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Dr. Pradeep Kumar
Executive Editor & Managing Director
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Protection of Unorganised Workers in India: A Frozen Dream

Dr. Rajneesh Kumar Patel[1]

Abstract

It has been very aptly remarked that, the history of labour struggle is nothing but a continuous demand for a fair return to the working class. These demands are articulated in diverse compositions like demands for fair wages, grant of leave, various allowances, confrontation against decrease in remuneration, poor service conditions, overburden working hours, through their collective wisdom and trade unions. However, even this is not realistic for the entire working population in India, as about 93 percent of the total working capacity is even not in position to raise their voice against these exploitations; they are categorized as unorganized workers. Actually before the advent of modern industrial relations, philosophy the doctrine of laissez-faire dominated the attitude and thinking of policy maker, planner and legislators. In the later eighteenth century the dominant school of jurisprudence was the 'natural law school', whose basic principle was "law is what, it ought to be". The natural law school relied heavily on reason, equity and good conscience, and in fact equated it to law. In sharp contrast to the natural law school, in the nineteenth century the "positivist school" of law, has taken its birth which is the counterpart of the "laissez-faire" school in economics. According to this school, law should be distinguished from morality as well as; the law courts were directed to keep away from ethical, social and equitable consideration and restrict strictly to the form and letter of the law. The main drawback of the positivist school was that it was devoid of social content and was strictly formal in nature. It was increasingly realized that "laissez-faire" only result in exploitation of the worker and hardships to the consumers. It was then believed that the "greatest service which the state could render to industry was to stand out of its sunshine". Obviously, the legislators of those days were deadly against any outside authority's intervention in labour management. The purely positivistic approach towards labour management relations has restricted in too much of exploitation of the working class. As a reaction to the theory of laissez-faire arose the concept of Welfare State in the twentieth century, which maintained that the third party should intervene in disciplinary matters in the social interest. Nevertheless, even after the introduction of welfare State, a huge number of working population is still aloof from the protection provided in the name of social security by a welfare State to its workers and waiting for the day on which their dreams will come true.

Key Words: Unorganised Workers, laissez-faire, wages, welfare State, social security, Frozen Dream

Introduction

During the early era of industrialization, human labour had no recognition except that it was the means of production. There was no law regulating the fairness of wages, hours of work, the working condition and consequently working conditions were fixed as per economic laws of *demand and supply* and even the State did not intervene in any matter regarding the employment of labour on the basis of its *laissez-faire* policy. At that time low rate of wages and inhuman working conditions was not a hidden fact and the factory workers were getting nothing more than starvation wages. It was also an undisputed fact that, the employers who were in dominating position, forcedly exercising their authority and virtually fixing wages and

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other conditions of service to the employees. Therefore, evils developed in the form of low wages, long hours of works, insecurity of employment, insanitary working and living conditions, and social-economic injustice. The labourers were the main victim of the doctrine of *laissez-faire* which provided free contractual system without any interference by the government. Indian workmen also faced the same evils arising due to industrialization. The feeling of class consciousness was generated thereafter and in the course of time, the above theory of *laissez-faire* becomes unsuitable in the context of rising expectation of working class.

With the span of time when exploitations against workers reaches on its unbearable stage then they started thinking about their unity and after a long struggle they became aware about their roles and importance in an industry. They become organized in the form of trade union to gain for themselves more strength to make collective bargaining with their employees. Workers had to resort to strikes and employers replied by declaring lockouts. Meanwhile, after Independence, when India becomes a democratic State, its Constitution provided guarantee to political, social and economic justice and directed the States to promote welfare of the people.[2] Similarly, the Universal Declaration of Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights, 1966 also acknowledged the right to social security, right to work and social protection in the juncture of unemployment, sickness, disability, old age or other hysterical circumstances.

Observing the guidelines of the Indian Constitution as well as the above mentioned International documents, the Government of India has enacted a good number of social security laws to cater the need of working class and to provide legal protection against the exploitation. However, from the beginning to till today it has been very unfortunate that benefit of these legislations are available only to 7-10 percent of the total work force in India and the remaining unorganized workers comprising about 90-93 percent, who are contributing their notable part in the Indian economy are still waiting for their good days as their own condition is not better than the bonded labourers.

Thus, the above indicated struggle between labour and capital is still going on and is true even today that, due to numerous reasons including unfavorable conditions of workers and half-hearted implementations of labour laws the unorganized workers are not in position to avail the benefits of various welfare and social security enactments. Indian Government is regularly trying for their betterment in the form of various schemes as well as the legislative attempts. The Unorganized Workers' Social Security Act, 2008 is one of the example, constituted with the aim to provide benefits of social security to them is also not far from faltering.[3]

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[2] The Preamble and the Directive Principles of State Policy which enjoin the creation of social order for the promotion of welfare of the people, securing adequate means of livelihood for the citizens. social control over material resources, provisions of minimum wages, development of facilities for education, employment, health and nutrition and so on.

[3] To enjoy benefits of the schemes under the Act any individual who attend the age of 14 years must declare that he is an unorganized sector worker and apply for registration with the district administration. Thereafter, the district administration will issue a card carrying a unique identification number. If a scheme requires contribution from the registered unorganized sector, he will be eligible for socials security benefits under that scheme only if he has made the required contribution.

In the light of above remarks an attempt is made under this chapter to discuss and examine the status of unorganized labour in India. The study will focus on conceptual analysis of unorganized labour along with their comparison to organized labour. The study will move around the legal protection available to the working class and reasons for non access to the workers. It will also focus on various legislative and administrative attempts towards the betterment of unorganized labour in India.

Meaning and Extent of Unorganized Worker

In its common denotation a worker or group of workers who are due to one or other reasons not capable to fight jointly against exploitations or even not get protected through the legal provisions in regards to their wages, leaves, working hours and other service conditions; are simply categorized as unorganized workers or workers of unorganized sector. It is very true that in their total strength they constitute almost the entire population of working class of this country but actually they are scattered, and divided into uncounted small units. Almost all the units, in which they are working, are not registered as per law of the land and operated at squat level of institution. Over and above, their relations with their employers are casual in nature or merely informal relations, bearing no liability to provide any legal protection given under social security laws.

A significant number of these unorganized workers are engaged in personal employment, domestic works, agriculture works and even if they are employed in any factory or industry they have been employed as casual and ad-hoc workers or other than the capacity of a permanent employee or worker of the establishment. Hence, they constitute their livelihood as a domestic worker, agricultural worker[4], labours employed in small scale industry, hawkers, rickshaw pullers, auto drivers, night watchmen, ferrymen, construction workers, cooks, private security guards, farm labours, handloom and power loom workers, beedi and cigar workers, employees in private shops and commercial establishments, multi-taskers, sweepers, scavengers, workers in tanneries, and other unprotected labour of factories or industrial establishments.[5]

Considering the range of examples and generic definition of the term unorganized workers it appears that, it is not so easy to define this term as definitions itself lacks conceptual clarity and uniformity. In this regard the National Commission for Enterprises in the Unorganized Sector in its report has given a wide definition of the term unorganized sector, which states that "unorganized sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers.[6]" Hence, the Commission included mostly all agricultural activities, either individually or through partnership in the arena of unorganized sector. Similarly, the United Nations Economic and Social Council states in its report that, the term unorganized workers refers to an individual or

[4] Most countries exclude agriculture from the composition of unorganized sector and some other include the agriculture also.
[5] The above are only few examples of unorganised sector's workers. It is not an exhaustive list of them.
[6] Reports on Condition of Work and Promotion of Livelihood, 2007.

a group of individuals whose employment relationship is not subject to labour legislation, social protection and certain employment benefit.[7] Likewise, the first National Commission on Labour[8] defined unorganized sector as that part of the workforce who have not been able to organize in pursuit of a common objective because of constraints such as casual nature of employment, ignorance and illiteracy, small and scattered size of establishments and superior strength of the employer operating singly or in combination.[9]

It depicts from the above definitions, that the concept of unorganized workers have been dealt as the divergent and non-formal economy, where workers are engaged in a series of survival activities providing useful services and goods at cheaper rate but themselves they are deprived even from their basic rights of working class. It is true that the persons who are employed in unorganized sector are called unorganized workers, but even if they are engaged in organized sector and facing the same condition, they may be categorized as unorganized workers.[10]

Apart from the above definitions, the term unorganized worker is also defined statutorily under section 2 (m) of the Unorganized Workers' Social Security Act, 2008. As per this definition, "unorganized workers means a home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act".

It will be relevant to mention here that in the same swing of the above Act, the Government of India, National Statistical Commission, Report of the Committee on Unorganized Sector Statistics, 2012 also included following categories under the preview of informal sector's employment:

1. The entire home based workers who are engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.[11]
2. The self-employed worker, who are not employed by an employer, but engages himself or herself in any occupation in the unorganized sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.[12]
3. The wage workers who are employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant

[7] Government of India, Report on Employment-Unemployment Survey, Vol. I, Ministry of Labour and Employment,(2013-14)
[8] Government of India, Report of National Commission on Labour (1969), Page-417.
[9] National Commission for Enterprises in the Unorganized Sector, Report on Condition of Work and Promotion of livelihoods in the unorganized sector, 2007.
[10] I.L.O., Seventeenth International Conference of Labour Statisticians ICLS, 2003.
[11] See, section 2 (b) of the Unorganized Workers' Social Security Act, 2008.
[12] See, section 2 (k) of the Unorganized Workers' Social Security Act, 2008.

> worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.[13]

The close scrutiny of the above definition revels that unorganized workers are mainly of three types; firstly, they are self employed workers, meaning by that they are not appointed by any employer and earning their livelihood by their own engagements and arrangements. Secondly even if they are employed by their employers but they have not been employed by any factory or industrial establishment, where labour laws are applicable. Thirdly, either they are employed by any factory or industrial establishment of unorganized sector where labour laws are not applicable; or if it is establishment of organized sector, those workers have not been employed as a permanent workers and due to their nature of employment agreement they can't enjoy the various benefits available under those six legislations which are mentioned under second schedule of this Act.[14]

In order to understand concept of unorganized workers it is also necessary to realize the meaning of unorganized sector, therefore, moving towards the comparison between organized and unorganized sectors, that organized sectors are an venture which are having their just reverse characteristics to unorganized sectors particularly in relation to legal binding of welfare of the workers.[15] It refers to all establishments of public sector, Central, State, Quasi-governmental establishment and local bodies irrespective of their size of employment and non agricultural establishment including the plantations in private sector employing ten or more persons. On the other hand, unorganized sector means a project owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.[16]

It is necessary to mention here that under the Act, the term unorganized workers includes, home based worker, self employed workers and wage worker, for which numerical restriction is not given, but when the Act defines the term unorganized sector then it restrict it to maximum ten in numbers. This implies that if any unorganized sector establishment is employing more than ten workers then the workers employed in such establishment would not consider as unorganized workers for the purpose of this Act. Not only this even in case of organized sector establishment if they are engaged without formal employment agreement then maybe they are not covered under this Act. Therefore, the numerical restriction given under this definition is creating problem, however, it will also not fruitful to suggest to

[13] See, section 2 (n) of the Unorganized Workers' Social Security Act, 2008.
[14] Under second schedule of this Act , these six legislations are given as, The Workmen's Compensation Act, 1923, The Industrial Disputes Act, 1947, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 , The Maternity Benefit Act, 1961 and The Payment of Gratuity Act, 1972.
[15] As per, section 2 (f) "organized sector" means an enterprise which is not an unorganized sector
[16] See, section 2 (m) of the Unorganized Workers' Social Security Act, 2008.

remove it, because if it will so then it will cover each and every person even in case of a single worker employment for any private purpose which is also not practically possible.[17]

Coming back to the same issue again, it is relevant to note that, to determine whether the particular sector is coming under organized or unorganized sector, primarily there are two criteria. The first, if the establishment is coming under the jurisdiction of government and nature of employment of the worker is permanent then irrespective of number of employed workers they would be considered as worker of organized sector. However even a number of workers who are appointed in organized sector but they are appointed as purely ad-hoc or not on regular basis and unable to get any benefit under those legislations given under the second schedule of this Act, they would be treated as unorganized workers. It is also important to note here that the phrase "who is not covered by any of the Acts mentioned in Schedule II to this Act", gives an impression that those casual and contract workers of the organized sector shall be included under this Act, but it is requested here that it will not be an universal phenomenon because, some of the Acts, specified under the Schedule are applicable to them in principle, therefore, even after this intentional inclusion it is not going to provide any benefit to them.

Thus, it is clear from the above discussion that unorganized workers, as their name is also suggesting, are deprived from not only the benefits of labour laws but also their rights given under the Indian Constitution.[18] Unfortunately, a considerable fraction of them are falls under migrant category workers, who are uneducated, unskilled, poor, vulnerable and do not have basic housing facilities consequently, they have been always bound to move here and there to earn the bread for their families. Further, they are unprotected so their livelihood can be stopped without any notice.

Status and Features of Unorganized Workers

The earlier discussion of this paper suggested that unorganized workers cannot be identified by a definition but could be described as an individual or group of workers who have not been able to systematize their voice in pursuit of a common objective because of constraints of their poor, helpless and unprotected conditions even in the era of welfare State. Therefore, it will not be out of mark to discuss here some of the specific nature and characteristics of unorganized workers:

Large Number of Workers

The unorganized worker is breathtaking in terms of its quantity and diversity and therefore, they are ever-present with huge density throughout India. It will be relevant to state here in this regard that a survey was carried out by the National Sample Survey Organization in the year 2010, which estimated that the total employment in the country was about 46.5 crore. Out of this, about 2.8 crore were in the organized sector and the rest 43.7 crore in the unorganized sector.[19] The total 43.7 crore unorganized sector's workers were further divided

[17] It is also not clear that village health workers such as Asha and Anganbadi workers will be entitle to get benefit under the Act or not.

[18] See, Article 23, 24, 38, 39, 39-A, 41-43-A, 46 and 47 of the Indian Constitution.

[19] As per the estimation of a Sub-committee of the National Commission for Enterprises in the Unorganized Sector, 2008, the

as 24.6 crore workers in agriculture sector, 4.4 crore in construction, and remaining were in manufacturing activities, trade and transport, communication & services. The same organization further reported in the year 2011-2012 that the total workforce of unorganized workers was 92.4 and only 7.6 percent of the work force was belonging to organized workers in India. Again in 2017-18 the share of organized worker has increased by 1.7 percent and come to 9.3 and consequently on the other hand the share of unorganized has decreased and come to on 90.7 percent.[20]

Though the above mentioned statistical information on significantly vary on account of its intensity and accuracy, but it is widely acknowledged that the unorganized workers are also significantly high in their migration. As per the National Sample Survey Organization, 30 million migrant workers in India are constantly on the move for their livelihood.[21]

The report of the National Sample Survey Organization[22] also indicating that the number of casual workers in India between the periods of 2005-2010 compared to that of the period between 1999–2005 is significantly increasing. This report further shows a substantial shift between 1999-2000 and 2009-2010 in the structure of the labour force which can be broadly divided into self employed, regular, and casual workers.[23]

Again, in the year of 2018, Niti Aayog reported that there are 85 percent of unorganized workers are working in India. Further, among them, interestingly, the Periodic Labour Force Survey 2017-18 states that about 71% of the regular and salaried employees in the unorganized sector are those who do not have a written job contract. There is 54.2 percent who do not get paid leave. Not only had this, but 49.6 percent of them not even qualified for any social security scheme. However, in the year of 2019 report of Economic Survey again stated that this number is on 93% of the total workforce of the country.

Thus, appears that, though the number of unorganized workers is varying in various reports, but almost all the report are giving the significant figures, which is moving between 90-93 percent of the total work force of the country.

Diversity of Unorganized Workers

Apart from their significant number in this country the unorganized workers are also of various kinds depending upon their nature of work. Interestingly they are not only concern with their own sectors but one can also find them in organized sectors. On the same swing, the Ministry of Labour, Government of India, has categorized the unorganized workers into four groups based on their occupation, nature of employment, service categories and

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contribution of unorganized sector to GDP is about 50 percent in India. While the sector contributes around half of the GDP of the county, its dominance in the employment front is such that more than 90% of the total workforce has been engaged in the informal economy.

[20] See, Periodic Labour Force Survey, 2017-18.

[21] *Ibid.*

[22] Published in May 2011.

[23] Casual workers are employees who do not enjoy the same benefits and security as tenured employees. All daily wage employees and some categories of contract employees are casual labourers.

especially distressed categories.

As per this division in terms of occupation, it includes small and marginal farmers, sharecroppers, fishermen, fisherwomen, beedi rollers, landless agricultural workers, animal husbandry workers, labeling and packing workers, leather workers, weavers, workers in brick-kilns and stone quarries, building and construction workers, artisans, salt workers, workers in saw mills and oil mills, etc. similarly, in terms of nature of employment, it includes attached agricultural labourers, migrant workers, bonded labourers, contract and casual labours'. Likewise, in terms of service categories, it includes midwives, domestic workers, fishermen, barbers, newspaper vendors, fruit and vegetable vendors and finally in terms of especially distressed categories, it includes toddy tappers, scavengers, head-load carriers, drivers of animal-driven vehicles, loaders and un-loaders.

It will be necessary to note here that along with the above four categories, there is also a large number of unorganized workers like cobblers, auto drivers, sericulture workers, handicraft artisans, power loom workers, handloom weavers, physically handicapped self-employed persons, lady tailors, rickshaw pullers, carpenter and tannery workers etc. who have not been categorized clearly.[24]

Unstable Employment

It is also an essential characteristic of the unorganized workers that they always suffers from seasonality of employment, due to which majority of the workers does not have stable and durable avenues of employment. Therefore, a prime feature of unorganized labour is high incidence of involuntary turnover and migration concentration of uneducated young workers and women workers in the sector. Their employment never has any stability and for earning the bread they are compel to move here and there. Most of the unorganized labour paid lump-sum wages without any additional allowances, incentives fringe benefits or short-term security measures which has been provided to the organized workers. In case of any emergency like, flood, earthquake or community disease they faced a lot of problems.

Scattered Nature of Establishments

As the place of work of unorganized workers are found always scattered and fragmented, the workers do the same kind of employment in different places and in different supervisions, consequently they do not work and live together in nearby geographical areas. This is also true about home based work which employs large number of workers, because in this case there geographical area may be the same but they work under different jurisdiction and control. These types of works are done either from the worker's own premises or the premises of the employers who employ them just like a private worker not an employee. Therefore, thinking about the collective wisdom or working together is really an inaccessible dream for unorganized workers, due to which they are exploited in the absence of collective bargaining power and trade unions.

[24] Economic Review 2010, Government of Kerala.

Most of the workers in unorganized sector spend their life to hard and hardly manage their economical survival in the society. There is no feasibility of savings and it is difficult to manage during the time of unemployment. They do not have pension or any such benefits. Even in case of emergencies like major illness, death of an earning member, disability due to hazardous working condition they lack any kind of financial support. Therefore, they are vulnerable and also not able to fight against their vulnerability due to their scattered position of employment.

Lack of Formal Relationship with Employer

Lack of formal relationship with employer is also a prime characteristic of the unorganized workers and rather it is one of the main reasons for their deplorable condition, as formal employer-employee relationship is the primary condition to avail the benefits of any welfare legislation. The term unorganized workers represent the home-based employment, self-employment, agricultural work, construction work and a lot of other temporary occupations and employment who works without any type of written and formal agreement of employment. Even in case of any dispute with their employer they will be unable to get any remedy from tribunal or labour court, without support of formal relationship with their employer.[25]

State of Vulnerability

As discussed above that a considerable number of unorganized workers are illiterate, financially week and migrant in nature, therefore vulnerability, ignorance and helplessness is rampant amongst them. It is well known fact that the Informal sector labourer has been characterized by low social-economic status. Even in the case of self-employed persons they don't have regular and proper source of income. In addition a large number of unorganized workers have been drawn from weaker and down trodden sections of the community like scheduled castes scheduled tribes and backward classes.

Lack of Social Security Protection

Lack of protection of social security actions is also a prime characteristic of unorganized workers. Actually, wide spread-location, lack of knowledge and small size of the industrial establishments creates the problem in enforcement of various labour legislations. High incidence of grievances, heavy work load, absence of assignment of specific duties, unhygienic working conditions, weak promotional opportunities, absence of organized trade union movement, illiteracy, acquisition of skills through experience, harassment and exploitation by middlemen lack of credit facilities dearth and non-availability of raw material etc. are the regular features of the unorganized sector's workers. Due to the above reasons, the unorganized sector does not give any benefit to the workers in terms of various laws like Minimum Wages Act, 1948, Employees' Compensations Act, 1923 and Factories Act, 1948.

[25] See, section 2(S) of the Industrial Disputes Act, 1947.

Thus it is clear from the above discussion that the unorganized workers are subject to severe exploitation. They are bound to work under poor working conditions on not more than starvation wages. Fixed pay, long working hours, being deprived of social security's, such as provident fund, insurance and medical benefits are the only dream for them. Like a regular worker they do not get leaves too. Workers in the construction sector and other hazardous industrial sectors also have a threat to their lives. In case of accidents, there is no institutionalized mechanism to ensure the compensation or support of their rehabilitations. Further, women workers are also not entitled to maternity benefits. The above and all large scale ignorance and illiteracy is responsible factor for their poor and helpless condition.

Attempt towards Welfare of the Unorganized Workers

The foregoing discussion of this paper indicated that, the unorganized workers are the most vulnerable section of the Indian society, who not only constitutes the significant number in the total population of workers, but they also contribute their notable part in the Indian economy, however unfortunately their own economical and social condition is not up to the mark and so deplorable due to numerous reasons, including their own hostile circumstances, non application of the various labour legislations as well as non-enforcement of the legislations too.

In the year of 1950 when India becomes a democratic State, then our Constitution was founded not just as a supreme law of the land but it was drafted as a welfare document too, with a wide range of wellbeing declarations.[26] Here, it will be interesting to note that, Indian citizen were very much fortunate due to two reasons, firstly, the entire labour laws existing today are in confirmation with the recommendations of International Labour Organization, and secondly, when Constitution was drafted almost about the same time on international level another document was in the process of formulation and it was Universal Declaration of Human Rights, 1948. Therefore, the founding fathers' of Indian Constitution have taken a lot of help from this as they added some of the declaration in the form of fundamental rights under the part III of the Constitution[27], and in regards to others if they feels that it will be not too easy to implement it for the newly born government, they added that rights in part IV of the Indian Constitution with a view to enforce that in future.[28]

Needless to say that, under Constitution, India is declared as union of States[29] due to which the law making power is prearranged to both of the government, therefore, the issue of labour was specially included in the concurrent list[30] and was made the parallel responsibility of the Central and State Governments. Taking inspiration from the preamble of the Constitution a

[26] No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
[27] See, Article 14, 19, 21 and 32 of the Indian Constitution. Further, The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
[28] See, Article 38, 39, 46, 47, and 48 of the Indian Constitution.
[29] See, Article 1 of the Constitution of India, 1950.
[30] See, the list III to Schedule VII of the Constitution of India, 1950.

number of provisions was also added in relation to the social security[31] in the form of directive principles of State policy with intent to provide respectful life to the working class.

To achieve the above Constitutional promises to the working class, from the very beginning Indian Government has taken initiative to constitute a number of legislative enactments, such as, Industrial Disputes Act, 1947, the Employees State Insurance Act, 1948, Factories Act, 1948, Minimum Wages Act, 1948, the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, the Seamen's Provident Fund Act, 1966, Contract Labour (Regulation and Abolition) Act, 1970, The Payment of Gratuity Act, 1972, Building and Construction Workers Act, 1996 and the list is still increasing.

However, on the other hand it is also true that, if one would analysis the actual result of these legislations he will found that, although, there are a number of laws purporting to provide basic economic and social benefits to the unorganized workers, but the gains have been always insignificant. It may be noted here that the Minimum Wages Act, 1948 which was specifically enacted by the Government for the amelioration of poverty and improvement of conditions is directly applicable to the unorganized workers, but no one can deny that, in reality workers hardly receive minimum wages due to lack of knowledge, awareness as well as a formal employee-employer relationship prescribed by law. Lack of proper implementation, high rates of illiteracy, negligent attitude of the employers, poor economic conditions, small holdings are also reasons for the deplorable condition of the unorganized workers.

Further, it will be interesting to note here that most of the above legislations not directly declared about its application to the unorganized workers. It has been widely argued that the above legislations are directly or indirectly applicable to them, but one can also not deny that due to procedural requirements for the application of these enactments it is really too difficult to apply in relation to unorganized workers. For example, most of the legislations have a requirement that to get benefits of this Act one should come under the definition of employee, workmen, or workers. It goes without saying that in the cases the unorganized workers not have a formal employee-employer relation with their industrial establishments, therefore, fails to take benefits of those Acts and even if in few cases these legislation will apply to the unorganized workers, its contribution is very negligible to them.

Apart from the above conclusion, it is a matter of great satisfaction that even after a lot of hurdle the government of India is regularly trying to save the interest of unorganized workers

[31] Social security was established as a basic human right in the Declaration of International Labour Organization at Philadelphia in 1944 and it's Income Security Recommendation, 1944 number, 67. This right is upheld in the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966. The right to social security ensures that everyone, regardless of age or ability to work, is guaranteed the means necessary to procure basic needs and services. Several key human rights principles are fundamental to guaranteeing the right to social security. Social security must be provided without discrimination (in intent or effect) based on health status, race, ethnicity, age, sex, sexuality, disability, language, religion, national origin, income, or social status.

through its legislative endorsements. In this regard it will not out of the mark to have a little focus on two particular legislation of the government of India, i.e., Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and Unorganized Workers Social Security Act, 2008.

Mahatma Gandhi National Rural Employment Guarantee Act

Mahatma Gandhi National Rural Employment Guarantee Act, 2005, was a wonderful attempt of the United Progressive Alliance,[32] leaded by Congress Party towards improvement of economic condition of poor people of rural India.

The Act provides a statutory guarantee for at least 100 days of employment in a year, to begin with on asset creating public works scheme at minimum wage in every rural, urban, poor and lower middle class household.[33] The Act was meant with the objective to increase the source of income of the poor citizen in rural areas to do unskilled manual work.[34] It provide for wage fixation which is to be specified by the Central Government for the purpose of this legislation until such time when the wage rate is not specified by the Central Government for an area, the minimum wage rate fixed by the State Government under the Minimum Wages Act, 1948 shall be considered as the wage rate applicable to that area.[35]

Under the Act, any adult member of a rural household if he is willing to do unskilled manual work, may apply for registration in writing or orally to the local Gram Panchayat. Then, the Gram Panchayat after due verification will issue a job card to him. A job card holder may submit a written application for employment to the Gram Panchayat, stating the time and duration for which work is sought. The Gram Panchayat will issue a dated receipt of the written application for employment, against which the guarantee of providing employment within 15 days. If an applicant is not provided employment within fifteen days of receipt of his or her application seeking employment, he or she shall be entitled to a daily unemployment allowance.[36]

Thus, the above scheme has given rise to the largest employment plan in Indian history related with social security as it is bottoms up, people-centered and demand-driven. Undoubtedly, this legislation has brought a silent revolution in rural areas of the country. For the first time, the Act brings the role of the state as a provider of livelihood within the reach of the beneficiaries themselves. However, apart from the above this program is frequently criticized on the basis of non-implementation and corruption, due to which like any of the

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[32] It was the largest member's party formed in 2004 general election of India.

[33] This Act was initially passed with the name of National Rural Employment Guarantee Act, 2005 and was renamed as Mahatma Gandhi National Rural Employment Guarantee Act, 2005 on 2 October 2009, on the occasion of Gandhi's birth anniversary. It was enacted on 25 August 2005 and was notified on September 7, 2005. The Ministry of Rural Development, Government of India is monitoring the entire implementation of this scheme in association with State Governments Primarily it was notified in 200 most backward districts of the country on February 02, 2006 and subsequently it was extended to additional 130 districts added in the financial year 2007-2008 thereafter, on 1st April 2007 it was notified for 113 more districts and again on May 15th, 2007, in Uttar Pradesh 17 districts were brought in its coverage. Finally, from April 1, 2008, it covers the entire country with the exception of districts that have a hundred percent urban population.

[34] The National Rural Employment Guarantee Act, 2005, Section 4.

[35] *Ibid*., Section 6(2).

[36] See, Section 7.

other earlier schemes it has also not achieved its goal properly. Different minimum wage limit in different States is also serious lacuna of the Act.

The Unorganized Workers Social Security Act

It is another attempt of the United Progressive Alliance Government in relation to the improvement of life of unorganized workers. The Unorganized Workers' Social Security Act, 2008 was passed with intent to provide benefits of social security to unorganized workers. In this context, section 3 (1) of the Act provides that the both governments shall formulate and notify schemes from time to time covering life and disability, health and maternity benefits, old age protection and any other benefit as may be determined by the Central Government. To implement these aims and objects of the Act, section 10, provides that every unorganized worker shall be eligible for registration subject to the fulfillment of the condition that he has completed fourteen years of age; and declare that he is an unorganized worker. He shall make an application in the prescribed form to the District Administration for registration. Thereafter, he shall be registered and issued an identity card. If a scheme started under the Act requires making a contribution, then he shall be eligible for social security benefits under the scheme only upon payment of such contribution. Similarly, if the scheme requires the government to make a contribution, the government, also make the contribution regularly in terms of that scheme.

Further, in regard to the implementation mechanism, the Act empowers the Central Government under section 5 to constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it under this Act.[37] Similarly, on State level the same power is given to the respective State Governments to constitute a State Board to be known as State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it under this Act.[38]

It is to be noted here that, though, this Act was a welcome step hoping to bring radical changes for the betterment in the life of unorganized workers, but rather it was drafted in very hurry and without proper home work on the conditions and challenges in regards to the unorganized workers, due to which the Act suffers, with serious lacunas and has its own limitations. Undoubtedly the Act was significant because first time it had tried to define the term unorganized workers and procure various welfare schemes for unorganized workers, but a close scrutiny of the provisions of the Act, reflects that the existing provisions are neither

[37] The National Board shall consist Union Minister for Labour and Employment-Chairperson, ex officio; Director General (Labour Welfare)-Member-Secretary, ex officio; and thirty-four members to be nominated by the Central Government, out of whom, seven representing unorganized sector workers; seven representing employers of unorganized sector; seven representing eminent persons from civil society; two representing members from Lok Sabha and one from Rajya Sabha; five representing Central Government Ministries and Departments concerned; and five representing State Governments.

[38] The State Board shall consist with Minister of Labour and Employment of the concerned State Chairperson, ex officio; Principal Secretary or Secretary (Labour) Member Secretary, ex officio; and twenty-eight members to be nominated by the State Government, out of whom seven representing the unorganized workers; seven representing employers of unorganized workers; two representing members of Legislative Assembly of the concerned State; five representing eminent persons from civil society; and seven representing State Government Departments concerned.

confirming any right of social security, nor incorporating any appropriate mechanism to implement the key objectives of this Act. As the various issues related with the unorganized worker will arise locally, it will inadequate to have two boards for the entire country. Further, The Social Board will be effective only if they are given powers to administer and enforce but in reality they have only advisory role under the Act. The Act should have provided for the creation of a Social Security Fund, and a financial memorandum for budgetary allocation for the Funds also.[39]

Further, the definition of unorganized worker as well as unorganized sector is so ambiguous. Similarly, the Act was formulated for unorganized workers, but the representation of workers is from organized sector. Finally, it does not define the term social security benefits, and only provides for starting some social security schemes as given under the schedule I of the Act.

Welfare Scheme for the Unorganized Workers

Apart from the above legislative enactments, from time to time both the Central and State Governments have also formulated certain specific schemes to support unorganized workers which have tried to fulfill basic needs and requirements of the unorganized working population, some time under the above legislations and some time as separate schemes. Some of the schemes are discussed as under:

Indira Gandhi National Old Age Pension Scheme

Indira Gandhi National Old Age Pension Scheme was initiated by the Government of India with intent to carry out the objectives of National Social Assistance Programme on 19th November 2007. Eligibility age for this scheme is 60 years. Initially, the scheme provided Rs.200 per month as pension and thereafter it is increased gradually[40] for the elderly belonging to below poverty line families. States were asked to share their responsibility as mandated by the Constitution of India by contributing an equal amount for them, therefore, at present under this scheme the responsibility is concurrent. Apart from the above, one free dhoti for male pensioner and one free saree for female pensioner are supplied twice a year during Pongal and Deepavali festivals. Likewise, all the pensioners are provided daily with free nutritious meal at Anganwadi centres.[41]

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[39] The aims and functions of the Fund would not merely be to enable better access of credit to farm and non-farm enterprises alone but to enable the unorganized sector to benefit in the areas of marketing, technology, skill and entrepreneurship, guidance and counseling and capacity building. Though some of these areas are mentioned as objectives of NABARD and SIDBI, but they get subsumed primarily in their credit related activities. The target group of the Fund on the other hand, would be the micro enterprises, with focus on those below an investment of Rs. 0.5 million. These constitute 94 per cent of the small enterprises in the country but they receive approximately two per cent of the Net Bank Credit despite providing employment to 70 million people and contributing 30 per cent of industrial production (NCEUS 2007). As the fund would have the flexibility of entering into an arrangement with financing and developmental agencies in the public and private sector, it is expected to ensure convergence among the various institutions and programmes and supplement their efforts through refinancing and confidence building schemes for the banks.

[40] Firstly, in 2012-2017 it was increased to Rs. 300 per month for the age group of 60 to 79 years with effect from 1.4.2013. as per Government of India, Ministry of Rural Development, March 2013, page 12. Subsequently, the pension amount is increased to Rs. 500 for those below 80 years of age, and Rs.1000 for those 80 years and above from the financial year 2016-2017 Ministry of Rural Development, Report of Task Force on NSAP, March 2013, p 29).

[41] Free supply of 2 kilogram of rice per month to those who are taking nutritious meal, and 4 kilograms of rice per month to those who are not taking nutritious meal.

National Family Benefit Scheme

This Scheme was introduced by Government of India in August 1995, with the endeavor to provide immediate succor to the elder member of below poverty line families, by way of providing financial assistance of 10,000 rupees to the family whose bread earner expires naturally or otherwise. Primarily, this scheme was fully funded by Government of India under centrally sponsored scheme,[42] but now it is shifted to State sector and implemented by the Social Welfare Department throughout the State. The essential condition for this scheme is that deceased person should be primary bread earner of the family and his earnings should be substantially contributing to the overall house hold income. Further, he should be in the age group of 18-64 years and the below poverty line families applying for assistance under this scheme should not have any other source of livelihood.

Janani Suraksha Yojana

This scheme was started to ensure the safe motherhood under the National Rural Health Mission. Primarily it was implemented with intent to reduce maternal and neonatal mortality by promoting institutional delivery to the poor pregnant women. It was initiated in April 2005 by modifying the earlier National Maternity Benefit Scheme, 1995, which was providing financial assistance of Rs. 500/- per birth (up to two live births) to the pregnant women who have attained 19 years of age and belongs to the below poverty line household.[43] However, under the Janani Suraksha Scheme the above financial assistance which was available uniformly throughout the country to pregnant women belongs to the below poverty line, was replaced by graded scale of assistance based on the categorization of States as well as whether beneficiary was from rural area or urban area.[44] This scheme is for the all pregnant women belonging to below poverty line, schedule caste and schedule tribes, delivering in government health centers, such as sub centers, primary health centers, community health centers, first referral units or general wards of district or state hospitals.

Handloom Weavers' Comprehensive Welfare Scheme

This Scheme came into existence during the 11th plan with an amalgamation of two separate schemes, viz. the 'Health Insurance Scheme' and the 'Mahatma Gandhi Bunkar Insurance Scheme'. It had two segments, the first component is health insurance scheme which provides health care facility to the handloom weavers and workers, and the second component provides the insurance cover to them in case of natural and accidental death as well as total or impartial disability to the insured person. Primarily this scheme was implemented through Ministry of Textile but after 30th September, 2014 it is implemented as per Rashtriya Swasthya Insurance scheme.

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[42] Up to the year of 2002.

[43] It was transferred from the Ministry of Rural Development to the Department of Health & Family Welfare during the year 2001-2002.

[44] States were classified into Low Performing States and High Performing States on the basis of institutional delivery rate i.e. states having institutional delivery 25% or less were termed as Low Performing States and those which have institutional delivery rate more than 25% were classified as High Performing States. Accordingly, Uttar Pradesh, Uttarakhand, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, Rajasthan, Odisha and the states of Assam & Jammu & Kashmir were classified as Low Performing States. The remaining States were grouped into High Performing States.

In this connection the Pradhanmantri Jeewan Jyoti Insurance Scheme[45] and Pradhanmantri Suraksha Insurance Scheme[46] were launched on 9th May, 2015, with a purpose to create an affordable social security scheme for handloom weavers and workers. Under the scheme registered handloom weavers and workers can get 2 lakh rupees on beneficiary's death irrespective of the cause over one year period between 1st June to 31 May on the year based payment of total 330 rupees in which Government's share is 150 rupees, Life Insurance Corporation's share is 100 rupees and worker's share is 80 rupees per year.

Similarly, under Pradhanmantri Suraksha Insurance Scheme, any registered 18-50 age group of weavers and workers can claim 2 lakh rupees for accidental death and 1 lakh rupees for any permanent disability whether total or partial on the government share of 12 rupees per year. On the other hand the converged Mahatam Gandhai Bunkar Bima Scheme is an Insurance scheme offering life insurance cover and accidental insurance cover for death and disability for a closed group of handloom weaver and worker who belong to 51-59 age group and enrolled under previous Mahatma Gandhi Bunkar Bima Yojana before 31st May, 2017.[47]

Handicraft Artisans' Comprehensive Welfare Scheme

As work of handicraft constitutes an important division of the Indian economy, so in order to address the welfare needs of artisan in terms of health and dwelling insurance, this scheme has been envisaged under the supervision of Ministry of Textiles. It has two main components, viz. Raiv Gandhi Shilpi Swasthya Bima Yojana and Bima Yojana for Handicrafts Artisans.[48] The Rajiv Gandhi Shilpi Swasthya BimaYojana intended to provide financial enabling to the artisans' community to access the best of health care facilities in the country. This scheme covers the artisan, his wife and two children. All craft persons whether male or female, between the age group of zero to 80 years are eligible under this scheme.

The Insurance Company shall pay and reimburse expenses incurred by the artisans in course of medical treatment availed of in any hospital or nursing home within the country, subject to limits and sublimits of the scheme.[49] The second segment of this scheme is Janshree BimaYojana, which provide life insurance protection to the Handicraft Artisans, between the age group of 18-60 years. Under this scheme they will get a life insurance cover of Rs.30000/- per member towards natural death, for accidental death or permanent disability Rs. 75000/- per member and the Permanent partial disability, subject to maximum of Rs. 37,500/- per member is provided. Apart from above in the form of an associated scheme of Life Insurance Corporation, Siksha Sahyog Yojana under which not more than 2 dependent children of the

[45] It is Life Insurance Scheme.
[46] It is Accidental Insurance Scheme.
[47] Under this scheme for natural death they can claim 60000 rupees, for accidental death and total disability 1.5 lakh rupees and for partial disability 75000 rupees, only on the payment of 470 rupees annual premium in which government share is 290 rupees, Life Insurance Corporation share is 100 rupees and workers share is 80 rupees.
[48] The former provides health insurance protection to the handicrafts artisans and their family members and late provides insurance protection in case of accident to them.
[49] Contribution by Government of India under this scheme is Rs. 697, by the Handicraft artisan is Rs. 200/- in case of general category artisans and Rs. 100/- from artisans belonging to North Eastern Region and SC/ST communities / below poverty line families.

beneficiary studying in the classes 9th to 12th are given Rs. 300/- per quarter per child as educational allowance for a maximum period of 4 years or till they complete 12th standard, which ever occur earlier is available.

Pension to Master Craft Persons

Under this Scheme, Master craftsperson of 60 years or more who are recipients of National Awards or Merit Certificates or State awards in Handicrafts and whose private income is less than 30000 rupees per year and who is not receipt of similar financial assistance from any other source, 2000 rupees per month pension for disseminating their knowledge to the younger generation.

National Schemes for Welfare of Fishermen and Training and Extension

This is also a centrally sponsored scheme envisaging to provide financial assistance to fishers for construction of house, community hall for recreation and common working place and installation of tube-wells for drinking water and assistance through saving cum relief component. This welfare scheme has been continued during the 10th Plan. The scheme has three broad components, viz, Development of Model Fishermen Villages, Group Accident Insurance for Active Fishermen and Saving-cum-Relief.

Under the first component, the eligible active fisherman belonging to below poverty line family and to landless fishermen in inland and marine sector would be provided with basic civic amenities like houses, drinking water and commonplace for recreation and work. Under second component, they would be insured for Rs 50,000/- against death or permanent total disability and Rs 25,000/- for partial permanent disability. The insurance cover will be for a period of 12 months. The annual premium payable would not exceed Rs 15/- per person and 50 percent of which will be subsidized as grants-in-aid by the Centre and the remaining 50 percent by the State Government. In the case of Union Territories, 100% premium will be borne by the Central Government.

Under the third component Rs 75/- per month shall be collected from eligible marine fishermen for a period of 8 months in a year. A total of Rs 600/- thus collected will be matched with 50 percent contribution i.e. Rs 300/-, each by the State Government and Central Government separately. In respect of Union Territories, the share of Union Territory Administration would also be borne by the Government of India. The total sum of Rs 1200/- thus collected will be distributed during the four lean months[50] to the beneficiaries in four equal monthly installments of Rs 300/- each. The interest accrued will also be disbursed with the fourth installment.

Janashree Bima Yojana

This plan was launched on August 10, by the Government of India and Life Insurance Corporation of India together and provides cover to people who are below poverty line and marginally above the poverty line. The plan covers 45 occupation groups currently. In order

[50] It means, closed season.

to avail the Janashree Bima Scheme, the person should be aged between 18 to 59 years. The members under this scheme will have to pay a premium of Rs 200; however, fifty percent of the premium will be paid by the members of the State Government/Nodal Agency, while submitting the proposal.[51] Shiksha Sahyog Yojana, for children also covered under the scheme, which was add-on benefit of the Janashree Bima Yojana. A scholarship amount of Rs 600 is paid every 6 months to students studying in IX to XII includes I.T.I. students. This benefit can be availed by only two children in every family. In the event of natural death, the nominee will be paid Rs 30,000 as death benefit. On total permanent disability or death caused due to accident, the beneficiary of the life assured will receive Rs 75,000 as compensation. If the life assured suffers partial permanent disability due to an accident, then Rs 37,500 will be paid as compensation. Finally, this scheme was amalgamated with Aam Adami Bima Scheme.

Aam Admi Bima Yojana

This is a popular scheme of social security initiated and administered by the Government of India, for below poverty line family or even slightly above the poverty line families that are a part of any vocational group defined in the scheme[52] or a person belonging to a rural landless household.[53] It provides insurance coverage at the affordable premium of total Rs.320/- per annum to the head of the family or one earning member in the family.[54] The premium is divided between the proposer of policy and the Government of India. The eligibility age for this scheme is between 18 and 59 years. Under the scheme natural death claim is Rs.30, 000 however in case of any accident or permanent partial disability claim is rupees 37500/- and in case of death or permanent total disability is 75000/- rupees. It also ensures that at least two children in the family continue to receive education without a break. It offers a free scholarship of Rs. 100/- each month on a half-yearly basis to eligible children studying between 9th and 12th standard and I.T.I. students.

Rashtriya Swasthaya Bima Yojana

It is widely acknowledge that frequent incidences of illness and need for medical care and hospitalization is one of the key requirement of unorganized workers. Despite the expansion in the health facilities, even till today a person belonging to the weak economic group is unable to take up health insurance because of its cost, or lack of perceived benefits. Bearing in mind this fact that, the government of India, started a health insurance scheme for below poverty line families in the name of Rashtria Swasthya Bima Scheme.[55] It provides for cashless health insurance benefit cover up to Rs. 30,000/- per annum on a family floater basis and 11 occupational groups[56] in the unorganized sector. In order to encourage institutional

[51] Nodal Agencies comprise Self Help Groups, Panchayat, or any other institutional arrangement.

[52] It is a combination of Aam Admi Bima Yojana and Janashree Bima Yojana, which is renamed as Aam Admi Bima Yojana. It comes into effect from 01.01.2013.

[53] This scheme was launched on October 2, 2007.

[54] The Ministry of Finance, under the Government of India made an approval for the merger of Aam Aadmi Bima Yojana and Janashree Bima Yojana, with effect from January 1, 2013.

[55] This scheme was launched in 2007 but became fully operational from 1st April 2008, and the Labour and Employment Ministry is handing over this scheme with effect from 1st April 2015.

[56] They are MGNREGA Workers, Construction Workers, Domestic workers, Sanitation Workers, Mine Workers, licensed

delivery maternity benefits are also provided under this scheme. The building and other construction workers are also covered under this scheme.

Thus, analysis of the above mentioned schemes shows that nothing new is offered through the Unorganized Workers Social Security Act, 2008 as the schemes envisaged under it are already in public domain, therefore, the Act only provides integration of existing schemes. These schemes are also not universally applicable to all unorganized workers, as application of these schemes is subject to the condition that the family that it must belong to below poverty line. A considerable number of the unorganized workers may not fall under this category, due to un-updated minimum amount of below poverty line.[57]

Concluding Observations

The study under this paper was started with a remark that continuous struggle remains in the history of labour resistance and unfortunately it is also the fact of today. The unorganized workers are still confronting even for their basic rights which is necessary to take breath in this society. However, this fact should not be taken to draw a conclusion that Indian Government is doing nothing. Tremendous actions have been taken in this regard and it is also going till today. Undoubtedly the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 and Unorganized Workers Social Security Act, 2008 were a much expected legislative framework to fulfill the dream of the dignified life of the unorganized workers in India. Without any question these legislative attempts were a progressive step for their protection, however, its half-hearted implementation and paper welfare makes its discredit.

Therefore, analysis of the provisions of the above legislative attempts is compelling to remark that it could not justify its desired objectives. We should not forget that the basic ambition while enacting the Act of 2008 was to have a comprehensive legislation containing all basic requirements of unorganized worker's day to day personal life as well as security of their employment and humanize conditions of work were targeted, but unfortunately instead of providing a plan for various social security schemes, this Act does nothing. Due to unplanned provisions and half hearted implementation, this Act becomes only the showing teeth of elephant. Indisputably the Act is suffering from serious deficiencies as the legislation itself does not provide any guarantee for social security to the unorganized workers. Likewise, due to unclear definition of the unorganized workers, this Act makes them out of its coverage. Already existing disparate schemes, managed by different ministries or agencies and serving limited groups of workers, were put together as a schedule to the Act, essentially undermining the universality and bringing in built in arbitrariness to the provisions of social security.
Although the stated objective of Act is to provide social security and welfare to the unorganized workers, the Act does not confer any defined right of social security for them;

Railway Porters, Street Vendors, Beedi Workers, Rickshaw Pullers, Rag Pickers and Auto/Taxi drivers.

[57] The expert committee set up by the Planning Commission has redefined the poverty line. According to the report of the committee, the new poverty line should be Rs 32 in rural areas and Rs 47 in urban areas. The earlier poverty line figure was Rs 27 for rural India and Rs 33 for Urban India.

hence it is pleaded that a right providing provision should be added under the Act.

To sum up it is requested that, government should come with full hearted attempt to improve the condition of life of unorganized workers by enacting a comprehensive legislation, which must be able to cater the essential needs of their life, such as food, clothes and house along with health, secured employment, Income, and security against various hurdles of life. Nevertheless, present government claimed that the existing schemes are their major achievement; on the same time unorganized workers are waiting the day on which their dreams will come true.

Skill Development of Prison Inmates and their Rehabilitation: An Evaluation

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Abstract

Skill development can be said to be an ability and capacity acquired through deliberate, systematic and sustained effort to smoothly and adaptively carryout complex activities. It can be said to be one important component of human development. Through utilization of one's ability in one particular field each individual can contribute in the progress and prosperity of the nation.

As per National Crime Records Bureau, prison population including pre-trial detainees consists of 4, 19,623 till 31st December 2015. Thus a group or section of each society is confined behind bars, and the development and utilization of their potentiality is a matter of great concern. Still most of the prisons of Assam and other North Eastern States are lagging behind from the facility of skill development to make the inmates self-reliant after their return to civil society. In some jails of Assam there are no bars on skill-building. In the absence of infrastructural development, skill development in various areas like weaving, computer literacy, garment making, beauty care training, diploma course in various discipline are yet to be explored. Once the inmates will be compelled to involve in some creative and profit making activity their mind will be changed and in future there will be no chance of the repetition of petty offences like theft, burglary, mischief etc. Mere distribution of money in the name of rehabilitation can do nothing until and unless they will be made aware regarding utilization of money in constructive activity. Skill development can lead to personal development and employment opportunities among inmates. In the present paper an effort has been made to highlight some new areas through which skill development can become an important component of criminal justice system with a focus on the areas where State Government has not taken proper initiative to develop the skill of inmates in vocations like farming, sericulture, beekeeping, fisheries and animal husbandry etc. The present paper is based primarily on doctrinal method and observation; analytical methodology has been adopted in discussing and analyzing the issues relating to rehabilitation of inmates with reference to their skill development.

Key Words: Prisoner, Skill Development, Rehabilitation, State Government.

Introduction

Skill Development can be said to be one of the means to make citizen a resource for the nation on a more extensive and improved basis. It can inspire individual to think independently for the national peace and progress. Professional training can make a man perfect to participate in various events relating to socio-economic and political progress of the entire nation. Lack of personal initiative can cause tyranny in human life which leads one to involve in destructive activities. Nation's growth and development depends upon its individual creative talent. Those nations which had made atmosphere to increase the capabilities of its individual have progressed rapidly in human history.

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Skill development can be said to be an ability and capacity acquired through deliberate, systematic and sustained effort to smoothly and adaptively carryout complex activities. Through utilization of one's ability in one particular field each individual can transform him/her as precious resource for the state. It can lead to full development of human personality in terms of social progress. It is a common saying that success in a profession depends more upon personal skill rather than formal education or training.[3]Government is the only organ of a nation which can make its citizen bound to achieve skill in particular field in a particular manner. Lack of skill can make one person a burden for the state as well as the government. In recent past Indian democracy has laid down various programmes and plans to develop and make perfect one's own personal talent. Various governments also made their efforts to make skill development as the indispensable prerequisite for the progress of the entire nation.

One of the important aspects where each nation should keep concentration regarding the implementation of its skill development programmes is the "Equalization of Benefit". It means discrimination among various groups of individual in this regard can cause dissatisfaction among the deprived groups. Prisoners can be said to be those sections of the civil society who lose their various rights by virtue of their confinement. They can be said to be one vulnerable group of the civil society about whom others know nothing. The life which they live, under what circumstance they are surviving behind bar are not matter of consideration for other free citizen of a state. The state can be said to be doing justice to its individual only when it can include this vulnerable group within the parameter of its development and justice. Professor H. L. A. Hart once said that punishment should be given to the wrongdoer not to inflict mere injury upon him but for preventing him from future wrongs.[4]Rawlsian theory of Justice also claims that punishment merely cannot bring any change in the thinking process of the wrong doer and rationale difference can only be brought by positive and creative training.[5]Thus it can be said that rationale relationship between the wrong and the punishment is based not on retribution but on reformation. But how far these philosophical sayings are utilized in the modern criminal justice system is a big question for all of us.

Rehabilitation and reintegration of prisoners can be said to one of the new aspect of the criminal justice which grows from 1980s basically from the time of judicial pronouncement made in the case of *Mohammad Giasuddin v. State of Andhra Pradesh*[6], the Supreme Court has observed that barbarity and injury recoils as injury so that if healing the mentally or morally maimed or malformed man is the goal, awakening the inner being more than torturing through exterior compulsions, holds out better curative hopes. Sentencing should be a process of re-shaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. The

[3]Dr. Paras Diwan, *Modern Hindu Law* (21nd Edition), Faridabad; Allahabad Law Agency, 2013. p. 395.
[4] H. L. A. Hart, *Punishment and Responsibility* (2nd Edition), New York; Oxford University Press, 1967, p. xviii.
[5] Mellssa Gronebaum, *John Rawls' Theory of Justice. Justice as Fairness* (1st Edition) London; Grin Verlag Gmbh Publishers, 2014p. 102.
[6] AIR 1978 SCR (1) 153.

observation of the Supreme Court has made it clear that sentencing should be able to transform the offender from burden to resource.

The humane art of sentencing has been considered as one of the integral part of Criminal Justice System in India from the very time of formation of independent judiciary. But still it remains a retarded child of the Criminal Justice System. Government's recent report on Skill Development and Entrepreneurship reveals that the country had more than 70 odd programs on skill development being run across 29 states through 21 different ministries. Each one had their own norms and outcomes and tracking mechanism. But there was no rationalisation of the process & system and the training method which could cover this vulnerable section of the society.[7]Lack of express provisions relating to skill development in various legislations like Probation of Offenders (Amendment) Act, 2009, Juvenile Justice (Care and Protection of Children) Act, 2015 can be said to be one important reason of vulnerability of this particular group in terms of skill development. If the present system continues with such deficiencies then our country can never produce honest and corruption free citizen.

The present paper is an effort to highlight some areas where government should take new initiatives regarding implementation of skill development programmes. An attempt has been made to correlate the skill development with rehabilitation of prisoners and its benefits for the society as well as the nation as a whole. The present paper is based on doctrinal method and observation; analytical methodology has been adopted in discussing and analysing the issues relating to sustainable re-development of the inmates with reference to their skill development. Various commission, committee and ministry reports, National Crime Record Bureau Reports, Prison statistics index etc. has been taken as reference for the completion of present work.

Meaning and Objectives of the Skill Development

Vocational education is a matter of great concern which can lead citizen to realize his/her own potentiality. This is the only condition through which one can develop one's own personality as well as others. The basic objective of this programme is to bring the power of change among individual and it compels men to become educated, honest and hardworking. United Nations Educational, Scientific and Cultural Organization in one of its Report termed skill development as a facility that provides the core work skills, general knowledge, and industry based and professional competencies which facilitate the transition from education into the world of work.[8] The report also reveals that skill development programmes are important means of pursuing the overall goal of equality of opportunity in employment and occupation. It is one of the important means which can bring the under-represented groups, minorities, people with disability, and people from disadvantaged communities to the mainland of the

[7] *Key Achievements 2015-2016: Ministry of Skill Development and Entrepreneurship*, Press Information Bureau Government of India Ministry of Skill Development and Entrepreneurship, March 8 2016, available in www.msde.gov.in.
[8] *A Skilled Workforce for Strong, Sustainable and Balanced Growth, A G20 Training Strategy*, International Labour Office, Geneva, November 2010, available at www.oecd.org.

nation.[9] Union Ministry of Skill Development and Entrepreneurship recently said that skill development is one direct way of bridging the gap between the potential employee and the employer and promoting the economy of the entire nation.[10] NALCO Chief Managing Director in an industry-institution interaction programme recently termed skill development programmes as only innovative idea for national progress.[11]17% of India's GDP depends upon agriculture, 26% on industry and 57% on the service sector. This data reveals how individual skills can contribute in the economic growth.[12]Employment Generation Mission Assam, an autonomous body under the Government spear heads the skill development initiatives. The major objective of these schemes is the stimulation of economy of Assam through skill development and project implementation agencies. Recent report on 'Skills Empowering the New India 2017' reveals that vulnerable and neglected population groups will be more focused in coming days so far as the implementation of this programmes is concerned. Women, differently able persons, SC/ST/OBC are traditionally considered as vulnerable groups. But it is expected that if it will include the prison inmates also then the scheme alone can protect the society from crime and delinquency.[13]

Various workshops and seminars are held in various parts of the State to train the youths in diverse skill sectors like bell metal unit, printing press, horticulture and many other skills. Main purpose of skill development programmes is to increase and sustain income of poor, especially women and such other vulnerable groups as well as stimulation of economy of each state through skill development and project implementation agencies.[14]

Skill Development and Rehabilitation of Prisoners

Rehabilitation can be said to be a process of incarceration which can radically shape one person's life, health, and economic prospects while he undergoes his prison sentence under the vice of essential human dignity, as guaranteed by the fundamental law of one nation. The concept of rehabilitation remains unrecognized in the Constitution of both India and United Sates, but has been able to dominate the Criminal Justice System of both the nations from last few decades. In a landmark judgment US Court in *Nicholson v. Choctaw County, Alabama*[15] observed that the idea of rehabilitation is used to justify disciplinary goals and paternalistic state intervention, which can serve basic prisoners' rights, such as due process and free speech as well as health or religion during the period of confinement. In the case of *Mistretta v. United States*[16], the concept of rehabilitation has been termed as imprecise term. The US Supreme Court observed that its utility and proper implementation are the subject of a substantial, dynamic field of inquiry and dialogue and is for legislatures to determine what

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[9] *The Missing Entrepreneurs 2014, Policies for Inclusive Entrepreneurship in Europe*, European Commission, 2014, available at www.books.google.co.in

[10] *PM Narendra Modi unveils initiatives for skill development,* December 19, 2016, available in economictimes.indiatimes.com.

[11] *Skill development key driver of Indian economy: NALCO CMD,* November 27, 2016, available at economitimes.indiatimes.com.

[12] *Annual Report 2013-2014, Ministry of Finance*, available in www.finmin.nic.in.

[13] *Skills Empowering the New India, Ministry of Skill Development and Entrepreneurship*, Government of India, 2017, p. 39, available at www.skilldevelopment.gov.in

[14] *Skill Development Schemes,* Employment Generation Mission (Assam) available in www.egmassam.org.

[15] 498 F. Supp. 295 (S.D. Ala. 1980).

[16] 488 U. S. 361, 363 (1989).

rehabilitative techniques are appropriate and effective. The humanistic model of rehabilitation affirms the concept of prison inmates as possessors of rights. This legal status generates feelings of self-worth and trust in the legal system and favours the possibility of self-command and responsible action within society. This conception ultimately leads rehabilitative efforts toward the paradigm of the inmate as a full-fledged citizen. By the term 'rehabilitation' the US Supreme Court wants to encompass the prisoners' legal status with meaningful work, education and treatment by which he/she can shape and govern society after his return to the civil society.[17]

So far as Indian Criminal Justice System is concerned, Justice V.R. Krishna Iyer and Justice P.N. Bhagawati have evolved numbers of standards of decency and dignity for the inmates in 1970s. Since then the term has been interpreted from such broad perspective that today the court can intervene for any form of administrative reluctance regarding their education, job-training and fundamental social learning. Now the State is obliged to make penal policy which can provide for the genuine fulfilment of their minimum standard needs.[18]Skill development can be termed as one form of therapy which transforms the offenders from burden to State resource by removing their psycho-social disadvantages. It is justified by International Human Rights laws also. Various Covenants like Universal Declaration of Human Rights[19], International Covenant on Civil and Political Rights[20] speaks on promotion of dignity and well-being of those who have lose their liberty by virtue of imprisonment. US Standard Minimum Rules for the Treatment of Prisoners also made it obligatory for each nation to adopt new laws for protection and promotion of basic rights of inmates relating to life, health, fairness and justice, human treatment, dignity and protection from ill treatment or torture. It speaks that there is a minimum standards for the way a State treats people, whoever they may be and no one should fall below it.[21] The UN Congress on Prevention of Crimes and Treatment of Offenders once observed that the purpose and justification of sentence of imprisonment or similar measures are ultimately to protect the society against crime. This can be achieved only if the period of imprisonment is used to ensure, as far as possible, that upon his return to society, the offender is not only willing, but able to lead a law abiding and self supporting life. To this end, the institution should utilize all the remedial, educational, morale, spiritual and other forces.[22]

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[17] Edgardo Rotman, *Do Criminal Offenders Have a Constitutional Right to Rehabilitation*, Journal of Criminal Law and Criminology, Volume 77, Issue 4, 1987 available in www.scholarlycommons.law.northwestern.edu.

[18] Charles Sobraj vs Supdt. Central Jail, Tihar AIR 1978 SC 1514, Delhi Judicial Service Association vs. State of Gujarat(1991) 4 SCC 406, Nilabati Behra vs. State of Bihar AIR 1993 SC 1086, D.K. Basu vs. State of West Bengal AIR 1997 SC 61, Prithipal Singh etc. vs. State of Punjab & Anr. (2012) 1 SCC 10.

[19] Article 5 "No one shall be subjected to torture or cruel, human or degrading treatment or punishment."

[20] Article 10 "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

[21] The Standard Minimum Rules for the Treatment of Prisoners were first adopted in 1957, and in 2015 were revised and adopted as the Nelson Mandela Rules, as is said by the Penal Reform International Report, 2015 available in www.penalreform.org.justice Promoting fair and effective.

[22] *Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders* (Toronto, Canada, 1-12 September 1975, United Nations, available in www.unodc.org.

Despite of all the approaches which have been laid down by International and National laws and judicial pronouncements, progress in the overall spheres of dignified life of inmates has not been seen in recent past. The fact can be made clear by citing the Supreme Court recent pronouncement in the case of *Re-Inhuman Conditions In 1382 v. State*[23] The judgment has proved the complete failure of Government to remove certain problems prevailing in such premise from many decades. Justice Lahoti in the order clearly pointed out that we cannot expect further progress in such premise as long as there will be problem of overcrowding, unnatural death, gross inadequacy of staff, untrained and corrupt authority and inhuman treatment within the premise.

Juveniles are one another group of offenders whom one cannot neglect in terms of training and skill development. These are the vulnerable sections of offenders who require more education, care, moral support for their progress and qualitative growth within reformation centres. NCRB data reveals that number of juveniles involved in serious crimes is on the rise and we can say that lack of proper education and formal training had made their mind set very dark. One early landmark investigation made by MacFarlane, Allen, and Honzik (1954) provided one of the best form to study child psychology. They said that commonly reported problems in 6 to 14 years old children are overactivity, oversensitiveness, specific fears, tempers, jealousy and excessive reserve.[24]Education is considered as 'Gnana Nethram' which opens our eye of wisdom. If these child from broken homes and uneducated family cannot be properly educated then we cannot expect that our next generation will do well for the nation. Thus, it is the obligation of the Government as well as each members of the civil society to re-think and analyse all those issues and come out with a proper solution through which inmates can be brought within the parameter of various Skill Development Programmes as have been laid down by the Central Government as well as the Government of each State. In the absence of other basic facilities like hygienic food, medicine, clean drinking water inmates cannot think to evaluate and promote their hidden skills in different fields.

Model Prison Manual 2016 speaks that all open and semi open institutions are intended to put into practice the contemporary ideology of reformation, correction and rehabilitation of convicted prisoners so that they may lead to a self-disciplined and cultured life after their release. This restores dignity of the individual and develops inherent self-confidence and social responsibility.[25]

Necessity of Skill Development in the Process of Rehabilitation

Social control on the behaviour of individuals in a society is necessary for maintaining social order and stability.[26] Prison houses are nothing else but a component of society where inmates are taught to become honest and creative. Only physical harm and deprivation of liberty cannot bring the violators back into comfortable conformity. Training as well as utilization of

[23] CWP No. 406 of 2013.
[24] Neelam Sood, *Behaviour Problems in Children* (1st Edition) New Delhi; Gitanjali Publishing House, 1997, pp. 44-45.
[25] *Union Home Minister approves New Prison Manual 2016*, Press Information Bureau Government of India Ministry of Home Affairs, January 2016 available in www. http://pib.nic.in.
[26] Ram Ahuja, *Criminology* (1st Edition Re-print), New Delhi; Rawat Publications, 2012, p. 266.

skill can make them able to fulfil social expectation. Various research works have found that psychological effect of incarceration is substantial, even among those experiencing relatively short-term confinement in a jail or refugee and detention incarceration. Indeed prison experience is unlike any other. Sociologist Donald Clemmer once quoted in his Book "Prison Community" that prison experience is neither normal nor natural and constitutes one of the more degrading experiences a person might endure.[27] Thus if once the person will be made bound to involve in some productive activity as well as skilled work then he/she will not get time to think on those destructive things which society wishes to prevent.

Prisoners are those sections of the society for whose survival each day huge amount of money is gone out from Government treasury. Always Human Rights activists as well as other social organizations used to raise voice for their adequate maintenance in terms of food, clothing, shelter, leisure, hygiene etc. and all these require money. In this reference this group can be said to be the huge burden for the state. In the state of Bihar, State Welfare Department data recently reveals that Government of Bihar spends more money to the jail inmates than that of SC/ST school students, patients in government hospitals. The chief of Bihar jail C.D. Ram in an open interview with Times of India said that Government spends around Rs 88 per day on meals for each jail inmate.[28] As per Prison Statistics of the National Crime Records Bureau the expenditure per inmate has increased by over 50% in the five years between 2010-2011 and 2014-15. More than 50% of the expenses were on food in each of these five years. NCRB data says that the average annual expenditure on prison inmates has increased from Rs. 19447 in 2010-2011 to Rs. 29538 in 2014-15. In the last five years the number of inmates in prison has increased by over 3%. From 3.69 lakh inmates by the end of 2016, the total number of inmates in prisons across India went upto 4.18 lakhs by the end of 2014. The capacity of prisons in India has increased from 3.2 lakh in 2010 to 3.56 lakh in 2014. The occupancy ratio was 117.4% while it was 115.1% in 2010. NCRB Prison Statistics in India reveals that average expenditure has gone up more than 50%.[29] Thus if in return the inmate cannot uplift their thinking, working skill as well as self-realising capacity then it can be termed as failure of Criminal Justice System. By means of skill development techniques, prison can undertake human engineering, influencing and modifying perceptions, attitude and behaviour of those who come into their charge.

Right from the very inception when the National Skill Development Policy was announced in the year 2009, the Ministry of Justice and Empowerment has been forging ties with the leading training providers in the country to train the eligible members of the target groups to empower and help them break the shackles of poverty and backwardness so as to find a dignified place in the society. Today Skill Development initiative has played a major role in helping the youths in coming out from the root of poverty and backwardness. The skill

[27] F. E. Haynes, The Sociological Study of the Prison Community, Journal of Criminal Law and Criminology, Volume 39 Issue 4, 1949 available in www.scholarlycommons.law.northwestern.edu.
[28] Alok Chamaria, *Govt spends more on jail inmates than SC/ST students, patients*, May 9 2016 available in www.timesofindia.indiatimes.com.
[29] *Prison Statistics India 2015*, National Crime Records Bureau Ministry of Home Affairs, New Delhi, September 2016, available in www.ncrb.nic.in.

development training can contribute to overall poverty reduction. Poverty can be said to be core factor behind increase of certain criminal activities basically the terror related offences. Recently 'The Hindu' news report reveals a fact in this regard. Some of the recent terror recruits were being signed up with up to Rs. 50,000 and their families are offered Rs. one lakh if they die. Criminal activities are committed by school dropouts, drug addicts, and children belonging from poverty ridden family.[30] The Skill Development Programme can lead to improvement of sense of responsibility of such young offenders towards their family, society and State in future. If once these young offenders should be taught to learn and adopt relevant training relating to agriculture, poultry, dairy, fisheries, seri-culture, gardening etc. then those skills can radically shape their life, health and economic prospects in later period of their life.

Punishment should be of such a nature from which one can learn something new. If there is inclusion of skill development programme within the parameter of present legislation, then only administrative authorities will be bound to follow the orders of court. In the absence of adequate legislative provision vocational training of inmates can never be psychologically satisfactory and socially meaningful.

Skill Development among Prisoners: A Legislative and Judicial Outlook

Skill Development Programmes for prisoners will be beneficial if following aspects like system monitoring, evaluation of individual capacity of inmates, identification of field where one can give best performance, term and method of training etc. may be specified by legislative provisions. Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed. The Act was made to meet the varying needs of juvenile offenders while protecting their basic rights, to meet the needs of society; and to implement various welfare provisions for young offenders thoroughly and fairly. In the case of *Arnit Das v. State of Bihar*[31], the Court observed that the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. The Hon'ble Supreme Court in *Sheela Barse v. Union of India*[32] ordered that the justice delivery system suitable for juvenile offenders should be enforced on all States and such enforcement was to be reported back to the Supreme Court.

The Act was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 which provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development,

[30] Josy Joseph, *Poverty, the Crucible of Terror,* February 09, 2016, New Delhi, available in www.thehindu.com.
[31] 2000 (5) SCC 488.
[32] (1986) 3 SCC 596.

life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children. The new Act lays down provision for imparting such institutional care with which the young offender can become fit person in future. The word 'rehabilitation and re-integration' is of wide amplitude and judiciary needs to interpret it from various dimension of socio-economic life of young offenders. All aspect of dignified life such as disability, education, including reference to Right to Education, skill development, occupational therapy and life skill education, mental health, participation in sports and cultural activities and legal aid are expressly covered by the new Act and thus each young offender is statutorily entitled to make them a part of Government Skill Development Programmes.[33]

Skill India Programme can be said to be new mantra for juveniles also as per recent Government decision. New initiative has jointly been taken up by Delhi Police and Juvenile Justice Board under the aegis of ministry of skill development and national Skill Development Corporation.[34]National Crime Records Bureau data shows that cases involving juvenile offenders went up by 16% in 2015. In the 2,332 cases reported, 3,570 offenders were apprehended. In 2014, 2,876 juveniles were apprehended in 1,946 cases. Of the apprehended juveniles, 2,796 were found to be first-time offenders while 243 were repeat offenders. In 2015, juveniles committed 338 cases of sexual assault, including rape, molestation and voyeurism, besides 457 cases of robbery or snatching and 669 cases of theft.[35] It is a very new legislation and it is our expectation that its provisions will be properly implemented. Properly and timely implantation of the provisions can play the role of a vehicle of social change and economic growth.

Model Prison Manual 2003 also focused on vocational training of inmates. It laid down provision that vocational training and work programmes should be treated as essential features of the correctional programmes. Vocational training programmes should be designed to suit the needs of prisoners sentenced to short, medium and long term imprisonment.[36]

The Probation of Offenders Act, 1958 can be said to be one another piece of legislation which aims to correct the offenders of certain offences through sentencing process. The law relating to release after admonition is provided under section 3 of this Act and section 360 (3) of the Code of Criminal Procedure, 1973. The court is empowered to release the first time offender after admonition with or without the conditions, on his own bond or with sureties in certain offences.

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[33] Section 53 of the Juvenile Justice (Care and Protection of Children) Act 2015.
[34] Raj Shekhar, *60 juvenile offenders to get job skills*, The Times of India, New Delhi, Feb 4, 2017.
[35] *Crimes in India 2015 Statistics*, National Crime Records Bureau Ministry of Home Affairs, New Delhi 2016 available in www.ncrb.nic.in.
[36] Model Prison Manual for the Superintendence and Management of Prisons in India, Bureau of Police Research and Development Ministry of Home Affairs Government of India New Delhi 2003 available in www.mha.gov.in.

The object behind this legislation was to prevent offenders from becoming obdurate criminals because of their association with hardened criminals and to make him/her able to lead an industrious life. But in past decades the Act could not do anything in the growth of needy, orphaned and destitute section of offenders because in absence of adequate legislative provision the judiciary cannot pronounce such order which can make the prison authority bound to impart them industrious training outside prison. In the case of *Arvind Mohan Sinha v. Amulya Kumar Biswas &Ors*[37], Justice Y.V. Chandrachud observed that crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society.

Discussion

Though Skill Development is a very beneficial approach for the upliftment of individual personality as well as the economic progress of the country, however in India, criminal justice system in recent past could not provide the opportunities of adequate employment, dignified, self-confident and responsible life in open society to the prison inmates. It has been seen that while new programmes and policies relating to improvement of jail inmates come always these are applied in few famous jails like, Tihar jail, New Delhi, Hijli jail, Bengal, Yerwada jail, Maharashtra etc. because all the political leaders and other famous personalities are confined here during their term of imprisonment, but in some other jails basically in State prisons no Government notifications even comes for implementation.

Modern justice system cannot transform prison premise as a work based institution so long these practices will be prevailing. Government alone is not responsible for these deficiencies, but to some extent prison premises themselves constitute a major obstacle to correction and rehabilitation. Modern prisons are overcrowded in terms of its prison population. Almost each jail and correctional institution is facing this problem. So no authority can think to impart training to each of its inmates while it could not provide them two times meal properly. Again few individuals are there in the society to whom no one can change as they are evil by birth or are habituated with the system. Thus imparting training is nothing but the wastage of money and energy of the Government to some of such hard core criminals.

Thus unless individuals realise their guilt and convince their fault only the training cannot transform them from offender to saint. It needs self-realisation and self-uprightness. It can be said that skill development is a means which can open the door of self spirit and self realisation and with that realisation one should rehabilitee him/her. Again this is a new area which requires more sophisticated research which can reveal the drawback of the present system along with its solution. Further evaluation can be said to play an undeniably important role in this regard. Skill Development Programme will play important role in the sustainable re-development of inmates if certain aspects mentioned below are given importance.

[37] AIR 1974 SCR (3) 133.

1. Formal provisions and rules dealing with Skill Development training is the need of present Criminal Justice System and Parliament must take it into consideration.
2. Utilization of fund allotted for the rehabilitation of inmates.
3. Scrutiny Committee needs to be established with independent, impartial member of judiciary as well as government to examine the matters relating to utilization of fund, utilization of land attached to prison institutions.
4. Nature of work or training should be simple, understandable and practicable so that each group of inmates can learn easily.
5. Certification and award can be good component for encouraging them to adopt skill.

The Practice of Halala and Human Rights of Muslim Women: An Analysis

Dr. Syed Ali Nawaz Zaidi[1]

Introduction

"Halala" is a concept which is derived from the Arabic word 'halal' (lawful). Basically, halala marriage means a woman can go back to her husband after getting divorced. Halala is the Islamic divorce where a victim of talaq, the instant divorce, undergoes a temporary marriage with another man to remarry the husband It is actually a blatant distortion of a Quranic injunction in which, to emphasise the sanctity of marriage and the enormity of ending it for frivolous reasons, introduced a prohibited degree by warning the parties who opt for separation through the third and final talaq that they cannot entertain hopes of remarrying each other unless the divorced wife voluntarily decides to marry another man and that marriage too ends in a divorce. Halala is unacceptable since many marriages are illegitimate due to fraudulent halala. It was suggested that another BBC reporter had to pay almost two thousand pounds for a fake halala marriage last year.[2]

Quranic Position and Understanding

In fact, the Prophet cursed "those who marry a divorced woman with the intention of making her lawful for her former husband" and "the one whose ex-husband has been remarried".[3] Although Quran verses and their translation given by various jurists depict different story, the Quranic verses related to remarriage are given below with reason of revelation:

"وَإِذَا طَلَّقْتُمُ النِّسَاء فَبَلَغْنَ أَجَلَهُنَّ فَلاَ تَعْضُلُوهُنَّ" أَن يَنكِحْنَ أَزْوَاجَهُنَّ إِذَا تَرَاضَوْاْ بَيْنَهُم بِالْمَعْرُوفِ ذَلِكَ يُوعَظُ بِهِ مَن كَانَ مِنكُمْ يُؤْمِنُ بِاللّهِ وَالْيَوْمِ الآخِرِ ذَلِكُمْ أَزْكَى لَكُمْ وَأَطْهَرُ وَاللّهُ يَعْلَمُ وَأَنتُمْ لاَ تَعْلَمُونَ[4]

232. "When you divorce women, you are not allowed to prevent them from marrying the persons whom they've chosen themselves. This is urging to the people that whoever believes in Allah and the Last Day, that is better for you; for Allah knows and you do not know."

Reason of Revelation

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[1] ***Associate Professor, Department of Law, AMU, Aligarh.***
[2]*The Indian express march 26 2018 issue.*
[3]Abu Dawud,Book 005, Hadith Number 2071 Narrated by Ali ibn Abu Talib.
[4]*Al-quran surah al-baqarah verse 232.*

One companion of Prophet Muhammad (S) named Ma'qal-ibn-Yasar rejected the proposal of his sister to her former husband. After a period of waiting the law provides that both parties have consented and married each other.

So God prevented Ma'qal from opposing this marriage.

Many people believe that this verse was revealed when Jabir objected to his cousins' marriage with her previous husband. This right was granted by many relatives in the Era of Ignorance.

Regardless of whether or not they are men or women, they are not entitled to refuse marriage of any one.

If women broke free from their ignorance, they would receive a significant amount of virtue in their lives.

The inequality of the woman was proved by the fact that woman could not choose her marriage partner. According to this custom, even if a woman was married formally, and got separated from her husband thereafter, the re-marriage into the same man was decided upon depending on the decision of her guardian or guardians.
Since their parents were worried about their well-being, they tried to prevent the marriage, fearing ill fate.

There is other evidence in the Qur'an that is against this possibility. This provision states that the guardians are not allowed to stop the wife from remarrying her ex-husband.

"And when you divorce women, and they have reached their waiting-period, do not prevent them from marrying their husbands, when they agree between themselves in a fair manner...."
Thus, it is understood from this verse that divorcees need not to obtain permission or agreement of their guardians to marry again, and even the opposition of their guardians, if any, is invalid.

Concept of Halala
"Halala" is not referred in the Quran. It has its origins in the practise of halal (Lawful) on this verse of the Holy Quran, it states: Sura [xxii] 230 (i.e. Verse 230).

It is no sin for the married to marry another if they can love each other with mind and body.These limits belong to God. "(God) made them visible for people of understanding."
Basically this means that in a limited period of time, another man has married the woman, she cannot remarry her original husband. This is halala.

Islam requires a minimum period of seven lunar months before the divorced woman may remarry. It also mandates that the divorce is irrevocable and that a man may not marry his former spouse again.

Halala is a set of laws that allow a man to re-marry with his first wife only if he divorced her and re-married her more than once.

It is impermissible, prohibited and forbidden to mock the laws of Allah, for the Messenger of Allah (PBUH) cursed the people who practised halala, making Allah's words manifest as mere deception.

Halala is not part of Islam. This is a view derived from Islam that is espoused by some and considered part of shari'ah law. In accordance with the law of the Quran, if a husband divorces his wife for the third time in a marriage contract, he cannot get her back unless he marries another person, and then divorces the newlywed. This rule should not be the basis of pre-planned marriage and divorce proceedings.

It is best not to give unmarried women titles, as these results in gendered generalisations. These unfair situations are usually unconscionable. According to Sharia law, the three talaqs are considered one divorce, rendering no effect on a marriage. Sunnis and Shias together disagree with this position.[5]

In such a way, a couple will remain unmarried until their first partner marries another man. According to Islamic law, a woman's marriage cannot be reformed if she has been divorced three times. To prevent a very large number of divorces and to protect the woman's honour, this law is enacted. Nikah halala cannot be done as a condition or intention to make her lawful to her ex-husband. After divorce, an original spouse may re-marry again. Nikah halala is mostly used in countries that have accepted the triple talaq.

The husband is allowed to make 3 talaqs during his marriage. Once this takes place, there is no reversing it. She is now free to remarry and move on with her life. It is irrelevant to the new marriage of the wife, and it's valid regardless of whether it can be revoked. In this case, "halala" cannot be an agreed divorce. It has to be an arranged divorce. If she doesn't follow the plan, she will get married to the second husband without a legal contract. According to the Prophet Muhammad (pbuh), those who perform halala are severely cursed. This kind of punishment was enforced in Caliphate of Hazrat Umar. Islam relates that in the case of a married woman, her husband may not have sex with her.

In cases where a husband divorces his wife and wants to keep her as a wife, he must obtain a second marriage (nikah) (Trimizi). There is a wide misunderstanding of Hanafi fiqh, which greatly differs from the Quranic interpretation. Due to religious bias and poor research, Muslim clerics opposed to the Quranic concept of halala. Certainly, in the legal and religious framework there is no a prerequisite or programmes of divorce at the occasion of marriage. If a new marriage occurs with the intention of living together eternally and then it turns into disastrous due to hardship of circumstances, such marriage becomes permissible. There should be no secret methods in the creation of a new marriage and, if not, it will be invalid.

[5]Muslim 3491, 3492.

Sexual immorality is really possible in women just like men. After a person has been exposed to halala, it is likely that she would soon be involved in extra marital relations.

Al Nisa is because of that men and women are equal in laws. This means that women should come under the statute of marriage. We believe that halala confers a chance to indulge in desires.

We understood that this statement has mentioned marriage as a sin that is devoid of Islam's authenticity and rife with hypocrisy.

Remember that often Prophet Muhammad (PBUH) had warned his followers.

"Do I not warn you about the hired thug?".

The Companions asked, "Who are they?"

He replied that they are the ones who always cause problems.

A number of understandings are given by author Pir Kabir Shah Alazhari regarding this topic. "From here onwards it is the discussion about 3rd divorce (4) i.e. if he has given the 3rd divorce as well, then until she marries someone in the same way as she married the first husband and then the second husband after consummating the marriage does not divorce per his free will, she can marry the first husband again. This is a clear order from Quran which is not subject to any interpretation. Now-a-days a solution has been sought in terms of halala for which Prophet Muhammed (PBUH) has ordered "Allah's curse on the person doing halala and the one for whom it is being done.

The quotations by Prophet Muhammad (PBUH), Hazrat Umar (RA) and Hazrat Uthman (RA) are very clear now. When such highly regarded verdicts are made, Halala is no longer understood.

Understanding of Hadith

Sahih-International
If women divorce their husbands and they are secure in themselves, they can remarry their husbands if they agree amongst themselves on an acceptable basis. This implies that whoever believes in Allah and the Last Day be sure to follow it. That's better for you and more pure, and God knows what is in your heart.

Shakir
And when you have divorced women and they have ended their term (of waiting), then do not prevent them from marrying their husbands when they agree among themselves in a lawful

manner; with this is admonished he among you who believes in Allah and the last day, this is more profitable and purer for you; and Allah knows while you do not know.

Pickthall
Once women have divorced their husbands and reached their term; don't place difficulties in their way if they choose to marry their ex-husbands. This is a reminder for him who believes in Allah and the Last Day. That is better for you, and it is cleaner. God knows; you do not know.

From the above examples, it can clearly be understood that Nikah halala has no legal basis in the Quran and that Muhammad himself strongly denounced its practice. There are many things that Muslims do differently than Islam, and we must understand this. Nikah halala violates a woman's right to live under religious law and to live equally.

Indian Position and Relevant Laws:
This issue is of critical importance because there is a serious type of discrimination against Muslim women in Singapore. To correct the injustice faced by women, the legislature should first repeal unfair discriminatory laws.

The Supreme Court has declared that Nikah Halala is a violation of human rights as it violates the human rights of women. Chief Justice Dipak Misra and the rest of the justices continued to hear the petition of one of the petitioner.

As a citizen of India, Muslim women are protected by special governmental guarantees because they possess special rights and special privileges. Although "Halala" is still considered controversial, the Hanafi School of law supports the legality of it. If Triple Talaq is allowed, women's rights will be violated along with their equality.

Women subjected to this type of practice suffer deeply, but can still escape if they embrace it. This has been determined as a means to discourage divorce as a step toward reconciliation with one's spouse. The objection is invalid due to lack of supporting reasoning.

Conclusion
In March 2013, a collection of petitions to the Supreme Court requested that "*nikah halala*" be made unconstitutional, and polygamy be restrained. One of the petitioners maintained that Nikah Halala is considered as rape and polygamy under section 375 of the Indian Penal Code and section 494 of Indian Penal Code (triple talaq). On April 11, the Supreme Court warned the government concerning its legislative process concerning the Triple Talaq Bill. After the Supreme Court banned Triple Talaq, the government implemented a bill to put forth a law against the practice. The bill is still being considered by the Indian government. This proposed bill prohibits triple talaq while also providing penalties for the husband.

Discussing the issue of personal law wouldn't resolve controversy between different groups of Indians. In the case that the husband and the wife disagree, it is not proper for the divorce to occur. Therefore, it is imperative that irrevocably divorced women cannot remarry. Because Islamic divorce procedures are so clear-cut, people would hesitate to remarry a divorced couple simply because they simply read the Qur'an. Another argument in favor of the author's position is the fact that the unjustified legitimization of instant talaq has caused the abominable circumvention of the Quran. This is because a pliable person is set up to marry a divorced woman, consummate the marriage overnight, and the next day divorce her to legitimize her new married status with the original man. Misunderstood religious practices which cause harm to an innocent woman or girl are called *halala* or *nikah al-tahleel*. In spite of the barbaric manner in which nikah halala is administered, the inhumane manner of triple talaq is redundant.

Intellectual Property Rights and Public Health

Dr. Shiv Shankar Singh[1]

Introduction

Intellectual property is intangible property, that is, the result of creativity (such as patents or trademarks or copyrights). Intellectual property is a form of knowledge to which societies have decided that is can be assigned like specific property rights. A patent is an exclusive right awarded to an inventor to prevent others from making, selling, distributing, importing or using the invention, without license or authorisation, for a fixed period of time (India stipulates 20 years minimum from filing date).Patent rights are being extended around the world through the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Doha Declaration on the TRIPS Agreement and public health recognized that developing countries with insufficient or no manufacturing capacity in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. The TRIPS agreement will give rise to factors that can put access to medicines out of reach for millions of people in the developing world. Public health advocates propose to abandon pharmaceutical patents or impose a legal duty on pharmaceutical companies to make essential medicines accessible. This paper investigates the monopolistic rights and practices in the pharmaceutical field, the gravity of the public health problem and the status of patenting and medicines access to in least-developed countries and developing countries. The paper argues that a patent is a minor factor for access to medicines so for as developed countries are concerned but an important factor in least-developed countries and developing countries. But compulsory licensing or other practical solutions can reduce its impact, and intellectual property and public health.

TRIPS Agreement and Public Health

Access to essential medicines is a human right. TRIPS Agreement aims to protect the intellectual property rights of the creator, impediments to trade, adequate IPR protection, to ensure that enforcement measures do not lead to barriers to trade and to cater to the special needs of developing and least-developed countries. Patent is intangible intellectual property and an incentive mechanism for research and development of new drugs. Patents should be managed so as to protect interests of patent holder, as well as, safeguard public health principles. TRIPS Agreement protected intellectual property and introduced the most drastic harmonizing effect with respect to pharmaceutical patents. This paper examines TRIPS Agreement, Doha Ministerial Declaration related provision of public health, WHO's Commission on IP, Innovation and Public Health and compulsory licences in patent. This

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paper aims to initiate a serious debate on intellectual property rights and public health in international perspective.

TRIPS Agreement aims to protect the IP rights of the creator. IP rights are the rights given to people over the creations of their minds. Creators can be given the right to prevent others from using their inventions, designs or other creations and to use that right to negotiate payment in return for others using them.But Article 7 of the TRIPS Agreement provided that 'IP contributing to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. 'Members in formulating or amending their laws may adopt measures necessary for the protection of public health and nutrition and take measures to promote public interests in sectors of vital importance to their socio-economic and technological development.[2]They may adopt appropriate measures to prevent the abuse of IPRs by right holders or the resort by them to practices that unreasonably restrain trade or adversely affect the international transfer of technology.[3]Objects of TRIPS Agreement to promote the public interest in sectors of vital importance to their socio-economic, technological development prevent the abuse of IPRs and unreasonably restrain trade.

The general rule on patentable subject matter contained under the TRIPS Agreement is that, patents shall be available for all inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[4] Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.[5]Members may also exclude from patentability: diagnostics, therapeutic and surgical methods for the treatment of humans or animals and plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes, and provides for a review.[6] However, health care education and technology transfer are also critical for developing countries. Doha Declaration of 2001 addresses circumvention of patent rights for access to essential medicines. WTO's mission is to lower trade barriers and provide a platform for trade negotiations between its member countries. But TRIPS has been criticized for not considering the needs of developing countries and forcing them to adhere to global IP standards. Increased IP standards can negatively impact access to essential medicines in developing countries.

Article 30 of the TRIPS Agreement establishes the general parameters for exceptions to the exclusive rights envisaged in article 28 the Agreement. The rule is that exceptions to the

[2] Art. 8(1) of TRIPS Agreement, 1994, available at http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm accessed on 06/06/2018 at 02:30 pm.
[3] Art. 8(2) of TRIPS Agreement, 1994
[4] Art. 27(1) of TRIPS Agreement, 1994
[5] Art. 27(2) of TRIPS Agreement, 1994
[6] Art. 27(3) of TRIPS Agreement, 1994

patent rights are permissible provided that, taking into account the legitimate interests of third parties, the exceptions: (1) must be limited; (2) should not unreasonably conflict with the normal exploitation of the patent; and (3) should not unreasonably prejudice the legitimate interests of the patent owner. There is no closed list of exceptions but includes, among others, research and experimentation exception, the early working exception (bolar exception), preparation of medicines for personal use and prior use.

Article 31 of TRIPS establishes an additional exception, referred to in the Agreement as use without the authorisation of the right holder, and special rules for the use of the exception. This requirement may be waived by a Member in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. Compulsory licensing as a policy mechanism which can be used to address a number of situations in the context of public health including: high prices of medicines, anti-competitive practices by pharmaceutical companies, failure by pharmaceutical patent holders to sufficiently supply the market with needed medicines, emergency public health situations, and, the needs for establishing a pharmaceutical industrial base.

Compulsory licensing is gratified when a government allows someone else to produce the patented product or process without the consent of the patent owner but compulsory licensing and government use of a patent without the authorization of its owner can only be done under a number of conditions aimed at protecting the legitimate interests of the patent holder. If a compulsory licence is issued, adequate remuneration must still be paid to the patent holder.

TRIPS Agreement and public health (Doha Declaration 2001)

In the Doha Ministerial Conference in November 2001, WTO member states agreed that the TRIPS agreement does not and should not prevent members from taking measures to protect public health. They underscored countries ability to use the flexibilities that are built into the TRIPS Agreement, including compulsory licensing and parallel importing. And they agreed to extend exemptions on pharmaceutical patent protection for least-developed countries until 2016.

Separate declaration on the TRIPS Agreement and public health provided that the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.[7]The intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.[8]The TRIPS Agreement does not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in

[7] Para 1 of the WTO Ministerial Declaration on the TRIPS agreement and public health Adopted on 14 November 2001, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm accessed on 06/06/2018 at 19:30 pm.

[8] Id., Para 2.

particular, to promote access to medicines for all.[9] In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

Each member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.[10]Each member has the right to determine what constitutes a national emergency or other circumstance of extreme urgency.[11]Leave each member free to establish its own regime for exhaustion without challenge, subject to the most favourable nation and national treatment.[12]The WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. These provisions in the Doha Declaration ensure that governments may issue compulsory licenses on patents for medicines, or take other steps to protect public health.[13]TRIPS Agreement says products made under compulsory licensing must be predominantly for the supply of the domestic market. This has an impact on countries unable to make medicines and therefore wanting to import generics. They would find it difficult to find countries that can supply them with drugs made under compulsory licensing. This declaration makes it clear that each member is free to determine the grounds upon which the licences are granted. This, for example, is a useful corrective to the view sometimes expressed that some form of emergency is a pre condition for compulsory licensing.

The TRIPS Agreement is to promote access to medicines for all, research and development into new medicines.[14] The TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.[15]Doha Declaration recognizes the gravity of public health problems in developing/least developed countries. The TRIPS Agreement is to provide flexibility which includes the right to grant compulsory licenses and the freedom to determine the grounds upon which such licences are granted.

On 30 August 2003, WTO members agreed on legal changes to make it easier for countries to import cheaper generics made under compulsory licensing if they are unable to manufacture the medicines themselves. The decision waives exporting countries obligations. Any member country can export generic pharmaceutical products made under compulsory licences to meet the needs of importing countries, provided certain conditions are met.

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[9] Id., Para 4.
[10] Id., Para 5(b).
[11] Id., Para 5(c).
[12] Id., Para 5(d).
[13]Id., Para 6.
[14] Para 17 of Doha WTO Ministerial Declaration Adopted on 14 November 2001, available on http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#top accessed on 10/05/2018 at 11:25 am.
[15] Id., para 19.

WHO's Commission on Intellectual Property Rights and Public Health

Patent pools of upstream technologies may be useful in some circumstances to promote innovation relevant to developing countries. WHO and WIPO should consider playing a bigger role in promoting such arrangements, particularly to address diseases that disproportionately affect developing countries.[16]WHO's World Health Assembly in 2003 was an attempt to gather all the stakeholders involved to analysis the relationship between intellectual property rights, innovation and public health, with a particular focus on the question of funding and incentive mechanisms for the creation of new medicines, vaccines and diagnostic tests, to tackle diseases disproportionately affecting developing countries.[17]WHO urge countries, where appropriate, to use the intellectual property and public health, in order to reduce the price of HIV medicines and expand access to people most in need.These are following WHO strategy on research for health[18]:

a) Draft WHO strategy on research for health,
b) Report on financial and administrative implications for the secretariat of resolutions proposed for adoption by the executive board or health assembly
c) Global ministerial forum on research for health,
d) Pandemic influenza viruses and access to vaccines and other benefits,
e) Promote global health sector strategy on HIV/AIDS and Cancer,
f) Promote public health, innovation and intellectual property,
g) Promote international trade in health,
h) Scaling up treatment and care within a coordinated and comprehensive response for HIV/AIDS,
i) Ensuring accessibility of essential medicines,
j) WHO medicines strategy,
k) Scaling up the response to HIV/AIDS,
l) Revised drug strategy.

Commission made recommendations to foster innovation and improve access and analysed various effects of intellectual property rights on research, development of medical products in both developed and developing countries and access to them in developing countries. Considered impact of other funding and incentive mechanisms, and how to foster innovation capacity in developing countries and concluded that intellectual property rights provide important incentives for the development of new medicines, but do not provide an effective incentive when patient populations are small or poor.

The global strategy on public health, innovation and intellectual property aims to promote new thinking on innovation and access to medicines, as well as, provide a medium-term

[16] WHO Commission on Intellectual Property, Innovation and Public Health, April 2006, available at http://www.who.int/phi/documents/en/ accessed on 10/05/2018 at 11:25 am.
[17] Public health, innovation and intellectual property rights: unfinished business available at http://www.who.int/bulletin/volumes/84/5/editorial10506html/en/index.html accessed on 10/05/2018 at 11:44 am.
[18] Available at http://www.who.int/phi/documents/en/ accessed on 10/05/2018 at 12:10 pm.

framework for securing an enhanced and sustainable basis for needs-driven essential health research and development relevant to diseases which disproportionately affect developing countries, proposing clear objectives and estimating funding needs in this area.The eight elements of the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (GSPOA), 2008 are:[19]

a) prioritizing research and development needs
b) promoting research and development
c) building and improving innovative capacity
d) transfer of technology
e) application and management of intellectual property
f) improving delivery and access
g) promoting sustainable financing mechanisms
h) establishing monitoring and reporting systems

The Doha Declaration clarifies the right of governments to use compulsory licensing as a means of resolving tensions that may arise between public health and intellectual property. Developing countries should provide in their legislation for the use of compulsory licensing provisions, consistent with the TRIPS agreement, as one means to facilitate access to cheaper medicines through import or local production.

Compulsory Licence and Public health

A compulsory license, also known as statutory license, provides that the owner of a patent licenses the use of their rights against payment either set by law or determined through some form of arbitration. In essence, under compulsory license, an individual or company seeking to use a patent can do so without seeking the patent holder's consent, and pays the patent holder a set fee for the license. Compulsory licensing is certainly the backbone of patent laws. Production of /access to quality affordable generic medicines is therefore key in making life-extending treatment available to more people who need it. Need for Compulsory Licensing is to reduce prices if patented drugs are unaffordable and/or unavailable. A compulsory license for local production is often the only solution to solve procurement problems, increase local availability of drugs and save on costs for patients and the national health budget. It increases the power of the Ministry of Health to purchase drugs and medicines from sources independent of the patentee. Compulsory Licensing allows generic competition and license to produce /sell to competitor to reduce prices. The question of constraints that would emerge after the implementation of TRIPS has been a subject of serious concern and was discussed in the TRIPS Council of the World Trade Organisation during 2001. The issue was further hotly debated in the Doha Ministerial Conference held in November 2001. The Doha Declaration on TRIPS Agreement and Public Health clarifies that sufficient flexibilities and freedom to determine the grounds upon which compulsory licences can be granted are available to

[19] Member States adopted the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (GSPOA) at the 61st WHA 2008 (Resolution WHA 61.21), available at http://www.who.int/phi/en/ accessed on 13/05/2018 at 14:44 pm.

member countries. It is now up to member countries to exercise their right and make suitable provisions in their national legislations.

The TRIPs Agreement also sets out specific provisions that shall be followed if a compulsory license is issued, and the requirements of such licenses. TRIPs provide that the requirements for a compulsory license may be waived in certain situations, in particular cases of national emergency or extreme urgency or in cases of public non-commercial use. Authorization of such use shall be considered on its individual merits.[20]Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. [21]

The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization.[22]The legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member.[23]Decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member.[24] Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive.[25]TRIPS require that compulsory licenses be used "predominantly" for local markets, a requirement that complicates the ability of countries to import drugs manufactured overseas.[26]

The grounds on which compulsory licenses are granted are freely to be determined by national laws. TRIPS do not impose any limitations and allows also the use of compulsory licence to tackle public health crisis.Art.31 rather regulates a long list on the procedure to be followed and terms to be included in compulsory licence.Art.31 (f) requires a production under a compulsory licence to be predominantly for the supply to domestic market. Developing countries which lack domestic production facilities cannot produce ‘at home’ and cannot rely on imports from countries where the drug is under patent protection. HIV/AIDS, Malaria, TB and the patented inventions (products, processes) needed to address public health problems. Generally, all least developed countries, developing countries and Countries in transition can use the system as importers.

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[20] TRIPS Agreement, 1994, Art. 31(a), available on http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm accessed on 15/05/2018 at 09:15 am.
[21] Art. 31(b) of TRIPS Agreement, 1994.
[22] Art. 31(h) of TRIPS Agreement, 1994.
[23] Art. 31(i) of TRIPS Agreement, 1994.
[24] Art. 31(j) of TRIPS Agreement, 1994.
[25] Art. 31(k) of TRIPS Agreement, 1994.
[26] Art. 31(f) of TRIPS Agreement, 1994.

India has compulsory licenses for virtually any use of the exclusive rights granted by patentin cases of national emergency, extreme urgency, public non commercial use including public health crises relating to AIDS, TB, Malaria, Cancer etc.

According to Article 31(h) of TRIPS Agreement the patent owner is to be paid a license fee that will provide adequate remuneration that reflects the economic value of the authorization (i.e., the economic value of the license). Indian law provides that the terms of the license are to be set so as to provide remuneration to the patent owner that is reasonable considering the nature of the invention, the expenditure made by the patent owner in developing the invention and the cost of obtaining the patent and "other relevant factors.

Compulsory licence and Public Health in India

In India the government has option to issue a compulsory licence on life saving drug which could bring down its price. Compulsory licence shall be available for manufacture and export of patent pharmaceutical products to any country having insufficient or no manufactucturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country.[27]If the Central Government is satisfied in respect of any patent or expedient in the public interest that compulsory licences should be granted at any time. The controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.[28]Compulsory license is issue where the controller is satisfied at any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the controller for grant of compulsory licence on patent on any of the following grounds, namely:-

a) The reasonable requirements of the public with respect to the patented invention have not been satisfied, or
b) The patented invention is not available to the public at reasonably affordable price, or
c) The patented invention is not worked in the territory of India,[29]
d) A circumstance of national emergency; or
e) A circumstance of extreme urgency; or
f) A case of public non-commercial use,[30]
g) To facilitate transfer of technology,
h) To promote public health and nutrition,
i) Promote socio-economic development, trade etc.

It is necessary compulsory licence may arise or is required, as the case may be, including public health crises, relating to AIDS/HIV, cancer, tuberculosis, malaria or other epidemics,

[27] Sec. 92A (1) of the Patent Act, 1970.
[28] Sec. 92A (2) of the Patent Act, 1970.
[29] Sec. 84 (1) of the Patent Act, 1970.
[30] Sec. 92 of the Patent Act, 1970.

he shall not apply any procedure specified under this Act in relation to that application for grant of licence under this section. The following general purposes of compulsory licences, that is to say,[31]

a) that patented inventions are worked on a commercial scale in the territory of India; or
b) that the interests of any person for the time being working; or
c) that the developing an invention in the territory of India under the protection of a patent are not unfairly prejudiced,
d) That the patent shall be available to the public at the lowest prices.

A compulsory license for local production is often the only solution to solve procurement problems, increase local availability of drugs and save on costs for patients and the national health budget. Increase the power of the Ministry of Health to purchase drugs and medicines from sources independent of the patentee. Increase access to affordable medicines of patients in India and other developing countries. Compulsory Licensing allows generic competition and license to produce /sell to competitor to reduce prices.

Patents and Access to Medicine in India

A patent grants the inventor the right to prevent others from making, selling, importing, or using the protected invention without authorization for a fixed period of time within a country. Patented medicines are generally more expensive than their generic counterparts. High prices for medicines in developing countries have seriously compromised the ability of governments, communities, and other players in the health sector to effectively manage infectious diseases. High drug prices leave governments with little money left over to spend on other related health needs like infrastructure and training. The TRIPS permitted compulsory licence as a legally recognized means to overcome barriers in accessing affordable medicines, where a government allows a company to manufacture a patented drug without the consent of the innovator company. Compulsory licences in cases where patent holders choose to supply the market through imports rather than through local production. This was aimed primarily at transferring production of AIDS/HIV, cancer, tuberculosis, malaria or other epidemics drugs to domestic firms and government agencies in order to reduce their prices below those on the U.S. and E.U. markets.[32]A compulsory licence, if issued on the medicine that treats chronic myeloid leukemia, will allow the government to source generic versions of the patent drug and sell them at a fraction of the cost. The government of India is studying options to issue a compulsory licence on life saving anti cancer drug dasatinib to reduce its price by over 90%. A compulsory licence on dasatinib will reduce the price to around Rs. 8000 for a month's therapy from Rs. 1.65 lakh for "Sprycel", the drug marketed by Bristol-Myers Squibb (BMS), bringing relief to leukaemia

[31] Sec. 89 of the Patent Act, 1970.
[32] The TRIPS flexibilities-access to medicines debate Brazil's Industrial Property Law (Law 9279, 1997), available at http://www.surjournal.org/eng/conteudos/getArtigo8.php?artigo=8,artigo_chaves.htm accessed on 17/05/2018 at 18:34 pm.

patients.[33]The pharmaceutical industry argues that the issue of access to medicines is not a patent's issue but it is a social welfare policies.

In India compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country. The Controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him[34]provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India." There was indeed a flaw in the earlier Section 92A. Even in countries which do have a patent law, many drug products are not patented, and thus no compulsory licence can be granted.

The grant of a patent in respect of any medicine or drug is subject to the condition that it may be imported by the Government for the purpose of merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.[35]

Indian law provides that the terms of the license are to be set so as to provide remuneration to the patent owner that is reasonable considering the nature of the invention, the expenditure made by the patent owner in developing the invention and the cost of obtaining the patent and "other relevant factors. The right atmosphere has been created to promote innovation and investment in India by multinational Pharmaceutical Companies should now happen. This will ultimately help in moving the world from proprietary science dominated by a few countries to partnership in science which will benefit all. Indian Patent Act is major way forward in protecting and promoting innovations while at the same time retaining India's ability to be a low cost producer / supplier of pharmaceuticals to the developing world. Improved patent office infrastructure and adequate training of all personnel involved, including the judiciary, is vital for ensuring that the legislative intent of eliminating ever greening of patents is fully met.

Conclusion

Intellectual property rights provide necessary incentives in drug discovery and development for public health. Intellectual property rights and public health can hinder access to affordable medicines for poor people. The Doha Declaration on the TRIPS Agreement recognized that developing countries with insufficient or no manufacturing capacity in the pharmaceutical

[33] The Times of India, February 8, 2014.
[34]Id., Sec. 92A.
[35]Id., Sec. 47 (4).

sector could face difficulties in making effective use of compulsory licensing. The TRIPS agreement will give rise to factors that can put access to medicines out of reach for millions of people in the developing world.

Public health advocates propose to abandon pharmaceutical patents or impose a legal duty on pharmaceutical companies to make essential medicines accessible. The monopolistic rights in the pharmaceutical field, the gravity of the public health problem and the status of patenting and medicines access to in least-developed countries and developing countries. A patent is a minor factor for access to medicines so for as developed countries are concerned but an important factor in least-developed countries and developing countries. But compulsory licensing or other practical solutions can reduce its impact, on intellectual property and public health.

However, today TRIPS Agreement is to promote the public interest in sectors of vital importance to their public health. Globalization has given acceptance to technology in the whole world. We may conclude by saying that the public health is facing the problems in developing and least developed countries. Development of public health is entirely left to the mercy of the least developed countries. Those resulting from HIV/AIDS, tuberculosis, malaria…. But member of the TRIPS Agreement should not prevent taking measures action to protect public health. There is need for WTO Members to use the provisions of the TRIPS Agreement, which provide flexibility for this purpose.

Consumer Rights under the Consumer Protection Bill, 2018

Dr. Kabindra Singh Brijwal[1]
Dr. Pradeep Kumar[2]

"A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us the opportunity to do so."
……..……***Mahatma Gandhi***[3]

Introduction

Consumers play a vital role in the development of a nation and also consumers is the real deciding factor for all economic activities in world. Each company, manufacturers or service providers has as a socio-economic impact on the people and has to deliver the goods and/or services and the standard of living as per the aspirations of the people. Therefore, consumer is an important component of society and business has an obligation to him. Consumer protection is a concept that was first introduced by *John F. Kennedy*; the 35th President of the United States, spoke about this concept in a special speech to the Congress on 15th March, 1962. His speech stressed protecting the consumer's interest.

John F. Kennedy also spoke about the four basic rights of the consumer, like Right to Safety, Right to be Informed, Right to be Heard and Right to Choose. His discussion sparked a deliberation and subsequent legislations to protect consumers. 15th March is celebrated as World Consumer Rights Day, taking inspiration from *John. F. Kennedy*. Another important name in the international sphere while discussing consumer protection is *Ralph Nader*, the well-known American Advocate. He is the author of the book "*Unsafe at Any Speed*" which indicates the faulty design of automobiles. The book led to a series of landmark laws that have prevented multiple motor vehicle accidents thus curbing deaths and injuries. He revolutionized consumer protection in the United States of America.

March, 15 every year is celebrated as 'World Consumer Rights Day'. The theme of the 'World Consumer Rights Day' 2018 is "Making Digital Marketplaces Fairer". In India we have started celebrating 24th December every year as the National Consumer Rights Day. 24th of December is celebrate as National Consumer Rights Day commemorate the coming into effect of the Consumer Protection Act, 1986. To provide simple, speedy and inexpensive

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[3] In a speech in South Africa in 1890 Mahatma Gandhi said.

redressal of consumer disputes, the Consumer Protection Act, 1986 envisages a *three tier* quasi-judicial machinery at the District, State and National levels.

If we talked about the historical perspective, *Kautilya, Chandragupta* and *Alauddin Khilji* were major supporters of consumer protection in India. According to *Kautilya*, 'The trade guilds were prohibited from taking recourse to black marketing and unfair trade practice'. Severe punishments were prescribed for different types of cheating. *Kautilya's Arthasastra* is considered to be a treatise and a prominent source, describing various theories of statecraft and the rights and duties of subjects in ancient society. Though its primary concern is with matters of practical administration, consumer protection occupies a prominent place in *Arthasastra*. It describes the role of the State in regulating trade and its duty to prevent crimes against consumers.

During *Chandragupta's* period, good trade practices were prevalent. For example, goods could not be sold at the place of their origin, field or factory. They were to be carried to the appointed markets (Panya Sala) where the dealer had to declare particulars as to the quantity, quality and the prices of his goods which were examined and registered in the books. Every trader was required to take a license to sell. A trader from outside had to obtain permission. The superintendent of commerce fixed the whole-sale prices of goods as they entered the Customs House. He allowed a margin of profit to fix retail prices. Speculation and cornering to influence prices were prohibited.

Thus, the State bore a heavy responsibility for protecting the public against unfair prices and fake transactions. There were severe punishments for smuggling and adulteration of goods. For example, public health was guarded by punishing adulteration of food products of all kinds, including grains, oils, salts, perfume and medicines. Also during Chandragupta's period, easy access to justice for all, including consumers, was considered of great importance.

The rule of *Alauddin Khalji,* strict controls was established in the market place. In those days, there was unending supply of grain to the city and grain-carriers sold at prices fixed by the Sultan. There was a mechanism for price-enforcement in the market. Similarly, shop-keepers were punished for under weighing their goods. There are six rights of consumer which are provided in the Consumer Protection Act, 1986. The purchase of goods and services entitles the consumer to certain rights which are as follows –

Consumer Rights in India

1. Right to Safety
2. Right to be Informed
3. Right to Choose
4. Right to be Heard
5. Right to Seek Redressal
6. Right to Consumer Education
7. Right to Healthy Environment

1. Right to Safety

A consumer has the right to safety against such goods and services that are hazardous to his health, life and property. For example, counterfeit and substandard drugs; appliances made of low quality raw material, such as iron, pressure cooker, etc. and low quality food products like bread, milk, jam, butter, etc.

The consumers have the right to safety against the loss caused by such products.
It is applicable to specific areas like healthcare, and food processing; this right is spread across the domain having a serious effect on the health of the consumers or their well being viz. Automobiles, Housing, Domestic Appliances, and Travel etc.

2. Right to be Informed

A consumer has the right to be provided with all the information on the basis of which he decides to buy goods or services. Such information may relate to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, a producer is required to provide all these information in a proper manner, so that the consumer is not cheated.

3. Right to Choose

A consumer has the absolute right to buy any goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner.

If any seller does so, it will be deemed as interference in his right to choice. The definition of Right to Choose as per the CP Act is 'the right to be assured, wherever possible, to have access to a variety of goods and services at competitive prices'.

4. Right to be Heard

A consumer has the right that his complaint be heard. This right also empowers the consumers to fearlessly voice their complaints against the defective products and the erring producer/company /seller.

5. Right to Seek Redressal

This right provides compensation to the consumers against unfair trade practice of the seller. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers' is referred to as the right to redressal according to the Consumer Protection Act.

The government of India has been bit more successful with regard to this right. The Consumer courts like District Consumer Disputes Redressal Commission at district level, State Consumer Disputes Redressal Commissions and National Consumer Disputes Redressal Commissions have been incorporated with the help of the Consumer Protection Act.

6. Right to Consumer Education

Consumer education is an important part of this process and is a basic consumer right that must be introduced at the school level. The right of every Indian citizen to have education on matters regarding consumer protection as well as about her/his right is regarded as the last right provided by the Consumer Protection Act. The right makes sure that the consumers in the country have informational programs and materials which are easily accessible and would enable them to make purchasing decisions which are better than before.

Consumer education might refer to formal education through college and school curriculums as well as consumer awareness campaigns being run by non-governmental and governmental agencies both. Consumer NGOs, having little endorsement from the government of India, basically undertake the task of ensuring the consumer right throughout the country. India is found to be 20 years away from giving this right that gives power to the common consumer.

It means to have access to programs and information that help consumers make better decisions before and after purchase. Instructions and guidelines for consumers are issued by the government departments and NGOs.

The consumer movement is a mass social movement that seeks to protect the rights of consumers. "*Jago Grahak Jago*" a consumer affairs ministry initiative started in year 2005 for Consumer Complaint, Consumer Awareness, and Consumer Grievances. The government uses print & electronic media advertisements, audio and video campaigns to educate consumers about rules regarding sales and purchase like the definition of maximum retail price (MRP), for instance and help them make an informed to consumers Complaints 24x7 Monday to Sunday.

7. Right to Healthy Environment

Consumers have a right to protected against environmental pollutions so as to improve quality of life. This right includes protection against degradation of environment. Non-renewable resources of the country need to be concerned future generation. Consumers has the right to live and work in an environment which is neither threatening nor dangerous but permit a life of dignity and well being.

Consumer Rights under the CP Bill, 2018

Recently the Consumer Protection Bill, 2018[4] (CP Bill, 2018) introduced in January 2018 in the winter session of Parliament, seeks to replace the three decade old Consumer Protection Act, 1986, which was amended thrice but is still found wanting in tackling the challenges posed by online transactions and digital marketing.

The CP Bill, 2018 to replace the Act was introduced in 2015, but has been withdrawn post the introduction of the 2018 Bill. The bill also deals with Rights of consumers: Six consumer

[4] Bill No. 1 of 2018.

rights have been defined in the Bill, including the right to: (i) be protected against marketing of goods and services which are hazardous to life and property, (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services, (iii) be assured of access to a variety of goods or services at competitive prices, and (iv) seek redressal against unfair or restrictive trade practices. For better protection of consumer rights in India CP Bill, 2018 proposed several new provisions.

Central Consumer Protection Authority (CCPA)[5]

Executive Agency provides relief to certain classes of the consumers. The CCPA will be empowered to-

A. Conduct investigations into violations of consumer rights and institute Complaints /Prosecution;
B. Order recall of unsafe goods and services;
C. Order discontinuance of Unfair Trade Practices and Misleading Advertisements;
D. Impose penalties on Manufactures /Endorsers /Publishers of Misleading Advertisements.

Pecuniary Jurisdiction

The CP Bill, 2018 has increase pecuniary jurisdiction of the Commissions. The major changed is proposed in pecuniary jurisdiction in the CP Bill, 2018.

- District Consumer Redressal Commission - Claim value does not exceed ₹ 1 crore;
- State Consumer Redressal Commission - Claim value exceed ₹ 1 crore but is less than ₹ 10 crore;
- National Consumer Redressal Commission - Claim value exceed ₹ 10 crore.

For better protection of the consumer, the CP Bill, 2018 propose E-filing, Videoconferencing for hearing from place of residence are propose in 2018 Bill also.

Settlement by Mediation

The C P Bill, 2018 also speak Alternate Dispute Resolution (ADR) mechanism reference to mediation by Consumer Forum wherever scope for early settlement exists and parties agree for it. At the first hearing of the complaint after its admission, or at any later stage, if it appears to the District Commission that there exists elements of a settlement which may be acceptable to the parties, except in such cases as may be prescribed, it may direct the parties to give in writing, within five days, consent to have their dispute settled by mediation in accordance with the provisions of Chapter V of CP Bill, 2018.

Product Liability

In the CP Bill, 2018 a manufacturer or product service provider or product seller to be responsible to compensate for injury or damage caused by defective product or deficiency in services. The Basis for product liability action will be like Manufacturing defect; Design defect; Deviation from manufacturing specifications; Not conforming to express warranty;

[5] Newly incorporate by Consumer Protection Bill, 2018 (Bill No. 1 of 2018).

Failing to contain adequate instruction for correct use; Services provided are faulty, imperfect or deficient.

For instance, if the quantity and quality of the product do not conform to those promised by the seller, the buyer has the right to claim compensation. Several redressals are available to the consumer byway of compensation, such as free repair of the product, taking back of the product with refund of money, changing of the product by the seller.
After New CP Act, Consumer has a single point of access to justice, which is less time consuming. Additional swift executive remedies are Central Consumer Protection Authority (CCPA).

Conclusion
Today after more than three decades of passing of the Consumer Protection Act, 1986 majority of the people in India are not yet aware about the rights available to them. The United Nations and IOCU also have identified a bill of rights for consumers to which they feel everyone is entitled. The rights are choice, information, safety, voice, redress, a healthy environment, consumer education, and substance needs.

Lack of consumer education is the root of the problem of unawareness among the people of India about available rights and remedies in cases anything goes against the interest of consumer in India. It is predictable that the new CP Bill, 2018 may provide a better relief to the consumer in the market place and prove that the 'Consumer is King'. This main object of the Bill to appreciated for its simple, speedy, inexpensive and effective justice, and for less paperwork and formal procedures. It was considered to provide more effective protection to consumers than any other correspond legislation existing in the world.

Crime against Women and Human Rights with special reference to India

Dr. Vijay Kumar[1]

Introduction

Crimes against Women in India have always been issues of concern. The folks and society at large consider women as second class citizens. Though we admire and preach them in the name of Durga, Saraswati, Parvati and Kali, we also abuse her in the form of Child-marriage, Female infanticide, Sexual harassment, Dowry and so on. The status of women in India has been subject to many great alterations over the past few millenniums. From a largely unknown status in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been lively.

The status of women has varied in different periods of time. Crime against women is partly a result of gender relations that assumes men to be superior to women. Given the subordinate status of women, much of gender violence is considered normal and enjoys social sanction. Manifestations of crime include physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological crime through insults, acid attack, honour killing, humiliation, coercion, blackmail, economic or emotional threats, and control over speech and actions. In extreme, but not unknown cases, death is the result. These expressions of violence take place in a man-woman relationship within the family, state and society. Usually, domestic aggression towards women and girls, due to various reasons remain hidden. Cultural and social factors are interlinked with the development and propagation of violent behaviour.

The status of women in India has been subject to many great changes over the past few millennial. From a largely unknown status in ancient times through the low points of the medieval period, to the promotion of equal rights by many reforms, the history of women in India has been eventful. The current status of women cannot be properly understood without reference to the predecessor form of womanhood from which it evolved and the process by which it grew. So the status of women has been traced by dividing into historical phase's Ancient society, medieval society, and Modern society.

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Women's participation in the workforce as well as in other activities increased during the 19th and from the early period of 20th century due to the upliftment of women started by the influence of social reforms. As far as India is concerned, the social structure, cultural norms and value systems are important determinants of women's role and their position in society India has one of the most impressive sets of laws for women.

In recent years there has been an alarming increase in atrocities and crime against women in the country. It is estimated that the growth rate of crime against women would be higher than the population growth rate by 2010, which implies that progressively a greater number of women are becoming victims of violence. Throughout history, women in various continents of the world have been considered as the physically weaker sex. The gender differences and prejudice existing globally places women all over the world at various disadvantageous positions. Crimes against women are assertion of dominance over them and come from the baser instincts of society. As a matter of fact the problem of crime against women is not something new. Moreover violence against women is often not considered as violence because of general acceptance of man's superiority in the society. Women themselves also do not consider it as crime because of their misconstrued religious values and resulting socio cultural attitudes.

Gender crimes are a common problem prevailing in almost all the developing countries. Even in India the issue continues unabated creating many hassle and challenges for the social growth. The age old cultural beliefs and tradition have identified various issues of gender – based violence that over the period of time has become a major cause of harassment faced by the women.

In India where almost half of the populations are women, they have always been ill-treated and deprived of their right to life and personal liberty as provided under the constitution of India. Women are always considered as a physically and emotionally weaker than the males, whereas at present women have proved themselves in almost every field of life affirming that they are not less than men due to their hard work whether at home or working places. Behind closed doors of homes all across our country, people are being tortured, beaten and killed. It is happening in rural areas, towns, cities and in metropolitans as well. It is crossing all social classes, genders, racial lines and age groups. It is becoming a legacy being passed on from one generation to another. But offences against women which reflect the pathetic reality those women are just not safe and secure anywhere. According to the latest report prepared by India's

The National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide.

Around the world, one in five women has been found to be victims of rape in one's lifetime. Many rapes go unreported because of the stigma and trauma associated with them and the

lack of sympathetic treatment from legal systems. The insecurity outside the household is today the greatest obstacle in the path of women.

In recent years, there has been an alarming rise in atrocities against women in India. Every 26 minutes a woman is molested. Every 34 minutes a rape takes place. Every 42 minutes a sexual harassment incident occurs. Every 43 minutes a woman is kidnapped. And every 93 minutes a woman is burnt to death over dowry

Though technological advancements are considered a boon to society, but for women, in particular, this advancement has proved to be having terrible side effects. Crimes against women in every march of life are on a rise. Our purpose of the research is to study the various types of crime against women, their causes or reasons along with the type of punishment given under our penal laws. It aims to trace out the law passed by Government of India for the protection of women and children are where the government machinery is failed to control the same.

The research aims to identify the role of judiciary in India in evolving new vistas of jurisprudence regarding the imminent risk to the security and safety of women in our country. The research work goings-on to espouse the unhappiness of women in our present society. The research work aims at identifying the instrument and tools to address the problem. Today with the spread of modern education and awareness, women step out of the four walls of house and entered and proved her potential in almost every state of life, which were earlier exclusive male domains in our patriarchal society

In Conceptual and Constitutional foundation, has been devoted to represent the status of women in India. In ancient India, women occupied a very important position, in fact a superior position to, men. It is a culture whose only words for strength and power are feminine -"Shakti" means "power" and "strength." All male power comes from the feminine. Literary evidence suggests that kings and towns were destroyed because a single woman was wronged by the state. For example, Valmiki's Ramayana teaches us that Ravana and his entire people were wiped out because he abducted Sita. By Veda Vyasa's Mahabharatha teaches us that all the Kauravas were killed because they humiliated Draupadi in public.

Further this chapter envisages how the condition of women deteriorated through ages and was at its lowest fade during medieval times and where women stand today. It further incorporates that despite being provided equal status by constitution and remarkable work by women in various fields she is yet to get her dues.

Women under Indian legal frame work And secure method, various crimes have taken an aggravated form and new types have come to arena with the advancement of technology and changing social scenario in which women are coming out of four walls of houses to work in public as well as private sector.

In the various Crimes against Women with Recent alarming Trends. And this regard protection of women under judiciary recently there has been mass of criminal cases against women in India. The Constitution of India provides for special treatment of women, guarantees equality and prohibits discrimination. The ground situation more or less remains the same. The present chapter focuses on the various types of laws and policies which have been formed by government from time to time to alleviate the crime against women. Also the chapter focuses on the social perception regarding crime against women and how it in turn helps in decreasing of such crimes.

Indian Judiciary through Various Path Breaking Judicial Pronouncements.' Judiciary in India has always played a laudable role in eradicating social evils, and to bring social justice to masses. Supreme Court of India has devised various ways like PIL (epistolary) jurisdiction, relaxing *locus standi* criteria, allowing public interest litigation (PIL) and has played pro-active role to bring justice to every approach.

Through various cases several guidelines have been provided by the Apex Court to eradicate social evils and specially to curb crimes against women. Some recent judgements of apex court with some strict guidelines with a view to minimize crime against women. This chapter specifically provides various steps taken, guidelines given by judiciary to bring crime against women under control.

"Crime against women under Indian penal law." The semantic meaning of crime against women's direct or indirect physical or mental cruelty to women. Various kinds of violence against women are eve-teasing, molestation, acid attack, lovezehad, honour killing, bigamy, fraudulent marriage, adultery, abduction and kidnapping, rape, harassment of women at working place, wife beating, dowry death, female child abuse and abuse of elderly female etc.

Crime against women is rising at an alarming rate. In modern world where we talk of a civilised society, women liberty and empowerment, every day the pace of crime against women is rapidly increasing. According to one estimate there are more than thirty specific forms of violence against women from womb to last resting place. These are reported frequently in media and newspapers.

Offence against women in context of human rights, in this chapter , specifically provides various steps to protect women human rights with comparative study of Hindu, Islamic Era and Universal Declaration guidelines and remedies' given by judiciary to bring violation of human rights against women under control.

Illustrated protection of women under procedural law. And error of the court procedure for delay in justice or trial. Procedural regulations are the door, and the only door, to make to real what is laid down by substantive law. Procedural regulations enter into and condition all substantive law's becoming actual when there is a dispute. They help courts conduct their business. And, they establish uniform procedures within the courts. Finally, they provide information and instruction to those appearing before the courts, whether they are attorneys or

the parties' themselves. I disclosed compensatory remedies for victim under Indian law, special law , supreme court guideline etc. The purpose of this research effort is to look at policy issues and future oriented planning that can best enhance the role of women's contribution towards sustainable development in the whole country.

Conclusion

After all finally End of This chapter work covered the Conclusion and Suggestions. Crime and violence against women are on a rise unabated in one form or another, in spite of various laws and legislations to curb it. The main cause for it lies in the very roots of our upbringing of our children.

From the very beginning male child is taught that he is superior to his female counterpart, and this superiority feeling grows with him and when in future he has to compete with female counterparts he looks down upon them but when they prove superior to him, the feeling of revenge is vent out in various forms, or often anger is released on female as they are considered as physically weak and under their right and control by male. So, before anything else this mentality is required to be changed. First of all we will have to acknowledge that women also humans as male are, only after we can bring change to the existing situation. The researcher in this episode tries to bring various suggestions which can be of utmost important for the stakeholders.

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Ethics Governing Medical Negligence in Clinical Practice

Dr. Satish Kumar Vishwakarma[1]

Abstract

Medical Ethics which is a code of behavior imposed by the profession itself and voluntary accepted by doctors. In any profession the moral obligation is embedded, but when it comes to medical profession this obligation tends to have a great importance as it is directly related public health. Today ethical issues and moral challenges have become an increasingly complex aspect of a medical profession. Medical ethics is not merely a moral code but also a legally sanctioned code of conduct acceptable and normal within the medical profession. This does not mean that morality or moral theories do not influence medical ethics, but instead it should be understood, and practiced from a rational standpoint as is prevalent within the profession at a given point of time.

The code of medical ethics expressly says that doctors should be uninfluenced by motives of profit. This is because medical aid is a matter of service to humanity. Medical ethics is a set of moral principles which guides members of the medical profession in their dealings with others concerned. Medical ethics must be peeved as involving the moral maturation of medical professionals. Apart from the legislative control of the medical profession by the government there is yet another controlling mechanism upon medical practitioners. The basic objective of the medical profession is thus to serve the humanity with full respect and dignity of a man due to this obligation western developed countries have invoked moldered lens of judicial response for fully providing safeguards to protect the interests of patients. I would like to explore the Medical profession is a novel profession there should be high moral quality medical ethics to medical practitioner, during medical treatment they should be fair and concentrate. This paper deals with ethics governing medical negligence in clinical practice.

Keywords: Ethics, Medical Ethics, Medical Negligence, Clinical Practice

Introduction

Medical Ethics which is a code of behavior imposed by the profession itself and voluntarily accepted by doctors. In any profession the moral obligation is embedded, but when it comes to medical profession this obligation tends to have a great importance as it is directly related public health. Today ethical issues and moral challenges have become an increasingly complex aspect of a medical profession. Medical ethics are a set of moral principles which guides members of the medical profession in their dealings with others concerned. The basic *objective* of the medical profession is thus to serve the humanity with full respect and dignity of a man due to this obligation. Medical ethics are not merely a moral code but also a legally sanctioned code of conduct acceptable and normal within the medical profession.

Conceptual framework

What is Ethics?

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The term "ethics" can be generally defined as the principles governing moral behavior. The practice of ethics involves recommending concepts of right and wrong behavior. Ethics means what is right and wrong in human behavior.

Medical Profession: Trade or Profession?

In present Indian scenario the commercialization medical profession medical professional become traders. One hand contradictory manner it is debate on the subject. But the ground reality is a mass level medical profession is nothing it is only trading by qualified as well as non qualified medical practitioners.

Legal viewpoint

International Code of Medical Ethics 1948

The California Court of Apples in *Sago v. Leland Stanfored Jr. University Board of Trustees*[2] despite the fact that the case has been celled a landmark for its phrase informed consent, it also reflected continued judicial ambiguity over the proper balance between physician's discretion and a patient's rights of self-discrimination.

In *Schloendorff v. Society of New York Hospitals*[3] *Justice Benjamin Cardozo* issued what remains a classic statement of the principal of patient self-determination "Every human being of adult years and sound mind" has a right to determine what shall be done with his own body; and a medical practitioners who performs an operation without his patient's consent commits an assault, for which he liable in damages.

It is ethical case in case of *Dr. Savita Halappanavar* who died after Irish doctors refused to abort her fetus citing an orthodox ban. The University Hospital Galway in Ireland after doctors allegedly refused to terminate her pregnancy citing Catholic tenets. In this case it was submitted that a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done. But in this case she was ready for the termination of the pregnancy but later on she gave her consent; therefore it is violation of medical ethics that is prescribed in international code of medical ethics.

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

The code of Medical Ethics is the primary law binding the medical practitioners. They are laid out as general principals of medical practice and duties which the practitioner owes to patient, to the profession at large, to each and to the public. It will be instructive and interesting to have a broad idea of these principals and duties to find out what is right and wrong in the conduct of medical professionals.[4]

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[2] 317 p. 2d 170 (Cal.1957).

[3] 211 N.Y. 125, 105 N.E. 92 (1914).

[4] N.R. Madhava Menon, "Strengthening self-regulation in the Medical Profession for the Health of All," Legal *Aspects of Health Care*, edited by Dr. Ashok Sahi, Indian Society of Health Administrators, Bangalore, p. 1.

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (IMC (PCEE) R, 2002) enjoin the councils to prescribe standards of professional conduct and etiquette through the design of a code of ethics. This serves two purposes. *Firstly*, it provides practitioners with some professional guidelines when they start practice and *secondly*, the code sets the standard against which the nature and content of professional misconduct can be ascertained. The codes of ethics of the different branches of medicine follow a pattern. The areas covered include the duties and obligations of practitioners towards patients, duties towards other practitioners and duties towards the public. The content of unethical practices is also listed out.[5]

It is a medical practitioner's responsibility to maintain good medical practice.[6] The principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on scientific basis and should not associate professionally with anyone who violates this principle. The honored ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society.[7]

It is duty of a physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.[8]

A physician shall not aid or abet or commit any of the following acts which shall be construed as unethical. Soliciting of patients directly or indirectly, by a physician, by a group of physicians or by institutions or organizations is unethical. A physician shall not make use of him / her (or his / her name) as subject of any form or manner of advertising or publicity through any mode either alone or in conjunction with others which is of such a character as to invite attention to him or to his professional position, skill, qualification, achievements, attainments, specialties, appointments, associations, affiliations or honors and/or of such character as would ordinarily result in his self aggrandizement.[9]

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[5] Aditi Iyear & Amar Jesni, "Medical Ethics for Self-Regulation of Medical Profession and Practice," *Centre for Enquiry into Health and Allied Themes*, Research Centre of Anusandhan Trust, Survey No. 2804 & 2805, Aaram Society Road, Vakola, Santacruz East, Mumbai, 2000, p. 17.
[6] Chapter 1 Regulation 1.2, of IMC (PCEE) R, 2002.
[7] Chapter 1 Regulation 1.2.1, of IMC (PCEE) R, 2002.
[8] Chapter 2 Regulation 2.4, of IMC (PCEE) R, 2002.
[9] Chapter 6 Regulation 6.1.1, of IMC (PCEE) R, 2002.

The prescribing or dispensing by a physician of secret remedial agents of which he does not know the composition, or the manufacture or promotion of their use is unethical and as such prohibited. All the drugs prescribed by a physician should always carry a proprietary formula and clear name.[10] It is Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment.[11] The physician shall not aid or abet torture nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights.[12] And also no one shall be subjected to torture or to cruel, inhuman or degrading treatment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.[13]

On no account shall sex determination tests be undertaken with the intent to terminate the life of a female foetus developing in her mother's womb, unless there are other absolute indications for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971. Any act of termination of pregnancy of normal female foetus amounting to female feticide shall be regarded as professional misconduct on the part of the physician leading to penal erasure besides rendering him liable to criminal proceedings as per the provisions of this Act.[14]

But in other hand Section 3 of the Medical Termination of Pregnancy Act, 1971, it was submitted that a doctor is entitled to terminate the pregnancy under particular circumstances and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that without the consent of the woman it could not be done. He has also referred to the bed-head ticket and the other prescriptions to contend that on day one the complainant was not ready for the termination of the pregnancy but later on she gave her consent, therefore, no offence is made out. On the other hand, the provisions of Section 3 would not apply to the present case because they regulate and control the doctors in accordance with medical ethics.

If medical practitioners violate this regulation are liable to be punishment. It must be clearly understood that the instances of offences and of professional misconduct which are given above do not constitute and are not intended to constitute a complete list of the infamous acts which calls for disciplinary action, and that by issuing this notice the MCI and or State Medical Councils are in no way precluded from considering and dealing with any other form of professional misconduct on the part of a registered practitioner.

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[10] Chapter 6 Regulation 6.5, of IMC (PCEE) R, 2002.
[11] Article 5 of UDHR, 1948, General Assembly Resolution 217A (III) of 10 December 1948.
[12] Chapter 6 Regulation 6.6, of IMC (PCEE) R, 2002.
[13] Article 7 of ICCPR, 1966, General Assembly Resolution 2200A (XXI) of 16 December 1966.
[14] Chapter 7 Regulation 7.6, of IMC (PCEE) R, 2002.

Circumstances may and do arise from time to time in relation to which there may occur questions of professional misconduct which do not come within any of these categories. Every care should be taken that the code is not violated in letter or spirit. In such instances as in all others, the MCI and/or State Medical Councils have to consider and decide upon the facts brought before the MCI and/or State Medical Councils.[15]

Judicial Approach on Medical Ethics

In this case *R. v. Watson*[16] the conduct, apparent drunkenness, was reprehensible and a deliberate deviation by the physician from safe practice and the established norms of professional conduct, but this deviation did not seem to lead to any negligence in the diagnosis and treatment of the patient and accordingly the patient's death could not be attributed to the act or omission of the physicians.

In *Pt. Parmanand Katara v. Union of India & ors*.[17] the Indian Medical Council Act, 1860 Section 33--Indian Medical Council/Code of Medical Ethics--Clauses 10 and 13 the Obligation to sick patient not to be neglected the Court emphasized necessity to provide immediate medical aid.

In *State of Haryana v. Smt. Santra* the Supreme Court of India held that every medical practitioner who enters the medical profession has a duty to act with a reasonable degree of care and skill as an implied undertaking. Breach of any such duties may give a cause for action of negligence, entitling a patient to recover damages from the medical practitioners. In *Poonam Verma v. Ashwin Patel* [18] Supreme Court held that an Ayurvedic medical practitioner cannot prescribe allopathic medicines. If they engaged this activity is not only illegal it is also against of medical ethics.

In *Srimathi and Others v. The Union of India, and Others*[19] the Supreme Court which are relevant for the purpose of this case. "It has been urged that medical practitioners are governed by the provisions of the Indian Medical Council Act, 1956 and the code of Medical Ethics made by the Medical Council of India, as approved by the Government of India under Section 3 of the Indian Medical Council Act, 1956 which regulates their conduct as members of the medical profession and provides for disciplinary action by the Medical Council of India and/or State Medical Council against a person for professional misconduct."

In *Hospital v. Harjol Ahluwalia through K.S. Ahluwalia*[20] wherein it has been held as in the of the medical ethics and as such it may be appropriate to notice the broad responsibilities of such organisations who in the garb of doing service to the humanity have continued

[15] Chapter 8 Regulation 8.1, of IMC (PCEE) R, 2002.
[16] 4 D.L.R. 358, 2 W.W.R. 560 (B.C.C.A).
[17] A.I.R. 1989 SC 2039.
[18] 1996 (3) CPR 205.
[19] Decided on 6 March, 1996.
[20] AIR 1998 SC 1801.

commercial activities and have been mercilessly extracting money from helpless patient and their family members and yet do not provide the necessary services. The influence experted by a doctor is unique. The relationship between the doctor and the patient is not always equally balanced. The attitude of a patient is poised between trust in the learning of another and the general distress of one who is in a state of uncertainty and such ambivalence naturally leads to a sense of inferiority and it is, therefore, the function of medical ethics to ensure; that the superiority of the doctor is not abused in any manner. It is a great mistake to think that doctors and hospitals are easy targets for the dissatisfied patient. It is indeed very difficult to raise an action of negligence.

In the land mark judgment of the Supreme Court delivered in *Indian Medical Association v. V. P. Shanta*[21] deals with the following important issues of medical ethics. A patient who has been injured by an act of medical negligence has suffered in a way which is recognised by the law and by the public at large as deserving compensation. This loss may be continuing and what may seem like an unduly large award may be little more than that sum which is required to compensate him for such matters as loss of a future earnings and the future cost of medical or nursing care.

In *K. Vishnu v. National Consumer Disputes...*[22] the Supreme Court rejected the contention that medical practitioners being governed by the disciplinary provisions of the Indian Medical Council's Act and the Code of Medical Ethics cannot be brought within the provisions of the Consumer Protection Act. Their Lordships of the Supreme Court after referring to the fact that the trend was towards narrowing down the immunity to the professionals including barristers, reiterated the accepted legal position that medical practitioners can be sued in contract or tort on the ground that they have failed to exercise reasonable skill and care. The Supreme Court then observed and held thus: "Immunity from suit was enjoyed by certain professionals on the grounds of public interest. The trend is towards narrowing of such immunity and it is no longer available to architects in respect of certificates negligently given and to mutual valuers. Earlier, barristers were enjoying complete immunity but now even for them the field is limited to work done in Court and to a small category of pre-trial work which is directly related to what transpires in Court. It would thus appear that medical practitioners, though belonging to the medical profession, are not immune from a claim for damages on the ground of negligence.

In *People's Union For Civil v. Union of India And Ors.*[23] The Medical Council of India in its reply in mentioned that the medical ethics cases are normally related to the obligation of a physician to his patients while discharging his duty as a medical practitioner. The Council may take up this issue and if the charges leveled against the two doctors have been proved and a formal request is made by the Government with the relevant documents. The Director of

[21] 1995 A.I.R. SCW 4463.
[22] Decided on 21 July, 2000.
[23] Decided on *30 July, 2003.*

the Hospital has been held accountable for improper procurement of equipments but no action whatsoever was taken against him at the relevant point of time.

In *Samira Kohli v. Dr. Prabha Manchanda & Anr.*[24] The respondent was guilty of two distinct acts of negligence: the first was the failure to take her consent, much less an informed consent, for the radical surgery involving removal of reproductive organs; and the second was the failure to exhaust conservative treatment before resorting to radical surgery, particularly when such drastic irreversible surgical procedure was not warranted in her case. The respondent did not inform the appellant, of the possible risks, side effects and complications associated with such surgery, before undertaking the surgical procedure. Such surgery without her consent was also in violation of medical Rules and ethics.

In *Martin F. D'Souza v. Mohd. Ishfaq*[25] The Supreme Court referred to the Code of Medical Ethics drawn up with the approval of the Central Government under Section 33 of the Indian Council Medical Act and observed & quote; Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services for protecting life. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise cannot be sustained and, therefore, must give way. The Supreme Court held that it is the duty of the doctor in an emergency to begin treatment of the patient and he should not await the arrival of the police or to complete the legal formalities. The life of a person is far more important than legal formalities.

A latest view of Supreme Court has awards Rs. 5.96 crore compensation in medical negligence case in the highest ever compensation awarded in a medical negligence case, the Supreme Court held that Kolkata-based AMRI Hospital and three doctors to pay a whopping Rs. 5.96 crore along with interest to a US-based Indian-origin doctor who lost his 29-year-old child psychologist wife during their visit to India in 1998.[26]

Conclusion

The above discussion concludes that medical professionals need to act in the limits of values and norms of the profession, the law, and the medical ethics. Medical practitioners are also human being error is to be there but not due to the negligence because you are not god but worship by the poor patients. Therefore the negligence may be converted into caring that may reduce medical ill incident by medical professionals. In case of hospitals, nursing homes, diagnostic centers, and pathological laboratories, the names, addresses and license numbers of all the practicing medical practitioners, including that of honorary medical practitioners, shall be prominently displayed. The minimum standards as laid down under a medical license issued by the Medical Council of India shall be maintained. Besides, proper hygiene and cleanliness, and adequate water and power supply shall be provided and the premises shall always be clean.

[24] (2008) 2 SCC 1.
[25] (2009) 3 SCC 1.
[26] The Hindu, Thursday, 24 October, 2013.

Finally, it is a great task of changing the mindset of medical practitioners and patients, creating doctor patient relationship milieu that is conductive for medical health care. The Medical profession is a noble profession there should be high moral quality medical ethics to medical practitioner, during medical treatment they should be fair and concentrate. The harmonious blend of ethics law is also needed to achieve the goal of medical profession.

Sedition Law: An Antithesis of Freedom of Speech and Expression

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Abstract

One of the most important hallmarks of civilization is the guarantee and preservation of the right to freedom of expression. United Nation Declaration on Human Rights and other conventions has also recognized and protected the existence of this right. India is one of such countries that have not merely included a bill of rights in their national constitutions, but have equally ratified series of international agreements embodying what is nationally known as 'fundamental rights'. Part III of the Indian Constitution is a bundle of rights recognized as fundamental by the Constitution itself. However, the law of sedition was introduced right from the colonial period into the nation's Criminal law to serve as a check to the excessiveness of these rights so as to provide a safe enabling ground for governance. This article aims to discuss the Freedom of speech and expression and its limitations and reasonable restrictions which the state can impose on it. This article also analyses the perception of sedition, its relevance today and the role of judiciary in protecting the freedom of speech and expression.

Key Words: Sedition, Antithesis, Freedom, Speech and Expression, Human Rights, civilization

Introduction

"Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom."

—Justice Benjamin N. Cardozo[3]

One of the most highly valued of the fundamental liberties guaranteed to members of a free and democratic society is the freedom of expression. This freedom of expression, universally acknowledged as both a fundamental and foundational human right. This freedom is not only the cornerstone of democracy, but indispensable to a thriving civil society.[4] Indeed, the

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[3] *Palko v. Connecticut*, 302 U.S. 319, 327, (1937) available at, https://www.aclu.org/issues/free-speech, accessed on 12/06/2018 at 14:12 pm.
[4] In its very first session, the UN General Assembly declared that the Freedom of Information [which inheres in the Freedom of Expression] is a fundamental human right and…the touchstone of all the freedoms to which the United Nations is consecrated." See Resolution 59(1), 14 December 1946. According to Article 19, an organization devoted to defending the freedom of expression, freedom of expression "is not only important in its own right but is also essential if other human rights are to be achieved." See http://www.article19.org/pages/en/freedom-of-expression.html.

freedom of expression is considered the "foundational human right of the greatest importance."[5]

International and Comparative Standards

Article 19 of the *Universal Declaration of Human Rights* (UDHR),[6] a United Nations General Assembly resolution, guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR is not directly binding on States but parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.[7]

Freedom of expression is also guaranteed at Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),[8] a treaty with 149 States Parties, as well as in all three regional treaties on human rights, specifically at Article 10 of the *European Convention on Human Rights* (ECHR),[9] at Article 9 of the *African Charter on Human and People's Rights*,[10] and at Article 13 of the *American Convention on Human Rights*.[11]

The Importance of Freedom of Expression

International bodies and courts have made it very clear that freedom of expression and information is one of the most important human rights. In its very first session in 1946, the United Nations General Assembly adopted Resolution 59(1) which states:

Freedom of information is a fundamental human right and it is the touchstone of all the freedoms to which the United Nations is consecrated.[12]

As this resolution notes, freedom of expression is both fundamentally important in its own right and also key to the fulfillment of all other rights. It is only in societies where the free flow of information and ideas is permitted that democracy can flourish. In addition, freedom of expression is essential if violations of human rights are to be exposed and challenged.

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[5] Centre for Law and Democracy, Restricting Freedom of Expression: Standards and Principles, Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression, available at http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf.
[6] UN General Assembly Resolution 217A (III), adopted 10 December 1948.
[7] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[8] UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.
[9] Adopted 4th November 1950, in force 3 September 1953.
[10] Adopted at Nairobi, Kenya, 26 June 1981, entered into force 21 October 1986.
[11] Adopted at San José, Costa Rica, 22 November 1969, entered into force 18 July 1978.
[12] Available at https://www.refworld.org/docid/3b00f0975f.html accessed on 14/06/2018 at 16:26 pm.

The importance of freedom of expression in a democracy has been stressed by a number of international courts. The African Commission on Human and People's Rights has stated:

> Freedom of expression is a basic human right, vital to an individual's personal development, his political consciousness, and participation in the conduct of public affairs in his country.[13]

Similarly, the Inter-American Court of Human Rights has stated:

> *Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It can be said that a society that is not well informed is not a society that is truly free.*[14]

This has repeatedly been affirmed by both the UN Human Rights Committee and the European Court of Human Rights. The fact that the right to freedom of expression exists to protect controversial expression as well as conventional statements is well established. For example, in a recent case the European Court of Human Rights stated:

> *According to the Court's well-established case-law, freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no "democratic society".*[15]

These statements emphasize that freedom of expression is both a fundamental human right and also key to democracy, which can flourish only in societies where information and ideas flow freely.

Characteristics of the Freedom of Expression

The freedom of expression is characterized by six key features[16]:

- It applies to everyone equally without distinction of any kind whatsoever; distinctions based on "race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" are entirely irrelevant to its application.
- Its geographical scope is unlimited; it applies "regardless of frontiers."
- Its substantive scope, while not unlimited, is broad; it encompasses information and ideas of all kinds.

[13] Available at https://www.article19.org/data/files/pdfs/analysis/malaysia-sediton.pdf accessed on 12/06/2018 at 16:30 pm.
[14] Ibid.
[15] Available at https://legal-monkey.blogspot.com/2007/09/perspective-on-freedom-of-expression-in.html accessed on 12/06/2018 at 16:40pm.
[16] Available at https://www.icnl.org/research/resources/dcs/-8-trends6-1.pdf accessed on 12/12/2017 at 10:45 am.

- It includes the rights to both receive and impart information and ideas; the rights of both listeners and speakers, and observers and demonstrators are equally protected.
- It imposes a positive obligation on signatories to the ICCPR; states are obligated to take the necessary steps to ensure its protection, including adopting laws or other measures as may be necessary and providing an effective remedy to those whose freedom of expression has been violated.
- The manner in which expressions are disseminated is unlimited; it protects the right to impart one's ideas using any form of media of his choice.

Purpose behind protecting Freedom of Speech

Professor Barendt in *Freedom of Speech*,[17] also identifies four common justifications for the principle of free speech. These are:

- **For the discovery of truth by open discussion** - According to it, if restrictions on speech are tolerated, society prevents the ascertainment and publication of accurate facts and valuable opinion. That is to say, it assists in the discovery of truth.
- **Free speech as an aspect of self-fulfillment and development-** Freedom of speech is an integral aspect of each individual's right to self-development and self-fulfillment. Restriction on what we are allowed to say and write or to hear and read will hamper our personality and its growth. It helps an individual to attain self-fulfillment
- **For expressing belief and political attitudes -** Freedom of speech provides opportunity to express one's belief and show political attitudes. It ultimately results in the welfare of the society and state. Thus, freedom of speech provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.
- **For active participation in democracy –** Democracy is most important feature of today's world. Freedom of speech is there to protect the right of all citizens to understand political issues so that they can participate in smooth working of democracy. That is to say, freedom of speech strengthens the capacity of an individual in participating in decision-making[18].

In India, in the case of *Govt. of India v. Cricket Association of Bengal*, the court expressed that, *the freedom of speech does not only help in the balance and stability of a democratic society, but also gives a sense of self-attainment.*[19] In the case of *Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India*[20] , aforesaid four important purposes of the free speech and expression were set out.

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[17] Eric Barendt Freedom of Speech (2 ed, Oxford University Press, Oxford, 2005) 1.

[18] Dheerajendra Patanjali "Freedom of Speech and Expression: *India v America* - A study" 3 (4) *India Law Journal* 1 (2015).

[19] *Ministry of Information & Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SC 1236.

[20] AIR 1986 SC 515.

Though, as we seen above, there are many theories, principles or objectives exists behind the idea of free speech, the modern theories justifying the freedom of speech are dominated by a utilitarian vision: speech is protected because it is necessary to achieve some greater, often ultimate, social good. This leads to the philosophy of necessity in maintaining and preserving freedom of speech and expression in tune with prevailing social order.

Restrictions on Freedom of Expression

The right to freedom of expression is not absolute in nature. Both International law and Constitution of several countries recognize that freedom of expression may be restricted. However, any limitations must be valid, justified and predefined parameters.

Article 29(2) of the Universal Declaration of Human Rights provides: '*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society*.'[21]

Article 19(3) of the International Covenant on Civil and Political Rights lays down the benchmark, stating[22]: '*The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

a) For respect of the rights or reputations of others;
b) For the protection of national security or of public order, or of public health or morals'.

It is a doctrine of human rights jurisprudence that restrictions on rights must always be construed narrowly; this is especially true of the right to freedom of expression in light of its importance in democratic society.

Accordingly, any restriction on the right to freedom of expression must meet a strict three-part test, approved by both the UN Human Rights Committee and the European Court of Human Rights. This test requires that any restriction must[23]:

a) Be provided by law;
b) Be for the purpose of safeguarding a legitimate public interest; and
c) Be necessary to secure that interest.

The third part of this test means that even measures which seek to protect a legitimate interest must meet the requisite standard established by the term "necessity". Although absolute

[21] Available at https://www.un.org/en/universal-declaration-human-rights/ accessed on 10/12/2017 at 10:45 am.
[22] Available at https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf accessed on 14/12/2017 at 11:45 am.
[23] Available at https://www.article19.org/data/files/pdfs/analysis/afghanistan-media-policy.pdf accessed on 20/12/2017 at 15:30 pm.

necessity is not required, a "pressing social need" must be demonstrated, the restriction must be proportionate to the legitimate aim pursued and the reasons given to justify the restriction must be relevant and sufficient. In other words, the government, in protecting legitimate interests, must restrict freedom of expression as little as possible.

Vague or broadly defined restrictions, even if they satisfy the "provided by law" criterion, will generally be unacceptable because they go beyond what is strictly required to protect the legitimate interest.

Articulation of Freedom of Speech and Expression in Indian Constitution

Freedom of Speech and Expression is one of the key fundamental rights outlined in Part III of the Indian Constitution. It finds place in Article 19(1)(a) of the Constitution along with other freedoms outlined in that Article. What immediately follows Article 19(1)(a) is Article 19(2) which outlines "reasonable restrictions" on the rights conferred in Article 19(1)(a). Rights mentioned in Article 19 are the only major fundamental rights in the Constitution that come with strings attached to them.[24]

In drafting the provision on Freedom of speech and expression, India's constitution founders were influenced by the First Amendment to the United States Constitution. That amendment says, "*Congress shall make no law abridging the freedom of speech, or of the press*."[25] It assures in relatively absolute terms, freedom of speech and press. But, under the Indian Constitution, this freedom is a lot more qualified. Article 19(2) allows the state to make laws that restrict freedom of speech so long as they impose reasonable restrictions in the "interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."[26]

Sedition Law: Antithesis of Freedom of Speech and Expression

Currently, the law of sedition under Section 124A has twisted big conflict with the right to freedom of speech and expression in the Constitutional jurisprudence of India. Sedition, as the Indian Penal Code characterizes, is an attempt to bring hatred or contempt, or disaffection against the Government established by law in India. This can be done by words, signs or any kind of visible representation. Thus, if any person promotes hatred or contempt towards the State is committing sedition.

The British introduced this law to India in 1870, as a part of their efforts to curb criticism of colonial rule, and to stamp out any dissent. Many famous nationalists including Bal Gangadhar Tilak[27] and Mahatma Gandhi[28] have been tried and imprisoned for sedition.[29]

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[24] Available at https://www.firstpost.com/long-reads/dissent-gagged-ambiguity-of-free-speech-laws-in-india-3392734.html accessed on 26/01/2018 at 10:45 am.
[25] Available at https://www.law.cornell.edu/constitution/first_amendment accessed on 30/01/2018 at 12:12 pm.
[26] Art.19 (2) the Indian Constitution, 1950.
[27] *Emperor v. Bal gangadhar Tilak* (1908) 22 Bom LR; (1917) 19 Bom LR 211.

After a spirited debate, the Indian Constitutional Assembly decided not to include 'sedition' as a specific exception to Article 19(1)(a). However section 124A IPC remained on the statute book.

In *Romesh Thapper v. State of Madras*[30], it was held that the limits set out under Article 19(2) are very narrow and stringent. In *Tara Singh Gopichand v. State*[31], the validity of Section 124A of the IPC was directly in issue. The East Punjab High Court held that section 124-A has no place in a new democratic setup and it curtailed the freedom of speech and expression. The Court declared this section void.

After the Constitution (First Amendment) Act, 1951 two most important changes were made to the freedom of speech and expression. First, more grounds were added as restrictions to free speech and secondly, it imposed that restrictions must be reasonable. The introduction of the words "in the interests of" and "public order" to the exceptions to Article 19(1)(a), became extremely difficult to challenge the constitutionality of section 124A.

The question now arises whether Article 19(2) and Section 124A are compatible or contradictory to each other. There are three arguments that can be made:

1. Section 124A *ultra-vires* the Constitution since it infringes article 19(1)(a) and is not saved by the expression 'in the interest of public order.'[32]
2. Section 124A is not void because the expression 'in the interest of public order' has wider amplitude and is not only confined to 'violence'. It must undermine the authority of the government by bringing in hatred or contempt or disaffection towards it.
3. In *Sagolsem Indramani Singh v. State of Manipur*[33], it was held that Section 124A is partly void and partly valid.

In 1962, the Supreme Court upheld the constitutional validity of the law in the *Kedarnath Singh* case[34], yet limited the extent of the law to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence. In this case Supreme Court sets out the essential element of the modern law of sedition. The apex court while deciding the constitutional validity of Section 124A in light of Article 19(1)(a), said that "incitement of violence" is an essential ingredient to constitute sedition.

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[28] Available at https://bombayhighcourt.nic.in/libweb/historicalcases/cases/TRIAL_OF__Mahatma_Gandhi-1922.html accessed on 02/02/2018 at 09:30 am.
[29] Available at https://cis-india.org/internet-governance/blog/free-speech-and-the-law-on-sedition accessed on 02/02/2018 at 09:45 am.
[30] AIR 1950 SC 124.
[31] AIR 1951 E.P. 27.
[32] *Ram Nandan v. State of Uttar Pradesh*, AIR1959 All 101.
[33] 1955 CrLJ 184.
[34]AIR 1962 SC 955.

Thus the Supreme Court provided an additional safeguard to the law: not only was constructive criticism or disapprobation allowed, but if the speech concerned did not have an intention or tendency to cause violence or a disturbance of law and order, it was acceptable. The apex court also referred to a pre-legislative history of India and opposition surrounding Article 19 in the Constituent Assembly debates. Sedition was not a valid restriction to freedom. It was also made mandatory in the case of *R.M.D. Chamarbaugwalla v. Union of India*[35], that incitement of violence and disorder must also be there to constitute sedition.

Numerous cases have started political debate and prompted challenge the detention of the accused. First most controversial case of this decade was against a cartoonist and a political activist, *Mr Aseem Trivedi,* who was alleged to have displayed 'insulting and derogatory' sketches that depicted Parliament as a commode and the National Emblem in a negative light.[36] Basis the opinion of the Advocate General of Maharashtra, the Mumbai Police dropped charges against him under Section 124A and the final judgment of the Bombay High Court in 2015 notes certain guidelines issued to the Police department while invoking the provisions under this Section.

Recently, most controversial sedition case was against Mr. Kanhaiya Kumar. It was asserted that he was raised 'anti-India' slogans in a student rally in the campus of Jawaharlal Nehru University, Delhi. He did this in protest against the execution of Afzal Guru, the man behind the 2001 Indian Parliament assault. Mr. Kumar was captured on March 2, 2016, by the Delhi Police yet recordings were doctored found and he was in this way discharged in the wake of going through three weeks in prison at the discretion of the Delhi High Court.

In *IndraDas v State of Assam*[37] The Supreme Court reiterated that all laws, including Section 124A, have to be "read in a manner so as to make them in conformity with the Fundamental Rights". In *ArupBhuyan v State of Assam*[38], Supreme Court reiterated that the speeches which amounts to "incitement to imminent action "can only be criminalized. Recently in the *Shreya Singhal v Union of India*[39], the Supreme Court clearly drew distinction between "Advocacy" and "incitement", in which only incitement can be punished.

This was a landmark case relating to free speech in India. This was a monumental case since it struck down Section 66A of the IT Act, which was held contrary to the freedom of speech and expression. The court also held that the restriction of 'public order' under Article 19(2) would only apply to 'incitement' and not 'advocacy.' In the words of the SC, "The intelligible differentia is clear the internet gives any individual a platform which requires very little or no

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[35] (1957) S. C. R. 930.
[36] *Sanskar Marathe v. State of Maharashtra & Ors, Criminal Public Interest Litigation* No. 3 of 2015, Bombay High Court.
[37] (2011) 3 SCC 380.
[38] (2011) 3 SCC 377.
[39] AIR 2015 SC 1523.

payment through which to air his views." Thus online speech without any arbitrary restrictions was the main outcome of this case.[40]

What is not amounting to Sedition

The Supreme Court has in many judgments outlined as to what does not constitute sedition. In the case of *Balwant Singh v. State of Punjab*[41], it held that raising some lonesome slogans (Khalistan Zindabad) a couple of times by two individuals did not give rise to hatred or contempt towards the Government established by law in India nor did it give rise to feelings of enmity or hatred among different communities. Similarly, criticizing the government or the Prime Minister does not amount to sedition, as held in *Javed Habib v. State of Delhi*[42]. In the case of *Sanskar Marathe v. State of Maharashtra & Ors*, the court differentiated between strong criticism and feeling of disloyalty towards India. The court observed –

> "… disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence."[43]

In this case the court reaffirmed the law laid down in *Kedarnath Singh*, and also held that for a prosecution under section 124A, a legal opinion in writing must be obtained from the law officer of the district(it did not specify who this was) followed by a legal opinion in writing within two weeks from the state public prosecutor. This adds to the existing procedural safeguard under section 196 of the Code of Criminal Procedure (CrPC) that says that courts cannot take cognizance of offences punishable under section 124A IPC unless the Central or State government has given sanction or permission to proceed.

In the case of *Arun Jaitley v. State of U.P*[44]., the Allahabad High Court held that a critique of a judgment of the Supreme Court on National Judicial Appointment Commission does not amount to sedition. It was merely a fair criticism.

NCRB Data related to Sedition

The NCRB data tell us that a total of 179 people were arrested for sedition under Section 124A of the IPC during 2014-16. However, by the end of 2016[45], the charge sheet was not filed for almost 80% of the cases and 90% sedition cases are lying pending in the court. In 2016, a trial was completed for only 3 out of 34 cases, with one conviction and two acquittals.

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[40] *Supra Note* 39.
[41] AIR 1985 SC 1785.
[42] (2007) 96 DRJ 693.
[43] *Supra Note* 21.
[44] 2016 (1) ADJ 76.
[45] Available at http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf accessed on 16/06/2018 at 10:45 am.

In 2015, none were convicted and 11 were acquitted out of 38 against whom charges were framed.

The question now arises as to why is the conviction rate so low. Mostly, it is because of political appeasement. Politicians let off people accused in the violence, largely keeping in mind the vote-bank politics. The second issue with these numbers is the misuse of the sedition law as oppressive tool of politics as where the police don't even file a charge sheet and people just spend time in prison. People, on whom frivolous charges of sedition have been applied, are punished with jail for a long period without a trial.[46]

The way forward

In the year 2011, a private member Bill titled the Indian Penal Code (Amendment) Bill, was introduced in the Rajya Sabha by Mr. D. Raja.[47] The Bill proposed that section 124A IPC should be omitted. It was reasoned that the British Government used this law to oppress the view, speech and criticism against the British rule. But the law is still being used in independent India, despite having specialized laws to deal with the internal and external threats to destabilise the nation. Thus, to check the misuse of the section and to promote the freedom of speech and expression, the section should be omitted.

Another Private member Bill titled The Indian Penal Code (Amendment) Bill, 2015, was introduced in Lok Sabha by Mr. Shashi Tharoor to amend section 124A IPC.[48] The Bill suggested that only those actions/words that directly result in the use of violence or incitement to violence should be termed seditious. This proposed amendment revived the debate on interpretation of sedition. The courts through various judgments have settled that the language of this section does not imply that only words, either spoken or written, or signs, or visible representation that are likely to incite violence should be considered seditious.

Conclusion

In a democracy, singing from a similar songbook isn't a benchmark of patriotism. Individuals should be at liberty to show their love and affection towards their nation in their own particular way. For doing the same, one might indulge in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Indian Constitution empowers us to express our views by the use of Freedom of Speech and Expression.

But this freedom comes with restrictions and being disloyal to your own nation and stirring violence in the name of our own country is an act that is seditious in nature. J Frankfurter

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[46] Available at https://www.deccanherald.com/opinion/main-article/abuse-sedition-law-721081.html. accessed on 19/06/2018 at 11:23 am.

[47] Available at http://www.lawcommissionofindia.nic.in/reports/CP-on-Sedition.pdf accessed on 30/06/2018 at 15: 23 am.

[48] *Ibid.*

observes: "Not every type of speech occupies the same position on the scale of values. There is no substantial public interest in permitting certain kinds of utterances ...."Here comes the relevance of regulating the speech. Even our much learned Constitution drafting committee members also realized that no freedom can be absolute or completely unrestricted. It is undeniable that freedom is like oxygen.[49]

The law of sedition is controversial and since it is an offence against the State, higher standards of proof must be applied for conviction. The Law Commission of India has suggested [50] that Section 124A must be read in consonance with Article 19(2) of the Constitution. Each case must be investigated based on true facts and circumstances. The law of sedition is a weapon to distinguish any individual who raises their voice against India and it must be constantly updated according to the global context.

The purpose of restricting speech under Seditious act is the protection of security and integration of the nation. While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy. Therefore, every restriction on free speech and expression must be carefully scrutinized to avoid unwarranted restrictions. Thus, sedition laws should be applied according to the guidelines given by the Judiciary.

[49]B. S. Chauhan, *Freedom of Speech and Expression*, Lexgentia, P.7, Vol (3) 2016; Jewish Supremacism, *Freedom of Speech and My Book Jewish Supremacism*, available at http://davidduke.com/freedom-of-speech/ accessed on 30/06/2018 at 08:15 am.
[50] *Supra note* 47.

A Critical Analysis of Criminal Law Amendment Act, 2018

Dr. Vijay Kumar Bhaskar[1]

Introduction

There has been an unnatural surge in the heinous accidents within the world, and it is only evident that the population will require stricter laws to be in place, of the sort that would help promote the curbing of such incidents. The country has been in a state of uproar, where the Indian society witnessed a soaring public anger over the most terrible incidents that took place in the year 2018. *Kathua* and the *Unnao rape* cases that took place this year, and it was only natural for the society to demand more stringent laws for offenders.

The rape cases of *Kathua* and *Unnao* were a reminder of the horrific incident that happened in 2012, and were the basis of the drastic changes made to the Indian Penal Code for matters relating to rape cases. The case of Kathua was nothing new, and it was frightening in equal measure. The kidnapping, rape and then murder of the eight-year-old girl, Asifa Bano, near Kathua, a small village in the state of Jammu and Kashmir, sent ripples of terror and hate to the country's people, as well as to the world..[2]

In the history of incidents of rape in India, more often than not, the legal response in the form of a new amendment being introduced is often of a hasty nature, and does not always take into considerations all the factors before being promulgated. The *Nirbhaya Gang Rape* Incidence was the cause why the government and community alike came to a certain awakening to deal with the issues of rapes occurring in society with a grain of seriousness, and also to give it due prominence as one of the key social problems facing women in society.The event drew a plethora of disdain from people across the globe, and the resulting outrage compelled the nation's government to take urgent remedial action, resulting in the Criminal Law (Amendment) Ordinance 2018.

The ordinance was later assented to by the President, and it came into force on April 21, 2018. After the LokSabha and the Rajya Sabha passed the Bill as well, on July 30 and August 6, 2018 respectively, the Bill further received the Presidential Assent on August 11, 2018, and was enforced as the Criminal Law (Amendment) Act, 2018 (hereinafter referred to as the "Act 2018"). In turn, this Amending Act, which replaced the previously in force ordinance, which doing so with a retrospective effect, has resulted in revisions to four entire statutes, which are

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[2] Available at https://theprint.in accessed on 30/06/2018 at 16:26 pm.

the Indian Penal Code, 1860 (IPC), the Criminal Procedure Code, 1973 (Cr.P.C.), the Indian Evidence Act, 1872 (IEA) and the Protection of Children from Sexual Offences Act, 2012 (POCSO).

In this article, the researcher will discuss the amendments introduced by the Act, of 2018 to the IPC and the code, since these two statutes are the most prominent pieces of criminal law regulating the country's criminal offences.It is evident that the reforms that have been implemented have been made in a very short period of time, which is uncharacteristic of the rules that are applied in the natural sense.However, it seems that the government's purpose in enforcing these laws was to pacify the people who were outraged by the incidents that have taken place in recent years.

Amendment in the Code of Criminal Procedure:

Before the Act, 2018 was enforced, the Cr.P.C. was last amended in a slight manner by the Amendment that was enforced in 2013, but as of now, the Act, 2018 has further amended the Code. The Cr.P.C., as it was before, It required that the prosecution process be concluded within a period of three months in cases where the crime of rape has been committed against a minor girl, but Act, 2018 has made amendments to the period, which now mandates that the investigation process be completed within a period of two months instead of three months.

However, Act, 2018 continues to be silent as to what is to follow if, within a span of two months, the agencies involved are unable to conclude the prosecution process and the complaint is unable to be resolved within a period of six months. In the Cr.P.C., the allowance of appeals no particular rule is laid down concerning the disposal of appeals lodged in cases of a criminal nature.This is what provides a credible justification for the complaints made that the appeal process under the Code of Criminal Procedure works to become a barrier to the public's delivery of speedy justice, and in its view, the Law Commission has also expressed that there needs to be a reform that sets out a system that allows to speedy disposal of appeals in cases of rape. The Act, 2018 has now added a sub-section to the Section 374 of the Cr.P.C., that mandates that the appeals must be disposed of within a period of six months.

In addition, several provisions are also included in the Code to allow for anticipatory bail to be granted to individuals. The anticipatory bail is typically made available to persons who are worried that they will be arrested for committing a non-bailable offense. A sub-section of Act, 2018 is incorporated in Section 438, which makes anticipatory bail available to criminals who expect their arrest for committing the crime of rape against minors aged 16 or 12 years of age. This initiative does not, however, have an impact that is utter in nature.

The courts have treated the cases of anticipatory bail with the notion of advancing justice since the case of *Maneka Gandhi v. Union of India*[3] and the courts have resorted to the doctrine of proportionality. The misuse of existing legal frameworks has contributed to the advent of many steps aimed at curbing this misuse, such as the blanket abolition since 1976 of

[3] 1978 AIR 597.

the right of availability of anticipatory bail in the State of Uttar Pradesh. However, there have been cases where the lack of this clause has been circumvented in a variety of other respects, as was clear in the case of *Amaravati v. State of U.P.*[4], as well as in the case of *Lal Kamlendra Pratap Singh v. State of U.P.*[5]

There is little assurance that the abolition of the anticipatory bail clause in cases of rapes and gang-rapes, as pursued by the Act, 2018, would be a successful step to curtail the cases of rape in the world, because, as is evident from the precedents, the absence of anticipatory bail in the past has not been a major obstacle.

Amendment in provisions of The Indian Penal Code, 1860

Prior to the Act, 2018 the IPC was revised by the Criminal Law (Amendment) Act, 2013. However, the Act, 2018 further amends the IPC in a particular manner, because although, on the one hand, it amends the current provisions of the IPC, on the other hand, the Act,2018 has also incorporated a variety of separate provisions to the original act.However, whether or not the expected result of these reforms, which are meant to cause a dissuasive effect in culture to curb sexual assaults against minors, is also a controversial feature of these hurried changes.The most notable reform made by the Act, 2018 to the IPC is the rise in the punishment previously provided for the offences of rapes in the country i.e. the Sections 375 and 376, IPC in the Code.

The nature of this reform does not take into account the nature of sexual harassment in the country, nor does it include the founding principles of criminal legislation in our country. Section 376 points out 14 conditions in which, it is deemed to be an aggravated form of rape owing to the presence of the material of the aggravation. Prior to the Act, 2018, the maximum punishment that was awarded for rape (under section 376(1) was imprisonment between 7 years and ranging all the way to life imprisonment, has been increased to a period of 10 years. This means that now, in both subsections, the penalty, i.e. Parts 376 (1) and 376 (2) have been leveled and have been rendered similar. While a consolidated step against the crime of rape may appear.

In comparison, another amendment made to the sentence for rape offence was the clause that concerned the crime being committed against a girl under 16 years of age. This basic provision has now been omitted and, now, sub-section (3) was introduced by the ACT 2018.This change, now enacted, allows for a minimum sentence of 20 years, and this can apply to the offender's life imprisonment, but this is a dubious feature of the nature of this punishment, notably from the point of view of the constitutional legitimacy of the nature of this punishment. A punishment for a period of 20 years under the Section 376 (3) is furiously debatable, and to some, hard to justify.

[4] 2005 Cr.L.J. 755.
[5] S.C., Criminal Appeal No.538 of 2009.

It seems to be too unfair to abandon judicial power to invoke the application of Section 376(3) of the Statute, however a term of 20 years of minimum imprisonment.As the sentence for life imprisonment is awarded to a man aged 18 years, it would mean that the man would not be free for the rest of his life, something seems entirely irrational, especially, in the absence of the judiciary discretion.Section 376AB, which has been added, allows for a minimum sentence of 20 years, which can also extend to life imprisonment under this section for the crime of rape against a minor girl under the age of 12 years has been fixed as the maximum penalty for the offence. On the other hand, the other sections also incorporated the provisions that formerly existed for the crime of gang rape.

Conclusion

The amendment so enacted in the form of the 2018 Act is clearly incomplete, and it is as plain as the day that the amendments warranted much more deliberation than they had been given. Either the changes that have been incorporated to the current sections or the sections that have been added as additional crimes to the Indian Penal Code, they have all left a few lacunae.

For example, the recent laws that have been included in the Indian Penal Code for the crimes of rape perpetrated against minors between the age of 12 and 16 are very strict and may lead to a challenge for law enforcement authorities.Capital punishment in this situation would also serve as a deterrent factor, but the effect will be counter-productive, as allegations of rape in situations where the woman is in a marital partnership and under the age of 12 will go down significantly as a result of this move.

Since the Act, 2018 has been introduced; Sections 376 DA and 376 DB of the IPC have made the sentence obligatory for juveniles, which is contrary to the rules of the Criminal Justice Act. The provisions of the JuvenileJustice Act 2012 forbid the awarding of life imprisonment or death sentences to a minor who is in violation of law.[6]Contrarily to that, Section 376DA provided life imprisonment as a punishment to a convict who has committed a crime under Section 376DA. This intersection is evidence that the reforms have not been adequately evaluated until they have been enforced by the Government.

The Act, 2018 incorporated modifications to the appeals process in the Criminal Procedure Code, but stayed silent in situations where the proposed amendments have not been complied with.The appeals must now be rejected within a span of 6 months, in line with the revisions adopted by the Act, 2018 to Section 374 of the Code, but the consequences that should follow in the event of non-compliance have not been determined.

Changes, when introduced hastily, appear to weaken the consistency of the statutory amendments and lead to congestion within the legal system. Such hasty action should be eliminated, and appropriate careful action should be taken.

[6] Section 21, Juvenile Justice Act, 2015.

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Analysis of Domestic Violence against Women in India and Role of Judiciary

Asha Rani[1]

Abstract

Domestic violence is like no other crime. It does not happen in a vacuum. It does not happen because someone is in the wrong place at the wrong time. Homes and families are supposed to be scared territory, the "have in a heartless world."[2] *The article explains that how violence takes place within the four wall of the homes and how it happened by your love once, the author makes an attempt to analysis the widening scope of the meaning of the act of Domestic Violence against Women in India through the help of various case study which make the growth in the definition of act of violence against Women. As judiciary also play a vital role in widening the definition of act of Violence against Women therefore it can be said that judiciary is a mirror to know the status of act of Domestic Violence occurred in the society.*

Key words: Domestic Violence, Women, Role of Judiciary.

Introduction

Domestic violence means any act of violence against women which provide an injury to the life and limb of the victim by their family member or by their intimate partner, as there are many dimension of such violence, it may be physical, sexual, psychological, verbal or economic violence.

Domestic[3] *Violence*[4] *is an act or omission or commission or conduct or behavior of any member* of family to provide the harm or injuries or any endangers the health, safety, life, limb or well being to the female or any other person related to her. It may be through physical, sexual, verbal, emotional, cyber or economical abuse.

Domestic violence (also named domestic abuse or family violence) is violence or other abuse in a domestic setting, such as in marriage or cohabitation[5]. Domestic violence may be used as

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[2] Rachel Louise Snyder, "The Particular Cruelty of Domestic Violence".

[3] Origin of the word Domestic from old French domestique in Latin domesticus belonging to the house. Available at https://www.dictionary.com accessed on 10/05/2018 at 20:10 pm.
The act of Domestic Violence, 2005, has not define the word but section 2(g) of the act r. w. section 3 of the act, the word 'domestic' make a proportion with 'violence' a s a phrase which include dimension of violence viz.- sexual, physical, emotional verbal & mental abuses and economic abuse that includes Stridhan other movable and immovable properties, right to residence and so on. Domestic means- relating to home, the households affairs, or the family. Available at http://www.merriam- webester.com accessed on 14/06/2018 at 16:26 pm.

[4] Violence means- the use of physical force so as to injure, abuse, damage or destroy. Available at http://www.merriam-webster Dictionary. Accessed on 18/06/2018 at 10:10 am.

[5] Cohabtation means – where two or more person living together without being married. In broad sense cohabit means to "coexist". The origin of the term comes the mid 16th century, from the Latin cohabitate, from co- 'together'+habitare 'dwell'. Available at www.lexico.com...oxfrddictionaries.com. visited on 01/04/2018.

a synonym for intimate partner violence, which is committed by a spouse or partner in an intimate relationship against the other spouse or partner and can take place in heterosexual or same-sex relationship or between former spouse or partner. In the broadest sense, domestic violence can also involve violence against children, parents, or the elderly. It takes a number of forms, including physical, verbal, emotional, religious, reproductive, and sexual abuse, which can range from subtle, coercive forms to marital rape and to violent physical abuse such as choking, beating, female genital mutilation, and acid attack throwing that results in disfigurement or death. Domestic murders include stoning, bride burning, honor killing, and dowry death (which sometimes involve non-cohabitating family members) [6]

The domain of domestic violence is not a new concept and neither it only prevailed in India but the incidents of Domestic Violence are prevailed all over the world whether any country is developed or developing as it has been discussed by the United Nation under the "International Bill of Human Right" as it is known as violence against human right too. In 1980 first time it was mention in official documents of United Nation[7] and after it in – "Vienna Accord of 1994 and the Beijing Declaration[8] and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family.

Though domestic violence, in the history of India was also prevailed from the very ancient time as India is a male dominated country where women have to face violence in many form as some time name of tradition. But earlier it never acknowledges as a form of family abuse and only under the Hindu law it was known as a cruelty as a ground of divorced and under the criminal law under section 498-A of it was such cruelty known as crime. But all the provisions related to violence against women were not seen satisfactory therefore in 2005, The Protection of Women From Domestic Violence[9] Act, 2005, was enacted to fill the gaps of existing laws related to domestic violence in India and it is the first of its kind to provide a comprehensive definitions to domestic violence by including physical, emotional and verbal, economical, and sexual abuse. According to the National Crime Record 2017[10], published by the National Crimes Research Bureau (NCRB), every 1.7 minutes a crime was recorded against women in India, every 16 minutes a rape was committed and every 4.4 minutes a girl is subjected to domestic violence.

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[6] Available at http// www.wikipedia.org/wikia Domestic-violence accessed on 03/04/2018 at 11:05 am.
[7] Available at https://www.un.org accessed on 14/06/2018 at 16:26 pm.
[8] Beijing Declaration-1995.
[9] Section-3 of the Protection of Women from Domestic Violence Act, 2005 define the term "Domestic Violence", - any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse. In determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" the overall facts and circumstances of the case shall be a guiding factor.
[10] Available at http// www.ncrb.gov, accessed on 11/05/2018 at 16:26 pm.

No matter whether she is educated or not, literate or illiterate or related from urban or rural area. Domestic Violence is prevailed in the life of every woman in many forms which is impossible to express it in a particular manner. Though Violence is acknowledged but remained invisible because it is very individual and private matter therefore violence against women is always hidden within the home.

Violence against Women[11] has taken various shapes viz. rape, kidnapping, abduction, female feticide, homicide, dowry death, harassment, cruelty, murder after rape, immoral traffic etc. all are example of Violence against Women.

Legal jurisprudence has historically considered the domain of the house to be with the control and unquestionable authority of male head. A woman is never an entity in her own rights, she is first the daughter, next the wife and last the mother of a man. They have large array of duties in parental home, in the matrimonial home but no rights. The rights are only provided to male. In our India traditions are bound to society where women have been socially, economically, psychologically and sexually exploited from the time immemorial, sometime in the name of religion, sometime on the pretext of writings.

Thus it can be said that though the act was passed in the year 2005, i.e. 15 years before still the cases of domestic violence are prevailed in all over the India and the act is unable to control over such cases. Behind the close door, such evil domains are happening everyday in the society.

It has been seen that violence against women tends to increase even during every type of emergency. As the scope of our rights are widening day by day under article 21 of the Indian Constitution of India; with the growth of the society and culture. As the nature of law is also dynamic, therefore it should be change according to the need of the society and the definitions of act of domestic violence also need to be widened

As the judiciary also play a vital role in this reference as it has to face challenges everyday and felt that the interpretation of law in such a manner or legal regime of law in such a way that matrimonial relationship would not be effect as the most of matrimonial cases led to end. It is therefore need to analysis of judicial decisions.

In the interpretation of law by judicial decisions it may conclude that domestic violence act speaks only about the wives – from legal marriages and about sister, daughter and widow but not has explained about women – live – in relationship, rights of third gender, the rights of surrogate mother, rights of transgender, the rights of foster child therefore there is need to give attention the towards the legal regime of the above victim also.

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[11] Black's law Dictionary defines" female" as the sex which conceives and gives birth to young also a member of such sex. The term is generic but has specific meaning of "Women". West Publishing Company, VI Ed, US, and Law Lexicon define "Women" as an adult female human being; whereas it also refers to the terms of section 10 r/ w 40 of Indian Penal Code, 1860.

Analysis of Judicial Decisions

Beside above literature there are number of cases in which Supreme Court and High Court has interpreted the legislation on domestic violence. As the extraordinary power is vested in Supreme Court under article 32 and 142 and the High Court under Article 226. There are three organs of government, namely the legislative body, executive body, and judicial body each has to do their function with the rule of separation of power but judiciary has extra ordinary power to do its work more actively that is known as judicial activism as the legislation and statutes provide remedy on the violation against cultural crime but judiciary has to meet with the common aspiration of people through litigation every day. As law is an effective tool to translate the aspirations of common people into reality and to achieve justice against violence but many time mere law and legislation alone do not play a crucial role in formulating the social and legal policies and uprooting this evil of domestic violence then judiciary play a vital role in the favour of victim of violence through the interpretation of act and analysis of various laws judicial decisions. Therefore there are following judicial decisions of Supreme Court and High Court to understand the developing dimension of the expression of domestic violence:

In the case of *Indra Sharma v. V.K.V. Sharma*[12] the Supreme Court has ruled that live- in-relationship which is not in the nature of marriage not coming within purview of domestic relationship. There is no express statutory provision to regulate such type of live- in-relationship upon termination or disruption. However women and children born out of such relationship call for adequate and effective protection. Parliament needed to ponder over these issues and bring in proper legislation on make proper amendment of the Act 2005.

The Supreme Court said that the court cannot lose sight of the fact that iniquities do exist in such relationship and on breaking down such relationship, the woman invariably is the sufferer. Law of constructive Trust developed as a means of recognising the contribution both pecuniary and non-pecuniary perhaps comes to their aid in such situation, which may remain as recourse for such a woman who finds herself unfairly disadvantaged. Unfortunately there is no express statutory provision to regulate such types of live-in-relationship upon termination or disruption. Since these relationships are not in the nature of marriage there may be situation where the parties entering into live- in- relationship and due to their joint efforts or otherwise acquiring properties, rearing children etc and disputes may also arise when one of the parties dies intestate.

In *S.R. Batra and another v. Smt Taruna Batra*[13] the Supreme Court ruled that the wife is only entitled to claim a right to residence in a shared household and a "shared household" would only mean a house belongings to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to "A" nor was it taken on rent by him nor is it a joint family property of which the husband "A" is a member. It is an exclusive property of the mother of

[12] 2014 (1) MWN (Cri.) 481 (SC).
[13] AIR 2007 SC. 1118.

"A". Hence it cannot be called a "shared household" In this case The Supreme Court observed that "No doubt, the definition of the "shared household" in section 2(5) of the Act is not very happily worded and appears to be result of clumsy drafting but we have to give interpretation which is sensible and which does not lead to chaos in society

In *Smt Preeti Satija v. Smt Raj Kumar and Another*[14] case where estranged daughter-in-law staying with mother-in-law, whereas family had disowned her husband. The division Bench of the Delhi High Court observed that ward Respondent in Section 2(q) includes female relatives of husband, thus relationship between daughter-in-law and mother-in-law would be domestic relationship. House claimed by the mother-in-law to be her absolute ownership is a shared house hold. Her daughter in law is entitled to stay in shared household. latest three judges bench decision the Apex Court in *Shabnam Hashmi v. Union of India*[15] has recognized in law the right of Indian citizens irrespective of their caste, creed, religion and community, to adopt a child and under the Juvenile justice (Care and Protection of Children) Act, 2000 by adopting a special procedure prescribed therein by virtue of the section 2(aa).

Prior to the pronouncement of the said judgement of the Apex Court, such child could have been taken only under the Guardians and Wards Act by a person of any community than that of Hindus and such child, in that event, would not be entitled to inherit the property of such guardian Thus, a foster child[16] in law may not have sufficient rights available to him under law akin to a natural child or an adopted child, the Protection of woman from Domestic Violence act 2005 has made an arrangement for care of such child as well as per the natural child .

One more another case through which the scope of the word domestic violence has become wider as the case is as following *Navtez Singh Johar and others v. Union of India*[17] in which S. C. overrule the judgment in *Suresh Kumar Koushal v. Naz Foundation* and upheld that LGBT people in India are entitled to all Constitutional rights, equal citizenship and protection of the Laws including the liberties protected by the Constitution of India and the choice of whom to partner, the ability to find to fulfillment in sexual intimacies and the right not to be subjected to discriminatory behavior are intrinsic to the constitutional protection of sexual orientation .

Thus through the above ruling The Court has made to describe that there is another aspect of the matter, that is, what would be the matrimonial rights and obligation of a person falling in category of 'third gender' and as to whether such person should be entitled to drive the benefit of the protection of the Woman from Domestic Violence Act, 2005.

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[14] AIR 2014 Del. 46 (DB).
[15] AIR 2014 SC.
[16] The expression "foster" has been defined in Shorter Oxford English Dictionaries as keeping under guardianship, or to nourish or to take care, to bring up, to nurse, to promote.
[17] AIR 2018, five judges Constitutional Bench decision of the Supreme Court, in writ petition (Crl.) No. 76 of 2016.

Conclusion

Thus the article suggests that the solutions regarding the domestic violence must be found within the family setting and within the community setting. Strategies that should be explored further are education of women and girls, the formation of women's groups to minimize isolation and increase power; and the use of mass media to promote more balanced, healthy perceptions of male female relationships.

The results of this study, though limited by lack of multivariate analysis to establish significance of factors, present a glimpse into both the severity and endemic nature of marital violence. The above article also helps to increase the understanding of the social and economic pressures that limit the power and options of women in violent relationships. Understanding both immediate precipitating factors and underlying causes for abuse as well as the structures that women feel comfortable tapping for support provides a starting place for designing initiatives to counter violence. The ways in which correlates such as age, caste, education, and duration of marriage are associated with different forms and factors is an important finding that can aid in informing context-specific efforts in domestic violence prevention and intervention.