become universal. Its existence is a needed condition for a dynamic idea of political shelter[9]. There is no appropriate regulation regarding empathy of political crime and it depends upon demanded State. It means where that person took asylum or where he physically presents, that State will decide whether it is a political crime or not. In modern era even political crime is also one of the contemporary problems of extradition. Related to this United Nation should conduct one international convention on extradition and define what political crime is. Otherwise fugitive criminal can take political crime as a defence for his crime and extradition. Even in *Haya Della Torre case* also Haya Della Torre took the defence on the ground of political crime.

If the political offence itself is questionable then it should be decided by requested State because criminal took shelter in its territory and extradition proceedings will start according to the laws of requested State. Similarly, a great numbers of the national States also confirm the proposition that persons

---

7 Sir Robert Jennings and Sir Arthur Watts, Oppenheim's International law, vol-1(peace) 9th ed, 2003, universal law Publishing Co Pvt. Ltd, p-965.

8 J.G.Starke "Introduction to International law", Adithya Book Pvt Ltd. New Delh,4th Ed.1994,P.355

9 Sir Robert Jennings and Arthur Watts, "Oppenheim's International law", Vol-1 peace parts 2 to 4, 9th ed, Universal Law publishing Co. Pvt Ltd, 2003, P, 962-963.

accused of political offences shall not be extradited[10]. Numerous States in their domestic or municipal law confirm the propositions that person accused of political offence shall not be extradited. The Indian Extradition Act-1962 also deals with offence of political character. Generally, a political offence is one committed with the object of altering the State government or encouraging it to alteration its rule. The Indian Penal Code and Criminal Procedure Code do not recognize nature of political offence as a category of offence. It does not mean that political offence is unidentified in jurisprudence. But in extradition matter nature of political offence is one of the exceptional grounds for extradition.

MILITARY OFFENCE

Military offence is also one of the mandatory grounds for refusal of extradition. An offence under ordinary criminal law, then requested State can reject the request of requesting State because it is one of the mandatory grounds for refusal of extradition under Model treaty on extradition, 1990[11]. According to Model Treaty on Extradition, 1990 if an offence is not a crime under ordinary criminal law then only fugitive criminal exempted from extradition otherwise he is held liable as like common man. Generally Military crime can be divided into two categories. They are

a) Offences under ordinary criminal law
b) Offences specifically relates to Military Matters

In above two categories, extradition will not apply for Second category. In case of first category how a common man is liable as like even military persons are also held liable, ie, offences such as rape, murder, kidnapping, Dacoity etc. such offences, even if committed by the member of the armed forces are not considered a military offence. A considerable number of bilateral and multilateral conventions as well as national statutes contain provisions specifically barring extradition of a fugitive if he is charged with an act or omission which essentially is a military offence and hence is punishable only under the military laws of the demanding State. To acquire this designation, the alleged act or omission should not primarily be either a violation of the ordinary penal code or a violation of the laws of war which

---

[10] Sathyadeva Bedi, "Extradition in international law and practice", vol-2,Discovery publishing house, New Delhi,1st ed, 1991, p-373.

[11] Art-3(c) of the Model Treaty on extradition, 1990 provides if the offence for which extradition is requested is an Offence under military law, which is not also an offence under ordinary criminal law

would convert it into an international crime[12]. It is true that now a day the practice of non-extradition for military offence has been so universally accepted. However number of treaties which expressly contain the provision regarding states adopted the practice of non-extradition for military offences. Even several States adopted the practice of non-extradition for military offences in their domestic law.

RELIGIOUS CRIME

Religious offence is also one of the mandatory grounds for refusal of extradition.Religious crime means any act which insults religious feelings and stimulates serious negative emotions in people with strong belief and which is usually associated with a traditional response to, or correction of, sin.Even in Model treaty on Extradition, 1990 provides thatRequested State refuses to surrender the criminal if requested State thought that what the request made by the requesting State for extradition it has the purpose of punishing a fugitive criminal on the account of race, religion[13]. Therefore in modern era it is universally accepted principle that religious crime is also one of the compulsory grounds for refusal of extradition.

RULE OF SPECIALTY

Rule of Specialty is also one of the essential conditions for extradition. This rule also finds a place in the extradition treaties and municipal laws. The doctrine of Speciality is however recognized rule of International law relating to extradition. Under this rule, the demanding State can punish the extradited person for the offence for which he was extradited and for no other crime[14]. It means for what crime the person was extradited demanding state should be tried for such crime not for other crime. For example, if a person is surrendered for rape, he cannot be tried for causing murder. It means when a person is extradited for a specific offence, he can be tried for that offence only. If that person involved in any other crimes other than for what purpose or offence he was extradited, the criminal has to be returned first to the State which granted and fresh extradition procedure is to be start. It means after extradited if states finds that, that person involved in other offences also

---

[12] Sathyadeva Bedi, Extradition in international law and practice, vol-2,1st ed, 1991, Discovery publishing house, New Delhi, p-393

[13] Art-3(b) of the Model treaty on Extradition, 1990 nationality, ethnic, origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons.

[14] K.C.joshi, "International law and Human rights", Eastern Book Company, Delhi, 3rd Ed,2016, P.201

immediately state cannot start the trail. Should return the person to the State where that person was brought. Then fresh extradition procedure will be start if State is succeeds, then only state can conduct trail for such offence

DOUBLE CRIMINALITY

Double Criminality means a crime basing upon which the State requesting the extradition should also have been confirmed as an offence in the State-extraditing. It means what the offence committed by that offender in requesting State and it is also an offence where that person presents. No person is to be extradited or surrendered or handed over if his crime is not an offence under the criminal law of State–extraditing. Therefore, his crime should be an offence in both requesting and requested States, because Nature of crime is different from one State to another.It means a crime basing upon which the State requesting the extradition should also have been confirmed as an offence in the State-extraditing. According to which extradition is only granted in respect of a deed which is a crime according to the law of the state which is asked to extradite, as well as of the state which demands extradition[15]

ITS OWN NATIONALS

"Extradition is the delivery of an accused or a convicted individual to the state on whose territory he is alleged to have committed or to have been convicted of a crime, by a state on whose territory the alleged criminals happens to be for the time being"[16]. The purpose of extradition is to prevent criminals who flee a jurisdiction to escape from punishment for an offence they have been accused or convicted of. In many cases a person after committing a crime in a foreign State flees back to his own State. The nationality plays a very important role in extradition proceedings. The surrender of a national has always remained a controversial point and practice of States considerably differs on it. The controversy over the surrender of national is a question of immense significance. Therefore, to remove this controversy universal law is essential. Usually States do not allow the extradition of their own citizen. Belgium was the first State which was passed law on extradition in the world in 1833. Many countries such as the Netherlands, Belgium, Italy, Germany, Switzerland and France have adopted a rule not extraditing their own nationals to foreign state. Nationality is the link through which an individual can enjoy the benefits of International law. It means any person wants to enjoy the benefits of International law should be a

---

[15] Sir Robert Jennings and Sir Arthur Watts, "Oppenheim's International Law" Vol-1 Peace, universal law Publishing Co. Pvt. Ltd., 9th ed, 2003, p-958

[16] Prof.Oppenhiem " International Law",7th Ed,P.631

nationals of one State otherwise he cannot and State will protect us in international level. Therefore, he should be nationals of one State. Many States enacted laws regarding not to surrender their own nationals if he committed a crime in requesting or demanding State. But they will prosecute him according to their domestic law and starts the inquiry or proceedings under its municipal law.

In modern era all the States adopted different practice for extradition. In international level there is no universal law regarding extradition. Therefore, States enter into extradition treaty with each other and according to the terms and conditions mentioned in the treaty contracting parties extradite the fugitive criminal. Even in the absence of treaties also States can extradite the criminal to another State on the basis of good faith or reciprocity. Now a day a criminal is extradite to demanding State because to prevent criminal who flee from a jurisdiction to escape from sentence for a criminal offence they have been accused or sentenced of. Criminals are transferred so that their crimes may not go unpunished. After got independence from Britishers in 1947, Government of India enacted its own extradition law; it is called Indian Extradition Act, 1962. Through this Act State of India adopted the different practice and procedure for extradition of fugitive criminal to foreign State. From 1947 to till today Government of India enter into extradition treaty with more than 42 States. In extradition treaty all the contracting parties accepted different terms and conditions for surrender of fugitive. At the time of request requesting State should follow the procedure or rule mentioned in treaty and domestic law of the requesting state. In British period, at first extradition was delimited through by the United Kingdom Extradition Act, 1870. Later another extradition Act was enacted in 1903. But this Act continued to be in force even after India got freedom from Britishers and until 1962. From 1962 to till today Extradition Act plays a vital role with suitable modifications. In International level all states are sovereign, no one State shall not intervene or compel to another sovereign State to extradite or surrender of fugitive criminal. Because no one State shall not claim extradition as a right but it's only a legal duty. Father of Modern International law Hugo Grotius says each State has the legal duty to punish or to surrender the criminal for prosecuting, if such fugitive criminal physically present within its boundary as have done the crime in foreign State. What the practice is adopted by the India for extradition of fugitive criminal it is not provided in international law but it is its domestic law. When requesting State requests the State of India for surrender of fugitive and when such requests received by the central Government it shall refer the matter to Magistrate to conduct inquiry. Then

magistrate shall conduct inquiry and submit the report to Central Government. But one of the lacunas in the practice is that it is necessary to follow what the report submitted by Magistrate. It means the whole discretionary powers vested in Central Government to surrender or reject to surrender of fugitive. Extradition is an act where a State surrender a person alleged or sentenced of committing an offense in another state, over to their prosecution. It is an accommodating (cooperative) law enforcement procedure between the states and depends on the engagements made between them. The extradition procedures are dependent on the law and practice of the requested State.in India unless proved the offence every accused is considered to be innocent. The process of extradition starts with request of foreign State for extradite of a person through by its diplomatic representative to the Government of India through Indian diplomatic agent in that State. If any mode is provided in the treaty, contracting States can follow such mode also. On the basis of certain grounds requested State can refuse to extradite the fugitive criminal because if offence is related to political, military, religious, double jeopardy and time bared limitation. But one of the lacunas is no one law will not define what is political crime in international level. At the time of extradition requested State will decide whether offence has a political character or not according to their own domestic law or practice. If it is political offence requested State denied the extradition. When there is this type of practice exists in the world, criminal can flee from the punishment. If requested State can refuse to extradite the fugitive criminal on the basis of natural justice. When states adopted their own practice regarding extradition then it's very difficult to bring back the fugitive criminal before the judiciary. Therefore all the States should have one type of mind set regarding extradition. Because crime is an evil in the society and it destroys the peace atmosphere in the world. Therefore universal law is needed for extradition. Even United Nation from 24th October, 1945 to till today it will not conduct single convention on Extradition. Regarding this U.N.O will enact a universal law and compel to all the States should follow. Otherwise States can adopt different municipal laws and different practices regarding extradition and it's create a lot of confuse. Even criminals also can escape from the punishment because of different practices adopted by the States for extradition.

CONCLUSION

In contemporary period crime is considered as an evil in the world. It is the social responsibility and obligation on every State to punish the criminals. Now a days States enacted plenty of legislations to punish the culprits and reduce or lessen the crime rates, because through by statutes or laws only we

can create fear in the minds of the people. Father of Modern international law Hugo Grotius said every State has the right to punish the criminal irrespective of nationality, because without punishment it's very difficult to establish the peace in the world. Therefore, he said it is the societal obligation of all the State to punish the criminal. But related to extradition of criminal,internal law and treaty provisions plays an important role because there is no universal law for extradition. UNO enacted Model Treaty on Extradition, 1990 and Model Law on Extradition, 2004 but it is not a universal law, it is only a model law for States to enact its own domestic law for extradition. Even today also States follow the procedure of extradition according to treaty rules and municipal law. But one of the lacunas in extradition is exceptions for extradition. It means what the offence is committed by that person, if it is a political crime, religious crime, military crime then extradition will not be applicable for extradition. Even the rule of double criminality also exemptions from extradition. Therefore, to remove all these faculties universal law is essential and then only injured State can bring back the fugitive offender before the judiciary otherwise it is very difficult to achieve the object of United Nation.Extradition is the deliver by one State to another of a person accused or sentenced of a crime outside of its own land and within the territorial jurisdiction of the other which being capable to try and penalize him requests the surrender. Extradition is the authority to hand over of a violator of law is utterly a right of the national Government. Therefore, all requests for surrender of fugitive must come from the executive authority of the requesting State, which means through its diplomatic representatives.

ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN SETTLEMENT OF INDUSTRIAL DISPUTES IN INDIA

-Aakash Y. Raj*
& Dr.Divya D.V. * *

INTRODUCTION

According to Industrial Dispute Act, 1947, section 2(K), Industrial Disputes can be explained as situations of disputes or differences between employees and employers. It also considers the disputes among employers and workers that are related to employment and unemployment issues and conditions of regulated orunethical labour activities[1]. Alternative dispute resolution (ADR) can be explained as a mechanism adopted by the legal system of a country to achieve the best resolution for disputes. This mechanism is highly used in the field of an industrial disputes to resolve contractual issues between employers and employees in India. ADR settlements can be classified into four types are Arbitration, Conciliation, Mediation, and Negotiation.

However, the negotiation settlement type of ADR is not statutorily recognized and it allows self-counselling among parties for solving disputes[2]. ADR is effective for solving case pendency in courts. With help of diverse and developed techniques, this legal mechanism reduces the burden of case pendency's on courts. This legal mechanism is based on Article 14 and Article 21 of the Indian constitution that ensures the right of equality before the law and the right to life and personal liberty of citizens[3].

Alternative dispute resolution includes dispute resolution processes and strategies that act as a means for the disputed parties to come to a peaceful settlement agreement short of litigation. It is an alternative way where parties can settle disputes, with or without the help of a third party. To settle the

---

* Research Scholar,CHRIST(Deemed to be University), Central Campus, Bangalore – 560029

**Assistant Professor,CHRIST(Deemed to be University),Central Campus, Bangalore – 560029

1 Vijay M Gawas, "Analysis the provision for right to strike of workers under the Industrial Dispute Act 1947 and other provisions of laws." *4 IJOL,* 25-30, (2018)

2 Anubhav Pandey "All you need to know about Alternative Dispute Resolution (ADR)", May 9, 2017.

3 Ibid.

industrial disputes initially theemployer and employees have to negotiate with each other which is called negotiation. In this step help of an outsider is not required. The fundamental purpose of the negotiation process is for adequatediscussion between the employer and employee about the dispute for each side to take place so that an amicable settlement agreement can be reached. If negotiation is not fruitful then they shall refer the matter to the conciliator which is called a conciliation proceeding and here help of the third party is required.

In this case,a conciliator is a person who is appointed by the government and whose duty is to help the parties to reach an agreement. He just helps the parties without giving any binding decision. He shall make the parties understand that what will be the ultimate result, if they settle the matter between them; what will be their loss, and what will be their gain if they go to the court. This is a win-win process; there is no fair loss from any party. If the parties fail to settle the dispute between them in a conciliation proceeding then they may refer the dispute either to the arbitration or they may call for strike or lock-out. Alternative dispute resolution (ADR), for instances negotiation, conciliation, and arbitration, is often regarded as a better option than the more conventional mechanisms for the settlement of the industrial dispute, because of the lower cost and greater speed involved, it has the potential of presenting a more successful and sustainable solution to the industrial dispute.

ADR IN INDIA

ADR is facilitated to overcome shortcomings of the judicial system and helps to manage tension in community-related to any legal dispute. India has entered into a bilateral investment protection agreement UK and Germany. Apart from that this country has also entered into agreements with other foreign countries such as Russian Federation and the Netherlands. All of these agreements are needed to ensure provisions for the settlement of disputes that can arise regarding contractual relationships[4].

Conciliation is the most common form of settlement used for resolving disputes in this country. Industrial Dispute Act 1947 (I.D Act), identified the most effective use of conciliation type of settlements for solving contractual disputes. According tothis act, settlement is defined as a situation that arrives after a conciliation proceeding, and a written agreement between employer

[4] Ujwala S. Shinde, "Critical Analysis of ADR Mechanism in India." 3 *D. J*, 9-12 (2017)

and employee is presented. If this situation is not present then through conciliation proceedings agreements are signed between parties to resolve the situation[5]. Through this Industrial Dispute Act, disputing parties can settle disputes through effective negotiation agreements before taking it to the Government office for conciliation. Section 89 of the Code of Civil procedure 1908 (CPC) allows courts as well as disputing parties to resolve pending cases through effective methods other than litigation. This section of CPC allows courts to identify elements of settlements that can be agreed upon by disputing parties, based on such available elements courts formulate terms of settlement and allow parties to observe settlement criteria. Disputing parties provide feedback after observation of settlement criteria and based on feedback from disputing parties' courts reformulate agreements that can be passed through arbitration or Conciliation.

Apart from that, judicial settlement mediation can also be considered in the case of resolving disputes where there is a presenceof settlement elements. In case of arbitration and conciliation disputes are solved according to Arbitration and Conciliation Act 1996[6]. However, in the case of mediation courts can consider compromising between disputing parties according to Section 89 of CPC 1908.

Through ADR constitutional rights mentioned in Articles, 14 and 21 are maintained that includes the right of personal liberty that provides freedom from physical restraints and confinement aroused due to contractual disputes to both employer and employees[7]. ADR ensures freedom to disputing parties to express their views on contractual agreements and matters of dispute.

This mechanism also allows disputing parties to restore employment relationships as they can discuss issues on the same platform. Further conflicts between disputing parties can be avoided as agreements are made based on feedback from both parties regarding the availability of settlement elements[8].

---

5 The Industrial Disputes Act, 1947 (ACT NO. 14 OF 1947 1*)

6 Arbitration and Conciliation Act, 1996 (Act no 26 of 1996)

7 Sylvine "Substantive Rights That Flow from Article 21"(Last visited onJune 16, 2016)

8 Supra note 2.

INDUSTRIAL DISPUTES IN INDIA

Industrial disputes can result in form of strikes, lock-outs, and go-slow tactics. Strikes or lockout can be described as a stoppage of work by employees that are initiated by trade unions. In trade union activities groupsof employees act together to apply last resort for creating pressure on employers to resolve grievances that limit employers to accept terms and conditions of services that employees want to rejoice[9]. The causes for industrial disputes in Indiacan be broadly classified into two categories: economic and non-economic causes. The economic causes will include issues relating to compensation like wages, bonuses, allowances and conditions for work, working hours, leave and holidays without pay, unjust lay-offs, and retrenchments.

The non-economic factors will include victimization of workers, ill-treatment by staff members, sympathetic strikes, political factors, indiscipline, etc. According to the Industrial Disputes Act, 1947, industrial disputes can arise due to a lack of fairness of standing orders, and retrenchment of that is resulted from closing down of factories and layoffs. Apart from that lock-out on claims for fixation of minimum wages, disputes between rival trade unions and denial of benefits of the award by the employer can influence industrial disputes.

The economic cause is the prime cause that influences industrial disputes related to interest. Two major reasons behind economic causes are non-fulfillment of demand for employees' minimum wages and wage difference between industrial sectors, regional levels as well as geographical levels[10].

According to section 2(q) of the Industrial Disputes Act 1947, a strike can be defined as cessation of work by persons who are employed in industries and acting in combination against refusal of deals related to employment[11]. A strike is considered as on oldest and most effective weapon of labour or employees for securing financial justice from employers. A strike is the most common industrial dispute at present in India. Industrial Disputes

---

9 Sudarshan Prasad Singh. "Historical Perspective of Industrial Disputes in India." 1 *IJSCR,* 1-7, (2018).

10 Ibid.

11 Vijay M Gawas "Analysis the provision for right to strike of workers under the Industrial Dispute Act 1947 and other provisions of laws." *4 IJOL,* 25-30, (2018)

Act 1947 provides employees the right to strike, however, it is not considered as a fundamental right by the Indian Constitution.

According to the Government of Indian Act 1935, current list III of schedule number VIII, central government, as well as provincial and president legislatures, are empowered to control activities of trade union, industrialand labour disputes[12]. Apart from that, article 19(1) of the Indian Constitution highlights the protection of certain freedoms as fundamental rights that are freedom of speech and freedom of expression. Other fundamental rights highlighted in this article are to form associations and the freedom of forming associations to assemble peaceable and without arms.

However, none of these rights support the freedom to strike against employers regarding unsolved employment issues. For example, in the case of *Kameshwar Prasad V., The State of Bihar* court verdict concluded that strike is not a fundamental right thus employees have no legal or moral right to go on strike and results in financial issues for the employer[13]. However, under labour code on industrial relations bill passed in 2019, based on Trade Unions Act, 1926, Industrial employment (standing Orders) Act 1946, and Industrial Disputes Act 1947,the ministry amended the definition of a strike by including mass casual leave of employees within it[14]. This amendment of code also highlighted termination of workers after he or she has completed tenure under a fixed term-employment is not going to be considered as retrenchment.

Through amendment of labour code, the labour ministry of respective countries expects to make employer engagement or disengagement regarding requirements of workers easier to avoid industrial disputes. In this context, ADR helps to solve industrial disputes related to wage issues and lock-out issues which facilitate conversation between employer and employee and allow coming up with favourable agreement without presenting it in court.

Arbitration of common modes used in ADR; this process cannot exist without the presence of valid arbitration agreement for the earlier period of the emergence of dispute. Through this technique parties expecting resolution refers to matters of dispute to one or more persons who are named as

---

12 Ibid

13 Supra note 11.

14 Yogima Seth Sharma, "Govt introduces Labour Code on Industrial Relations bill in Lok Sabha" *The Economic Times*, Nov 28, 2019.

arbitrators. The decision of the arbitrator related to matters of dispute is based on the party's preference that is called an award[15]. This method is focused on obtaining fair settlements of disputed matters without taking it to the court and without wasting a long period for resolving disputed matters. Section 8 of the Arbitration and Conciliation Act 1996 allows disputing parties to consider moves that take to civil court if cases of disrespecting arbitral agreements occur. However, for applying in civil court applicant party is required to have a written copy of arbitration that acts as proof of arbitration.

On the other hand, in the case of **Mediation**, third and neutral parties are identified by parties involved in disputes for reaching an effective agreement. It is easier than arbitrator as well as it is uncomplicated and ensures a party-centred negotiation process in which a third person or party acts as a mediator through using effective communication techniques. However, this method is fully controlled by parties involved in disputes as the mediator has no power to impose voice and has no power to make decisions regarding elements that are required to be considered in fair settlements. However, there are some cases where mediators fail to come up with negotiation agreements with effective communication[16]. In such situations, the best alternative to a negotiated agreement (BATNA) is considered where both parties come up with possible outcomes and in sustainable situations, each party conveys expected scenarios regarding disputes.

On the other hand, a most likely alternative to a negotiated agreement (MLATNA) is based on the fact that the best result is dependent on the abilities of mediators[17]. After effective evaluation of the preference of both parties, the mediator comes up with agreements that are either slightly in support ofthe left or right party based on the negotiation capabilities of parties and the negotiation situation. However, in the case of the worst alternative to a negotiated agreement (WATNA), the worst possible outcomes can be experienced that can happen after or during the negotiation procedure.

In the case of **Conciliation** less formal nature of arbitration is considered. This process focuses on facilitating amicable resolution between parties thus, parties involved in dispute use the help of a conciliator. In this method, the conciliator meets with each party personally to reduce tension

---

15 Supra note 2.
16 Supra note 2.
17 Ibid

related to the disputed situation[18]. This personal meeting with the conciliator helps to enhance communication with parties and helps conciliators to identify issues related to disputes that create barriers for settlements. Unlike arbitration, no prior agreement is required in this respective ADR method.

CASE EXAMPLES

For exploring the successful implementation of ADR for solving the industrial dispute, the case of Appellate Panel Arbitrators of *Stock exchange Hyderabad V Punjab Brokers Pvt Ltd* can be considered. In this case, the appellant explained the decision to liquidatethe Applicant position by respondents was unfair, irregular and incorrect. Appellant also explained this decision as a mistake and prayed for reimbursement of loss that amounted to INR 75.00 million[19]. After taking this case to legal authority, the Panel identified that the applicant's ledge account was subjected to irregular debit balances and the appellant brought the account back to credit in minimum time. Panel considered Doctrine of Estoppel based on a continuous extension of credit to Appellant and dues related to regular settlements. This Doctrine of Estoppels limits parties from withdrawing contractual promises made to the second party. Specifically, when the second party has reasonably relied on promises made by the first party regarding financial agreement Doctrine of Estoppels is beneficial.

According to ADR regulations personal hearing was arranged to maintain the privacy of disputing parties. A personal hearing appellant expressed that senior executives for the respondent's side conceded that decisions regarding liquidating positions were incorrect and suggested settling issues through bilateral conversation. However, the appellant did not agree to the settlement terms suggested by the respondent. On the other hand, respondents during personal hearings explained that the margin fell to 104% duringthe time of liquidation of TeleDials[20]. It was also identified that if no collaterals and margins in the appellant account respondents would clear the full debit balance. In this case application of ADR helped to solve industrial disputes regarding business contracts and financial agreements with ease without consuming a longer time and without taking in front of higher legislative authorities.

---

[18] Ibid

[19] Brahmaiah, B, "Alternative Dispute Resolution on Margin Trading Close out at Stock Exchange in India: A Case Study Approach." 8 *TEL*773-779 (2018).

[20] Ibid.

However, there are some cases where the judiciary structure became able to partially use the ADR mechanism for solving disputes. Based on ADR and section 89 of the CPC case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd* can be explained. In this case, Supreme Court directed the interchange of clause number (c) and (d) belonging to section 89 (2) of CPC. This section is used at a higher rate in Delhi for solving cases related to industrial disputes[21]. The introduction of ADR highlighted escape routes for ensuring reducing case pendency's that negatively influenced justice delivery. Howver4 in this case the court failed to use section 89 of CPC effectively. The court considered arbitration and mode did not focus on the other four modes present within this mechanism for solving this dispute effectively. Arbitration cannot be considered as a precedent condition for exercising judicial activities under CPC section 89 as there are other ADR processes present for exercising activities under this respective section[22].

RECOMMENDATION

Seen in the context of the emerging conflict between workers and management world over there is a need for urgent steps to develop a suitable ADR mechanism in peacefully and effectively settling their disputes. In this regard, the International LabourOrganisation (ILO), the premier international body has played an important role in the past hundred years in drafting conventions and recommendations for smoothening the relationship between labour, management, and the Government.

The ILO supports the member States to strengthen the mechanism for labour disputes settlement, parallel with international labour standards and in consultation with the societal partners, by establishing legal and regulatory frameworks, constructing effective dispute resolution systems and facilities within the labour administration and by independent statutory institutions and specialisedlabour courts, capacity building through specialised training focused on negotiation talents and conciliation/mediation talents, as well as on international labour standards, sharing knowledge and raising awareness in respect of the advantages of voluntary conciliation, mediation and arbitration machinery and sharing experiences of labour court judges on issues of common interest and concern. Some of the important ILO Convention

---

[21] Alternative dispute resolution mechanism: A case study of Delhi,*inflibnet*, available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/26666/16/16_abstract.pdf (last visited on March 3, 2020)

[22] Ibid.

recommendations encapsulating the idea of ADR are Recommendation No.92 – The voluntary Conciliation and Arbitration and Convention No.98 – Convention concerning to application of principles of the right to organise and to bargain collectively.

Dispute issues in the industry of India can be easily solved by implementing the ADR mechanism. Advantages of using ADR in the industry include allowing disputing parties to choose neutral parties who have experienced technical issues to help to resolve disputed matters[23]. Part form as that privacy is maintained sensitive information is not disclosed to rival organizations that help to protect fundamental rights of maintaining the privacy of information. With help of mediation, third party involvement can help to solve disputes with help to ensure an environment to facilitate negotiation between disputing parties.

To avoid limitations related to ADR improving awareness related to modes considered in this mechanism can be beneficial[24]. Three stages can be considered for enhancing the implementation of ADR as well as to avoid limitations related to this respective mechanism that include increasing awareness, enhancing acceptance and increasing scope for effective implementation. For enhancing awareness arranging seminars for employers can be beneficial. Apart from that arranging literacy programs for letting people understand this respective legal mechanism can also be beneficial for changing the mindset of parties involved in disputes and lawyers and judges involved in solving disputes.

For enhancing acceptance of this legal mechanism extensive training can be provided to individuals who want to act as facilitators, mediators, and conciliators. For effective implementation, judicial officers are required to be trained effectively for proper identification of elements related to settlements for identifying effective agreement that is according to the consent of both disputing parties[25]. Litigations are costly thus most of the population of India is not able to afford litigation. Thus, to ensure enhanced acceptance of ADR,

---

[23] Neethu Anna Sam "Best Methods of Alternate Dispute Resolution to tackle Conflicts in the IT Industry: A tactical approach to future IT contracts1, 2" 3 *PMWJ* 1-21 (2019).

[24] S.Chaitanya Shashank and Kaushalya T. Madhavan "ADR in India: Legislations and Practices" *Academike*, January 7, 2015.

[25] Ibid.

centers can be created in rural areas for establishing people's beliefs on the judiciary structure of the country for solving disputes.

CONCLUSION

Conflicts and grievances are an unavoidable part of the employment relationship. In India, the Industrial disputes Act, 1947 is the legislation that has a mechanism to resolve disputes between workers and management, technically called "Industrial Disputes." There are two kinds of mechanisms under the Industrial Dispute Act, 1947 – one, Adjudicatory the other, Non-adjudicatory. The Non-adjudicatory mechanism involves various options under ADR to resolve Industrial disputes. ADR characteristically includes impartial evaluation, negotiation, conciliation, mediation, and arbitration. As mounting disputes in court, increasing costs of litigation, and delays in time continue to plague litigants, this caused more states to adopt the methods of ADR programs. Some of these programs are voluntary and others are mandatory. The main benefit of this form of settlement of the dispute is that it will permit the parties themselves to control the process and the solution to industrial disputes.

It can be concludedthat ADR is effective to solve industrial disputes without taking it any higher courts of civil courts. This method helps to maintain the privacy of information thus it retains fundamental rights. Methods used in this mechanism in most of the cases include a mediator who listens to both parties and communicates with both parties to identify elements available for settlements and formulate agreements that can be accepted by both parties. This process can be further enhanced by increasing awareness related to methods of ADR as well as providing training of officials.

Statement about the Ownership and other Particulars of the Journal

BANGALORE UNIVERSITY LAW JOURNAL

(Form IV – Rule 8)

Place of Publication	- Bengaluru
Periodicity of Publication	- Biannual
Publishers Name	- University Law College
Printers Name and Address	- Bangalore University Printing Press Bangalore University Jnanabharathi Campus Bengaluru – 560056
Publishers Address	- University Law College & Department of Studies in Law University Bangalore University Jnanabharathi Campus Bengaluru – 560056
Editor's Name and Address	- Prof. Dr. Suresh V. Nadagoudar & Prof. Dr. V. Sudesh University Law College & Department of Studies in Law Bangalore University Jnanabharathi Campus Bengaluru - 560056
Ownership	- University Law College & Department of Studies in Law Bangalore University, Jnanabharathi Campus Bengaluru - 560056

I, Prof. Dr. Suresh V. Nadagoudar hereby declare that the particulars given above are true to the best of my knowledge and belief.

Prof. Dr. Suresh V. Nadagoudar

9188-BUP-100 copies-Sept.2021