ISSN 2321-1059

Journal

of Legal Studies

An International Journal of Legal Studies

Volume 1 **Issue II** **July** **2013**

Published By:

Manavta Samajik Sanstha

Mughalsarai, Chandauli, U.P. India

ISSN 2321-1059

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Cite this Volume as JLS Vol. 1, Issue II, July 2013

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Journal
of Legal Studies

An International Journal of Legal Studies

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The Role of, "The Protection of Human Right Act, 1993" in the Protections of Human Rights in India

Dr. Jay Prakash Yadav*

Introduction

When the General Assembly adopted and proclaimed the Universal Declaration of Human Rights, the Indian Constitution was in the process of making in the Constituent Assembly. Viewed from the Indian Standpoint, human rights have been synthesized, as it were, into an integrated fabric by the preambular promise and various Constitutional clause of the National Charter of 1950. In other words, the tryst to make the India's Constitution a viable instrument of the Indian People's salvation, and to secure all persons basic human rights, is implicit from the preambular promise, fundamental rights, and directive principles of state policy, fundamental duties and various other provisions of the Constitution. Most of the human rights and fundamental freedoms declared in the Universal Declaration of Human Rights and the two Convents are the building blocks of the Rights in the Indian Constitution.[1]

In spite aforesaid text, in the year of 1993 the Government of India has been passed the, 'The Protection of Human Rights Act, 1993', to fulfill the International and National obligation. It might be that India is the Signatory of The UDHR, (Universal Declaration of Human Rights, 1948), and to satisfy the demand of the native people which was vigorously raised by the common men of India. Police atrocity has been enhancing by the leap and bound because they were not concern with Human Rights. At the same time, they were not accountable to anyone for their act. What baffled me as a law student those two decades has been passed after the enactment of the aforesaid Act, what the change brought by the Act in the protection of Human Rights in India? It is the matter of my concern to write this paper.

In India, Human rights problems have multiple dimensions; it included disappearances, poor prison conditions that were frequently life threatening, arbitrary arrest and detention, and lengthy pretrial detention. The judiciary was overburdened, and court backlogs led to lengthy delays or the denial of justice. Authorities continued to infringe on citizens' privacy rights.

The law in some States restricted religious conversion, and there were reports of arrests, but no reports of convictions under these laws. There were some limits on freedom of movement. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remained serious problems. Child abuse, child marriage, and child prostitution were problems. Trafficking in persons and caste-based discrimination and violence

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continued, as did discrimination against indigenous persons. Discrimination against persons with HIV and discrimination and violence based on gender identity continued. Forced labor and bonded labor were widespread. Child labor, including forced and bonded child labor, also was a serious problem.[2]

Widespread impunity at all levels of government remained a serious problem. Investigations into individual cases and legal punishment for perpetrators occurred, but in many cases a lack of accountability due to weak law enforcement, a lack of trained police, and an overburdened court system created an atmosphere of impunity. Separatist insurgents and terrorists in Jammu and Kashmir, the Northeastern States, and the Naxalite belt committed numerous serious abuses, including killing armed forces personnel, police, government officials, and civilians. Insurgents were responsible for numerous cases of beheading, kidnapping, torture, rape, and extortion.[3]

Composition of Human Right Commission

Human Rights Commission can be defined most suitably as Human Rights Commissions deal with the protection of citizens against discrimination as well as with the protection of other human rights. They are generally designed to hear and investigate individual charges of human right violations or discriminatory acts committed in violation of existing law. Most human rights Commissions are collegial bodies comprised of members who, in most cases, are selected by the Executive. In many cases the Commissions enjoy statutory independence and are responsible for reporting on a basis to the legislative body.[4]

At a UN sponsored meeting in Paris in 1991 a detailed set of principles on the status of national human rights institutions was developed which are known as the Paris Principles. These principles provides that a National Institution must have a broad mandate; pluralism; including representatives composition; wide accessibility; effectiveness; independence; sufficient resources; and adequate powers of investigation.[5]

The mandate of the Paris Meeting has been followed by the India Parliament to constitute, The Protection of Human Right Act, 1993. According to section- 3 of the Act, the National Human Rights commission shall consist of five members out of these three should be from judiciary and two “from amongst persons having knowledge of, or practical experience in matters relating to human rights.” So far selection of chairperson and members of the commission is made only on the recommendations of a committee consisting of the Prime Ministers, Home Ministers, Speaker and leader of the opposition in the house of the people and deputy chairman and leader of opposition in the council of States.[6]

Under Section-21 of Act provision has been given for the composition of State Human Rights Commission which is similar to the National Human Rights Commission. There are multiple objections to the existing arrangements. Firstly, the legislation limits the selection to a narrow horizon of person who, just belonging to the judiciary needs not reflect any particular expertise in or commitment to human rights. It restricts the commission from getting the plurality of

perspectives, vocation and diverse experience from the civil society. Secondly, the committee recommending selection consists solely of politicians. Thirdly, the process of selection is not transparent. Fourthly, the process of selection reveals is not a selection, perhaps it is a nomination. Composition of the commission is generally decided through noting in secret files or during closed door meetings between the politicians and their favorite bureaucrats. Conditions are more and less similar in the composition of the State Human Rights commission. Perhaps in such circumstance, how is it possible to protect and preserve the Human rights of the Human in this country? There is an ample illustration to reveals that the intention of the Government is not fair for the protection of the Human Rights in India.

Functions of Human Rights Commission

National Human Rights has several functions which are expressly in the Section 12 of the Act. Some of this are-

To inquire, *suo moto*, or on a petition presented by victims or person on their behalf, into complaints of;

1. Violation of Human Rights or abetment thereof, or
2. Negligence or dereliction of duties in the protection of such violation, by public servants;
3. Intervene in any proceeding involving any allegations of violation of Human Rights pending before courts, with the approval of such courts;
4. Visit, any jails or other institutions under the control of State Government, where are detained or lodged for purpose of treatment, reformation or protection, to study the living conditioned of the inmates and make recommendations;
5. Study treaties and other international instruments on Human Rights and make recommendations for their effective implementation;
6. Undertake and promote research in the field of Human Rights;
7. Spread Human Rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
8. Review the safeguards provided by or under the Commission or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
9. Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
10. Encourage the efforts of non-governmental organization and institutions working in the field of Human Rights;[7]
11. Such other functions as it may consider necessary for the promotion of human rights.

However, the complaints relating to following matters shall not be entertained by the commission:

1. Complained in regard to events which happened more than one year before making of the complaints;
2. Complained with regard to the matter which are *sub-judice* or pending before a State Commission duly constituted under any law for the time being in force;

3. Complaints which are vague, anonymous or pseudonymous;
4. Complaints which are of frivolous nature; or
5. The Complaints which are outsides the purview of the Commission.[8]

The function of the State Human Right Commission is similar to the National Commission which also contains the same provisions. However the scopes of SHRC are limited as compared to the NHRC.

Power relating to investigation

Section 14 (1)- of The protection of Human Right, 1993 Act, stated that the Commission may for the propose of conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

On the other hand sub section 5 of the section 15 stated that the Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

These provisions have produced ample reason of doubt that Commission has not trust on the investigation agency, hence Commission have make procedure to cross check the Investigation report. Then, how it is possible to the victim of the Human right volition can have faith on the redressal of grievances of the concerned body i.e. Commissions.

Section 18 of the National Human Rights Commission (Procedure) Regulations, states that the Commission shall have its own team of investigation to be headed by a person not below the rank of a Director-General of Police appointed by it and such team shall consists of one Deputy Inspector General of Police, 2 Superintendents of Police, 6 Deputy Superintends of Police and 24 Inspector of Police and such categories of officers as the Commission from time to time decides. The commission may in any given case appoint an appropriate number of outsiders to be associated with the investigation either as Investigators or observers.

Aforesaid, provision of National Human Rights Commission (Procedure) Regulations, reveals that the Commission has not an independent agency to investigate the Human Rights violation cases. They have to have dependent on the same agencies, which are most of the times and most of the cases, are the violator of the Human rights.

Henceforth, it is very difficult to protect the Human Rights in such situation because, if the Investigation Report will not conduct fairly and honestly then how the violator get penalized.

Power relating to enquiries:

The commission shall inquiry into complaint have all the power of a civil court in respect of the following matters under section 13(1) of the Act:

a) Summoning and enforcing the attendance of attendance of witnesses and examining them on oath;
b) Discovery and production of any document;
c) Receiving evidence on affidavits;
d) Requisitioning any public record or copy thereof from any court or office.
e) Issuing commissions for the examination of witnesses or documents;
f) Any other matter which matter be prescribed.

Under the sub section 4, the Commission shall be deemed to be Civil Court and when any offence as is described in section 175, 178, 179,180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of the Commission, the Commission may , after recording the facts constituting the offence and the statement of the accused as provided for in the code of Criminal Procedure, 1973 (2of 1974) forward the case to a magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forward to him under Section 346 of the Code of Criminal Procedure, 1973.

Sub section 4, every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a civil court for all the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

These provisions of the Act have also revealed the fact that the commissions have neither the power of Civil Court nor the Criminal Court in true sense. After, conducting the enquiry, commission has forward the cases to the Magistrate having the jurisdiction as per the sub section 4 of the Act. In this regards, it could be said that commission has delay the procedure nothing else.

Therefore, it is humbly suggested that power of the Commission should be enhanced appropriately, so that justice could not only be done, but seem to be done to the victim of the Human Rights violation, and if it has not to be done, then the Commission will merely a teeth less lion nothing else. The Asian centre for Human Rights estimated that between 2002 and 2008, over four people per day died while in police custody with “hundreds” of those deaths being due to police use of torture.[9]

According to a report written by the institute of correctional Administration in Punjab up to 50% of police officers in the State have to use physical or mental abuse on Prisoners.[10] Instances of torture, such as through a lack of sanitation, space or water have been documented in West Bengal as well.[11]

Aforesaid, illustrations reveal that 'The Protection Human Rights, 1993' does not working properly. Therefore, it is the high time to review the functioning of the Central and State Commission which was established by the aforesaid Act.

Government should provide the teeth to commission, so that it can be worked in just and fair manner for that separate 'Investigation agency', separate' Human Rights Court', for each at District level should be established.

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A Historical Survey of Important Cases on Domestic Violence

Shashank Shekhar*
Radhika Mishra**

Introduction

Domestic Violence has evolved as a serious human rights issue and needs to be addressed so as to encourage all round development and give an opportunity to women as a strategic human resource.

Though it has been dealt with in Section 498 A of the Indian Penal Code (IPC) as a part of criminal law, it has not been given adequate attention as regards litigation was concerned. Apart from punishing the culprit under criminal law it also had to be dealt with in Civil law so as to provide compensation to the aggrieved party. Hence in pursuance of Vienna Accord of 1994, Beijing Declaration, Platform for Action 1995, United Nations Convention on Elimination of all forms of Discrimination Against Women (CEDAW), all of which directed State parties to make provisions for the protection of women, the Protection of Women Against Domestic Violence Act, 2005 was enacted recently.

In this project report, the researcher has highlighted and explicated the meaning of Domestic Violence as given in the Protection of Women Against Domestic Violence Act of 2005. It is seen that physical violence on women can range from minor to major offences which not only include physical torture but also emotional and psychological pain and suffering. Hence the need arises for framing a new set of rules to treat domestic violence as a crime and also provide compensation to the aggrieved party. Hence the Act of 2005 was enacted.

The researcher has also elaborated on Section 498A and Section 304B of the Indian Penal Code which have traditionally dealt with domestic violence and also defined 'cruelty to women'.
The researcher has then moved on to elaborate on the role of NGOs to provide an answer to Domestic Violence as a part of the historical evolution of Domestic Violence laws vis-a-vis the role of Government as enumerated in various provisions of IPC and CrPC.

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Having illustrated the history of Domestic Violence legislations the researcher moves on to discuss domestic violence as a crime which is the first part of this research paper. The researcher has also brought pout the fact that that domestic violence has been dealt with under Section 498 A of IPC law reform has failed to arrest the torture and harassment of housewives. Under the same sub-topic the researcher has dealt extensively with dowry and its regulation under Section 304B of IPC. The role and duties of the police as given under Section 5 of the Act of 2005 as also Protection Orders under Section 4 and Section 2(o) of the same Act have been illustrated by the researcher.

Tort law being an aspect of Civil Law, the researcher has dealt with various provisions of the Dowry Prohibition Act 1961 which would deal with compensation and various aspects of Domestic Violence and would not treat it as a criminal offence. In this section the researcher has dealt with cohabitation and obscenity and referred to various case laws where of course, the tort law and criminal law aspects overlap to a great extent.

Tort law addresses the interference with a person’s family and service relations based on the archaic notion that a man has proprietary interest in the services of his family members.

Hence the difference between tort law and criminal law on this subject of domestic violence has been brought out thoroughly despite their overlapping nature in this paper.

Domestic Violence

As per Chapter II of the Domestic Violence Act of 2005, domestic violence has been defined as: Any act, omission, commission, or conduct of the respondent shall constitute domestic violence in case it

a) Harms, injures, endangers the health safety, life limb, wellbeing, physical or mental of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.
b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Though Dorris Lessing had started a movement against her own sex claiming that today women are the oppressors and men the silent victims, it is quite the reverse in the Indian scenario.

According to a study by the International Council for research on women, 45% of Indian women experience some form of violence. As per a report, every one woman out of every three is beaten, coerced into sex or otherwise physically and mentally abused and a whooping of 74.8% cited domestic violence as the compelling factors for committing suicide.

Physical violence on women at home is not only confined to homicidal deaths by way of strangling, stabbing, setting them on fire. The violence originates from minor offences like pulling hair, pinching, pushing to throwing boiling water and acid. Ignoring any minor ailment can lead to a fatal disease. Hence domestic violence should be treated not only as a criminal offence but also as a civil wrong so as to provide compensation to the aggrieved party apart from punishing the culprit.

In a male dominated society, women are not only emotionally tortured and coerced on a daily basis. Women in their maidenhood and married life are vulnerable to illicit relation and adultery. They are not given the freedom to visit parents at free will after marriage, spend the family property and so on. Since the need for a specific legislation was felt, Section 498A and Section 304B was introduced in the IPC. Section 498A states that whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Cruelty has been defined as:

(a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical) of the woman or;
(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her meet such demand.

Specific legislations in this field were deterred on the grounds that no one should interfere in the domestic affairs of man and wife till the Protection of Women against Domestic Violence Act 2005 was enacted recently.[1]

Historical Relation of Domestic Violence Laws

The Government's role in bringing an end to Domestic Violence was enumerated in Section 498A of IPC, Section 304B of IPC relating to dowry death, Sections 339 to 348 dealing in wrongful restraint and confinement and Section 151 of CPC relating to injunctions to protect victims of Domestic Violence. It is not only a ground for divorce under personal laws but needs to be recognised as a separate offence.

However the role of NGOs cannot be ignored. Owing to the Indifference of the Government to this growing evil, a women's rights group headed by Indira Jaisingh, Senior Supreme Court advocate drafted a bill in 1994 whose main objective was to define domestic violence as civil wrong. The Bill defined domestic violence as an act, omission, conduct which is of such a nature so as to harm or injure or has the potential of harming or injuring the health, safety, well being of the person aggrieved or any child in a domestic relationship and includes physical abuse, mental and economic abuse.[2] This Bill later became the subject of a lot of debate and finally culminated into this Act.

Domestic Violence: A Crime

Cruelty under criminal law is a wilful conduct which is likely to drive the woman to cause grave injury to her health, life and limbs—physical and mental. It also refers to harassment of the woman with a view to coerce her or her relations to meet any unlawful demand of property.

Though it has been dealt with under Section 498A of IPC, law reform has failed to arrest the torture and harassment of housewives. Domestic Violence in the form of physical and mental torture constituted 26.22% of crimes against women in India in 1994.

In this regard, there has also not been much of judicial consensus. In a particular case of L.V. Jadhav, the bridegroom's father demanded Rs. 50,000 which was rejected by the bride's father, even though it was demanded in the form of air fare to take the bride to USA. In the disagreement to pay the bride was not allowed to join her husband for one year after marriage. Bombay High Court quashed the complaint against the father-in-law. Supreme Court reversed the decision and held that even if it was a unilateral agreement it was still a demand for dowry and could be charged under the Dowry Prohibition Act of 1961.[3]

Dowry has been one of the most common reasons for domestic violence. Dowry in common parlance means to endow or give. It is the property a woman brings to her husband's house after marriage. But across the space of time, this view has been changed. Today the better values and traditions of human society have been eroded by consumerism and unbridled desire for wealth which has led to dowry being the primary cause for domestic violence.[4]

Section 304B of the IPC defines dowry death as:

"where the death of a woman is caused by any burns or bodily injury which occurs other than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death."

Section 113B of the Indian Evidence Act also deals with this. This section states:-

"When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death."

For the purposes of this section, "dowry death" was to have the same meaning as in section 304B of the Indian Penal Code.

In the case of *Shanti vs. State of Haryana*[5], a relation between Sections 498A and 304B were brought out. In that case the appellants were charged of committing a dowry death. The High Court set aside their conviction under section 498-A holding that Sections 304-B and 498-A are mutually exclusive and that when once the cruelty envisaged in section 498-A culminates in dowry death of the victim Section, 304-B alone is attracted. The Supreme Court, on appeal held

that this view was incorrect. Cruelty has to be proved in both the sections and is an essential constituent.

Section 498A explains the meaning of cruelty though no such explanation is given in Section 304 B. However the meaning of cruelty is the same for both the sections in the light of the common background to both the sections. Under Section 304-B, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage. No such period is mentioned in Section 498-A and the husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage. A person charged and acquitted under section 304-B can be convicted under Section 498-A without charge being there, if such a case, is made out. But from the point of view of practice and procedure and to avoid technical defects it is necessary in such cases to frame charges under both the Section and if the case is established they can be convicted under both the Sections but no separate sentence need be awarded under Section 498-A in view of the substantive sentence being awarded for the major offence under Section 304-B. Hence the prosecution had proved the charge under Section 304 B.

In another case of *Satvir Singh vs. State of Punjab*[6], Tejinder Pal Kaur was given in marriage to Satvir Singh and started living at her husband's house. Though dowry was given at the time of marriage the appellants started harassing the bride after about 4 or 5 months of the wedding for not giving a car and a house as part of the dowry. They used to hurl taunts on her pertaining to the subject, including telling her that she had brought rags instead of wedding costumes. Soon she gave birth to two sons as well. On the night of the tragic incident, when food was served to Satvir Singh, one of the items in the meals (salad) contained excessive salt. After tasting it, he became furious and unleashed abuses on his wife and was profusely supported by his parents. They went to the extent of suggesting to her why not end your life in front of one of the trains as many such trains are running nearby.

At about 4 am, she went to the railway track, and stood in front of an approaching train and was run over. But instead of being killed she was devastatingly maimed. The husband and parents-in-law were being prosecuted under Sections 304 B and 498A. Though the charge under Section 498A stood to be valid, it was not so under Section 304B as it essentially requires death which was not caused in this case.

As far as the response of law enforcement agencies is concerned, the substantive as well as procedural laws were amended in 1986 to prevent dowry death of newly married women. If any woman dies an unnatural death within 7 years of marriage and has been subjected to cruelty by her in laws they can be imprisoned for life under Section 304B of the IPC.[7]

The police undoubtedly plays a very important role in putting an end to domestic violence. As per Section 5 of the Protection of Women Against Domestic Violence Act of 2005, a police officer who has received a complaint of Domestic Violence or is otherwise present at the place of the incident is under a duty to inform the aggrieved person of his rights under Clauses (a) to (e) of the Section.

However Section 4 of the Act empowers any person to give information about domestic violence but only to Protection Officers and not to a Police Officer directly.
Section 5 also reposes the function in a Police Officer to proceed according to the law in cases of cognizable offences. These offences under Section 31(1) generally includes breach of protection order and 'law' includes the Criminal Procedure Code (CrPC) and IPC.

Section 2(o) of the Act defines Protection Order to mean an order made in Section 18 which empowers a Magistrate to pass a protection order in favour of the aggrieved person prohibiting the respondent from doing acts specified in Clauses (a) to (g).

Section 9(b) requires the police officer to receive a copy of the report of Domestic Violence made to a Magistrate by the Protection Officer along with a medical report of bodily injuries sustained by the aggrieved person. Section 11(b) of the Act imposes a duty on Central and State Governments to ensure that Police Officers are given periodic sensitization and training on awareness.[8]

Domestic Violence in Tort Law
Law of Torts refers to that part of Civil law which has evolved a largely unarticulated section. Tort refers to those civil wrongs, other than a breach of contract whereby a person violates the generally duty which he primarily owes to another, thereby causing damage to the latter. Damages are essentially unliquidated i.e. determined by the Court as per the facts and situation.

According to Section 6 of the Dowry Prohibition Act of 1961 even though law prohibits dowry, it also states if at all it is gives it must be the property of the wife or her heirs and remain so. It states that when dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman.

Sub- section 2 states that any failure to do so would be an offence punishable with imprisonment for a term of not less than 6 months which may extend to 2 years with a fine of not less than Rs. 5000 which may extend to Rs.10000 or both. Sub-section 3A states that in case a woman dies before receiving the property due to unnatural causes, the Court may direct the husband by order to transfer the property to her heirs, children or parents; if not, an equivalent amount should be paid to them within a specified period.

Cohabitation by deceitful means whereby a man has sexual intercourse with a woman, putting her under an impression that she is lawfully married to him is an offence under Section 493 of IPC punishable with ten years of imprisonment and fine. Similarly Section 498A which deals with cruelty by husband or his relatives towards the wife and Section 304B which deals with dowry death also treat domestic violence as a criminal offence. But at the same time they also provide for compensation which treats it as a civil wrong. More often than not, compensation is not predetermined but decided according to the situation, (unliquidated damages). Andhra Pradesh

Assembly passed a bill to convert cruelty under Section 498A as a compoundable offence where a compromise and consent of the wife can expiate criminal liability of the husband.[9]

Obscenity is an offence under Section 293 of the IPC. Using a woman's image as an object of obscenity entitles that woman to claim damages. Eve teasing under this section was observed in Zafar Ahmed Khan vs. State of Uttar Pradesh[10], as an address to respectable young girls in a public place suggestive of illicit sex relation with them amounting to an obscene act under Section 294[11].

Tort law also addresses the interference with a person's family and service relations based on the archaic notion that a man has proprietary interest in the services of his family members and domestic servants. Action for enticement including harbouring which includes providing shelter to an errant wife and for criminal conversation are out of tune with current notions of equality of status for husband and wife. These actions are prone to abuse by blackmail through collusion between man and wife.

Tort law, as against criminal law generally compensates a person for injury caused to his wife or minor children by a third party. In case of female children, the father or guardian, and in case of female servants, the employer has a right of action for seduction i.e. for debauching of such child or servant.

The foundation of an action by a father to recover damages against the wrongdoer for seduction of his daughter has been rested upon loss of service of the daughter in which he has a legal right or interest as was held in the case of Grinell vs. Wells.[12] The action is maintainable where the daughter under 21 years of age does not render actual service but there is proof of such service rendered after that age. Thus seduction is not actionable per se but only when it results in actual loss of service in the present or future. Similarly in case of a female servant, a master can sue the person who seduces her and thus deprives him of her services. The usual cause of this is pregnancy.

In the case of Terry vs. Hutchinson, the plaintiff's daughter being under age, left his house. After a month the master dismissed her with a day's notice and the next day, on her way to her father's house, the defendant seduced her. It was held that as soon as the real service was put to an end by the master, whether rightfully or wrongfully, the right of the father to the girl's services had been revived and there was sufficient evidence to maintain an action for the seduction.[13]

According to Ashwin Karia, lack of political determination has led to a tremendous uncertainty about Women's Reservation Bills. That apart, the Government and women's organizations including NCW (National Commission for Women) have shown their anxiety for the safety of women through the Protection of Women from Domestic Violence Bill, 2002.

The *Vishakha vs. State of Rajasthan*[14] case which demanded a comprehensive law on the subject led to the passage of this Bill. The irony lay in the fact that even 53 years after independence

there was no specific legislation existing for the protection of women. However an analysis of the Bill shows that instead of uplifting the status of women, it lowers their status. In order to file a complaint se needs to have passed through several acts of cruelty and harassment to be eligible to file the complaint.

In order to prevent misuse of freedom, liberty, equality, the Constitution framers inserted Article 15 which prohibits the State from discrimination on the grounds of religion, race, sex, place of birth, etc. This Bill is prepared in pursuance of this provision which is better termed as "protective discrimination for women." However the main objection is that "protective discrimination for women" essentially means a "discrimination against men. Moreover, the word 'for' implies 'in favour of it'. Hence it side tracks the Constitutional guarantee of personal safety.

The second objectionable provision in the Bill is that the victim is advised to go in for counselling. This adversely affects the constitutional right of the victim. It casts a duty upon the victim to take the perpetrator to a counsellor. This merely re-enforces a patriarchal society rather than questioning it.[15]

Conclusion and Suggestions

Domestic Violence occurring in the private sphere has eluded the human rights concern. Human Rights are sacrosanct rights of any civilized society based on the principles of morality and duties for guiding all human interactions. Alternate moral perspectives coexist and evolve along with the scope, nature and context of human rights.

Domestic Violence occurring as a physical and psychological abuse contravenes the United Nations Declaration of Human Rights. Victims of domestic violence are not only restricted to women alone but also include children and the aged.

The quintessence of domestic violence is the control or subjugation both over resources and persons albeit under social sanctions rooted in traditions and re-enforced by religious and other dogmas.

Domestic Violence manifested in verbal, physical and psychological abuse is more subtle than violence elsewhere. Familial identity deters resistance, closed doors alienate victims from remedies resulting in a convenient status quo, where the victim reconciles and society can connive. This reconciliation with subjugation in the wake of limiting social circumstances violates the core of human rights – liberty and human dignity. The hopelessness harms the women and children much more than the violence itself as it erodes their personality.

Domestic Violence presents a chicken and egg paradox. Laws are needed to protect victims against crimes rooted in social circumstances and social reforms are necessary for effectiveness of the law. Legal institutions and implementation of the law have lagged.

Continuance of domestic violence erodes confidence in the rule of law. The need for judicial reforms to deal with domestic violence is most urgent. But judicial reforms are blunted unless

they are also accompanied by radical social reforms. One issue is the role of ideological movements that influence societal and family values. The other is the access to social institutions which have access to families and enjoy social sanctions to intervene in public and private matters.[16]

Having established the need to eradicate domestic violence at least to protect the sanctity of human rights as being the sacrosanct rights of any civilized society, let us examine the remedies for domestic violence as considered by Sweta Pandey.

It has been found that law reform can only be effective if it is accompanied by a change in social attitudes. The lack of responsiveness of police and law making authorities is the cause for the inability to take a stand against domestic violence.

With growing arrears of cases, domestic violence cases require immediate redressed. Publicizing the result of the cases would make the judicial system more accessible.

Apart from a separate law on the subject, the existing law in view of the changing socio-economic needs also need to be reformed. The definition of cruelty under Section 498A of the IPC needs to be altered to clear abstractions and include mental cruelty in addition to violence. The concept of matrimonial property can help the woman to claim her rights in a shared household.

What is most necessary to lend confidence and prestige to women is prevention of discrimination between male and female at the time of divorce. In the personal laws a provision should be made for joint property of husband and wife which includes the earnings of either party to give the woman equal economic security and social status especially at the time of divorce. This will contribute to social solidarity and disappearance of male dominance in society.[17]

In the case of Gurupad vs. Hirabai,[18] a man named Khandappa had died, being survived by his wife Hirabai and his two sons, Gurupad and Shivapad and three daughters. The widow had filed the given suit for the partition of her late husband's property and for the receipt of her own share in the same. The son Gurupad contended that the suit properties did not belong to the joint family that they were Khandappa's self-requisitions and that, on the date of Khandappa's death in 1960 there was no joint family in existence. He alleged that Khandappa had affected a partition of the suit properties between himself and his two sons.

In that case, a reference was made to the Hindu Succession Act which states that when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act. By the application of the normal rule prescribed by that section, Khandappa's interest in the coparcenary property would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of the Act. But, since the widow and daughter are amongst the

female relatives specified in class I relatives of the Schedule to the Act and Khandappa died leaving behind a widow and daughters, the proviso to Section 6 comes into play and the normal rule is excluded.

Hence we find that domestic violence threatens the basis of a civilized social order in our society even today. Though it has been dealt with now from the point of view of a crime and a civil wrong or a tort, implicating all these provisions remains a necessary step for the benefit of the community as a whole. We have also seen how in this research project, the researcher has dealt with domestic violence both a tort and a crime. Even though in this subject matter, the two overlap, their jurisdictions still remain quite distinct.

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Social Concerns Relating to Genetically Modified Crops

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Introduction

The issues relating to the Genetically Modified Crops have generated intense public debate in many parts of the world relating to the costs and benefits of the GM crops and the inherent safety concerns. In India also, this debate has engaged the attention not only of the Government but also of the farming community and the civil society. Though, it is widely claimed that biotechnology, particularly genetically engineered food offers dramatic promise for meeting some of the 21st century's greatest challenges; like all new technologies, it also poses certain apprehensions and risks, both known and unknown. It is, therefore, paramount in this context; to know the basic processes involved in genetic modification.

The genetic modification of plants involves transferring DNA (deoxyribonucleic acid), the genetic material, from a plant or bacterium, or even an animal, into a different plant species. Because we can increasingly identify which gene or genes determine particular characteristics, the appropriate genes can now be inserted directly into the plants we wish to modify. Although techniques required to create GM crops are recent and relatively sophisticated, genetic modification is in most respects an extension of what has been happening for ten thousand years. The primitive ancestors of almost all modern food crops are barely recognisable to the lay person; maize ears, for instance, were half an inch long rather than the eight or nine inches of their modern descendants. The principle objections to GM crops and the food products made from them concern possible harm to human health, damage to the environment and unease about the 'unnatural' status of the technology.

The issues surrounding this topic are social, economical, political, ethical, related to intellectual property, food security, sustainable development, environment safety, conservation of biodiversity, benefit sharing arising out of use of genetic resources food safety and standards etc.

Genetically Modified Crops (Bt. Cotton)'s Contribution to Suicide of Farmers

There are incidents of Farmer Suicides in Maharashtra and Vidharbha areas of India. These areas are basically cotton growing areas and reasons behind these suicides are crop failure and indebtedness. The findings of Maharashtra High Court in *The Secretary, All India Biodynamic and Organic Farming Association Vs. The Principal Secretary to the Government of Maharashtra and Ors*[1] also affirm the role and contribution of Bt cotton in growing indebtedness of farmers and their decision to commit suicide in the region.

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In the said case by Public Interest Litigation Petitioner apprised the Chief Justice about the increasing number of suicides in the District of Jalna. The High Court took assistance of Tata Institute of Social Sciences and called for report from State and Union Ministry of Agriculture. Agricultural indebtedness was found to be the reason behind the suicides. No concrete scheme was found for tackling the problem in rational and psychological manner. The Court undertook to make the government aware of its duty to implement Directive Principles of State Policy 38, 39, 41, 47, 48A, 51A(g) specifically in order to bring out a cohesive scheme to help farmers economically, socially, psychologically. Court took note of the fact that in spite of 25 per cent share in gross domestic product, Indian agriculture accounted for negligible share in world imports and exports and also that the investment in agriculture was declining. Fundamental problem identified was increase in the cost of cultivation as a result of higher input prices, without corresponding increase in the prices realized by farmers of agricultural produce. The Court suggested fixation of support price for group of States, not at national level. The Court considered the measures suggested to State to cultivate indebtedness and hoped that State would implement the measures with vigour and would not keep them as ornate scheme. The Court considered the significance of these measures as being helpful in realizing right to life and personal liberty enshrined under Article 21 and tried to infuse and guide the interpretation of the fundamental rights in light of values, enshrined in Directive Principles of the State Policy but refused to issue directions in regard to the fixation of minimum support prices as price fixation was clearly the legislative function.

The High Court took assistance of Tata Institute of Social Sciences and called for report from State and Union Ministry of Agriculture. On the basis of the report, the fundamental causes for suicide by cultivators in the State of Maharashtra can, therefore, be summarised as follows:

1. The major reason for suicides is the heavy indebtedness that the cultivators find themselves in today. This indebtedness is not an overnight phenomenon that occurred suddenly. It has its roots in the credit policy that has been followed over a number of years;
2. Indebtedness itself results from a mismatch in the cost of production and the support price and the market price that the cultivators receive at the end of every cropping cycle;
3. Field data suggests that there have been repeated crop failures in the last four years. These crop failures have resulted in a reduction in the productivity of the land due to a variety of reasons. These reasons could be due to the overuse of fertilisers, pesticides and reliance on HYV seeds and now to some extent on genetically modified seeds such as Bt. Cotton. Thus, crop failure becomes a cyclical phenomena and not a one-time occurrence;
4. Heavy indebtedness is spreading across landholding patterns. In that context, the small and the medium-sized cultivator is the most affected of the lot, though the large landholder in the rain-fed areas of the state, too, is coming under strain;
5. In the context of availability of credit, field data suggests that even after 55 years of Independence, private money lending remains the single largest source of credit to small and marginal farmers. This is so because the banking sector is fast moving out of the credit delivery mechanism;

6. Cultivation in Maharashtra is primarily rain-fed. Thus, the subsidy given on fertilisers and pesticides, irrigation and electricity does not touch the small/ marginal and medium sized landholder, as cultivation is deprived of an assured irrigation source. Thus, those who are cultivating cash crops that require irrigated water have to perforce rely on rainfall that is fickle at the best of times. This puts the system under tremendous stress. The cash crop becomes a kind of a compulsion, as subsistence farming alone does not provide for the need of liquid capital that the cultivator needs for survival. More and more, the small and marginal farmers are pushed into compulsory cash crops cultivation that is having a spiral effect in terms of the debt crisis;
7. The access to an information base that the cultivators have largely comes from the agents of fertiliser and seed companies. The government extension machinery is not visible in the sense that it could provide an objective database in information to cultivators;
8. The attitude of the government may be described as starkly apathetic. This is demonstrated by the fact that almost 80% of the victims have not received any kind of compensation from government; and
9. There is a total absence of any safety net for cultivators, especially the small and the medium ones.

The TISS report outlines the genesis of the agrarian crisis to which the emerging pattern of suicides by farmers can be traced. The agricultural sector accounts for 25% of total GDP. 75% of India's population lives in rural areas and in hilly terrains. Between 60% and 70% of GDP from agriculture is derived from subsistence agriculture. Despite a 25% share in GDP, Indian agriculture accounts for a negligible 0.7% share in world imports and 0.6% in exports. Investment in agriculture has witnessed a serious trend. The report notes that while investment (at 1980-81) prices stood at Rs. 1,266 crores in 1950-51 and rose to Rs. 5,246 crores by 1978-79; it declined thereafter to Rs.4,692 crores in 1990-91. Agricultural investment came down from 22% in 1950-51 to 19% in 1980-81 and thereafter to 10% in 1990-91. This has adversely affected public sector investment in irrigation as more than 90% of the total public investment in agriculture goes into irrigation. Investment in rural development in India has reduced to 5.9% of the GDP in the 10th Plan. Added to this, are factors such as environmental degradation resulting from deforestation, depletion of water availability and a threat to bio-diversity.

Thus the fundamental problem identified was increase in the cost of cultivation as a result of higher input prices, without corresponding increase in the prices realized by farmers of agricultural produce. Court suggested fixation of support price for group of States, not at national level and Court considered the measure suggested to State to cultivate indebtedness and hoped that State would implement the measures with vigour and would not keep them as ornate scheme. Court considered the significance of these measures as being helpful in realizing right to life and personal liberty enshrined under Article 21 and tried to infuse and guide the interpretation of the fundamental rights in light of values, enshrined in Directive Principles of the State Policy but refused to issue directions in regard to the fixation of minimum support prices as price fixation was clearly the legislative function.

G M Crops: Not Economical to Farmers

Convincing evidence is not available from independent scientists, research organizations and farmers' organizations, in India or abroad to show that significant increases in productivity or income were possible with commercial cultivation of Bt cotton, which began in 2002. The same is the case for the rest of the world, where it started in 1996. On the other hand, there are many reports about low productivity. In some cases, as we shall see, the Government has asked the company concerned to pay compensation to farmers for the loss.

In Madhya Pradesh, the average production of cotton for five years just before the introduction of cotton for five years just before the introduction of Bt cotton in 2002 was 614 kg/ha. In 1997-1998 the yield was 740 kilos per hectare (kg/ha). However, it went down to 516 kg/ha after five years of its introduction. In Warangal district, Andhra Pradesh, the Government constituted a special team during 2004-05 to look at Bt cotton performance. Data from 16,632 acres showed that the average yield loss was about 1.75 quintals per acre. The Government ordered the company to pay a compensation of Rs. 3.3 crores to affected farmers.

An official evaluation of the performance of cotton produced by traditional, IPM-based, organic and Bt methods in Maharashtra showed that although the production was slightly higher in Bt by one quintal, net profit per hectare was more in organically produced cotton by Rs. 12,000/ha. The Director, Agriculture Department, Maharashtra said organic and IPM cotton fetched better prices.

The Gujarat, cotton production went up from just 175 kg/ha in 2002-2003 to almost 460 kg/ha in 2004-2005. However, the Gujarat Government wrote to the GEAC that this increase was not solely due to Bt cotton, as Gujarat had recorded 450 kg/ha during 1998-99 when Bt cotton was not on the scene. Monitoring showed that the increased productivity was chiefly due to increased irrigation through massive water harvesting programmes, good monsoon, use of drip irrigation, and low pest pressure. Because of these factors, inclusion of Gujarat's data in the country's total GM production would give a distorted picture. The latest figure for national cotton production, around 3 million bales in 2007 as against 1.4 million bales (of 175 kg) in 2002, prior to the introduction of Bt, should be viewed with this in mind.

Similar or even much lower production of GM crops has been recorded in other parts of the world. The University of Nebraska recorded 6-11 per cent lower yield of GM maize compared to non-GM varieties. In a study of over 8,000 field trials, it was found the production of soya was less by 6.7 to 10 percent compared to conventional varieties. Independent studies on productivity of cotton, soy and corn in the US from 1930 show that genetic engineering has been at best neutral in terms of yield.

GM products have far lower demand in the market than organic and conventionally grown produce. Within a few years of introduction of GM crops in north America, annual exports of US maize worth $300 million and Canada's oilseeds worth $300 million to the European Union disappeared. Similarly, Japan and South Korea, the largest clients of US maize stopped imports. Some well known packaged food companies also rejected GM produce.[2]

Soil Association's US investigations show that GM farming costs are high (seed cost increased by up to 40 percent per acre) and the farmer has to use the same or even higher amounts of pesticides.
It is reported that 70 percent of farmers who committed suicide in Vidharbha, Maharashtra were Bt farmers, reeling under crop failure and unbearable burden of higher costs. This is attested by the Tata Institute of Social Sciences studies.

G M Contamination: A Challenge to Organic Farming and agricultural Sustainability
Farmer from Canada, Percy Schmeiser, battled Monsanto over crop contamination, now crusading issues a stark warning: UK organic farming cannot survive alongside GM. Canadian farmer Percy Schmeiser; shot to fame in 2000 during a protracted series of court battles with biotechnology company Monsanto, told a lecture audience in October, 2009 that cross-contamination from GM crops in Canada is now so extensive that if they were introduced on a wide scale in Europe, organic farming would become impossible[3].

Speaking at a lecture organised by the Gala Foundation in London, Schmeiser said that cross-contamination in Canada is now so extensive that it is almost impossible to buy non-GM rapeseed in country. Schmeiser's own brush with contamination from GM crops began in 1997, when he found Monsanto's plants growing in a ditch beside his field, which he was able to identify because they did not die when he sprayed them with the company's herbicide, Roundup.

Suspicious that the contamination might extend beyond the ditch, Schmeiser tried the same test with his adjacent field of oilseed rape, and discovered that approximately 60 percent of it contained Monsanto's variety. As a plant breeder himself, Schmeiser was anxious not to lose a crop that was a painstakingly crossbred variety developed over 40 years. He asked a farmhand to harvest the contaminated crop and store it separately. The following year-whether by accident or by design is contested the same seed was used to sow Schmeiser's entire crop.

Monsanto received a tip off that Schmeiser might be growing their GM oilseed rape and sent investigators to sample the edge of his field. They claimed subsequent tests indicated contamination rates of up to 98 percent, and the company sued for patent infringement in growing its crops without a license.

As the case unfolded, clear inconsistencies arose around the samples of crops taken from Schmeiser's fields. Monsanto's showed high contamination rates, whereas Schmeiser's own, tested by the University of Winnipeg, were much lower around 70 percent. Schmeiser claimed the samples taken from his fields by Monsanto's investigators bore grid reference numbers that did not correspond to land he owned or farmed, but his evidence was not considered in the trial. He also said he had later met an employee from a local mill that supplied Monsanto with a sample of his seed who admitted supplying false batch. Schmeiser lost the case, and was ordered to pay damages and court costs totaling millions of Canadian dollars. He appealed the decision and lost

again, by which time his own legal fees were well in excess of C$300,000 and he had multiple mortgages on his land.

In 2004, Schmeiser obtained a hearing at the Canadian Supreme Court, where his lawyers argued that because he hadn't sprayed Roundup herbicide on the crop, he had not 'used' the genetic modification within the plant. The court dismissed his argument and upheld Monsanto's exclusive right to any organism containing its patented genetic material, however it got there. In a personal victory for Schmeiser, however, the court ruled he did not have to pay damages as he had not financially benefited from the contamination of his crop.

In his lecture, Schmeiser maintained that Monsanto's stance had always been one of bullying and intimidation. He explained how company operatives used to watch him and his wife from vehicles parked on the roads near their farm, and how they received threatening phone calls. Monsanto initially tried to suggest Schmeiser had stolen its seed from someone who was licensed to grow Roundup-ready oilseed rape, but dropped the charge when it emerged there was no evidence to support it.

Further attempts to keep Schmeiser quiet occurred in 2005, when he informed the company that some of its plants had again appeared in his fields. Monsanto agreed to remove the plants, but asked Schmeiser to sign an agreement form that contained a conspicuous blacked out paragraph. When Schmeiser demanded to see an uncensored version of the document, he discovered the hidden paragraph contained a gagging clause, forbidding him to speak to the press or ever take Monsanto to court again, no matter what level of contamination occurred in his fields. Incensed, Schmeiser employed some of his neighbours to pull out the plants by hand then took Monsanto to the local small claims court for the sum of C$640, which it agreed to pay.'It hasn't been easy to stand up to Monsanto', Schmeiser said. In fact, it has been a living hell.

What worries him particularly is the effect Monsanto has had on farming communities worldwide. Farmers are widely encouraged to 'tip off' its operatives if they believe their neighbours might be growing Roundup-ready products without a licence, which Schmeiser says breeds an atmosphere of distrust.
He acknowledges few farmers would have the resources to fight a legal battle similar to his own, and carries copies of the threat letters sent by Monsanto to farmers it believes may be illegally growing its crops. Now operating an advice service for those who fall foul of Monsanto, Schmeiser believes many farmers pay up out of fear on receipt of a letter and his warning to countries considering relaxing their stance on GM is blunt.

There is no such thing as containment, there is no such thing as coexistence, there is no such thing as choice. Your yields drop and you end up using three to five times more chemicals. We now have new superweeds in our towns, on our golf courses, in our cemeteries and on our roads. The chemicals we have to use on them contain up to 70 percent of the constituents of Agent Orange. I have not come here from Canada to tell you what to do you have a choice but in two years from now, if you introduce [GM], you can't say 'we didn't know.'

Food Insecurity: Rising Concern

In an increasingly uncertain world, climate change and peak oil are posing a threat to the food of rich and poor nations alike. [4]The World Bank's 2008 World Development Report makes a grim prediction of what is to come: 'The future is increasingly uncertain. Models predict that food prices in global markets may reverse their long term downward trend, creating rising uncertainties about global food security.'

When the architects of globalization start making such statements, first we should pity, those low income countries dependent on world markets, and second, we can understand why in Whitehall, Brussels and capitals everywhere, food security is also back on the agenda of rich and poor countries alike.

The situation in UK is fairly sobering, while a 2006 study by Cranfield University suggested that the UK food system was pretty robust and would prove resilient if there were a crisis or shock of some kind, the hard facts are that the UK is only 63 percent self-sufficient. This rises to 74 percent for indigenous (home grown) foods. Nevertheless, the UK currently imports approximately £22 billion of food and drink each year. Most of this-68 percent comes from elsewhere in the EU. It's important not to be blinkered about self reliance; even at the end of World War-II the UK produced the same amount of food as it does currently. It's a long time since Britain was truly self sufficient the late 18th century in fact but the situation today is rapidly worsening. In 1995, 27 percent of UK food was imported. By 2006 it was 37 percent.

For decades, the term 'food security' was applied only to developing nations. The problem, as the policy makers saw it, was a simple one, they couldn't feed themselves; the solution was therefore to increase their output. What followed was a simple solution-the green revolution a combination of new plant breeding and fertilizers. The output from many farms did increase, but farmers were punished for their pains with environmental damage, job losses and a long period of low raw food commodity prices.

Today, the green revolution seems to have run its course. Food prices are rising to such a level that what was once a developing world problem is now firmly on the radar of the rich, policy makers look in vain for another quick fix. They point out that total food production has risen as population has increased, but then acknowledge that food production per capita has fallen to current lows. Thus a new generation of hi-tech agriculturalist is now arguing that only through genetic modification can we hope to feed the world.

There is a dizzying convergence of factors some economic, some institutional, some social, some environmental all pointing towards a new period of global food insecurity and renewed worries about the sustainability and fragility of our current food system.

Market speculation is one such factor. In an uncertain world, basic human needs surface as a good investment bet. After decades of chasing easy money the dot.com boom, property, consumer

goods-food now looks like Cinderella, a sector dismissed as a frump not worthy partying for who turns out to be the belle of the ball. Many commodity traders privately admit that speculation is playing a part in the rises. But only a part. Other factors are purely economic. Rising affluence in India and China has led to a rise in dietary expectations. As consumers get richer, 'feast day' food is eaten more often. Meat consumption is rising. Yet animals are inefficient energy converters, require a lot of water and feed, and add to global methane emissions combined with attempt by the USA and European Union to alleviate oil dependency by promoting and subsidizing bio fuels, the price of grain now used to feed cars as well as humans and livestock has spiralled.

Increasing population is a further factor. Already at 6.6 billion in 2007, global population is expected to rise to 9.1 billion by 2050. Urbanisation appears unstoppable. In 1961, one billion lived in towns; it was two billion by 1986 and three billion by 2003; it is projected to be four billion by 2018 and five billion by 2030. More people claiming food from limited land means greater scarcity and higher prices. Optimists say new land (or old land in Eastern Europe) will be planted. But displacing what? and with what longer term repercussions?

Land use also has an influence. In the early 1990s, David and Marcia Pimentel calculated that use of US arable land was at near capacity and that no more was available to cater to a growing population. Land is sometimes mistakenly described as a finite resource. In fact, available land fluctuates, not least with sea levels. The important point for food security is not how much land there is in total, but how much productive land is available. Optimists suggest that the world could bring into use about 12 percent more land than is currently under cultivation. This might well be so, but marginal land tends to be less productive and more expensive to use. Moreover, climate change is highly likely to restructure which lands will yield at all. Remember that what we now call the Sahara was probably once the Old Testament Garden of Eden.

Here in the UK, calculations productive arable land are sorely needed. The Stockholm Environment Institute at York recently calculated that the UK's current food and farming ecological footprint-its land, energy and sea space use is up to six times the food growing area of the UK itself. In northwest England for example, total household consumption equated to 6.2 global hectares (gha) per resident of which food consumptions, estimated at 1.4 gha/per capita, was the biggest component. In that region, the 20 million tonnes of raw materials produced from the land eventually became just 2.4 million tonnes of food consumed. Half a million tonnes of packaging was used and almost one million tonnes of food and drink were never eaten and sent directly to landfill. The UK throws away 6.7 million tonnes of food annually, a third of food bought. This is equivalent to 15 million tonnes of Co_2 So much for modern efficiency.

Without water, agriculture grinds to a halt. In developed countries with clean tap water widely available. It's easy to forget the long struggles that went on in the 19th and 20th centuries to bring clean water to the urban masses. But in vast areas of the world sources of water are either unreliable or under threat, and the fight to get decent water in the first place looks as though it might like food quietly start to fall, despite the pleas of the World Health Organization and FAO. As environmental science writer Fred Pearce has shown, the world's virtual water trade (the

amount of water that is embedded in food or other products needed for its production) is equivalent to 1,000 cubic kilometres, or 20 Nile rivers of water each year, most of it in agricultural crops.

The Biotechnology Regulatory Authority of India Bill, 2013[5] whether addresses social concerns?

General

The Biotechnology Regulatory Authority of India Bill, 2013 was introduced in the Lok Sabha on April 22, 2013 by the Minister for Science and Technology, Mr. S. Jaipal Reddy. The Bill aims to promote the safe use of modern biotechnology by enhancing the effectiveness and efficiency of regulatory procedures. The objective of the Bill is to promote the safe use of modern biotechnology by enhancing the effectiveness and efficiency of regulatory procedures and provide for establishment of the Biotechnology Regulatory Authority of India to regulate the research, transport, import, manufacture and use of organisms and products of modern biotechnology. The bill is in compliance of International obligations arising out of Convention on Biological Diversity and Cartagena
Protocol on Biosafety[6].

The bill extends to the whole of India[7]. It declares about expediency of control by Union and says that in the public interest that the Union had taken under its control the regulation of organisms, products and processes of modern biotechnology industry[8].

Biotechnology Regulatory Authority

The Bill establishes the Biotechnology Regulatory Authority of India (Authority)[9]. The Authority will consist of a chairperson, two full time members, and two part time members[10]. The tenure of office of chairman has been fixed for three years which may be extended for further three years.[11]The Bill provides about selection procedure qualification term of office etc. It also puts a restriction on Chairperson or Members on employment after cessation of office for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person which has been associated with or granted authorisation for research, transport or import of organisms or products or manufacture or use of organisms and products under this Act.[12] These provisions definitely secure the objective of fairness in decision making by the authority.

Functions and Powers of the Authority[13]

The functions of the Authority shall include regulating the research, transport, import, containment, environmental release, manufacture and use of organisms and products of modern biotechnology. The Authority has the power to call for information, conduct an inquiry and issue directions for the safety of products or processes of modern biotechnology.

Field trials for certain organisms or products cannot be conducted unless the Authority permits them as aiding the development of modern biotechnology such as genetically engineered plants,

animals used in food or any animal clones that can be applied in agriculture, fisheries or food products. The Bill will not apply to the clinical trials of drugs, under the Drugs and Cosmetics Act, 1940, and food or food additives or any material under the Food Safety and Standards Act, 2006.
The Authority will not disclose confidential commercial information made available in an application to the Authority. However, the Authority may disclose it in public interest or if this disclosure will not harm any person[14].

Divisions under the Authority
Regulatory divisions of the Authority have been created for the implementation of safety assessment procedures and processes. The divisions are: (i) agriculture, forest and fisheries, (ii) human health and veterinary products, and (iii) industrial and environmental applications[15]. A Risk Assessment Unit will appraise applications for proposed research, transport or import of an organism or product, before final approval is granted. The Product Rulings Committee will make recommendations to the Authority for the manufacture or use of organisms or products. The Environmental Appraisal Panel will make recommendations on environmental safety of organisms and products.

Other bodies
The Bill also provides for a Biotechnology Advisory Council will render strategic advice to the Authority regarding developments in modern biotechnology and their implications in India[16]. An Inter-Ministerial Governance Board has been established to promote inter-ministerial or departmental co-operation for the effective discharge of the functions of the Authority[17].

Procedure for grant of authorization for manufacture or use of organisms and products:[18]
Section 27 of the Bill provides details about procedure for grant of authorization for manufacture or use of organisms and products as following

1) Every person shall obtain authorisation under clause (*a*) of sub-section (*6*), for the purpose of manufacture or use, of organisms and products specified in Parts I, II [except products covered under drug as defined under clause (*b*) of section 3 of the Drugs and Cosmetics Act, 1940] and III of Schedule I, and submit for the said purpose an application in the form and manner, along with such fees and accompanied by such documents and information as may be specified by regulations.
2) On receipt of the application under sub-section (*1*) for the manufacture or use of organisms and products specified under Parts I, II [except products covered under drug as defined under clause (*b*) of section 3 of the Drugs and Cosmetics Act, 1940] and III of Schedule I, the Authority shall forward the application to the Risk assessment Unit which shall undertake a science-based evaluation of the application and submit its risk assessment report as to the safety of the proposed manufacture and use of organisms or products to the Authority.
3) The Authority, on receipt of the risk assessment report under sub-section (*2*), as to the safety for manufacture or use of organisms and products, shall forward the risk assessment report of the Risk Assessment Unit to the Product Rulings Committee for giving its recommendations thereon, as to the safety of organisms and products.

4) The Authority shall obtain the opinion of the Environmental Appraisal Panel in case of organisms and products having environmental impact as may be referred by the Authority: Provided that in case of difference of opinion between the Environmental Appraisal Panel and the Authority, the Authority shall pass an order giving its reason in this regard.
5) Without prejudice to the provisions contained in sub-sections (*1*), (*2*), (*3*) and (*4*), the Authority shall obtain the objections or suggestions from the public in case of organisms and products.
6) The Authority, on receipt of the recommendations under sub-section (*3*), as to the safety for manufacture or use of organisms and products, shall consider all other relevant matters, in addition to the risk assessment report submitted to it by the Risk Assessment Unit and-
   a) if it is of the opinion that the proposed manufacture or use of organisms and products is safe it may, in writing authorise, with or without conditions, such manufacture or use of organisms and products, as the case may be;
   b) if it is of the opinion that the proposed manufacture or use of organisms and products is not safe to human health or animal health or the environment, it may, in writing refuse to grant authorisation for the manufacture or use of organisms and products, as the case may be;
   c) if the Authority has reasonable grounds to believe that the person may not comply with the conditions which may be imposed under clause (*a*) in respect of the authorisation, it may in writing refuse to grant authorisation for the manufacture or use of organisms and products, as the case may be.
7) Where the Authority refuses to grant authorisation referred to in clause (*c*) of sub-section (*6*), it shall record the reasons for such decision and furnish a copy thereof to the applicant.
8) The decisions of the Authority taken under clause (*a*) or clause (*b*) or clause (*c*) of sub-section (*6*) shall be communicated in writing to the applicant and be made available to public, within ten working days of the decision being taken by it.
9) The Authority may, by notice given in writing to the applicant, suspend or cancel the authorization:
   a) if it is of the opinion that any condition of the authorisation has been violated; or
   b) the authorisation was obtained improperly; or
   c) any new risks have emerged for continuation of the activitiy.
10) The Authority may develop a prompt and effective product recall system of organisms and products in circumstances as specified.

State level body

A State Biotechnology Regulatory Advisory Committee will act as a nodal agency between the state government and the Authority with regard to the regulation of modern biotechnology.

Appellate Tribunal

A Biotechnology Regulatory Appellate Tribunal will hear appeals against the decisions, orders or directions of the Authority within a period of thirty days from the date on which the decision or order or direction is communicated to him[19]. The Tribunal will consist of a full-time chairperson,

who has been a judge of the Supreme Court of India or a Chief Justice of a High Court, and five part time expert members.[20]

Offences and Penalties under the Bill

The Bill imposes a penalty for providing false information (imprisonment for three months and fine extending to Rs five 5 lakh)[21] and conducting an unapproved field trial (imprisonment for six months to one year and a fine extending to Rs two lakh)[22]. If a person, without reasonable excuse, resists, obstructs, or attempts to obstruct, impersonate, threaten, intimidate or assault an officer of the Authority or any person assigned to discharge any function under this Act, or in exercising his functions under this Act, he shall be punishable with imprisonment for a term which may extend to three months and also with fine which may extend to five lakh rupees[23]. It also provides about offences by companies,[24] society, trust or university[25] and also by Government Departments[26] Bill provides that cognizance of any offence punishable under this Act shall be taken only by complaint made by the Authority or any officer or person authorised by it and shall be tried by the court not below the rank of Chief Metropolitan Magistrate or a Chief Judicial Magistrate.[27]The Bill has two schedules.

Conclusion

Thus the BRAI bill attempts to streamline the procedure for the safe use of modern biotechnology by enhancing the effectiveness and efficiency of regulatory authority. Although it provides a comprehensive mechanism and procedures for regulation of GMO in India but it also has been criticised by civil society on the basis of various grounds including conflict of interest between BRAI and Department of science and Technology, overriding of State Government's role, lack of socio- economic assessment, insufficiency of punishment etc.

There should a socio- economic study of issues relating to genetically modified crops before the introduction of any regulatory mechanism so that all such issues must be properly addressed.

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[5] Bill No. 57 of 2013

[6] Preamble of the Bill.

[7] Section 2 of the Bill.

[8] Section 3.

[9] Section 4 of the Bill.

[10] Section 5 of the Bill.

[11] Section 9.
[12] Section 10.
[13] chapter IV sections 18,19 nd 20 discus about functions and powers of authority
[14] Section 28.
[15] Section 21.
[16] Section 16.
[17] Section 17.
[18] Section 27
[19] Section 43.
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[21] Section 62
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[25] Section 68
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Central Vigilance Commission: Need to Maintain Institutional Integrity, Independence and Autonomy for Its Effective Functioning

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Who will watch the watchman?

Abstract

Necessity is the mother of invention. It may be good or bad for mankind. Corruption, perhaps is fast wearing down the belief in the state. Such a development would not only be dangerous for the society but also jeopardize the integrity of the nation. Corruption is posing to be a great challenge at the social front. The administration has come to play a decive role in influencing and shaping the socio-economic order and affect the daily lives of the people over a wide canvas. In the flush of power the administration Exhibits a tendency to disregard individual rights and interests in the name of public good. Therefore an urgent problem of the is to evolve an defective and mechanism to contain these dangers by controlling the administration in exercising its power, safeguarding individual rights and creating procedures for redressal of individual grievances against the administration.

Introduction

There is a perception that the Indian bureaucracy is inefficient and corrupt. There is no doubt about the correctness of the statement. Members of the executive come from the general public.

Both of them share same social and moral values. We the people of India at present definitely lack the value of abiding by the law. Any person, who tries to follow all the rules instead of being praised, is rediculed by the society. Social sanction or disapproval is the greatest law enforcing agency. How the members of executive recruited from such people may be honest? Members of the executive are under greater stress. If they are honest, they are, apart from being rediculed, considered to be useless and worthless by their family members, freinds and the people with whom they deal.

A serious problem afflicting the Indian polity is that of corruption in the administration. This distorts the decision making process of administration. Incorruptibility is the essential requirement for public confidence in the administration of Government departments. To eradicate and checking corruption amongst government servants and to strengthen the existing anti

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corruption mechanism, the Central Vigilance Commission was created in February, 1964 by a resolution of Government of India. The Commission was established as a result of recommendations of the Committee on Prevention of Corruption that is also known as Santhanam Committee which was appointed in 1962. The Committee had recommended that the Commission should be concerned with two major problems facing the administration.

1. Prevention of Corruption and maintenance of intercity amongst Government servants.
2. Insuring just and fair exercise of administrative powers vested in the various authorities.

Thus the Committee had recommended two major matters to come within the preview of the Commission.

1. Cases of Corruption and,
2. Cases involving maladministration.

The Government accepted the recommendations of the Committee as regards corruption but not maladministration because the latter problem was big enough to require separate machinery by itself and if the Commission was burden with the additional responsibility for maladministration along with corruption, it would dilute its effectiveness in dealing with cases of corruption. The Vigilance Commission has jurisdiction and powers in respect of matters to which the executive power of the center extends. Vigilance is an integral part of all Government institutions. Anti-corruption measures are responsibility of the Central Government. At the time of setting up, CVC was not a statutory body. According to the recommendation of the Santhanam Committee, CVC, in its functions, was supposed to be independent of the executive. The sole purpose behind the setting up of the CVC was to improve the Vigilance administration of the country.

In September, 1997 the Government of India established the Independent Review Committee to monitor the functioning CVC and to examine the working of CBI and the enforcement Directorate. Independent Review Committee vide its report of December, 1997 suggested that CVC be given a statutory status. It also recommended that the selection of Central Vigilana Commissioner shall be made by High Powered Committee comprising of the Prime Minister, Home Minister and the Leader of Opposition in Lok Shabha It also recommended that the appointment shall be made by President of India on the basis of recommendation made by High Powered Committee. That, the CVC shall be responsible for the efficient functioning of CBI. CBI shall report to CVC about cases taken up for investigation. The appointment of CBI director shall be made by a Committee headed by Central Vigilance Commissioner. The Central Vigilance Commessioner shall have a minimum fixed tenure and that a committee headed by Central Vigilance Commissioner shall prepare a panel for appointment of Director of enforcement. On 18th December, 1997 the Supreme Court in the case of Vineet Narain vs. Union of India [(1998)1 SCC 226] :(AIR 1998 SC 889) exercising its authourity under Art. 32 read with Act 142 to implement an important constitutional principle of the rule of law ordered that the CVC shall be given a statutory status as recommended by Independent Review Committee. The Judgment in Vineet Narain case was followed by the 1999 ordinance under which CVC became a multi member Commission headed by Central Vigilance Commissioner and got statutory status. Thus the 1999 ordinance stood promulgated to improve the vigilance administration and to creat a

culture of integrity as for as Government administration is concerned. Ultimately, the 1999 ordinance was replaced by the Central Vigilance Act (45 of 2003) which came into force with effect form 11th September, 2003. The object and purpose of 2003 Act is to have an integrity institution like CVC which is in charge of vigilance administration and which constitutes an anti-corruption mechanism. In its functions, the CVC is similar to Election Commission Comptroller and Auditor General Parliamentary Committees etc. The 2003 act has been enacted to provide for the constitution of a Central Vigilance Commission as an institution to inquire or cause inquiries to be conducted into offences alleged to have been committed under the prevention of Corruption Act 1988 by certain categories of public servants of the central government, corporations established by or under any central act government companies societies and local authorities owned or controlled by the central government and for matters connected there with or incidental thereto. We may point out that in Australia, USA, UK and Canada there exits a concept of integrity institutions. In Hongkong we have an Independent Commission against corruption. In Western Australia there exists a statutory Corruption Commission. In Queensland we have Misconduct Commission. In New South Wales there is a police integrity commission. All these come within the category of integrity institution. It is clear from the scope and ambit of the 2003 Act, that the CVC is also an integrity institution. It is to supervise Vigilance administration**.** The 2003 Act provide a mechanism by which the CVC retains control over CBI.

Constitution of Central Vigilance Commission

Under the Vigilance Commission Act, 2003 the Commission shall consist of a Central Vigilance Commissioner as chairperson and not more than two Vigilance Commissioner Members. The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons who have been or are in All India Services or in any civil service of Union of India or in any civil post under the union having knowledge and experience in the matters relating to Vigilance, Policy making and administration including police administration. The appointment of Central Vigilance Commissioner and Vigilance Commissioner shall be made by President of India after obtaiming the recommendation of a High Powered Committee Consisting the Prime Minister-Chairperson, the Minister of Home Affairs and the Leader of opposition in House of the People as members Further provided that the appointment of the Chief Vigilance Commissioner and other Vigilance Commissioners shall not be invalid for the reason of any vacancy in Committee. The Central Vigilance Commissioner and Vigilance Commissiners shall hold office for a term of four years or till he attains the age of sixty five years, whichever is earlier. The Central Vigilance Commissioner shall be ineligible for reappointment. The Chief Vigilance Commissioner and other Vigilance Commissioner shall be removed from his office by an order of President on the ground of proved misbehavior or incapacity after the Supreme Court inquiry.

Chapter III of the CVC Act, 2003 refers to functions and powers of the Central Vigilance Commission. CVC exercise superintendence over the functioning of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been Committed under the Prevention of Corruption Act, 1988. The CVC is empowered to exercise superintendence of the functioning of C.B.I. It is also empowered to give direction to CBI and to review the progress of investigations conducted by CBI into offences alleged to have been

committed under the prevention of corruption Act, 1988. CVC is also empowered to exercise superintendence over the Vigilance administration of the various ministries of the Central Government, PSUs, Government Companies etc. The powers and functions discharged by CVC is the sole reason for giving the institution the administrative autonomy, Independence and insulation from external influences.

Institutional Integrity of CVC
The object and purpose of the 2003 Act, is to have an integrity institution like CVC which is in charge of vigilance administration and constitutes an anti-corruption mechanism. Under the Act, CVC is given a statutory status. It stands establishing as an institution. The constitution of CVC makes it an integrity institution.

Appointment of Chief and Others Vigilance Commissioners
The parliament has put its faith in the High Powered Committee consisting Prime Minister, Home Minister and the leader of Opposition. It is persumed that such High Powered Committee entrusted with the wide-discretion to make a choice will exercise its powers in accordance with the Act, objectively and in a fair and reasonable manner. The HPC must take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be duty of HPC not to recommend such a condidate. The HPC had to taken into consideration what is good for institution and not what is good for the candidate. Certainly the personal integrity has a co-relationship with institutional integrity. The prescribed form of oath under sec 5(3) requires Central Vigilance Commissioner to uphold the sovereignty and integrity of the country and to perform his duties without fear or favour. Under sec 6(1) the Central Vigilance Commissioner shall be removed from his office only by an order of the President on the ground of proved misbehaviour or incapacity, after a inquiry made by Supreme Court. All these provisions indicate that CVC is an integrity institution. The HPC has therefore to take into consideration the values independance and impartiality of the instititution. It has to take an informed dicision keeping in mind the above mentioned vital aspects indicated by the purpose and policy of the 2003 Act. It is the independence and impartiality of the institution like CVC which has to be maintained and preserved in the larger interest of the rule of law.

Centre for PIL & An. vs. Union of India & An. **(AIR 2011 S.C. 1267)** In this case, two writs of quowarranto petitions were filed under Art. 32 of the Constitution of India in the Supreme Court raising a substantial question of law and public importance as to the legality of the appointment of Shri P.J. Thomas as Central Vigilance Commissioner under sec 4 (1) of the Central Vigilance Commission Act 2003. Shri P.J. Thomas was appointed to the Indian Administrative Service (Kerala Cadre) 1973 batch where he served in different capacities with the state government including as secretary, Department of Food and Civil Supplies in the year 1991. During that period, the State of Kerala decided to import 30,000 MT of palmolein. The CAG in its report Feb, 1994 alleged some irregularities in the import of palmolien. This report of the CAG was placed befor the Public Undertaking Committiee of the Kerala assembly.

The Committee also alleged irregularities causing a loss of more than Rs. 4 crore to the exchequer. An FIR was registered against Shri Karunakaran, then Chief Minister and six other who were involved in the import of palmolien. The State of Kerala accorded its sanction for prosecution of Shri P.J. Thomas and others on 30 November, 1999. In the charge sheet filed befor the trial court, the allegation was made against him. On 18th Jan 2011 a note was put up by the concerned Under Secretary that a regular departmental enquiry should be held against Shri P.J. Thomas for impossing a major penalty. On 18th Feb, 2003 the DoPT had made a reference to the Central Vigilance Commission. Keeping in view the fact and circumstances Commission advised to initiate major penality proceeding against Shri P.J. Thomas. In November, 2005 the state of Kerala took the position that the allegation made by the investigation agency were invalid and the cases and request for sanction against Shri P.J. Thomas should be withdraw. In Oct., 2006 the Chief Secretory to the Government of Kerala again wrote a latter to the Government of India informing them that the state Government had decided to continue the same.

The case has been re-examined by CVC. The CVC has observed that no case is made out against Shri P.J. Thomas and others and no loss has been caused to the state government but no any reasons were given as to why CVC has changed its earlier opinion. It is found that there are at least six nothings of the DoPT between 2000 and 2004 which had recommended initiation of penality proceeding against Shri. P.J. Thomas. In September 2010 the DoPT empanelled three officers including Shri. P.J. Thomas for the post of Central Vigilance Commissioner. Along with the brief the matter was put up to the HPC for selecting one candidate out of the empanelled officers. The meeting of HPC consisting of the Prime Minister, the Home Minister and the Leader of the Opposition was held on 3rd September, 2010. In the meeting, disagreement was recorded by the Leader of Opposition despite which name of Shri P.J. Thomas was recommended for the appointment of the post of Central Vigilance Commissioner by majority. In the instant case the HPC had faild to take into consideration pendency of palmolin case befor the Special Judge, Thiruvananthapuram and various nothings of DoPT against appointee. The recommendation dated 3rd September 2010 of HPC in entirely premised on the blanket clearance given by CVC on the 6th Oct., 2008 and on the fact of respondent being appointed as Chief Secretary of Kerala his appointment as Secretary of Parliamentary Affairs and his subsequent appointment as Secretary Telecom.

While making recommendations the criteria of the candidate being a public servant or a civil servant in the post is not the sole consideration. The HPC has to look at the record and take into consideration wether the candidate would or would not be able to function as a Central Vigilance Commissioner. Wither the institutional competency would be adversely affected by the pending proceeding and by that touchstone the candidate stands disqualified then it shall be duty of HPC not to recommend such a candidate for the above reasons, the Supreme court held that the recommendation for the appointment of Shri P.J. Thomas as Central Vigilance Commissioner is non-est. in law and laible to be quashed.

Conclusion

Incorruptibility and integrity are essential requirement for public confidence in the administration of government department. The menial of corruption cannot be permitted to be hidden under the carpet of legal technicalities. Under the proviso to sec 4 (1) parliament has put its faith in the three members High Powered Committee. It is presumed that such High Powered Committee entrusted with wide descretion to make a choice will exercise its powers in a fair and reasonable manner. It is well settled that mere conferment of the wide discretionary powers per se will not violate the doctrine of reasonableness or equality. Each of the members is persumed by the lagislature to act in public interest. If one member of the committe dissents that member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give the reasons for overruling the dissent. This will bring about fairness in action. We are of the view that if the above methodology is followed transparency would emery which would also maintain the integrity of the decision-making process.

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Cyber Forensics: A Techno-Scientific Revolution Against Cyber Crime

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"Technological progress is like an axe in the hands of a pathological criminal."
- Albert Einstein.

Abstract

As change is inevitable, the innovation in new technology continues to grow in its prevalence and frequency. The cyber criminals have changed their method as according to advanced technology. To reduce these cyber criminal activities, cyber criminal investigations need to be supported with digital evidence collection tools and techniques and also to the development of digital forensic science and specifically cyber forensics. The goal of cyber forensics is to examine digital media in a forensically sound manner with the aim of identifying, preserving, recovering, analyzing and presenting facts and opinions about the information.

Cyber forensics, still rather a new regulation in computer security and law enforcement, is a rapidly growing and it focuses on finding digital evidence after any infringement in computer security. With the growing importance of computer security and the seriousness of cyber crime, it is important for computer professionals to understand the technology that is used in cyber forensics The aspiration of cyber forensics is to do a structured investigation and find out exactly what happened on a digital system, and who was responsible for it.

But one of the greatest lacunae in the field of computers is the absence of awareness about the cyber forensics laws anywhere in world. This research paper examines the devastating challenges of the cyber crime through the cyber forensics. This research paper explores the concept of the cyber forensics and its current legal applications. "Giving birth to new technologies is the work of inventors and making use of those technologies for more advanced and drastic crimes is the craftwork of criminals."[1]

Introduction

The digital revolution has widened the outlook of human approach towards the technological enhancement. The Internet facility has been accessible now both in office and bedroom providing a gateway to communicate in a free flow of information and ideas with others across the world. At a rather unique societal and cultural cross road, almost every facet of our day to-day lives is impacted by digital technologies like email, Internet, online banking, digital music, etc.

Historically, criminal investigations relied on the concepts of physical evidence, eyewitnesses, and confessions. Today, the criminal investigator must recognize that a vast amount of evidence will be in the electronic or digital form. The crime scene may consist of a computer system or

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network. The eyewitness of today and tomorrow may be a computer generated 'log file'. In order to effectively deal with this fundamental change in evidence, the science of digital forensics has been developed, or more correctly is developing[2]. While developing standards for dealing with electronic or digital evidence, it is necessary that other supporting disciplines also must evolve in order to assist the investigator in this rather new realm.[3]

The power of the technological advancement that is Information technology age has become a boon to the human community, but this paradigm-shrift in the human being is also reflected in the area of crime and committing crimes in the virtual environment called the cyber crimes.[4]

The increase in cyber criminal activity places a strain on law enforcement and government. Today, traditional criminal investigations need to be supported with digital evidence collection tools and techniques. This need has led to the development of digital forensic science and specifically computer forensics.[5]

Cyber forensics, also called computer forensics, is the application of computer investigation and analysis techniques to gather evidence suitable for presentation in a court of law. The goal of computer forensics is to perform a structured investigation while maintaining a documented chain of evidence to find out exactly what happened on a computer and who was responsible for it.[6]

Cyber Forensics

The word *forensics* literally means "a science that deals with the relation and application of a particular field." Computer forensics is the science that is concerned with the relation and application of computers and legal issues.[7] Cyber forensics is a new and fast growing field that involves carefully collecting and examining electronic evidence that not only assesses the damage to a computer as a result of an electronic attack, but also to recover lost information from such a system to prosecute a criminal.[8]

The simple definition of computer forensics is that the art and science of applying computer science to aid the legal process. Although plenty of science is attributable to computer forensics, most successful investigators possess knowledge for investigations and a skill for solving puzzles, which is where the art comes in".[9]

Cyber forensics combines specialized techniques with the use of sophisticated software to view and analyze information that cannot be accessed by the ordinary user. This information may have been deleted by the user months or even years prior to the investigation, or may never have been saved to begin with, but it may still exist in whole or in part on the computer's drive.[10]

Evidence from computer forensics investigations is usually subjected to the same guidelines and practices of other digital evidence. It has been used in a number of high profile cases and is becoming widely accepted as reliable within U S and European Court Systems.[11]

The term "computer forensics" is associated with a relatively new class of crime. Essentially computer forensics is used to describe the study of computer and storage devices for the purposes of obtaining legal evidence. The evidence must be capable of being used in legal proceedings. Computer forensics involves the recovery of lost, damaged, hidden or password-protected data from a computer system after the system has crashed or been effected by a virus, or because of accidental, deliberate or malicious file corruption or loss. As such, computer forensics can be described as the scientific process of preserving, identifying, extracting, and documenting and interpreting data held on electronic storage media.[12]

Computer forensics is the postmortem of a computer criminal act. It is the process that will comb potential evidence and interpret it to conclude on whether or not the device was used to facilitate the crime. Proper investigation methods when used will enable investigators to present credible evidence in courts of law and hence lead law-breakers or criminals to pay the price for their actions.[13]

Components of Cyber Forensics

Cyber forensics consists of two components:

I) **Computer Forensic**

It is the control of acquiring, preserving, retrieving, analyzing, reconstructing, and presenting data that has been processed electronically and stored on computer media including networks. This relates to investigations by law enforcement agencies for use in a court of law. The methods used must be technologically robust to ensure that all probative information is recovered, that original evidence is unaltered, and that no data were added to or deleted from the original collection.

Generally, computer forensics investigations are performed after the crime or event occurred. A forensic computer expert may recover files that have been lost or deleted by accident. Information potentially valuable to criminal or civil cases in a court of law are identified and collected using investigative techniques. Law enforcement employs forensic science expert to:

1) assist pre-search warrant preparations and post-seizure handling of the computer equipment;
2) help support individuals' claims of sexual harassment, wrongful termination, or age discrimination;
3) aid insurance companies in mitigating costs where possible fraud in accidents, arson and workman's compensation cases occur;
4) help corporations discover and confirm evidence related to embezzlement, sexual harassment, theft or misappropriation of trade secrets, and other internal/confidential information.

II) Network Forensics

It involves gathering digital evidence, which can be transient and not preserved with permanent storage media distributed across large-scale, complex networks. Network forensics is a more technically challenging area of cyber forensics as it deals primarily with in-depth analysis of computer network intrusion evidence. This is difficult because current commercial intrusion analysis tools are inadequate to deal with today's networked, distributed environments.[14]

In the computer security mechanism, the logs files are used to describe the behaviors of the computer system, applications and users, monitoring the user's operations of the system, recording anomalies of the system. Once the system was invaded, we can find out loopholes in the current system by analyzing the logs files, identify weak points in network security, and analyze the possible attacks, and thus take appropriate measures to strengthen the network control. Log data is also an important source of information and should be preserved in digital forensic investigations. To carry out forensic computing, trustworthy logs are needed to be admissible for the use in court. Moreover, since the log contains private information, the confidentiality of the log files must be preserved. Therefore, the logs file's integrity and security are important to the maintenance of the system, monitor on system activity and the security of system.[15]

Case Laws Regarding Utility of Cyber Forensics

The following cases decisions proves the importance of utilizing cyber forensics-

In *United States v. Tucker,* the defendant was found guilty of possession of child pornography. The conviction was strengthened by computer forensics evidence which was found in deleted internet "cache" files which were saved to the defendant's hard drive.

A European murder case of a young girl was murdered at a nightclub. The nightclub had a computerized ID system which recorded who had been at the club each night. The software recorded the time when the card was swiped but this information was not stored within the system. However, a computer forensics investigation was able to retrieve this deleted data.[16]

A Hong Kong rape case of a girl who was involved in regular "chatting" with a man over the Internet. After chatting to each other for some time they arranged to meet and the girl was subsequently raped. A computer forensics investigation was carried out on the girl's computer and the address of the man was ascertained. A further examination of the man's computer revealed the contents of his conversations with the girl. The man subsequently admitted his guilt.[17]

In Australia, *Sony Computer Entertainment Australia Pty Ltd v Jakopcevic* involved the infringement of two trademarks. The respondents were involved in manufacturing and distributing CD-ROMs bearing counterfeits of the Sony Trademarks. When the respondents became aware that they were going to be investigated, they deleted many business records from their computer. A computer forensics specialist was able to recover the deleted computer files.[18]

Advantages of Cyber Forensics

a) It helps in controlling cyber crime,
b) It is quick and efficient,
c) Enables legal professionals to produce as evidence data, which would otherwise be unable to be produced to the court, and

d) The ability to recover data, which has been deleted, damaged, hidden or lost, is of great advantage to legal professionals involved in litigation.

Cyber Forensics Methodologies

Forensic methodologies generally divided into two broad categories -

The first is the **DEAD FORENSICS** where the computer is abruptly disconnected from the power and then the hard disk is acquired to perform forensics analysis later in a forensic lab. This method is great for preserving data on disk, but a lot of volatile data lost in this process, which may be useful. A skillful attacker may never even write their files to disk. A real world example of this is the code red worm.

The second methodology, **LIVE FORENSICS**, recognizes the value of the volatile data that may be lost by a power down and seeks to collect it from a running system. As any such action will in some minor ways alter the system, it is not pure in forensic terms. But on exceptional cases an investigator with a proper advice from and expert can collect the volatile data provided with the documents the entire data collection procedure with supporting photographs & time stamps before and after the data collection.[19]

Legal Aspects of Cyber Forensics

Cyber forensics is a relatively new regulation to the courts and many of the existing laws used to prosecute computer-related crimes, legal precedents, and practices. The best source of information in this area is the United States Department of Justice's Cyber Crime web site. The site lists recent court cases involving computer forensics and computer crime, and it has guides about how to introduce computer evidence in court and what standards apply. The important point for forensics investigators is that evidence must be collected in a way that is legally admissible in a court case.

A constant challenge facing computer forensic investigators is inherent fragility of digital evidence. When handled improperly, digital evidence can be easily altered or even eliminated. In the minutes and hours immediately following the discovery of a crime involving digital evidence, the actions taken by the first respondent should ensure that the evidence is preserved in a forensically sound manner. Mistakes in interpretation and analysis can be reduced by rigorous application of the scientific method performing exhaustive investigation and research, questioning all assumptions and developing a process that explains the facts. [20]

Every method used to destroy evidence, once found, entails a risk to the individual doing the destruction. Any attempt to destroy evidence indicates that there is something to hide, and is likely to destroy the credibility of the side that does it. There are few pieces of evidence that can be found on a computer that are more damaging than a finding of evidence tampering.[21]

The Judicial System is having difficulties in mandating and interpreting standardization for computer forensics, it becomes the responsibility of the scientific community to assist in this endeavor. In the evolution of the Indian challenge to cyber crimes, during the last three years,

Police in different parts of the country have been exposed to the reality of cyber crimes and more and more cases are being registered for investigation.[22]

With the increased use of computers in society, the necessity of electronic evidence in litigation has increased. The valuable evidence can be found on a computer, which enables legal professionals to produce evidence, which had previously been lost, destroyed, hidden or deleted. While there are disadvantages associated with computer forensics, the advantages are far greater.[23]

Cyber forensics tools to trace activities are necessary from a law enforcement perspective; however, any data gathered with regard to an investigation must not violate the privacy rights of individuals. More important, the policies in place should protect the privacy of individuals not related to any suspected crime. This field will enable crucial electronic evidence to be found, whether it was lost, deleted, damaged, or hidden, and used to prosecute individuals that believe they have successfully beaten the system.[24]

Computer forensics is used as an investigative tool in order to allow the investigator to determine what has occurred, when it occurred, where it occurred, why it might have occurred, and hopefully who is responsible. These outcomes are no different from the goals of traditional criminal investigations. The use of criminal profiling can greatly assist the investigator in developing investigative and media search strategies, reducing the number of possible suspects, and effectively interviewing identified suspects.[25] As more and more criminal behavior becomes linked to technology and the Internet, more evidence will move into the realm of the digital or electronic world. This evolution of evidence means that investigative strategies also must evolve in order to be applicable today and in the not so distant future. It is predicted that criminal profiling will continue to be an effective investigative tool and will surely undergo modifications and growth as it matures into the age of advanced technology and cyberspace.[26]

Cyber crime threatens our commercial and personal safety. Cyber forensics has developed as an indispensable tool for law enforcement. But in the digital world, as in the physical world, the goals of law enforcement are balanced with the goals of maintaining personal liberty and privacy. Computer forensic investigators must be aware of the legal environment in which they work, or they risk having the evidence they obtain being ruled inadmissible.

Forensic investigators should understand that before they seize a computer or other electronic hardware they must requires a search warrant. They should be aware that if they wish to access stored electronic communications, they would need to comply with the Electronic Communication Privacy Act. If they wish to conduct real-time electronic surveillance, they will need to obtain a wiretap order from a judge.
Computer forensic investigators face ethical dilemmas. They must exercise their discretion wisely, balancing their prosecutorial zeal with respect for citizens' individual liberties. Criminal investigators in America have grappled with these same issues for over two hundred

years. Digital technology is not the first “new era” to challenge law enforcement. The railroad, telephone and automobile posed similar challenges. By following Constitutional principles and encouraging ethical behavior we will achieve the right balance between liberty and security in the digital age.[27]

Provisions in Indian Telegraph Act
The Indian Telegraph Act authorizes the surveillance of communications, including monitoring telephone conversations and intercepting personal mail, in case of public emergency or "in the interest of the public safety or tranquility." Every State government has used these powers. The Union Government also uses the powers of the Indian Telegraph Act to tap phones and open mail. The Indian Telegraph Act of 1885 authorizes the surveillance of communications, including monitoring telephone conversations and intercepting personal mail, in cases of public emergency, or "in the interest of the public safety or tranquility." The Central Government and State Government used these powers during the year. Although the Telegraph Act gives police the power to tap phones to aid an investigation, they were not allowed to use such evidence in court. However, under POTA and the Unlawful Activities Prevention Act (UAPA) such evidence was admissible in terrorist cases, and some human rights activists noted that the new UAPA Ordinance confers additional powers on police to use intercepted communications as evidence in terrorism cases. While there were elaborate legal safeguards to prevent police from encroaching on personal privacy, there were no such protections in terrorist cases.

Indian Evidence Act, 1872
In Indian Evidence Act, the scope of term document to include electronic record. Section 65B of the Indian Evidence Act recognizes admissibility of computer outputs in the media, paper, and optical or magnetic form. There are detailed provisions relating to admissibility of computer output as evidence. New section 73A of Indian Evidence Act prescribes procedures for verification of digital signatures. New Sections 85A and 85B of Indian Evidence Act create presumption as regards electronic contracts, electronic records and digital signatures, digital signature certificates and electronic messages.

According to Indian Evidence Act, Section 65 refers to "Cases in which secondary evidence relating to documents may be given". However, the modifications made to this section by Information Technology Act, 2000 have added Sections 65 A and Section 65 B. According to Section 65 A of the Indian Evidence Act, explains "Contents of electronic records may be proved in accordance with the provisions of Section 65B".

Whether by design or otherwise, Section 65B clearly states that " Not withstanding anything contained in the Indian Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer called the Computer Output shall be deemed to be also a document..."
However, for the "Computer Output" to be considered as admissible evidence, the conditions mentioned in the Section 65 B (2) needs to be satisfied. Section 65B(2) contains a series of

certifications which is to be provided by the person who is having lawful control over the use of the computer generating the said computer output and is not easy to be fulfilled without extreme care. When a Cyber Crime is reported, the Police will have to quickly examine a large number of Computers and storage media and gather details from which further investigations have to be made. Any delay may result in the evidence getting obliterated in the ordinary course of usage of the suspect hard disk or the media.

Any such investigation has to cover the following main aspects of Cyber Forensics, namely,

1. Collection of suspect evidence;
2. Recovery of erased/hidden/encrypted data; and
3. Analysis of suspect evidence.[28]

Indian Penal Code, 1860

A number of amendments have been made to Sections 29, 167, 172, 192, 463, and 464 of the Indian Penal Code, 1860 and the like. The key amendment relates to the widening of term document to include electronic records. Section 464 now recognizes the concept of digital signature.

The Computer Forensics Process

Forensic computer examinations are unlike ordinary data recovery efforts. Forensic computer examinations use strict controls and procedures to ensure that all existing data is found, that the original data is preserved unchanged, and that any recovered data is admissible in court or other legal proceedings. Deleted, disguised, hidden and password protected data can be retrieved in many instances. The forensic examiner is able to recover many forms of data, which are not readily accessible. The recovered data would then be carefully documented, catalogued, analyzed and recorded in exhibits, and reports would be presented to the client or the courts in compliance with the rules of evidence.

Computer forensic examiners first make exact copies of all hard drives and disks using computer forensics software. The program automatically recovers deleted documents, emails and graphic images and displays them in an easy to read format. Each file’s date and timestamp is displayed, making it easier to assemble a timeline related to when the file was created, saved or viewed.

Every computer forensics examiner should employ a set of methods and procedures for all examinations. The examiner should be aware at all times during the investigation of all possible conclusions that their examination may lead to. This protects the examiner from allegations of bias. During an investigation, the methodology, which computer forensics specialists follow, can be summarized as follows:

1. acquiring evidence without altering the original;
2. authenticating that the recovered evidence is the same as the original; and
3. analysing the data without modification.

In many criminal cases involving computers and electronic technology, we encounter multi-jurisdictional issues that challenge the very legal structure of all nations' legal and statutory codes. For example, today we find criminal enterprises being initiated from different nations throughout the world, and to effectively investigate, apprehend, prosecute, and convict these individuals we must utilize appropriate judicial search warrants. It is also necessary that the penal codes of the respective nations have statutory authority for legal action to be pursued. The "I love you" virus in 2000, which caused an estimated $10 billion in damages, was released by an individual in the Philippines and created havoc to computer systems throughout the world. Despite the extensive damage, this case was not prosecutable because the Philippines did not have legal restrictions against behavior of this type when this virus was released.

An additional problem with this new-age criminal activity that relies on technology and electronics is the ease with which one person can impersonate another through rather elaborate spoofing schemes. A related activity that has cost our nation's businesses an enormous financial loss is identity theft. This crime of identity theft generally takes the victim approximately 6 to 9 months of work with credit agencies, bill collectors, and other credit entities before they can have any semblance of restoring their good name and credit standing.

Since personal computers can store the equivalent of several million pages of information, and networks can store many times more than this amount of data, the location and recovery of evidence by a trained computer forensic specialist working in a forensic laboratory may take several days or weeks.

When it is necessary to access a suspect's computer and inspect data, one will have to have an appreciation and working knowledge of the aspects of each operating system.[29] The computer as a repository of criminal evidence as in case of Child pornography and child exploitation materials, Stalking, Unauthorized access into other computer systems, Fraud, Software piracy, Gambling, Drugs, Terrorism-attack plans, Terrorist organizations' Web-site recruiting plans, Credit card numbers in fraud cases, Trade secrets, Governmental classified documents as a result of espionage activities, etc.[30]

Conclusion

Cyber Forensics can be defined as the use of technology and science for investigation and fact recovery when dealing with criminal matters. Cyber forensics is the technological aspect of retrieving evidence to use within criminal or civil courts of law. They are able to recover damaged and deleted files. Some cases in particular used the art of computer forensics as their lead of evidence to indict a criminal offender or find the location of a missing person.

Today in the present era there is a need to evolve a cyber-jurisprudence based on which cyber ethics can be evaluated and criticized. Further there is a dire need for evolving a code of ethics on the cyberspace and discipline.[31]

Whereas cyber forensics is defined as "the collection of techniques and tools used to find evidence in a computer", ultimately abiding by the scientific method will help forensic examiners to avoid egregious errors. Carefully exploring potential sources of errors, hypothesis testing and qualifying conclusions with appropriate uncertainty will protect forensic examiners from overstating and misinterpretation the facts.

Digital evidence should trigger new rules of criminal procedure because computer related crimes feature new facts that will demand new law. Existing law is naturally tailored to law enforcement need and privacy threats they raise. Digital evidence is collected in different ways than eyewitness testimony or physical evidence. The new ways of collecting evidence are so different that the rules developed for the old investigations often no longer make sense for the new.[32]

Suggestions

In the case of cyber forensics, the crime scene is the machine that was hacked, the victim is the entity to which the computer belongs, and the hacker is the criminal. The evidence in the case of computer forensics is the trail left by the hacker, which is recorded in the log files. In order for computer forensics to be effective, one must have accurate and trustworthy log files.

Searching computer files is an extraordinarily difficult process, because files can be moved from one computer to another throughout the world in a matter of milliseconds. Files can also be hidden in slack space of the computer hard drive or stored on a remote server located in other geographic jurisdictions. Files can also be encrypted, misleadingly titled, or commingled with thousands of unrelated, innocuous, or statutorily protected files. It is to address these challenges that the FBI has developed a Computer Analysis Response Team (CART Team); the IRS has a Seized Computer Evidence Recovery Team (SCER Team); and the Secret Service has an Electronic Crime Special Agent Program (ECSAP) in U.S. Department of Justice 2002.

The software's easily available for the government should restrict download by appropriated actions. New amendments should be included in the Information Technology Act, 2000 to make cyber forensics efficient and active against the cyber crimes.[33]

The Law Enforcement Agencies i.e. Police, Prosecution and Judiciary etc. and the Public at large may be made aware and trained through special training programmes/seminars and workshops for the effective implementation of Information technology Act, 2000 read with Information Technology (Amendment) Act, 2008 and Rules made there under, as these are effective laws to deal with Cyber-Crime. Training to protect and seize digital evidence in a secure manner should be provided to law enforcement agencies and also to examiners of digital evidence.

It is often seen that processing of digital evidence in Computer Forensic Laboratories takes a long time. States must consider as take him their own central as well as regional computer forensic laboratories. Mobile Cyber Forensic Vans would also be useful in seizing electronic evidence from the spot in a proper manner. Assistance of NASSCOM may also be taken to establish cyber

labs and training. In addition to NASSCOM help of other agencies like NTRO, CERT-In etc. may also be taken for training. [34]

Acceptance of live remote techniques would enhance the capabilities of forensic practitioners while still fulfilling established evidentiary standards. This paper is intended to offer guidance on the yet untested issue of the admissibility of live remote digital evidence acquisition, as well as to debunk the myth that dynamic, network evidence collection is unreliable. This recommendation, although untested in the courtroom, is nonetheless supported indirectly by case law and grounded in evidentiary standards.[35]
Increasingly, laws are being passed that require organizations to safeguard the privacy of personal data.

Further such experts must not only be knowledgeable but must also be provided with necessary technical hardware and software so that they can efficiently fight the cyber criminals. Thus necessary facilities must be established in various parts of the country so that crime in the virtual world can be contained.[36]

It is evident that these new technologies are requiring more skills for our investigators, prosecutors, and judges. Accordingly, the role of our educational institutions in preparing current and next-generation criminal justice personnel to address these challenges is becoming more critical as each new technology is developed and introduced to our society.

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Gender Discrimination & Sexual Harassment At Workplace: An Analysis

Dr. Md. Ahmad*

Introduction

The word "discrimination" has been derived from the Latin term 'discrimire' which means "to separate, distinguish or to make a distinction." It has been in use as an expression of derogatory racial prejudice in the year 1830s.[1] Since the American civil war the term 'discrimination' generally evolved in American English usage as an understanding of prejudicial of treatment of individual based solely on their race, later generalized as membership in a certain socially undesirable group or social category'.[2] Though gender discrimination and sexism refers to beliefs and attitudes in relation to the gender of a person, such beliefs and attitudes of a social nature and do not normally, carry any legal consequences. On the other hand sex discrimination may have legal consequences.

Historically, gender discrimination and other forms of discrimination including racial discrimination have been considered as parallel. Gender is the societal determination of what is accepted as male and female based upon personality, appearance and actions. It has nothing to do with physically being male or female. It is widely accepted that woman were the caregivers and housekeepers while men brought in the money. These are gender's roles that have nothing to do with a person's anatomical parts like sex does. While it can be said that gender places unfair expectations on each sex.

Gender and sexuality are important for policy makers, practitioners and activists because sexuality and gender can be combined to make a huge differences in people's lives between well-being and I'll being, and sometimes between life and death. Gender identity refers to a person's private sense and subjective experience of their own gender.[3] All societies have a set of gender categories that can serve as the basis of the formation of a social identity in relation to other members of society. In most societies, this is a basic division between gender attributes assigned to males and females. However, in all societies some individuals do not identify with some of the aspects of gender that are assigned to their biological sex.

When the gender identity of a person makes them one gender, but their genital suggests a different sex they will likely experience what is called gender dysphoria[4]. Some people do not

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believe that their gender identity corresponds to their birth sex, including transsexual people, trans-gender people, and many intersexes individuals.

Consequently, complications arise when society insists that an individual must adopt a manner of social expression (gender role) which is based on sex, that the individual feels inconsistency with that persons' gender identity. Complications can also arise with the stereotyping or gender typing of behavior for individuals for behavior related to a specific sex, when they identify as a gender and it can lead to gender identity disorder. In many places, to be considered a 'proper man 'or proper women; one need to act as one hundred percent heterosexual and stay in line with gender stereotypes. Thus being lesbian, gay, bisexual or transgender can result in violence or marginalization. Just as sexuality has repercussions related to poverty, marginalization and death, it can instead lead to empowerment, enjoyment, and wellbeing and can enhance human relations with shared intimacy or pleasure. Sex can be a place where women escape the pressures of reputation, their desires to the full, where men let themselves enjoy being vulnerable, where trans genders affirm their sense of self with lovers who see them as they wish to be seem. Why sexuality and gender are so important in people's lives, in political struggles and in deployment? The answer of this question is that it helps to explore the framework of sexual rights and how it can help address gender and sexuality including the impotent work on gender and sexual rights which has taken place in and around the united nation According to the report of world health organization (2004).

"Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, behavior, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors".

Gender discrimination is meant only for women because females are the only victims of gender discrimination. It is not biologically determined but it is determined socially and the discrimination can be changed by the proper and perpetual efforts. Sexuality plays vital role for discrimination such discrimination is being made on the basis of sex which in turns becomes sexual harassment.

Although there are a number of laws relating to workplace discrimination, such as the civil rights act and the equal pay act, discrimination still happen. A female employee may be passed over for promotion because she has a child or an employer may choose a younger job candidate over an older one because he believes the older person does not understand technology. Often discrimination may be in unintentional. The United Nations general recommendation on the elimination of all forms of discrimination against women defines "sexual harassment of women to include such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by word or

actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the women have reasonable ground to believe that the objection would disadvantage her in connection with her employment, including recruitment or promotion or when it greets a hostile working environment."

In Australia, the sex discrimination Act, 1984 defines sexual harassment as "unwanted conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated." While sexual harassment in India is termed as 'eve teasing' and is described as unwelcome sexual gesture or behavior whether directly or indirectly as sexually coloured remark, physical contact and advances; showing pornography; a demand or request for sexual favors; any other unwelcomed physical. verbal/non-verbal conduct being sexual in nature. Article 14 of the Indian constitution which deals with the right to equality makes it clear that sexual harassment infringes the fundamental rights of a woman to gender equality as well as her right to life and live with human dignity under Article 21 of the constitution.

Gender Discrimination & Sexual Harassment

Moral philosophers have defined discrimination as disadvantageous treatment or consideration. The United Nation stance on discrimination includes-the statements 'discriminatory behaviors take many forms, but they all involve some form of exclusion or rejection.[5] A person's gender is complex, encompassing costless characteristics of appearance, speech, movement and other factors not solely limited to biological sex but societies tend to have binary, gender systems in which everyone is categorized as male or female. Some societies have included a third gender role, for instance the Native American, Two-sprit people and the Hijras of India. Thus it can be said that "A term that refers to social or cultural distinctions of behaviors that are considered male or female.

'Gender discrimination' is often based on gender stereotypes of a particular society, i.e., considering man physically strong and women as emotionally sensitive. It is because of the fact that the term 'gender' is often conflicted with the term 'sex' both the terms are used as synonyms of each other in normal contact but there is a technical difference between both. Sex is a biological differentiation of individuals categorizing them as males or females. This difference determines the role of individuals in a particular society. The role of individual in different societies is different and thus the role of gender is variable in accordance with the prevailing social setup.

'Sex' and 'gender' are different in origin but basically the general role of individual in a particular society is partly based on the physical potential of individuals. Along with physical requirements, individual must have to use his/her mental capabilities in order to move in the society. Gender discrimination in its originality is a phenomenon, by which the role of individuals are determined with a particular society.[6] Furthermore gender discrimination refers to the practice of granting or denying right or privileges to a person based on their gender. In some societies, their practice is long standing and acceptable to both genders. According to certain religious groups 'gender

discrimination is part of their dogma'. However, in most industrialized nations, it is either illegal or generally considered inappropriate. Attitudes toward gender discrimination can normally be traced back to the roots of certain segments of society. Much of the discrimination is attributed to stories such as women being made from man's rib and societal practices for example dowries paid to fathers by prospective husbands to purchase their daughter to be wives. Countless literally fiction references are made to females being the fair, weaker sex and male being the strong invincible hunters of the world. The combined power of these societal and religious beliefs left little room for equitable thinking for centuries.

Although gender discrimination is traditionally viewed as a problem normally encountered by female, it has significantly affected males as well. Historically and customarily jobs are mainly denied to women were often denied to men based on social stigmas. Some of the more common jobs that fell into this category are nurses, Childcare providers and flight attendant[7] during the last few decades gender discrimination has gained respect and become the serious concerns for academicians, sociologists including persons from legal field. It has got much credence as racial discrimination. In many countries and societies there are harsh punishments than those convicted to gender discrimination.

So far as gender discrimination is concerned it is often difficult to prove. Normally it is not as overtly evident as racial discrimination since the offender can claim the other reasons. For instance, if a mail claims he was not hired as a nurse based on his gender, the employee can take a plea that his qualification was substandard or his personality was not as good fit with the rest of the staff. Such ambiguities frequently make it hard to prove gender discrimination. In cases where the discriminatory act is repeated, legal action is customarily taken. These incidents commonly evolve around persons of a certain gender being summarily passed over' for promotions by the same company. Another common scenario involves a gender defined group being paid less for performing exactly the same job as the other gender.

Educational institutions and lending institution are some of the first segments accused of this type of discrimination. The sociological aspects of the word gender refer to the socio-cultural characterization of man and women, the distinction between men and women and assign them social roles. The distinction between sex and gender was introduced to deal with the general tendency to attribute women's subordination to their autonomy. Since the ancient times it was believed that the different characteristics, roles and status accorded to women and men in society are determined by sex, that they are natural and therefore not challengeable.

Gender can easily be seen as closely related to the roles and behavior assigned to men and women, which is based on their sexual differences. As soon as a child is born society begins the process of gendering. The birth of a male child is celebrated; the birth of a female child is not celebrated in the same way.

From the very early stage of live boys are encourage to be tough and outgoing; girls are encouraged to be homebound and shy. All such differences are gender differences and may be

recognized as gender discrimination in the families which is created by our society. Thus gender inequality is a form of inequality which is distinct from other form of inequality i.e. economic and social inequalities. Further more such type of gender discrimination/inequalities has adverse impact on development goals as reduces economic growth. It hampers the overall well being because blocking women from participation in social, political and economic activities can adversely affect the whole society. There are vast differences in education level of two sexes. Gender discrimination or sexual inequality can be traced in India from its early history which due to it socio- economic and religious practices has resulted in a wide gap between the position of men and women in the society.

The origin of the Indian idea of appropriate female behavior can be traced to the rule laid down by Manu in 200 B.C.; ‘by a young girl, by a young women, or even by an aged one nothing must be done independently, even in her own house’. "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her son; a woman must never be independent’. Christians, Hindus and many other religious groups have the practice of covering or veiling in their histories. In Muslim nation and cultures there is more traditional way of life. Hijab which is the Arabic word that means to cover or veil is more common. Often Hijab means modest and private in the day to day interpretation of the practice. For some countries it is a personal choice while for others it becomes a crime not to comply. Many women rights group have brought public attention to this trend, not so much because the mandate covering of females is that of oppressive, but because the veiling and cover1ng is symbolic of religious, traditional, and labor forced patterns of oppression that have caused so many problems for women and countries to do so today[8].

Hence it can be said that gender discrimination is unfair or unequal treatment directed at a person because of his or her sex or gender. It results most typically from the stereotypical association of certain character traits with women and men , the identification of feminine character traits as less desirable, and the disadvantage that result from this women. Although gender discrimination also can, at least in principle, be directed at men, its victims are overwhelmingly woman.

Cross-culturally and throughout history societies have imputed social significance to gender, assigned different roles to women and men gender biased language and symbols to suggest a categories differences between women and men. 'Categorical distinction becomes unfair when woman are identified persistently as subordinate and weaker. All over the world governments, organization, firms and harsh holds have used gender distinction to allocate burdens and rewards to women and men differently. Frequently societies have considered gender inequalities panty a natural divine order and justified discrimination by referring to religion and biology. Socially, sexual differences have been used to justify different roles for men and women, in some cases giving rise to claim of primary and secondary roles. While there are alleged non-physical differences between men and women, major review of the academic literature on gender differences find only a tiny minorities of characteristics where there are commitments psychological differences between men and women, and these relate directly to experience grounded in biological differences. However, there are also some psychological differences[9] in

regard to how problems are dealt with and emotional perceptions and reaction that may relate to hormones and the successful characteristics of each gender during longstanding in past primitive life. Unfair discrimination usually follows the gender stereotyping held by a society.[10]

Thus, gender discrimination or sex discrimination can be defined as prejudice or discrimination based on sex. Sexist attitude is frequently based on beliefs in traditional stereotypes of gender roles. Sexism is not just a matter of individual attitudes, but is built into many societal institutions.

The term sexism is most often used in relation to discrimination against women in the content of patriarchy. Sexism involves hatred of or prejudice towards a gender as a whole or the application of gender stereotypes. Sexism is also associated with particular gender supremacy.[11] Meaning there by sexism refers to beliefs that a sexiest in one which suggests human being can be understood or judge on the basis of the essential characteristic of the group to which an individual belongs. This assumes that all individuals fit into the category of male or female and does not take into account people who identify as neither or both. Thus, it can be said that sexuality is related to a variety of factors, including an individual's sex, gender identity, expression and sexual orientation.[12] Sexuality encompasses both sexual behavior and sexual desire.[13] However, heterosexuality structures social life so that heterosexuality is always assumed, expected, ordinary and privileged. Its Perseveres make it difficult for people to imagine other ways of life.[14] The term sex and gender have not always been differentiated in the English language. It was not until 1950s that American and British psychologist and other professionals working with intersex and transsexual patients formally began distinguishing between sex and gender .since then, psychological and psychological professionals have increasingly used the term gender. By the end of the 20th century, expanding the proper uses of the term gender to everyday language becomes more challenging-particularly where legal language is concerned. In an effort to clarify usage of the term sex and gender, Justice Antonim Scalia of the U.S. Supreme court has written in his briefing in the year 1994 as, "The moral gender has acquired the new and useful commutation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes, i.e. to say, gender is to sex as feminine is to female and masculine is to male."[15] However, Supreme Court justice Ruth Bader said that "those nine men" (the other Supreme Court justice),"hear that word and the first association is not the way you want them to be thinking". It reveals that even human experience that is assumed to be biological and personal (such as on self-perception and behavior) is actually a socially defined variable by culture.[16]

Human Sexual Orientation

Human 'sexual orientation' is based on the emotional and sexual attraction to a particular sex (male or female). Sexual orientation is a 'predilection for homosexuality, or bisexuality'[17] Sexual orientation may be divided into categories heterosexuality, the attraction to individuals of the opposite sex; homosexuality, the attraction to individuals of one's are sex: bisexuality the attrition to individual of earthen sex, and asexuality, no attraction to either sex, Heterosexuals and homosexual may also be refrred to informally as 'straight' and 'gay' respectively. Like most minority grasp, homosexuals and discrimination from the majority grasp. They may experience

hatred forum others because of their sexual preferences, them for such hatred based upon one's sexual orientation which is called homophobia.

In the United States, there is a hetro-normative society which means that it has heterosexuality as norm. Many of them contemn to hold negative feelings towards those who are non-heterosexual orientations and will discriminate who have them. There are eighty countries around the world that continue to consider homosexuality illegal, five prescribes death penalty for homosexual activity and to do in some regions of the country;[18] which is described as state sponsored homophobia.[19] This happens in Islamic states, or in two cases region under Islamic authority[20]almost such discrimination is based on stereotypes misinformation and homosexual an extreme or irrational version to homosexuals. Major policies to prevent discrimination are based on sexual variation much of this discrimination was based on stereotypes, misinformation and homophobia. An extreme or irrational version is homosexuals. Major policies prevent to prevent discrimination based on sexual orientation has yet not come into effect until the last few years. In 2011 president Obama returned "don't ask, don't tell", a controversial policy which requires homosexuals in the US military to keep their sexuality undisclosed. Five American states and the district of Colombia have legalized gay marriage, in the year 2004 to 2010. Organization such as GALLD (gay arid lesbian alliance deformation) is advocates for homosexual rights and ensilage governments and citizen to recognize the presence of sexual discrimination and work to prevent it.

Sexual Harassment

Sexual harassment is unwelcome nature of a sexual nature, or based upon the receiving panty's sex or gender is some content or circumstances. It includes a range of behavior from seemingly mild transgressions and annoyances to actual sexual abuse or sexual Assault. Sexual harassment is a form of discrimination and a form of abuse. Sexual harassment is intimidation, bullying or coercion of a sexual nature or inappropriate promise of rewinds in exchange for sexual favour.[21] In most made legal content sexual harassment is illegal. It includes "sexual harassment" or unwelcome sexual advances, requests for sexual favor and other verbal or physical harassment of female nature.

Many organizations include in their statements a full description of what will be taken to constitute sexual harassment. Advice on desiring effective policy statements generally includes that they should include a comprehensive and clean definition of sexual harassment and a description of the kinds of conducts covered.[22] It does not mean that the harassment should be of sexual in nature which can include offensive remarks about a person's sex i.e. to say that "it is illegal to honor a woman by making offensive comments about women in general. The harassment can be either of a women or a man, and the victim can be of the same sex.[23] So, sexual harassment can be viewed as a subjective concept to objective limitations. His definition of sexual harassment, although not always identical generally draw on this understanding of sexual harassment. Although the perceive behavior captured by the definition is open to interpretation and may vary according to the cultural content, it will be both unreasonable and unwelcome. Indeed, the flexibility of definitions of sexual harassment, which allow it to respond

to the cultural content in which it is used, can be viewed as one of its primary strength.[24] Most of the victim of sexual harassment is women. There is growing awareness that men can be victimized in similar ways. Reports of men being subject to harassment, and the number of complaints and legal action brought by them, have been increased in recent years. The most vulnerable groups are targeted: young men, gay men, member of ethnic or racial minorities, and new marking in female dominated groups.[25] In response to it, preventive measures have been adopted to gender harassment of men and same sex harassment. Discrimination against, and harassment of these with a sexual orientation different from the heterosexual are being more openly addressing in the past ten years than it was earlier. Yet, coming out openly is still an act of courage.

However, homosexual couples were susceptible to antes and extortion. Just the knowledge that a person is a homosexual would gender lined vulnerable. The lesbian groups are facing difficulty of coming out and the support services which are needed to held resist, principally, the families. On the ways of providing that support is in the imitation of help lines.

Example of Sexual Harassment

Physical Conduct

1) Physical violence
2) Physical contact, e.g. touching, pinching
3) The use of job related threats or rewards to solicit sexual favour

Verbal Conduct

1) Comment on worker's appearance, age, private life etc
2) Sexual comments stories or jokes
3) Sexual advances
4) Repeated social imitation
5) Insult based on the sex of the workers
6) Condescending or paternalistic remarks

Non Verbal Conduct

1) Display of sexually implicative or suggestive material.
2) Sexuality-suggestive gestures
3) Whistling[26]

Sexual Harassment at the Workplace

Sexual harassment is a form of sex discrimination. One legal definition of sexual harassment is ‘unwelcome verbal, vital, or physical conduct of sexual nature that is served or creates hostile work environment.[27] Sexual harassment is any unwelcome sexual behaviour which is likely to offered, humiliate or intimidate. It has nothing to do with mutual attraction or friendship. Some illustrations of sexual harassments are:

1) Unwelcome physically
2) Staving or leaving
3) Suggestive comments or joke

4) Unwanted request to go out on dates
5) Request for sex
6) Emailing pornography or nude jokes
7) Sending sexually explicit tents
8) Intrusive questions about your private life or body
9) Displaying posters, magazines or screen save of a sexual nature.

Everyone has the rights to be safe and free from harassment while at work. Although sexual harassment at work has been legally prohibited in shame chantries for more those decades, until final, recently only a few midsection had canted legislation on this issues.
Since the mid-1990 haven, the number of canaries in which lens have been enacted has more thus doubled. While legal miasmas can readers complains and play some part in the prevention of sexual harassment, the primary preventive role belongs to work pleas policies and complaint precedes. Men it is significant for the goal of eradicating sexual harassment, that it appearance that an increasing number of policies are being introduced in organization a cress the world work place-level policies and alongside national legal prohibitions, reinforcing and building on them. In legal systems which prohibit sexual harassment, employers are often sexual to positive duty to prevent it.

Sexual harassment in the workplace was first addressed through law in the mid-1970 at the culmination of a comparing in the United States to have it recognized as a form of sex discrimination under the Federal civil Rights Act.[28]Since this initial recognition of the problem, a griming marble of chantries in all region of the world have erected legislative provisions on sexual harassment. A European Union study has highlighted a growing consensus that the characteristics of an organization are a critical influence on whether its workers will be sexually harassed.[29] In the organizations sex-eyed, organizational climate reneged as a primary explanatory unable in the ranging incidence rates of sexual harassment.
This research reinforces previews studies, which show that sexual harassment in more prevalent in sexualized work environments, and those in which it is tolerated, rather thane is organizations characterized by a positive social climate and sensitivity to the problems which can be uncreated by women workers. Sexual harassment may occur in variety of ways. The lays member of sexual harassment is sometimes by the some sex. To determine whether it would be considered sexual harassment the severity, circumstances, and frequency of the conduct in question must be taken into account. If the conduct is server or pervasive enough to create an environment that "reasonable person" world find hostile or abusive, And the severity, Circumstances, ad frequency of done by a male supervisor towards a female subordinate and the conduct in question must be taken In to account. If the conduct is severe or pervasive enough to create an environment that "reasonable person" would find hostile or abusive, and the victim perceives the harassment.

For example if a male colleague as a female colleague for a date in a friendly manner, this alone would not be considered sexual harassment. However, if he persists and his behavior becomes pervasive enough to detract from her job performance it may become sexual harassment. Since the initial recognition of the problem, a growing number of countries in all regions of the world

have enacted legislative provision sexual harassment. In this regard three main approaches have been adopted. Firstly in many countries, the Courts have categorized specific acts of harassment as a form of some other kind of prohibited conduct. such as sexual assault or defamation, without explicitly referring to "sexual harassment". This approach was common in many jurisdictions even prior to widespread awareness of the whole range of forms which sexual harassment can take. Secondly, in a number of countries, courts and tribunals have taken the lead by explicitly referring to sexual harassment and referring it as a form of sex discrimination and prohibited under equality or anti discrimination laws. Finally legislatures have enacted legislation, or amended existing provisions to specifically prohibit workplace sexual harassment. It appears that almost fifty countries have directly it in legislations. The majority have taken this step very recently: at Least have legislated against sexual harassment for the first time over the period since 1995. The courts have established that the parameters of sexual harassment.

Sexually harassing behavior is after categorized as either "quid pro quo "hostile working environment harassment, a distinction stemming from the jurisdiction of the American courts. Quid pro quo sexual harassment takes place when a Job benefits-a pay raise, a promotion or demands to engage in some form of arts sexual behaviors. It was the first kind of sexual harassment to be prohibited when it was recognized by the U.S. district court of Columbia in 19763.[30] The second category, hostile working environment harassment, covers conduct that creates a working environment which is unwelcome and offensive to the victim. It in encompasses the range of sexuality harassing behavior that does not involve in sexual blackmail; sex- Based comments, derogatory remark about the sex of the target innuendos.

The display of sexuality suggestive or explicit material etc., hostile working environment harassment was also in initially named, legally recognize and prohibited in the United States, first guidelines were issued by the U.S. equal employment opportunities commission (EEOC) and subsequently by the courts.[31]

Other countries have followed the United States by drawing a distinction between quid pro quo and hostile working environment, sexual harassment. Most of the legislation which defines sexual harassment can be convincingly interpreted as prohibiting both forms. Despite the wide spread adoption of a distinction between quid pro quo and hostile working environment harassment, it is possible to define sexual harassment in a way which captures all of its forms, for example, by viewing quid pro quo harassment as one of the types of behavior which hostile working environment. This unified approach has been in Canada, where the courts have downplayed the tow-fold distinction developed in the United States.[32]

It has become relatively common for the social partners, advocacy and community groups, and even government agencies to advocate legal change to combat sexual harassment. The Icelandic office for gender equality for example, product a report on sexual harassment at the workplace in 1988, which concluded that it was much more significant problem then, had previously been assumed. In light of these findings, it proposed legislation to prohibit sexual harassment in all its forms and to serve as a basic for further action at workplace. Other agencies too, have actively campaign for legal reforms usually for enactment or revision of legislation.

In Chile the national woman's service (Sernam) has advocated the enactment of legislation for number of years. In the United Kingdom the equal opportunities commission publishes a consultation documents in 1998 proposing legislative change.[33] In India NGO intervention in the leading Supreme Court case of Vishakha v. State of Rajasthan helped to prohibit sexual harassment for the first time and developed detail guidelines to be followed by employers.

International Context

Efforts have been made by the United Nations at international level to eradicate sex based discriminations and the other international organizations have recognized that woman's rights are human rights and violence against women is the violation of human rights of women. To protect women from sexual harassment at workplace falling steps has been taken:

1- United Nations conversion on Elimination of All forms of Discrimination against women,

2- Vienna Declaration 1993.

3- Declaration on the elimination of violence against women.

4- The Begging Declaration and Platform of for Action to Promote the States of women 1995.

Cater on UN General Assembly in a special session held in New York in June 2000 has reviewed the Begging declaration of 1995. In pursuance of the Begging Declaration, Switzerland created a law for equal rumination, Nigeria permitted women to inherit and some rights were conceded to women in countries like gaiter, Pakistan and Magnolia.[34]

Obligation of State Under International Human Rights Law

The obligations of States to prevent violence and discrimination based on sexual orientation and gender identity are derived from Unions international human rights instruments under Article 3 of the universal Declaration of Human Rights, "everyone has rights to life, liberty and the sanctity of person." Article 6 of the International cornet on Civil and Political Rights affirms that "every human being has the inherent rights too life this rights shall be protected by law. No one shall be arbitrarily deprived of his life." [35]

The State has an obligation to exercise due diligence to prevent, punish and redress deprivations of life, and to investigate and prosecute all acts of targeted and violence. States are under obligation to protect from torture and ill treatment all persons, regardless of sexual orientation or transgender identity,[36] and to prohibit, prevent and parried redress too torte and ill treatment in all contorts of State custody or contro1.[37] In their general comments, concluding observations and views on communication, human rights treaty bodies have confirmed that States have an obligation to protect everyone from discrimination on grads of sexual orientation or gender identity. The fact that someone is lesbian, gay, bisexual or transgender does not limit their entitlement to enjoy the full range of human rights. The human rights committee has United States parties to 'guarantee equal rights to all individuals, as established in the covenant regardless of their sexual orientation'[38] and welcomed legislation that includes sexual orientation among prohibited grand of discrimination.[39]

Sexual Harassment at Workplace in India

Discrimination against women in most parts of India (particularly the north) emerges from the social and religion construct of women's role and their status. As such in many parts of India, women are considered to be less than men, occupying a lower status in the family and community, which consequentially restricts equal opportunity in women and girls access to educations, economic possibilities and mobility. Discrimination also limits women's choices and freedom. These choices are further dependent on structural factors like caste and class. Abuse and violence towards women is predominantly perpetrated within the household, and marital violence is among the most accepted by both men and women. Wife beating, slapping, rape, demur related deaths, federal violence towards tribal and lover caste women, trafficking, sexual abuse, street violence and sexual harassment at workplace is prevalent is the Indian social fabric.[40] Women and girls in Urban India are also at the high rise of gender-based violence. There have been hummers instance of violence perpetrated by state security forces against local and tribal women.[41] The Supreme Court held that such provision is discriminatory against women and hence unconstitutional.

In Air India v. Nargis Mirza[42] the legality of the regulation 46 (c) was challenged which provided that an air hostess would retire form the service of the corporation upon attaining the age of 35 years, or on marriage if it takes place within form years of service or first pregnancy. The Supreme Court struck down the Air India and Indian Airlines Regulation on grand that the retirement and pregnancy bar on the services of Airhostesses as unconstitutional, unreasonable and arbitrary. The Court further held that wheth~r the women after bearing children would centime in sauce or would find it difficult to look after the children is her personal matter and a problem which affects the Airhostess concerned and the corporation has nothing to do with the same. In Neera v. LIC of India it was held by the Court that provisions' regarding the disclosure of last menstruation period from women is violation of Article 14 and 21 of the Indian Constitution.

In a Landmark judgment in Visakaha v. State of Rajasthan[43] the Supreme Court has laid derma exhaustive guidelines for the prevention of sexual harassment of working women in place of their work until a legation is enacted for the proposes. The court held that it is the duty of the employers or other responsible person is work place or other institutions, whether public, to prevent sexual harassment of working women. A writ petition was filed by Vishaka, a NGO working for "gender equality" by way of PIL seeking enforcement of fundamental rights of working women under Act, 14, 19 and 21 of the constitution. Relying on the International convections and woman which were significant in interpreting the grantee of gender equality, right to work with human dignity in Article 14, 15, 19(1)(a) and 21 of the constitution and the safeguards against sexual harassment implicit therein. The in mediate cause for finely the petition was alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in absence of enacted law to provide for effective enforcement off basic human rights of gender equality and grantee against sexual harassment laid deems the following guidelines:

1) It is the duty of every employer to deliver a sense of security to every women employee.
2) Government should make strict laws and regulations to prohibit sexual harassment.

3) Any act of such nature should result in disciplinary action and criminal proceedings should also be brought against the worry deer.
4) The organization should have a well set up complaint mechanism for the redressal of the complaints made by the victim and should be subjected to a reasonable time.
5) Their complaint mechanism should be in the form of complain committee which need to be headed by a women member and at least 50% of the committee members should be women so that women could not feel ashamed while committing their a problems. This complaint committee should also have a third party involvement in the form of NGO or other body who is familiar with this issue.
6) There is a need of trams among in the functionary of the committee and for that there is requirement of submission of annual effort to the government.
7) Issues relating to sexual harassment should not be a taboo in works meeting and should be discussed positively.
8) It is the duty of organization to aware the female employee about their rights by them.
9) These guidelines are not limited only to government employers but also to private sector.

So, for as sexual harassment at workplace in India is concerned, Indian Supreme court is the case of Vishakha v. State of Rajasthan, has defined the tern sexual harassment as "Any unwelcome sexually determined behavior (Whether directly or indirectly) as physical contact and advances, a demand or request, for sexual foams, sexually-clamed remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual motive.

Sexual harassment is about male dominance over women and it is used to remind women that they are workers than man. In a society where violence against women is posed just to show the patriarchal value operating in society, there values of men pose the greatest challenge in combing the sexual harassment at workplace. It is a manifestation of power relations-women are much more likely to be victims of sexual harassment precisely because they lack power and are in a more vulnerable and insecure position, lack of self- confidence, or have been socially conditioned to suffer in silence. The cases of sexual harassment of women at the work place in India are increasing because of several factors, poor status of women, increasing number of working women, poor knowledge of human relations and valises, poor law and order, position in the society and no adequate Provision of law to deal with the problem effectively. This issue is not just a women empowerment issue but an issue pertaining to Human Rights, Human Resource Management and safety and health of the workplace environment.

Every Country is facing the problems of sexual harassment at workplace and gender discrimination Female more hers are passing through the souse of is security. Many Countries have developed the law on the protection of woman from sexual harassment at workplace. But sexual harassment is rooted is cultural practices, unless there is enough emphasis on sanitization at workplace, legal changes are hardly likely to be successful. Workplace need to frame their own comprehensive policies on how they will deal with sexual harassment. Although there is no specific law for curbing sexual harassment at the workplace in India, but certain precisions of the Indian Panel Code provides sexual harassment in any form a punishable such as:

a) Section 294 deals with obscene acts and songs at public place.
b) Section 345deals with assault or criminal force against women.
c) Section 376 deals with the offence of Rape.
d) Section 510 deals with uttering words or making gestures which outrages a women's modesty.
e) Indecent Represent action of women, Act (1997).

To protect the women's interest, Indecent Representation of women Act (1997) was passed, but it has not been used in cases of sexual harassment, although there are contains provisions in the act which can be used in two ways.

1) If a person harasses another by sharing books, photographs, painting, films, etc. Containing indecent representation of women then he will be liable for minimum two years imprisonment.
2) Section 7 of this act provides punishment for companies, if there is indecent representation of women like shiny pornography.

The harassed women can also bring an action before the civil courts for torture actions like mental anguishes, physical harassment and loss of income in employment of victim, etc. However, the framers of the Indian Constitution bestowed sufficient thought on the position of women in Indian social order. Article 14 and Article 21 of the Indian Constitution makes it clear that sexual harassment violates the women's fundamental right of gender equality as well as within the meaning of life and liberty clause, to live with human dignity while Article 15 (1) of the Indian Constitution guarantees the right against discrimination, on the other hand Article 15 (2) guarantees the right against discrimination by individual. Article 15 (3) says that Parliament is empowered to make laws for the empowerment of woman and children, which is an exception to Article 15 (1) and Article 15 (2), also not violates of Article 14. Article 16 provides the rights to equality of opportunity in public employment, irrespective of sex of the person. Article 19 guarantees freedom of speech and expression. to assemble peaceably and without arms, freely throughout the deviatory of India, axel to carryon any occupation, trade or business. Thus the rights to equality, personal liberty and right to freedom are playing vital role for on democratic society as well as concept of social justice and gender justice in particular. Because without right to equality, the object of gender justice cannot be achieved Article 39 provides certain principles of police that need to be followed by the state to serve the adequate means of livelihood equally for men and women, and the health and strength of workers, men and women are not abused. Article 42 requires the state to make precision for scaring humans conditions 'of work and maternity relief.
In C.B. Muthamma v. Union of India[44] validity of the Indian Foreign Service (conduct and discipline) Rules 1961 was challenged on the ground that it was violative of rights to equality enshrined under Article 14 of the Indian Constitution. The rule requiring a female employee to obtain a written permission of the government before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from services.

There are many other incidences of Sexual Harassment at work place which can in to limelight namely, Rupam Deol Bajaj, an IAS officer in Chandigarh alleged against K.P.S.Gill, An activist from the All India Democratic women's Association, against the environment in Dehra Dun, An airhostess against her Colleague Mahesh Kumar Lala, in Mumbai, An IAS officer in Thiruvanthapuram, against the state minister, Medha Kotwal petition of a Ph.D Student by her guide at MS University, Film Stair Sushmita Sen against the CEO of Coca Cola. In Rupan Deol Bajaj v, K.P.S Gill, a senior IAS officer Rupan Bajaj was slapped on the posterior by the chief of Police, Punjab Mr. KPS Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him; despite the public opinion that she was blaming it art of proportion, along with the attempts by all senior officials of the State to suppress the matter. The Supreme Court fined Mr. KPS Gill of Rupees 2.5 lacs in lieu of three months rigorous imprisonment under Sections 294 and 509 of the IPC (Indian Penal Code).

Now a bill on the sexual harassment at the workplace 'The sexual harassment of women at workplace Prevention, Prohibition and Redressal Bill 2012 got' passed by the Look Sabah. India did not have any legislation to deal with sexual harassment at the workplace and is that sense, the bill is a welcome addition.

Conclusion

Sexual harassment and gender discrimination is such type of problem which has its impact on entire world. Indian Constitution in its Article 14, 15 and 21 provides safeguards against all forms of discrimination. Our country is rapidly advancing is its developmental goals and everyone is free to join the work force irrespective of any discrimination. It is the duty of the state to provide for the well being and respect of its citizens to power trust nation. In fact, the recognition of the right to protection against sexual harassment is an intrinsic component of the protection of woman's human rights. It is our constitutional mandate and also a step towards providing woman independence, equality of opportunity and the right to work with dignity. Most International women's human rights movements have raised their voice against gender discrimination, abuse and violence perpetrated against women is general. In 1997 the UN General Assembly adopted the convention on the elimination of all forms of Discrimination against women. Political rights, management, family and employment are the main areas where discrimination is prevalent. Indian Parliament in the year 2005 has already introduced a bill to prevent Sexual Harassment at the work place. Further to remove the Look Sabha entitled the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Bill 2012.

These steps of our Parliament show that our Parliament is very much serious about the protection of women at workplace. But an anti-discrimination policy is meaningless if employees know that nothing will happen to them if they break the rules. In potential cases of discrimination there must be strictness. None should be allowed to think that they are above the rules. Some gourmets have introduced codes of practice containing guidelines which, although not binding on employers, may be influential. Many provide guidance on developing measures to respond to sexual harassment at the workplace and offer counseling to workers who have been targeted. Raising awareness and training on the elimination of sexual harassment may play an effective role to

prevent it. In addition, training should be conducted frequently for all workers and targeted particularly at staff that plays a specific role in the complaints procedure. Lastly, sexual harassment complaints procedures should be monitorial and regularly evaluated to ensure that they are functioning effectively. About all, it could be urgent that what is needed most is comprehensive and coherent intuitional and policy framework that creates polices that lead to more equitable life and livelihood with human dignity and without any discrimination against women.

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Introduction, Origin and Need of Taxation

Arun Verma*

"In this world, nothing can be said to be certain, except death and taxes."

-Benjamin Franklin[1]

Introduction

Benjamin Franklin beautifully quoted the importance of taxes in human life. Definitely taxes are certain and no one can escape from taxes. Modern civilization depends upon tax administration and one who manages the web of taxes have the key to rule people. Taxation is compulsory on the part of the government. The government receives taxes from the national and foreigner, those who are doing business in their home country in order to make good profit. So government collects taxes and put in on different projects for their people.

"It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold"

–Kalidas in Raghuvansh eulogizing King Dalip[2]

The king Dalip was a wise king; he knew the importance of tax and its effects. Poor people cannot bear heavy taxes and it has been seen that heaver taxes lead to tax evasion and stock of black money. Therefore taxes should be reasonable and progressive in nature that people don't feel pinch of taxes. It is duty of the king to make good tax system to raise more revenue only to help people.

As we knew government has to perform multiple operations which are vital for a sovereign nation and betterment of the people. There is one question widely asked by the people, why taxes are so much important? Answer is not typical; as we know government has responsibility to protect life and property of citizens and has to facilitate those services which are necessary for doing economic activity within and outside the nation. As we know the term property exists only in sovereign country where security is guaranteed by the government to the owner of the property and in return owner of property pays taxes to the state.

Taxes were present from the very beginning of human civilization, when people started to live in groups. Taxes were common in the state theories given by Hobbs, Lock and Russo. People governed have to give taxes to the ruler for the protection of their property and life. Later ruler started to provide services; which helped people to do progressive economic activities, now ruler

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provide basic infrastructure that helped people multiple fold and it also increased revenue collection. There are some laws (initially in the form of Darma) ruler must follow in case if he does not follow, people had right to raise demand for his removal from the kinghood. So it was will of people that prevail in normal times.

Definition of Tax: The word tax is derived from the Latin word 'taxare' meaning 'to estimate'. The term "Tax" is no where defined in Indian Constitution. Supreme Court of India has approved definition of "Tax" given by Australian High Court in the famous case, *The Commissioner, Hindu Religious Endowments, Madras vs Sri Lakshmindra Thirtha Swamiar, 1954*[3] is "A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered."*"A tax is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority" and is any contribution imposed by government whether under the name of toll, tribute, impost, duty, custom, excise, subsidy, aid, supply, or other name." (Black's Law Dictionary)*[4]

According to article 265 of Indian Constitution, No Taxes can be levied or collected except authority of law. No tax can be imposed by the executive order. The law providing for imposition of tax must be a valid law.[5] By this way Tax is compulsory extraction of money by public authority and it is enforceable by law. It is not charge for any kind of services. It provides benefit to all people in the form of government policies. It is not possible to formulate a definition of fee that can apply to all cases as there are various kinds of fees. But a fee may generally be defined as a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases such expenses are arbitrarily assessed. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is a payment for a special benefit or privilege."

D.G. Ghosh vs State of Kerela, 1980[6], The Court cannot for "obvious reasons meticulously scrutinize" the burden of taxation on different persons and interests. Certain advantages or disadvantages are accidental and unavoidable and are inherent in every law imposing a tax because such law "has to draw a line somewhere and some cases necessarily fall on the other side of the line".

The aggregate of all sum collected by government is called its **Revenue**; the system by which it is collected is called '**Taxation**".

"The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing."

-Colbert[7]

The aggregate of all sums collected by government is called its Revenue; the system by which it is collected is called Taxation. Although the single object of taxation is to obtain a given amount

of wealth (generally in the form of money), yet the modes by which that object may be secured are various.

Funds provided by taxation have been used by states and their functional equivalents throughout history to carry out many functions. Some of these include expenditures on war, the enforcement of law and public order, protection of property, economic infrastructure (roads, legal tender, enforcement of contracts, etc.), public works, social engineering, and the operation of government itself. Most modern governments also use taxes to fund welfare and public services. These services can include education systems, health care systems; pensions for the elderly, unemployment benefits, and public transportation. Energy, water and waste management systems are also common public utilities. Governments use different kinds of taxes and vary the tax rates. This is done to distribute the tax burden among individuals or classes of the population involved in taxable activities, such as business, or to redistribute resources between individuals or classes in the population.

The theory that underlies taxation is that charges are imposed to support the government in exchange for the general advantages and protection afforded by the government to the taxpayer and his or her property. The existence of government is a necessity that cannot continue without financial means to pay its expenses; therefore, the government has the right to compel all citizens and property within its limits to share its costs. The state and federal governments both have the power to impose taxes upon their citizens.

Origin

At the beginning of human occupation of this planet, men lived in small roaming bands as "food gatherers" and families were free from tax. It was when man learned to plant grain that the situation of land ownership developed. The landholders organised themselves into communities in self-defence against predatory animals and other roaming bands. This meant that every family had to make some contribution to support the community effort. This contribution was, in our present understanding of the situation, a form of taxation. As agriculture developed, man had more time for arts and crafts, for spiritual awareness, for the development of small industries, all of which led to transfer of authority in the realm of communal good to a chief selected by the community. This leader expected remuneration; consequently a type of "tax" was imposed on the members of the community for his support.

With the advent of the years and subsequent growth of communities, now function of these communities become more and more complex and it required more tax to support ancillary services i.e. building infrastructure for better economic activities, now leader of these communities have to perform multiple work i.e. protection of their people from external aggression and save their life and property, maintenance of law and order within the his state. Building friendly relation with the neighbour states for promotion of trade and commerce; promotion of education and art, and entertainment services i.e. dancing, singing, wrestling and sport activities. These activities need more funds thus very first time ruler worked on tax planning. Now big states are in vogue and king had group of minister to help him taking decision on important matter. Finance minister of the state had responsibility of tax management.

In ancient times, taxation was often imposed by the arbitrary fiat of the ruler, with little or no reference to equity, or its effect on the prosperity and happiness of the people; thus some rulers became greedy for power, and therefore they imposed so heavy a tax that it became a burden on the people. Populations grew that were born into serfdom, wherein man was beholden to his authority figures. During the approximately 3,000 years of control by chiefs, landlords and kings who held their subjects obligated to pay tax, a man often paid with his labour and skills when currency was a scarce commodity. Even today, segments of the population within our society are charged for their labour and skills and they pay rent on the land they lease. It is understandable therefore, that taxation today has developed into a multiplicity of levies, taxes and tithes, all of which overwhelm the common ordinary citizen. A good example of today's complex taxation system comes in the form of licenses, customs duties, road tax, sales tax, luxury tax, service tax and many, many others. Over and above all forms of taxation, that which causes the most concern to the ordinary citizen of the country is direct tax i.e. income tax. The question of taxation, in its various bearings, is now made the subject of examination and discussion in all legislative bodies; and taxes are imposed, in all constitutional governments, not at the caprice of the ruler, but by the representatives of the people.

Need of Taxation

Government and social organization are among wants of man, as truly as food, clothing and abode. Government needs revenue to perform their functions which are vital for people to live life with dignity. History is witness of miserable life of people in weak states. The great Indian scholar Kautilya popularly known as Chanakya said “"From the treasury, comes the power of the government, and the Earth whose ornament is the treasury, is acquired by means of the Treasury and Army". The statement made by Chanakya is very much true, a strong nation can better protect rights of its citizen and it is treasury from where comes the power and the treasury of the state depends upon good tax planning and people's trust in the government to pay taxes honestly to make their state stronger.

It is duty of the government to aware people about state's welfare schemes, therefore now modern government advertise their public policies and program to have public confidence and this social engineering work as catalyze to pay taxes to government in due time. Publications Division of the Ministry of Information and Broadcasting advertise government planning and schemes that people take maximum benefit of government planning and schemes. It is one of the most important works of the government to advertise its policies.

As we know Treasure is the source of power for the government therefore government should prepare good taxation system to take maximum advantage of economic resources of the country but the same time taxes should not be excessive and complicated; if no it will lead people to start tax evasion, which is not good for health of a nation.

Taxes are important for the growth of nation; it helps to protect people from war i.e. people are better safe in strong nation than weak nation and we know power comes from the treasury. It helps the state to maintain law and order within the state, government take impose high taxes on alcohol, tobacco etc such heavy taxes are known as evil taxes e.g. it has been seen after taking liquor people break law and order system therefore they have to pay for it therefore government has imposed heavy taxes to reduce consumption of such things to maintain law and order in the state. Expenditure on infrastructure helps the state many fold and we can see its positive results immediately and after a long time as well. Those countries where government got success to build strong infrastructure are now develop countries or emerging as one of fastest growing counties of the world. Taxes help the government to spend on social security programs and welfare schemes. Benefits of effective taxation system are endless.

It is public will that prevail in democratic system. Legislation is one of the most difficult and delicate work to perform especially when it comes to legislate on financial matters. To introduce a new tax or to increase tax rate (especially in direct taxes – Income tax) is never being an easy task for the government. It is quite clear that government need money to perform its respective duties. Often government fails to make aware people about importance of tax and its direct nexus with the development of the state. At the very beginning of a new democratic system government were in need of money to build infrastructure to walk on path of progress therefore government had to take public property for public purposes but that days has gone by, probably not soon to return. If, then, the property of the citizen must be taken to meet the exigencies of government, it becomes highly important that those from whom it is taken should feel that it is equitably done. Nothing in relation to all the acts of government is more to be desired than that its mode of raising revenue should be so wisely and economically arranged, so manifestly just and equal, and so well understood by all, that no opposition to its demands shall arise from a sense of oppression.

There is no force superior to the public will, and where it is certain do taxes can be collected but such as are believed to be both necessary and just. In the distribution of wealth, as has been before stated, government makes a peremptory claim to so much as its necessities, real or supposed, may require. This claim is not only peremptory, but prior to every other claim. The laborer must contribute a part of his wages; the business man, of his profits; and the capitalist, of his interest, or rent. Every man knows, or should know, that when he creates any kind of wealth, a share of it belongs to government. He, in fact, creates a fund out of which government is to be supported.

Taxation has four main purposes or effects:

1. Revenue
2. Redistribution
3. Repricing and
4. Representation.

Revenue: The main purpose of taxes is to collect revenue, and revenue funds to spend on roads, schools, hospitals, and on other indirect government functions like market regulation or legal systems.

The tax revenue is the sum of the revenues of different kind of taxes, depending on what is taxed:

1. The revenue of physical and juridical persons ("direct taxes").
2. Wealth and assets as real estates and houses.
3. The domestic economic transactions ("indirect taxes" - e.g. VAT).
4. International trade, typically through import duties.
5. Financial transactions, both in domestic and in international terms.

Determinants

Tax revenue is the result of the application of a tax rate to a tax base.

Taxes are ranked according to the tax rate:

1. Progressive taxes, with a tax percentage rate growing with the amount taxed.
2. Proportional taxes, with a tax rate constant whatever the tax base.
3. Regressive taxes, with falling tax rate whilst increasing base.
4. Lump sum taxes, with a fixed absolute value of the tax, irrespective of the tax base.

Thus, the income distribution and tax base dynamics are key determinants for the revenue from progressive, proportional and regressive taxes, whereas it becomes irrelevant for lump sum taxes.

Fiscal systems differ a lot throughout the world but usually the personal revenue tax is progressive, the firm revenue tax is proportional as well as the taxation of domestic and international economic activity. Also wealth taxation is usually proportional, with some use of lump sums.

Redistribution: The second purpose is redistribution, which means transferring wealth from the richer sections of society to poorer sections.

"It lies in the nature of things that the beginnings are slight, but unless great care is taken, the rates will multiply rapidly and finally will reach a point that no one could have foreseen"

-F. Guicciardini[8]

Redistribution of income and wealth or redistribution of wealth is the transfer of income, wealth or property from some individuals to others caused by a social mechanism such as taxation, monetary policies, welfare, charity, and divorce or tort law.[9]

"Money is like muck, not good except it be spread"

-Francis Bacon[10]

Today, income redistribution occurs in some form in most democratic countries. In a progressive income tax system, a high income earner will pay a higher tax rate than a low income earner.

Two common types of governmental redistribution of wealth are subsidies and vouchers (such as food stamps). These "transfer payment" programs are funded through general taxation, but

disproportionately benefit the poor, who pay fewer or no taxes. While the persons receiving redistributions from such programs may prefer to be directly given cash, these programs may be more palatable to society, as it gives society some measure of control over how the funds are spent.[11]

Repricing: A third purpose of taxation is repricing of certain goods to increase or decrease their consumption. Taxes are levied to discourage consumption of certain items like say tobacco. Taxes on alcohol, coffee, fast foods, soft drinks candies and tobacco are also known as sin tax, a kind of sumptuary tax levied on certain socially proscribed goods and services.

Sin Tax: A state-sponsored tax that is added to products or services that are seen as vices, such as alcohol, tobacco and gambling. These type of taxes are levied by governments to discourage individuals from partaking in such activities without making the use of the products illegal. These taxes also provide a source of government revenue.[12]

Sin taxes are typically added to liquor, cigarettes and other non-luxury items. State governments favor sin taxes because they generate an enormous amount of revenue and are usually easily accepted by the general public because they are indirect taxes that only affect those who use the products. When individual states run deficits, the sin tax is typically one of the first taxes recommended by lawmakers to help fill the budget gap.
The revenue generated by sin taxes is sometimes used for special projects, but might also be used in the ordinary budget. American cities and counties have used them to pay for stadiums, while in Sweden the tax for gambling is used for helping people with gambling problems. In many countries tax for alcohol and tobacco is used to maintaining law and order in the state. Acceptance of sumptuary taxes may be greater than income tax or sales tax

Representation: the citizens by paying taxes demand accountability in return from the government. Several studies have shown that direct taxation (such as income taxes) generates the greatest degree of accountability and better governance, while indirect taxation tends to have smaller effects. There are consumer interest protection groups in Europe and America to protect interest of people and they represent them before the government and bargain with the government in the matter of indirect taxes. It has been seen if government arbitrary increase indirect which diversely affect interest of consumers they start mass boycott of that commodity to make pressure on the government to rethink on government's indirect taxation policy. If citizen pay taxes honestly it will increase sense of patriotism also and therefore they ask to government about their fiscal policies and it helps democratic system to flourish. After all democracy is all about peoples active participation in the governments affairs, if it increases it means that democratic system is active in real sense.

Nature of Taxation

The power to tax is an attribute of sovereignty, exercised by the government for the betterment of the people within its jurisdiction whose interest should be served, enhanced and protected.[13]

It is an inherent power of sovereignty, essentially a legislative function, enforced for public purpose, operates only within its territorial jurisdiction, exempts government agencies from tax and is subject to constitutional and inherent limitations. Art 265 of the constitution of India clear that no tax can be withdrawn without authority of law. It is work of the legislature to legislate for public welfare but there is invisible line not to cross by the courts in the financial matters of the government. But the same time it is public will that prevail at the end, and we have seen it is general elections of the country.

Article 246 of the Constitution of the India define Subject-matter of laws made by Parliament and by the Legislatures of States, and for the convenience of the government operations and to remove future ambiguity all subjects has been divided into three lists one is the union list having 97entries, second one is States list having 66 entries and third and the last one is Concurrent list having 47 entries. Residuary subject falls under entry 97 of the Union list.

In order for a tax system to operate effectively, certain principles must be put in place.

Fairness: the tax must be fair, that is, citizens should be taxed in proportion to their abilities to pay.

Clarity and Certainty: Convenience: the application of a tax should be clear and certain. If the application is uncertain and arbitrary the public can have no confidence in the system. Compliance with tax laws may increase if it is easy and convenient.

Efficiency: a good tax system should be structured so that it can be administered efficiently and economically. Taxes that are difficult or costly to administer divert resources to nonproductive uses and diminish confidence in both the levy and the government.

In the past taxation was regarded solely as a means to finance the necessary obligations of a government. The money was used to pay elected officials, maintain state security, build roads, bridges and public buildings; and pay for such services as schools, hospitals and fire fighters. In recent times, the purposes of taxation have expanded considerably, as have the roles of governments in society.

Taxes have three main functions at present scenario. First and foremost, to provide the money that makes it possible for government to function. Second, taxes have an economic significance: they are used to promote goals such as full employment, satisfactory rates of economic growth, and stability of the money supply. The economic goals of taxation are achieved by raising or lowering tax rates. The fewer taxes people pay, the more they have for their personal use. Conversely, the more taxes they pay, the less money they have available for themselves. Third, taxes are used as a redistribution of wealth. The purpose of income redistribution is to lessen the inequalities of wealth in society. This is done through what is called a system of transfer payments. The effect of the system is to transfer money from those who have a good deal of it to

those who have very little. Two of the most common examples are social security payments and welfare payments made to people who, for one reason or another, do not work

Taxation Structure
The sum of all taxes is called revenue and taxes are divided in two broad category first one is direct taxes and indirect taxes. All taxes fall either in direct taxes or indirect taxes. Direct taxes are paid on income. Direct taxes are progressive in mature it means that the more income you earn the greater your contribution is expected to be to the state. Direct taxes are more reliable than indirect taxes as government have clear figure of assesses to calculate future income but in case of indirect taxes government cannot fully rely on future income through indirect taxes. Indirect taxes are levied on expenditure and generally regressive in nature indirect taxes are imposed on the basis of the individual consumption, the individual pays only on what he consumes. However, it must be noted that taxation is used not only to raise revenue but also to regulate consumption and may even be used to curtail various forms of business activities. For instance, alcoholic beverages and tobacco may be taxed heavily on the grounds that their use is hazardous to the health of individuals. Such revenue, often called a "sin tax", is infect, a penalty paid by the users of the substance.

The regulatory aspects of taxation are more apparent in indirect taxes, such as customs duties and taxes, than in direct taxes such as income tax. For instance, government can control private consumption, especially of imported goods, by increasing customs tariffs. An increase in taxation on personal income on the other hand, may result in a decrease in private savings without affecting the level of consumption.

The effectiveness of any government depends on the willingness of the people governed to surrender or exchange a measure of control over their persons and property, in return for protection and other services. Taxation is one form of this exchange. In designing tax systems, governments customarily consider three basic indicators of taxpayer wealth or ability to pay: what people own, what they spend, and what they earn. The kinds of taxes raised by government for revenue are numerous. The most common are: personal income taxes, corporate income taxes, property taxes, sales taxes, death and gift taxes, and import-export duties.

We can classify taxes according to their nature. Some popular taxes are given below:

- **Progressive Tax**
- **Regressive Tax**
- **Proportional Tax**
- **Lump-sum tax**
- **Ghetto Tax**

Before discussing above taxes one must know what is Marginal Rate of Tax and Average Rate of Tax.

Marginal Rate of Tax: tax rate applied to an incremental amount of income. Think of this as the rate that will be applied to the next dollar of income. The concept of marginal tax will be

important throughout the course in evaluation the rate on income and the tax savings associated with a particular deduction. Most tax planning is based upon the marginal rate.

Average Rate of Tax: The total amount of taxes paid by an individual or business divided by taxable income; this rate will vary based on the amount of income received during the taxable period. For example, if john paid $3,000 in taxes on income of $25,000, his average tax rate would be 12%.

$$\text{Average tax rate} = \frac{\text{Paid taxes}}{\text{Taxable income}}$$

Progressive tax: The earliest known application of progressive taxation took place in Great Britain in the 14th century. In the United States, the first progressive income tax was established by the Revenue Act of 1862, which was signed into law by President Abraham Lincoln and repealed the short-lived flat tax contained in the Revenue Act of 1861.

Progressive tax policy is based on the simple idea that people with more money should pay more in taxes, and people with a lot more money should pay a lot more. It is fair that people who have benefited most from the opportunities provided by our public institutions should contribute in order to keep our society livable. The term "Progressive" describes a distribution effect on income or expenditure, referring to the way the rate progresses from low to high, where the average tax rate is less than the marginal tax rate.[14] It can be applied to individual taxes or to a tax system as a whole; a year, multi-year, or lifetime. Progressive taxes attempt to reduce the tax incidence of people with a lower ability-to-pay, as they shift the incidence increasingly to those with a higher ability-to-pay.

Slightly restructuring the income tax so that the wealthiest people pay a fair share of their income is the best way to bring revenue to the state so that people have the quality public services people need and deserve. The top one per cent of income earners will not be hurt by paying a fraction more, and the billions in income brought to the state will provide smaller class sizes, safer neighborhoods, and public health measures that keep people all healthier.

Taxation has four main purposes or effects: Revenue, Redistribution, Repricing, and Representation. Progressive taxation is reliable source of income as government knows how many assessee there in the state and how much revenue can be generate through direct taxes. Redistribution is one of the most important feature of progressive taxation, redistribution means taking more money from the rich people and to distribute it to poor in the form of government policies and programs and lastly representation direct taxes fix greater degree of responsibility towards the taxpayers of the state and it also helps to increase sense of patriotism as one who pays direct taxes feels that he has done something for the country. it is responsibility of the government to do work for betterment of their people so people feel that taxes paid by them is spending on right direction and it helps the government to successfully operate their functions.

"God did not create all of us equal; he created some more equal than others"

-Anon

Redistribution follows laws of natural justice and based on principles of equity. Taxation is based on the maxim "equality of sacrifice". Equality of scarifies can be justified only when we apply progressive taxation in our society but in case of indirect taxes, there are practical difficulties to implement it but in case of direct taxes we can easily apply it, we can treat people equal only if are equal in status. People who have similar income have to pay equal amount in the form of income tax. Equality of scarifies means taxpayers should feel equal amount of burden in the form of taxes. People with more income pay a higher percentage of that income in tax than do those with less income. It can also apply to adjustment of the tax base by using tax exemptions, tax credits, or selective taxation that creates progressive distribution effects.

Progressive taxation means that **MRT > ART** [if you are pedantic, if MRT (Marginal Rate of Tax) and ART (Average Rate of Tax) do not equal zero]. For example, in India there are three rates of income tax - 10% 'starting tax', 20% 'standard tax', and 30% high rate of tax. For a low income earner, ART will be around 10-20%, whereas a very high income earner will pay more like 30% ART. Thus, higher income earners pay a greater proportion of their income in tax than low earners.

Regressive tax: A tax that takes a larger percentage from low-income people than from high-income people. A regressive tax is generally a tax that is applied uniformly. This means that it hits lower-income individuals harder.[15] Some examples include excise tax and service tax. For example, if a person has Rs.10 of income and must pay Rs.1 of tax on a packet of bread, this represents 10% of the person's income. However, if the person has Rs.20 of income, this Rs.1 tax only represents 5% of that person's income.

Excise taxes that apply to essentials are generally considered to be regressive as well because expenses for food, clothing and shelter tend to make up a higher percentage of a lower income consumer's overall budget. In this case, even though the tax may be uniform (such as 5.5%. sales tax), lower income consumers are more affected by it because they are less able to afford it.

A regressive tax is a tax imposed in such a manner that the tax rate decreases as the amount subject to taxation increases. "Regressive" describes a distribution effect on income or expenditure, referring to the way the rate progresses from high to low, where the average tax rate exceeds the marginal tax rate. In terms of individual income and wealth, a regressive tax imposes a greater burden (relative to resources) on the poor than on the rich. There is an inverse relationship between the tax rate and the taxpayer's ability to pay as measured by assets, consumption, or income.

The regressivity of a particular tax often depends on the propensity of the taxpayers to engage in the taxed activity relative to their income. In other words, if the activity being taxed is more likely to be carried out by the poor and less likely to be carried out by the rich, the tax may be

considered regressive. To determine whether a tax is regressive, the income elasticity of the good being taxed as well as the income substitution effect must be considered.

Proportional tax: The French Declaration of the Rights of Man and of the Citizen of 1789 proclaims: A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.[16] Proportional tax is a tax in which the tax rate remains constant regardless of the amount of the tax base.[17] A proportional tax is a tax imposed so that the tax rate is fixed, with no change as the taxable base amount increases or decreases. The amount of the tax is in proportion to the amount subject to taxation.[18]

Proportional tax is also called flat tax. Tax rate is same for all taxpayers, regardless of level of income. Proportional tax system requires the same percentage of income from all taxpayers regardless of their earnings. A proportional tax applies the same tax rate across low, middle and high-income taxpayers. The proportional tax is in contrast to a progressive tax, where taxpayers with higher incomes pay higher tax rates than taxpayers with lower incomes.[19] A proportional tax is also called a flat tax. For example, in a proportional tax system, all taxpayers may be required to pay 10% of income in taxes. A sales tax can be considered a type of proportional tax since all consumers, regardless of earnings, are required to pay the same fixed rate.

The term "Proportional" describes a distribution effect on income or expenditure, referring to the way the rate remains consistent (does not progress from "low to high" or "high to low" as income or consumption changes), where the marginal tax rate is equal to the average tax rate.[20] It can be applied to individual taxes or to a tax system as a whole; a year, multi-year, or lifetime. Proportional taxes maintain equal tax incidence regardless of the ability-to-pay and do not shift the incidence disproportionately to those with a higher or lower economic well-being.

A proportion form of taxation to many seems quite fair as individuals pay according to their ability to pay. One point of view is that for the rich, based on the different high incomes, it is easier to pay off taxes because a smaller proportion of their income is spent on necessities. They therefore have more disposable income to spend on other goods/services also to invest within capital goods which said before may stimulate and benefit the welfare of the economy. Some may say that this system promotes a more fair and just society. Equity of taxation in this economy can be neutral. Increases in labor, increases wages thereby increases income-taxes. The con for this system is that the government would receive less income tax. Less income tax therefore means that less would be available for government spending.

The French Declaration of the Rights of Man and of the Citizen of 1789 proclaims: A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.[21]

Proportional taxation means that **MRT = ART**, so if a low income earner is taxed at 20%, so is a higher income earner. The proportion of tax paid is always the same, though in absolute terms it goes up the higher your income.
Some people consider it as regressive tax as it affects low income group people, as low income group people spend much money on daily utilities as food, medicine etc and spend large part of their income on it and pays proportionally more tax than those who have large income but do not spend proportionally large part of their income on daily utilities therefore they pay proportionally less tax than those who have low income.

Lump-sum tax: A lump sum tax is a tax with a fixed amount that is levied on all members of a society regardless of their income levels. Each member of the society, from the richest to the poorest, is charged the same lump sum when such a tax exists. Instances of an actual lump sum tax are rare in reality, since the tax would be excessively burdensome to the poorer members of a society. The theory of a lump sum tax is often used by economists as a means of studying the ways that an economy can be more efficient. Many economists argue that charging a lump sum would be a more effective method of aiding an economy. Whereas a tax based on income might cause some workers to work at less than their maximum capability for fear of paying higher taxes, proponents of the lump sum argue that a fixed-amount tax would not impede workers' motivation in any way.

As the lump-sum is negotiable, the tax authorities are free to set the taxable amount in the negotiations to a different and even higher amount. Factors that play a role are your total global wealth, age, family situation and the municipality in which the taxpayer will live. Individual taxes are usually levied depending either on the amount of income they earn or the amount of some particular product that they consume. It's usually the case that the people who make the most money in a society are taxed at the highest percentage of their income since they can afford it. Those taxes often are used in turn to benefit the poorer people in an economy. By contrast, a lump sum tax is levied upon every single member of a single society.

It is one of the various modes used for taxation: income, things owned (property taxes), money spent (sales taxes), miscellaneous (excise taxes). It is a regressive tax, such that the lower the income is, the higher the percentage of income applicable to the tax. An example is a poll tax to vote, which is unchanged no matter what the income of the voter. Other related examples include personal property taxes on cars or business equipment regardless of income or ability to pay. Real estate taxes that are levied on a per lot or per unit basis are another example; some condominium fees could be regarded as having most of the characteristics of a lump sum tax (other than being avoidable by not owning property in a condominium).

In economic theory, a lump-sum tax may have the advantage of not contributing to an excess burden of taxation, a loss in economic efficiency that results from taxes reducing incentives for production. In practice, lump-sum taxes are often encountered, in spite of their conflict with other criteria, such as equity or ability to pay. A lump-sum tax remains a standard for measuring the performance of other imperfect kinds of taxes (J. de V. Graaf, 1987)[22]

An example of a lump-sum tax is a $55 fee on all employees who work in a township. Another example is tag fees on vehicles, which are the same regardless of the income of vehicle owners. Lump-sum taxes are regressive, meaning persons with lower income pay more as a percentage of their income.

Ghetto Tax: Exploitation of poor people and minorities in the form of price markups on goods and services. For example, higher rates for insurance, usury in loan rates, and "vending machine" level prices from the corner store. The study, from the Brookings Institution, said finding ways to eliminate these added costs, often called a "ghetto tax," could be an important new front in the fight against poverty.[23] Poor urban residents frequently pay hundreds if not thousands of dollars a year in extra costs for everyday necessities. The study said some of the disparities were due to real differences in the cost of doing business in poor areas, some to predatory financial practices and some to consumer ignorance. A ghetto tax is not literally a tax; it is a situation in which people pay higher costs for equivalent goods or services simply because they are poor, or live in a poor area.

In public policy, a euphemism for the higher price of many goods and services for low-income consumers.[24] The term ghetto tax is used to describe the generally higher prices those with low incomes pay for goods and services, particularly those living in poverty-stricken areas.[25]

The problem of ghetto taxes is closely associated with mobility; one study in the USA showed that higher prices might be prevalent in some neighborhoods, but people with access to a car would have more access to affordable goods and services elsewhere, whilst those without a car would bear the brunt of higher local prices.[26]

The New York State Banking Department has drawn major banks into underserved neighborhoods by placing deposits of government money, sometimes at below-market interest, in the new branches. These may enable more residents to open accounts and reduce reliance on costly check-cashers and lenders, said the state's superintendent of banks, Diana L. Taylor.[27]

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Mapping the scope of Nanotechnology from Environment Perspective

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Introduction

The word nanotechnology derived from the words nano and technology. Nano, typically employed as a prefix, is defined as one-billionth of a quantity or term. It is represented mathematically as 1×10^{-9}, or simply as 10^{-9}. Technology generally refers to the system by which a society provides its members with those things needed or desired. The term nanotechnology has come to be defined as those systems or processes that provide goods and services that are obtained from matter at the nanometer level that is from sizes in the range of one-billionth of a meter. In addition, the new technology allows the engineering of matter by systems or processes that deal with atoms. Nanotechnology is the principle of manipulation of the structure of matter at the molecular level. It entails the ability to build molecular systems with atom-by-atom precision, yielding a variety of nanomachines. The classic laws of science are different at the nanoscale. Nanoparticles possess large surface areas and essentially no inner mass that is their surface-to-mass ratio is extremely high.

Nanotechnology and environment: an interrelation

The new science of nanotechnology is based on the fact that particles in the nanometer range, and nanostructures or nanomachines that are developed from these nanoparticles possess special properties and exhibit unique behavior. These special properties, in conjunction with the unique behavior of nanomaterials, can significantly impact physical, chemical, electrical, biological, mechanical, and functional qualities and properties. These newly identified characteristics can be harnessed and exploited by applied scientists to engineer new processes. In general nanotechnology devices consume less energy, reduce material wastes, and help in monitoring. Nanotechnology can also be used to reduce and prevent the toxicity of nanoparticles in environment more efficiently. There are certain areas of manufacturing currently benefiting from the development of nanotechnology. Energy consumption is the first area in which the use of graphene into a coating material resulting in the need for only one layer, which does not require a multifunctional film coating. Two applications for a graphene based coating are to apply it to a blade used in wind turbines or on the body of an airplane. It saves the weight increasing efficiency. After that less waste on raw materials that is large sample testing will be done on a smaller scale and simultaneously of raw materials will become more efficiency. Nanoscale chemical reagents (catalysts) increase the reaction rate and other efficiency of chemical reactions.

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Environmental monitoring and protection is the next in utilizing advanced nanotechnology, a detector was made to detect a nuclear leak faster and more accurate at the Fukushima Daiichi Nuclear power plant, which is one of the best radiation detectors in Washington and can sense the faints amount of radiation. Then biological applications developing ultra small probes on planetary surfaces for agricultural applications and control of soil, air, and water contamination. Lastly biomedical application are there which includes the medical diagnostic and treatments.

Common nanoparticles includes nanofibers, buckyballs, carbon nanotubes, and grapheme etc. nanodevices can also be made by using nanotechnology and are used in many applications such as sun glasses, sun screen, semiconductor and sports equipments etc. Nanotechnology can provide future solutions for certain environmental problems; however, it also crests negative impact on environment. Therefore, evaluation of the positive and negative impacts of nanotechnology is essential for the safety of society.

Nanotechnology increases the strengths of many materials and devices, as well as enhances efficiencies of monitoring devices, remediation of environmental pollution, and renewable energy production. While these are considered to be positive effect of nanotechnology, there are certain negative impacts of nanotechnology on environment in many ways, such as increased toxicological pollution on the environment due to the uncertain shape, size and chemical compositions of some of the nanotechnology products (nanomaterial). It can be vital understand the risks of using nanomaterials and coast of the resulting damages.

As applications of nanotechnology develop over time; they have the potential to help shrink the human footprint on the environment. This is important, because over the next 50 years the world's population is expected to grow 50%, global economic activity is expected to grow 500%, and global energy and material use is expected to grow 300 %. So far, increased level of production and consumption has offset our gains in cleaner and more efficient technologies. This has been true for municipal waste generation, as well as for the environmental impacts associated with vehicle travel, ground water pollution and agricultural runoff. Thus nanotechnology can create materials and products that will not only directly advance our ability to detect monitor and clean up environmental contaminants, but also help us avoid creating pollution in the first place.

Nanoparticles have higher surface areas than the bulk materials which can cause more damage to the human body and environment compared to the bulk particles. Therefore, concern for the potential risk to the society due to nanoparticles has attracted national and international attentions. Nanoparticles are not only beneficial to tailor the properties of environment in air pollution monitoring, but also to help reduce material consumption and remediation. For example- carbon nanotube and grapheme based coating have been developed to reduce the weathering effects on composite used for wind turbines and aircraft.

Potential environmental risks involved in nanotechnology

Grapheme has been chosen to be a better nanoscale inclusion to reduce the degradation of UV exposure and salt. By using nanotechnology to apply a nanoscale coating on existing materials, the materials will last longer and retain the initial strength longer in the presence of salt and UV exposure. Carbone nanotubes have been used to increase the performance of data information

system. However, there are few considerations of potential risks need to be considered using nanoparticles. The major problem of nanomaterials is the nanoparticles analysis method. As nanotechnology improves, new and novel nanomaterials are gradually developed. However, the materials vary by shape and size which are important factors in determine toxicity. Lack of information and methods of characterizing nanomaterials make existing technology extremely difficult to detect the nanopartical in air for environmental protection. Secondly the Information of the chemical structure is a critical factor to determine how toxic a nanomaterial is and minor changes of chemical function group could drastically change its properties. Then Full risk assessment of the safety on human health and environmental impact need to be evaluated at all stages of nanotechnology. The risk assessment should include the exposure risk and its probability to exposure, toxicological analysis, transport risk, persistenence risk, transformation risk and ability to recycle. Life cycle risk assessment is another factor that can be used to predict the environmental impacts. Lastly the good experimental design in advance of manufacturing a nanotechnology based product can reduce the material waste.

Carbon nanotubes have applications in many materials for memory storage, electronics, batteries etc. however, some scientists have concerns about carbon nanotubes because of unknown harmful impacts to the human body by inhalation into lungs and initial data suggests that carbon nanotubes have similar toxicity to asbestos fibers. Carbon nanotube showed to be more toxic than carbon black and quartz once it reaches lung. In the 1980's, a semiconductor plant contaminated the ground water in Silicon Valley, California. This is a classic example of how nanotechnology can harm the environment even through there are several positive benefits.

As current nonscale materials are becoming smaller, it is more difficult to detect toxic nanoparticles from waste which contaminate the environment. Nanoparticles may interact with environment in many ways: it may b attached to a carrier and transported in underground water by bio-uptake, contaminants and organic compounds. Possible aggregation will allow for conventional transporation to sensitive environments where the nanoparticles can break up into colloidal nanoparticles. There are four ways that nanoparticles or nano materials can become toxic and harm the surrounding environment.

1. Hydrophobic and hydrophilic nanoparticles- nanocoating researchers are currently working on TiO2 powder as a coating inclusion that will reduce the weathering effects, such as salt rain degradation on composite materials. The effect of TiO2 nanoparticles to be assessed when leaked into environment.
2. Mobility of contaminants- there are two general methods that nanoparticle can be emitted into atmosphere. Nanoparticles are emitted into air directly from the source called primary emission and are the main source of the total emissions. However secondary particles are emitted naturally such as homogenous nucleation with ammonia and sulfuric acid presents. Nanoparticles can easily be attached to contaminations and transported to a more sensitive environment such as aqueous environments for example nuclear waste traveled almost 1 mile from a nuclear test site.

3. Solubility- many of the nanoparticles are soluble in water and are hard to separate from waste if inappropriately handled.
4. Disposal- any waste products including nanomaterials can cause environmental concerns if disposed inappropriately.

Environmental assessment of Nanotechnology

It increases the strengths of many materials and devices, as well as enhances efficiencies of monitoring devices, remediation of environmental pollution, and renewable energy production. While these are considered to be the positive effect of nanotechnology, there are certain negative impacts of nanotechnology on environment in many ways, such as increased toxicological pollution on the environment due to the uncertain shape, size, and chemical compositions of some of the nanotechnology products (or nanomaterials). It can be vital to understand the risks of using nanomaterials, and cost of the resulting damage. It is required to conduct a risk assessment and full life-cycle analysis for nanotechnology products at all stages of products to understand the hazards of nanoproducts and the resultant knowledge that can then be used to predict the possible positive and negative impacts of the nanoscale products. Choosing right, less toxic materials (e.g., graphene) will make huge impacts on the environment. This can be very useful for the training and protection of students, as well as scientists, engineers, policymakers, and regulators working in the field.

Positive impressions on Environment

Nanotechnology offers potential economic, societal and environmental benefits. Nanotechnology also has the potential to help reduce the human footprint on the environment by providing solutions for energy consumption, pollution and green gas emissions. Nanotechnology offers the potential for significant environmental benefits including such as:

- Cleaner and more efficient industrial processes
- Improved ability to detect and eliminate pollution by improving air, water and soil quality
- High precision manufacturing by reducing amount of waste.
- Clean abundant power via more efficient solar cells
- Removal of greenhouse gases and other pollutants from the atmosphere
- Decreased need for large industrial plants.
- Remediating environmental damages.

The nanoscale products that utilize graphene in an industrial use or research can benefit the environment in several ways:

- Graphene based nanocomposites reduce the weight of airplanes by substituting traditional metals and composites and the consequence of the weight saving results in a reduction of a thousand tons of gasoline.
- Graphene thin film or graphene bucky papers can be subsitutd in place of metal meshes around the fuselage of airplane used to prevent th direct indirect effects of lightning strikes.

- The eminent properties of graphene increased the efficiency of advanced renewable energy processes, such as reducing the weight of a wind turbine blades and increasing the energy converse efficiency.

Negative impressions on Environment

Understanding of the environmental effects and risks associated with nanotechnology are very limited and inconsistent. The potential environmental through nanotechnology can be summarized as follows:

- High energy requirements for synthesizing nanoparticles causing high energy demand
- Dissemination of toxic persistent nanosubstances originating environmental harm
- Lower recovery and recycling rates
- Environmental implications of other life cycle stages also not clear
- Lack of trained engineers and workers causing further concerns.

Graphene has outstanding properties and its products can benefit the environment and economy unfortunately, graphene based composites may also harm the environment in other ways, the toxic property of graphene is unknown and is difficult to remove graphene from waste.

- Graphene could react with materials and biological systems in environment in a way that is unexpected.
- Graphene has a good thermal conductivity and fire retardancy of the polymer nanocomposties is already well reached. However, scientists warn that it may cause fire risk if graphene is contaminated with other substances during processs.

One cause of some concern of nanotechnology is the potential health and safety risks of nanoparticles and nanotubes. It is known that nanoscale particles are likely to be more reactive than the same material bulk and that nanoparticles may be able to penetrate human cells. However, there is no evidence that the limited number of nanoparticles used in cosmetics can cause any damage. At present there is little research into the general toxicity of nanoparticles with respect to damage to DNA or lungs. More evidence is needed to understand if there is any cause for concern and more research needs to be carried out by the scientific community. The problem is that these particles may be harmful to the human body and scientists say it will be years before they fully understand their effects. Nanoparticles are small enough to slip unnoticed through a cell membrane but large enough to carry foreign material between strands of DNA. There are no long term health studies issues but researchers have seen brain cancer develop in fish that ingest a small number of carbon nanoparticles. Rats that inhale carbon nanotubes have lung problems similar to those caused by asbestos.

Nanotechnology and its emergence in pedagogy

Industry and education including public schools, community colleges and universities will have to respond to the change in dynamics composition of the workforce. This is to change curriculum to match changes in society with emphasis on science, technology and engineering fields. Advances in miniature electronics could result in changes in the classroom. Having organized

education or training systems to college students and researchers in laboratories is a key factor of reducing the negative impacts of nanotechnology. Educational progress follows nanotechnology research progress. Researchers and college students do not fully realized ad understand how nanoparticles affect a system. One of the important Causes is the lack of toxicity information from manufacture and could easily handle safely with appropriate protection equipment.

Developing new technology classes providing safety seminar and confence could not only benefit college students but also engineers and industrial manufacture scientists in other fields. For a new student research assistant who is going to be handling nanoscale materials should be trained in a general safety course and a course associated with that specific nanomaterials. Public media is an ideal way to populate the information of nanomaterial and to educate public of advantages and disadvantages of nanomaterials for the commercial products which contains nanomaterials. Exposure of nanomaterials to workers, consumers and the environment seems inevitable with the increasing production volumes and the increasing number of commercially available products containing nanomatrials or based on nanotechnology. Exposure is a key element in risk assessment of nanomaterials since it is a precondition for the potential toxicological and ecotoxicological effects to take place. If there is no exposure there is no risk.

Conclusion

There is no doubt that nanotechnology will continue to ne develop, be a benefit to society and improve the environment in various ways. Nanoscale materials will make the products better in terms of functionality, weight savings, less energy consumption and a cleaner environment. Shortcomings always exist when new unproven technology is released. Nanomaterial may help clean certain environmental wastes but contaminate environment in other ways. Choosing the right nanoscale materials is one of the key parameters for the future direction of nanotechnology. Engineering ethics need to be defined before the commercial use of nanotechnology. Risk assessment on new nanomaterial based application is important to evaluate potential risk to our environment when the products are in use. Full life cycle evaluation and analysis for all different applications should be conducted with constant attention. Major concern regarding nanoparticles is that they might not be detectable after release into the environment which in turn can create difficulties if remediation is needed.

Therefore, analyses methods need to be developed to detect nanoparticles in the environment that accurately determine the shape and surface area of the particles. More information is needed regarding the structure function relationships and in relating surface area and chemistry to functionality and toxicity. Full risk assessment should be performed on new nanomaterials that present a real risk of exposure during manufacture or use. Such assessment should take into consideration the toxicological hazard the probability of exposure and the environmental and biological fate, transport, persistence, transformation into the finished product and recycling. Life cycle analysis will be a useful tool assessing the true environmental impacts. When the use of scarce material is inevitable for the elaboration of the nanoparticles, an effective strategy for recycling and recovery is necessary.

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Doctrine of Legitimate Expectation: An Analysis

Kanchan Prabha*

Introduction

The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law in the strict sense of the term though they had suffered a civil consequence because their legitimate expectation had been violated.[1] The term 'legitimate expectation' was first used by Lord Denning in 1969 and from that time it has assumed the position of a significant doctrine of public law in almost all jurisdictions.[2] When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty.[3]

Doctrine of Legitimate Expectation forms a part of judicial strategy to exclude the possibility of arbitrary administrative actions. Where discretion is exercised in a manner not consistent with past practice or policy, its reasonableness is examined with reference to the detriment caused by the non-fulfilment of legitimate expectation. The plea of legitimate expectation is invoked when the government does not exercise its discretion on the expected lines. The usual situation is not of renewing a contract or a sudden discontinuation of a policy. Any expectation based on sporadic, casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation.

Doctrine of Legitimate Expectation supplements doctrine of *locus standi* by providing sufficient standing to anyone who cannot point to the existence of a substantive right to obtain the leave of the Court for judicial review. The legitimate expectation further gives the applicant sufficient *locus standi* for judicial review.

Scope of the Doctrine

Whether an expectation exists is, self-evidently, a question of fact. If a person did not expect anything, then there is nothing that the doctrine of legitimate expectation can protect.[4] So, a person unaware of an undertaking made by a public authority cannot expect compliance with that undertaking. A decision not to honour any such undertaking maybe flawed for some other reason. When no promise of a benefit has been made and there is no established practice of granting that benefit, the person concerned is, elementarily, entitled to be treated fairly. But he is not entitled to rely upon his expectation of a benefit unless it is founded upon some promise or established

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practice. To determine whether an expectation exists, and whether it is legitimate, requires the investigation of many circumstances. Clear statutory words override any expectation howsoever founded[5]. Legitimate Expectation may arise-

a) If there is an express promise given by a public authority
b) Because of the exercise of a regular practice which the claimant can reasonably expect to continue
c) Such an expectation must be reasonable.[6]

Theories for Justifying the Legal Protection of Legitimate Expectations

a) **Reliance Theory:** The reliance theory argues that legitimate expectations should be protected because to do otherwise would inflict harm on individuals who rely upon such expectations. Firstly, there is a general obligation not to cause preventable harm to others. This obligation derives from our concern to maximize welfare or happiness in society. That is, a utilitarian analysis of societal arrangements suggests that preventable harm should not be tolerated. Secondly, respect for individual autonomy suggests an obligation not to cause preventable harm, irrespective of what aggregate utility this obligation might have. It follows that the freedom of action of one person may be limited to the extent that its exercise causes harm to others.

The Reliance principle maybe formulated as follows: a public authority's freedom to take action in the public interest is limited to the extent that it causes harm to particular individuals. If a public authority has induced a person to rely upon its representations or conduct, realising that such reliance was a real possibility, it is under a prima facie duty to act in such a way that the reliance will not be detrimental to the representee. The reliance theory is too narrow because detrimental reliance is not and should not always be a precondition for protection of expectation. This theory is also too inflexible. It suggests that an authority is precluded from disappointing induced foreseeable reliance, if the disappointment is preventable. But even the most cautious public authority cannot completely prevent changes of policy from harming or adversely affecting, individuals.

b) **The Rule of Law Theory**: In this theory, the principle of legitimate expectation is seen as one aspect of the Rule of Law. Like the reliance theory, the rule of law theory proceeds from autonomy. For individuals to be autonomous they must, at least, be able to plan ahead and therefore foresee with some degree of certainty the consequences of their actions. In administrative law, the importance of certainty is increased by wide-ranging discretionary powers being vested in public authorities.[7] Individuals cannot easily predict how discretionary powers will be exercised because the provisions conferring such powers are linguistically indeterminate and because informal working rules and other constraints of which individuals are not normally aware affect their exercise in practice. Firstly, the rule of law presupposes formal equality. That is, like cases must be treated alike by the correct and consistent application of law. Secondly, the rule of law presupposes a certain measure of constancy in the law.

The rule of law theory is more comprehensive and convincing than the reliance theory. Reliance is only relevant in so far as it strengthens the rule of law justification for protection of legitimate expectations. Moreover, the rule of law theory is more flexible than the reliance theory.

Types of Expectations

1) Procedural Expectation- An expectation where a particular procedure not otherwise required has been promised.
2) The expectation may be a particular or favourable decision by the authority.

Reasons for Supreme Court of India Having Developed This Doctrine

This doctrine was evolved in order to check the arbitrary exercise of power by the administrative authorities. The doctrine provides a central space between 'no claim' and a 'legal claim' wherein a public authority can be made accountable on the ground of an expectation which is legitimate. The legal protection of expectations is a way of giving expression to the requirements of predictability, formal equality, and constancy inherent in the rule of law.

Negative and Positive Contents of The Doctrine

The doctrine has negative and positive contents both. If applied negatively an administrative authority can be prohibited from violating the legitimate expectations of the people and if applied in a positive manner an administrative authority can be compelled to fulfil the legitimate expectations of the people. It is argued that the protection of legitimate expectations would have a 'chilling effect' upon public authorities in the following sense. If the public authorities are bound by, or potentially liable in damages for, their representations on the grounds that they generate expectations in individuals, authorities will be much less willing to establish good practices, publish guidelines, and give informal advice lest this conduct be turned against him.[8]

Development of the Doctrine in England

The term 'legitimate expectation' was first used by Lord Denning in *Schimdt v Secretary of State for Home Affairs*[9]. However, it was in *Breen v Amalgamated Engineering Union*[10] that the Doctrine of legitimate expectation found its legitimate place. In the case of *Melnnes v Onslow Fane*[11], the doctrine found fine exposition. Evolving the doctrine further the courts in England support the opinion that the claim of legitimate expectation must not always fail against legal incapacity. In *R. v Ministry of Agriculture Fisheries and Food, ex parte Hamble (Offshore) Fisheries Ltd.*[12], the question of applicability of the principles of legitimate expectation in respect of policy matter was considered. In *R. v Secretary of State for the Home Department, ex parte Ruddock*[13], Taylor J. said at page 531, that:

"The doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as LORD ROSKILL said, with a right to be heard, I do not think the doctrine is so confined. Indeed in a case where ex hypothesi there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept. Of course such promise or undertaking must not conflict with his statutory duty or his duty, as here, in the exercise of a prerogative power."

A person has a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment.[14] The expectation may arise either from a representation or a promise made by an authority including an implied representation or from consistent past practice.

Development of the Doctrine in India

The legal position in India is more or less the same as in England. The first reference of the Doctrine was found in *State of Kerala v K.G. Madhavan Pillai*[15]. In *Navjyoti Coop. Group Housing Society v. Union of India*[16], the Supreme Court recognised that by reason of application of the said doctrine, an aggrieved party would be entitled to seek judicial review, "if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment such reasons".[17]

The doctrine was further applied in *Scheduled Caste and Weaker Section Welfare Association v State of Karnataka*[18]. The Court in *Union of India v Hindustan Developent Corporation*[19], laid down the meaning and scope of this doctrine. In *National Building Construction Co. v S. Raghunathan*[20], the Supreme Court brought in the concept of 'detriment' in legitimate expectation theory. In *West Bengal v Niranjan Singha*[21], the Supreme Court said that 'the doctrine of legitimate expectation' is only an aspect of Article 14 of the Constitution in dealing with the citizens in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right but in testing the action taken by the government authority whether arbitrary or otherwise, it would be relevant. In *Food Corporation of India v Kamdhenu Cattle Feed Industries*[22], the Supreme Court held that even though the respondent's bid was the highest, it had no right to have it accepted. The procedure of negotiation itself gave due weight to the legitimate expectation of the highest bidder and that was sufficient.

Legitimate expectation gives the applicant sufficient *locus* standi for judicial review. Doctrine of Legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativating a promise of withdrawing an undertaking is given. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its power to fulfil. If a question is of policy, even by a change of old policy, the courts cannot interfere with a decision. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, the same can be questioned on well known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It follows that the concept of Legitimate expectation is not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits particularly when the element of speculation and uncertainty is inherent in that very concept. The courts should restrain themselves and restrict such claims duly to the legal limitation.[23]

When can this doctrine not be invoked?

An overriding public interest may justify denial of any legitimate expectation. Also, it is an equity doctrine that a person's own conduct may disentitle him to the benefit of this doctrine. Also, this doctrine cannot be enforced in cases of promises made by administrative authorities. Theory of legitimate expectation cannot defeat or invalidate legislation. It may at most be used against an administrative action and even there it may not be an indefeasible right.

Conclusion

The plea of legitimate expectation still remains a very weak plea in Indian Administrative Law. A claim for a benefit on the basis of legitimate expectation is more often negatived by the courts. It is rarely that such a plea is accepted by courts in India. It is humbly submitted, therefore, that in situation of confusion of ideas regarding the concept of legitimate expectation what needs to be realized is that the concept envisages not merely "expectation" but "legitimate expectation" which means that there is already something super-added to just "expectation" some kind of assurance or representation by the administration or the fact that the expectation has been recognized over a period of time. What needs to be realized is that the concept is more of an equitable nature rather than legalistic in nature.

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[12] (1995) 2 All ER 714
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[14] *O'Reilly v Mackman,* (1982) 2 All ER 1124 HL.
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Surrogacy Tourism in India - Issues and Challenges

Mrs. Neetu*

Introduction

Reproductive tourism is defined as 'the travelling by candidate service recipients from one institution, jurisdiction or country where treatment is not available to another institution, jurisdiction or country where they can obtain the kind of medically assisted reproduction they desire'. 'Reproductive tourism,' is also known as 'fertility tourism,' 'procreative tourism,' and 'cross-border reproductive care' (CBRC). Assisted reproductive technology (ART) lures people across borders the willingness to travel for ART and the practices that facilitate fertility travel. Surrogacy tourism is the branch of reproductive tourism. In the past few years, surrogacy tourism has expanded rapidly, and has acquired a public profile in the process.

Surrogacy means "a substitute". In surrogacy, one woman (surrogate mother) carries a child for other persons (commissioning couples) based on an agreement before conception, requiring the child to be handed over to commissioning couples following birth.

Section 2(aa) of The Assisted Reproductive Technology (Regulation) Bill, 2010 defines this as follows" surrogacy, means an arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention to carry it to term and hand over the child to the person or persons for whom she is acting as a surrogate."

Reasons to Recourse Surrogacy

In Hindu mythology, the desire to have a male child is greatly stressed and is considered to be a man's highest duty, a religious necessity, and a source of emotional and familial gratification. The Hindu scriptures say that it is necessary for a Hindu to beget a son from his marriage for the performance of his funeral rites and to preserve the continuance of his lineage. The son is the legal heir who wills take-care property after death. Hindus also believed that one who died without having a son would go to hell called poota and it was only a son who could save the father from going to poota. In the absence of a son, adoption can play a significant role. Adoptive son enjoys all the rights and performs all the duties which are deemed to be performed by the natural born child. It forces a person to beget a child.

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The earliest mention of the term `surrogacy' is also in the Old Testament of the Holy Bible. The story is told that, because Sarai had been unable to bear Abraham a child, she suggested to him that he go to maid Hagar. Abraham did as he was told and he was able to father a child by Hagar, and Ishmael was born. According to Hindu mythology, Krishna was born as the eighth child of Devaki, sister of the cruel demon king Kansa. A sage, Narada, predicts that Kansa will be killed by his nephew, so Kansa kills his sister's first six children. The eighth child, Krishna, is secretly exchanged for a cowherd's daughter. Krishna is brought up by the cowherd's wife Yashoda, and most stories surrounding Lord Krishna in his infant years are about the loving bond shared between him and his surrogate mother, Yashoda. It is likely that surrogacy has been used through the ages to help women who are unable to have children themselves to have families, but no specific incidences are recorded in the medical history texts.

Pronatalism means state sponsored parenthood. It is an ideology which belief that everyone should reproduce and have babies as often as possible. A Pro-Natalist Policy is a government's way of convincing people to have more kids. In some cases they might offer rewards or discounts on certain things. In Russia, they have the Russian Sex Day. It is about 9 months from the countries national day, and if you give birth on the national day; you get rewards. The rewards can range from SUVs to money. In Canada, When Canadian citizens give birth in Canada they give you money to help support the baby and they help with providing money for health care. In Japan they offer extended maternity vacations and other benefits. India is an extremely pronatalistic society. In India, six month maternity leave is granted to working women in case of government job and 3 months in case of private sector. 15 days paternity leave is also granted to father at the time of the birth of a child. The rationale for government involvement in support of families is recognition of the social value of children. Fundamentally, children are tomorrow's citizens and tomorrow's workers. Pro-natalist policies are flowed from a populationist philosophy which equated

Infertility is defined as one year of unprotected intercourse without pregnancy. Infertility has been conceptualized emotionally stressful and psychologically threatening experience. It negatively affects different aspects of couples' life, which includes disruptions in couple's personal life, quality of emotional and sexual relationships, as well as their relationship with co-workers, family, and friends. Social transformations as well as medical science advances regarding infertility treatment has resulted in increasing demand of infertility services. Today, advances in assisted reproductive technology (ART) can offer hope to many couples with infertility. There are certain other medical reasons like Repeated failure of IVF, Recurrent abortion, Severe medical conditions incompatible with pregnancy, Congenital absence of the uterus etc are responsible to force the childless couples to choose surrogacy.

Legal Status of Surrogacy in different Countries around the World Surrogacy is worldwide concept. Most countries like Australia, China, the Czech Republic, Denmark, France, Germany, Italy, Mexico, Spain, Switzerland, Taiwan, Turkey. Some have imposed partial

bans, as in Brazil, Israel, and the United Kingdom. Others, such as India, Belgium, Finland, and Greece, have no regulations at all. Commercial surrogacy is mainly practiced in the state of California and in Israel. In many countries and jurisdictions, most notably in Europe, surrogacy is an illegal medical procedure. But in the United States, there is no Federal regulation of surrogacy and its fifty states constitute a patchwork quilt of policies and laws, ranging from outright bans to no regulation. More than a dozen states, including Pennsylvania, Massachusetts and California, specifically legalize and regulate surrogacy and just in the past five years, four states – Texas, Illinois, Utah and Florida have passed laws legalizing surrogacy. Only twelve states refuse to recognize surrogacy contracts.

Legislative Attempts and Judicial Responses to regulate Surrogacy Tourism

In 2005, the Indian Council of Medical Research (ICMR),part of the Ministry of Health and Family Welfare, published nonbinding National Guidelines for Accreditation, Supervision and Regulation of Assisted Reproductive Technology (ART) Clinic in India.

Manji Yamada v Union of India[i] is the first reported case on legality of surrogacy agreement. In this case, The Supreme Court of India permitted Commercial Surrogacy in India.

On 5th of August, 2009 , Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India submitted the 228th Law Commission Report titled "**Need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of parties to a Surrogacy**" to the Union Minister of Law and Justice, Ministry of Law and Justice, Government of India. This report is submitted with **draft Assisted Reproductive Technology (Regulation) Bill and Rules 2008**. which is further replaced by **draft Assisted Reproductive Technology (Regulation) Bill ,2010** which is still pending.

The reasons for the growth of Surrogacy Tourism in India

India is fast becoming the most prominent player in the global industry of surrogacy tourism, which is worth somewhere between $500 million and $2.4 billion annually. The reasons can be so many but some of them are:

- The usual fee is around $25,000 to $30,000 in India which is around 1/10rd of that in developed countries like the USA.
- Advanced privatized tertiary healthcare, India has the best IVF services in the world.
- English speaking providers that make it easier for foreigners to avail medical services.
- World famous tourist destination
- An apparently ample supply of Indian women interested in serving as surrogates,
- A business climate that encourages the outsourcing of Indian labour,
- Possibility of closely monitoring surrogates
- The absence of binding industry regulations

Issues

Surrogacy tourism has raised the social, ethical, medical and religious issues such as:

- Surrogacy is like slavery in the absence of reciprocity ,in the fact that one person Becomes what Aristotle called an 'animated tool' of another, serving simply as a means to another's end"
- Reproduction, through surrogacy will obtain the same status of commodification because the reproductive technology makes the womb province of the doctor, not the women; all technologies will make the womb extractable from the woman as a whole person in the same way the vegina is now and reproduction will be controllable by men even more than ever before.
- Andrea Dworkin says," Commercial Surrogacy amounts to reproductive prostitution. You make use of the bodily functions of another person to fulfil your own needs. That is what happens in prostitution. It has nothing to do with the interest of the child".
- **Geneaological bewilderment and adopted syndrome**-- It refers to the identity problems that are experienced by a child who was either fostered, adopted, or conceive through surrogacy. Surrogacy deliberately creates confused family structures producing genealogical bewilderment for the child. Adopted child syndrome is a pattern seen in adopted children which includes pathological lying, stealing, truancy, manipulation, shallowness of attachment, provocation of parents and other authorities, threatened or actual running away, learning problems, fire-setting, and increasingly serious antisocial behaviour.
- **Foetal- Maternal Bonding**- This is the bond formed between the mother and the foetus during the pregnancy and for some time after the birth. Breast feeding, skin to skin contact initiates release of oxytocin which helps psychological process for the baby to develop and the mother to recover. Surrogacy ruptures this bond and depriving both the mother and child from important psychological development and may lead to surrogates not giving up the child.
- According to a recent review, ART is responsible for approximately 50% of all multiple births worldwide, and about half of IVF pregnancies in the US result in multiple births, with a high risk of premature delivery.
- One-third or even one-half of infant mortality is due to complications of prematurity, and a large contributor to prematurity is infertility treatment.
- Developing countries such as India where destitute women often serve as surrogates and are paid an average of one-tenth what an American surrogate is paid.
- Practice of "selective reduction"- killing of one or more multiple foetuses in the womb
- Psychological impact on the surrogates
- Who will take the responsibility of the child if the commissioning parents refuse to take the former due to abnormalities?
- What happens if the surrogate mother changes her mind & refuses to hand over the baby or blackmails for custody?
- Will the child born to an Indian mother be a citizen of this country?

Arguments in favour of Surrogacy Tourism

A surrogate is like hero because she bought joy in the form of child in the life of childless couples.

- It recognizes a woman's right to make choices regarding her body and also the right of procreation under the right to life guaranteed by Article 21 of the Constitution of India.
- It allows women who are unable to give birth to have their biological child.
- This branch of reproductive tourism industry brought about additional revenue of 1-2 billion dollars in 2012 in India and there is no signs of slowing down and expected to earn nearly $9 million as revenue from the surrogate business in the year before the rule change.
- Indian women participating as a gestational surrogates used the money they earned to purchase nice family homes and to provide their children with a good education. Puspa Pandya , a 27 year old surrogate, used the money to build her house. She is again planning to be a surrogate to pay for her daughter's medical school education to become a doctor. Indian women are financially benefitted by participating as gestational surrogates.
- Surrogacy for all couples including lesbian and gay couples and even single men and single women can avail this facility to fulfill their dream of enjoying parenthood.
- This is a wonderful treatment option for older women and women with ovarian failure.

Suggestions and Conclusion

India is fast becoming the most prominent player in the global industry of surrogacy tourism. It becomes necessary to regulate this industry. The Indian government may consider the below mentioned points before taking any concrete decision.

- Active legislative intervention is required to facilitate correct uses of the new technology i.e. ART
- Commercial surrogacy should be legalised in India but in stricter manner as it has become the means of livelihood for poor woman in India.
- The only hope for the childless couples who are suffering from severe infertility problems like Congenital absence of the uterus, Repeated failure of IVF, Recurrent abortion, Severe medical conditions incompatible with pregnancy etc

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Reservation for Tribes in Government Employments

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Introduction

India has a composite population. The Indian society lacks homogeneity in sop for as their numerous religious, cultural and linguistic groups. There are Hindus, Muslims, Christians, Paris, Sikhs, Buddhists, Janis and others. The pattern of culture varies from place to place. There are sections of people like the Scheduled Castes (SCs), Scheduled Tribe (STs) and Other Backward Classes (OBCs) who not only need protection from exploitation but even positive help from the State for amelioration of their miserable lot. The tribals are a very backward section of our society.

The framers of the Constitution tried level best to safeguard the interest of the Scheduled Tribes. The Scheduled Tribes are those sections of the Indian population who still live in their tribal ways and observe their own peculiar customs and culture norms. Their primitive way of living, nomadic habits, love for drink and dance and habitation in remote and inaccessible areas, less affected by the forces of modernization, required special treatment from the framers of Indian Constitution in order to improve their economic and social position. Under The Constitution of India and Law of the land, the Scheduled Tribes have enjoyed special privileges and easiness in various competitions. A lot has been done for their empowerment and emancipation, since independence. Yet the majority of these castes still lag behind in many areas in life.

Reservation means equal representation of people in the Government. Reservation in India is the process of setting aside a certain percentage of Government services and seats in educational institutes for the weaker sections of the societies. Reservation is a form of quota-based affirmation action of the Government. Reservation is governed by the Constitutional Laws, Statutory Laws and local rules and regulations. The Schedule Caste, Schedule Tribes and Other Backward Classes of the society, are the primary beneficiary of the reservation policies under the promoting and protective provisions of the Constitution of India.

The reservation system has received a mixed response from Indian societies since its inception. It has been praised for diminishing the gap between the upper and lower castes by allowing a latter to enjoy the further increased opportunities as the formers in the jobs, education and governance

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by allotting seats exclusively for them. It has also been criticised for discouraging a multi-based system and encouraging vote bank politics.

Reservation is closely linked with caste based social structure in India. Caste system is unique to India and its parallel is hardly to be seen anywhere in the world. Caste system is a product of Hindu society. Division of society between high and low castes in hierarchical way is clear visible. Membership of a caste is involuntary and is determined by mere accident of birth. Once an individual is born in a particular caste, he cannot change it. He has no choice but to remain identified with that caste till his death. Caste is the index of person's status. A person born in a low caste continues to be looked upon as a member of low caste, even if his achievements are much higher than many of those belonging to higher castes. If he is lucky to be born in a higher caste, he automatically gets higher status without any efforts.
Reservation is meant only to those classes of citizens who are totally unable to join the mainstream of upward mobility in society because of their utter helplessness arising from social educational backwardness and aggravated by economic disability.

Evolution of the Scheme of Reservation
On attainment of Independence, instructions were issued on 21-9-47 providing for reservation of **12.5%** of vacancies for **SCs** in respect of recruitment made by open competition. In case of recruitment otherwise than by open competition this percentage was fixed at **16.66%**. After the Constitution was promulgated, MUA, in its Resolution of 13-9-50, provided **5%** reservation for ***STs*** apart from the percentage fixed for SCs already in force. The 1951 Census showed that the percentage of SCs in the total population was 15.05% and that of ST 6.31%. The percentages were not revised at the time as a comprehensive bill revising the lists of SCs and STs was under consideration. The other reason for not revising the percentage was that reservation had already been provided for SCs in posts filled otherwise than by open competition to the extent of **16.66%** and instructions had also been issued for following a regional and local percentage for **Class III and Class IV** posts attracting candidates from a locality or a region. The 1961 Census revealed that the SC and ST population in proportion to the Indian population stood at **14.64%** and **6.80%** respectively. Accordingly, the percentage of reservation for SCs and STs was increased **5%** from **12.5% to 15 %** and **5% to 7.5%** respectively on **25-3-70**. The 1971 Census did not warrant any such review. The actual impact of 1981 Census figures on all India percentages could not be known because the Census of 1981 could not be carried out in the State of Assam. The Government in 1993 introduced reservation for **Other Backward Classes** in direct recruitment broadly at the rate of **27%**. After introduction of reservation for OBCs, total reservation for SCs, STs and OBCs comes to **49.5%** in case of direct recruitment on all India basis by open competition and 50% in case of otherwise than by open competition. As per various judgements of the Supreme Court, total reservation for these communities cannot exceed the limit of **50%**.

Reservation has been extended to different modes of promotion in stages. In 1957, reservation was provided for SC & ST in departmental competitive examinations. Reservation in promotion by selection in Group C and Group D was provided in 1963 and in the same year reservation in

departmental competitive examination was limited to Class Ill and Class IV only. The position was slightly changed in 1968 when reservation in limited departmental examination to Class II, III and IV and promotion by selection to Class III and IV was subjected to a condition that element of direct recruitment should not exceed **50%**. Reservation in promotion by 'seniority subject to fitness' came in force in 1972 subject to the condition that the element of direct recruitment does not exceed **50%**. In 1974, reservation in promotion by selection from Group C to Group B, within Group B and from Group B to the lowest rung of Group A was introduced subject to the condition that the element of direct recruitment, if any, does not exceed **50 %**. The limitation of the direct recruitment not exceeding **50%** was raised to **66.66%** in 1976 and to **75%** in 1989.

Reservation till 1.7.1997 was computed on the basis of number of vacancies filled. The Supreme Court in the case of ***R.K. Sabharwal and Others Vs State of Punjab***[1] held that the reservation should be determined on the basis of number of posts in the cadre and not on the basis of vacancies. Accordingly post based reservation was introduced w.e.f. 2.7.1997. The basic principle of post based reservation is that the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. Prior to introduction of post based reservation, there was a provision of exchange of reservation between SCs and STs. After implementation of the post based reservation such exchange is no more permissible.

Prior to 1975, scientific and technical posts required for conducting research or for organising, guiding and directing research were exempted from the purview of orders relating to reservation for Scheduled Castes and Scheduled Tribes. In 1975 however, the above orders were modified and it was decided that the scheme of reservations for Scheduled Castes and Scheduled Tribes should also cover appointments made to scientific and technical posts upto and including the lowest grade of Class 1 in the respective services wherever they were exempt from the purview of the scheme of reservations; The amended orders were however not made applicable to Department of Space, Department of Electronics, and in regard to recruitment of trainees to the training school of the Department of Atomic Energy. In the case of these latter departments, the orders in force prior to 1975 continue to apply.

Various relaxations and concessions are given to SC or ST candidates like relaxation in upper age limit, exemption from payment of examination/application fees, relaxation in qualification of experience at the discretion of the UPSC/competent authority, relaxations in standard of suitability etc. Some relaxations like in upper age limit are also available to OBCs.

Employment under the Government or semi Government sector is associated with power and prestige of varying degrees, depending upon the post. Employment under the Government may help to achieve triple goals of social, economic and political justice. An attempt to secure employment to those who were deliberately denied the same in the past is a positive step towards ensuring social and economic justice to them as ordained by the Preamble of the Constitution of India.

Present caste-based reservation system of Union Government:

Category as per Government of India	**Reservation Percentage for each Category as per Government of India**
Scheduled Castes (**SC**)	**15%**
Scheduled Tribes (**ST**)	**7.5%**
Other Backward Classes (**OBC**)	**27%**
Total	**49.5%**

Objective of Reservation

Objectives of reservation may be spelt out variously. Reservation is an affirmative action undertaken to remove continuing ill-effects of past discrimination; to lift the limitation on access to equal opportunities for full and fair participation in the governance of the society; to recognise the discharges of special obligations towards the disadvantaged and discriminated social groups; to overcome substantial chronic under representation of social groups; or to serve the important governmental objectives

The primary objective of reservation system in India is to increase the opportunities for enhanced social and educational status of the underprivileged communities and thus allow them to take their place in the mainstream of the society. The reservation system exists to provide opportunities for the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes to increase their representation in the State Legislatures, the Executive Organs of the Union (Centre) and States, and schools, colleges, and other public institutions.

The Constitution of India spells out three important objectives of State policy, namely, socialism, secularism and democracy. These goals of the Constitution cannot be achieved unless all sections of the society participate in the State power equally, irrespective of their caste, religion, sex and race and all discriminations in the sharing of the State power made on these grounds are eliminated by positive measures. It is very essential to achieve social integration of various social groups by giving equal status to all. Neither democracy nor unity will become real unless all sections of the society have an equal and effective voice in the governance of the country.

Representation of STs in Government Jobs:

"As of **8th May 2013**, the maximum number of backlog vacancies with the Central Government was ***12,195 posts for the STs***, followed by 8,332 posts for the Other Backward Classes (OBCs) and 6,961 posts for the Scheduled Castes (SCs)," Asian Centre for Human Rights (ACHR) stated in its report[2].

The Central Universities discriminate the most against Scheduled Tribes (STs), who were a deprived social group in government employment, a human rights body said on Wednesday. In its report, "India's Unfinished Agenda for Inclusion: A study on denial of reservation to the tribals in the government services and posts", Asian Centre for Human Rights (ACHR) said STs were the most deprived in the government employment.

Quoting information provided by the University Grants Commission (UGC) under the Right to Information Act, ACHR said the representation of the STs in the post of **Professors** has come down from 3.88% (46 STs against total of 1,187 Professors) in 2006-07 to 0.24% **(4 STs** against total sanctioned posts of **1,667 Professors) in 2010-11**.

Similarly, STs' representation in the post of Readers has decreased from 1.03% (18 STs against total of 1,744 Readers) in 2006-2007 to 0.32% (**10 STs** against total sanctioned posts of **3,155 Readers) in 2010-11**. In the category of **Lecturers (Assistant Professor)** too, their representation witnessed a downward trend. It came down from 4.43% (129 STs against total of 2,914 Lecturers) in 2006-07 to 3.63% (**193 STs** against total posts of **5,317) in 2010-11**, the report stated.

"The data provided by the UGC show that India's higher educational institutions remain the most casteist, possibly a reflection of the opposition to the reservation policy."[3] There was better representation of the STs in the top echelons of the Central Government than in the Central universities, the report noted. "During 2010-11, at the level of the Secretary to the Central Government, the representation of the STs was 2.68% while representation of the STs at the level of Professor in the Central Universities was mere 0.24%. During the same period, at the level of the Additional Secretary and Joint Secretary to the Government of India, the combined representation of the STs was 2.5% while the representation of the STs at the level of Readers in the Central Universities was mere 0.32%," it stated. "The posts in the reserved seats are kept vacant for certain years, and later dereserved on the ground of public interest as "no suitable candidates found" even if many ST and other reserved category candidates meet all the eligibility criteria for the specific posts," the ACHR said demanding reversal of this policy.[4]

Constitutional Provisions regarding Reservation

The Constitution of India permits the State to adopt affirmative action as it deemed necessary to correct the continuing evil effects of prior discrimination and to uplift the weaker sections or backward classes of citizens to level of forward classes in the society. The Constitution of India has made provision for reservation in public employment in favour of Schedule Castes, Schedule Tribes and social and educational Backward Classes.

Under the Constitution of India the services provisions are, namely, ***Articles 16(4, 4-A&4-B), 46, 320(4), 335***, which define the safeguards, such as, reservation for employments, claims in appointments and in the services.

I. Reservation in post and services

Nothing in this Article shall prevent Parliament from making any law provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State[5].

The object of special protection guaranteed by Article 16(4) is advancement of the backward classes of the citizens. Article 16 (4) provides for specific remedy by permitting the State to make

any provision for reservation of appointments or posts in public services in favour of any backward class (including Scheduled Tribes) of citizens of which, in the opinion of the State, are not adequately represented in the services under the State. This is enabling provisions permitting the State to adopt such affirmative action programmes as are necessary including reservation of seats or post.

In ***State of Kerala Vs N. M. Thomas***[6] Court held that preference without reservation may be adopted in favour of the chosen classes of citizens by prescribing for them a longer period for passing a test or by awarding additional marks or granting other advantages like relaxation in age, free travelling for appearing in tests or interviews or other minimum requirement.

Nothing in this Article shall prevent the State from making any provision for reservation (in matters of promotion, with consequential seniority, to any class)[7] or classes or posts in the services under the State in favour of the Scheduled Caste and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State[8].

By the **Constitution (77th Amendment) Act, 1995** a new clause (4-A) has been inserted in Article 16 of the Constitution of India. As per this clause reservation in promotion in government jobs with consequential seniority can be made in favour of the Scheduled Castes and Scheduled Tribes but reservation in promotion in favour of the backward classes of citizens cannot be made.

In ***S.B.I. SC/ST Employers Welfare Association Vs State Bank of India,***[9] the State Bank of India SC/ST Employer Welfare Association, Chandigarh has challenged the reservation policy framed by the SBI reserving certain posts form employees belonging to SC/ST's in promotion. The two Circulars issued by the SBI provided a scheme for reservation in promotion for the above categories of employees. Under the scheme 15 % reservation was made in favour of SCs and 7 ½ % in favour of ST's. The rule also provided that the number of vacancies which could not be filled would be carried forward from one year to the next year upto a period of three years. If after end of three years, such vacancies could not be filled, it will be treated as lapsed. However it provided that the maximum reservation in any year would not exceed 50 %. The circular gave a further relaxation in service norms, that is, the relaxation to continue for 5 years of service. The Court held that the policy of reservation in promotion was not violative of Article 16(4) and (4-A) and the vacancies lapsed due to non-availability of reserved category candidates with required length of service could not be revived and filled retrospectively. Article 16(4) is an enabling provision and confers discretionary power on the State to make reservation at the stage of initial recruitment or at the stage of promotion in favour of Backward Classes of citizens which in the opinion of the State is not adequately represented in the services of the State. Article 16 (4) does not impose a duty on the Government to make such reservation. Hence no person can claim it as a matter of right.

In ***Chattra Singh Vs State of Rajasthan***[10]the Supreme Court held that the candidate belonging to OBC are not entitled to the 5% exemption in qualifying marks available to SC & ST. The OBC

and SC & ST are distinct categories. The SC & ST have been dealt with separately by the Constitution. The OBCs are not identified by the Constitution to get the benefit under Article 15(4) or 16(4). Though OBCs are socially and educationally backward, yet they do not suffer the same social handicaps inflicted upon. The object of reservation for the SC and STs is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps.

Nothing in this Article shall prevent the State from considering any unfiled vacancies of a year which are reserved for being filled up in that year in accordance with any provisions for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of 50% reservation on total number of vacancies of that year[11].

Under Article 16 (4-B) the vacancies which could not be filled up in the previous year's shall be treated as a separated class of vacancies and will be filled up in any succeeding years and shall not be considered together with the vacancies of the year or years, even if they go beyond the 50 % limit.

In ***M. Nagraj Vs Union of India***[12]a five judge Bench has unanimously held that the Constitutional Amendments by which Article 16 (4A) and 16 (4B) have been inserted flow from Article 16(4) and do not alter the basic structure of Article 16(4). They are enabling provisions and only apply to SC and ST. they do not obliterate constitutional requirements, such as- 50% ceiling limit in reservation, Creamy Layer Rule and post based roster sub classification between OBC on one hand and STs on the other hand, as held in *Indra Sawhney's* case. They do not alter structure of equality codes, therefore, they are not beyond amending power of Parliament.

II. Promotion of educational interest of Scheduled Tribes

The State shall promote with special care the educational and economic interest of the weaker sections of the people, and in particulars, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation[13].

Article 46 is a comprehensive Article comprising both the development & regulatory function. Under this Article the State is at liberty to do anything to promotion of educational and economic interests of the weaker sections of the people including Scheduled Castes and Scheduled Tribes, and shall specially protect them from social injustice and various forms of exploitation. But this Article is subject to limitations imposed by fundamental rights.

For achieving these objectives, various safeguards relating to protection and development of weaker sections, particularly Scheduled Castes and Scheduled Tribes have been made under the Constitution. In order to give effect to this Article, the Constitution Act of 1951has amended Article 15 and 29 on Fundamental Rights.

III. Function of Public Service Commission

Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335[14].

Article 320 (4) says that the commission need not be consulted as regards the reservation of post for Backward classes, Scheduled Castes and Scheduled Tribes.

IV. Claims of Scheduled Castes and Scheduled Tribes to services and post

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State[15].

Article 335 provides for reservation of posts for SCs and STs considering maintenance of efficiency in administration in making appointments to service and posts in connection with the affairs of the Union and the States. Article 335 in a way puts a limit on the extent of reservation. It must not go beyond that limit so as to affect the efficiency of administration.

Nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of the evolution, for reservation in matters of promotion to any class or class of services or posts in connection with the affairs of the Union or of a State[16].

The Provided of Article 335 to restore the relaxation in qualifying marks and standard of evolution in job reservation and promotions to SCs and STs which had been set aside by a Supreme Court's judgment in 1996 that the relaxation in the matter reservation was not permissible under Article 16 (4) of the Constitution of India in view of the command contained in Article 335 of the Indian Constitution.

Conclusion

Reservation is often critised on the assumption that it leads to appointment of non-meritorious candidates. This criticism is misleading and is not factually correct. Firstly, there are maximum qualifying marks prescribed for appointment. Secondly, there is fierce competition among the Schedule Tribes candidates for posts in reservation quota.

Reservation in Government employment is provided for Schedule Caste, Schedule Tribes and other Backward Classes in accordance with the provisions made under the Constitution of India. Through reservation a person can get employment. Employment promotes economic and social advancement which in turn also leads to cultural advancement. Employment is an important aid for socio-economic and educational attainments leading to social accomplishment and refinement of mind, morals and taste. Employment of an individual is a means not only of economic upliftment but also of instilling in the individual self-confidence, self-esteem and self-worthiness.

It also accords him a status and dignity as an independent and useful member of the society. There cannot be dignity of individual without equality of status and equal participation in the State power.

Employment under the Government may help to achieve triple goals of social, economic and political justice. An attempt to secure employment to those who were deliberately denied the same in the past is a positive step towards ensuring social and economic justice to them as ordained by the Preamble of the Constitution of India.

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Health, Environment and Sustainable Development

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Abstract

Health, Environment and Sustainable development appear to be different subjects and concepts, but in reality they are interrelated and interdependent. One cannot exist without the other. For good health hygienic environment is a sine qua non. It has been interpreted by the international court that the word 'life' does not means simply to live but it means to live with dignity and in good and pollution free environment which is a gift of nature on this universe. There is no doubt about the industrial revolution that has taken place and has made life of human beings worth living on this earth with comfort. It is growing economies of the nation. They solve unemployment problems and are a boon to the public in general. But in the process the development that has been done at the cost of human life, public health and environment which will prove fatal in the long run. So there is a need for Sustainable Development of the countries and economies of the world. Precisely and concisely, the sustainable development is a process that meets the needs of the present without compromising ability of future generations to meet their own needs.

The conclusion of this paper is environment and health is a basic part of human life. Environment is deeply intertwined with human health. The existence of human beings depends upon the protection of environment. A hygienic environment will ensure the better health of the people. Environment and development can coexist.

The harmonization of the two needs has led to the concept of sustainable development, so much so that it has become the most significant and focal point of environmental legislation and judicial decisions relating to the same. Sustainable development, simply put, is a process in which development can be sustained over generations. Present paper deals with right to health environment and sustainable development its meaning and in particular with a legal framework.

Keywords: Health, Environment, Sustainable Development

Introduction

Healthy environment is base of healthy wealth. If environment is not wholesome they affect the human health. Therefore environment and health are correlatives and for health clean environment is necessary. This necessity is felt even from mother's womb. One needs unpolluted air to breath, uncontaminated water to drink, nutritious food to eat and hygienic condition to live in. These elements are sine qua non for sound development of human personality.[1] In the absence of all these facilities a man's growth to their fullest extent is jeopardized.

Ramchandra Guha, an environmentalist, in his own book *Environmentalism,* writes, environmental justice is a part of social justice and social justice can found in healthy

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environment. The principle of social justice must be at the heart of any effort aimed at bringing lakhs into the mainstream of environmental organizations in the US. We must not misuse concern for endangered species as a way of diluting our responsibility to meet the basic need for human health care, food and shelter.[2]

Article 21of the Indian Constitution recognizes right to clean environment within the ambit of right to Life. The world life does not mean simply to live but it means to live with dignity in good and pollution free environment which is a gift of nature to this universe. Also Right to health is interpreted in the constitution in Article 47 regarding nutrition, standard of living and health. Further Apex Court judgments in favour of health care makes a strong case for the right to health and right to clean environment to be enforced as basic fundamental right. The right to health is recognized in numerous international instruments. Article 25 of the Universal Declaration of Human Rights (UDHR) affirms, "Everyone has the right to a standard of living adequate for the health of himself and of his family". International Covent of Economic Social and Cultural Rights (ICESCR) in Article 12 provide the most comprehensive Article on right to health as a human right. This Article recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Right to health is recognized, inter alia, in Article 5 (e) (iv) of the International Covenant on the Elimination of all forms of Racial Discrimination of 1965, in Article 11.1 (f) and 12 of the Convention on the Elimination of all forms of Discrimination against Women of 1979 and in Article 24 of the Convention on the Rights of the Child of 1989. The world health organization (WHO) Constitution was drafted in 1946, and Declaration of Alma-Ata was adopted in 1978. The Ottawa Charter of health promotion of 1986 and the Bangkok charter for health promotion in a globalized era also reflect the connections between public health and human rights and they are indirectly related to the human health. These rights are availed in pollution free environment. So pollution free environment is sine qua non for good health.

Objectives of the study

The objective of this study is to inspire, motivate, cultivate inquisitiveness, shape the opinion and enlighten the Health, Environment and Sustainable Development. In view of all above facts in mind the following objectives of the proposed study are being framed:

1) To identify the conceptual framework of Health, Environment and Sustainable Development;
2) To analyze environmental conference on Sustainable Development;
3) To review the right to Health, Environment and Sustainable Development;
4) To analyze a legal Study of precisely and concisely, the sustainable development is a process that meets the needs of the present without compromising ability of future generations to meet their own needs.

Research Methodology

The proposed paper is carried out in primary as well as secondary documentary sources. Various environmental reports, environmental conferences, articles, judicial decisions, international,

national, constitutional norms and national measures are taken as important research tools. In order to maintain authenticity and uniformity in the thesis *Harvard Blue Book* has been used for citation and referencing.

Conceptual Framework

Right to Health:

Right to health means right of everyone to a standard of physical and mental health conducive to living a life in dignity.[3] Enjoyment of human right to health is vital to all aspects of a patient's life and well-being, and crucial to the realization of many other fundamental human rights and freedoms. The right to health can be understood as a right to enjoyment of variety of facilities of the highest attainable standard of health care. Right to health has been defined in the authoritative general comment 14 of the ICESCR as follows: "The right to health must be understood as a right to the enjoyment of a variety of a facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health." Right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying socio-economic, cultural and environmental determinants of health.[4]

Obligations of governments in relation to health General obligations towards progressive realization of health and well-being Government of India and the State Governments have the following general obligations at all times, within the maximum limits of their available resources, towards the progressive realization of health and well being of every person in the country. Take all measures and steps, for addressing bio-medical determinants as well as the underlying socio-economic, cultural and environmental determinants of health and wellbeing to ensure the enjoyment of right to health and well-being of every person, equally and without any discrimination.[5]

Environment:

Environment literally means surrounding and everything that affect an organism during its lifetime is collectively known as its environment. Environment includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.[6]

Subsumable Development

Subsumable Development means development that meets the needs of the present without compromising the ability of future generations to meet their own needs.[7] States have achieved consensus in support of Subsumable Development as a balance between environmental and developments, and have periodically pledge to carefully formulated policies with the aim of achieving development ends do not irreparably compromise the environment.

The concept of subsumable development is a concept that goes ahead of the right to development of the present and recognizes similar right of future generations. Therefore, subsumable development is living harmony with nature by adopting environment friendly method where one can reads economic satisfaction and at the same time living with bless with mother earth.[8]

This article seeks to explore the links between various branches of law like health, international human rights law, the law on Subsumable Development along with public health and environmentalism. The environmental law repose top growing environment degradation, are also a statement of the maturing of health law in India. The law on subsumable development attempts to incorporate a human face for development by putting issues of basic rights above development agendas.

The paradigms of development, based on the premise of endless economic growth, have been refuted, indeed development has come to men development which is not at the cost of the environment subsumable development is the recognition of this shift, bringing with it is the idea of accountability in the use of natural resources.[9]

Linkage between Health with Environment and Sustainable Development:
Irrespective of the precise contribution of the environment to ill-health in the world, concerted action is needed to reduce the health impacts. The factors that contribute to problems of health and the environment are manifold and complex, but fundamental are inadequate attention to health in development policy and practice, lack of coordinated management and insufficient inter-sectoral collaboration[10]. The root causes of problems are often related to the way in which development at large has proceeded, with little attention paid to the effects on the environment and health of policies, plans, strategies and projects. From recent international meetings held since Rio'92, it has become evident that health issues are an increasingly important item on the broad environment and development agenda, and that environmental issues are receiving more prominence on the public health agenda.[11]

The WHO Commission on Health and the Environment was convened in 1990 and provided key input for the subsequent Earth Summit. The central relevance of the human factor to the concept of sustainable development was stressed in the preamble to the Rio Declaration, as follows: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature" Chapter 6 of Agenda 21 takes this principle further by emphasizing the fundamental commitment within sustainable development of "protecting and promoting human health". There is thus growing recognition that economic development, management of the environment and protection of public health must be addressed together in an integrated way. While the environmental movement has highlighted the aspect of sustainability, the health movement has laid special stress on the issues of social justice, equity and human development. Not only are healthy people needed to ensure development, but also health is not possible without development.[12]

Nowadays, environmental concerns range from social climate to biosphere, from various kinds of pollution to climate change and vanishing biodiversity from waste disposals, air water and soil pollution and public health concerns to the expansive filed of nature and natural resources in all its diversity and complexity.[13] Pollution is destroying ecosystem and also human health, because

human depends on ecosystems, if ecosystem fails like water, soil, air pollution, is directly effect on human health.

In 1972 the United Nations held a conference in Stockholm on the Human Environment. Its primary target was to address the rights of the human family to a healthy and productive environment.[14] The *Stockholm Conference* has several impotent aspects. It stressed upon the need for a common outlook and the development of genially acceptable principles. The Stockholm Declaration has significance in the environment field, at par with the important accorded to the Universal Declaration of Human Rights 1948, and aimed at the protection of human rights and civil liberties.[15]

The importance of this declaration on the scope of the right to life when the Supreme Court of India rules that the right to life when the Supreme Court of India rules that the right to a clean environment is a fact of the right to life's itself. This interpretation to Article 21 of the Indian Constitution has been possible only because of principal 1 of the Stockholm Deceleration that states, "Man has fundamental rights to freedom, equality and adequate conations of life in an environment of a quality that permits a life of dignity and well being and he bears a solemn responsibility to protect and impure the environment for present and future generation.[16]

In 1987 the *Brundtland Commission* published its report titled 'our Common future", which served to make sustainable development a widely understood and accepted concept. The report asserted that development is essential to improving the quality of human life, yet development must be carried out in such a way that it does not compromise the ability of the planet to meet present and future needs.[17]

In 1992 the *Rio de Janeiro* '*Earth Summit'* sought to find way to stop the destruction of irreplaceable natural resources. It emphasized the connection between environmental protection and natural resource management, and such economic and social conditions as poverty and development. In this declaration human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.[18]

In 2002 the *Johannesburg Summit* set a different tone for environment protection it calls upon all the countries of the world to reduce disparities in the access to basic facilities like water, food, health and so on. The call from environment protection has merged with the larger human agenda by considering the basic rights of the people to be part of the environment paradigm. Thus, environment rights become part of the human rights which cannot be viewed in isolation. In 2002 the third united Nations Conference in Johannesburg. The participating countries recognized the need to develop policies on subsumable development and India is in the process of drafting its policy on subsumable development.[19] The Johannesburg Declaration expresses the commitment of the world leaders to build a humane equitable and caring global society cognisant of the need for human dignity for all. It is recognized as a tool for addressing important questions such as rural deployment, health care, community involvement, HIV/AIDS, the environment, and wider ethical and legal issues such as human values and human rights.[20]

In 2009 *Copenhagen Climate Conference* the United Nations' climate summit at Copenhagen, officially known as COP-15, has been unofficially dubbed Klimafarce by the Danish press, because leaders of the 194 negotiating nations failed to reach a legally binding international climate agreement to replace the Kyoto Protocol. Instead, the result of the summit is the Copenhagen Accord, proposed by a U.S. alliance (with China, Brazil, India, and South Africa) dated December 18, 2009.

The outcomes of the Copenhagen Climate Conference are:

1. To reduce global emissions and bring global temperature below 2 degree Celsius.
2. A proposal attached to the accord calls for a legally binding treaty by next year.
3. The deal promises short-term financing pledge from developed countries for 2010-2012 EU$ 10.6 bn.
4. Details of mitigation plans are included in separate annexes, one for developed country targets and one for the voluntary pledge of developing countries.

These are the indirectly related to health environment and sustainable development.

In *Calcutta v. State of West Bengal*[21] the court has observed that in developing country there shall have to be development, but that development shall to be in closest possible harmony with environment as otherwise there would be development but no environment which would result in total devastation through, however, may not be felt in the present but at some future point of the time, but then it would be too late in the day to control and improve the environment. In fact, there has to be a proper balance between so that both can coexist without affecting the other.

In the case of *Hoskot v. State of Maharashtra*[22], the right to legal aid was considered as an unsegregable facet of Article 21 of the Constitution. Right to speedy trial and right to health have also been encapsuled within the broader spectrum of the said right.

In *Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*[23], the Supreme Court was faced with the problem of the mining activities in the limestone quarries in Dehradun-Mussoorie area. This was the first case of its kind in the country involving issues relating to environment and ecological balance and brought into sharp focus the conflict between development and conservation. In this case, the Supreme Court emphasized the need for reconciling development and conservation in the larger interest of the country.

The Supreme Court in *M.C. Mehta v. Union of India*[24] has observed that "the development and the protection of environments are not enemies. If without degrading the environment or minimizing adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, projects, etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck.

In *Kinkri Devi v. State of Himachal Pradesh*[25], the Himachal Pradesh High Court has observed that if industrial growth sought to be achieved by reckless mining resulting in loss of life, loss of property, loss of amenities like water supply and creating of ecological imbalance then there may ultimately be no real economic growth and no real development.
In *People United for Better Living in Calcutta v. State of West Bengal*[26], the Calcutta High Court has observed that it is true that in a developing country there shall have to be developments, but that developments must be in harmony with the environment. There has to be a proper balance between the economic growth and environment so that both of them may exist without affecting each other.

The Supreme Court in *Indian Council for Enviro-legal Actions v. Union of India*[27], has recognized polluter pays principle as an integral feature of sustainable development and observed that the remedy and betterment of damaged society is part of the process of sustainable development.

In *Vellore Citizens Welfare Forum v. Union of India*[28], the Supreme Court of India has recognized the Principle of sustainable development as a basis for balancing ecological imperatives with developmental goods. Rejecting the old notion that development and environment cannot go together, the Supreme Court has given a landmark judgment and held that sustainable development is a viable concept to eradicate poverty. It will improve the quality of human life if human beings live within the carrying capacity of the life supporting ecosystem.

The Supreme Court in *A.P. Pollution Control Board v. M.V. Nayudu*[29], has observed that in order to ensure that there is neither damage to the environment nor to the ecology and, at the same time ensuring sustainable development it can refer scientific and technical aspects for investigation and opinions to statutory expert bodies having combination of both judicial and technical expertise in such matter.

In the case of *M.C. Mehta v. Kamalnath*[30] the Apex Court held that causing disturbance of ecological balance would be hazardous to life within the meaning of Article 21 of the Constitution. In the case of *M.C. Mehta v. Union of India (Delhi Vehicular Air Pollution)*[31], the Apex Court reiterated the principle that vehicular pollution is violative of Article 21 of the Constitution.

In the case of *A.P. Pollution Control Board II v. Prof. M.V Nayudu*[32], the Apex Court ruled that right to access to clean drinking water is a fundamental right to life and the responsibility rests on the State to provide clean drinking water to its citizens. Emphasis has also been laid on the present environmental damage and to have a healthy environment. In the case of *Hinchlal Tiwari v. Kamla Devi and Ors.*[33], the Apex Court gave emphasis on enjoyment of a quality life the same being the essence of the right guaranteed under Article 21 of the Constitution.

In *Murli S. Deora v. Union of India*[34] and in *Ajay Kumar v. Godfrey Phillips India Ltd.*[35] case seeing its harmfulness and considering the adverse effect of smoking, the Hon'ble Supreme Court

has directed the Union Government as well as State Governments/UTs to take effective steps to ensure prohibiting smoking in public places.

In *N.D. Jayal v. Union of India*[36], Court has held that the right to clean environment and right to development are integral parts of human right covered by Article 21 of Constitution. The Court has laid down that the principles of sustainable development is a means to achieve the object and purpose of Environment Protection Act, 1986 as well as protection of life envisaged under Article 21 of Constitution. Court has said that people who are displaced from the area on account of the construction of the Dam have a right under Article 21 to lead a decent life and earn livelihood in rehabilitated located.

The purpose of referring to the aforesaid decision is only to state that right to life includes not only right to livelihood and right to health but also in its connotative expanse includes various subtle rights which are germane to the human existence. Human life has to be lived with dignity. Life without dignity and self respect is essentially sans life in proper sense of life- the noblest and priceless gift of nature. Dignity does not come to a man if he is compelled to remain in a state of constant fear or any interminable apprehension of damage that looms large.

Conclusion:
The conclusion of this paper is that the environment and health are basic parts of human life. Environment is deeply intertwined with human health. The existence of human life depends upon the protection of environment. A hygienic environment will ensure the better health of the people. The successful proactive preventive approaches, development policies and planning need a long time horizon. In addition, health and environment concerns must become an integral part of the planning within the framework of sustainable development.[37] Environment and development can coexist. We bear the sole responsibility to protect and improve the environment for present and future generations.

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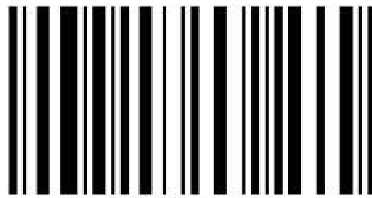
ISSN 2321 - 1059

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