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Editor
R.K. Verma

Supplement on Law and Governance

Indian Institute of Public Administration
Bihar Regional Branch, Patna

Indian Institute of Public Administration
Bihar Regional Branch ,Patna

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On the recommendation of Paul H. Appleby, the then Prime Minister Pt Jawahar Lal Nehru established the Indian Institute of Public Administration (IIPA) on March 29, 1954 with its HQ at IP Estate, Ring Road, New Delhi- 110 002 under the supervision of DoPT, Government of India. Its main aim is to equip the public servants with knowledge, skills and behaviour required for managing the tasks of governance. Bihar Regional Branch, commenced in the year 1961, is one of the 22 regional branches in India as part of the apex body of IIPA with an objective to undertake activities in furtherance of discipline of Public Administration and good governance. The Branch has five pronged activities like - research/evaluation studies, seminar / conferences / workshops etc., training / orientation / awareness programmes, collaboration with governmental & non-governmental agencies and publication of Journal, books, Monographs etc.

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From the Desk of the Chief Editor

I have the pleasure to present the special supplement on 'Law and Governance' of BJPA Vol. XIX No. 2S, July-Dec, 2022 before readers. Some of quality contributions, dealing with legal aspects of public administration, were received. This prompted us to bring out those contributions in a separate Issue of BJPA. As the frequency of the Journal is bi-annual, it was not appropriate to carry these contributions to June 2023 Issue. The supplement could only be finalized by the beginning of February 2023, hence late. It covers the judicial opinions on various aspects of governance. As the Journal has been receiving a large number of contributions of good research quality in the shape of research papers, research notes, book reviews etc. from across the disciplines and the country, it becomes difficult to publish them in two issues. However, the editorial board intends to accommodate the new ideas and issues of our focus area of research. We have endeavoured to provide space for new ideas and practices related to Public Administration and allied disciplines.

The Branch has been conscious of maintaining quality and punctuality of thejournal in order to make it useful for teachers, researchers, students, policy makersand administrators. I express my thankfulness to the editorial team, anonymousreferees, learned contributors and institutions of higher education that haverendered helping hands to our venture.

Prof. S.P. Shahi
Chief Editor

Editorial

We have received a good number of papers, dealing with judicial and legal opinions on various aspects of governance and public administration related to protection of rights of women and children, citizens' right to water and sanitation, privacy in era of artificial intelligence and the rights of manual scavengers. Besides, the present supplement of BJPA covers the significant aspects of the intersection of law and governance such as civil servants and Indian Constitution, governance and judicial activism, NGT and environmental governance, legal aspects of digital signature, e-Courts in reducing judicial stress and public services, organizational wisdom and Indian laws, prevention of corruption and public services, Laws and SEZs and legal issues in governance of delivery of sanitation and water services and health services.

As it was decided to publish the Issue on 'law and governance' as the supplement of Vol. XIX, No. 2S, 2022, the processing of review etc. took some time and was completed by the beginning of February 2023. Hence, it is being published a bit late.

As the policy of the Journal is to place greater premium on the various aspects of governance, the legal and judicial aspects of governance have been taken up. The Bihar Regional Branch of IIPA and the Editorial team express thankfulness to external support from expert reviewers and the contributors. At last, though utmost care has been taken to maintain the quality, yet we shall feel obliged to have suggestions from readership for improvement in the Journal.

R.K. Verma,
Editor

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VIOLATION OF HUMAN RIGHTS OF CHILDREN: A CASE OF JUDICIAL PRACTICES IN PROTECTION OF MINORS FROM SEXUAL OFFENCES

Shakeel Ahmad* and Rahul**

Abstract

Child sexual offences can occur in a variety of situations, and India, which has the largest population of children worldwide, witnesses an increase in these incidents. One significant problem is that most cases of sexual abuse of children in India go undetected. Of these cases most of them are victimized by family members, relatives, friends, criminal family friends etc. The situation reveals that there is a gross violation of children's human rights. Despite Constitutional and several legal safeguards, cases of children's sexual abuse have not been arrested. In the given situation, the present paper attempts to examine the prevalent judicial practices in protection of children from victimization and to understand the functions and procedures of judiciary in delivery of justice, particularly related to the psyche of the victim. The paper finds that there is lack of awareness of protective and remedial legal provisions among the people.

Keywords: Sexual offences, Children, POCSO, Judiciary, Victims, India

INTRODUCTION

The child is said to be the father of humanity, according to an old proverb. Children's education today in a healthy, both physically and mentally, environment is the first step toward a bright future. In India where, as per census 2011 more than 440 million children counted below 18 years of age constituting 37% of the total population of the country. At 18 million, India has the most street children

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in the world. Each one has a unique history of emotional scarring, exploitation, and abuse. Many people in India's streets continue to dwell in forgotten nooks, while a fortunate handful are able to find new paths. It is very difficult to say that the crime will not be committed against them or their rights shall not be violated. Child not even faces physical crime but also they face sexual crime. In India, most sexually harassed or raped children by their known person like Accused may be family members, close family relatives, neighbors, etc.

The latest rape incidents have woken the nation's conscience. In the midst of India's "shock" following the incidents in Katha "(Jammu and Kashmir)" "and Unnao" "(Uttar Pradesh), more incidents, such as those in Surat (Gujarat) and Nadia (Uttar Pradesh), are reported almost daily. The sad "Nirbhaya case" has created "outrage and awareness" about rape assaults in India, which has led to an increase in recent years. It has been 15 years since the number of "reported" incidents has climbed by 26%, mostly because of an increase in complaints in northern Indian states including "Rajasthan, Delhi and Uttar Pradesh."

As per the report published by the "National Crime Record Bureau (NCRB)", 109 children were sexually abused every day in India in 2018, a 22% increase from the previous year (2017). In 2017, 32,608 cases were reported under the "POCSO Act", while 39,827 cases were reported in 2018. According to the data, 21,605 children were rape victims in 2018.

The number of child sex abuse instances reported on various platforms starting in March 2020 is as follows:

1. "As reported by National Crime Records Bureau (NCRB), the total number of child pornography/rape and gang rape complaints lodged in the National Cybercrime Reporting Portal (NCRP) from 01.03.2020 to 18.09.2020 is 13244.
2. As reported by National Commission for Protection of Child Rights (NCPCR), information of 420 cases of child sexual abuse has been received by NCPCR from 1st March, 2020 till 31st August, 2020 via online portals, helplines and other media.
3. As reported by Childline India Foundation (CIF), 3941 calls have been received by CIF regarding child sexual cases from 1st March, 2020 to 15th September, 2020."

The Judiciary is highly important in the process of advancing children's rights. Litigation in the public interest is often used to assist and support efforts to safeguard the legal rights of children. The courts put progressive legislation into effect and interpret restrictive laws so that they are consistent with the best interests of children. To provide full justice, they resorted to novel approaches, such as judicial activism, which entailed the defense of victims' rights and the investigation and punishment of abusers. One of the

most important functions of any government is the administration of justice, which ensures that citizens and visitors alike are protected from lawlessness. Justice must be administered quickly, efficiently, and impartially to ensure the safety of the public. The judiciary, which is made up of magistrates and judges who uphold the rule of law, is in charge of giving out justice.

The judiciary in India has to act as an impartial umpire to resolve disputes between the government and private individuals as well as between the governments themselves. It is required to safeguard the fundamental rights of individuals as outlined in Part III of the Constitution. In this country, the courts have already widened the scope of judicial review by putting the administration of social, economic, and political justice under their purview. It is important to protect not only the independence of each judge, but also the independence of the court system as a whole, especially as the scope of judicial review grows. In a nutshell, the judicial branch is the one that has the final say on the interpretation of the law as well as the Constitution. There is no doubt in anyone's mind that the court system does not operate independently of it and above it. The courts do not operate above and beyond the scope of their authority in the same manner that the judiciary does not. In the same way that Parliament is compelled to stay within its boundaries, so too must the courts. Since this is the case, India's current legal theory and constitutional jurisprudence cannot use the traditional ideas of law, state, and sovereignty. All precautionary measures, as well as the Supreme Court's guidelines, must be strictly followed, and the judge must strike a balance between protecting an accused's right to a fair trial and the rights of the victim.

OBJECTIVES AND METHODOLOGY

The main objective of our research paper is to develop an understanding to access the magnitude and protection of children from sexual offences in India and to present role of the Judiciary. To achieve this major objective it attempts to find out the causes of poor implementation of POSCO, analyse the NCRB reports, investigate the judicial procedure and its responsiveness under the Act in the context of protection of children's human rights.

The present research focuses mostly on doctrinal issues. The doctrinal analysis is predicated on secondary evidence that was compiled from a wide variety of sources, including books, journals, magazines, newspapers, and legal reports, among others. An attempt has been made to conduct a quantitative assessment of the major judgments that have been handed down by the Honorable Supreme Court of India and the High Courts

DEFINITION OF CHILD AND SEXUAL ABUSE IN THE EYES OF LAW

Different laws defined the age of children differently. The UN Convention on Rights of Child defined three categories of children – early childhood, middle childhood and puberty - up to the age of eighteen. The Census of India and Indian Constitution (Art 24) fixed the age of fourteen years that is applied to government programmes also. Under the Indian Contract Act 1872, Employment of Children Act 1938, POCSO Act 2012, and Juvenile Justice (Care and Protection of the Children) Act 2015, the age of the child is considered at 18 years. Whereas according to the Indian Penal Code, 1860, this is less than seven years and above twelve years for the purpose of criminal responsibility. With a view to providing protection against kidnapping, abduction, and related offences, the age limit has been fixed at sixteen years in the case of boys and eighteen years in the case of girls. A girl is considered a minor in rape if she has not reached the age of eighteen years. When using standard demographic data, social scientists classify females between the ages of fifteen and nineteen as "girl children.

Children's sexual abuse is a direct violation of a child's human rights and is the result of a number of interconnected familiar, social, psychological, and economic factors. It is a cause of psychological, physical, economic, and sexual maltreatment meted out to people under the age of 18, and it is an universal phenomenon.[1] Sexual abuse of children is defined as the physical or mental abuse of a child combined with sexual intent, usually by an older person in a position of trust or power over the child.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCECES (POCSO) ACT, 2012

On November 14, 2012, the "Protection of Children from Sexual Offenses" Act (also known as the POCSO Act, 2012, 32 of 2012) became law and went into effect. The Act was enacted as a piece of legislation with the goal of preventing minors from being sexually exploited or abused in any capacity. In addition to this, it establishes provisions for the establishment of specialised tribunals that will hear cases involving the sexual abuse of minors. These tribunals will be responsible for prosecuting those responsible for these crimes. In addition, it stipulates the use of a child-friendly method for the recording of evidence, the investigation of the offence, and the trial that pertains to that offence. In accordance with the POCSO Act, 2012, an individual is regarded as a "Child" if that person has not yet reached the age of 18 years old. The current statutory laws, such as the Indian Penal Code from 1860, the Criminal Procedure Code from 1973, and the Indian Enslavement Act from 1872, do not fully describe sexual offences committed against children.

1 S. K. Chattergee, "Offence against children and Juvenile Offences", P.163 (Central Law publications, Allahabad, 1st edition 2013).

Even though there have been a lot of sexual crimes in India, most of them have not been reported to the police. In the Indian Constitution, the state of India is given the power to pass additional laws or safeguards to protect children (Art 15(3) of Indian Constitution). The Criminal Law (Amendment) Act, 2013 after the "Nirbhaya Rape Case" in Delhi and the Criminal Law (Amendment) Act, 2018 after the Kathua Gang Rape Case So many provisions have been amended after these cases in the Cr.P.C., 1973, IEA, 1872, and IPC, 1860.

Offensive acts Against Minors: The Act defines the acts of sexual abuse against children as a) Sexual assault involving penetration, b) Child trafficking for sexual exploitation, c) Sexual assault with a sharp object, aggravated (If the child is mentally unwell or if the abuser earns the child's trust before abusing them, the situation is described as 'aggravated') d) Sexual assault and e) Making sexual or pornographic use of a child. This Act does not discriminate based on gender. The Act ensures a child-friendly environment in all judicial proceedings. The Act places a premium on the "best interest of the child" principle.

The reporting of crimes, the documentation of evidence, the examination of the circumstances surrounding the crime, and expedited trial are all made possible by the provisions of this Act. The case is heard in a special court established by the Act, and the child's identity is always protected. The amount of compensation awarded to the kid to pay for medical care, rehabilitation, and counselling is decided by a special court in this area.

The important provisions of POCSO Act

1. Police officers are required to notify the Child Welfare Committee of any suspected cases of child abuse or neglect within 24 hours of receiving such a report.
2. To prevent the children from receiving a reprimand, the police officers handling the case must be dressed appropriately when taking the child's statement. The statement of the child related to the crime must be recorded in the presence of the person whom he/she trusts.
3. For the collection of forensic evidence, the medical examination of the child should only be conducted by the lady doctor in presence of a person that the child trusts.
4. Under this Act, special courts have been set up to conduct speedy trials.
5. It is the duty of these court that they will not disclose the identity of the child and the child will not be exposed to the accused while recording the statement.
6. The child will not be asked to repeat his/her testimony again and again and he/she can give his/her testimony through video also.

7. It should be noted that the case should not get delay and are disposed of within a year from the date of being it reported.
8. If the child needs any assistance, an interpreter, translator, special educator or any other expert should be present in court.
9. The child of the family should be awarded compensation for the medical treatment and rehabilitation of the child.

ROLE OF THE JUDICIARY

During our struggle for freedom, a charter of rights was requested by the Motilal Nehru Committee as early as 1928. The Indian constitution is distinctive in that a significant portion of human rights are designated as fundamental rights. As part of its mission to ensure that all Indians are treated fairly under the law, the country's judicial system also analyses the intent of lawmakers considering the specifics of each case and identifies gaps in the law. The Judiciary is responsible for determining whether laws passed by the legislature are constitutional under the Constitution. Each branch of government—the administration, the legislature, and the judiciary—has clear responsibilities and authority boundaries within which to carry out their duties. Through judicial review, it is the job of the judiciary to make sure that each branch stays within its own limits. This helps to preserve the rule of law and the supremacy of the Constitution.

Since independence, India's legislation and judiciary have worked tirelessly to ensure that children have fundamental rights from conception to the legal age of maturity. The legislature incorporated many special provisions for the protection of children, and many of these provisions have been amended from time to time. In India, rape was the most common, if not the only, specific sexual offense against children recognized by law. In the absence of relevant legislation, various offensive behaviors were never legally sanctioned, including sexual abuse of children (but not rape), sexual harassment, and pornographic exploitation. Non-governmental organizations (NGOs) and the Union Ministry of Women and Child Development were actively involved in breaking the conspiracy of silence, generating significant social and political momentum to address the concerns. This resulted in increased media activism and public discourse on child protection issues. In response to this protest, the Ministry of Women and Child Development pushed through the "Protection of Children from Sexual Offenses" Act in 2012.

The Indian Constitution plays an important role in protecting and enforcing violations of human rights in India. Part III is concerned with fundamental rights, and Part IV is concerned with the Directive Principles. Article 13 of India's constitution declares that any law that is inconsistent with or violates any of the fundamental rights is void. In other words, it establishes a judicial review doctrine.

Under articles 32 and 226 of the Constitution, the Supreme Court and High Court have the authority to declare a law unconstitutional and invalid if it violates any of the fundamental rights. The Judiciary's role in the protection and enforcement of human rights is not limited to legal issues. It had played a significant role in the protection of children's rights. Article 147 of the constitution provides the supreme court of India with the power of interpretation.

In Ghanashyam Misra vs The State (1956) "Recognizing that the offence was committed by a person in a position of trust or authority over the child, the Orissa High Court increased the sentence of Ghanashyam Misra, a schoolteacher who raped a 10-year-old girl on school grounds. The judgement states that the circumstances are all of an aggravating nature. The victim is a ten-year-old girl, and the perpetrator is a 39-year-old adult. He took advantage of his position by inducing her to come inside the school room and commit such a heinous act, the consequences of which could have completely destroyed the girl's future life. The court not only increased the sentence to seven years, but also ordered the accused to pay restitution to the father and child".

(Mathura Rape Case) Tuka Ram And Anr vs State Of Maharashtra (1978) "The Mathura rape case occurred on March 26, 1972, in India, when Mathura, a tribal girl who was a minor at the time, was allegedly raped by two policemen on the compound of the Desai Ganj Police Station in the Chandrapur district of Maharashtra. Following the acquittal of the accused by the Supreme Court, there was public outrage and protests, which eventually resulted in amendments to Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46)."

Sheela Barse & Others vs Union Of India & Others Ms. Sheela Barse, a social worker, decided to take up the case of children under the age of 16 who were unlawfully detained in jails on August 13, 1986. As part of its decision, the Court stated that the right to a speedy trial is a fundamental right enshrined in Article 21 of the Constitution.

State Vs. Freddy Peats and Others "In Colva, Goa, Freddy Peats ran the 'Gurukul Orphamily' orphanage. 27 shelter boys were subjected to various perverse sexual activities between 1980 and 1991. Peats would not only abuse the boys himself, but would also send them to sex with other foreigners. He would inject steroids into the boys' testicles and take obscene photographs of them. In 1991, the issue was finally brought to light. The trial was held behind closed doors to protect the victim boy's anonymity and dignity. The prosecution established that Peats had wrongfully imprisoned the boys and committed unnatural acts. It was also established that he was paid in exchange for allowing others to abuse the boys. The decision was made by an additional sessions judge in Margoa in 1996, and it was upheld by the Bombay Court, Goa Bench, in 2000."

Contd…

According to the ruling: "After having personally heard the victim boys in this court and accessed the merits backing the testimony which is overwhelming on record with absolute corroboration almost verbatim inter se and almost illustrated in each one of those photographs coupled with various admissions and the scheming silence of accused no.1, I am of the unshakable belief that accused no. 1 deserved no leniency at all of any nature whatsoever. Quantum of sentence shall definitely be proportionate to the gravity of the crime." Freddy Peats died when still in prison in 2005, at the period of 81.

In State v/s Bhau Valve SP (***Decided On, 27 July 2010)*** The father, who was 46 years old, raped and sexually assaulted his daughter, who was 17 years old, at his home in Maddel, Curtorim. The victim in question gave birth to a girl. The court sentenced him to life in prison and imposed a fine of Rs. 100,000, failing which he must serve 3 years in prison. The fingerprint evidence, which demonstrates that the accused is the biological father of the infant girl with a 99.999 percent certainty, is the final piece of evidence required to convict the accused.

In the 2011 case of *State vs Pankaj Choudhar* When an inanimate instrument is used to penetrate a 5-year-old girl's anus and vagina, the accused can only be tried for "outraging the modesty of a lady." Without evidence of penile penetration, the High Court found that the prosecution had failed to prove rape.

Independent Thought vs. Union of India And AnotherThe Honorable Court ruled that even with his wife's agreement, sexual activity between a man and his wife between the ages of 15 and 18 constitutes rape. After this verdict, a woman's consent is irrelevant if she is under the age of 18.

The Protection of Children from Sexual Offenses Act (POCSO Act), 2012 specifies the age of consent as 18 years for both genders, whereas the rape law provision in the Indian Penal Code specifies the age of consent as 15 years for married girls. With this decision, the Court aimed to address this glaring anomaly in the age of consent law. So, based on past cases, any sexual activity between a married woman and her husband, even if the woman is under 18, is thought to be consenting, even if the woman does not consent. The Court concluded that given the "interest of the child," particularly the girl child, this imbalance is ludicrous. Also, a contradiction like this is impossible, especially since section 42A of the POCSO says that if there is a conflict between two pieces of legislation, the POCSO should take precedence.

In Imran Shamim Khan v. State of Maharashtra (2019), A minor told her grandma that she had been sexually molested, and a medical exam supported this. Her mother, however, instructed her to disregard it. The grandmother of the victim's young daughter and the remarks they made were written down in front

of the magistrate. The judgement states, "even if a minor in a sexual assault case turns hostile under the POCSO Act, the onus is on the accused to establish the innocence. It is easy to say that the prosecution failed to prove the guilt of the accused. But in a case like this, the judicial approach has to see justice is imparted to the victim too".

Tripura high Court, in a judgement, says "Touching a Minor's Hand Without Intention to Molest Will Not Be Considered Sexual Assault," The victim's mother filed the complaint, claiming that the suspect had broken into her home, abused her daughter, and attempted to rape her. The complainant arrived after hearing the victim's screams, and the accused quickly ran away. The victim's and witnesses' statements were taken down by the investigating officer during the investigation.

Allahabad High Court rules that having sex orally with a juvenile does not constitute "aggravated sexual assault" under POCSO. Section 4 of the POCSO Act defines "penetrative sexual assault" as a crime, according to the court's ruling. A Jhansi convict who was sentenced to 10 years in prison for violating the POCSO Act has appealed his conviction and sentence. His appeals to the Allahabad High Court resulted in a reduction of his sentence from ten to seven years. According to Section 4 of the POCSO Act, the conduct of an appellant qualifies as penetrative sexual assault, and as a result, he should be punished. Justice Madan Lokur approvingly cited a study by the Government of India on child sexual abuse stating that "minor girls have not achieved full maturity and capacity to Act and lack ability to control their sexuality", concurring Justice Deepak Gupta emphasised that "the girl child must not be deprived of her right of choice [and] her right to develop into a mature woman."

In a judgement delivered by Justice Pushpa Ganediwala of the Nagpur Bench of the Bombay High Court acquitted an accused person under the Children from Sexual Offenses Act, 2012. The decision was made in Criminal Appeal No.161 of 2020. The case involved sexual violence against women and girls. The Judge ruled: "Considering the stringent nature of punishment provided for the offence (under POCSO), in the opinion of this Court, stricter proof and serious allegations are required. The act of pressing of the breast of the child aged 12 years, in the absence of any specific detail as to whether the top was removed or whether he inserted his hand inside top and pressed her breast, would not fall in the definition of 'sexual assault. The Act of pressing the breast can be a criminal force to a woman / girl with the intention to outrage her modesty."

CONCLUSION

Even though the judiciary has made suggestions for protecting children, the government hasn't taken any of them into account yet. Therefore, it is necessary to

enforce some strictness. Despite the existence of all these legal structures, society remains unchanged. Children are consistently denied justice. Even though it is against the law, activities like child labour and child marriages nevertheless occur. All of this is a result of poverty, and our nation adheres to a reformative idea that, in my opinion, is useless. Nobody is going to change this way. More restraint is required, and people's minds should be filled with fear. Without a doubt, the POCSO Act, 2012 has made a substantial contribution to resolving the CSA problem in India. It has acknowledged and outlawed some dangerous sexual behaviours that have an impact on children. Underage weddings should be discouraged by the Prohibition of Child Weddings Act 2006 and the Prohibition of Child Marriages Order 2012, which state the Indian government's intention to forbid child marriages and protect vulnerable youngsters. But given the above problems and the fact that social and cultural norms continue to accept and even promote child marriage, it is impossible to ignore the possibility of resource loss and waste.

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PUBLIC-PRIVATE PARTNERSHIP MECHANISM FOR SANITATION SECTOR IN INDIA: A STUDY FROM EFFICIENCY ENHANCEMENT AND DELIVERY OUTCOME PERSPECTIVE

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Abstract

In Maximum district the local self-governance is at the verge of collapse or the states have failed to develop mechanism for effective mechanism for sanitation and clean drinking water. Consequently, the citizens are living in situation where the good quality water is a dream and logged drains and urban slums are strength of the cities. Improving the efficiency of utilities appears at plausible condition. To overcome the challenges related to sanitation facilities states have started opting for alternative option of fund through PPPs to outcome the problem. This paper is an attempt to examine the pros and cons of the PPP model and to examine the probability of adoption by the rest of the municipal corporations. This paper has been structured with an objective to compare and focus on the working difference between government-controlled municipality function and those state where PPP is in operation.

Keywords: PPP, Sanitation-Policy, Swachh Bharat Mission, Biometrical-waste, and Hybrid Annuity-PPP model.

INTRODUCTION

It is alleged that even after 75 years of independence, government of India has failed to provide the basic amenities to its citizens. This condition became grim during the covid 19 pandemic and it had been reported most of the state's lack infrastructure and mechanism to handle the crisis arising out of the pandemic.

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The data reveals that merely 28.6% of all spending which grew to 40.6% on health comes from the Union government. The state government spending is just 25% of the total spending; over 70% of healthcare services in India are provided by the private sector. In majority of the state's municipal Corporations performance is disappointing and dismay.

Urban cities are clogged and people are struggling to get basic sanitation facilities for livable environment. Improving the efficiency of utilities appears at plausible condition. Nearly 60 million people in urban areas lack access to improved sanitation arrangements, and still more than two-thirds of wastewater is let out untreated into the environment, which is polluting land and water bodies. Everyday almost in every second cities residents have to face the crisis of non-supply of water or poor sanitation facility or clogged drainage. Despite strong claim and initiatives like Swachcha Bharat Mission the empirical report of assessment establishes that villagers had not been consulted with regard to location, design or operation of the toilet.

To overcome the challenges related to sanitation facilities states have started looking for alternative option of fund through PPPs may lead to better outcomes. This paper is an attempt to examine the pros and cons of the PPP model and to examine the probability of adoption by the rest of the municipal corporations. This paper further aims at identifying the working difficulty of the PPPs model in India. It also addresses that what precautionary measures are needed to deal with the legal issues arising out of investment by the private players? What strategy should be adopted by the state and private players to achieve more output and make the mission successful? This paper has been structured with an objective to compare and focus on the working difference between government-controlled municipality function and those state where PPP is in operation.

STATEMENT OF PROBLEMS

Most of the people, who become the victims of health-related problem have identified that there is a direct link with the poor quality of sanitation and carelessness on the part of state machinery to monitor implementation of its planning and effectiveness of its actions. Many research papers reveal that the allocation for sanitation facilities is dissatisfactory and not adequate. There is a need to release more funds for priority areas. Inadequate sanitation facility; like unsafe disposal of human excreta, open defecation, lack of infrastructure (sewerage, drainage/ sullage), sanitation and water treatment plant and absence of hygiene management constitute a major threat to the health of the people. It is estimated in several research that the problem of poor sanitation will become more serious in the years to come as the city population continues to grow rapidly.

SANITATION POLICY INITIATIVES- STEPS AND EFFICIENCY LEVEL

To understand the working efficiency of Sanitation Policy, we need to examine the operational scope of the term sanitation. This usually includes disposing and hygienic management of human and animal excreta, refuse and waste water, control of disease vectors and provision of washing facilities for personal and domestic hygiene. Improved sanitation is important because it makes human health better, promotes economic and social development and also helps the environment. Due to lack of proper sanitation facility, water is contaminated, environment is polluted, and vector is increased resulting in major health hazards. It is estimated that every year more than millions of people die from illness linked to excreta disposal and improper hygiene practices. Despite so many serious consequences linked with poor sanitation facilities; initially the policy, planning and execution thereto were not accorded priority. PPP Model is advanced as alternative means for this sector; as in many other sectors such as in infrastructure and road we may use it as an effective alternative.

Although in 1954 rural sanitation programme was introduced for the first time in India but it was confined to healthcare infrastructure, manpower facilities. Supply of clean drinking water, sanitation and hygiene were not given priority. Since launch of the International Drinking Water Supply and Sanitation Decade in 1980, focus have changed and effort were made for rural water supply and sanitation. Though some progress was made; yet the target set under the programme remained unachieved. Further, Central Rural Sanitation Programme (CRSP) was restructured in 1999 and the *Total Sanitation Campaign* (TSC) was introduced. It was aimed at providing adequate sanitation facilities to the rural poor. In the Ninth , Tenth Five-Year Plan was made for taking all possible measures for rapid expansion and improvement of sanitation facilities in urban and rural areas and coverage of Not Covered (NC) habitations followed by the Partially Covered (PC) one by 2004.

Integrated Low-Cost Sanitation (ILCS)

Considering the poor achievement of previous policies; Ministry of Housing and Poverty Alleviation (HUPA) had started a Centrally Sponsored Scheme for Integrated Low-Cost Sanitation (ILCS). Under this scheme, central subsidy to the extent of 75%, state subsidy to the extent of 15% and beneficiary contribution to the extent of 10% is provided for. The main objective of the scheme was to convert around 6 lakh dry latrines into low cost pour flush latrines by 31st March 2010. 75% of the central allocation were be used for conversion and the remaining 25% be used for construction of new toilets for EWS households who have no toilets in urban areas. This programme also failed to achieve projected the target.

Swachh Bharat Mission and Building Toilet

Swachh Bharat Mission (SBM) that was launched on Oct 2, 2014, with a larger vision of a clean India. Since October 2014, according to the central government, SBM (U) has equipped over 52,19,604, households with toilets, and 4,17,496, community and public toilets have been delivered. A whopping 3,362 cities have been declared ODF, which accounts for 94 percent of the targeted cities. Is it really making India free from open space latrines? The reports of many agencies claimed that there is gap between claim and reality. Though the statistics and numbers from the Swachh Bharat Mission indicate complete success of the plan, yet many agencies claim there are still gaps within the programme. Its authenticity is as the statistical data of the ministry in claim sanitation coverage was 73 per cent in 2011 whereas the census record pointed out that only 40 per cent of households had a toilet.

Dealing with Biomedical waste and Sanitation

The Union Ministry of Environment, Forests and Climate Change (MoEF&CC) had notified the new Solid Waste Management Rules (SWM), 2016 to replace the Municipal Solid Wastes (Management and Handling) Rules, 2000. The new rules mandated the segregation of waste at source into three streams: Biodegradables, dry waste (plastic, paper, metal, wood, and so on), and domestic hazardous waste (diapers, sanitary napkins, mosquito repellents, condoms, disposable gloves, and face masks), before handing it over to the waste collector. However, in reality waste collectors do not insist on separation, domestic hazardous waste gets mixed either with wet or dry waste. Moreover, the COVID-19 pandemic has exposed the indifference of our government towards these workers as waste pickers and kabadiwalas collect, sort, and process recyclable items, by picking them from mixed waste at dumpsites or street corners without caring for the risk to which were being constantly exposed.

Policy Outcomes of Early steps-Achievement and Gap

Despite several planning, Scheme and legislative obligations real picture of urban as well as rural India does not reflect that it has gone through so many policies implementation scheme. Utilities in India have low-cost recovery, which is further exacerbated by low tariffs that have little relation to operating costs. Only about 20 percent of connections are metered,. Large gaps exist in terms of service efficiency. More than 80 per cent of India's rural population and 50 percent urban has no access to safe and hygienic sanitation facilities. An estimated 650 million Indians defecate in the open and 200,000 tonnes of feacal matter are deposited in the open

environment every day. The Government of India has invested a large amount of about Rs. 32 000 crores (6.8 billion) in the Rural Water Supply and Sanitation (RWSS) sector since 1954 but the results and achievements are not very encouraging. The situation is not much improved.

Households having bathroom facility within the house is abysmally low in rural areas and urban areas in the BIMARU States, NE, J&K and Orissa. The position in respect of connectivity for waste water outlet is even more alarming. While closed drainage is available in the urban areas, a large percentage of bathrooms across all States in the country have no drainage system particularly in the rural areas. This percentage is as high as 73.88 in Orissa, 72.69 in Assam and 71.81 in Chhattisgarh. The non-availability of toilets within the house is as high 71.94 in Bihar, 76.78 in Chhattisgarh and 73.03 in Jharkhand. In urban areas, the households not having toilet is marked in the case of Goa (15.26), Maharashtra (17.75), Chandigarh (17.83), Delhi (19.58) and Tamil Nadu (14.84).

PUBLIC AND PRIVATE-DESIGN AND EXPECTATIONS

The unrelenting necessity to raise infrastructure funds compels governments to seek private partners. PPPs will enable the public sector to profit by financial, business and other types of knowledge and skills and an innovative entrepreneurial approach in project implementation and management. It is claimed that this model will enable government with the opportunity to bundle infrastructure creation and/or rehabilitation with related service delivery that leverages private sector efficiencies. It is claimed that as a partner, the private sector can bring technical and management skills and experience, commercial discipline, and private finance to help tackle such challenges in a structured and contractually binding manner. PPPs are also taking the government towards ensuring water and sanitation services accessible for everyone which is one of the main targets of the Millennium Development Goals (MDGs). It is also the core responsibility of both national and local governments to satisfy the legitimate (human) rights of all citizens and safeguard the interests of the poor.

Policy Implementation of Public-Private Partnership- Ground Level Execution

It is claimed by many that adoption of PPP may offer a win-win solution for all stakeholders. As a part of its urban work programme, the Water & Sanitation Program - South Asia (WSP-SA) in partnership with the Ministry of Urban Development (MoUD), Government of India (GoI), undertook the PPP project. The PPP cell in the Department of Economic Affairs, in the Ministry of Finance

is mainstreaming PPPs at selected line ministries through a technical assistance project. Tirupur in Tamil Nadu was the first in India to implement a PPP water and sanitation project in 2005. A consortium of three private firms implemented the PPP project to ensure sustained supply of water. The project was designed on a Build-Own-Operate-Transfer (BOOT) basis for 30 years, after which it is to be transferred to the state Government. This project was aimed to supply 185 Millions of Liters per Day (MLD) water to 450,000 people in Tirupur city and to another 450,000 people in the surrounding rural areas, as well as to 900 industrial units. The project charges a composite water and sewerage charge to recover the cost. This project has a very strong element of cross subsidization of the household water tariff rate. While the base year charge was calculated at Rs 30.0/kl, rural and urban households were to be charged at Rs 3.5/kl and 5.0/kl, respectively against a rate of Rs 45.0/kl for the industries. Actual cost of water in comparable locations were much higher (from Rs 60 to 80/kl). The concession agreement were in disconnect of financial burden.

As part of the capacity-building initiative, technical assistance was provided to the Government of Maharashtra for developing PPP templates in the urban water supply and urban transport sectors. The Municipal Corporation of Greater Mumbai (MCGM) has decided to implement the Middle Vaitarna project, to augment water supply to Mumbai by 455 Million Litres a Day (MLD). MCGM appointed CRIS Infrastructure Advisory-following a competitive bidding process-for assistance in evaluating different financing options for the implementation of the Middle Vaitarna project.

CRISIL Infrastructure Advisory is assisting Kolhapur Municipal Corporation (KMC) in developing an STP on PPP model. The private developer is expected to design, construct and commission a 76- Million Litres a Day (MLD) STP, and operate and maintain it for 10 years. This project is funded through a grant of 70 per cent of the approved project cost by the National River Conservation Directorate (NRCD), Ministry of Environment and Forests, Government of India. Since 2005, most water PPP projects have been initiated by the project-sponsoring authority itself, such as Urban Local Bodies (ULBs) and state departments. At present, 50 percent of projects have been developed with financial support from the central government. The capital injection from schemes such as JNNURM and UIDSSMT has been a major driver of this shift. Public funding for PPP projects in progress within the JNNURM framework (including the UIDSSMT component) covers approximately 60-70 percent of the escalated project cost.

Review of Working of PPP in Sanitation Sector

There are two opposite claims with regard to success of PPP in sanitation sector. Non-government organizations are speculative and claimed partnerships in

sanitation sector is facing constraints at various level; related to clearance of tools of infrastructure projects, delayed regulatory approval, an undeveloped corporate bond market, limited availability of long duration instruments and banks saddled with NPAs and accusations of weak governance. The debt financing from banks may make them more vulnerable. The economic recession has made this worse - private finance is even more expensive now (2%-3% more expensive than public finance in India, as the booklet points out), the reputation of private banks and financial organisations is extremely low, and many PPPs have hit their own financial crises because banks are reluctant to lend them any more money. It is further submitted that it is brutally clear that the extra costs is involved, as a result of the private sector's need to pay higher returns to investors, and the lack of evidence of any compensating efficiency gains. It unpicks the seams of complex contracts, re-negotiation, evasion, secrecy, selectiveness, avoidance of responsibility, incompetence and corruption that hold together this latest form of privatisation.. It is advisable to introduce reforms prior to a PPP. The absence of credible regulatory mechanisms may have more detrimental impacts on the sustainability of water and sanitation PPPs in India. This lacuna thereof has had negative impacts on progress toward efficiency gains in utility operations. Moreover, for the success of PPP in India we must introduce water-tariff reform as it is a key condition for the development of sound PPPs in the water and sanitation sector. The Infrastructure Department report in its report relating PPP argues that Bid Evaluation criterion need to be simple and robust so that capable entities are identified for the project and at the same time bids are not speculative. While profitability requires an operating model of full cost recovery, many governments find it politically and administratively difficult to implement the necessary tariff reforms and dynamic pricing. Some PPP experiments led to better utility performance but others did not. Hence handing over managerial responsibility to a for-profit entity is no guarantee for better utility performance.

Out of the five water supply PPP projects initiated in 1990, three involved international private operators. It is claimed that domestic operators may not be able to mitigate risk to a greater extent than international firms because their local knowledge enables them to navigate through the local project environment. But in opposite to claim in most of the project it has been witnessed that inadequate baseline information, lack of clarity on risk sharing, and weaknesses in the procurement processes contributed to difficulties in getting these PPPs off the ground. In most of the project lack of stakeholder support has been a significant reason for several PPPs not moving forward. The other solution was advanced as a decentralized or non-networked approach, where the wastewater is contained on-site, transported through small or medium-sized vehicles, treated at small plants, and, if possible, reused.

Contd…

It is submitted that most of the projects imited to the later steps of the sanitation value chain, such as the construction and operation of sludge treatment plants, end use or disposal, and so on. This result in poor efficiency of the overall service provision in non-sewered sanitation. From a citywide sanitation perspective, it may thus be necessary to consider extending the partnership between the public and the private sectors as well as the state penetration to more aspects of the sanitation value chain. Moreover, the sanitation sector is often affected by social stigma associated with the work. Thus, finding skilled personnel is difficult. Also, the businesses find it challenging to fulfill the growth aspirations of their employees and therefore struggle to retain quality personnel.

a). Viability Gap Funding Scheme

To overcome the financial liability and meet future requirements; Viability Gap Funding (VGF) should be designed to provide capital support. VGF may reduce the gap of revenue requirement and may provide a financially attractive return for the private sector. The Government of India has established the Indian Infrastructure Finance Company Limited (IIFCL) to provide support for infrastructure funding. This takes advantage of the Government's sovereign borrowing capacity to create a large fund that can then on-lend to PPP projects. A notification on 7 December, 2020 was made by the government of with regard to Scheme and Guidelines for forwarding proposals for financial support to Public Private Partnerships in Infrastructure under the Viability Gap Funding Scheme. Is it going to remove all the hinderance needs to be seen how it is implemented and made operational?

b) PPP- Sewage Treatment Plant

The Government of India had accorded Cabinet approval to Hybrid Annuity-PPP model in January 2016 with 100% central sector funding. Under this model, the development, operation and maintenance of the sewage treatment STPs will be undertaken by a Special Purpose Vehicle (SPV) to be created by the winning bidder at the local level. As per this model, 40% of the Capital cost quoted would be paid on completion of construction while the remaining 60% of the cost will be paid over the 15 years life of the project as annuities along with operation and maintenance cost (O&M) expenses. Hybrid Annuity based PPP model has taken off with NMCG awarding work to private sector for construction and maintenance of Sewage Treatment Plants (STPs) in two major cities in Ganga river basin - Varanasi and Haridwar. The Sarai, Haridwar 14 MLD STP has been developed at a cost of Rs. 41.40 crores and the plant has been completed before its scheduled timeline..However, it is too early to predict anything about hybrid STP- PPP model.

c) Solid waste Management

Though Municipal Solid Waste Management is an essential and obligatory function of the Urban Local Bodies, service levels in MSWM continues to fall short of desired levels. The Report of study conducted by ASSOCHAM jointly with Ernst & Young (EY), submits that that disposal of millions of tonnes of untreated garbage by the municipal bodies is a problem. The Ministry of Urban Development (MoUD) has defined Eight Service Level Benchmarks (SLBs) for SWM. However, an assessment of the average performance of 28 ULBs revealed that none of these benchmarks are achieved except for complaints redressal. Against the benchmark of 100% household coverage and cost recovery, only 48% and 17% level is achieved respectively. Waste recovery has been as low as 32% against the desired benchmark of 80% and collection of service charges from households stands at 31%, which is not even half of the desired benchmark of 90%. With persistent focus on processing, recycling and user fee, this initiative has been able to surpass the national benchmark of 80% waste recovery set by the Ministry of Urban Development (MoUD). But it is observed that in most of municipal areas in India still compost solid wastes, in static piles. Study of PPP- in Aizwal district reveals that shortage of funds, absence of specially designed waste vehicles, no segregation of waste, local councils beyond the control of Aizawl Municipal Council (AMC), and the absence of scientific SWM system.

Sanitation and Water Sector as Market for Local Enterprises

Across the developing world, millions of people rely on the private sector for their daily water and sanitation needs. In the majority of cases, these local entrepreneurs operating on a small scale, see selling water and sanitation services to the poor as market opportunities. They consider poor people as the markets of the unserved people that public services have failed to provide for and for whom internationally recognized notions of improved services are out of reach. The paradox is that this large market is dominated by small, local enterprises and who in connivance the bureaucrats make the public services non-functional.

CONCLUSION

It is evident from the above discussion that much of what is known about PPP, has been emerging out of an unstructured process almost as a trial and error and policy measures designed to bring about public private participation have not delivered significant success. There are intrinsic obstacles which make investments in water supply and sanitation projects unattractive to potential investors. PPPs depend on

government statistics and customer's willingness to pay. A PPP model need to be after conducting study on feasibility of project, as often the speculative statistics of the government are turning out incorrect. The private sector's interest depends on the sustainability of the project, in terms of operations and financial performance. For such sustainability to exist in a water and sanitation project, significant effort is required. Moreover, government policy regarding regulatory, legal and institutional framework is still evolving. In water and sanitation sector, the private sector's interest depends on the credibility and transparency of the bidding process undertaken to award the PPP contract.

For PPP to be successful and sustainable, the contractual schemes must be properly designed, with incentives for performance, realistic targets, efficient monitoring, and sufficient access to financing (whether public, private, or both) to carry out the rehabilitation and expansion of infrastructure. At the same time, government needs to create a conducive enabling environment, in terms of policies, legislation, and institutions and develop its capacity to manage the PPP cycle from project concept, through procurement and negotiation, to implementation and regulation.

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WOMEN'S RIGHT AGAINST MARITAL RAPE EXCEPTION: A CONSTITUTIONAL ANALYSIS

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Abstract

The issue of women's rights against immunity to husband from being prosecuted for marital rape has been under serious debate, particularly after passage of Criminal Law Amendment Act, 2013 and a landmark judgement of Supreme Court. But under the new situation, only the minor wives, below the age of 18 years, are protected from forced sexual intercourse by husbands. However, the Supreme Court left the protection of rights of the major wives against marital rape to the mercy of legislature. Now the issue of protection of rights of women, having attained the majority, from marital rape hangs in balance. Exception 2 of section 375 of Indian Penal Code (IPC) is still there and so is the controversy. As the women have every right to enjoy fundamental rights granted by the Constitution, the major wives do also enjoy these rights. In this context, the pertinent question is - should major wives not enjoy these fundamental rights? Are constitutional provisions not applicable to them? For last few years the section 375 exception 2 of the IPC has been subject to various litigation and discussions without any conclusive outcome. As such, the present paper intends to analyse the constitutional provisions and judicial verdicts in the light of rights of women against exception 2 of section 375 of IPC.

Keywords: Marital rape, Women's Fundamental Rights, IPC, Major Wives, Supreme Court

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INTRODUCTION

Marital Rape is a disgraceful offence in modern times that has scarred the trust and confidence in the institution of marriage. An immense population of woman has faced the pain of non-criminalization of this heinous practice. Marital Rape refers to unwanted intercourse by a husband with his legally wedded wife obtained by threat of force, force or physical violence, or when she is unable to give consent. It is a nonconsensual act of violent perversion by a husband against the wife where she is abused sexually and physically.

Exception 2 to section 375 of Indian Penal Code gives a marital immunity to the husbands to rape their wife. The law reads that a man cannot rape his wife if she is above the age of fifteen years, now eighteen with judicial interpretation. The travesty of this exception 2 of section 375 lies in the fact that the same act which otherwise would have constituted an offence of rape would not amount to it only on the ground that a lawful marriage subsists between the complainant and the accused.

This is an accepted dictum that the Constitution is the ground norm from which all other laws emanate. It is the bedrock and all the laws of the country have their roots in it. Every law of the country has to pass through the test of constitution in order to be valid. The present law of exception of marital rape does also owe to the Indian Constitution. Part III of the Indian Constitution deals with Fundamental Rights guaranteed to all the citizens irrespective of sex and other socio-economic divisions. The object is to ensure inviolability of the essential rights from any kind of political mischief. The Fundamental Rights have two purposes, firstly they act as checks and balance on the power of the legislature and secondly, they provide an environment for the holistic development of the people and secures a life with dignity. Any law which violates the fundamental rights of the citizen, no matter how meticulously or with what majority it is passed, it shall be declared by the court to be void. Article 13 makes it very clear that both pre constitutional and post constitutional law have to stand the test of fundamental rights. By pre constitutional laws we mean the laws that were drafted prior to the constitution. Even though these laws were drafted at a time when fundamental rights were not in existence, they cannot continue to exist if they violate the fundamental rights. The Supreme Court is the ultimate guardian of the constitution and it is the inherent duty of the Supreme Court to ensure that all laws in force in the country are constitutionally valid.

The Indian Penal Code of 1860, is also a pre-constitutional law and so is the exception 2 of section 375. This law thus needs to be tested on the principles of fundamental rights and seek validation. Here we have tried to analyze the exception in the light of the fundamental rights

RIGHT TO EQUALITY

Article 14 of the Indian Constitution talks about equality before law and equal protection of law. Equality before law resonates with the concept of rule of law i.e., everyone is equal in the eyes of law and the law does not discriminates between rich and poor, man and woman and the like. On the other hand, equal protection of law is a positive concept which allows the state to make special provisions for the promotion of equality. The underline principle of equality before law is equality among equals. Article14 does not indicate the application of same rules or remedies to everyone irrespective of the circumstances. It simply means that all persons similarly circumstanced should be treated alike both in privileges and liabilities**.** What article 14 prohibits is discrimination between one person and another when their position in relation to the subject matter of the legislation is substantially the same. Article 14 prohibits discriminations but allows classification. Classification means segregation in classes of those who have systematic relations, common properties or characteristics. The law is expected to classify according to the needs of the society and should not be arbitrary or evasive. There are two conditions that must be fulfilled in order to be a reasonable classification. First, classification must be founded on intelligible differentia, second, the differentia must have a rationale relation to the object sought to be achieved by the act.

Now coming to the classification which is made in the case of marital rape exemption. The first classification is between bodily integrity and sexual autonomy of married and unmarried women. The exception is based on the doctrine of irretrievable consent to sexual intercourse given during marriage. This theory believes that women give up their sexual autonomy while entering into marriage and thus a husband can never rape his wife even when he has sexual intercourse against her will because the consent is already given once for all. While the same acts can constitute rape when done by a non-spouse. This theory appears to be arbitrary on various grounds. Firstly, it is absolutely unreasonable to accept that marriage is a perpetual license to command sex. While sexual intimacy forms an integral part of marriage, it is no justification to say that man can use force when denied sex and can go scout free as it is his legal right. Secondly, a woman holds the right to her body with or without marriage. Every wife is a human being and not a property whose ownership can pass over after marriage. She is the owner of her own body whether married or not. And such theory which takes away the ownership of a woman over her own bodily integrity on the pretext of marriage is nothing but prima facie, arbitrary. Thirdly, the doctrine of waiver does not apply to fundamental rights. Be it through an agreement or through marriage, no person can agree to waive off their fundamental right. A woman enjoys a right to life with dignity, right against exploitation, right to equality and many more fundamental

freedoms, which are eroded if we allow marital rape. So, no contract of marriage can allow this to happen. More so ever to differentiate in between rape cases on he ground of marriage or no marriage in declaring it a crime violates the clause of equal protection. The right to equal protection under the Indian Constitution mandates that similar subjects should not be treated differently, in order to give undue favor to one and unjust treatment to other.

Karnataka High Court in *Hrishikesh Sahoo v. State of Karnataka* emphasized that Constitution treats woman equal to man and considers marriage as an association of equals. The constitution in no way considers woman to be subordinate to a man. Fundamental Rights like life with dignity, personal liberty, bodily integrity, right to privacy, sexual autonomy, freedom of speech and expression, right to reproductive choices are available to all equally. The court further explained that if a woman being a woman is given a certain status but denied the same status because she is a wife and likewise if a man is punished for his acts but a man being a husband is exempted from his acts, it is nothing but sheer inequality. It is this inequality that destroys the soul of the Indian Constitution. Equality in article 14 pervades through the entire spectrum of the constitution, be it a man or a woman. The Code practices discrimination because under the code, every other man indulging in offences against woman is punished for those offences, but when it comes to section 375 of IPC the exception springs up. Justice Nagaprasanna *considers this exception as regressive because a woman is treated subordinate to husband, which concept abhors equality*.

After the case of Independent Thought v. Union of India, minor wives have been protected under the marital rape. There was a direct conflict in law, while the Protection of sexual offences against children act criminalized any kind of sexual contact with children below the age of eighteen years, the marital rape exception protected even rape by husband if the women was more than fifteen years. Thus, a child from the age of fifteen to eighteen was protected under the law but she lost the same protection if she became a wife. The court found no intelligible differentia in classifying minor and minor wife as two separate class.

This brings us to the second ground of classification. Here the classification is happening between minor and major wives. Again, if a husband commits voluntary or involuntary sexual intercourse with his wife, when she is under eighteen years of age, then though the marriage shall be valid under both Hindu and Muslim law, the act would amount to rape under section 375 and the same punishment under 376 would be applicable. But one day after she attained the age of eighteen years, even if the husband brutally and forcefully has sexual intercourse with his wife, it would not amount to rape.

Article 14 runs through the heart of every legislation and every judicial pronouncement. There cannot exist a legislation where right to equality does not apply. The constitution is the fountain head of all legislations and every enacted law of the country must abide by the constitution. When a man, on the ground that he is a husband is exempted from the allegations of rape, inequality seeps in the law. Any thought of inequality irrespective of the fact that it is against a man or a woman would be against the concept of equality guaranteed under article 14.

RIGHT AGAINST DISCRIMINATION

Article 15 (1) prohibits the state from discriminating only on the ground of religion, race, caste, sex, place of birth or any of them. This means that no law, which gives any liability, disability, restriction or condition on grounds of religion, race, caste, sex, place of birth only can thrive. The use of the word only means that if the discrimination is based on any of the above-mentioned grounds plus an additional ground not mentioned here, then it won't be regarded as discrimination under article 15. The use of the word "only" implies it must be solely on these grounds. Now coming to exception 2 of section 375 IPC and its relationship with article 15. There are two important points to be kept in mind. Firstly, if we proceed with the presumption that there is discrimination inherent under this exception, then the question arises is whether the discrimination is on the above mentioned five grounds. And secondly if the discrimination is solely on these grounds. If we look at the provision which says that a man cannot rape his wife if she is above the age of eighteen years, here definitely women is being discriminated. She is being considered as a less valuable human than a man and is being subject to discrimination, that she has surrendered her individuality on being married. She has no remedy against a rapist because of her relationship with the rapist. However, coming to the second question, is the discrimination based solely on the ground of sex, the answer to this is negative. The major ground on which the discrimination is based is on marital status of the women. It is not that women are not allowed to file rape cases against husband but only married women are not allowed to file rape cases against their own husband. Marital status is not one of the grounds mentioned under article 15 clause (1) and thus it cannot be very affirmatively said that the clause violates article 15.

SPECIAL PROVISION FOR WOMEN

Article 15(3) allows state to make special provisions for women and children. This provision clearly indicates that while state is not allowed to discriminate against them but can take affirmative action for their benefit. The purpose of this section is to eliminate any kind of discrimination, socio-economic-biological-political-financial etc. A doubt that was raised with regard to this question was whether

this clause saves any provision relating to women or only those provisions that are favorable to women. The Supreme court has held that the entire purpose of article 15 is to empower women and not to pull them back. Thus, any law which hinders the growth of women in any way would not be regarded as a special provision for women. It would be a discriminatory provision and violative of article 15 of the Indian Constitution. Coming to the provision in question, exception 2 to section 375 cannot be regarded as a special provision made in favor of women.

RIGHT TO LIFE

Article 21 of the Indian Constitution talks about right to life and personal liberty according to the procedure established by law. The term procedure established by law means that there must be in existence a law which authorizes the taking away of life or liberty of the person and the law has been passed by a competent authority. Procedure established by law is indifferent towards justness, fairness and reasonableness of the law. However, with the passage of time, due process of law has been read into the Indian Constitution. The credit for this goes to *Maneka Gandhi v. Union of India*. The judgment lays down those various fundamental rights cannot be bifurcated into water tight compartments. They merge at many points. "Mere prescription of some kind of procedure cannot ever meet the mandate of this article. The procedure established by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary". The term life used under article 21 does not mean life as a mere animal existence, it does not only mean breathing, eating and surviving, it refers to overall and holistic development. Anything that deprives a person of their dignity, self-respect is said to take away their right to life. In the case of *Bodhisatwa Gautam v. Shubhra Chakroborthy,* it was held that rape is violation of one of the most valuable human rights of a person, that is right to life. When a woman is raped, she is deprived of her right to life. The court while deciding this case, did not mention that rape can only be committed by stranger. The court did not hold that when rape is committed by husband, it does not amount to violation of right to life. Thus, if we apply the principle of this law to our present case, it can be said that exception 2 to section 375 which gives an immunity to husband from prosecution of rape despite the amount of force, brutality, is simply violating the right to life of a woman.

RIGHT TO LIVE WITH DIGNITY

In *Kharak Singh v. State of UP* it was held that the term personal liberty used under article 21 is a compendium to include all rights except those which are not mentioned under article 19. Right to life with dignity has been recognized as a part of article 21. In the case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* it

was held that right to life is not limited to protection of limb but also includes right to nutrition, facilities for reading and writing, etc. Every act which harms human dignity would harm the person's right to life. Thus, any form of torture or cruel inhumane behavior would violate a person's dignity and be prohibited under article 21. The constitution nowhere mentions that once married, the wife loses such a right against the husband. A woman enjoys all the right to dignity irrespective of her marital status. And thus, any law which allows torture to be committed against woman on the baseless ground of she being a wife is prima facia against the spirit of article 21. A woman is no longer the chattel of her husband.

Autonomy refers to a feeling which one believes to possess and have control over. Respect for physical and mental integrity constitutes bodily integrity. Whenever there is a disrespect to bodily integrity, it results in violation of individual autonomy. Autonomy is now considered as a part of privacy and thus regarded as a fundamental right. When the husband suffers from venereal disease, when the husband is involved in an extra-marital relation, when the woman is suffering from sickness either mental or physical, and many other situations when the husband forces the wife to enter into physical relationship, he is not only depleting her of her sexual autonomy but also her right to life with dignity.

RIGHT TO PRIVACY

In the case of *Govind v. State of M.P* it was held that right to privacy is a part of right to life and personal liberty under the Indian Constitution. And if in case any law violates the right to privacy of any citizen, it must prove superior state interest. What all are covered under the right to privacy is a topic to be contemplated. Individual autonomy is definitely one of the most significant rights protected by the Constitution. Time changes and brings new conditions under the ambit of privacy but a far-reaching definition also cannot be accepted as that would be encroaching on something which is not guaranteed by the constitution. But few things are settled and clearly covered under the ambit of Privacy like personal intimacies of home, the family, marriage, motherhood, procreation and child rearing.

In the case of *Suchita Srivastava v. Chandigarh Administration* it was held by the Supreme Court that women's right to reproductive choice is very much a part of her personal liberty guaranteed under the Constitution. By the term reproductive choice, it is implied not only the right to procreate but also the right to abstain from procreating. In either situation, a women's right to privacy, dignity and bodily integrity should be respected. This clearly implies that every woman has a right to refuse sexual activity or insist on the use of contraceptives. The existence of this

exception 2 to section 375 is a clear-cut violation of right to privacy of women. If the Supreme Court has guaranteed her right to privacy which includes right to refuse sexual intercourse, then any law which denies her such rights or remedies against such right is an unconstitutional law.

There is another aspect of right to privacy which the advocates of non-criminalization of marital rape highlight. They argue that every married couple enjoys certain privacy which includes their intimate moments and there should be no state interference. Privacy also means freedom to live one's life without governmental interference. Every individual needs a space where he/she can drop the mask and be accepted as themselves. But no fundamental right is absolute. The couple enjoys right to privacy but no right to commit a crime against each other. In *Mr. X v. Hospital Z* it was held that right to privacy is not absolute and legal actions can be taken to curtail privacy for prevention of crime or protection of health and freedoms of other.

In the landmark judgment of *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.,* the nine-judge bench finally and conclusively declared privacy to be a fundamental right. The case mentioned about sexual orientation and autonomy to be an integral part of privacy. Privacy is both positive and negative obligation on state. The state is not only retrained from intrusion on privacy but also expected to take up necessary measures to secure privacy.

Even within marriage, each spouse possesses right to privacy as an invaluable right. Thus, privacy within marriage is connected with individual autonomy and any intrusion, physical or otherwise into his or her space would diminish their privacy. Marriage can never mean end of a person's individual identity.

CONCLUSION

Every husband needs to keep this in mind that marriage is not a license to rape his wife. No husband can own the body of his wife by reason of marriage. Just because she is married, it does not mean that she has given up her fundamental right to an absolute autonomy over her body. She has all the legal right to withhold her consent to sexual intercourse. The aggrieved husband also has various remedies against the wife but none of them gives him the power to resort to violence against her. The husband and wife are equal partners in marriage and thus in no way a wife is obliged to obey her husband at all cost. A living law will always be expected to pay heed to the changing situations of society in order to test the validity of any exception to a general rule.

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WATER GOVERNANCE & RIGHT TO WATER: LEGAL ISSUES AND CHALLENGES

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Abstract

The issue of water manifests the basic human rights at every international legal instrument. But, the right of water and its accessibility can't be studied in isolation, there are different aspects like sanitation, cleanliness and water preservation also needs to be strengthened in an efficient manner. The substantial rise in inequitable distribution of water resources and contamination of water leads to crisis in the sustenance of clean water. It is important to comprehend whether existing framework associated with right of water and water conservation consider water as economic good. The issue of economic sustainability is significant for water governance through which matter of wastage and contamination of water can be addressed. It is also important to understand the importance of socio-legal awareness towards water harvesting and water conservation strategy along with capacity building programs for different stakeholders in the society.

Keywords: Right to water, Sustainable Development, Sanitation, Transparency, Accountability, Water Conservation.

INTRODUCTION

Water is one of the most indispensable sources of life without which there is no existence of life in any ecosystem. It has the attribute of sustainable development as it relates with different aspects of life like public health, sanitation, clean environment, food security, other facet of human dignity. With progressive growth in science & modern technology, water was broadly utilized for urban planning and industrial

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development based action plan. Thus, over the period of time, water has become essential not only for bare necessity of life, but also for economic development. Similarly, sanitation is a significant facet of life. It is specifically related to ensure better facilities in relation to better accessibility to clean and safe toilets. It also concerns with efficient and protected mechanism and ejection of human wastes. It is necessary to understand its ambit so as to reduce the unhygienic practices which put adverse impact on health of people. This issue becomes more sensitive in case of tender age of children who are vulnerable to contaminated morbidities like typhoid, cholera, etc and also because of worst kind of sanitation. It actually deteriorates the level of health status and also deprivation of socio-economic state of society. So, it is obvious that sufficient accessibility to clean drinking water and germane hygienic establishment are two essential factors of having human life with dignity with fundamental human rights. There is no doubt that such rights has become well-recognized and valued as human rights through international legal instruments and global protocols based recommendation and further supported observations made by mainstream conclaves. Irrespective of the exhaustive study that established the link between human dignity, cleanliness and unalienable rights at every global platform, substantial percentage of global populations are not able to access such rights adequately. The SDG report of 2018 mentioned about substantial percentage of world population doesn't have accessibility of proper and adequate drinking water and deprivation of hygienic facility. The report further describe about such precarious portable water and insecure cleanliness facility leads to substantial rise in the cases of worldwide mortality and many deaths.

There are many essential imperative for realization of wholesome right of drinking water and hygiene like its attainability, amenability, acquiescence and receptiveness. Every attribute of such features are closely related. At the same time, it is also important that not only quantity, but the quality of accessibility of water should also be maintained. Though, there are other concerns like prevalence of unhygienic practices, blocked drainage, open defecation which created many barriers against clean environment, human health and perseverance of sanitation over many decades and such concerns were also highlighted before many international conventions. Such barriers are actually putting more adverse affect on vulnerable sections of society especially those who are socially and economically backward in rural as well as urban areas. Some are also worse affected by gender or caste based discrimination. It has been very clear that such rights need to be enforced in every state whereby states have to comply with obligations as per contracting conventions with efficient realization. The whole ecosystem contains national resources like air, water and land for subsistence and sustenance of any life. Water is one of the most essential factors out of these three natural resources. Though, potable water has minimal percentage of its existence in the whole ecosystem ,but its decreasing rate of existence also put real threat to survival of every life.

There are many other concerns associated with water that has been discussed at different national & international forums and conventions like impurity & pollution of water, adverse impact of climate change, rising population, insufficient policies related to water conservation, mechanism to tackle the menace of scarcity of water, indecorous solid waste management resulting into contamination and excessive usage of ground-water for agrarian and commercial reasons by industries etc. Interestingly, the depletion of surface water and ground-water are also occurring at fast pace adversely affecting human lives.

The right of clean drinking water and sanitation got major attention even before the introduction of MDGs (Millennium Development Goals). There are different facets of human rights which are elaborately provided in the tenets of MDGs. One of the major goal was to provide basic accessibility to drinking water and hygiene to those people who don't have adequate means. With the passage of time, the concept of sustainability becomes significant at every global discourse and the countries progressed towards Sustainable Development Goals (SDGs) fixing objective for ensuring accessibility and viable management of water and hygiene which is also mentioned in SDG 6. Considering the necessity to understand the nature of uncertainty in relation to reduced water areas, the SDGs emphasized that States should call for inter-state support and capacity-building programmes. It also calls for extended role and involvement of indigenous bodies in regulating the different usages and existing framework.

It is true that many of human rights documentation do not mention about water issue in general, and wherever it is mentioned, it is not explicit regarding obligation of state on preservation of water and fulfillment of accessibility of water. It is fundamentally clear to construct water as matter of human rights so that it serves the social and environmental justice. Even, at the forum of the International Union for Conservation of Nature and Natural Resources(IUCN), it was observed that water can be acknowledged as significant subject -matter of human right. Such recognition may encourage global bodies, organizations and nations to fulfill their fundamental human prerequisite. The UN has been quite instrumental in promoting protection of natural resources, adequate living condition with human dignity , health security and protection of children and women. It was believed such targets and goals will help in improving the accessibility and preservation of water. But, from a comprehensive outlook of leading conventions & treaties, it is clear that global discourse on water issues is minimum and governments don't pay significant attention. The idea of preservation of water for number of uses could be understood from the perspective of common heritage of mankind. It is expected that general water dispute could be resolved and mediated with emphasis on shared natural resources at international level. This principle of common heritage indicate as to how inter-state cooperation and common source management are required

in the interest of equity against increasing water crisis across the globe. This principle is quite significant even for right of availability of water within a state's own jurisdiction. It will help in implementation of decentralization from state government to local authorities for the realization of right to water for different uses.

LEGAL ISSUES PERTAINING TO RIGHT TO WATER – INDIAN CONTEXT

With the enactment of Constitution of India, the mandate of social and economic justice become main objective of state as it is clear from the basic features of the preamble. There are various articles in the constitution of India which obligated the states to deal resources with equitable distribution and common good principle(Article 39(b)), obligation of the state for improving public health(Article 47) and environment(Article 48) and such provision can set the standard to prioritize the obligations of the state to improve the position of water resources in the interest of public. Even , within the ambit of constitutional framework, the fundamental obligation for growth, conservation, preservation & handling of water entrusted with the states.

This power is entrusted to states by Entry 17 of List II of 7th Schedule that deals with public health and sanitation whereas Entry 56 of List I covers the issue of water supplies, storage,etc. Considering the existing management and governance matter related to water resources, states are in charge of availability and accessibility of portable water . The existing water law framework is characterized with many policies and rules and it actually started from the year 1987 when the first National Water Policy was formulated which was targeted to make sure maximum availability of water resources and ground water in particular. However, such type of policy had to face many hurdles in case of implementation and thus resulted into failure especially because of absence of people participation and consultation. The policy also didn't have any scope for the role of communities associated in following conventional water conservation. It was understood that the term "participation" emphasized for the policy actually refers to different stages of planning, SOPs, design, infrastructure and water management resources, but in real sense , it was not planned in the same way. After realizing the little impact of execution of National Water Policy, 1987, another attempt was by Government ,whereby a new draft of water policy was prepared in the year 1998. Interestingly, this time, the policy didn't get wider circulation among public, instead, it was kept as secret and although national water board approved it & no suggestions and concerns from public were incorporated in it.

Finally, the national water policy was revised and introduced again in the year 2002, where number of key features were the highlight like conservation of

groundwater, conservative way of storage water at home, conventional roof tap mechanism, etc. It was clearly emphasized that water is one of the most substantial part ecosystem for sustenance of every life. The fundamental aims of the policy are to analyze the existing position of water conservation and crisis, to formulate action plan for conservation and devising of legal system for better regulation. The policy discuss about coordinated approach of central and state government and their commitment towards water resource management and institutional framework on inter/intra-sectoral allocation of water. There are many discourses where water rights are usually interlinked with land rights and such rights are studied as inherently customary rights of indigenous or agricultural societies. Such rights do need statutory recognition in the interest of customary justice of indigenous people or farmers in rural areas. It was not subject matter of discussion specifically under the water policy of 2002. Customary beliefs and laws will definitely evolve and encourage equitable use of water resources.

Though, the implementation of this policy has its own challenges. There is absence of people participation in decision making process associated with water management. There is concern in the form of excessive wastage of drinking water which went unattended as action plan for a considerable period of time. Another critical matter is the inequitable distribution of water adversely affecting people living in rural areas where accessibility to water is quite challenging in general. The requirement of a holistic domestic legislation based on mechanism on water issue & its usage was recommended by the National Commission for Integrated Water Resources Development. Though, as a matter of priority , the need of maintaining quality and quantity right of clean drinking water has to be ensured and how it could be managed scientifically. Even, there are not adequate number of supervisory institutions which ensure equitable effectualization of water policies and to come redressal framework in case of grievance.

Considering the far-reaching crisis of water came into picture under the report of Composite water management index in the year 2018 prepared under Niti Aayog, the Government of India decided adopt a constructive community approach in the form of Jal Jeevan Mission in the year 2019. This mission serves a clear purpose of water movement through which every household is expected to get proper access to piped water. This mission involve a kind of collective obligation of central government, state government , local bodies, NGOs through which traditional and modern practices related to water conservation can be streamlined for better sustainability along with imparting of socio-legal awareness of water conservation, reuse of water and water harvesting techniques.

The existing water supply mechanism in urban area is another major problem resulting into water crisis. Due to lack of effective implementation integrated water

policy, it was found that water supply system is somehow discriminatory in nature where low line areas/ unauthorized areas are not getting adequate supply of water in comparison to areas where rich people are residing. In most of such situation, such problem go ignored as households of such unauthorized areas/low line areas are either not aware of their rights or they couldn't understand bureaucratic style of working in municipal offices and can't address or track their grievances related to shortage or contamination of water. Such complex and compelling circumstances often leads huge gap in demand and supply of water across many urban regions. It often leads to diverse kind of corrupt practices including bribery for getting better supply of water and it encourages in creation of different water tanker gangs taking complete control over accessibility of water supply. Usually, such practice also become a very profitable business for many stakeholders, middlemen and as a result , it is difficult to address such problem or complaint against anyone. Thus, transparent mechanism in the up-gradation of water infrastructure process and removals blockage of existing sewage will leads not only to the reduction of water loss , but also help in lowering down the systematic corrupt practices.

It will be interesting to see how the multilevel participation of relevant stakeholders will play substantial role in continuous surveillance of water supply, water audit methodology and use of modern techniques in calculation of estimated water loss. Thus, it requires a paradigm shift in policy making strategy towards expansion of national sanitation plan, portability of drinking water. It has also become necessary on the part of all stakeholders associated with public health to impart socio-legal awareness against water borne diseases and to maintain proper hygiene.

JUDICIAL APPROACH TOWARDS WATER CONSERVATION AND RIGHT TO WATER

Indian judiciary have always raised the bar , supported the cause and advocated for environment preservation. Environmental protection including water as fundamental necessity has been emphasized in many progressive judgments passed by courts. Within the ambit of Article 21 of constitution, water has also been recognized as basic right and it enforced the state to fulfill its obligations towards this right. There are different perspective of judicial activism which observed by Supreme court in many environmental matters. In the case of A.P. Pollution Control Board II v. Prof. M.V. Nayudu, The Supreme Court raised an important issue as to whether operation of an industry can be allowed by state authorities when such acts may adversely affect aquatic ecosystem and nearby water bodies in the state. The court further reminded about significance of state obligations towards environmental management, principle of inter-generational equity and precautionary principle against any action which may encourage environmental

degradation. The Supreme court also observed that it is the responsibility of state to overcome the problem of water-borne diseases with a corrective action plan and efficient arrangement for the provision of hygienic and portable drinking water. Furthermore, different experts have also come with their observation in societal discourse that there is need to inculcate right to water specifically as a fundamental right. The court further suggested states to take initiatives in the interest of environment awareness among community people in every society. At many international forums like UN Conference on human Environment, it was discussed that the rising environmental damage substantiated by huge level of air pollution, loss of biodiversity, oil spill and other environmental mishaps. An urgent need was felt by all countries to improve the quality of environment for which necessary legislation and welfare policies were introduced, but there is need to strengthen and focus on real status of implementation of such legal instruments. At same time, it is also important to meet the existing gaps to tackle the menace of specific environmental hazards.

Water pollution is one the major phenomenon evidenced by degeneration of standard of water because of diverse human actions. It is such global hazardous issue which adversely affect the overall environment of developed and developing countries. There are many human actions which result into water contamination like mining, farming activities, fisheries, urban settlements, industrial works,etc. Even, cities near river and lakes also see considerable migration of people due to many economic opportunity and establishment of business activities. It is possible that such level of water contamination might spread from one district to another district, one state to another state or one country to different country across the border causing diverse complex problems affecting global health and environmental issues. Thus, it requires an integrative approach and sincere commitment of citizens and states towards socio-environmental duties. Apart from Supreme Court, different high courts also showed their active role in emphasizing right to environment in India, like in one of the case of Centre for Environmental Law v. State of Orissa, it was observed that constitutional peremptory was reposed on state government and local bodies to secure and improve the quality of environment.

Interestingly, in the case of M.C. Mehta v. Union of India(Ganga pollution by tanneries case), the court adopted a balanced approach in context of industrial development and environmental conservation & safety. The supreme court held that it is important to close the polluting units in large interest of public health and environmental health which has its more significance in comparison to loss of money and profit. In this case ,the court exercised its social & judicial activism within the purview of article 32 on this basis where the state authorities couldn't control & prevent pollution n the Ganga river. The court refused to accept the contention of tanneries where they mentioned about their financial crisis in establishing pollutant

processing plant. The curt further said any enterprise/tannery which doesn't have capability to establish a basic treatment/processing plant, should not be allowed to continue its business activity adversely affecting the health rights, environmental rights of public and overall sanitation of society.

This nature of judicial action is very clear on the front against polluting factories and industries. A direction was also given to state authorities to deny & not to renew licence of such industries which doesn't have any scope of waste treatment mechanism and its effluents are escaped easily. However, the court proceeded with such observation and recommendation without making any reference to article 21 of the Constitution of India. Interestingly, the court also didn't adhere to a pertinent question as to whether industries or tanneries could be liable for infringement of fundamental rights within the ambit of Constitution of India. Though, the concept of polluter pay principle was described as absolute liability of factory/industry for degradation and damage to environment in the case of Indian Council for Enviro-legal action v. Union of India (UOI) and Ors, where it cover the provision of compensating victims of pollution and cost of repairing the environmental damage. So, it is clear that if any hazardous action is carrying on resulting into loss to anyone irrespective of the fact whether there is presence of reasonable care or not, the responsibility and liability will be there on polluting factory to meet the compensation to aggrieved people and environment which include land, air and water.

There is no doubt that Indian judiciary plays a significant role in encouraging socio-legal awareness on environment conservation and motivate people to engage in the prevention of water pollution. Somehow, the legal fraternity including lawyers and academicians also involve in the practice of social activism, where time and again, legal issues were raised through public interest litigation. But, the public interest litigation in the matters related to water conservation and issues of untreated sewage and blockage through industrial waste water must come through high sense of responsibility something which promote environmental education, legal literacy and other concerns related to water conservation towards fulfillment of sustainable development goal and environmental justice. The rising development due to excessive industrialization is major cause of increasing industrial pollution through air and water. Such gravity of problem won't be prevented because of inadequate treatment based infrastructure and absence of standard operating procedure within the existing facility of such tannery/industry near Ganga river. In the case of M.C.Mehta v. Union of India & others(Kanpur Tanneries), it was realized by the Supreme Court that the nature of public nuisance and environmental degradation through industrial waste water are very serious and it may went to that extent where there is difficult to restore environment and beyond control. It was observed that many notices were served to all stakeholders and industrialist

of these tanneries to take necessary preventive action, but these tanneries are even failed to take any action for the treatment of such excessive effluents. As a result of such matter of grave concern , the supreme court ordered for the closure of such tanneries in the interest of public health, ecology and societal welfare despite that fact such close may lead to loss revenue and rise of unemployment in the region.

In a similar type of case of M.C. Mehta v. Union of India & others(Calcutta Tanneries), the supreme court directed polluting tanneries to relocate their place of business to some other place instead of closing the business of tanneries in interest of environmental protection. It was observed that there is little scope for expansion or modernization of tanneries to have adequate water wastage treatment facilities. as tanneries are situated in congested residential regions. That's why, the order of relocation was given. The court also ordered for compensation to be covered from four tanneries and deposited under a specific head as Environment protection fund which can be used for repairing environment. In the case of Subhash Kumar v. State of Bihar,the supreme court observed that right to life include right of pollution free water and through this observation the court tried till fill the vacuum as right to water is not explicitly mentioned under chapter III of the Constitution. Similarly, in the case of Gautam Uzir v. Gauhati Municipal Corporation, the major problem of shortage and contamination of water was highlighted in the petition at the court. The court specifically directed the state government and the municipal corporation to take their collective responsibility towards creation of affordable scheme to improve the position of water supply in the region. In another case of Dantani Kanubai Savjibhai v. State of Gujarat, inhabitants of slum are alleged to occupy the dwelling places illegally and they were deprived of basic human necessities of life. The court strongly advocated for right to shelter which includes adequate space of living, air, water and bare necessities and right to have drinking water can't be denied. In general context, the principle of public trust doctrine is significant to ensure the right of enjoyment of clean water. This doctrine ensures citizen can enjoy the benefits of natural resources without any discrimination. In the same way, state has corresponding duty to fulfill its obligations. It is also affirmation to the fact that state have to realize the significance common heritage of mankind having common concern for lakes, streams and tidelands. It also ask for state obligation to go for judicious review of utility of water resources and revise the existing strategy to maintain the quality of groundwater and surface water and come with practical solution to meet existing gaps at every level. It is also important to expand and utilize water harvesting technologies in the interest of conservation and augmentation of water supply. It is important to note that challenges associated to environment justice and water governance issues in general won't be solved through seeking justice through PIL, until judicial orders can be enforced efficiently in this direction in the interest of societal and environmental justice.

CONCLUSION WITH SUGGESTIONS

The idea of public engagement & involvement in the environment based decision making procedure is not a recent phenomenon. Local consultation in framing and revising pollution control strategy is quite useful with the passage of time as regional stakeholders have better experience to know the existing reality of environmental problems especially the issue of water scarcity. To certain extent, such level of community engagement and local communities would encourage the importance of transparency and accountability with an effect to boost social and environment impact assessment. Just like access to information is\important to strengthen the democratic process, increased access to environmental information will bring more vigilance and alertness to the functionality of state authorities towards the fulfillment of environmental justice and water governance. By improving the framework of environmental information can bring more constructive suggestions to existing water policies and enforcement of pertinent legislations. Apart from strengthening existing regulation, it is important to revise allocation of water resources to ensure adequacy, proper distribution of water among public and bring efficiency in waste water management process. Though, there is presence of existing penalty provision in Indian Penal Code regarding negligence of water usage, but it is necessary to create a framework to address the possible water related disputes among public which also require consultative approach. Somehow, there is need to inculcate modern techniques in the water management process by using internet of things so that proper supervision can be done for water harvesting methods, recycling water treatment and possible water leakage. The utility of such practice may address the crisis of water in rural areas with the help of smart innovative solutions with help of artificial intelligence. Such modern practice may help in reducing the workload of manpower as well as water infrastructure expenditure.

It is important to realize that scarcity of water and its resources is going to threaten human rights and human values of affected people living in every vulnerable society. This natural resource is one of the important assets of human dignity and right of self-determination, thus it is crucial to recognize it formally at every bilateral or multilateral agreements of our country and its significance must be reflected and acknowledged through institutional reforms and equitable investment framework towards water governance. So, it is clear that the there is need for expansion of community sensitization towards water conservation among universities, residential societies, research institutions(public& private) for creating a strong base with resilient approach. It is equally pertinent to note that starts up and cutting edge innovation must be streamlined and institutionalized in the specific direction of water conservation and preservation will bring desired outcome towards inclusiveness. Now, it has become necessary for government to support the entrepreneurs who formulate a strategy to create more water ATMs at

different public places where big corporate entities can also collaborate by using its CSR fund towards fulfillment of sustainable development goals. The contamination of water is undoubtedly a complex problem for which strategic planning is required with the use of advanced green technology. Such technology can bring quality to water filtration system and water stewardship.

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WOMEN'S INVOLVEMENT IN CRIME: AN INDIAN PERSPECTIVE

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Abstract

With the increase in number of crimes, women's involvement has also increased. But the Indian socio-cultural structure does not allow most of the crimes of women to come to light, due to which the legislature is not able to make any strict laws to stop it. In the present article, the author intends to discuss about the crime committed by women in India in the context of theoretical perspectives of women in crime, nature of crimes, causes and remedies. The paper is based on secondary sources of data collection mainly government reports. It finds that female criminality in India does not show a particular trend or cause nor does it fall in any category of criminal theories. The social environment and victimization of women draw them to crime.

Keywords: Female Criminality, *Cherchez la femme*, Crimes, NCRB, India

INTRODUCTION

The definition of crime (section 12 of IPC) explicitly includes the presence of criminal intent. Further, any acts or omissions which constitute crime don't differentiate between man and woman as to the crime committed. The phrase '*Cherchez la femme*' in French means 'search the woman' which implies that in every crime which has been committed there is possibility of involvement of a woman. Male offenders comprise most offenders being arrested, charged, convicted, and imprisoned within the criminal justice system. As a result, the field of criminology has paid little attention to understanding female criminality and

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has neglected to create policies designed to address or treat female offenders until recently, Traditional criminological theory was simply applied to female offenders in the same manner as at the time females that committed crimes were viewed as more "male-like," and therefore criminologists operated under the assumption that male-centric theory would apply to a female offender.

Traditionally it has been assumed that any crime which has been committed will only involve men as the society is male dominant. But today women are participating in every activity at par with men and they are enjoying freedom like their male counterparts so there is equal possibility that the crime may involve a woman as well. There was also hesitancy on the part of crime enforcement machinery to take cognizance of crime committed by women resulting in less arrest and conviction of accused women. This has been the case in almost all countries and hence no systematic studies have been conducted on women crimes related cases and cause of committing such crimes. This lack of study and information is more common in India because the condition of women in India is more precarious as compared to other nations. All studies related to crimes have only focused on male and detailed study into the crimes committed by women is yet to take place.

SOCIAL ENVIRONMENT AND WOMEN IN CRIME

The social climate also plays a significant role in the development of woman offenders in India. Here, the patriarchal society has much else to deal with. The female criminals have lost confidence in the social structure, says counsellor Anchal Bhagat. The destiny of women is secured, and instead of civil privileges and prerogatives they endure injustice. In most parts of India there is social discrimination from birth to last breath. Bhagat listed a very popular illustration in her work regarding the perpetrator, Phoolan Devi, who was turned victim. Her tale as an aggressor continues with the rule that would not offer her justice. Phoolan Devi denied justice, who later became a politician, had been renowned bandit queen. She had nevertheless made numerous rivals and was assassinated in her brief full-life battle. Bhagat's example concludes that women like Phoolan Devi are likely to use drastic law-making measures, as persuasive reasons such as a loss of economic freedom, an acknowledgment of community and to achieve a respectable place in society. She further stresses that courts ought to look for factors and compelling motives for a woman to conduct this particular offence before determining proceedings.

Durkheim observes that crimes are normal in a society because no society can be ideal in practical sense. He also observes that the crime can be committed by any human being be it men, women or children. In present century social and economic statuses of women have undergone a drastic change. In a world which is industrialized and urbanized, women are equally seen as breadwinner. This

freedom in present times has not only improved their personality and made them modern but also has created some ill effects. The economic independence coupled with political power made the women feel that they are no less than anyone in general and men in particular. This has paved the way to women criminality.

The growing participation of women in activities previously monopolized by men has led to involvement of women in crimes. Still their participation is less as compared to men because men have been committing crimes since time immemorial and On the other hand women's traditional roles prevent them from committing crime. To William Bonger, women are like hot houseplants sheltered from the icy blasts of life and hence fewer criminals. Lombroso, an Italian Anthropologist, has held that women are generally portrayed as occasional criminals rather than born criminals unlike men.

Similarly, Pollak, an American Sociologist, after detailed research has concluded that female crimes were under-reported , for instance the sex offences committed by women against very young children went unnoticed while they were given loud publicity when performed by men.

Having said that women too involved in criminal activities, the factors responsible for it are to be looked into. They too are motivated by fear and jealousy which is moral weakness found in any human mind. Other causes like illiteracy, poverty, suspicions, broken families, marital maladjustment, emotional tension and pervert tendencies often lead women to commit crime. Recently Supreme Court of India held *Shabnam* guilty of murdering her parents who were against her marriage with a person of her choice.

Apart from social and economic problems and rejection by family, a woman's personal nature and attitudes are equally important causes of women criminality. The quarrelsome nature of a woman, arrogance, discourteous behavior, pride, disobedience, narrow mindedness, impatience, selfishness, stupidity, impoliteness or timidity also play a significant role in a women's criminal behavior.

THEORIES ON FEMALE CRIMINALITY

Pollak argues that women are the most abled criminals as biologically and socially they are well equipped for lying, deceiving and trickery. Therefore, he contends that low rate of female criminality are misleading as they are more capable than men in concealing their crimes. Pollak found that female offenders are really protected by men, even by victims. He also observed that there are several crimes that are ordinarily highly noticeable or detected in men but have low detestability in women. Her role in society permits women to commit crimes easily without being noticed, like slowly poisoning her husband or treating her husband or children abusively. Pollak further observes that in addition to law enforcement agencies,

judges and jury are much more lenient towards women than men. Pollak examined the question as to whether specific patterns of crime can be established. Pollock found that criminal liability of women working in domestic service seems to be relatively higher than that of women employed in factories. He dispensed the theory that physical weakness of women leads to specificity of crimes.

Since Ceasar Lombroso's time, it was believed by criminologist that women participated only in small portion of criminal activities.Pollock challenged this illusion and stated that women's participation in crime has not been significantly lower than that of men. He added that low percentages of crime committed by women are due to following reasons:

1. Types of crimes committed by women are less likely to be detected.
2. Even if detected, they are less likely to be reported.
3. And even if reported, women have better chances of avoiding arrest or conviction because of leniency shown by law enforcement agencies.

Vernon Fox has made his contribution to the study of female criminality. He observes that cultural factors are relevant criteria to explain the differential crime rate between men and women. Most of the reasons appear to be in social and cultural factors within the family that reduce the possibility of women being involved in crime in first place. The attitudes of society about the expected behavior of girls tend to develop methods of handling problems in ways not considered to be criminal. Further relationship of girls with home and family tend to decrease their vulnerability to negative experiences that might result in criminal behavior.

The method adopted by women for committing offence differs from that of men, because of differences in physical strength and cultural definitions of sex roles. Poor treatment of women at home as well as at workplace leads to pent up resentment. It is undisputed fact that women seldom kill strangers. The victims in majority of cases are close relatives like husband, children, in-laws or lover. It is generally understood that women use greater deceitfulness, and they tend to be more manipulative than men.

Some scholars claim that female crime is caused by physical factors while others maintain that psychological factors dominate, but the biological factors seem to have dominated the theories of Lombroso and Pollock. The basic or fundamental body process has been considered as the motivation reason. First, menstruation or the menopause though affecting the hormonal balance in the body is taken to be precipitating factor leading some women to commit criminal activities. Second, the female biology is perceived to determine the temperament, intelligence, ability and aggression of women.

Hence those commit crime are treated pathological and require psychiatric treatment. Another belief that exists regarding female criminality as an outcome

of Lombroso's theory is that when women become criminal they are far more cruel and sinister than men. Also his contention is that women having criminal tendencies lack maternal instinct.

As can be seen, biological, anthropological, psychiatric, and psychological elements all have a part in the development of criminal behaviour. As a result, tackling the issue of female criminality requires a multidisciplinary approach.

NATURE AND PATTERN OF CRIME BY WOMEN

The changing social values regarding women, their entry into the main stream of society with some role equivalent to men such as 'getting into stress' and more out of home, women's bill, equal right and other equalizing movements are bringing the female crime rate closer to that of male, although there is still wide inequality in their respective arrest rates. The analysis of trends in female criminality all over the world roughly indicates a general tendency towards an increase of female criminality.

According to Carol Smart, more research into the cause, character and scale of female crime and treatment of female offenders by legal and penal system is required. From time immemorial women have been involved in acts like petty theft, illegal abortions, prostitution and infanticides. These crimes are not easily detectable. Women are also member of the same society in which men live. They are exposed to same living conditions as men are exposed. Today female crimes are becoming more visible because there is frequent recording of these crimes unlike in the past times. Extensive and intensive studies at macro and micro levels respectively would reveal the peculiar nature of female criminality and its causation in terms of systemic and social psychological variables. Criminality after all is a child of anger generated by supposed or real injustices committed or perpetrated to them or their near and dear. This study will focus on the crime of prostitution among women in our country.

WOMEN CRIMINALITY IN INDIA

Human history shows that women are the building blocks of a given family and culture. In India in particular, women are regarded as safeguarding societal values, customs, traditions, moral activities and the cohesion of family life. In today's environment a woman has accepted additional obligation to mark her identity and to nurture her family. It is therefore regrettable to see that the achievement of women in the social, educational, economical and political climate of India is now being extended to crime. In India, female crime is on the rise. The issue has reached an alarming level, which has contributed to more criminal activity. Theoretically,

female crime was declared to be complicated; less known and easily regulated. The social climate leads significantly to the criminalization of women.

The severity of the task is enhanced by the accessible crime statistics from the Bureau of National Crime Reports (NCRB). Although woman offenders appear to be a minority, they only constitute 6.3% of criminals found guilty of IPC crimes. The Indian Crime Figures indicate that the number of women detained in 2003 was 1, 51,675 for illegal conduct, shot up at 1.54.635 in 2007. Interestingly enough, the essence of their criminality is also being steadily transformed - from milder crimes such as opium dealing and adultery to abominable murder crimes. 3439 women were imprisoned in 2005 for murder; 3812 in 2007 and 4007 in 2009, rising from 5.4% in 2005 to 6% in 2007 and 6.4% in 2009

As per data provided by NCRB Female Persons Arrested under IPC Crimes in India 2016 were 193241. As per data provided by NCRB Female Persons Arrested under IPC Crimes in only Metropolitan Cities – 2019 were 23,919.The National Crime Records Bureau (NCRB) has released it's in its Prison Statistics Report for 2019, and it showcases the ever-worsening plight of women prisoners. As per the data, 19,913 were female prisoners.

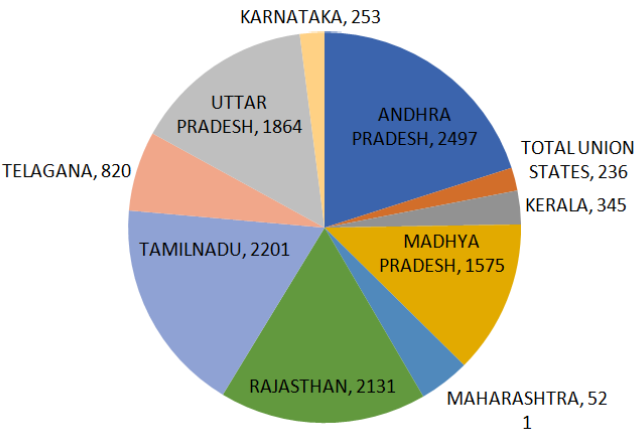
Out of about 1,300 prisons, there are 31 women's jails in 15 States/Union Territories (UTs) including Rajasthan, Tamil Nadu, Kerala, Andhra Pradesh, Bihar, Gujarat, Delhi, Karnataka Maharashtra, Mizoram, Odisha, Punjab, Telangana, Uttar Pradesh and West Bengal. The state of West Bengal has the highest occupancy rate (142.04%) in its women jail followed by Maharashtra (138.55%) and Bihar (112.5%).These 31 prisons have a capacity of 6,511 inmates and currently, 3,652 women prisoners are housed in these jails. Hence, the occupancy rate is 56.1%.

ANALYSIS OF DATA ON CRIME BY WOMEN

To understand the rise in female criminality, it is necessary to look beyond the statistics of crime committed by a female in comparison to the total crime in the year. When we observe the data, it seems too smart to be very small or insignificant. However, when actual figures are referred to, one can understand the difference. Below is a detailed table of women arrested in different states under Indian Penal Code and SLL during 2018 and 2019

As per NCRB Report (2019)- A total of 4,74,639 criminals were imprisoned in various crimes at the end of the year 2019, which included 4,54,883 males and 19,729 females. In all these imprisoned criminals, 14,4,125 criminals were convicted, 33,0487 were undertrial and 3,483 were prisoners. Uttar Pradesh has recorded the highest number of imprisoned criminals 1,01,030, followed by Madhya Pradesh (44,410) and Bihar (39,800) with 21.3%, 9.4%, 8.4%.

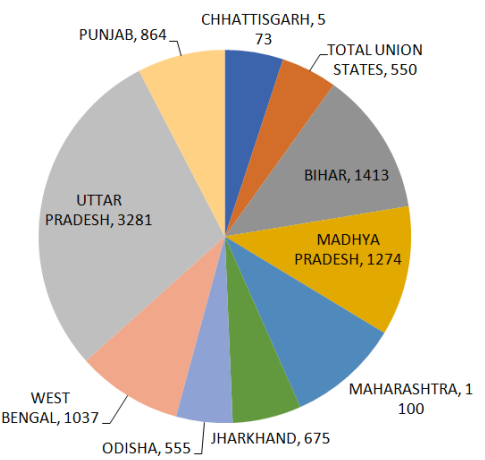
Table 1.1: Top 10 State Wise Convicted Female Offenders



Source: NCRB Report-2020

Convicts - At the end of the year 2020, a total of 634229 Indian convicts were imprisoned in various jails of the country under the IPC. In which 620609 were males, 13620 females and 13 Trans-genders. The highest numbers of convicted criminals were from Uttar Pradesh; in number 130454; Kerala was at second place with 82896 convicted criminals, and the Andhra Pradesh was at the third place with 75528 convicted criminals. The numbers of female convicted criminals in top three states were in Andhra Pradesh with the 2497, Rajasthan with 2131 and Uttar Pradesh with 1864.

Table 1.2: TOP 10 State Wise Female Offenders Under trial

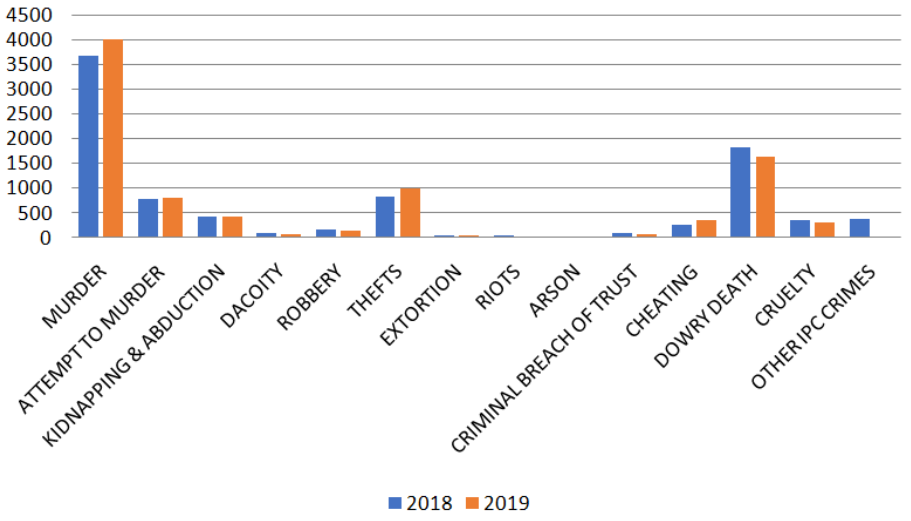


Source: NCRB Report-2020

Under trials - A total of 3, 68,381 under trials were imprisoned in various crimes at the end of the year 2020, which included 3, 53,699 men, 14,628 women and 54 Trans genders. Uttar Pradesh had the highest number of female offender under trials as 3281, Bihar is at second place with 1413 female offender under trial; and Madhya Pradeshis at the third position with 1274 female offender under trial. (Table-1.2)

In Table 2.1 and Table 2.2, an attempt has been made by the author to describe the crimes committed by women under IPC and SLL in the year 2018 and 2019. And also an attempt has been made to efforts which crimes are being committed mostly by the women.

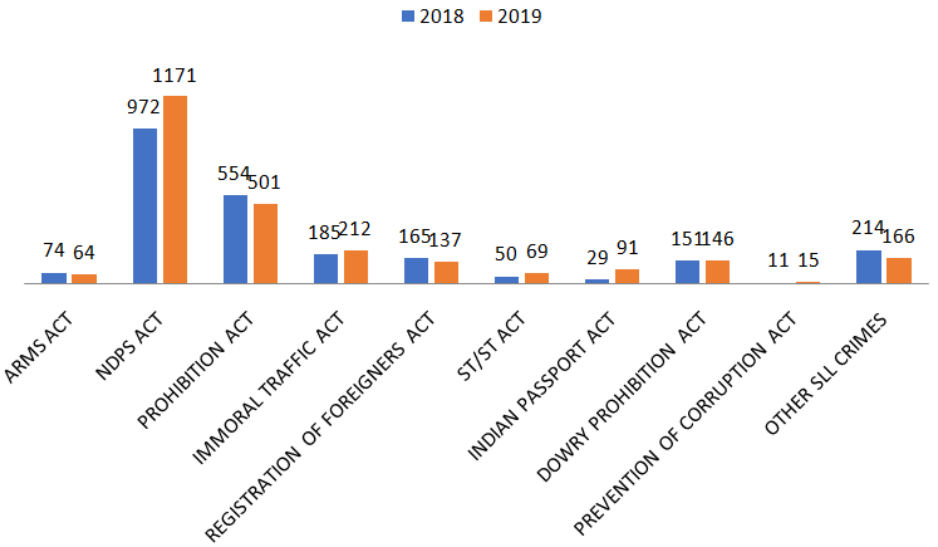
Table 2.1: Female arrested under IPC during 2018 and 2019 in India



Source: NCBR Report-2018 & 19

According to table 2.1 author has discussed crime committed by women in IPC. The total number of women arrested under the IPC in the year 2018 and 2019 are 10049 and 10524 respectively, in which most of the women arrested in murder cases are 3672, and 4006 respectively, followed by dowry murder whose number is 1821 and 1633. And women have been also arrested other offences as follow- Thefts 817, 1005, Attempt To Murder 773, 799, Kidnapping And Abduction 560, 577, Rape, 431, 427, Cruelty By Husband Or Relatives Of Husband 357, 310, Cheating 258, 355, etc.

Table 2.2: Women Arrested Under Special and Local Laws (SLL) during 2018 and 2019 In India



Source: NCRB Report-2018&2019

According to table 2.2 author has discussed crime committed by women in SLL. The total number of women arrested under the SLL in the year 2018 and 2019 are 3023 and 3016 respectively, in which most of the women arrested in NDPS Act are 972, and 1171 respectively, followed by Excise Act whose number is 554 and 501. And women have been also arrested other offences as follow- Prohibition Act 284, 190, Registration Of Foreigners Act 260, 226, Immoral Traffic (Prevention) Act 185, 212, etc.

From the above data it is known that the tendency of women to commit crimes is increasing day by day and they are capable of committing all kinds of crimes. Whether it is a heinous crime or a petty crime, the tendency to commit all these crimes is very harmful in the social penetration of women. Where women were the savior of the society, now they are presenting out as the eaters of the society like *Shabnam case* and *RenukaBai case*. It is known from the above table that the most heinous crimes are being committed by women like as in 2019 4006 women arrested in murder case, 1633 in dowry death, 577 in kidnapping and abduction, etc.

CONCLUSION

Female criminality in India does not show a particular trend or cause. Nor does any criminal theory sufficiently prove the cause of the crime committed by the woman.

The social environment has a great contribution in making women criminals. Changes in women who have been abused are leading to crime. The result of which is that today the involvement of women in all types of crime has increased. And he is capable of committing the heinous of crimes. But in most cases, it has more to do with a patriarchal society. According to psychologist Bhagat, "men motivate women to commit crimes." The woman criminal seems to have a lot of faith in the social order. Despite constitutional guarantees of equal rights and privileges, the fate of women could not be changed. There is discrimination from birth till the last breath. Even her education, her participation in everything equally is not enough to give her any credit. The problem increases manifold when despite his awareness and ability, he has to obey the orders of a person of lesser ability. Her own opinion is ruthlessly crushed and tortured because she is a woman. So they take the law into their own hands. Thus, it is necessary to give women their due place and respect in the society in order to reduce the crime against women in the Indian context and in turn to reduce the crime against women.

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DOCTRINE OF PLEASURE AND CIVIL SERVANTS: AN ANALYSIS IN THE LIGHT OF PART XIV OF INDIAN CONSTITUTION

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Abstract

India is a democratic country where the power is vested upon its people. The power is exercised through the representatives elected for a definite period of time. However, the governmental functions demand expertise and experience. To effectuate such situations, the system have cadres of officers either appointed or nominated known as civil servants. The civil service is a subdivision of government which is usually grouped with the Executive, and without which governments cannot function. These are men and women who establish the permanent staff of the departments of governments. They are expert administrators. Some academicians refer jointly to these employees as public administration or the bureaucracy, or public services. Such civil servants in India are not subject to removal on the pleasure of the President or Cabinet unlike British system. Thus, the present paper intends to examine their status under the 'doctrine of pleasure.'

PROBLEM, OBJECTIVES AND METHODOLOGY

The civil servants enjoy a large quantum of power which attracts misconduct and misuse of governmental power. They completely undermine the legal sanctions and control the working of legislature especially. Hence, the civil servants in the present scenario have completely forgotten the relevance of ethics and morality to officiate their public duty. In this context certain questions irk us - Whether the Doctrine of Pleasure prevalent in the India is similar to the pleasure principle existing in the England? Whether the code of conduct governing the civil servants have nexus

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with the professional ethics? Whether the civil servants face any punitive measures for professional misconduct?

As such the present paper attempts to trace the origin of doctrine of pleasure, introspect the scope of appointment and removal of civil servants available in the Indian Constitution, understand the code of ethics governing the civil servants and find out the discrepancies associated with the subject matter along with some suggestive measures.

The methodology used in this paper is descriptive in nature and the data which are relied upon are completely secondary in nature and are available in the public forum.

The major hypothesis of the present paper is - The office of a civil servant is more of status than of contract.

THE DOCTRINE OF PLEASURE AND THE ACT OF THE PARLIAMENT IN INDIA

In England, the common law principle is that a civil servant holds his office during the pleasure of the Crown. This connotes that there is no contract that gives the employee a remedy for its breach. The termination of the person be made with out assigning any reason. In effect, a civil servant cannot claim arrears of salary due or damages for wrongful dismissal, nor can he enforce by action any of the conditions of service. The doctrine of pleasure is based upon public policy that a public servant whose continuation in office is not or is against the public interest must be relieved of it. This rule is mere explanation of latin maxim "***Durante bene placito***" *which* focuses on the dictum of the Crown to be the guiding principle for the happening in the kingdom.It was the prime duty of the servants to appease the king through their service and in return got the favor and goodwill of the king.

On the same policy consideration the doctrine of pleasure has been introduced in the constitution to protect the legitimate state interest along with certain safeguards to defend the concerned civil servant. It is the view of the Hon'ble Supreme Court that while construing the doctrine of pleasure, it's inference ought to be stricter towards the government and flexible in favour of government servant.

However, the Indian Constitution in Article 309 has expressly made other provisions of the constitution that appropriate legislature can regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of state concerned.[1] But such drastic power is required to be exercised in a manner that it does not conflict with the Part III of the constitution.[2]

It is submitted that the reference of pleasure principle is mentioned in the text of Article 311 only with an provision that the dictum of the president to be followed

only by following the principles of natural justice. Whereas, the principles of natural justice be condoned in the following cases when:

I) A person is dismissed or removed on the ground of conduct which has led to his conviction on criminal charge.
II) The authority empowered to dismiss or remove from the rank is satisfied that for some reason (to be recorded on writing), not reasonably practicable to hold such inquiry.
III) The expedient interest of the state- security or public policy, the president or governor may remove the person.

The doctrine of pleasure is applicable only for the civil post.

The provisions of Article 311 extend to all persons holding a civil post under the Union or State, including members of the all India and State Services. Members of the Defence Services are thus excluded from the scope of this article but not police officers.[3] The expression "civil post" means an appointment office or employment on the civil side of the administration as distinguished from the military side.[4] A person however, cannot be said to have a status of holding a civil post under the State merely because his salary or wages are paid from State funds or that the State exercises a certain amount of control over the post.[5] There must exist a relationship of master and servant between the State and person said to be holding a post under it. The existence of this relationship is indicated by the state's right to select and appoint the holder of the post, its right to control the manner and method of his doing the work and payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances, and is a question of fact in each case whether there is such a relation between the State and the alleged holder of the post.[6]

The president acts on the aid and advice of the Council of Ministers.

Article 77 clearly states that all the executive action of the Government of India shall be expressed to be taken in the name of the president (in whom the executive power of the executive power of the Union is vested. Moreover, Article 74(1) and 163(1) provides for a Council of Ministers to aid and advise the President and the Governor are the sources of the rules of business . In this context, ***Samsher Singh v. State of Punjab***[7],the Court observed that the decision of any minister or officer under rules of business made under any of the two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. However, Justice Ray in the case of ***Moti Ram Deka v. North East Frontier Railway***[8] held that even the theory of pleasure is only permitted when such power is exercised by such officers

or ministers on whom the President or Governor confers or delegates such power. Thus, the observation made in ***State of U.P v. Babu Ram***[9] that the power of the Governor or President to dismiss at pleasure (subjected to Article 311) which was an executive power under Article 154[10] termed as a constitutional power through purposive interpretation was set aside on the grounds that excess power without limitation shall led to the violation of the principles of natural justice.

THE ETHICS AND PROFESSIONAL CONDUCT GO HAND IN HAND.

It was during the era of Clinton administration in the US that reinventing government assumed a great significance. As a results, two new inferences got evolved during this time. First involved identification of factors which promoted the productivity of governance and the second involved setting a new vision and mission policy. It was proposed that the productivity of governance can be increased by adopting more ethical measures in terms of distinguishing between the results and quantity of resources used. The use of a new mission policy will satisfy the needs of the general public. With the dynamics of governance changing from time to time, the importance of ethics have increased in the conduct of civil servants. Ethics remind an officer that he/she is accountable to legitimate needs of the people. The major determinants of administrative conduct in the public sector include the political construct of which officials are part of, the legal framework, the administrators and public functionaries- responsible for public services and the citizens who are the subject matter of implementation. The two leading models- (ethics of the sovereign good and ethics of the service of goods) that are involved with ethical thoughts and actions within the public sectors. The ethics of sovereign good is nothing but the set of guidelines based on which an individual acts. The ethics of the sovereign good is identified to be a set of values from which the different views on 'what is good' can be judged. Whereas, the ethics of the service of goods include the values that are promoted by the ethics of the service of goods are mainly efficiency and maximization of the inputs to outputs. Basically there are three aspects which are important when it comes to the service of goods. They are logic of reciprocity, its view of the collective, and its criteria for judgment.

A bye-law is made to regulate the conduct of the civil servants.

The Conduct of every Government servant is governed by a bye-law made under a parent statute. This power is conferred under Article 309[11] of the Constitution and every state has its own . The Conduct Rules mainly aim that every govt servant shall at all times maintain absolute integrity and devotion to duty.[12] Some important mandatory rules of conduct include:

1. Authorization not to collect not collect money from the public except when authorized by government or on permission from government.[13]
2. Not to communicate with the elected representatives except as their duty.[14]
3. Getting prior permission from the higher authority for acquiring any land,property (immovable or movable) or house.[15]
4. Not getting involved directly or indirectly in trade or business without any prior sanction of the Government.[16]
5. Limited permission to form associations.[17]
6. The civil servants cannot function on the basis of verbal or oral instructions, orders and suggestions. Recording of instructions/direction is necessary for fixing responsibility and ensuring accountability in the functioning of the civil servants and to uphold institutional integrity.[18]

The punitive measures against the civil servants are in accordance to the law in force.

The disciplinary proceeding who is alleged to have committed a misconduct which is detrimental to the prospects of the concerned department and the same may have also caused a pecuniary loss, etc. It is the foremost action taken by the department and presided over by the person/post who has appointed the officer or superior to the appointing authority or a legal authorization for taking such action.[19] While presiding over a disciplinary committee, it is expected that a committee as a quasi judicial body, follows the principles of natural justice I.e the principles of ***audi alteram partem and nemo judex in causa sua***.

THE PRINCIPLES OF FAIRNESS IS PIVOTAL IN A DEPARTMENTAL PROCEEDINGS

The safeguard provided by the Constitution to the civil servant is that he shall not be dismissed or removed in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The reasonable opportunity implies as per the decision of Supreme Court in the case of ***U.P Government v. Sabir Hussain[20]*** is that I) An enquiry should have been held in accordance with the rules of natural justice and the II) the enquiry should have been conducted fairly and properly. Moreover, in ***Khem Chand v. Union of India[21]***, the Supreme Court has said that reasonable opportunity envisaged to the government servant by the provision contained in Article 311(2) includes an opportunity to deny his guilt and established his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based and an opportunity

to defend himself by cross- examining the witnesses produced against him and by examining himself or any other witness in support of his defense.

THE DEPARTMENTAL PROCEEDING AND CRIMINAL PROCEEDING GO HAND IN HAND

It is to be noted that departmental proceeding and criminal proceeding in the court of law can be simultaneously initiated as both the proceedings have separate cause of action. It is ascertained that a departmental proceeding is preliminary in nature and if there is any suspicion that an officer is indulged any unwarranted act that is detrimental to his officiating position/public office, immediate action can be taken by the higher authority. Moreover, the Hon'ble Supreme Court in the case of ***State of Rajasthan v. B.K Meena*** [22] stated that :

"*Merely a criminal trial is pending, a departmental inquiry involving the very same charges as is involved in the criminal proceeding is not barred. The approach and objective in the criminal proceedings and disciplinary proceedings are altogether distinct and different. In disciplinary proceedings, the question is whether the officer is guilty of such conduct as would merit his removal from service or lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against the Government Servant are established and if established, what sentence can be imposed on him. However, if the charge in the criminal case is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. This will depend upon the nature of offense and the evidence and material collected against the Government servant during investigation or as reflected in the charge sheet. But if there is any unnecessary delay in trial, the departmental proceedings can be winded up on preliminary observation of the court.*"

THE OFFICE OF CIVIL SERVANT IS A STATUS, NOT A CONTRACTUAL OBLIGATION- CONCLUSION.

The rules providing for terms of services can be altered unilaterally by the government, and this is so because once appointment to his post or office, the government servant acquires status and his rights and obligations are no longer determined by consent of both the parties but by statute or statutory rules which may be framed and altered unilaterally by the government.[23] The duties or status are fixed by law and in the enforcement of these duties society has an interest. The public policy is that a government servant has a duty of care and responsibility towards the masses for which he/she has been appointed and ought to be carried out with utmost due diligence.

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NATIONAL GREEN TRIBUNAL AND ENVIRONMENTAL GOVERNANCE

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Abstract

With a view to ensure speedy disposal of environment related disputes and delivery of environmental justice, the National Green Tribunal (NGT) was established by law. It was expected that the Tribunal would facilitate the environmental governance in India. Thus, it becomes an imperative to examine the functioning of and delivery of environmental justice by NGT in the context of strengthening environmental governance. The present paper intends to examine the NGT in the context of its structure, functions, jurisdiction and setting legal principles in disposal of the related cases and assesses its performance in relation to the environmental governance of India. Based on the secondary sources of data collection, the paper finds that the Tribunal has been successful, during the last decade, in bringing the environmental issues on political agenda and sensitizing governmental agencies in addition to delivery of environmental justice.

Keywords: National Green Tribunal, Environment, Governance, Justice Delivery, India

INTRODUCTION

Environmental degradation in world in general and in India in particular has reached its peak despite a plethora of schemes of environmental protection. About two hundred laws exist at present for protection of environment in India, most of them enacted after Stockholm convention in 1972. All these laws are required to be implemented through rules and regulations created by the executive

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branch of the governments which are always subject to judicial review. Further, the implementation of programmes and policies face the violation of these rules and laws and also have impact on the people concerned. The disputes, violation of laws and rules are again settled by the judicial courts but the Indian judiciary is already so overburdened that environmental issues are either pushed back or delayed by the judiciary (Verma: 2019). Verma argues that "The implementation of environmental policies becomes extremely difficult and sometimes ineffective due to lack of awareness among people, institutional factors and inadequate infrastructure. Among institutional factors, the most important is the Environment Impact Assessment (EIA) which has two types of models: the statutory model making the assessment of impact compulsory under enacted law or a delegated legislation (rules and regulations made by executive), and second, administrative model under which an administration exercises its discretion to determine itself the necessity of impact assessment. India has been practicing the administrative model." (Verma_ 2010, p. 922). As such it becomes pertinent

ENVIRONMENTAL GOVERNANCE: CONCEPTUAL CONSIDERATIONS

The paradigm shift from government to governance was marked by increasing role of civil society organizations, private sector, and individual citizens who are seen as important contributor in affairs of the state. (World Bank, 1992, 1989). In fact, governance is the way rules, norms and actions are structured, sustained, regulated and held accountable. Similarly, environmental governance refers to a concept in political ecology which promotes environmental policy and sustainable human activity. It is a process of decision-making decision-making involved in the control and management of the environment and natural resources. define environmental governance as the "multi-level interactions (i.e., local, national, international/ global) among, but not limited to, three main actors, i.e., state, market and civil society, which interact with one another, whether in formal and informal ways; in formulating and implementing policies in response to environment-related demands and inputs from the society; bound by rules, procedures, processes, and widely accepted behavior; possessing characteristics of good governance (IUCN:2015).

"Governing our planet's rich and diverse natural resources is an increasingly complex challenge. In our globalised world of interconnected nations, economies and people, managing environmental threats, particularly those that cross political borders such as air pollution and biodiversity loss, will require new global, regional, national and local responses involving a wide range of stakeholders. "Effective environmental governance at all levels is critical for finding solutions to these challenges. Environmental Governance comprises the rules, practices, policies and institutions that shape how humans interact with the environment.

Good environmental governance considers the role of all actors that impact the environment. From governments to NGOs, the private sector and civil society, cooperation is critical to achieving effective governance that can help us move towards a more sustainable future (UNEP).

Environmentalism can be best viewed as advocacy of the preservation, restoration, or improvement of the natural environment and also having a conscious approach to maintain a sustainable living and taking care of our surroundings. The traces about recorded awareness for ecology can be seen in human records some five thousand years ago. It was evident in Vedic sages praising the wild forests in their hymns or Taoists urging that human life should reflect nature's patterns and Buddha teaching compassion for all sentient beings. This awareness was part of all civilisations, be it Indus civilisation, Mesopotamian, or Greek civilisation. In ancient Indian treatise like that of Kalidasa does show Concern about environment and its importance. The ancient people were greatly attached with their environment. Rachel Carson's seminal work entitled 'The Silent Spring' generated lot of response, discussion, and debate around the world and was catalyst in starting a discourse on environmental protection, environmentalism and environmental governance (Weyler, 2018; Guha, 2016).

GENESIS OF TRIBUNALS AND NGT

In view of the growing environmental litigations and its adverse impact on environment, a National Environment Tribunal was created to award compensation for damages to persons, property and the environment arising from any activity involving hazardous substances under the National Environment Tribunal Act, 1995. However, the National Environment Tribunal could not become functional. After two years, it ventured to set up a National Environment Appellate Authority under National Environment Appellate Authority Act, 1997, by the MoEFC to address cases in which environment clearances were required in certain restricted areas. It was given the jurisdiction of hearing appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes should or should not be carried out, subject to certain safeguards under the Environment (Protection) Act, 1986. It was made clear that the Authority would become defunct and the Act would be repealed upon the enactment of the NGT Bill 2009.

The NGT Bill, 2009, was finally passed by the Parliament and got assent of the President in the year 2010 as NGT Act, 2010, which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues. The Act seeks the support of Article 21 of the Indian Constitution guaranteeing the right to life which in turn requires the assurance

of a healthy environment for citizens of India. The tribunal has the dedicated jurisdiction in environmental matters for delivery of speedy environmental justice and reduce the burden on the superior judiciary (the Supreme Court and the High Courts). The tribunal has been kept immune from the procedure laid down by the Code of Criminal Procedure, 1973, and Code of Civil Procedure, 1908. The tribunal is mandated to make and endeavour for disposal of applications or appeals finally within six months of filing of the same. Besides the reasons discussed above, the NGT has been destined to achieve India's move for 'Carbon Credit' with vital role in ensuring the controlof emissions and maintaining the desired levels. This is the first body of its kindthat is required by its parent statute to apply the 'polluter pays' principle and the principle of sustainable development. Recently, the NGT has passed stricture on union government and state governments too, namely, strictures against governments of Delhi, Haryana, Punjab and Rajasthan on the issue of burning agricultural crop roots residues in the field itself and growing air pollution in urban areas. In response, the governments applied some short-term remedies only (Verma: 2019).

Pring and Pring (2016) have categorised environmental courts five different categories namely, Operationally Independent Environmental Courts Decisional Independent Environmental Courts, General Court "Designated" Judges, Courts with environmentally trained judges, Environmental Law -Trained Judges and mixed category. The National Green Tribunal (hereafter NGT) of India falls in to the category of decisional independent tribunal along with the Province of Ontario, (Canada) – Environmental Review Tribunal and New York City – Environmental Control Board.

ABOUT NGT: COMPOSITION, JURISDICTION AND POWERS

The National Green Tribunal was established almost eighteen years after this conference. Countries like Australia and New Zealand have been forerunner in terms of taking lead and establishing such tribunals (Amirante, 2012). The National Green Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible. New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other 4 place of sitting of the Tribunal (MoEFCC). The section 4 to 13 of the NGT Act (2010) deals with the various provisions regarding the Composition, Manner of appointment, Term and Qualifications for appointment of Chairperson, Judicial Member and Expert Member of tribunal. The following are the provisions made in this regard:

The NGT derives powers from laws like, The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Forest (Conservation) Act, 1980; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002. The Schedule II [Sections 15(4) and 17(1)] mentions the heads under which compensation or Relief for damage may be Claimed. The tribunal while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. The Tribunal shall not be bound by the procedure laid down by the code of Civil Procedure, 1908 but shall be guided by the principal of natural justice and the tribunal shall also not be bound by the rules of evidence contained in the Indian evidence Act,1872.The tribunal shall have the power to regulate its own procedure.

PERFORMANCE OF NGT

The tribunal which is going to complete a decade of its functioning has not only flagged key environmental issues of the entire country and its presence has been felt across the country and on different issues of environment but also has brought a new dynamic style of functioning for sensitizing government machinery, to act fast and intensify its surveillance and vigilance mechanism. It has gone into detail of every case and sought Para -wise details of each matter and even adjourned matter when there was no proper response of the given notice by the parties. This shows how serious tribunal is, in its functioning. It has even tried to simplify the process by admitting online complaints and petitions without advocates. It has also considered mails and letters as petitions. The tribunal for ensuring quick disposal of cases and to bring more expertise in dealing with the complex environmental issues, invited experts from institutions like IITs and other reputed institutions and also included representatives of central and state governments. It also in selected cases took help of retired Supreme Court and High Court judges to have inter- departmental coordination in states and to take stock of the situation. It also summoned the chief secretaries of states and UTs on issues of solid and plastic waste, sand mining, air pollution and on the issue of polluted river stretches. This move of NGT was seen as an unprecedented move. The tribunal also gave instructions to the centre and the state governments to adhere to the timeline to set up sewage treatments plants so that damages to the rivers and other water bodies can be prevented. It also dealt with the matters related to the air pollution in different cities of the country by taking help of Central Pollution control Board. It also directed to issue advisories to the public for severe pollution days. Even its presence was felt in far Lakshadweep also when it asked the administration to ensure supply of drinking water to the villages of that area and directed the authorities to implement the drinking water

plan in consultation with the Central Pollution Control Board. It also dealt with the plans of environment management for ecologically sensitive areas like Kullu-Manali and Rohtang Pass (PTI, 2020).

Table 1: Indication of number and percentage of judgements pronounced by NGT 2011-2019

Years/ Categories	*EC*	*FC*	*Pollution*	*Coastal*	*Waste Management*	*MISC*	*Mining*
2011	7	2	6	0	1	0	0
2012	1	1	7	1	5	8	0
2013	25	1	45	12	6	21	1
2014	55	19	96	16	29	53	8
2015	51	21	146	33	33	120	17
2016	97	3	26	21	24	105	1
2017	88	29	172	15	90	3	3
2018	2	5	6	0	1	1	5
2019	22	4	8	1	2	4	3

Source: https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/

It covered and dealt with a wide spectrum of cases and environmental issues ranging from cases of environmental clearance (EC) to forest clearance (FC) to cases related with pollution, waste management, mining and coastal zones(See Table 1 and Figure 1 and 2) in last nine years of its functioning and has made a considerable impact. The NGT has been able to achieve and fulfill its mandate to a large extent and has ensured to implement the principles of environmental governance.

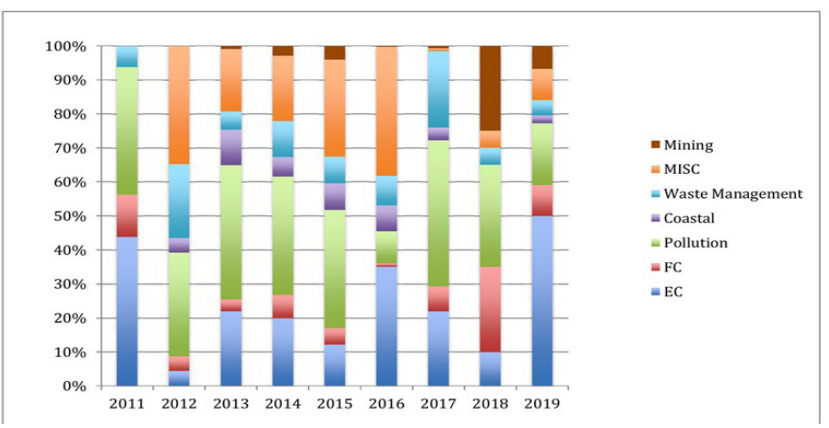

Figure 1: Indication of Number of Cases in Each Category from 2011 to 2019

Source: https://www.wwfindia.org/about_wwf/enablers/cel/national_green_tribunal/

The NGT while dealing with a variety of cases, and one can assume, must have gained expertise in dealing with various matters. This type of handling of cases and its wider publicity does also help citizens' empowerment in two ways. First they become more aware about the environmental problems and issues. Second, they also come to know the process to access and acquire justice related to environmental issues, if they require.

SOME AREAS OF CONCERN

There have been some concerns with regard to the functioning of National Green Tribunal. Sahu (2019) while pointing out the problems says that it requires a continuous administrative support by the government, because lack of it, critically undermines the functioning and decision making process; and the access of environmental justice to the aggrieved. The concerns have been raised in terms of basic infrastructure facilities and human resource available to the tribunal. If one looks at the number of members appointed to the tribunal during the Year 2011 to 2019, the NGT has never got the minimum strength of 10 judicial members and 10 expert members which is a mandatory provision. While at the same time there was a rise in the number of environmental litigations in the country. Result of this can be seen in functioning of zonal benches as they are not able to function properly. The lawyers who are the critical stakeholders of the entire process related to the tribunal have also expressed their concerns and a degree of discomfort with the process, especially with regard to the hearing process through the video conferences. They feel that it has put lot of burden on their clients in terms of the cost. They have also raised the concern as the hearing of the case is adjourned in last minute in an unfashionable manner in which the lawyers and their clients do not get sufficient time to prepare their case. Video conferences also get cancelled at last minute. Lawyers also complaint that they hardly even get a chance to mention any new matter via video conference –hearing. The majority of cases are not even resolved within the stipulated time period of six months.

Sahu (2019) further says that there is also challenge in terms of implementation of the NGT orders. Firstly, polluters are not paying the compensation amount which needs to be remitted in Environment Relief Fund with in a fix time period. Secondly, the NGT orders are being challenged in Supreme Court quite often especially in those cases where a heavy penalty is imposed by tribunal. Thirdly, there is lack of institutional mechanism which can ensure that there is compliance of tribunal orders by the environment regulatory authorities. Porecha (2019) has also expressed concerns over the shortfall of members in the tribunal. She mentions that shortage of members is making NGT toothless and weak.

The Concerns raised are needs to be addressed. There is need to have a full member tribunal to address the pressing issues of environment. The tribunal needs to be supported administratively and with human resource and with adequate logistics to perform its operation. The tribunal also has to address the concerns raised by other stakeholders especially by lawyers. It is high time that everyone understands that there can be no two views about protecting the environment. The development and economic activities are also equally important but what is needed is the balance between the environment and development. The growth has to be sustainable and equitable and in a time to come much would depend upon how we treat and protect our environment.

CONCLUSION

The protection of environment and sustenance of it is a global pressing need. The issues of environment protection, climate change and sustainable development are taking a centre stage in the discourse of global and national policy making. They are for real, and the all stakeholders of society that is governments, judiciary, quasi-judicial bodies, legislature, civil society organizations, private sector and individual citizens will have to come forward and will have to act together, because lot is at stake. Governance is all about binding all stakeholders together and leading them to work for achieving common goals for betterment of society and humanity at large. And in this effort in India the Role of National Green Tribunal is crucial and every step should be made in a way which enhances its performance and in turn ensures green justice, good governance and sustainability.

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LAWS ON MANUAL SCAVENGING – HOPE CRUSHED AND JUSTICE DENIED

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Abstract

Manual Scavenging is a practice which dates back to centuries. In order to give hopes to the families who are traditionally involved in the system and for whom an alternate profession is not possible due to socio-economic pressures, law has played a positive role. Though we have law at normative level, their plight remains the same, their hopes are crushed by the socio economic complexities and thus justice is denied,. Recent petitions in the Supreme Court and the active role being played by Karnataka High Court are the ray of hope to look forward to.

Keywords: Manual Savenging, safaikaramchari, civil rights, SBM, India

INTRODUCTION

The data of National Commission for Safai Karamcharis (NCSK) has always put forward a dismal picture, according to them approximately 50 persons died while cleaning sewars in first half of 2019 (The Wire Staff).As per NCSK data, it relates to only eight states -- Uttar Pradesh, Haryana, Delhi, Punjab, Gujarat, Maharashtra, Karnataka and Tamil Nadu -- out of the 36 states and Union territories. This makes the data incomplete, yet dismal. They are also doubtful about the accuracy of the data The year 2019 has been a significant one for the advocates of human rights since the practice of manual scavenging has reached portals of justice.

Manual scavenging is defined as the practice wherein a person manually cleans, carry's, disposes off or handles in any manner, human excreta from dry latrines

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and sewers. It generallyinvolves use buckets, brooms and baskets for the work. The practice of manual scavenging is linked with caste system. Somehow,theso-called lower castes were earlier expected to perform this job. Manual scavengers are amongst the poorest and most disadvantaged communities.

Though law is existent, the implementation level is very poor and to the surprise of the global human rights group's executive is aiding it. For the purpose of developing an insight into the issues and challenges, this article is divided into – Part – I: Historical Background, Part – II: Manual Scavenging in contemporary India, Part III – Law and Policy relating to Manual Scavenging, Part IV: International developments, Part V: The practice, the remnants, the illegality followed by conclusions.

MANUAL SCAVENGING IN CONTEMPORARY INDIA

Manual scavenging is certainly not a new practice. In the contemporary times, manual scavenging caste-based occupation which has become gender-based also. More than 90 per cent of manual scavengers are women. Generally, the households which have dry latrines located inside prefer a women manual scavenger. According to reports, on an average, women get paid Rs. 10-50 only per month per household. The men who clean sewer lines earn up to Rs. 300 a day. (Goswami). As per survey conducted in 170 districts in 18 States of our country, there were 54,130 people engaged in this work as of July 2019. The figures are sure to be understated because they were carried out only in areas where "there are reasons to believe the existence of manual scavengers". (Share Article)

Moreover, as per the traditional *jajmani*system, the service and artisan caste households are expected to serve upper caste households or *jajmans* in the village. Hence, women who clean toilets in the private households generally "inherit" the work from their mothers-in-law and join them post marriage, in the daily rounds of collection of excrement and carrying it in baskets to the borders of the village. If it very sad occurrence that these women refer to their practice of manually cleaning toilets as their jagir, which, in Hindi language, refers to an estate. In fact, a jagir—"entitling" the owner of the jagir to clean toilets in particular households in the village—has historically been a formal, valuable family asset. Each family would characteristically serve between 10 and 30 households. This would mean eventually mean that inheriting a greater number of households to clean is considered to increase the value of the inheritance (Cleaning Human Waste)

It may be noted that currently there are three categories of scavengers - scavengers of individual dry latrines, scavengers who clean sewerage and the garbage collectors. Interestingly, in modern India, all manual scavengers do not belong to scheduled castes. Research proves that members of other communities have taken up manual scavenging due to economic compulsions (Srivastava).

Here voluntary efforts for the liberation and rehabilitation like the Sulabh movement of 1980's under the leadership of Dr.Bindeshwar Pathak, deserve a special mention. Sulabh has rehabilitated and liberated 1,20,000 manual scavengers and also works on skill development. It has constructed 1.3 million household toilets, 8000 community toilets in 1599 towns in 25 states and 4 UT's in India. Over 15 million people use Sulabh toilets daily. They have succeeded in creating opportunities, educational institutions, vocational training centers (Sinha and Sinha). With decades of work, knowledge, manpower resources, in depth experience they are one of the best contributors in sanitation driven processes aiming at restoring dignity of our manual scavengers.

As per Pathak the role of technology and management is positive and constructive. Technological vision of sanitation may not have forward and backward linkages of castes structure. It is the technology which occupies the Centre of the public display, and the socio-cultural dimensions remain in the periphery.(Sharma)

As envisaged in National Action for Mechanised Sanitation Ecosystem, Mechanised cleaning of sewers and septic tanks is also playing a crucial role in elimination of manual scavenging(Social Justice). Evolution of mechanical devices has generally kept pace and now equipment of various sizes, capabilities and cost is readily available to prevent any need for human entry except in extreme emergencies. Mechanical tools used for desilting of sewer lines, dechoking of sewer lines have brought lot of change in the scenario. New innovations like robotic scavenger, poisonous gas detector before opening manhole, Robotic Sewer Inspection Camera etc are expected to be essential aids to eliminate manual scavenging and also health issues for other workers(Ministry of Housing and Urban Affairs).

LAW AND POLICY RELATING TO MANUAL SCAVENGING

In this part, the authors have discussed the law and policy relating to manual scavenging. This part is divided into three subparts – law, policy and operationalization of law and policy.

Law

This subpart is divided further into the following sub – parts- 1. Abolition of untouchability, 2. Protection of civil rights act 1955, 3. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and 4.The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013

1. ***Abolition of untouchability*** - An insight into the legal norms relating to manual scavengers commences with abolition of untouchability. Untouchability has

been abolished in India by Art 17 of the Constitution of India. Though the backbone of untouchability, is still existing in Indian social system. With the disease still existent, the symptom has been very tough to cure. Caste system still results into the psyche which look at the untouchables for all the work relating to manual scavenging. (Read with Article 14, Article 15, Article 16, Article 17, Article 19(1)(g), Article 21, Article 46 and Article 338.)

2. ***The Protection of Civil Rights Act 1955andThe untouchability (offences) Act 1955***-They are the umbrella legislations to make untouchability and offence and provide the target group with right equal to others. Theyprohibit compelling anyone to do manual scavenging also.
3. ***Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993***

   It prohibits the employment of manual scavengers for manually cleaning dry latrines and also the construction of dry toilets. It also provides for imprisonment of upto a year and a fine.
4. ***Protection of Human Rights Act 1993***

   It provides for the constitution of a National Human Rights Commission, State Human Rights Commission in states and Human Rights Courts. It seeksto achieve better protection of human rights.
5. ***National Commission for Safai Karamcharis Act 1993***

   It provides for constitution of National Commission for*Safai Karamcharis*and for protection of their rights
6. ***The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013*** and ***rulesread with Guidelines for Survey on Manual Scavengers in Statutory Towns 2013***

In 2013, landmark new legislation which is wider in application and scope was passed.

Key features of the Act are:

a. Prohibition of construction or maintenance of insanitary toilets
b. Prohibition of engagement or employment of anyone as a manual scavenger
c. In case of violations, it provides for a years' imprisonment or a fine of 50,000 rupees or both
d. Prohibition of engaging or employing a person for hazardous cleaning of a sewer or a septic tank
e. Cognizable and non-bailable offences
f. Requirement of survey of manual scavengers in urban and rural areas within a time bound framework

g. Land is to be allotted as part of the rehabilitation package for former manual scavengers.
h. It prohibits 'hazardous cleaning' of sewers and septic tanks.

1. ***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989/2014***

The Act prohibits making a member of scheduled caste or scheduled tribes to do manual scavenging or employing or permitting employment of the same. It also provides for imprisonment for a term not less than six months which may extend to five years or fine in case of violations.

Thus, at normative level we have sufficient norms, the challenge seems to be at the level of implementation or in other words, through the frequency and impunity with which it is violated. To begin with, an introspect needs to be done at the level of social construct. With a psyco-social fabric conducive of the caste system and pushing a few castes into such jobs, the difficulties at the implementation level are far from few.

Policy

1. ***National Urban Sanitation Policy 2008***

   It provides that the following issue must be addressed -

   Though there is appropriate legal framework, progress towards the elimination of manual scavenging has shown limited success. It also acknowledges the fact that little or no attention has been paid towards the occupational hazard faced by sanitation workers fully.

2. ***National Urban Housing and Habitat Policy 2007***

   It provides that while preparing a special action plan special emphasis has to be given to persons belonging to SC/ST. Also, it provides that due consideration is to be given to the *safaikaramcharis* and scavengers are not geographically and socially segregated.

3. ***Recommendations on Manual Scavenging and Sanitation 2008***

   The recommendations further provide for the protection of manual scavengers.

4. ***Integrated Low Cost Sanitation Scheme revised guidelines 2008***

   The main objective of the scheme is to convert the existing dry latrines into low cost pour flush latrines and alsoto construct new ones where none exist. Thus, it aims at reducing the need for manual scavenging.

   Thus, at the level of policy also, the government has been taking steps. There are other schemes like *Nirman Bharat, Swachh Bharat Mission, Nirman Gram Puraskar* etc. which also have an indirect impact on the manual scavengers because a reduction in demand will also have an impact on their lives.

5. **Swachh Bharat Abhiyan 2014**

   Swachh Bharat Abhiyan aims at making India Open defecation free (ODF) through construction of individual and community toilets, to keep the villages clean, solid and liquid waste management through village panchayats. As per government of India, in August 2022, 101462 villages are ODF (open defecation free) Plus. 54734 villages are ODF Plus – Aspiring, 17121 villages are ODF Plus – Rising are 17121 villages, and 29607 villages are ODF Plus - Model (Another milestone achieved)

   Also, the Government has been laying increasing emphasis on mechanical cleaning and preventing human entry into sewer and septic tanks to the extent possible through the use of modern technologies. Through the National Safai Karmacharis Finance and Development Corporation (NSKFDC) formal integration of these workers is being done through the disbursement of grants, provision of loans and livelihood training programs (Government is fully committed to eradicate Manual Scavenging)

6. **Other movements**

   Other movements like Clean India Campaign of Central Tourism Ministry and regional movements like 'Sabar souchahar' under' Mission Nirmal Bangla' also deserve a mention here

Operationalizing Law and Policy

Operationalization of law and policy is very significant in view of the recent petition in Supreme Court seeking initiation of criminal proceedings against officials, agencies, contractors or any other person involved in engaging or employing manual scavengers resulting in their death at work. Also, the work of Karnataka High Court needs special mention here. The important cases are as under:

1. ***Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage& Allied Workers***

   The Hon'ble Supreme Court gave ten direction relating to free medical treatment of sewer workers in case of occupational disease, no termination of services in case of illness, ex-gratial compensation of 1 lack rupees (can be recovered from the contractor, payment of provident fund, gratuity and bonus, protective equipment, soap and oil on monthly basis, accident-card-cum-wage-slip for contact workers, authentication of payment of wages register and ex-gratia compensation to the families of deceased workmen within eight months.

2. ***Rajesh v. Delhi Jal Board***

   It was observed that Delhi State Industrial and Infrastructure Development Corporation Limited (DSIIDC), a government company is responsible for developing and providing industrial infrastructure facilities to the entrepreneurs in Delhi, should have taken necessary steps to ensure that the sewers are not

opened for cleaning purposes by anybody. Also, the grant of compensation would not await a decision as to who was negligent to compel the deceased persons to go into the sewer lines. The liability being strict, the Curt directed the DSIIDC to pay an amount of ` 10 lacs each to the petitioners.

3. ***National Campaign for Dignity and Rights of Sewerage and Allied Workers &Others Vs. Municipal Corporation of Delhi***

   The Hon'ble High Court passed a series of orders on various issues including improving the condition of service of sewerage workers, provision of basic amenities,medical and hospitalization facilities, covering them in labour legislations, compensation etc.

4. ***Safai Karamchari Andolan and others vs Union of India***

   In the light of the 2013 Act and various other orders, the apex court gave the following directions among others-

   A. In case a person is included in the final list of manual scavengers Under Sections 11 and 12 of the 2013 Act, he/she shall be rehabilitated as per the provisions of Part IV of the 2013 Act, i.e initial, one time, cash assistance, scholarship for their children as per the relevant government scheme, allotment of residential plot and financial assistance for construction or a readybuilt house with financial assistance, livelihood training for a family member, subsidy or concessional loan for alternative occupation for a family member and any other assistance as per norms.

   B. In case of sewer deaths-entering sewer lines without safety gears, compensation of Rs. 10 lakhs should be given to the family of thedeceased.

5. All Indian Council of Trade Unions vs Union of India

   The Hon'ble High Court observed that " there can be no dispute that manual scavenging is most inhuman and it infringes the fundamental rights guaranteed under Article 21. The court also highlighted the major difference between the old act (Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993) and the Act of 2013. It said that the definition of 'manual scavenger' in the Manual Scavengers Act is much wider than the definition of 'manual scavenger' defined under clause (j) of Section 2 of the old Act. It was observed that there is hardly any implementation of the provisions of the Manual Scavengers Act and the Rules in the State of Karnataka. Thus, the court found the case fit for continuous monitoring with the power of issuing continuing mandamus and gave directions for implementation of the Act."

In the same case, on 17 February 2021, the Hon'ble High Court suggested the state government to consider issuing a general direction to all Urban and Rural local authorities as well as all agencies and instrumentalities of the state for implementation of Rule 3 of the said Rules of 2013. The State government was also suggested to consider issuing a direction that whenever authorities appoint

contractors, condition of complying with Rule 3, should be incorporated in the contract for work order.

On 16 March 2021, the Karnataka High Court was pleased to direct the state government to file an affidavit disclosing whether it has discharged its duty to promote, use of modern technology, for cleaning sewers, as provided under sub-section (2) of Section 33 of the said Act of 2013.

On 30 August 2021, the court observed that in case of noncompliance of the statutory provisions under the Act of 2013 and Rules of 2013 and for violation of this Order, the District Magistrate shall be held for contempt proceedings as District Magistrate is the authority who has been made responsible under the Act of 2013 for rehabilitation of such manual scavengers.

It may be observed that the Supreme Court petition for initiation of criminal proceedings in case of a death and Karnataka High Courts monitoring of the implementation of law at formative level are expected to be an important addition the jurisprudence for protection of life and dignity of manual scavengers. Also, of late there have been many cases wherein compensation for death of a manual scavenger has been given.

PART IV: INTERNATIONAL DEVELOPMENTS

Though many international instruments deal with right to sanitation, only ILO definition deals with manual scavenging

The International Labor Organization (ILO) works for three forms of manual scavenging: 1) removal of human excrement from public streets and dry latrines, 2) cleaning septic tanks, and 3) cleaning gutters and sewers. A per the reports the tasks are subdivided by gender: 95 percent of private and village toilets are cleaned by women; both women and men clean open defecation from roads, open areas, and open gutters; and men typically clean septic tanks, closed gutters, and sewers.(Cleaning Human Waste)

The Supreme Court of India had also discussed the international developments the case Safai Karamchari Union vs Union of India.Other important instruments which deal with manual scavenging are

1. UDHR – Art 1, 2(1), 23(3),
2. CEDAW – 5(a)
3. CERD – 2 (1)(C)
4. MDG
5. UNDESA
6. UN declarations
7. ILO Declarations

It was also observed that the above provisions of the Covenants, which have been ratified by India, are binding to the extent they are not inconsistent with the Indian domestic law.

PART V: THE PRACTICE, THE REMNANTS, THE ILLEGALITY

We need to introspect and ask a few questions. Why a practice declared illegal by law of the land, a practice the highest court of land is displeased with, is still existing? Does the society allow a manual scavenger to do some other work? What is the situation after Swacch Bharat Abhiyan?

The answers are very easy and comprehensible. The practice exists because of the continued presence of insanitary latrines. According to Safai KarmachariAndolan—an NGO that works for abolishing manual scavenging, there are about 2.6 million insanitary latrines (dry toilets) that require cleaning by hand.According to A Narayanan, director of Chennai-based Change India, there is a structural issue. Septic tanks are designed badly with engineering defects. After a point, a machine cannot clean it. This means after a point we need a manual scavenger to clean them. (Goswami)

According to Ashif Shaikh, the founder of Jan Sahas social development society, the Manual Scavengers need to be provided with an alternative livelihood option, which is difficult because people belonging to this community are still looked down upon and refused jobs(Baweja).

One more issue is the absence of alternate livelihood skill. Lack of skills adds to the misery.

An important but mostly forgotten aspect is severe healthconsequences. They often get exposed to harmful gases like hydrogen sulphide and methane leading to the diseases like cardiovascular degeneration, musculoskeletal disorders like Osteoarthritic changes and inter vertebral disc herniation. They are suffer from infections like hepatitis, leptospirosis, helicobacter, various skin and respiratory diseases and altered pulmonary function parameters. Due to close contact with excreta women suffer from TB, campylobacter infection, cryptosporidiosis , giardiasis, hand, foot and mouth disease, hepatitis A, meningitis (viral), rotavirus infection, salmonellainfection, shigellosis, thrush, viralgastroenteritis, worms and yersiniosis. Situation of a sewage and manhole sanitation worker is almost the same (John and Sasidharan)

Despite progress, manual scavenging persists in India. According to the India Census 2011, there are more than 2.6 million dry latrines in the country. There are 13,14,652 toilets where human excreta are flushed in open drains, 7,94,390 dry latrines where the human excreta is cleaned manually. Seventy three percent of these are in rural areas and 27 percent are in urban areas. (Cleaning Manual Waste)

It is worthwhile to note that under the Swacch Bharat Mission, millions of septic tanks are being built in rural India. This means that the Central, state and local sanitation programmes must focus on fecal sludge management as a priority otherwise the society will shift the onus on manual scavengers to clean millions of hurriedly built dry toilets (Goswami) .Hence, it didn't give us a long-term solution for disposing of the waste from these toilets. The single pit toilets would require manual cleaning every year.

CONCLUSION

Manual Scavenging has socio economic and cultural dimensions. Regulation of social behavior to bring social change is essentially a slow process. It is a problem to be handled with multi-pronged approaches. This can only be done by a comprehensive plan. Firstly, education is a centroidal key to many social problems. Education can pave their way to better employment. Social empowerment without financial empowerment is not possible Secondly, there is a challenge relating to lack of skills. Skill development is a way to bring some change. We can take clues from the success of Sulabh movement.Though it is notpossible to get rid of the caste system which sustains untouchability, skill development programmes and the consequent income can be helpful.This is important since the manual scavengers belong to economically week and oppressed class. Thirdly, while we are focusing on skill development, we must remember the issue of double disability, this is very important to link skill development with employment generation. Unless the skill development results in alternate livelihood opportunities, we will not come out of the vicious socio – economic circle. Alternate livelihood opportunities are necessary to liberate them and restore their dignity. Fourthly, there is a need for creating a conducive environment and sensitizing people about their issues to increase the acceptability in mainstream work opportunities.Fifthly, the society should be sensitized about the complex issues and educated to discourage such practices around us. The state and society need to take active interest in the issue and look into all possible options to accurately assess and subsequently eradicate this practice.Sixthly, innovations in science and technology must be considered in a phased manner. for ex, Professor Dr. Prabhu Rajagopal, from the Centre for Non-Destructive Evaluation at IIT-Madras has invented a 50-kg, pneumatic-powered, remote-controlled robot, called Sepoy Septic Tank' which can be sent down in the septic and sewer lines for the purpose of cleaning. Though considering the vastness of our country we need to first do a pilot study.Sixthly, railways being the largest employer of manual scavengers should focus more on bio-toilets. Seventhly, there should be dissemination of information of schemes of National Safai Karmacharis Finance and Development Corporation. It will aid the manual scavengers in becoming owners of their equipment's.

Multipronged approach is the only solution to this problem, though socio-economic transformation is a slow process, it is nevertheless an achievable target.

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RIGHT TO CLEAN WATER AND SANITATION IN INDIA: A STUDY WITH REFERENCE TO NORTH-EAST REGION

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Abstract

The presence of a clean environment is essential for everyone to work with their most incredible efficiency. Countries with good sanitation policies always prosper. Further, good public health contributes to the GDP since reducing medical bills, which usually contribute to a considerable portion of individual income, leads to increased savings and investment. The Indian judiciary has inscribed sanitation and access to clean water within the sacrosanct scope of fundamental rights guaranteed within the Indian Constitution. The present paper attempts to discover diverse aspects of the Right to sanitation and access to clean water. It further endeavours to study the effectiveness of the order in securing the above Right for the people in India.

Keywords: Right to Water & Sanitation, Constitution of India, Opinio Juris, North East, India.

INDIAN CONSTITUTION AND RIGHT TO WATER

Water remains an essential element to sustain life. Since the State has the sacrosanct obligation to protect and preserve the life and liberty of its subjects thus, providing access to clean water inherently remains a fundamental obligation of the State. Under Article 21 of the Indian Constitution, right to clean and safe water becomes a fundamental right. Further, Supreme Court of India in the cases A.P Pollution Control Board (II) v. M. V. Nayudu (Retd.) & Ors, and In the

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Subhash Kumar v. State of Bihar case ruled that the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens and can be approached the upon the infringement of the same.

Again, upholding the indispensability of sanitation and clean water, Supreme Court in Susetha v. State of Tamil Nadu, case also observed:

> "The water bodies are required to be retained. Such requirement is envisaged not only since the right to water as also quality life are envisaged under Article 21 of the Constitution of India, but also because the same has been recognized in Articles 47 and 48-A of the Constitution of India. Article 51-A of the Constitution of India furthermore makes it a fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife."

Furthermore, the Indian constitution provides the guidelines for state policies in Directive Principles of State Policy (Part IV of the Constitution). Article 47 says, " Duty of the state to raise the level of nutrition and the standard of living and to improve public health." In the case of M.C. Mehta v. Union of India the court suggested, "article 39(e), 47 and 48A by themselves and collectively cast a duty on the state to secure the health of the people, improve public health and protect and improve the environment." However, many perceive the two as different rights, where the right to sanitation remains oriented towards the dignity of an individual while access to clean water is analogous to the right to life. Henceforth, exploring the legal instruments beyond the Indian legal instruments on the Right to clean water and sanitation appears appropriate to appreciate the two rights better.

FRESH WATER AS THE NEW OIL

While, securing clean water for the subjects remains an intrinsic constitutional obligation of the state under the theoretical domain of domestic as well as international law, however practically securing the availability for all people remains a convoluting challenge to solve. Furthermore, freshwater usage does not remain limited for drinking purpose only but also extends as a major industrial resource. Henceforth, while fulfilling the constitutional obligation at all costs remains the fundamental role of the state, dealing with challenging global issues also inherently exists an intrinsic role of the leadership. Therefore, to solve the water crisis challenge the world needs to focus on effective management of water and its resources. It has become essential to tackle this problem so that everyone can benefit from a balanced access to clean water resources. The consequences for failing to address the unequal distribution of fresh water are dire; both economic and environmental damage will be incurred if left unchecked. This includes investing more money into research projects focused on improving existing technologies related to desalination plants or wastewater treatment facilities; creating new policies aimed at reducing wasteful

practices; educating local communities about conservation methods; supporting initiatives like rainwater harvesting schemes among many others. By doing so we can ensure sustainable use and equitable sharing of freshwater resources worldwide thus guaranteeing a better future for generations ahead.

INTERNATIONAL LAW OF RIGHT TO WATER AND SANITATION

International organisations have invested significant efforts in promoting the accessibility to clean water and sanitation by inscribing it in the form of international law through treaties or conventions. However, traditionally international law is often regarded as soft law, and so inconsistency between international and domestic law hinders effective implementation. Therefore, the domestic and international laws must always be understood and interpreted in a harmonious manner, further such harmonious analysis must be considering international law. In Germany this approach is called "Völkerrechtsfreundlichkeit des Grundgesetzes".

The issues and challenges with the Right to water in the arena of international law remain complex. Since the subject remains different for every country as it is influenced by multifariously diverse factors like climatic conditions, water storage infrastructure, technical advancements, consumption population, among others. Therefore, international law attempts to formulate general principles upon a subject, enabling nation-states to devise congruous and compatible constitutional and legal policies to guarantee similar rights and protection to their subjects. In this regards study of such international efforts concerning the subject in discussion becomes relevant.

MDGS AND SDGS

Several major nations particularly, the developed states have paid significant attention to sanitation policies, which is why six out of the ten healthiest nations were in Europe. Recognising the importance of sanitation, the United Nations, in 2000, set the Millennium Development Goals (MDG-7), which focused on access to sanitation for the people. In 2010, the UN General Assembly vide UNGA resolution 64/292 also recognized the Right to water and sanitation as a Human Right. In 2015 MDGs is superseded by the Sustainable Development Goals to be achieved by 2030, which expressly enacted the goal to "ensure availability and sustainable management of water and sanitation for all."

The international customary law is based on the customs followed by the nations. In this regard, the emerging question for exploration remains: when are the state's actions considered customs? If the adherence to the norm is reflected or traceable in the general and consistent state practice and the corresponding Opinio Juris. In that case, such co-occurrence and synchronicity provide evidence of the

state's recognition to accept the designated practice as international customary law. Therefore, even though some States might not be signatories to international covenants like ICESCR (International Covenant on Economic, social and cultural rights), yet certain traditions or customs mark the presence of state practice and Opinio Juris to be regarded as the International Customary law.

UNGA resolution on "The Human Rights to Water and Sanitation" 2010 has a respectable recommendatory value, it can be said to possess a value to become customary law, it mainly consists of three operative paragraphs : par 1 recognises the right to clean water and sanitation as human right essential for life and all human rights, secondly it calls upon the inter-governmental organisations and states to invest in assistance to developing nations to promote clean water and sanitation facility and thirdly it welcomes the work done by independent experts in finding the challenges in promoting sanitation and clean water. This resolution can be considered as the source of customary law because out of the 192 countries 122 accepts it and rest were silent and there was no vote against it, the main contention before considering it customary law is that there was no mention of legal origin of this right which is important to consider new right, 'it was worth questioning that what a shared Opinio Juris is worth, if the legal origin, scope and limit of such right is remained undefined.'

INTERNATIONAL INSTRUMENTS AND WATER RIGHTS

In pursuance to the fulfilment of its mandate, the United Nations apart from setting SDGs has adopted several international instruments to protect the above subject rights. Relevant articles of two of such conventions obliging signatory states to eventually embrace the policy of these conventions into their municipal laws are being discussed below:

Art 14 (h) of Convention on the Elimination of all forms of All Forms of Discrimination Against Women, 1979 provides, "State parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on the basis of equality of men and women, that they participate in and benefit from rural development and in particular, shall ensure to such women the right" and "To enjoy living conditions particularly in relation to housing, sanitation, electricity and water supply, transport and communication." Article 24 of the Convention on the Rights of the Child, 1989 states that "States parties recognize the right of the child to the enjoyment of the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation of health. State parties shall pursue full implementation of this right and, in particular, shall take appropriate measures to combat diseases and malnutrition, including within

the primary framework of primary health care, through, inter alia, (...) the provision of adequate nutritious food and clean drinking water (...)."

POLICIES OF CLEAN WATER AND SANITATION IN INDIA

In the light of the legal aspects of right to clean water and sanitation both at national and international levels, it becomes pertinent to take stock of governance for ensuring these legal safeguards through policies and programmmes. Major recent policies in this regard are Drinking Water Regulation 2007, National Rural Drinking Water Programme 2009, National Water Policy 2012, Swaksha Bharat Abhiyan 2014, Jal Jivan Mission 2019 and present Jal Jivan Hariyali of Bihar.

The Drinking Water Regulations, 2007 is applicable to the public water systems and specifies contaminants which may have adverse effect on the health of the consumer. The regulation also stipulates maximum permissible limits for each contaminant. It mandates to provide detailed specification of drinking water and regular monitoring. It is applicable to all concerned authorities. National Rural Drinking Water Programme (NRDWP) 2009 is centrally sponsored scheme which aims to improve the coverage of safe drinking water in rural India. The scheme provided significant emphasis on ensuring, "sustainability of water availability in terms of potability, adequacy, convenience, affordability and equity" through effective management of water assets. The National Water Policy, 2012 is another central government scheme was formulated by the central government scheme to govern the planning and development of water resources and ensure their optimum utilization. It aims at finding the reliable solutions for the access of clean water, it aims at defining the priority use of water and the alternative solution in order to protect underground water.

To achieve universal sanitation coverage, the Union government launched the Swachh Bharat Mission (SBM) on October 2, 2014. The policy could be considered a subsidiary of the Nirmal Bharat Abhiyan, introduced in 2012. The main objectives of the mission are - to Accelerate the rural sanitation coverage, to spread awareness in communities and Panchayati Raj institutions to adopt sanitation practices and educate people about sanitary habits and to promote cost-effective and safe sanitation methods. It aims to expand sanitation coverage in the country. The first phase of the mission aimed at "eradication of manual scavenging, generating awareness and bringing about a behavioural change regarding sanitation practices, and augmentation of capacity at the local level. The phase-II of the mission aims to sustain the open defecation free (ODF) status and improve the management of solid and liquid waste. The scheme authorises states to use the previously established network of state policies and institutions like, institutions and infrastructure available under National Rural Livelihood Mission (NRLM) since this will enable in

accelerating the pace of achieving the goal. The funds flowing under Swachh Bharat Mission can also be utilised through NRLM subsidiaries where the program has yet to invest directly. The central government in 2019 subsumed NRDWP into Jal Jeevan Mission which envisages to provide safe and clean drinking water through Functional Household Tap Connections (FHTC) to every Indian rural household by 2024.

ACCESS TO CLEAN WATER IN NORTH EAST INDIA

North-Eastern India remains an area of strategic significance for the country and a vast expanse of natural beauty. Right from fertile plains of Assam to the glaciers on the Himalayan peaks of Arunachal Pradesh, there are stupendous locations which are untouched, unexplored and mysterious yet extremely beautiful. Due presence near international boundaries provides opportunity increase trade activities further boosting economy. this region has direct access into foreign countries due to its borders with Bangladesh on its western side Nepal Bhutan Tibet on its northern side Myanmar on its eastern border making it one possible avenue through which Indian influence could spread beyond national boundaries economically or politically. Northeast India consequently holds immense value from both geopolitical & economical point view hence need special attention focus from central Government.

It is evident that this region is home to the massive Brahmaputra-Barak basin and several other rivers and their basins that attracts and supports biodiversity that is extremely rich in its nature. There are two widely known biodiversity hotspots that find their existence in the north-eastern region. The first is the Eastern Himalayas Hotspot and the second one is the Indo- Burma Hotspot. In addition to this, the communities thriving in these regions' portrait a unique spiritual and cultural bonding with the rivers that escalates the intrinsic relationship with nature and water bodies.

However, despite such richness, the entire northeast region is not an exception to the contemporary issue revolving around clean water. Though the region has immense potential in terms of water, such potential has its own hurdles. It is the ground of some of the most water-starved and drying pockets of the country. Making clean water a far cry, the accessibility of water is a major concern for the people living in these areas. Increasing urbanisation and industrialization in the area are leaving the rivers polluted and deteriorating the water quality of the water bodies existing in nearby areas.

Floods are another hurdle that north-east India faces on a regular basis. For instance, the state of Assam has less than 1% of the total land mass of India but unfortunately it is home to about 9% of the total flood prone area of our country. There has been no scientific planning lately that could provide solutions and

demarcate the appropriate way forward. Though floods do not affect the issue of clean water to a great extent, their annual occurrence acts as a deviating catalyst for the authorities who could invest the time and resources towards achieving the objective of clean water and not channelize it towards flood control every year. Moreover, the presence of arsenic in the rivers and its contamination in the groundwater of surrounding areas is posing a major health threat to the inhabitants.

Human activities have disrupted the freshwater cycle and it is raising red alert for the existence of clean water in north-east India. Now, north-east India is not an exception to rampant industrialisation and construction and such aspects are affecting the entire ecosystem. The uncommon rain pattern in these regions has started affecting the ecosystem and making the clean water crisis in the region more critical. For instance, irregular heavy and extreme rainfall patterns in the northeast have escalated the black carbon concentration in the region. Reports depict that the amount and existence of usable groundwater is depleting at a sharp rate in north-east India. Evidently, the state of Assam is known to be a water affluent state, but it is also losing its clean water resource that comes from the groundwater storage. Such activities have given rise to drastic climate change. In Assam a temperature rises of almost 1.7-2.0 degree Celsius is bound to take place by the year 2050. Similarly, in Arunachal Pradesh it is expected that the rainfall would decrease by 5-15%. In states like Manipur and Nagaland, a different effect may be seen wherein the rainfall may increase by 15-20% by the year 2050. This affects the existence of clean water to a great extent.

WAY FORWARD TOWARDS A SUSTAINABLE NORTHEAST

It is clear with such depiction that a clear and renewed policy towards integrated water resource management is the need of the hour. Inter-state cooperation is paramount when it comes to executing broader objectives like clean water and sanitation.

Rooftop rainwater harvesting structures are another way out to reduce the dependence on ground water. There have been drives pan India in government schools where such structures have been constructed with an objective to provide access to water to students. Such initiations in a way also train students to learn the importance of sustainable use of water. Moreover, the harvested water can be attached to appropriate water filters and make safe water drinking accessible and healthy.

One cannot ignore the fact that climate change has a drastic impact on the existence of clean water on the entire earth. Water scarcity is something that is being faced and dealt with at every juncture of one's life, its effect can be witnessed in every mundane activity that an individual does. It is here that the vital aspect

of innovation comes into picture because the medium to preserve clean water and ways for restoring freshwater ecosystems are not much known to many. The recent United Nations Climate Change Conference (COP 27) witnessed several pertinent discussions.

A lot can be learned by various centres that have been running and executing their holistic objectives within North-east India. The Centre for Microfinance & Livelihood (an initiative of Tata Trusts) is one such entity that has been working to preserve clean water in the northeast and talking about practical solutions to the problem of clean water and sanitation. It is worth depicting that it has released problem statements for the state of Assam, Manipur, and Tripura and has collated several connected reports, findings, and actions taken considering the same. While commenting on each of the states, the centre elaborates on two heads *i.e.* the water quality and the status of water access and conservation in the state.

While deliberating for the state of Assam, the centre points out that more than 50% of the population of Assam is dependent on drinking and using untreated water. Moreover, recently the Minister of State for Jal Shakti, Shri Prahnlad Singh Patel gave a written reply in the Lok Sabha elaborating on the tap water connections in rural households of India. According to the submissions made, only 41.4 percent of the rural households in Assam have water tap supply as of December, 2022. In terms of sanitation and hygiene, the entire state faces hurdles due to lack of appropriate awareness and knowledge. In addition to this, as per the report of Jal Jeevan Mission (JJM) only 4.13 percent of the rural households have running tap water connection. This state is also hit by lack of proper awareness in the community regarding pertinent concern of sanitation and menstrual hygiene. The third state on which the centre deliberates is the state of Manipur. The centre mentioned while depicting the problem statement for the state that the pollution and contamination level of water bodies is increasing and causing burden on the existing clean water pockets. The groundwater is being exploited by the open wells without any sustainable use and due to the hilly terrain, localities are dependent on consuming the collected water (collected from streams through pipes) without proper treatment of such water. Moreover, awareness is missed majorly within the community when it comes about hygiene and sanitation. Even the policies that are there within the state with the objective to channelize the execution of sanitation and hygiene concerns have minimal productivity and are not much visible.

In continuation to the elaboration, the centre also points out pertinent interventions that need to be pondered up. In addition to the above-mentioned mediums, these interventions can help in bringing in the paradigm shift that is the need of the hour in the entire northeast India in terms of clean water and its perseverance and maintenance. One primary intervention is to execute the plantation of appropriate arsenic and iron removal plants in pockets that have

contaminations. These plants have a capacity to furnish clean drinking water to almost 250 households and can help communities to access and manage it as per their need. The second intervention is to provide and inform the communities to have water purifiers in their households. On the same lines, even the World Health Organization (WHO) recently reiterated the fact that long term exposure to arsenic can cause lethal disease like cancer. Furthermore, the third intervention is about creating awareness about sanitation and menstrual hygiene among women and empowering them to the maximum extent. Following is an excerpt that points out the strategy

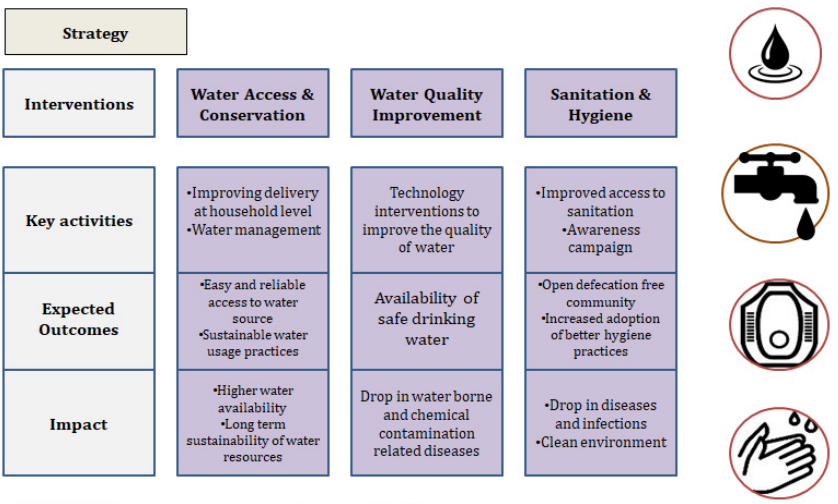

Figure 1:

Source: Centre for Microfinance & Livelihood, An initiative of Tata Trus.

CONCLUSION

The access to clean water and sanitation facilities are one of the most important human rights which separates humans from animals. Living in an unsensitized condition patently degrades human values in the current globalised world. Recognition of this right therefore, acts as the first step in removing inequalities from society. Exploring the state of sanitation coverage in India, shows the two disparate states, one section of society lives in a clean environment and has easy access to water on the other hand there are people who lack even the bare subsistence for sanitation. To take the society to the equal footing, equal health must be the priority and maintaining access to clean water is the first step towards good health.

However, despite the significant presence of policy and legal framework, a large Indian population do not have access to clean water and proper sanitation facilities. This consequently leads to health hazards in rural India. On a broader analysis massive population, corruption at the official level, unequal distribution of resources, and lack of education among masses can be analysed as prime obstacles in complete implementation and practical realisation of the right to sanitation. Such obstacles can be overcome by providing necessary education at target level, using technology for disbursement of funds, effective surveillance and providing incentives to local bodies directly dealing with the problem. Further, industries generating wastes must be sanctioned with the duty to sanitise the area and water body whose quality is derogated through their operations. The State must also induce a favourable climate to catalyse the growth of start-ups providing services to such companies to fulfil their sanitation-related obligations under the law. In the end the author would like to conclude that efforts related to securing of Right to sanitation must be analysed from a broader lens of human rights particularly the fundamental right to health and well-being of the people of India with a focus over effective implementation at micro level.

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RIGHT TO PRIVACY IN THE ERA OF ARTIFICIAL INTELLIGENCE

Mayuri Singh* and Anoop Kumar**

Abstract

Right to privacy is persistently a subject matter of talk among law experts. Concurring to the request of the times, numerous universal associations and nations of the world caught on the requirement of this right and drafted fitting legislations. These days world endures and battles from an overpowering and risky tribulation like corona contamination. On the other hand, there's disappointment in society due to encroachment of the right to privacy in the health services sectors. It is getting to be troublesome for an individual to choose whether to deliver more significance to prosperity or compromise privacy to remain healthy.

Given that the honorable court has recognised right to privacy as a fundamental right, yet the digital technologies, especially Artificial Intelligence seem to be posing a massive threat to privacy rights.

In this light, the authors seek to analyse the privacy laws in Indian context.

Keywords: privacy, digital technology, fundamental right, artificial intelligence, law

INTRODUCTION

The right to live with dignity is enshrined in the Fundamental Right to life and personal liberty of every person. For this, the court started a broader interpretation of Article 21 after ***Maneka Gandhi case*** by which right to privacy developed gradually. This case can be the beginning of the right to privacy in which court

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relieved petitioner but the ***case of K.S.Puttaswamy*** can be called a milestone in the matter of right to privacy. The court in Maneka Gandhi held that the while the procedure established by law should be reasonable, just and fair it shall be free from any unreasonableness and arbitrariness. In recent judgment of K.S. Puttaswamy, Supreme Court held that *"Privacy is a part of fundamental rights which can be traced to Articles 14,19 and 21 of constitution of India."*

Right to privacy is persistently a subject matter of discussion among law experts. Concurring to the needs of the times, numerous universal associations and nations of the world caught on the requirement of this right and drafted fitting legislations. These days world endures and battles from an overpowering and risky tribulation like corona contamination. On the other hand, there is disappointment in society due to encroachment of the right to privacy. The disclosure of personal information may cause intrinsic harm simply because that private information is known by others.

"There are a variety of reasons for placing a high value on protecting the privacy, confidentiality, and security of health information. The more common view is that privacy is valuable because it facilitates or promotes other fundamental values, including ideals of personhood. Such as:

1. Personal autonomy (the ability to make personal decisions)
2. Individuality
3. Respect
4. Dignity and worth as human beings

Now-a-days artificial intelligence (further called AI) is playing an important role of everybody's life in the form of mobile phones, laptops, smartwatches, tablet, cameras etc. but in the field of healthcare PATHAI, BUOY, ENCLITIC, FREENOME etc. are some names to treat and diagnose diseases with less chances of errors. The question is how safe are these kind of devices for a privacy seeking person. The discussion of AI in the context of the privacy debate often brings up the limitations and failures of AI systems, such as predictive policing that could disproportionately affect minorities or Amazon's failed experiment with a hiring algorithm that replicated the company's existing disproportionately male workforce. It effects directly to the person's life by breaching the right to privacy of every person. As an example, it can be seen often that while going to any place or talking by phone even, Google reads it by mobile and after some time notifications are received related to that place or regarding the thing discussed by that person earlier.

The Constitution of India provides a framework of welfare/socialist pattern of development and privacy is a key component of individual autonomy.

HISTORICAL BACKGROUND OF AI AND KEY DEFINITIONS

AI is an umbrella term that refers to advanced technologies such as machine learning and predictive analytics that essentially shift decisions once solely made by humans to computers.

The history of artificial intelligence began in 1956, when The Logic Theorist, a programme designed to mimic the problem solving skills of a human funded by Research and Development (RAND) Corporation was presented at the Dartmouth Summer Research Project on Artificial Intelligence (DSRPAI). It is the first artificial intelligence programme.

But development in this field was not bed of roses. However, in the 1980's, through an expansion of the algorithmic toolkit, and a boost of funds, major impetus was provided. John Hopfield and David Rumelhart popularized "deep learning" techniques which allowed computers to learn using experience. Also, Edward Feigenbaum introduced "expert systems", which could mimic the decision making process of a human expert.

In a major breakthrough, in 1997, IBM's Deep Blue became the first computer to beat a chess champion when it defeated Russian grandmaster Garry Kasparov.

Before knowing how secure the individual's data is, what are the legislations to ensure the protection of information of persons and what are the lacuna in those laws, it is exceptionally vital to have knowledge of the following definitions:

Privacy

Privacy, basically, do not have any universal definition but still it plays an indispensable role in the life of every person which includes not only human, but every other creature as well. They want to be in the state that should not be observed or disturbed by any other people. Privacy is a state of being free and freedom from interference or intrusion also it gives us a space to be ourselves without judgment and allows us to think freely without discrimination.

In spite of the several attempts that have been made to define privacy; no universal definition of privacy could be created. Despite the fact that the claim for privacy is universal, its concrete form differs according to the prevailing societal characteristics, the economic and cultural environment. It means that privacy must be reinterpreted in the light of the current era and be examined in the current context: -

According to American professor Tom Gerety, "the control over or the autonomy of the intimacies of personal identity isknown as privacy.

Cambridge dictionary has defined privacy as 'someone's right to keep their personal matters and relationships secret' or 'the state of being alone'.

The European Court of Human Rights created a very important case law regarding private life. The European Convention of Human Rights (hereinafter referred to as ECHR) states in Article 8 that:

> "Right to respect for private and family life- 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

According to Privacy International, An organization which is working to promote the right to privacy within international human rights bodies, and encouraging wider recognition of surveillance as a human rights issue, "Privacy is a fundamental right, essential to autonomy and the protection of human dignity: serving as the foundation upon which many other human rights built."

In India the term privacy is not defined clearly in any statute. Even the Constitution of India does not have any meaning of privacy or provisions which protects private data of an individual. But the Supreme Court of India has also passed some leading judgements relating to privacy. In the case of ***Rajgopal v. State of Tamil Nadu***, also known as Autoshanker case, Supreme Court held "The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

Subba Rao, J. in ***Kharak Singh v. State of UP*** said that "any definition of right to privacy must encompass and protect the personal intimacies of the home, family, marriage, motherhood, procreation and child rearing". In this case, the court held that "The right to personal liberty takes in right not only to be free from restriction placed on his movements but also free from encroachments into his private life. In the last resort, a person's house where he lives with his family is his 'castle': it is rampart against encroachment against his personal liberty. If physical restraints on a person's movement affect his personal liberty, a physical encroachment on his private life would affect it to a large degree. Indeed, nothing is more deleterious

to a man's physical happiness and health than a calculated interference with his privacy. We would therefore define right to personal liberty in Article 21 as a right of an individual to be free from restriction or encroachments imposed directly or indirectly brought about by a calculated measure".

In the recent judgment of K.S. Puttaswamy also known as Aadhar case, Supreme Court discussed about right to privacy and opined that right to privacy is a part of constitution of india under the chapter of fundamental rights in right to equality under Article 14 and right to freedom under Articles 19 and 21.

Data

The word data is derived from Latin word datum, which means- a piece of information. It is a plural of datum which came into existence in 17th century. In general term the word data means- facts and statistics collected together for reference or analysis. Section 2 (1)(o) of the Information Technology (Amendment) Act 2008., says that, "Data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

Data Protection

Data protection is a legal safeguard to prevent misuse of information about individual person on a medium including computers. It is adoption of administrative, technical, or physical deterrents to safeguard personal data. Privacy is closely connected to data protection. An individual's data like his name, address, telephone numbers, profession, family, choices, bank details etc. are often available at various places like schools, colleges, banks, hospitals, directories, surveys and on various websites. Passing of such information to interested parties can lead to intrusion in privacy like incessant marketing calls.

Artificial Intelligence

In computer science, the term artificial intelligence (AI) refers to any human-like intelligence exhibited by a computer, robot, or other machine. In popular usage, artificial intelligence refers to the ability of a computer or machine to mimic the capabilities of the human mind—learning from examples and experience, recognizing objects, understanding and responding to language, making decisions,

solving problems—and combining these and other capabilities to perform functions a human might perform, such as greeting a hotel guest or driving a car.

Artificial intelligence is an artificial creation of human like intelligence which can perceive, react, learn, reason, plan or process languages also. Today AI is used in so many fields of human life and some of the most common examples for using AI are email filtration, personalisation, fraud detection, speech recognition, clicking photos etc.

Email filtering: Email services use artificial intelligence to filter incoming emails. Users can train their spam filters by marking emails as "spam".

Personalization: Online services use artificial intelligence to personalize your experience. Services, like Amazon or Netflix, "learn" from your previous purchases and the purchases of other users in order to recommend relevant content for you.

Fraud detection: Bank use artificial intelligence to determine if there is strange activity on your account. Unexpected activity, such as foreign transactions, could be flagged by the algorithm.

Speech recognition: Applications use artificial intelligence to optimize speech recognition functions. Examples include intelligent personal assistants, e.g., Amazon's "Alexa" or Apple's "Siri."

Clicking pictures: applications use AI to optimizing face, face expressions, complexion of skin etc. The AI Camera does the heavy lifting in the photography department previously reserved for Professional Photographers. Due to the nature of their job, they understand a thing or two about what it takes to make quality images. These include camera setting and image processing, automatic shutter speed and exposure, saturation, colour depth, dynamic range and contrast.

Geofencing

It is the process of establishing an artificial perimeter around a specified location using either global positioning system (GPS) or radio frequency identification (RFID). Once the geographic boundary is established, the entity or individual running the campaign can set "triggers" that will result in a certain action occurring when a device enters the identified area. In many instances, the action is to push an advertisement when a web browser is opened or otherwise generate targeted ads based. The content of the ads will be determined by the entity or individual running the campaign.

Geo-fencing can be an effective tool for any marketing campaign since it can be hyper-localized and capture a wide audience. Further, it isn't truly focused on to any one person so much as anybody who enters that region. As such, geo-fencing is just another form of marketing.

IMPORTANCE OF RIGHT TO PRIVACY

The right to privacy is not only a fundamental right in constitution of India but also a human right under article 12 of universal declaration of human rights. In the US Constitution, it isn't explicitly stated, but experts infer it from several amendments, including the Fourth Amendment. It outlines that people have the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In many cases, the US Supreme Court has upheld the right to privacy. There are also many privacy laws designed to protect personal data from the government and corporations. These things are enough to describe the importance of this right in human life. Right to privacy is not a single right but it includes lot's of rights in it like freedom of expression, freedom to live life with dignity, freedom to travel, freedom to sexual orientation, right to keep quiet, right to seek, receive, impart information etc.

Some reasons are as follows which shows that why this right to so important: -

1. **To protect right to expression:** Without this right nobody can express their view neither personally nor publicly for their development and dignity it is very important to speak or keep quiet.
2. **To protect the personal data from others:** This right help people by securing their personal data from others because personal information sometimes hazardous for the person.
3. **Privacy rights let you engage freely in politics:** There's a reason that casting your vote is done confidentially. You are also not required to tell anyone who you voted for. Privacy rights let you follow your own opinion on politics without anyone else seeing. This is important in families with differing worldviews. It also protects you from losing your job because of your political leanings. While you can't control what people think about you because of your views, you do have the right to not share more than you're comfortable with.
4. **To protect from state when state crossed its limits about surveillance without any reason:** State is the protector of rights but sometimes it crossed the lines specially while breaching surveillance rules for no reason then right to privacy help people to get their comfort zone back.
5. **It ensures that the person who theft data will compel:** When privacy is recognized as a basic human right, there are consequences for those who disrespect it. While there are many "soft" examples of personal data use, like targeted ads, established privacy rights draw a line in the sand. Without these restrictions, corporations and governments are more likely to steal and misuse data without consequence. Privacy laws are necessary for the protection of privacy rights.

AI AND PRIVACY ISSUES

In the era of big data, on the one hand, the bunch of data derived from mobile phones and other online devices expand the volume, variety, and velocity of information about every facet of our lives, while on the other it has presented as a global public policy issue.

Most of the privacy-sensitive data analysis such as search algorithms, recommendation engines, and adtech networks, with the evolution of AI magnify the ability to use personal information in ways that can intrude on privacy interests. As an example, the deployment of Facial recognition systems as a tool of authoritarian control in Xinjiang and elsewhere has calls for a ban on the use of facial recognition.

In yet another example, the companies use a vast consumer and vendor data into advanced, AI-fuelled algorithms to create new bits of sensitive information, unbeknownst to affected consumers and employees.

LEGAL FRAMEWORK ON AI AND PRIVACY INTERFACE IN INDIA

India lacks any specific legislation that regulates AI. But the government developed a number of national strategies or road maps related to AI in 2018. As far as privacy and data protection is concerned, India currently lacks a comprehensive legal framework for data protection. However, in 2018, the Justice B.N. Srikrishna Committee released a Draft Protection of Personal Data Bill. On the lines of the EU's General Data Protection Regulation, the Bill establishes a set of rights but it lacks the provision on rights to protect against automated decision-making. An analysis by the Centre for Internet and Society, has observed that though the Bill creates a framework to address harms arising out of AI, fails to empower the individual to decide how their data is processed. Further it remains silent on the issue of 'black box' algorithms. Further the bill is focused on placing the responsibility on companies to prevent harm.

CONCLUSION

Given that the 21st century belongs to the age of information and data gathering, the AI has proved to be a very beneficial tool for human beings. Its role in day today lives cannot be underrated. However, it is equally true that AI has too a large extent invaded the private lives of citizens. Further lack of regulation on AI and a weak data protection system has added fuel to fire. Therefore, it is a high time that a robust legal framework is adopted in countries like India to protect the rights of citizens and to prevent further invasion of privacy. For this a strong provision for the same is needed to be inserted in the draft Data Protection Bill.

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PREVENTION OF CORRUPTION ACT 1988: A STUDY OF AMENDMENTS (2018) AND ITS EFFECTIVENESS IN PUBLIC SERVICES

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Abstract

The Prevention of Corruption Act, 1988 is a powerful legal instrument to effectively deal with the menace of corruption in public services in India. The Act provides for criminal prosecution of public servants for misusing public office for personal gain or for obtaining unfair advantage or illegal gratification. However, in the year 2018, the Indian Parliament amended the said Act to bring holistic changes in it. These changes were necessitated to curb the continued rampant practice of bribery in the public services despite the existing anti-corruption law and also with the aim to curb the rising trend of corporate bribery which is an outcome of deep-rooted unholy nexus between the public servant, politicians and corporate houses. For the first time, the provision relating to bribery by Commercial Organization has been introduced through the amendment. Further, the amendment also mandates time bound completion of criminal trial under the Act. The drastic provision of Attachment and Confiscation of property of the corrupt public servant has also been introduced in the law. There are several other changes brought. This paper attempts to investigate and examine these new changes brought in the Act through Amendment.

Keywords: Corruption, Prevention of Corruption Act, 1988, Corporate Bribery, Attachment and Confiscation of Property, Proceeds of Crime, Money Laundering.

INTRODUCTION

The corruption in the public service in India is not a new phenomenon. It was in existence before independence and it continued even after independence. The

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rampant corruption in public services defies and defeat the entire rationale of socialist welfare State, such as ours, where it is the solemn responsibility of the State to ensure effective delivery of all social and economic welfare measures to its citizens. This is especially so when a significant proportion of our population lives below poverty line. The corruption also defeats the basic objectives of our Constitution, that is, the attainment of social and economic justice and equality for all. It also defies the Constitutional objective which says that steps must be taken to ensure that there is no concentration of economic powers in the hand of few to the detriment of the general public. The evil effects of corruption are many such as artificial or forced poverty and consequent greater economic inequalities or widening gap between haves and haves not. This situation led to social discontentment and unrest in the society ultimately pushing it towards anarchy and instability. Hence, corruption is considered as a serious socio-economic evil in all civilized societies. The same hold true for India also. In order to deal with the corruption, initially provisions were inserted in the Indian Penal Code, 1860. Later on, a special law called Prevention of Corruption Act, 1947 was enacted which, in the year 1988, was replaced by Prevention of Corruption Act, 1988 (Hereinafter referred to as PCA 1988). The PCA 1988 sought to make the anti-corruption law more effective by removing the anomalies found in the 1947 Act. In the year 2018, the Indian Parliament has amended the PCA 1988 through the Prevention of Corruption (Amendment) Act, 2018 (Hereinafter referred to as 2018 Amendment Act) in order to bring about major changes in anti-graft law in the light of the changed circumstances and in order to make the law more robust and effective. This paper seek to examine these changes brought by the 2018 Amendment Act.

MAJOR CHANGES IN THE ACT

DEFINITION OF UNDUE ADVANTAGE: For the first time, the 2018 Amendment Act has inserted the definition of "*Undue Advantage*" under Section 2 (d) of the PCA 1988. Section 2 (d) defines "*Undue Advantage*" as meaning any gratification whatever, other than legal remuneration. Hence, receiving or obtaining any gratification other than legal remuneration would amount to "*Undue Advantage*" and the person concerned would be held criminally liable. The Explanation further provides that the word "*gratification*" is not limited to pecuniary gratification or gratification estimable in money. Hence, the import of the word "*gratification*" is very broad and it includes gratification obtained in kind also. It also includes something which is not measurable in money terms. For better clarity, the Explanation also provides that the expression "*legal remuneration*" is not restricted to remuneration paid to the public servant but includes all remuneration which he is permitted by the Government or the organization, which he serves, to receive.

PROVISION FOR CORPORATE BRIBERY: For the very first time, the provision of corporate bribery has been introduced by amending Section 9 of the PCA, 1988. The India has witnessed major corporate scams in the recent past such as 2G Spectrum scam, Coal Mines allocation scam and others. In some of these scams, it was noticed that there was a deep rooted nexus between corrupt politicians, bureaucrats and corporate houses. As a result, the voice was raised in some quarters that the current anti-corruption law needs to be amended to curb the evil practice of corporate bribery. As a result, the Parliament has amended the existing law by inserting the provision penalizing corporate bribery by making the entity as well as its director, manager and secretary and those in charge of the affairs of the company liable for the same. The Amended Act defines the term "*Commercial Organization*" (CO). Section 9 of the Amended Act says that where an offence under this Act has been committed by a Commercial Organization (CO), such organization shall be punishable with fine if any person associated with such organization gives or promises to give any undue advantage to a public servant intending to a) obtain or retain advantage for such commercial organization or b) obtain or retain an advantage in the conduct of business of such commercial organization. The CO is penalized with fine only as an incorporated or unincorporated body cannot be imprisoned. Only individual can be imprisoned. The Act provides for one defence for the CO, that is, it shall not be held liable if it proves that it has adequate procedure and measures in compliance of such guidelines (as may be prescribed by the Government through the framing of Rule) to prevent any person associated with it from indulging in the act of giving or promising to give undue advantage to the public servant. However, till now, no such guidelines have been provided by the Central Government. The Government is in the process of framing the guidelines. In the meantime, the CO can rely on the guidelines issued by international law enforcement bodies or foreign government authorities. Some such guidelines can be found in the *Foreign Corrupt Practices Act*, 1977 of USA, *UK Bribery Act of 2010* and also in the *Organization for Economic Cooperation and Development (OECD) Recommendations for Combating Bribery of Foreign Public Officials in International Business Transactions*. As far as association with CO is concerned, the law says that a person is said to be associated with the CO if such persons perform services for and on behalf of the CO. The law also says that the capacity in which such person perform the service for the CO shall not matter irrespective of the fact that whether such person is the employee, agent or subsidiary of the CO. Thus, the law has broaden the ambit of associated person. The person concerned need not hold any formal or official position in the CO. The only thing required is that he should work for and on behalf of the company. As far as employee is concerned, the law raises a rebuttable presumption that it shall be presumed, until contrary is proved, that such person is a person who has performed services for and on behalf of the CO. As far as the definition of CO is concerned, the law gives a very comprehensive

definition. It says CO means a) a body which is incorporated in India and which carries on business either in India or abroad b) any other body which is incorporated outside India (Foreign Company) and carries on business or a part of business within the territory of India c) a partnership firm or an association of persons formed in India (it will include both unlimited liability partnership firms and limited liability partnership firm) which carries on business in or outside India d) any other partnership or association of persons formed outside India which carries on business or a part of business in India. Hence, the definition of CO is very broad and it almost includes all body corporates and associations of Individuals whether incorporated or not and whether formed in or outside India. Under Section 10, where an offence under section 9 (Offence relating to bribing a public servant by CO) is committed by a commercial organization, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer of the commercial organization, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Thus, the minimum punishment for such functionaries of CO is three years which could be extended upto seven years. Earlier, the functionaries of the corporate body could be held liable as abettors under the PCA, but now with the amended provision, they could be held directly liable under Section 10. Under Section 9, the punishment imposed for CO is fine. However, the fine amount has not been prescribed which means that the amount imposed will depend upon the gravity of the offence of bribery and the paying capacity of the CO.

BRIBE: MADE A PUNISHABLE OFFENCE: A very significant change that has taken place in the 1988 Act though 2018 Amendment is that the person who offers bribe to public servant could also be held criminally liable. Under PCA 1988, there was no such provision penalizing bribe giver. Such person could only be held liable as an abettor. The term "Abetment" is defined in Section 107 of the Indian Penal Code, 1860 which means to instigates or intentionally aid the doing of a thing or to enters into conspiracy with some other person if any act takes place in pursuance of such conspiracy. Thus, as mentioned earlier, the bribe giver could be punished only as an abettor but now with the present amendment, there is an express provision penalizing bribe giver under Section 8. It says that any person who gives or promises to give undue advantage to another person or persons with the intention a) to induce public servant to perform improperly a public duty or b) to reward such public servant for the improper performance of public duty shall be punishable with imprisonment for a term which may extend to seven years or fine or both. The intention is to curb collusive bribery wherein both bribe giver and bribe taker are willing parties to the corruption. However, there is one exception

under which the bribe giver cannot be held criminally liable and, that is, if he is compelled to give such undue advantage meaning thereby that there is an element of compulsion, force or duress which led the bribe giver to give or promise to give undue advantage to public servant. However, in order to take the advantage of the exception, the bribe giver has to inform the law enforcement authorities or investigative authorities within seven days of giving undue advantage or promise to give undue advantage. If he fails to approach the authorities within seven days, then it could be assumed that he was a willing party to the corruption.

ATTACHMENT AND FORFEITURE OF PROPERTY: A very significant change that has taken place in the anti-graft law through 2018 Amendment Act is that for the very first time the provision has been made for attachment and confiscation of the ill-gotten property obtained through commission of the offences under the PCA, 1988. This is a very significant move by the Parliament which will make the anti-graft law more robust and effective in dealing with the rampant corruption in public services. The Amendment has inserted Chapter IV- A in the PCA, 1988 which is titled "*Attachment and Forfeiture of Property*". Section 18 A under the said Chapter says that the provisions of Criminal Law Amendment Ordinance, 1944 (Hereinafter referred to as Ordinance 1944) shall, as far as may be, apply to the attachment, administration of attached property, execution of order of attachment and confiscation of property obtained by means of an offence under PCA, 1988. The Ordinance 1944 provides procedures for attachment and confiscation of property which is generally done under the supervision of the civil court. The entire process of attaching and confiscating the ill-gotten wealth of corrupt public servant was very time consuming as the civil court need to follow the procedure under Ordinance 1944 after the conviction of the corrupt public servant by the Special Court under PCA, 1988. Now, armed with the power of attachment and confiscation of property, the Special Court under PCA, 1988 can pass swift order by following the procedure laid down in Ordinance 1944 without the need for investigative authorities to follow separate procedure under Ordinance 1944. Hence, the property obtained in the commission of offences under the PCA, 1988 could be subject to attachment and confiscation and the procedures laid down in Ordinance 1944 shall be followed for the same.

INCLUSION OF MONEY LAUNDERING LAW: Another significant feature of the 2018 Amendment Act is the inclusion of various offences enumerated in the PCA, 1988 under the ambit of Prevention of Money Laundering Act, 2002 (Hereinafter referred to as PMLA, 2002). The obtaining of ill-gotten property (through commission of various offences under the PCA,1988) and projecting it as untainted property through the process of its layering and integration into the financial system could make the accused liable under the provisions of the

PMLA, 2002. The Enforcement Directorate (ED) has been empowered to conduct investigation under the PMLA, 2002. The said ill-gotten money or property could be subjected to attachment by the ED and ultimately it could be confiscated by the order of the Special Court if the guilt of the accused is proved. The amended Paragraph 8 of the PMLA, 2002 is titled as "*Offences under the Prevention of Corruption Act, 1988*" which contains description of nine offences under the PCA, 1988 which has been brought under the purview of PMLA 2002. The nine PCA, 1988 offences inserted in Paragraph 8 of Part A of the PMLA are:

1. Section 7: Offence relating to public servant being bribed.
2. Section 7A: Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.
3. Section 8: Offence relating to bribing a public servant.
4. Section 9: Offence relating to bribing a public servant by a commercial organization.
5. Section 10: Person in charge of commercial organization to be guilty of offence.
6. Section 11: Public servant obtaining undue advantage, without consideration from person concerned in proceeding or business transacted by such public servant.
7. Section 12: Punishment for abetment of offences.
8. Section 13: Criminal misconduct by a public servant.
9. Section 14: Punishment for habitual offender.

Thus, almost all the major offences under PCA,1988 now form part of the Part A Paragraph 8 of the Schedule to PMLA Act, 2002 thus bringing the ill-gotten wealth earned through commission of offence(s) under PCA, 1988 under the ambit of money laundering law. It would be pertinent here to look into few provisions of the PMLA, 2002 in order to have holistic understanding of the Amendment Act, 2018 in context of PMLA, 2002. Section 2 (u) of the PMLA, 2002 defines Proceeds of Crime as "means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad." With the amendment of PCA, 1988, the ill-gotten wealth obtained through various offences under PCA, 1988 as categorized in Paragraph 8 of Part A of the PMLA, 2002 would amount to "Proceeds of Crime" under PMLA, 2002. Section 3 of the PMLA defines Offence of money-laundering as "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering." As far as punishment of money laundering is concerned, Section 4 of the PMLA says "Whoever commits the

offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine."

It is to be kept in mind that the offence of money laundering is independent of the offence committed under the scheduled offences. For instance, suppose a public servant has committed the offence under PCA, 1988. He also commit the offence of money laundering as defined in Section 3 of the PMLA, 2002 by concealing the proceeds of crime (ill-gotten wealth obtained through corrupt means under the PCA, 2002) or by projecting or claiming the proceeds of crime as untainted money. Now for the offences committed, he will be charged and punished under both the Acts i.e. PCA, 1988 as well as PMLA, 2002.

SPEEDY TRIAL UNDER PCA, 1988: The Amendment Act, 2018 for the very first time provides for the speedy trial of offences under the PCA, 1988. Section 4 of the PCA, 1988 has been amended to provide for time bound completion of trial under the PCA, 1988. It prescribes the timeline of 2 years for completion of trial. If the trial could not be completed within the prescribed period, the special judge has to record reasons for it. The trial could further be extended by a period of 6 months at a time upto the maximum period of 2 years. Hence, the trial for corruption has to be completed within the maximum period of four years. However, the law does not provide any consequence for non-compliance which can be taken to mean that trial shall not be vitiated if it continues beyond the period of four years. This provision is a legislative mandate to the court that every endeavour must be made to complete the trial within the prescribed period. The law retains the earlier provision that, as far as practicable, trial of corruption cases shall be conducted on a day to day basis.

BAR ON ENQUIRY OR INVESTIGATION WITHOUT DUE APPROVAL OF THE APPROPRIATE GOVERNMENT: One of the controversial provisions inserted in the PCA, 1988 through Amendment Act, 2018 is Section 17A. Section 17A says that no police officer shall conduct enquiry or investigation into any offence alleged to have been committed by public servant under the Act where the alleged offence is relatable to any recommendation made or decision taken by such public servant in the discharge of his official functions or duties without the previous approval of in case a) the person is employed in connection with the affairs of the Union, the Union Government; b) the person employed in connection with the affairs of the State, the State Government and c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed. This is a new provision introduced through the Amendment Act, 2018. There was no such provision pertaining to bar on investigation under the originally enacted under PCA, 1988. However, there was/ is bar on the commencement of trial unless the prior sanction from the appropriate authority has been obtained under Section 19 of the PCA, 1988. However, in the

present Amendment, Section 17 A bars even investigation by the police or the investigative authority. However, it is to be noted that not in all cases of offences under PCA, 1988 the investigation or enquiry is barred without due approval of the appropriate government or the competent authority. It is only in cases where the offence is relatable to recommendations made or any decisions taken in due discharge of the official duties by the public servant, there is a bar on enquiry or investigation without prior approval of the appropriate government or competent authority. For instance, if a public servant is caught red handed while taking bribe in the trap laid down by the anti-corruption bureau, Section 17 A will have no application as there is a direct evidence for commission of crime under PCA, 1988. The intent behind enacting Section 17 A is to prevent undue harassment of the public servant at the hand of the investigative authorities. However, nonetheless, the insertion of such provision has created controversy and it is being alleged by some that this provision has diluted or potentially could dilute the efficacy of the PCA, 1988. It is to be seen as to what the approach of the Court towards this provision will be.

REQUIREMENT OF PRIOR SANCTION FOR PROSECUTION NOW EXTENDED TO RETIRED PUBLIC SERVANT: Another controversial provision inserted through Amendment Act, 2018 is that the requirement of prior sanction before prosecuting public servant under Section 19 of the PCA, 1988 would be applicable not only to the serving public servant but also to the retired public servant. This is a marked departure from originally enacted PCA, 1988. Section 19 of the PCA 1988 is titled *Previous Sanction Necessary for Prosecution*. It says that no court shall take cognizance of the offences punishable under Sections 7, 11, 13 and 15 except with the previous sanction of the Central Government, in case the person is employed under Central government; or the State Government, in case the person is employed under State Government; or in the case of any other person, the authority competent to remove him from his office. This is an important provision in PCA, 1988 which aim to prevent the undue harassment of the public servant for act done in the discharge of his official functions. Earlier, Section 19 used to give protection only to the serving public servant but now the protective umbrella is extended even to retired public servant. The amended provision say that for the words "*who is employed*", the words "*who is employed, or as the case may be, was at the time of commission of the alleged offence employed*" shall be substituted in Section 19.

CONCLUDING REMARKS

As seen in the paper, the major amendments done in the Prevention of Corruption Act, 1988 is a welcome step in the right direction and is in tune with the requirement of the present situation. These amendments will make the anti-corruption law more

effective to deal with the menace of widespread corruption prevalent in public services in India. As Supreme Court of India once said, '*Corruption is a violation of Human Rights*'. Hence, a corruption free society advances the cause of human rights. It also help achieve the Constitutional objective of social and economic equality and justice for all. Coming to the amendment, the insertion of provision pertaining to corporate bribery is a commendable step. However, the insertion of Section 17-A which bar any enquiry or investigation by investigative authority where the alleged offence is relatable to any recommendations made or decision taken by public servant in the discharge of his official duties is not without controversy. The investigation into the corruption cases is a very important step and hence total bar on such investigation may dilute the efficacy of the law in the long run to deal with those cases of corruption where there is no direct proof and the case is based on circumstantial evidence. Hopefully, the Parliament will re-look into the provision. It is to be seen in the time to come as to how these amendments will make the anti-corruption law more robust in India's fight against corruption. It will also ensure India's commitment at International level to fight against corruption. In May 2011, the Government of India has ratified two United Nations Conventions relating to corruption. These Conventions are United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organised Crime (UNTOC). The UNCAC was entered into force in December 2005 and is the first ever binding global anti-corruption instrument. It put obligations upon the Member States to prevent and criminalize different corrupt practices and to promote international cooperation for the recovery of stolen assets. As far as India's ranking in Corruption Perception Index (CPI) released by Transparency International is concerned, India's ranking has slipped down to 86 in 2020. Earlier, in 2019, the ranking was 80. Hopefully, with the new Amendment brought into force, whose impact will be felt after some years, the India will improve its ranking in Corruption Perception Index.

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THE QUESTION OF CAPITAL (INCENTIVE) IN SPECIAL ECONOMIC ZONES: A STUDY WITH REFERENCE TO SEZs ACT 2005

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Abstract

The present paper explores the critical analysis of capital (incentive) given to Special Economic Zones (SEZs) in India. We have presented features of SEZs, its institutional structure, various fiscal provisions and incentives given in the SEZs Acts (2005) and SEZs Rules (2006). A brief illustration has been done of the profile of SEZs in India under which we have further bifurcated it into- regional distribution of SEZs in India, State-wise distribution of SEZs and sector-wise distribution of the zones, which clearly shows its skewedness differing from the promised objectives for its establishment. The paper further delves into popular debates regarding zones with respect to land, labour and capital. This paper focuses on the critical analysis of capital (incentives) given to SEZs which further questions the fiscal and economic viability of these zones. Thus, there are a few studies that have delved into specific-performance based study for SEZs with respect to its trends in the import intensity of exports, efficiency of enclaves and fiscal viability which further requires some in-depth research.

Keywords: Special Economic Zones (SEZs), Export Processing Zones (EPZs), Development, Capital, Incentives, Catch-up policy, India

BACKDROP

In the 19th century, development was delineated as industrialisation and catching-up policy followed by economic growth, accumulation, modernization, structural reforms, deregulation, privatization, liberalization in the 20th century. Today, developmentalism in the 21st century calls for sustainability, green thinking, green

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growth, etc. The nomenclature of development has altered over a period of time in context of its ideas, principles, perspectives, meaning, its hegemonic actors and stakeholders. In the light of development, in this paper we have discussed briefly the 'catch-up' policy in India with respect to development rooted through SEZs (Export-led growth) and its various pull/push factors responsible for introducing the Zones in India and analyze the perceptions behind its successful/ non-successful performances focussing on the question of 'capital'/ incentives in SEZs given for its establishment.

SPECIAL ECONOMIC ZONE AND ITS FEATURES

In India all existing Export Processing Zones (EPZs) were converted into SEZs through the strategic initiative taken under the EXIM Policy Statement of 1997-2002, announced on April 1, 2000.

Objectives, Institutional Structure and Fiscal Provisions under SEZs Acts, 2005 and Rules, 2006

Basic Objectives of SEZs Act

a) Generation of additional economic activity;
b) Promotion of export of goods and services and
c) Investment from domestic and foreign sources;
d) Creation of employment opportunities;
e) Development of infrastructure facilities, and
f) Maintenance of sovereignty and integrity of India, the security of the state and friendly relations with foreign states.

In addition, there would be many allied advantages in the process, some of them are:

a) Upgradation of labor and management skills,
b) Attracting advanced technology,
c) Establishing forward and backward linkages with rest of the economy, and
d) Strategic location and market access (Raman and Diwan 2002; Palit and Bhattacharjee 2008; Das 2009).

Institutional Structure of SEZs

Under the SEZ Act 2005, the administrative set-up is structurally three-tier. At the apex is the Board of Approval (BOA), in the second tier is the Unit Approval Committee (UAC) and in the third tier is the Development Commissioner (DC).

1. Under Chapter III, Section 8 of SEZ Act, Constitution of Board of Approval comprises of 19 member of inter-ministerial body who promotes and ensure orderly development of SEZs and Section 9, sub-section 2(a) of Act constitutes that the board approves, rejects or modify proposals for establishment of SEZs.
2. Under Chapter V, Section 13 of SEZ Act, the Unit Approval Committee (UAC) constituted under the Development Commissioner, comprises representatives of the state government and department of revenue, which acts as single-window clearance for SEZs units. Similarly, Section 14 states the powers and function of the Approval Committee, it approves the import or procurement of goods from the Domestic Tariff Area (DTA) in SEZs for carrying out the operation. Monitors the utilization of goods or services or warehousing trading in the SEZs.
3. Under Chapter IV, Section 12 (1) of SEZ Act, the Development Commissioner (DC) takes steps to ensure speedy development of SEZ and promotion of exports therefrom. DC is the executive director of SEZs.

Fiscal Provisions under SEZ Act, 2005 and SEZ Rules 2006

In Chapter VI, SEZs Act (2005) - Section 26 states that every developer and the entrepreneur is entitled to exemptions, drawbacks and concessions. Under the Custom policy, SEZs are considered as foreign territory. Thus, supplies from SEZs to DTA is considered as imports by DTA and alternatively supplies to SEZs from DTA are exports by DTA. Various incentives are made in terms of tax holidays, exemptions from sales and service taxes, excise duties to the developers and SEZ unit-holders acts as an attractive packages specified by the Central and State government under the SEZ Act and Rules, has been mentioned below as stated in the official site of SEZ:

- **Incentives and facilities offered to the units in SEZs:**
  i. Duty free import/ domestic procurement of goods for development, operation and maintenance of SEZs units.
  ii. 100% Income tax exemption on export income under Section 10 AA of the Income Tax Act for first 5 years, 50% for next 5 years and 50% of the ploughed back export profit for next 5 years.
  iii. Exemption from Central Sale tax, Service tax and State Sales tax, these are subsumed into Goods & Service Tax (GST) & supplies to Zones are zero rates under IGST Act, 2017.
  iv. Single window clearance for Central and State level approvals
  v. Other levies are imposed by the respective State government.

- **Incentives and Facilities to the SEZs Developers:**
  i. Exemption from Customs/ Excise duties for development of Zones authorized by the Board of Approvals (BoA).
  ii. Income Tax exemption derived from the business of development of the Zones in a block of 10 years in 15 years under Section 80-1AB of the Income Tax Act.
  iii. Exemption from Central Sales Tax (CST) and Service tax (Section 7, 26 & second schedule of the SEZs Act).

There is freedom for subcontracting. The unit holders are exempted from public hearing under Environment Impact Assessment (EIA). The State government has declared zones units as 'Public Utility Service' under the Industrial Disputes Act and thus any strikes without prior notice is considered to be illegal (Das, 2009).

Source: SEZs Act, 2005; SEZs Rules, 2006; Raman and Diwan 2002; Palit and Bhattacharjee 2008; Das 2009.

PROFILE OF SEZS IN INDIA

In 1991, neoliberal reforms ushered for sustainability of growth in the manufacturing sector but the slowdown and collapse of bureaucratic system in the later phase led India to revert to EPZs believing it to be 'engine of growth' after separating it from the rest of the economy. As mentioned above, it was mooted that the EPZs could not triumph due to lack of political commitments, it failed to provide state-of the-art infrastructure etc. The policy initiative to boost the export-led growth strategy, India was captivated by China's success story of SEZs and thus further replaced EPZs strategy with SEZ strategy in 2000 (Aggrawal, 2006). The SEZs Act of 2005, induced a speedy establishment of SEZs by different states by wooing the investors with lucrative incentives, tax concessions, custom facilitation, other regulatory concessions (*ibid*, 2006) and deregulating labour laws.

REGIONAL-STATE-SECTOR-WISE DISTRIBUTION OF SEZS IN INDIA

Current *status quo* of SEZs shows that after notification of SEZs Rule February 2006, there are 417 formal approvals for set-up SEZs out of which 349 have been notified with a total of 238 SEZs exporting at present (MoCI, 2019). The number of exporting SEZs has escalated by 56% since 2009-10. The figure 3.1 depicts 'skewed' distribution of zones, where it shows the maximum number of exporting SEZs are clustered in the Southern (61%) India followed by Western (22%), Northern (12%) and Eastern (5%) part of India. The further bifurcation of state-wise skewness has been illustrated in figure 1.

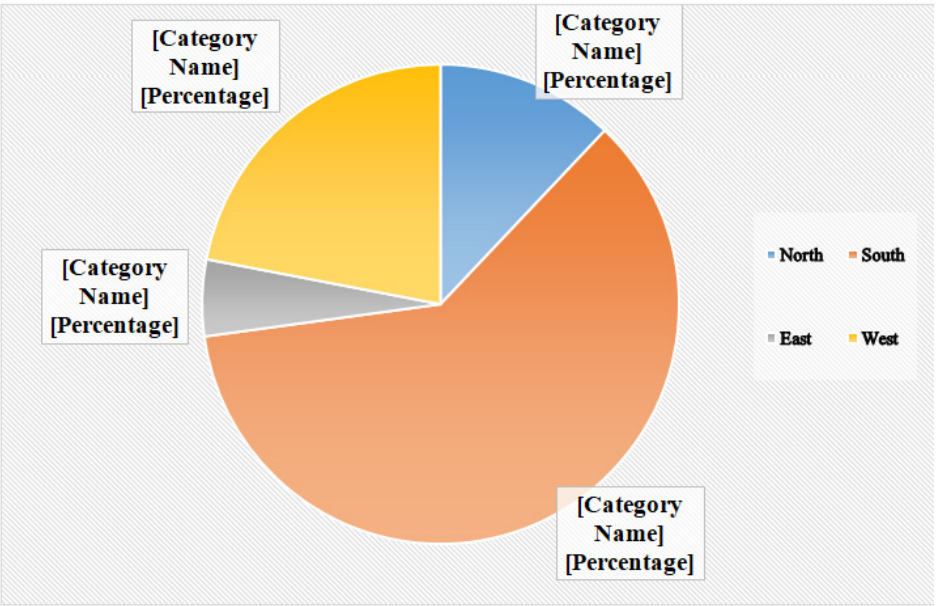

Figure 1: Regional Distribution of Zones

Source: Ministry of Commerce, Government of India, 2019-2020

The figure 2 shows State-wise distribution of SEZs, the maximum number of exporting SEZs are concentrated in the developed (investment hub) states with above average rate of industrialisation, such as, Karnataka, Maharashtra, Tamil Nadu, Telangana & Gujarat amongst other states with SEZs. This skewed distribution has been the result of the power delegated to the State government to grant exemptions under chapter VIII, section 50 of SEZs Act of 2005. The state government undergoes policy changes under state subject to beguile investors by providing them with immense exemptions and lucrative measures. Thus, this asymmetrical distribution of zones will defeat and neglect the objectives and its allied advantages of establishing zones for increasing economic activity of the region and further neglect forward and backward linkages anticipated to be created by zones.

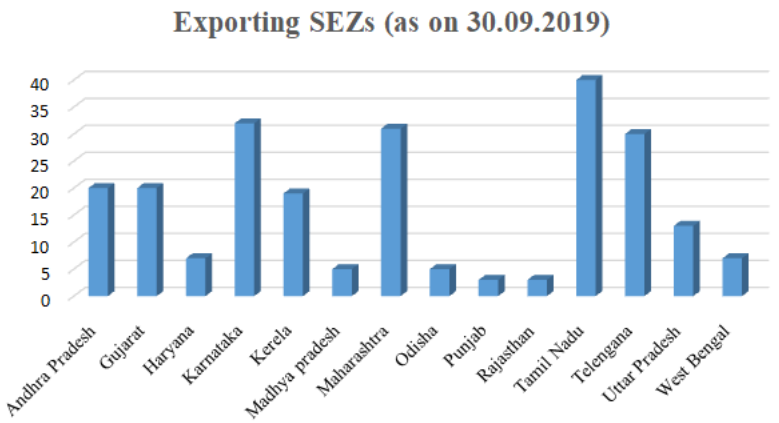

Figure 2: State-wise distribution of Exporting SEZs

Source: Ministry of Commerce, Government of India, 2019-2020

Furthermore, figure 3- portrays the sector-wise distribution of SEZs where 63% of the zones are located in IT/ITeS, 11% in multi-product, 5% in engineering and 7% others. The transpose from export-oriented manufacturing to IT/ITeS delineates the digression from its objectives. Thus, this raises a question that aren't we creating new manufacturing base? (Mukhopadhyay & Pradhan, 2009).

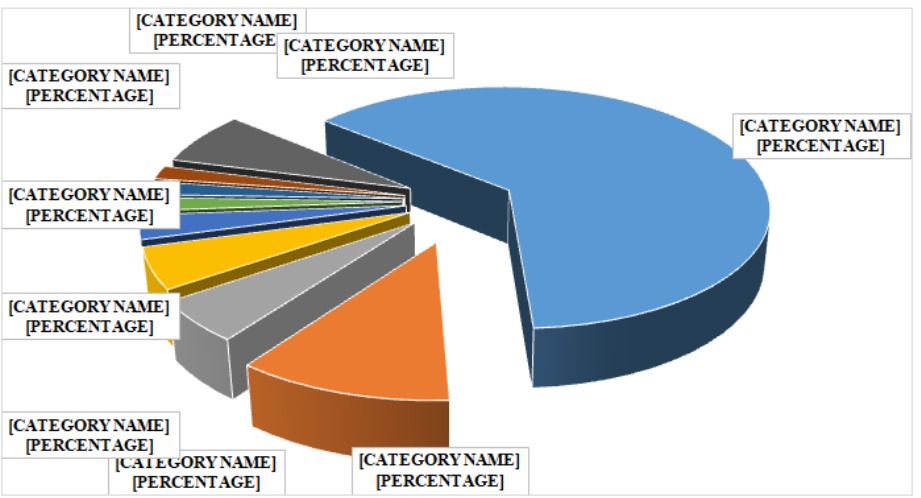

Figure 3: Sector-wise Distribution of SEZs

Source: Ministry of Commerce, Government of India 2019-2020

And these IT/ITeS are mainly concentrated in the six megacities of India- Bangalore, Kolkata, Mumbai, Delhi, Chennai and Hyderabad. This lopsided agglomeration of zones is aggravating regional imbalances which additionally dissuades from its affirmative objectives.

QUANTITATIVE ANALYSIS OF SEZS

SEZs in India are an enhanced version of EPZs on the lines of 'China's SEZs'. But we differ from China in many ways, first and foremost China's SEZs is a people's SEZs on the contrary India's SEZs are more furbished form of capitalist's SEZs with regard to export promotion and increased investment and shows a socialistic picture through employment generation in SEZs. After the implementation of SEZs Act, 2005- SEZs assured under export-led growth strategy for an increased exports followed by increased investment resulting to increased employment. Under this section- quantitative analysis of SEZs which will exhibit the purposeful establishments of SEZs after the act which has undermined its determined objectives.

Establishment of SEZs has been a double-edged sword for India. After the SEZs Act there was an exponential rise in the number of SEZs by the investors allured by its concessional and exemption provisions. Numerous studies by academicians, reports by research institutes, trade union reports, NGOs and activists have shown the benefits and afflictions by SEZs and have critically scrutinized the SEZs policy during and after its establishment, highlighted state-led investment policies that have resulted into increased lopsided agglomeration of zones creating regional imbalances and have distorted the democratic processes in India (Aggrawal, 2006; EPW eds, 2006, 2007; Sarma, 2007; Gopalkrishnan 2007; Sampat, 2008; Sahoo, 2015). A few studies have delved into specific-performance based study for SEZs with respect to its trends in the import intensity of exports, efficiency of enclaves and fiscal viability (Tantri, 2010, 2012, 2016). Some are on various questions following acquisition of land- displacement of farmers, misuse of land for real estate development (Ranjan 2006; Banerjee & Guha, 2008; Levien, 2011; Shah 2013; Bedi, 2015) and also on labour issues (Jaivir, 2008; Murayama & Yokota 2009; Vaish, 2011; ILO, 2012; Parwez, 2015). From the last decade, we came across a mammoth array concerning SEZs which has shown a picture, both in favor and against the class-divided society. To analyze SEZs from the prism of political economy we have divided the literature broadly into three elements of production which makes the functioning of Zone trouble-free are- Land, Capital (incentives) and Labour. This paper has broadly focused on the 'Question of Capital' in SEZs.

CAPITAL/ INCENTIVE IN SEZS

The analysis of Capital in SEZs refers to the fiscal incentives and facilities that the SEZs unit holders and developers are offered under Chapter VI, section 26 of the SEZs Act (2005) for attracting investments into the Zones. SEZs providing lucrative incentives has attracted investors/ developers/ entrepreneurs not only for tax and non-tax incentives in the form of exemption from various tariffs and duties but also for the state-of-the-art infrastructure. Since, the initiation of the SEZ Act, the then Commerce Minister when questioned about the impact of huge incentives offered to the developers in the Zone, he said that, "*economic activities and employment generated in SEZs will far outweigh the tax exemption*" (Menon & Mitra, 2009: 27s). The massive literature with regard to SEZs and its debates wheels around Zones' business and fiscal viability with respect to its revenue loss and lack of profitable incentives makes the developers to relocate (Ananthanarayan, 2008; Lakshmaanan, 2009; Tantri, 2010; Rawat, Bhushan & Surepally, 2010). The performance of SEZs has been divergent to the response made by the then Commerce Minister. The Comptroller and Auditor General (CAG) of India probed into the performance of SEZs in 2014 and asserted that, SEZs avail various exemptions and concessions from Central and State taxes. Zones in India had availed total tax concessions of Rs. 83,104.76 crores between 2006-07 to 2012-13, where Income tax was Rs. 55,158 crores and Indirect tax was Rs. 27,946.76 crores. Numerous in-eligible deductions worth Rs. 1,150.06 crores (Rs. 4.39 crores of income tax and Rs. 1,145.67 of Indirect tax) were granted and systematic weakness in indirect and direct tax administration to the tune of Rs. 27,130.98 crores. The CAG report revealed that the Ministry of Finance pegged the loss at Rs. 1, 75,487 crores from tax holiday granted to the Zones between 2004 and 2010 (CAG, 2014). The revenue from Custom Duty forgone by SEZs over the years since 2005-06 till 2016-17 has been illustrated in the figure 4:

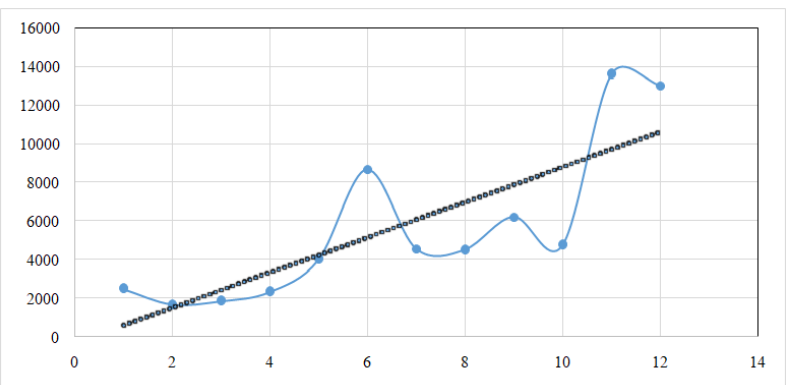

Figure 4: Custom Duty forgone

Source: CAG Report, Various years, Government of India.

The figure 4, presents the increasing trend of revenue forgone since 2005-06. The cumulative loss of revenue accounted to Rs. 67, 615 crores only from SEZs. The direct tax revenue forgone accounting from 2008 to 2012 is Rs. 31, 132 crores (CAG 2014). Recent trend shows the revenue forgone in the form of incentives and exemptions to corporates on account of direct taxes and custom duty grew by 16% i.e. from Rs 93, 642. 50 crores in 2017-18 to Rs. 1, 08,785 crores in 2018-19 (Economic Times, 2019). Considering the incentives given to the developers, this may lead to rise in the demand for imports without a corresponding rise in exports which will further disrupt balance of payment. Thus, the government should consider to prioritize sectors, which needs to be developed first depending on its return, otherwise, the developers may relocate to attain profits (Tantri, 2010) which is a perennial problem with these Zones. The incentives and facilities given to developers resulting in incurring revenue losses, this zonation of India has biasedly channelized the limited resources to these zones whereas it could have been used in the sector which have a better fiscal viability. However, according to CAG report (2014), affirms that concessions under state statues like Stamp Duty, CST etc. could not be quantified due to absence of any monitoring mechanism. Thus, we could not get a clear insight about the total revenue forgone. Therefore, academicians who have researched on fiscal viability like Tantri and Vaidyanathan (2006), have used proxies which represent incomplete information and sometimes biased conclusions too. In consequence, there are significant questions to be taken up as why hasn't the government or the Development Commissioner (DC) office calculated the complete picture of fiscal viability and economic viability of these Zones. The question arises do they really intent to evaluate or camouflage any benefits undertaken?

CONCLUSION

SEZs frenzy have been in debates time and again. After the SEZs Act was passed in the year 2005, there was a speedy establishment of SEZs by different states by wooing the investors with lucrative incentives, tax concessions, custom facilitation and other regulatory concessions. The chief Economist, Raghuram Rajan questioned the rationale of the SEZ policy, stating that the tax holidays or fiscal concessions will result in losses in revenue which the government can't afford (Frontline, 2006). But the state carried upon the carnage on the name of 'development' via growth via export.

Thus, there are a few studies that have delved into specific-performance based study for SEZs with respect to its trends in the import intensity of exports, efficiency of enclaves and fiscal viability which further requires some in-depth research.

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A REVIEW OF STUDIES ON URBAN TRAFFIC CONGESTION: SEEKING URGENT POLICY INITIATIVES

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Abstract

Fast pace of urbanisation and growing population are the major attributes of heavy traffic congestion . It is not a new phenomenon but technological advancement, particularly after second world war, it emerged as a formidable problem. At present, it does not only make the urban life troublesome, but it has become an environmental hazard. UNDESA (2020-21) reveals that by 2050 world will have 68 percent urban population. Although India has merely 35.9 percent, yet the high density of population in urban areas poses threat of greater rush of traffic than that of cities of developed world. In view of this alarming situation, a comprehensive review of studies covering different factors and perspective like geography, economics, engineering, sociology and urban planning becomes pertinent. Thus, it has been ventured to review the studies on traffic congestion with a view to find ways to tackle the menace. The studies reveal that it is high time to go for appropriate legal provisions and policy initiatives that may improve the traffic conditions and local economy.

Keywords: Urbanisation, Traffic-congestion, Urban Planning, Causes, Remedies, India

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INTRODUCTION

Urbanisation has many advantages, but it also comes with many drawbacks that make city life very complex. Statistics of the trend of urbanisation suggest that the phenomenon of modern urbanism has its inception in the industrial revolution. According to *Encyclopaedia Britannica,* 'the technological explosion that was the Industrial Revolution, led to a momentous increase in the process of urbanisation'. After the Second World War, a phase of rapid urbanisation took place. At present the Liberalisation, Privatisation, and Globalisation effects has made the rate of urbanisation very fast. More and more people are attracted to cities for better opportunities. These opportunities are in terms of employment, medical facility, better educational pursuits, better infrastructure, recreational purposes, etc. The general psychology of people of a country like India is 'People living in urban centres are forward-looking persons but people from rural set-ups are taken as backward ones'. This sort of tendency and associated factors have been compelling more and more people to move to and live in urban centres. The outcome of such factorsis seen in the cultural phenomenon of rapid urbanisation which has made cities a place of very high population density. Very high population density coupled with unplanned growth (in the developing world specially India) results in creating numerous challenges for the sustainable development of any urban centre. These urban challenges make city life a labyrinthine life for its citizens. Since people have to move from one place to another place for their work, the load of vehicles on road has increased tremendously. The result comes in the form of heavy traffic congestion. This traffic congestion situation becomes more severe in morning and evening peak hours. To properly address this issue of traffic congestion, it is much needed to properly understand the issue and thus a thorough review of the studies done so far in this regard is much sought.

Urban traffic congestion is a condition in urban transport that is a huge urban challenge in an urban area. It is not limited to any specific region but is considered as a global phenomenon. This urban phenomenon is caused by high proportion of travellers on roads with their vehicles while going to and coming back from their workplaces. Traditionally traffic congestion was considered an urban challenge mainly faced by Central Business District (CBD) and its surroundings, but recent studies suggest that it is expanding toward the suburbs as commercial activities are being pulled out of the central business districts.

UNDERSTANDING TRAFFIC CONGESTION

The term 'traffic congestion has been defined variedly which can be broadly categorise d threefold, namely demand capacity related, delay-travel time related, and cost-related. Traffic congestion is defined as the increased disruption of traffic

movement which results in delays and queues and is generated by the interactions amongst the flow units in a traffic stream or in intersecting traffic streams. It is visible when the capacity of a road is exceeded. In other words, congestion can be defined as the roadway condition in which travel time or delay is in excess of that normally incurred under light or free-flow traffic conditions. As per Royal Academy (2015), the congestion is most often associated with road transport and occurs when the volume of traffic approaches the available capacity. This leads to queuing, resulting in journey times becoming longer and more unpredictable. But the critical problem is that an urban area faces, is traffic congestion which occurs when the demand exceeds the capacity. The main cause of congestion is oversaturation of vehicles. It may occur on almost any road system but, in general, it Is likely to be experienced with the greatest severity in and around the major employment nodes such as the central business district during the morning and afternoon peak hours. Urban traffic is heterogeneous in character with all kinds of vehicles. This causes heavy traffic congestion and delay in traffic movement. Traffic congestion reduces the effective spatial interaction between different locations. Time spent ensnarled in traffic is not only time wasted but for most of us time miserably wasted (Arnott, R.*et al.:1993).*

In nutshell, it is a traffic condition in which the number of vehicles exceeds the bearing capacity of the road on peak periods. This phenomenon is the order of the day these days and has detrimental effect on the economy, spatial structure, environment and health. People of different disciplines perceive traffic congestion differently, such as a civil engineer considers its structure design, an economist considers its impact on economic activities, a social scientist consider its impact on social behaviour and so on.

METHODS APPLIED IN THE STUDIES

Most of the studies on traffic congestion are of empirical nature, applying techniques mainly observation, interview with help of schedule/questionnaire and survey using high-tech like GIS/GPS tagging, CCTV, AI, number plates, etc.

Zhang, Y.C. (2011) used GPS floating car data for the acquisition and detection of traffic congestion information. The output of Zhang's model is the traffic congestion distribution map in which different colour codes are assigned to different road segments based on travel speeds of FCD-Floating Car Data. Bashingi, N.*et al.* (2020), in survey of 388 respondents in Gaborone city, Botswana, finds excessive use of private vehicles as the cause of congestion and suggested the need of using public transport. Chow, Andy H.F. *et al.*(2013) presented an empirical assessment of urban traffic congestion in Central London, UK. They introduced the use of automatic number plate recognition technology to analyse the

characteristic of urban traffic congestion. The study observed that congestion was attributed to two main components: one due to recurrent factors and the other due to non-recurrent factors. Arnott, R. *et al.* (1989) investigated the presumption that route guidance and information systems necessarily reduce traffic congestion. Jain, V. *et al* .(2012) studied the problem of road traffic congestion in high-congestion hot spots in developing regions. They first presented a simple image processing algorithm to estimate traffic density at a hot spot using CCTV camera feeds from multiple traffic signals. Zhao, L. *et al.* (2005) presented two models to address the question, of how the topology influences the dynamics of traffic flow on a complex network, considering the network topology, the information-generating rate, and the information-processing capacity of individual nodes. Akhtar, M. *et al.* (2021) explored traffic congestion prediction using Artificial Intelligence, especially short-term traffic congestion prediction by evaluating different traffic parameters in contrast to most of the researchers that focused on historical data in forecasting traffic congestion. Pattara, Atikom, W. *et al.*(2006) investigated an alternative way to estimate degrees of road traffic congestion based on routine GPS measurements from main roads in urban areas of Bangkok, Thailand. The authors classified three levels of traffic congestion according to the weighted exponential moving averages of measured GPS speed. Wen, H. *et al.* (2014) evaluated traffic congestion with the Traffic Performance Index (TPI) for the city of Beijing, China. On the basis of the TPI, an objective expression for traffic congestion, the clustering analysis method was used to divide the pattern characteristics of traffic congestion in large cities. Taylor, M.A. *et al.* (2000) presented a case study application of the system of congestion levels on two parallel routes in a major arterial corridor in metropolitan Adelaide, South Australia. As part of the investigations, a discussion of the nature of traffic congestion was given. Patel, N. and Mukherjee, A.B. (2015) proposed a new formula to quantify traffic congestion in different spatial zones of Ranchi city characterised by distinct land use classes. The proposed formula considers three major influencing factors: Congestion Index Value, pedestrian movement, and road surface conditions. Obadina, E.O. and Akinyemi, Y.C. (2018) tried to explore the Volume of Vehicular Traffic (VVT) along the chosen road corridor in Lagos metropolis, Nigeria. Authors conducted a road network analysis and investigated the causative factors of traffic congestion. Graph theory-based network index has been used in determining road connectivity level, and a cross-sectional survey of 384 commuters has been conducted to obtain information on the congestion. Jain, S. *et al.* (2017) attempted to make use of traffic behaviour to estimate traffic congestion on urban arterial roads of Delhi exhibiting heterogeneous traffic conditions by breaking the route into independent segments and approximating the origin-destinationbased traffic flow behaviour of the segments.

STUDIES ON CAUSES OF TRAFFIC CONGESTION

A study by Das, Navanita, *et al*. (2015) made visual observations of the major road junctions of Guwahati city and interacted with local people and local traffic police with their structured questionnaire. It enquires the factors of congestion and role of traffic police and finds driving, types of vehicles and road construction design. It suggests creation of additional infrastructure. Another study of Muzaffarpur town of Bihar applied observation method and photography for classification of the structures of roads. They presented a classification of urban roads and their traffic characteristics. In addition it addresses the issues like garbage collection, street vendors, bottlenecking of roads, waterlogging, unorganised traffic, movement of NMT modes on flyovers, etc. Most of the causes, to the authors, are related to the management of traffic and transport. Another empirical case study of Asansol, West Bengal by Maji (2017) chose the most important and busy roads. It identifies the causes like people behaviour and design of roads. Maitra, B. *et al.*(2004) finds allowing heavy vehicles at peak periods and irrational traffic management as the major cause of the congestion. Vashisth A. (2017) has studied the Samalkha town (Haryana), applying interview technique, group discussions and observation, traces causes like Volume to Capacity ratio (V/C ratio), the Level of Service (LOS), Travel Time Index, and travel delay. Applying observation of GIS technology in Jeddah city, Mazloh Al-Enazi (2016) focussed on network analyst, shortest path, etc. during working day hours of residential areas. Another study of the road network of Jamshedpur city of Jharkhand by using GIS finds the connectivity problem. It is a GIS-based approach in which the centrality and connectivity of urban transport systems have been explored. Furthermore, Wen, H. *et al*. (2014) find the factors influencing traffic congestion such as Transportation Demand Management (TDM) policies, weather, holidays, weekdays, activities and events could be connected with TPI. Finally, the future congestion level, occurring time, and duration time are forecasted like a weather forecast. Jain et al The expected travel time in making a trip is modelled against sectional traffic characteristics (flow and speed) at the origin and destination points of road segments and roadway and segment traffic characteristics such as diversion routes are also tried in accounting for travel time.

Kumar, M. *et al.* (2020) have observed that Congestion occurs due to four basic reasons: environmental, mechanical, human, and infrastructural. In addition to this, rapid population growth, increasing urbanisation, inadequate/ unplanned transport infrastructure, poor public transport systems and the rising number of personal vehicles have been found as some of the primary causes of congestion. Afrin, T. *et al.* (2020) gave an overview of the causes of road traffic congestion for both recurring and non-recurring congestion. The study describes the measurements of congestion. A real-time traffic tracker dataset was used to compare seven congestion measures. Overall, this study determines current

challenges in traffic congestion measurement approaches and provided new insight into the development of a sustainable and resilient traffic management system in the long run. Another study identified the congestion problem and said that the increasing private transport and high incidence of people migrating from rural to urban lead to the problem of congestion casing health and environmental problems. Chow, Andy H.F. *et al. (2013)* found that about 15% of the observed congestion in Central London region is due to nonrecurrent factors such as accidents, roadwork, special events, and strikes. Causes of congestion found as travel demand, incidents (accidents, breakdown, obstruction, police security checks, special events and roadwork), weather (precipitation and snow) and strikes. This study can be valuable for transport policy evaluation and appraisal in other global cities.

STUDIES ON CHALLENGES OF TRAFFIC CONGESTION

The study of Chakwizira, J.(2007), on the basis of enquiry on traffic congestion conditions in Johannesburg (South Africa), proposed that 'an integrated and comprehensive land, air and road based strategic transportation framework and perspective plan reflecting input from all stakeholders could lay the foundation on which an appropriate, responsive and sustainable congestion and decongestion framework, mitigation and response mechanism can rest'. Akshay Akshay Kumar,C.P. *et al*. (2018) tried to provide some managerial measures to improve the traffic flow in Muvattupuzha municipality, Kerala. Saha, A. k.*et al*.(2013), conducted survey in Pabna City and has tried to investigate the standards of geometric elements and traffic control systems at major road intersections. Shiva Kumar, R(2016) while studying road accident spots and traffic congestion in Mysore city, quoted that traffic congestion in the metropolis is observed by people of CBD, concluded that the development of road infrastructure cannot be matched the transport demand because of financial and spatial restrictions.

Alam, M.A., and Ahmad, F. (2013) studied the traffic scenario of selected Indian cities and the policy measures undertaken by their respective governments. The authors revisited relevant policies in India, assesses the gaps that deter the desired impact of such policies on reducing traffic congestion, and suggest policy measures to overcome the gaps. Chakrabartty, A**.** *et al.* (2014) tried to measure congestion on a few arterial roads of Kolkata through a congestion/mobility index. Their remarkedthat to mitigate third world city's problems, concrete steps have to be taken. The authors suggested that the promotion of public transport, enforcement of road discipline, better traffic management, a disincentive to private vehicle ownership, etc, are the policies that need to be adopted. Toh, R.S. and Phang, S.Y.(1997) evaluated the ongoing practices in Singapore to curb urban traffic congestion. The draconian measures adopted by Singapore officials like limiting the purchase of vehicles, curbing the issuance of driving licenses to its

citizens, etc.have been reviewed. Kiunsi, R.B. (2013) did a systematic study of Dar es Salaam city and concluded that increasing road capacity and improvement of public transport services are the main strategies applied by the City authorities to control congestion. These strategies have not provided the desired results due to a number of reasons such as the rapid increase of population and cars, rapid growth of existing CBD, and non-application of physical planning as a key tool for traffic congestion minimisation. In order for the current solutions to work more effectively and in a sustainable way, both strategies of improving road capacities and public transport and physical planning should be applied together.

CONCLUSION

Traffic congestion is a global phenomenon and people are compelled to bear it. The situation has attracted the scholarship of the world to study the phenomenon in order to trace the causes and explore the remedies. Studies on traffic congestion are empirical ones and have applied the mainly the primary sources of data collection like survey using observation, interview by applying tools like schedule, and questionnaire. Besides, high-tech tools like GIS, GPS tagging, study of CCTV, artificial intelligence, electronic number plates and photography etc. were applied. Statistical tools like regression analysis can be useful by taking traffic congestion as the dependent variable whereas the volume of vehicular traffic and associated factors as independent ones. General proposition that emerged is traffic congestion does not only adversely affect the urban life but has adverse impact on economic activities and natural environment of cities and metros irrespective of being in developed or developing countries.

Measuring traffic congestion is however complicated due to the non-uniform, temporal and spatial distribution of traffic. Traffic congestion can be measured for an entire region or for a specific location. The measured quantity could be a parameter of the flow quality. (e.g., travel time, delay, and queue length) or a parameter of the flow characteristics. The measurement scale can be a collection of discrete classes e.g. level of service (LOS) = A, B, C, etc.] or a continuous value (e.g., a number between 0 and 1). Various traffic congestion measurement metrics are categorised into three parts: Travel time-based, Speed based, and Level of service based.

The present review reveals that traffic congestion are of two recurring and non-recurring categories. One of the major causes of traffic congestion is ever growing urban population added with migration and daily commuters. Other major causes are exorbitant rise of technologies, number of vehicles of different types, unruly behaviour of travellers, defective construction designs of roads, crossings and other infrastructure and more striking cause is poor traffic management.

In case of India, the absence of sufficient public transport, ever growing private vehicle to a large extent and this is the reason why most Indian cities are chock-a-block (packed) with traffic.

The socio-economic models of traffic congestion give more emphasis on the socio-economic background of the residents of the city. Thus, these models corroborate a model linked with that of societal principles and economic strata of the region. Infrastructural factors are not given much importance in these models. Spatial sciences like geography discipline have less dealt with the issue of traffic congestion. Since geography deals with the theory of 'pattern and process of the region', it can prove very fruitful as far as the study of urban traffic congestion is concerned.

Whatever it be, the need of the hour is to properly address this issue of traffic congestion. The draconian measures like limiting the issuance of driving licenses as adopted in Singapore will not work in a long run. The improvement in available infrastructure and proper spatial planning of the city area is a must. Measures like adopting the odd-even formula can be of some relief only. A thorough overhaul of the spatial infrastructure keeping every aspect in mind can only work in a long run. There is urgent need of framing appropriate policy and laws should be made strict to regulate the unruly traffic behaviour.

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POLITICAL ECONOMY OF DEVELOPMENT OF HEALTH CARE SYSTEM IN POST-COLONIAL INDIA

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Abstract

In post-colonial India, health system has been shaped by two competing ideological frameworks of political economy:- welfare economy of pre liberalisation era, and market economy of neo-liberal variant thereafter. Although during the later year of this period, few private players were promoted with state incentives to act as an alternate provider. During the early years, since health sector being integral to the overall development planning, thus influenced by the social goals, but later on as a result of acceptance of IMF's structural adjustment programme (SAP), many structural reforms were erupted in the economy including in the health sector. As a result, the dominance of public health care was curtailed at the cost of private health care system on the plea of achieving resource efficiency and accommodating consumer choice, these resulted in a cut in the public health care expenditure. The element of privatisation, started earlier went more deeper in the National Health Policy (2015), where the health sector gets transformed from a service providing sector to an instrument of economic growth. The current model of health care is that of a system dominated by the private sector with differential access mechanism, thereby dismantling its universalistic, egalitarian and cost-effective character. The crisis in the health system reflects the inadequacy of the institutional democracy to the lives of the people and thus the crisis of politics which underlines it and provides support to anti-people policies.

Keywords: Post-Colonial, Neo-liberal, structural adjustment programme (SAP), Welfare state, Market economies.

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Basic healthcare is individual's fundamental Rights for his/her social existence and it is the state responsibility to provide the services to its citizens, irrespective of their paying capacity.

India's health infrastructure has repeatedly undergone severe crisis and ongoing COVID19 has only made it worse. It is unfortunate and ironical that a consistently poor performance on hunger index parameter, accompanied with meagre allocation to health in the successive budgets has not gained enough public attention so far.

In this review paper, we have tried to analyse this sad state of healthcare system in India from a political economy perspective and make the case for more state intervention in this sector. State intervention in healthcare is driven by the principles of universality, equity and comprehensiveness that cannot be achieved in the market since individuals would be forced to take care of themselves individually. It also raises questions of equal accessibility and affordability. (1)

At the time of transfer of power, the British rule was confronted with the task of providing a provision of health care for Independent India, apart from some other provisions. For this the colonial government appointed *Bhore* Committee. The committee was charged with the task of (1) undertaking a survey of the present position regarding health, and (2) recommendation for future development. It submitted its report in 1946, suggested a short-term plan to be achieved in 10 years and a long-term plan, to be achieved in 40 years, to develop India's health services. Although we failed to fully achieve even the objectives of short-term plan, yet the very idea of *Bhore* Committee remains the most enduring image in our struggle for the development of health services, because of the comprehensiveness of the committee's vision. (2)

It should be noted here that *Bhore* Committee report came against the background of Great Economic Depression, second world war, emergence of USSR and rising tide of communism in Asia. All these raised a hope in the hearts of colonised and oppressed people and forced their governments to take cognizance of it. These background, along with the collaborative approach of British government with nationalist leaders and the continuance of colonial governance paradigm, all these shaped the recommendation of the *Bhore* Committee. (3)

In post-independence India, the struggle for the improvements of the health services continued. During this period, the failure of health policy paradigm, especially after introduction of world Bank guided reforms, resulted in non-fulfilment of the promises made at the time of independence. The fact that India has not achieved what were set out in the short-term plan, even by the starting of 1980s, necessitates renewed vigour in the planned expansion of integrated, that is preventive, promotive, curative and rehabilitative health services, especially in

rural areas. It is ironical to note that some of the fundamental principles of public health planning, that is epidemiological approach, a system approach to health care and training of health personnel, suggested in the recommendation of *Bhore* Committee report, are missing in our ambitious plan, that is NRHM, now converted into NHM. (4)

Besides, the pitfalls of the techno-centric approach in health planning geared towards expansion of costly curative health care, and on the other hand technology driven vertical disease control programme. These remains potent threat to the wholesome development of health care services in India, even today. There is a need to sublimate technology to the requirements of the people rather than otherwise. (5)

Even in the field of population stabilisation programme, we have failed miserably. An additional danger comes from the Neo liberal paradigm, currently pursued by the ruling elite. While in the last decade India's GDP has grown at an average rate of 8% per annum yet the percentage of GDP allotted to health sector remained the same. Such is the precarious situation created by the current developmental model, that the government is itself acknowledging its devastating impact on people and environment. The cancellation of aluminium plant by Sterlite group and POSCO steel plant in Orissa is a point.

Health planning after independence became an integral part of the planning for socio- economic development. Indian planners conceived the development of health services integrated with plans for tackling unemployment, malnutrition, social justice, housing, environmental sanitation. However, it seemed difficult to achieve. In fact, the trajectory of the development of the health services in India certainly is not the most desirable. (6)

The developmental model pursued by the Indian government, has been structured primarily to serve their as well those sections of the society whose support is essential for the continuance of their rule, while vast impoverished majority has had to remain content with minor concessions. In India, while on the one hand we have a minuscule rich, but who has a control over country's resources, on the other hand is the vast multitude of the population of people who struggle to eke out an existence on a per capita daily consumption of up to Rs 20/day. In between these two classes lies the middle class of approx. 50 million with dreams of making it to the big league, and to that extent serving as a bulwark of the ruling class. Unlike the case of China, where the Revolution of 1949 entailed radical restructuring of society, Indian independence ensured a continuance of the old socio-economic and political order.

In a sense the medical profession is owned by and forms one segment of the elite section of society. Its interests colluded with that of political, business,

bureaucratic and the feudal classes due to their common class origin. It is not surprising then that urban ruling elite have fostered health policies that have led to the development of highly techno-centric pre-dominantly curative health care services concentrated in the cities. By these policies the interests of the medical profession are best served. There is an enormous pressure on the government to establish this type of profitable curative health care from both with in the medical profession as well as from medical technology industry. These services are highly expensive…..and available to only miniscule population. (7)

The dual education policy, adopted, has enabled professional education to be monopolised by the rich. Any attempt to restructure the health care system is to order the restructuring of the society itself something that is worse than nemesis for the ruling class.

DEVELOPMENT PARADIGM AND ITS IMPACT ON HEALTH SERVICES

At the time of independence, India was a backward economy with limited and uneven pattern of industrialisation. Society was semi-feudal, poverty was widespread, all these resulted in low standard of living. At this stage India had to choose between two models, to follow. First was Soviet Union model, and second was that of Western Capitalist democracies. Choosing capitalist path of development was not feasible for India at that time, because neither Indian capitalist class was mature enough nor they had required amount of capital, inspite of the fact they had earned a lot during the war time contracts. Finally, India adopted mixed economy model, based on Keynesian principle.

In July 1944, the United Nation Monetary and Financial conference, commonly known as the *Bretton Woods* conference was held, to regulate the International monetary and financial order after second world war. The conference gave birth to IMF and IBRD, later known as World Bank. Even though the purpose of IBRD was to speed up post- war reconstruction and help political stability, but the seminal idea of the conference was the idea of open market. India was a participatory member country in the conference. (8)

India's ruling classes embarked on a path which has been described as 'state-led capitalism'.(9) Minimal efforts were given to land reforms and abolishing its semi-feudal relation of production. As a result, majority of the rural people remained dependent on agriculture and consequently impoverished. This continued economic backwardness resulted in a lack of genuine political empowerment of the people and thus an effective say in the policy matters including the development of health services. The development path chosen by India provided a solid ground for the continuing domination of western interests in its socio- economic and political development, a process akin to neo- imperialism.

It was this development paradigm that shaped the development of health care system in India. In the words of Debabar Banerjee, "Each pattern of approach to health care emerges as a logical outcome of a given political, social and economic system. These forces generate an unwritten policy frame which influences the health of a population." (10)

A mixed economy saw the development of health care led by public sector along with the involvement of private sector. While urban areas received three-fourth of the medical care resources, the rural area remained content with 'special attention' under the Community Development programme. The western agencies who were instrumental in vertical disease control programme ignored the social determinants of disease e.g inadequate nutrition, sanitation, housing etc. The national Malaria eradication programme, started with the help, aid and assistance of USA, WHO and Rockefeller foundation in 1953. Along with financial aid came political and ideological influence. The experts of various international agencies decided the entire policy framework. (11)

These policies did not bring anticipated results. A number of official committees diagnosed this to the result of an 'urban oriented, curative, technology centred evolution of health services alienated from the masses'. The fact that the policy planners were time and again compelled to at least talk about reorienting this development is evidence of the primary tension that continues to challenge the elitist orientation of health care.

'Health for all by 2000 AD' was adopted by the 30th world health assembly in 1977. From the realm of theory, the goal of health for all was sought to be put into practice and 'Primary Health Care' was placed at the centre of a new 'Bottom up' strategy to achieve it as opposed to the earlier' Top down' approach of the top heavy 'curative model's health care. Health was no longer to be the concern of individual but prime concern of the society as a whole. (12)

It is ironical to note here that most of the governments reneged on implementing 'Primary Health Care' almost as soon as they committed themselves to it. It was not the failure of the idea itself but remains a failure of the ruling elite across the world, including India. In fact, the vested interests of those associated with medical industry along with the political class felt threatened by the very idea of primary health care, because it was anticipated that application of this concept will have far reaching consequences, not only for health sector but also for other socio-economic sector at community level.

A decade long recession and inflation in the major economies of the world led to a disenchantment with Keynesian economics. Gradually this was replaced by 'Free Market' economy of Milton Friedman. These developments at international level, set the tone for a gradual jettisoning of the 'Socialist rhetoric' in India. The

involvement of the Indian state in caring for the health of its people was never comprehensive, began becoming more lethargic. By the 1980s private health care had begun acquiring a dominant role for itself in India. (13)

Structural Adjustment Programme (SAP), part of the New Economy Policy mandatory for getting any loan either from world bank or IMF, was implemented in many developing countries, since 1980s. These policies resulted in growth of market- oriented health care services. The essence of SAP was the conversion of market economies into market societies. (14)

The dark side of structural reforms and globalisation in terms of human development has become too obvious to be ignored. Gradually the virtues of 'welfare state' are being reinvented to lend globalisation a human face.

Alerted by the failed 'shining India' campaign of Vajpayee government, the UPA-1 came up with the programmes such as National Rural Health Mission (NRHM), and Food Security Act etc. Various government committees had negated the planning commission estimation of incidence of poverty in India. India's health and human development indicator had dipped far below. Thus the government started reinventing the virtues of primary health care, through NRHM. But still government couldn't bring out a real paradigm shift. The National Health Mission (erstwhile NRHM plus urban health mission) is in its second phase. But the goals and targets assigned for the first phase itself have remained elusive yet. (15)

The latest slogan in the health care provisioning in our country is 'Universal Health Coverage' (UHC), although formal policy is still undecided in this regard. The planning commission had set up a 'High Level Expert Group' to devise a path for achieving UHC in India. Contrary to the prevailing overall development thinking, the HLEG argued for strengthening the public sector health services to provide UHC for the people. The definition of UHC adopted by this group stated… .'the government being the guarantor and enabler, although not necessarily the only provider of health related service, it also recommended for the continuance of private sector in this field with adequate checks and balances. (16)

In fact, placing reliance on strengthened public sector health services as the main recourse to accomplishing UHC is the most prudent, cost-effective and sustainable way to accomplishing UHC. However, we do not find anything in the HLEG report that indicates an apposition to private providers partaking in its scheme. It is ironical to note, that just after coming out of this report, the World Bank charged that the panel's recommendations advocated-'marginalisation of the private sector' and the 'elimination of intermediation by insurance companies'. (17)

Three issues are related to such blatant interference by World Bank, first, is national policy making is the sovereign right of the Indian government, second,

whose case is being argued by such interference and finally, what will be its consequences for the overwhelming majority of the population.

The World Bank had successfully leveraged its position it was reflected in the manner in which the government acted. An internal committee of the planning commission- the 'Steering Committee on the Health for the 12th five year plan', submitted its report in 2012, after the HLEG report in Nov,2011…… the steering committee recommendation effectively laid out a plan to hand over the country's health service system to the corporate sector. (18)

The Ministry of Health and Family Welfare put out the Draft National Health Policy in 2015, it came in the background of India having been witness to the implementation of the Neo-liberal economic policies by different government since 1990s. A cursory reading of the draft reveals that it actually amounts to dismembering the complex process of health policy formulation in a hugely diverse country like India. Overriding this diversity, it adopts a 'one solution suits all' approach by decisively pushing insurance` based health care model for facilitating a near monopoly of the corporate sector in curative care. Many critiques have termed this draft policy to be pursuing 'an economic agenda in health care policy rather than a public health agenda. The declaration of National Health Policy 2017 has made the task of achieving 'Health for All' virtually all the more formidable. (19)

CONCLUSION

The evolution of a health care system ought to be understood as a dialectical process, affected by almost every human activity, thus the solutions to the problem as well as challenges facing the development of a genuine health care system must take into account this process of dialectics. People's health is too precious to be left to the tender mercies of the market.

The current model of health care is that of a system dominated by the private sector with differential access mechanism, thereby dismantling its universalistic, egalitarian and cost-effective character.

In fact, the health issues in India have never acquired priority and primacy either in public discourse or in public deliberations and governance. Its planning and development apart from being influenced by the class character of ruling class, also bears an imprint of external forces, experts of indigenous health system were ignored thus they failed to take into account the historically rooted social and economic inequalities across social groups, virtual neglect of rural areas both in terms of services and infrastructure. All these finally culminated in the conceptualisation of health as a technical issue rather than a social one, with its own ramifications.

The crisis in the health system reflects the inadequacy of the institutional democracy to the lives of the people and thus the crisis of politics which underlines it and provides support to anti-people policies. As a result of all these the Indian state has successfully narrowed down the concept of promoting good health and well-being of the people to just providing health care as the social goal of health policy.

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Note: Here I must acknowledge it that while preparing this paper, I was highly benefitted from the works of Dr. Vikas Bajpai and Dr. Anoop Saraya, whether it was in book form or article or references. I have extensively quoted, adopted from their work.

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CASCADING ROLE OF GOVERNANCE IN ENSURING JUDICIAL ACTIVISM IN INDIA

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Abstract

It is crucial that all three branches of government work in unison if the country is to advance. But the situation today is worrying. The legislature and the executive either struggle to carry out their responsibilities with the utmost earnestness or try to dodge them. Therefore, the judiciary, the third organ, is the only one left to use judicial activism to address the complaints of the public. There has been activist approach by the judiciary especially for the disadvantaged or downtrodden sections of the society. It has delivered justice to the people keeping in its mind the limitations mentioned in our Indian Constitution. On the other hand, the judges may have crossed the line and forgotten what was acceptable. According to Montesquieu's "separation of powers" philosophy, there should be no crossing of boundaries. However, the judicial inventiveness that hasn't been focused on and used by the other machinery is what the public see and view as the judiciary overstepping the other organs.

Keywords: Judicial activism, Judiciary and Governance.

INTRODUCTION

The enchanting words of A.S. Anand points out, *it* is crucial that all three branches of government work in unison if the country is to advance. When the judiciary performs in the form of an activist, performs its duties and functions for betterment

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of the society, it is referred to as Judicial activism. The Judicial activism is defined by the Black's Law dictionary as: Judicial decision-making theory where judges use personal opinions on public policy, among other things, drive their judgements. Judicial activism is also referred to as the court's innovative, creative, and law-making role contrasts with its mechanical, conservative, and static vision and its reliance on past precedents. The concept of separation of powers is opined to ensure proper harmony amongst these three organs to ensure checks and balances amongst each other.

When it comes to working system of the higher judiciary, it has come as a saviour to the people in ensuring rights and protection to them. One such instance is the case of ***Vishakha v. State of Rajasthan*** wherein which earlier, there was no law or regulation for such offences and it was only possible due to judicial intervention which has set a benchmark for forming the sole Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). However, the limitation is that it took 16 long years to have this Act in public forum.

In ***Keshavananda Bharti v State of Kerala*** it states that any constitutional amendment which hampers the basic structure of the Constitution will be declared and null and void. In ***Maneka Gandhi v Union of India*** declared that procedure followed by the court should not be only fair, just and reasonable but also not denying the liberty to the individual. The Hon'ble Supreme Court in case of ***VC Shukla v Delhi Administration*** opined, establishment of special courts for the crimes committed by high public officials. It was also stated in this case for the applicability of the 'basic structure' doctrine to the amendment in the Indian constitution and not to the legislation of ordinary nature.

In the above mentioned case laws, the creativity of the judiciary is very much evident which shows the judiciary is ensuring good governance at the national level. However, there are certain interference made by the higher judiciary in the smooth functioning of the legislature and the executive. The issues include, labour policy, environment, etc. Hence, it is the need of an hour on imposing barriers or reasonable restraint on the judiciary as well.

SEPARATION OF POWERS: A DOCTRINE

The doctrine of separation of powers was provided by Montesquieu, a French philosopher who called for separation and independent functioning of legislature, executive and the judiciary. The functions are independent in such a way as it doesn't call for dethroning of other organs of the government. On the same lines, at the State level, there is also functioning of legislature, executive and the judiciary. Hence, the concept of separation of powers states, the functions of the organs must

operate effectively in a free democracy, smoothly and independently. Hence, the executive cannot exercise the functions of judiciary nor the legislature and judiciary cannot perform the duties of executive nor the legislature.

HISTORICAL BACKGROUND

The doctrine of separation of powers is not of recent origin. It can be dated back during the era of Aristotle. In the later part, James Harrington and John Locke opined this concept. However, the much of the credit goes to Montesquieu for bringing this concept in concrete form in his book "*Spirit of Laws*" which states, there can be no liberty when the legislative and executive powers are combined in one person or in one body of magistrates... If the judicial powers are not distinct from the legislative and executive powers, there is no such thing as liberty. If the same guy or the same body... used three abilities of three different organs, everything would come to an end.

When we analyse the real essence of the doctrine of separation, it is seen that the President of India is the Executive head of the Union and is given powers within the Constitution to perform legislative functions, i.e. Article 123 which deals with promulgating of the ordinances by the President of India, Article 356 which deals with imposing of President's rule within the state and performing of legislative function under Article 357.

Article 50 of the Indian Constitution under Part IV Directive Principles of State policy calls for separation of the judicial and executive branches. However, the reality is that the President of India, performs the judicial functions. It can be highlighted under Article 103(1) of the Constitution, where the question arises regarding disqualification of member belonging to the either house of the parliament under Article 102(1), in those matters the final call will be taken by the Hon'ble President of India for approval. There is one more instance where the executive is performing legislative functions as reflected in Articles 124, 126, and 127 of the Constitution in appointment of judges. Under Article 56, dealing with President's resignation, will be communicated by the Vice President to the Hon'ble Speaker of the Lok Sabha.

JUDICIAL OPINION ON SEPARATION OF POWERS: LESS STRESSED

In ***Rai Sahib Ram Jawaya v State of Punjab,*** the Hon'ble Chief Justice B.K. Mukherjee reiterated the doctrine of the separation of powers has not been explicitly recognised by the Indian Constitution, but the duties of the various branches of government have been sufficiently distinguished, so it can be said that our Constitution does not allow for the assumption of duties by one organ or part of the state that fundamentally belong to another.

In the case of ***Chandra Mohan v State of U.P***. The Hon. Supreme Court ruled that even if the Indian Constitution at the time did not strictly follow the concept of separation of powers, it nonetheless provided for an independent judiciary in each state. It is generally known that there was a strong effort to separate the executive branch from the judiciary prior to India's independence on the grounds that, in the absence of such a separation, the court's independence at the highest levels would be a sham. In the case of **Udai Ram Sharma v. Union of India** stated that India is not subject to the American notion of clearly defined separation of legislative and judicial authorities.

In the case of ***Indira Nehru Gandhi v. Raj Narain*** it was stated by Hon'ble Justice Y.V. Chandrachud where the American Constitution establishes a strict division of political functions into the executive, legislative, and judicial branches. A fundamental tenet of that Constitution is that no department should use the authority granted to it for any other purpose. The distribution of powers is the same as in the Australian constitution. The Indian Constitution, in contrast to previous constitutions, does not explicitly grant the three types of power to three distinct State agencies. The State Government cannot evade from its functions to provide welfare and services to the citizens of the society. Also, they cannot give an excuse of getting over-burdened in its work.

Hence, there has been lot of criticism that judiciary is overstepping its jurisdiction and making interference with other organs. But however, the higher judiciary, i.e. the High Courts and the Supreme Court act as a watchdog for imposing restrictions on legislature and the executive.

CONCEPTUAL CONSIDERATIONS

The terms 'Judicial Review' and 'Judicial Activism' are complimentary to each other. Judicial review refers to the power of judiciary to review and determine the validity of a law or an order whereas Judicial Activism is a form of Judicial review in which judges exert to intervene in functions of executive and legislature. In other words, Judicial Activism refers to the use of judicial power to articulate and enforce what is beneficial for the society in general and people at large.

Judicial Review in common parlance is referred to as the power given to struck down provisions of law which are not in consonance with the Fundamental Rights enshrined under Part III of the Constitution. Article 13(1) states that laws in force within India before the commencement of the Constitution, if they are not in consonance with the Fundamental Rights, till that extent it is declared as void. Article 13(2) states, that a particular State shall not make any rule or legislation which abridges or takes away rights under Part III of Constitution, and any deviation is made it will be held as void. The Higher judiciary, i.e. the High Courts

and the Supreme Court have the power of Judicial Review under Articles 226 and 32 of the Constitution respectively. At the later stage, it became a part of Basic structure which is itself an initiative of the Supreme Court judgment which now its unamendable by the parliament.

The former Chief Justice of India and the Former Chairperson of Human Rights Commission of India, Justice Dr. AS Anand, on "judicial review' and 'judicial activism- need for caution" emphasised the state is composed of three coordinated organs: the legislative, executive, and judicial branches. The Constitution binds each of the three parties. The Third Schedule of the Constitution specifies the oaths that must be taken by the ministers who represent the executive, the elected candidates for the House of Representatives who represent the legislative, the judges of the Supreme Court and the High Courts who represent the judiciary. They all make the oath of allegiance to the Constitution and true faith. When it is said, therefore, that the judiciary is the guardian of the Constitution, it is not implied that the legislature and the executive are not equally to guard the Constitution. For the progress of the nation, however, it is imperative that all the three wings of the state function in complete harmony. A judicial decision either *'stigmatises or legitimises'* a decision of the legislature or of the executive. In either case the court neither approves nor condemns any legislative policy, nor is it concerned with its wisdom or expediency.

Therefore, it is not inferred that the legislative and the executive are not equally responsible for protecting the Constitution when it is stated that the court is its protector. However, it is essential that all three of the state's wings work in perfect harmony for the country to advance. A judicial ruling either "stigmatises or legitimises" a legislative or executive decision. In either scenario, the court expresses no opinion on the soundness or effectiveness of any legislative policy and neither endorses nor disapproves it.

The aspect of Judicial Review came into existence with the landmark case of ***Marbury v. Madison*** in which there was a paradigm shift from judicial opposition to judicial omnipotence. In the case of ***Brown v Board of Education*** the Hon'ble Supreme Court of U.S.A struck down the laws which called for segregation of the Negros in the arena of public education.

Judicial Activism: Black's Law Dictionary, Centennial Edition (1891-1991] defines Judicial Activism as the Judicial decision-making theory wherein judges permit their own personal ideas about public policy, among other things, to govern their choices. This concept means when the judiciary is active and plays a prominent role in dissemination of justice. Sir Ronald Dworkin does not consider the *"strict interpretation"* of constitutional text because it put restrictions on constitutional rights to those acknowledged at a specific historical time by a small group of people.

According to Prof. Upendra Baxi, Judicial activism is considered in two different sense – first, it is described as judicial creativity and second, getting revolution in the field of human rights whereas others have criticised it considering it as judicial extremism, judicial terrorism and interfering with other domains of rights, etc. Justice S.S. Verma described Judicial activism as the active process of enforcing the rule of law, necessary for the maintenance of a viable democracy.

Former Chief Justice of India A.M. Ahmadi in the Dr. Zakir Hussain Memorial Lecture stated, Public dissatisfaction with the political process has grown in recent years as the incumbents of Parliament have become less representative of the wishes of the people. This is the reason the (Supreme) Court had to enlarge its jurisdiction by, occasionally, giving the administration new instructions. Former Attorney General of India, Soli J Sorabjee reiterated that the Judicial activism has helped to safeguard fundamental rights.

When the issue of environmental pollution crops up and when the authorities don't turn up to resolve such issues, it is the courts which comes as a saviour to alleviate the suffering of society as a whole which is also sometimes referred to as *'judiciary for compassion'* as rightly pointed out by Sorabjee. There are some of the reasons which forces the judiciary to become active:

- The impending overthrow of the government.
- The legislative vacuum, which is left unfilled
- The judiciary is seen as the protector of rights
- The public's trust in the justice system, etc.

LINKING JUDICIARY AND GOOD GOVERNANCE

Judicial activism and good governance are linked in such a way which ensuring fulfilment and enforcement of the Human Rights and sustainable development. The UN Commission on Human Rights presses for following parameters to ensure good governance namely: Equal participation of people, responsibility of state to its citizens and vice versa, emphasising of accountability and transparency.

According to UN Economic and Social Commission for Asia and Pacific, it consists of eight key elements. It adheres to the rule of law and is participative, consensus-oriented, responsible, transparent, responsive, effective, and efficient. It ensures that corruption is kept to a minimum, minorities' opinions are considered, and the voices of the most vulnerable members of society are heard during the decision-making process. Additionally, it responds to the requirements of society, both now and in the future.

Democracy is considered to be the most approved form of good governance, which is been refined since time immemorial, as per the Article 25 of the International

Covenant of Civil and Political Rights, Article 3 Protocol I of European Convention on Human Rights, Article 23 of the International American Convention of Human Rights share the similar idea that every individual has right to make decisions and policy to ensure harmony and equilibrium in the society.

Effective good governance is enshrined in both Part III of the Indian Constitution's Fundamental Rights and Part IV's Directive Principles of State Policy. As a protector of the Indian Constitution and all of its rights, the court has frequently been essential in upholding them. It acts as a watchdog when there are rights abuses through sanctions and a set of regulations. It is admirable that the judiciary contributes to preserving the balance between citizens' equality and freedom. Therefore, preserving the court's independence is essential to ensure that it operates effectively and fairly, notably for the advantage of society's most disadvantaged groups.

LANDMARK CASES ON JUDICIARY AND GOOD GOVERNANCE

In the case of ***Randhir Singh v UOI,*** came for equal pay for equal work will be considered as a fundamental right enshrined under Article 14 and 16 of the Constitution. Justice P.N. Bhagwati in case of ***Hussainara Khatoon*** it was highlighted the provision of free legal services which is essential for reasonable, fair and just procedure which comes under ambit of Article 21 of the Indian Constitution.

But however, time and again, the Judiciary has overreached its limits and making interference with the legislature and the executives. In the case of ***Anwar Ali Sarkar v. State of West Bengal*** where the judiciary resorted to judicial restraint as it has taken into consideration the doctrine of Separation of powers. In ***Maneka Gandhi v Union of Indi*** dwelled upon overruling the A.K. Gopalan case while propagating the idea of due process in law.

In the case of ***S.P. Gupta v. Union of India*** it was held, he must inject flesh and blood into the dry skeleton established by the legislature and by a procedure of creative interpretation, fill it with a meaning which will harmonise, the law with the dominant principles and values and make it an acceptable, tool for delivering justice.

In ***M.C. Mehta v Union of India*** the Supreme Court came up with conversion of all diesel buses to CNG. However, when this order was not followed due to shortage of CNG, the Apex court concluded that States and the Central government have authority for annulling the order. By this case we can decipher is despite directions given by the court, the government did not act in an active way in response of this.

Hon'ble Mrs Justice Nagarathna, Judge of Supreme Court highlighted the judiciary's role in ensuring good governance derives from its guarantee to the

average person. The most important factor in attaining good government under the Constitution is the independence of judges. Every constitutional functionary, public official, and citizen must work to ensure good governance, but the judiciary plays a crucial role in doing so by giving the general people the comfort that they may still turn to constitutional courts to have their rights upheld. In order to prevent injustice, courts will continue to act with compassion, inventiveness, and fairness (superficial). The protection of civil and political rights, as well as the equality and dignity of all people, are essential components of the rule of law, which is upheld by an independent court."

FILLING THE GAP OF LEGISLATION BY JUDICIARY

In the famous case of ***Vishakha v State of Rajasthan*** There was a gap in the law or regulations regarding sexual harassment at the time the instance of sexual harassment took place. In this instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redress) Act, 2013, was implemented in addition to the sexual harassment standards.

In the case of ***L.K. Pandey v. Union of India*** where a need was felt by the judiciary for promulgating inter country adoption.

In ***Re Networking of Rivers*** The Honourable Supreme Court placed focus on the interlinking of rivers because it is associated with several issues, including land, the environment, etc. Additionally, it urged lawmakers to pass legislation governing river interlinking.

In ***Shakti Vahini v Union of India*** The court reaffirmed the crime of honour killing and outlined specific rules to address this problem. Despite being a terrible crime, honour killing is not covered by the IPC or any other relevant legislation.

In **S. Khushboo V. Kanniammal** the Supreme Court concluded, the right to live in relationship comes under the purview of Right to life and personal liberty under Article 21 of Constitution. Also, the court stated, the couples staying together, their cohabitation cannot be termed as illegal or unlawful. Despite getting legal recognition, the law or legislation is missing on live in relationships.

The Indian judicial system's paradigm serves as evidence of how the judiciary can improve government. Indian law would require the enforcement of numerous rights, regardless of those thought to have committed serious crimes. Thus, the rights given to liberty and life, as well as protections against torture, treatment that is inhumane or degrading; prohibition of assaults on the personal dignity, the right to a fair trial and due process, and the right to refrain from retrospectivity of criminal law; entitlement to all judicial protections as they exist is essential to civilised people; right to effective means of defence when accused of a crime;

right against self-incrimination; right against double jeopardy; right to presumed innocence until proven guilty in accordance with the law; right to be tried quickly, in person, by an impartial court; right to legal aid and advice; right to freedom of speech in addition to the right to freedom of thought, conscience, and religion.

The Indian judiciary has always maintained that while it may be acceptable for the courts to respect and value the executive branch's views, any State action that violates a person's fundamental human rights or personal liberties must always be subject to judicial review. This review would be supported by factually accurate evidence, relevant evidence that complies with the law, and a fair process.

CRITICAL ANALYSIS

Another reason for hostility to judicial activism is the issues with employing the court's directives as a sort of governmental policy targeting social minorities. The court may be asked to monitor the continuous activity that has a major influence on many individuals as a result of this so-called constructive activism. Due to this, it frequently imposes onerous authoritative requirements on the court. Despite this, the court proposes dubious government projects involving social minority who want a long lifespan for an itemised organisation and ongoing legal oversight. In India, actions like the ongoing investigation into the "Jain-Hawala-Dairies Scam," the ***Vineet Narain v. UOI*** by the Apex Court in drafting another writ known as a *"Continuing Mandamus,"* the setting up of positive headings relating to the removal of contaminating businesses that cause harm to the Taj Mahal and their termination, and the banning of the employment of vehicles over 15 years old and over 15 miles long in the National Capital Region.

CONCLUSION

Judicial activism entails being engaged in a matter and using one's own judgment. It includes every facet of judicial review and the fundamental rights of residents of the country. Without a doubt, the concept of judicial activism is not different from standard legal procedures. An individual who advocates for increased activity is an extremist who believes in completing tasks through option." The word "activism" means "being dynamic." Judicial activism is when the Supreme Court and other lower courts operate more like activists who force the expert to act and occasionally collaborate with the legislature, executive branch, and other organisations rather than upholding the law. It is a means of allocating equality to the disadvantaged and underprivileged residents. Legal activism is the act of obstructing authority figures in official capacities. Essentially, it happens as a result of inaction on the part of another administrative institution.

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LEGAL PROVISIONS AND POLITICAL EMPOWERMENT OF WPRS OF SCHEDULED CASTE CATEGORY IN HAJIPUR SUB-DIVISION OF VAISHALI, BIHAR

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Abstract

The 'political participation' is a major indicator of political empowerment of a section of our society. Broadly speaking it is not related to only 'Right to Vote' but to participate in decision making process, political activities, political consciousness etc. It has emerged a phenomenon of proxy leadership in case of women panchayat representatives (WPR) commonly known as 'Mukhiya Pati' phenomenon. Situation of WPRs of SC category has been more vulnerable. But as some studies show that with the passage of time since 2001, there has been gradual rise in self-assertive roles played by WPRs. As the Scheduled Castes (SC) women 'bear the triple burden of caste, class and gender', the assessment of their political empowerment seems essential for study after two decades of democratic experiments of panchayati raj in Bihar. As such it becomes an imperative to assess the actual political participation among WPRs of SC category in rural Bihar. With this view in mind, the present paper has endeavoured to assess the same at micro level. A quick survey was conducted in Hajipur Block of Vaishali District, Bihar. The aim of the study is to explore whether a quantitative rise in the participation of scheduled caste women in political decision making at grassroots level can transform into qualitative changes in the political empowerment of women.

Keywords: Political Participation, WPRs, Constitution, Bihar Panchayati Raj Act 2006, SC Women, Hajipur, Bihar

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INTRODUCTION

Deprivation, subjugation and oppression against women has been perpetuated for the ages through institutionalized methods. Scheduled Caste women among them in India have been the worst sufferers as they bear the "triple burden of caste, class and gender" (HRW: 1997). It has largely been argued that unless women are visible in power arena, their situation cannot be improved. Thanks to the introduction of new arrangements of panchayati raj institutions (PRIs) under the 73rd Constitutional Amendment that provided assured entry of women (through reservation of seats at all levels tiers of PRIs) in political arena at the grassroots level; (through reservation of seats for women at all levels tiers of PRIs). Bihar Government took the lead to increase the reservation of seats for women to fifty percent in all categories and at all tiers through provisions of reservation of 50 percent seats for women in Bihar Panchayati Raj Act 2006. Besides, the role of voluntary organisations in sensitizing them politically for participation can clearly be read (Verma and Singh: 2001). The elections of PRIs in 2001 has given space for insurgence of subaltern category including women in political sphere (Gupta: 2001). The situation of social capital among the downtrodden sections of our society has facilitated assertion among SC category (Pai: 2001). Some studies done, especially by Kumari (2016) and Kumar (2013), show that there has been gradual rise in self-assertive political participation among SC women in rural areas owing to new arrangements of PRIs, voluntarism, and social capital.

The theory of political participation proposes that all the citizens have the same opportunities to participate in the political affairs regardless of gender, caste, and other identities. Though our constitution guarantee equality to women, yet their political participation is abysmally low. As we know that the status of women is measured internationally by the participation of women in politics and their empowerment. Women remain seriously underrepresented in decision making so as to facilitate their empowerment. Women constitute half of the population, but face political discriminations irrespective of region, identity and status. The issue of political participation and empowerment of women has attracted global attention. However, participation of women, in general, in politics of India has been abysmally low. There is a huge gap between men and women in political activities beyond voting . Participation of women at the higher level is lower in comparison to their participation at the lower level of governance structure. In the domestic arena leadership and managerial skills of women are silently recognised however, they are not given space in public arena.

In the backdrop of the above situation, the present study intends to examine the state of political empowerment of SC women panchayat representatives in rural Bihar. For this purpose, a quick survey with the help of schedule was conducted among SC WPRs. 15 WPRs of SC category women from different level of PRIs,

in Hajipur Sub-Division of Vaishali district of Bihar, were interviewed to obtain their actual political participation, experiences in these institutions, the difficulties faced by them during participation. It was endeavoured to examine the link between women empowerment and gender quotas. It deals with the assessment of the barriers in their participation, orientation training of elected representatives and their nature of participation, rise in their self-confidence and socio-economic status. The universe of our study is SC women panchayat representatives of Vaishali district.

The selection of Hajipur sub-division for the study was governed by two factors – firstly, there is high concentration of SC population in the region having acute poverty and deprivation among SC women and secondly, it was convenient for the researcher in terms of establishing rapport and easy communication in their local language. Certain hypotheses were formed i.e. a) SC women are still hesitant to exert self-assertive roles in the given social system despite having intent and abilities to do so and b) their substantial economic dependence on male members of family as well as affluent sections of our society.

THE LEGAL PROVISIONS

The sources of ensured entry of women in political sphere at grassroots level are:

a) Article 15 (3) to the Constitution of India that empowers state to make special provisions for women. The constitutional mandate is recognition by the fact that the women in India need to be empowered socially and economically so as to ensure their full participation in social, economic and political activities of the country.

b) Under 73rd Constitutional Amendment, Clause (3) of Article 243D of the Constitution ensures that- not less than one third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be fulfilled by direct election in every panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. Again Clause (4) of Article 243 D of the Constitution states that The offices of the chairpersons in the Panchayats at the village or any other level shall be reserved for Scheduled Castes, Scheduled Tribes, women in such a manner as a Legislature of a State may, by law provide: Provided that the number of offices of chairpersons reserved for Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any state shall bear, as nearly may be ,the same proportion to the total number of such offices in the Panchayats. Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women.

c) Following the suggestion of the amendment acts, India reserved 33% of seats for women in local self-government, but the state of Bihar has gone ahead of this quota limit and through the Bihar Panchayati Raj Act introduced 50% of women in Panchayati Raj Institutions in 2006. Bihar Panchayati Raj Act 2006 makes the path of entry of women in political sphere smooth and assured in two ways – first, reservation of fifty percent seats of PRIs for women in all categories and at all tiers. The Act says, "As nearly as but not exceeding fifty percent of the total number of seats so reserved under Sub-section (i) shall be reserved for women belonging to Scheduled Castes, Scheduled Tribes and Backward Classes as the case may be. Such total number of seats reserved for women belonging to the Scheduled Castes, the Scheduled Tribes, the Backward Classes and unreserved category shall be allotted by rotation by the District Magistrate under the direction, control and supervision of the State Election Commission to different constituencies in a Gram Panchayat in such manner as may be prescribed by the State Election Commission." This provision has been made for both a) multiple member panchayat bodies like Gram Panchayat, Panchayat Samiti and Zila Parishad and also in standing committees at all levels and b) in case of chairpersons (single post) namely Mukhiya, Pramukh, Adhyaksha Zila Parishad, the posts will be rotated to ensure fifty percent seats for women from one constituency of Mukhiya, Sarpanch, Pramukh and Adhyaksha to the other as the case may be.

d) The institution of Gram Sabha has been made more active by the BPR Act 2006. It reads, "The Gram Sabha shall meet from time to time but not more than three months shall intervene in between any two meetings…Every meeting of the Gram Sabha shall be presided over by the Mukhiya of the concerned Gram Panchayat and in his absence by the Up-Mukhiya…The Quorum for a meeting shall be one-twentieth of the total members of the Gram Sabha." This institution gives much scope of participation of women in decision making process at village level, particularly in the areas of high concentration SC population.

As a result, more women are actively participating in these PRIs. It shows gender imbalance in Bihar's rural governance is gone, gender stereotypes are breaking, and it would gradually end apprehensions about women being projected as proxies for their husbands. Women are enjoying empowerment has started making a difference, as it will gradually help to change the male dominated climate not only in grassroots politics but also in improving their much needed participation in workforce. The reservation to women certainly contributed to their empowerment, as their voting behaviour has changed since 2006.

GROUND REALITIES

We intended to elucidate the factors that restrain and facilitate the political participation and empowerment of scheduled caste women, identify the constraints in the empowerment of the elected Scheduled Castes women as PRI members, examine the role of elected women members in putting forward the agenda of development and empowerment through Panchayati Raj Institutions, assess the reduction in exploitation, gains in self-esteem and confidence and study the remarkable changes comes in scheduled caste women representatives after actively participating in Panchayati Raj Institutions (PRI).

Data was collected mainly from primary sources by interviewing the selected respondents comprising of elected Scheduled Castes Women Representative, officials and opinion leaders. A semi structured interview schedule was prepared to obtain information covering the subjects like their awareness, the roles and responsibilities, and the reason of their political participation. Intensive interaction with the scheduled caste women representatives of Panchayati Raj Institutions of the area.

Our survey results reveal that women are aware of the functioning of the Panchayati Raj Institutions of their particular area. Elected Scheduled Castes women members and representatives have good knowledge about politics and decision making. The women had also gained good information concerning development programs. They were able to recognize the source of income of their panchayats like Government funds.

It was also observed that after politically participating in Panchayati Raj Institutions women not only interested in politics, but they are now more expressive and vocal in interacting with others. They are discussing political, social and economic issues without hesitation.

In view the responses of the Scheduled Castes Elected Women Representatives (EWR) on different issues, it was found that there is improvement in the condition of the schedule caste women from early days. They have also started realizing their importance in the community and in the society at large. They are motivating other women to participate in the political affairs and to organise themselves for pursuing gainful economic activities. The PRI with the provision for reservation to schedule castes women is likely to build integrated rural society.

It is clear from the collected data that women participation and representation in Panchayati Raj Institutions which started with shaky beginnings have definite signals of getting well established and recognised. Further, reservation for women in PRIs provided by 73rd Constitutional Amendment Act and subsequent increase in the quota with 50 per cent by Bihar Panchayati Raj Act 2006 brought an unprecedented huge number of Scheduled Caste women in governance arena.

However, WPRs have still not been able to realise their full potential as they face many challenges including patriarchy, inadequate capacities and self confidence. Equal participation and representation leads to the better functioning of Panchayati Raj Institutions and socio-economic empowerment of elected scheduled caste women representatives.

CONCLUSIONS AND SUGGESTIONS

In summary it can be said that Bihar Government is making sincere efforts to strengthen EWPRs through various initiatives, programs and policies but there are still some gaps to be bridged. In a nutshell, it can be stated that reservation for scheduled caste women is an important impetus to their political participation and holistic empowerment as it motivates them to join the mainstream politics.

While reservation for women in politics is a stride towards a more gender-just society, we need structural reforms to address the underlying social norms that limit equal footing for women. In spite of the efforts to level the terrain of politics by increasing the representation of women, Bihar continues to be plagued by gendered that perpetuate inequality. Despite state efforts to guarantee 50 per cent representation of women in panchayats, Bihar sees a practice of proxy candidacy.

This practice shows that ensuring equal participation of women in politics through reservation is not enough to empower them. So, here are some social norms that need to be addressed at the grassroots to foster gender equality.

- Promote literacy,
- Expansion of educational opportunities,
- Early marriages should be stopped,
- Women workforce participation should be increased, and
- Political awareness should be spread.

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CHANGING LIBRARY ADMINISTRATION IN INDIA: AN EXPLORATION OF POTENTIALITY OF UNESCO IN SOFTWARE UPGRADATION

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Abstract

The scenario of the library administration has vastly changed in India from personnel centric approach to software-based approach. Now almost all functions of the library administration in India including human resource management in libraries are being performed through the library software. A rational data-based analysis of performance can be easily analyzed through the library software. UNESCO's contributions to upgradation of library software conducive in Indian conditions but it remains confined only in libraries of UNESCO in India. Although, there are many library software in India like LibSys, KOHA, e-Granthalaya, WINISIS, SOUL, DSpace etc., yet most of them have been work specific. Here the real concern is that even after being informed the manufacturer of Windows operating system, they do not file a case upon the organization/ institutions to check the unauthorized use of the operating systems. They do not even take any action to defaulter different government organizations. In such situation, it becomes urgent imperative to explore the ways in which UNESCO's WINISIS software are brought in comprehensive use in Indian libraries. Thus, the present study tries to throw light on the issues in the garb of Library Administration theoretical frame work.

Keywords: Library Administration, Software, UNESCO, WINISIS, Data Base, Libraries, India

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INTRODUCTION

The present study intends to discuss the library administration in the context of library software used in India and potentialities of software developed by UNESCO. Several library software are used in India but they are task specific. KOHA and DSpace are internationally widely used software. KOHA is limited to mainly cataloguing aspects of documents which DSpace is used only for digital form of documents in a library which is more convenient to download the text of a book or journal or report. Both KOHA and DSpace are open-source software and different private vendors are giving support to both software, whenever there is any difficulty. e-Granthalaya and SOUL are government-controlled software in India. SOUL is managed by INFLIBNET (UGC) and e-Granthalaya is managed by NIC, New Delhi. CDS/ ISIS Version 1.0 came into being in 1985. UNESCO has taken steps from time to time to make CDS/ISIS compatible to the latest version of operating systems like Windows, Windows NT, Windows 2000 and Windows 10 and subsequently its nomenclature has been changed from MINISIS, MICROSIS to WINISIS. Despite such steps, the WINISIS software could not be so popularized due to lack of proper purchase of upgraded version of operating systems by different institution/ organization in India. The concept of globalization and the problem of frequent LOCKDOWN has affected the Indian economy too and the reputed institutions of even ICSSR in different states in India. Even few central universities as well as reputed organization like ADRI, Patna, NCEAR, New Delhi and so are not in a position to purchase proper operating systems to run the WINISIS software and therefore their library shifted to a new open source software like KOHA etc. It is of great concern that even after being informed the manufacturer of Windows operating system, they do not file a case upon the organization/ institutions to check the unauthorized use of the operating systems. They do not even take any action to defaulter different government organizations. Perhaps for this reason UNESCO's efforts in India could not popularize its software WINISIS and this is the reason why WINISIS software is limited to UNESCO own organizational library in India.

LIBRARY ADMINISTRATION AND SOFTWARE: THEORY AND PRAXIS

Administration can be defined as the act or process of administering, especially the management of a government or large institution in order to achieve the goals and objectives. In turn, Library Administration refers to handling internal and external administrative and leadership matters for the Libraries, which is responsible for executive leadership, strategic planning, budgeting, compliance and risk matters, library human resources, development/fundraising, and the overall operation of the libraries. In other words, library administration means managing the performance of the operations and other activities of a library and then finally making important

decisions (Mittal: 1969 and Ranganathan:2006). Now in all these stages of library administration, several software have been developed to handle the affairs of library administration right from 1960s. But such MIS (management information system) was introduced in India in 1985 that too in limited way.

UNESCO evolved methods to upgrade these software especially for developing countries like India. CDS/ ISIS (Computerized Documentation Service / Integrated Set of Information systems) was developed by International Labour Organization (ILO) in 1960s. It was used in ILO library. Hewlett Packard (HP) Company has developed the MINISIS version of it on the initiation of UNESCO. This software was made freely available to institutions and organizations in the developing countries by UNESCO (1998).

CDS/ ISIS version 1.0 for DOS (Disk Operating System) was released in 1985 in Paris at UNESCO headquarter for developing countries especially for Asia and Africa. A good number of training programme on use of CDS/ ISIS were being organized in these countries. The then INSDOC , CSIR, New Delhi (Now NISCAIR, CSIR, New Delhi) was the pioneer in India in imparting such training to SAARC countries besides African countries. Through the nodal centre(s) like NISSAT; UNESCO distributed the software free of cost to not-for-profit organizations in these countries. CDS/ ISIS user groups (Listservs) had been formed in some countries. After getting the feedback, UNESCO released new versions like Ver 2.3, 3.0, 3.0+ etc in early 1990s.

CDS/ISIS for Microsoft Windows, called WINISIS was made available in 1996 with a facility to free download from the Internet. After passing of old fashion of DOS version, the CDS/ ISIS has been made compatible with Windows version. WINISIS ver. 1.3 has been released in 1999 (UNESCO: 2001). Thereafter WINISIS ver. 1.5 has been released. Now, CDS/ ISIS software is also available through web with following nomenclature like GENISIS, WWWISIS, JAVAISIS.
WINISIS software is also available in different language like French, Spanish and English. UNESCO has collaborated with different government and the allied institutions/ universities for non-Roman script of this software like Arabic script, Thai script, Chinese script, Vietnamese script, Cyrillic script and Amharic script. In Ehiopia, Addis Ababa University played a vital role for the respective language version of this software. The Centre for Development of Advanced Computing (C-DAC), Pune has provided GIST card solution to handle Indian language scripts for this software.

DATABASE STRUCTURE AND FEATURES OF WINISIS

To promote a library functions like Acquisition, Cataloguing, Classification, Periodical Administration and circulation through WINISIS, UNESCO initiated

its efforts in 1980s. WINISIS database keeps records describing heterogeneous types of entities having only one data definition file and a single index file for all records. It may be noted that most of the data elements are common to different types of entities e.g. author profile, title profile, publisher profile and other bibliographic description of documents. Earlier COBOL programming language has been used in the databases. A single query e.g. subject headings or a subject descriptor could retrieve bibliographic records and also the name of a corporate body. Thus a database gives us an advantage of relative savings in time, effort and memory space even in the web. Since 1980s CDS/ ISIS incorporated database tools. After COBOL, PASCAL and JAVA have been adopted as programming language in WINISIS database.

Retrieval and Index facilities in WINISIS: Every word or even part of a word in every field of a record can be indexed since early version of DOS and Windows of CDS/ISIS. There are five basic indexing techniques (0,1,2,3,4) besides other indexing techniques (5,6,7,8). These indexing techniques (5-8) help in generating dictionary terms with prefixes. WINIISIS produces a single alphabetical list of the indexed terms. One and the same field can be indexed by more than one indexing technique and terms extracted from different fields like Personal Author, Corporate Author, Title words, Words from the Abstract, and Subject Descriptors can be placed in one field in the index. This is also useful in field based searches. The retrieval as well as searching of records in WINISIS databases can be – Index based or a free text search or a combination of both, e.g. Index based and a free text search. The index based search is very fast and it does not depend on the number of records in the database. Search statements can be framed using Boolean and other operators to secure high relevancy in search result.

System Parameter File: Syspar.par is a system parameter file added from ver. 2.3. The system provides by default locations for the different files created. The program checks values in Syspar.par as soon as it is loaded. Syspar.par allows set of files used by the program to be placed in different folders. Drives or devices. This system software enables CDS/ ISIS to be used as the search software for CD –ROM databases. Therefore the ver. 3.0 which has been released in 1992 called as "Network Sensitive" version.

Drag and Drop properties: In the WINISIS software, keeping the worksheet for a record open, the related index can also be opened concurrently, and terms selected from the index (name of author, subject headings can be dragged and dropped in the respective fields. Thus two or more database can be opened simultaneously

using vertical file option. Thus terms from the record or index of one database can be cut and pasted into the worksheet of the selected record of other database.

Integration of Utilities of DOS and PASCAL into WINISIS: An updated Pascal routines and functions were used in its compilation and were added to a Pascal programming library. It has enhanced the print formatting language in ISIS for Windows. Users can also develop their own Pascal programs to undertake functions which are not in the core program.

Hypertext Link facilities in WINISIS: A new feature added in WINISIS is hypertext link facilities of WINISIS records e.g. linking a field of a record to other fields in the same record; linking a record to other records in the same or other databases of WINISIS; linking files – image, text, audio, multimedia prepared with other software too; located in the same computer or in other computers in a network.

Record Structure and Record Exchange: ISO 2709 is a standard format for MARC (Machine readable Catalogue). The structure of records created by CDS-ISIS is in conformity with ISO 2709 format. Any database which structure conform this format can be easily imported into a CDS-ISIS database and vice-versa.

FEATURES OF WINISIS

When in 1989, MS Windows (Microsoft) operating system were supplied with the computer system, it became inevitable for UNESCO to develop Windows version of CSD/ ISIS and UNESCO began to develop it in 1995. ISIS for Windows has been written in a combination of languages, preferably C and C++. A program library has also been made available in its Windows version too. Graphical User Interface (GUI) for Windows, database processing, data entry and formatting language, searching and user-friendliness – are some new features of WINISIS -

Database processing : WINISIS uses the same database structure as CDS / ISIS for DOS. At present, a database created by the Windows version of the CDS / ISIS system can be processed by its DOS version. The database processing features of WINISIS are as follows :

- Opening of many databases simultaneously; same databases can be opened several times; each of these databases is displayed in a separate window; if the same database was opened in various windows each of them can display another record (or the same record shown according to another display format)
- Easy access from pull - down menu
- Maximum record size has been increased (30 KB in Windows in comparison to 8 KB in Dos)
- Global record processing operations like add a field; delete a field and replace text in a field content are available in system utilities menu

- Print format assistant automatically creates a default format
- Database Definition wizard handles the problems of complex databases

User friendliness: The following features made the WINISIS user friendly-

- Availability of different sets of system menus
- Facility to change the current profile during the session
- Introduction to new system parameters, however settings of the system parameters can be read and immediately applied by the system during the session
- From 1.3 version of WINISIS onwards, it provides a user friendly interface that enables quick online modification of various system parameters
- Presence of a help file (English language help file is always irrespective of current language of conversation

Data entry and searching: Five indexing techniques (0,1,2,3,4) are provided besides (5,6,7,8) to generate search terms with prefixes.

Formatting language: Since the version 1.0 of WINISIS, the formatting language includes some commands especially for a high level programming language, like the WHILE command and the FOR command. A "Library Administrator" module can be created in WINISIS through formatting like the "Library Administrator" module of e-Granthalaya software which controls access to the software by all the subordinate staff and also their respective works like acquisition, classification, cataloguing, circulation, serial control and article indexing.

CONCLUSIONS

The current restrictions with respect to CDS-ISIS and WINISIS are as follows: Maximum no. of data, Maximum number of databases, Maximum record size, Maximum field size and Maximum no. of field in FDT. Thus, it can be safely concluded that WINISIS is a powerful information storage for use in microcomputer in standalone or networked mode for the library administration. There were around 50,000 installations in the world, mostly in developing countries but the UNESCO does not give support to users, who use its old version and due to lack of funds the developing libraries do not adopt new version of WINISIS and switch over to less costly and efficient software like KOHA etc. Thus, UNESCO planning to promote this software in developing countries of Asia and Africa has become a failure and so library administrator switch to other software in these developing countries especially in SAARC countries. Therefore, UNESCO should take care of the reason for less use of WINISIS in library administration in India. There is urgent need to make appropriate laws to check the software piracy by private players even intruding in government agencies with unauthorized software.

APPENDIX

Abbreviations

ADRI : Asian Development Research Institute

CD-ROM : Compact Disk – Read Only Memory

CDS/ ISIS: Computerised Documentation Service / Integrated Set of Information Systems

COBOL : Common Business Oriented Language

CSIR: Council of Scientific & Industrial Research

DOS : Disk Operating System

ICSSR : Indian Council of Social Science Research

INFLIBNET: Information and Library Network Centre

JAVAISIS: JAVA based CDS/ ISIS

NCEAR : National Council of Applied Economic Research

NIC: National Informatics Centre

NISCAIR: National Institute of Science Communication and Information Resources

PASCAL : (Programming language named for Blaise Pascal)

SOUL : Software for Universities Libraries

UGC : University Grants Commission

UNESCO : United Nations Educational, Scientific and Cultural Organization

WINISIS : Windows version of CDS/ISIS software

WWWISIS: World Wide Web based CDS/ ISIS

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E-COURTS: REDUCTION OF JUDICIAL STRESS IN LOWER COURTS

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Abstract

Administration of justice is the most significant attribute of any democratic state. It is very crucial because it determines the quality of the life of its citizens. It is also pivotal to our democratic system in a way that it prevents crime, protects the citizens, provides rehabilitation services, and ensures equal justice for everyone. The crisis of Covid-19 pandemic hit our lives and almost every sphere has been digitized including the education sector, health sector, professional and corporate offices, and the judiciary system remains no exception. In the Judiciary, cases were started to be administered on the online platform or through virtual courts. It is to be noted that the Indian Judiciary is highly under stress due to the rising pendency of cases, and inadequate infrastructure. In the present paper, the most common issue of judicial stress including the pendency of cases will be discussed in the context of how virtual courts can help in reducing the judicial stress in the lower judiciary system.

Keywords: Administration of Justice, Virtual Courts, Judicial Stress, State, Citizens

INTRODUCTION

Right to justice is a constitutional right and there shouldn't be any compromise in the delivery of justice to the citizens. In contemporary times, having a possible course of action to a quick, affordable, and sufficient dispute settlement system is everything to get the right to justice. It is to be noted that justice should not only

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be done but it should also be look like be done. In present times, the increasing pendency of cases and delaying of cases have hampered the efficiency of the judiciary system and have also shaken the faith of the citizens in the system to an extent. The administration system is the bedrock of the country and if that bedrock is not stable then the entire democracy is susceptible to being unsustainable. It is considered as pivotal to democracy. The judiciary system in any country should be so strong that any aggrieved citizen should be confident enough that justice will be provided to him in a very effective manner. Justice doing an activity is a very crucial task as it intends to decide on the life and liberty of the citizens. However, the reality is something different. The judiciary system is not capable enough to overcome its issues like fulfilling vacancies, a regular presence in the courts, and how citizens will be confident enough to get justice and to be served.

VIRTUAL COURTS

Based on the National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary, the concept of e-courts emerged in 2005. The concept of virtual courts came into the limelight, especially during the unprecedented outbreak of COVID 19 pandemic. Keeping in mind the norms of maintaining social distance and avoiding physical contact, physical manifestations of courts rooms were shut down and the adjudication of cases was being done through e-courts or virtual courts. The virtual court is a system in which there is an elimination of the physical presence of the litigants or lawyer and the judge and rather they show their presence through virtual mode and carry on the process of adjudication of cases. The process of communication is conducted through electronic mode and rather payment of fees will also be done on online mode only. Moreover, the status of the cases can also be tracked through the established channel for the purpose. Filling of cases through software is available in 21 High Courts and 18000 district Courts in India. The virtual court is an advancement over the physical courtroom system. Even the Parliamentary committee has recommended that inculcation of computer courses in Law course prepare the future lawyer at their foundation level only to get comfortable and adaptable with the digitized mode.

After getting a brief overview of what virtual courts is all about it becomes a question does it solve the problem? Can virtual courts be a helping hand in disposing of the pendency of cases in district courts? It is to be noted that as per the reports till March, there are 17 such courts in the 13 states of the country, over 1.32 crore cases are handled by these courts and in more than 22 lakh cases, an online fine of Rs.229 crore has been realized till 03.03.2022. It is to be noted that access to justice is not just a question of equity but also the stress in the judicial system has affected the economy and has hampered its efficiency in dispute resolution.

DISTRICT COURTS

District courts are established under the state government at the local level. There is a district Court established for every district or more than one district together. The primary objective is to adjudicate justice at the local level. The Apex judicial body of the state i.e., the High Court is the administrative and judicial controller of the district and subordinate courts. Every district's highest court is the district and session judge. Apart from the High Court of the State, the District and Session Judge is the primary court of original civil jurisdiction, with jurisdiction in civil proceedings derived principally from the code of civil procedure. The district judge, who is selected by the state governor on the advice of the state chief justice, rules over each district court.

In India, there is a total of 672 district courts. Below district courts, there is a three-tier system of courts. On the civil side, Civil Judge (Junior Division) is the lowest level and on the criminal side, Judicial Magistrate is designated as the lowest court. Apart from the highest and lowest court at the district level, there is also a court at the intermediary level in the hierarchy. The court is known as the Court of Civil Judge (Senior Division) for adjudication of civil matters and criminal matters, the Court of Chief Judicial Magistrate is there. According to the workload, besides the district judge, a number of additional district judges and assistant district judges is also appointed.

The original side and appellate side in civil and criminal matters is the jurisdiction of the district and subordinate courts. The district court exercises its appellate jurisdiction over subordinate courts on civil and criminal matters. Jurisdiction is acquired from the criminal procedure code on all criminal matters. District courts can make appeals directly to the High Court, even if the parties are not satisfied with the High Court's decision they can approach the Supreme Court.

JUDICIAL STRESS IN THE DISTRICT COURTS

In all the district courts across the country, 36percent of cases are pendency for more than three years. The computerization of courts was initiated by National Informatics Centre in 1990 and it has been pursuing it to bring speedy justice to the citizen of the country. It has also been seen that the 59percent of internet users has increased in the country. E-courts' website characterizes several litigant-centric services at their disposal, to mention a few of them tracking the status of their cases. It is a well-known thing to know that in court cases in India, the process itself is the punishment. As per the Judicial Stress Index, which use to encapsulate the pendency rate, it is shown that Uttar Pradesh, Bihar, and Orissa are the most highly stressed courts in the country. It is to be noted that 45 districts out of 50 districts lie in these three states only. It is to be noted that out of the 10 most stressed district

courts, 7 district courts are in Bihar alone. 5 out of 10 least stressed district courts are in Haryana.

In Deoria, Uttar Pradesh has the highest pendency rate at 67percent along with 19 other cities. Other than this, 67percent in Angul and 64percent in Khurda in Odisha are the second and third districts with increasing pendency cases.

Moreover, other than the pendency of cases, judicial stress is also caused due to poor infrastructure. Adequate infrastructure measures include amenities like security, accessibility, and proper sanitation facilities. According to the survey held by Vidhi Centre by Legal Policy in 2018, there is a remarkable variation within the states in infrastructure. Urbanized cities and state capitals score low in the infrastructure deficit as they offer better than the rest of the cities. District Courts that are encapsulated within the top 25percent in having better infrastructure are Haryana, Punjab, Meghalaya, and Kerala. On the other hand, Rajasthan, Bihar, and Punjab list at the bottom.

Population-adjusted ratio (cases per 10,000) also accounts for building up the stress in the lower judiciary system. In the list of 10, the highest court load is in 4 district courts of Delhi- National Capital Region (NCR). Having low pendency rates and better infrastructure comparatively, Maharashtra and Kerala can deal with cases in a more efficient manner.

Apart from this, judicial stress has also affected the mental health of the officials working in the environment. They are trapped in an environment of conflict and distress, disturbing while having to deal with treachery, violence, and abuse on a daily basis. It is to be noted that judicial officers in the lower court are the most stressed ones as the burden of pendency of cases is the highest in the lower judiciary. Social isolation, lack of autonomy, and competence have affected them psychologically. In a study conducted in the United States, it was found that the most appropriate source to derive their happiness is the satisfaction of three basic needs i.e., autonomy, competence, and relatedness. Judicial officers who have closer and more trustworthy relationships at work experience less stress comparatively.

VIRTUAL COURT AND REDUCING JUDICIAL STRESS

With the popular belief of the government that digitization is the solution to all the problems of governance, the virtual courts are also the need of the hour. The technology-driven solution being cheaper and time effective will help in solving the issues like insurance, traffic challan, and other claims that clog the system. It is important to determine what kind of cases are amenable to going online to avoid unintended consequences. It is to be noted that enough consideration should also be given to the choice of participants whether they are comfortable with the online hearing system. Issues like a repeated adjournment, absentees of witnesses, and

traveling costs are some of the issues which can be overcome by the virtual court's system.

Alone technology will not do anything, it is the people and strong manpower behind curtains that make any system successful. A mere setup of a virtual system is not enough, proper infrastructure that enhances the adjudication process, proper connectivity in rural areas that ensures smooth adjudication throughout the process, proper training should be provided to the judges, lawyers, and the citizens so that they can get comfortable with the new system. The success of the virtual system depends on the supposition that everyone gets equal access to internet connectivity. It is to be noted that not only courts, but even several law firms have also adopted this system to carry out business meetings, hearings, and arbitration through regular use of virtual mode. In the district and subordinate courts alone, there is a rising pendency of cases of two crores as per the National Judicial Data Grid (NJDG). It is to be noted that 22,667 judges are present in the district and subordinate courts while around 6,000 posts are lying vacant. Our system still needs to work upon the judge's population ratio. We are having just 21 judges per million people. From the mid-90s, the initial phase when information technology was adopted, there was a listing of the case on the computer, posting of judgment on the internet, filing of petitions, however hearing of cases were not conducted because lawyers were disinclined to hear the cases virtually. Covid 19 has been a boon in the way that it has provided the opportunity for hearing the cases online and with that, all the issues faced by the advocates and citizens through physical courtrooms were eliminated at once. Though virtual system comes with their challenges with due time these challenges can be handled effectively because the advantages surely outweigh the disadvantages of the system.

It is to be noted that even in Covid, the virtual system has functioned and the cases were heard during this time then it has been possible only because we already have the vigorous infrastructure set up by that time, training has also been provided, consideration of stakeholders has also been done. However, if this system is to be adopted for the long run then accordingly training and infrastructure should be provided.

PROSPECTS OF VIRTUAL COURTS IN THE SYSTEM

The use of Artificial Intelligence and by reducing the cost of traveling and being able to see other people in the comfort of sitting in their homes and even more than one case can be heard in a day with the use of Information Technology are some of the perks of using technology for settlements of cases. Due to this, accessibility to all the courts throughout the country becomes possible.

Adjudication of cases through online mode has become a new normal due to the advent of pandemics. Virtual adjudication becomes an attractive option as it increases the flexibility in the system, uses of advancement of technologies, and by being time and cost-effective. Under the mentorship of the former chairman of the Supreme Court e-committee Justice DY Chandrachud, there is an obligation on the side of the Supreme Court to use the process of e-filing of cases to enhance efficiency. A seven-member committee of Supreme Court Judges presided by N.V. Ramana has determined not to fall back into the physical court system and to adopt a virtual system. During pandemic, several counties have adopted the virtual court system, for example, China, Singapore, Canada, Netherlands, A healthy balance can be maintained between the virtual court and open court system by determining what kind of cases are to be heard online and what kind of cases still needs to be heard through the physical manifestation because hearing of cases including heinous crimes should be heard in the courtrooms only. It will ensure smooth running without compromising on access to justice.

At present every state is using the theory's application, for example, Video is being used by Supreme Court whereas Zoom is being used by Kerala High Court, Delhi High Court is using WebEx. However, it is highly recommended that a uniform application is required at all levels to maintain the reliability of the system. The Supreme court has been working nonstop even after the hit of the pandemic which underlines the very importance of our judicial system on which the entire nation is dependent. Reportedly, virtual courts have 15,596 cases and it has disposed of around 4,300 cases there is a representation of the cases by the advocates that have hit the number 50,000. Moreover, using technology in the Judicial system can also be an inflection phase in demographic advantage as the adoption of more and more technology in solving legal problems will increase the interest of the engineers in this field.

Moreover, there is already an adoption of virtual court as a permanent system in some appellate tribunals for example, National Company Law Appellate Tribunal (NCLAT), Intellectual Property Appellate Board (IPAB) and they do require the physical presence of the legal representatives. Even the virtual court system presents a much more transparent outlook as it led judges to utilize their allotted time with better efficiency, lesser resources, and more comfortability.

CONCLUSION

Administration of Justice and having a court system is all about providing service and not about its existence in physical form. What is more important is to make sure to provide justice to the citizens. A thoroughly administered system not only improves the lives of citizens but also contributes to social and economic

development. It is to be noted that means is not as important as the end. Ensuring access to justice is also crucial for the development of the economy with a rapid dispute resolution mechanism rather than being just an issue of equity. According to the economic survey (2020-2021), it is to be noted that the judiciary and its impact is not bounded to the judiciary system itself but improvement in this section has a major effect on the ease of doing business in India. The Judiciary system anywhere in the world affects the mental health of the citizens, the lawyers, and the Judges of the state. This concern cannot be undermined that in India, due to judicial stress the district judges and the citizens are getting affected mentally and poor mental health can cripple the economic system.

The survey further mentioned that it can be one of the most profitable investments made in India. So, to reap the benefits of such investments, it is recommended to prioritize those districts that are facing high judicial stress. The Parliamentary Committee in their reports in 2020 recommended that Virtual Courts should be continued in resolving the cases post-pandemic also.

It is to be noted that undoubtedly, there is a need for improvement in the Virtual Court system on a constant mode. Having all the impediments and challenges, still, 15,000 cases were being heard successfully through Virtual mode in the Supreme Court of India. As per the requirements of contemporary times and to go with the saying that modern problems require modern solutions it is suggested that virtual courts should be adopted to reduce the paperwork and workload related to that and also to make it cheaper and easy to access for the citizens. It will also improve the mental health of the officials as they are the most affected people due to judicial stress. Improvement in mental health will also reflect in the work as it increases efficiency and productivity. Although virtual courts cannot be a total replacement for the existing system of courts they can be a helping hand to a great extent through which we can bring judicial stress under control, and then gradually we can adopt the system in a full-fledged mode by overcoming its challenges over time. Lawyers and Judges may also find it easy to administer the case or even more than one case by the comfort of sitting at their home or wherever they are during that time and that will reduce the delay in the hearing of cases.

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DIGITAL SIGNATURES: A STUDY IN THE CONTEXT OF LAW AND EFFECTIVE DELIVERY OF PUBLIC SERVICE

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Abstract

The present article puts light on the concept of Digital Signature Certificate and its use in Government departments for the benefit of public at large. Digital Signature Certificates are a modern-day concept to bring about overall efficiency in the Government administration. DSC is part of e-governance model of the Government. DSC tokens are used for the purpose of digitally signing any document by putting the password set by the user pertaining to the DSC token. It is a substitute for manual signatures. The evidentiary value of DSC is at par with manual signatures. DSC cannot be replicated by any other person since it is protected by way of a public key and private key. In the present article we look at the importance, advantages, and the disadvantages of using DSC in Government departments.

Keywords: Digital Signatures, Public administration, I T Act, Private Key, Public Key

INTRODUCTION

The concept of e-governance has revolutionized the way of governments function. With the implementation of online services, the effort is being made to reach the benefits to the last person on the lines of 'Antodaya Tatva'. The use of physical copies has considerably given way to digital records. In such records, the most crucial aspect pertains to the signature on any document. The process of putting signature on any document signifies that the issuer has agreed to the contents

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and thereby it provides evidence value and its being authentic to any document. Signatures can either be manual or digital. The former is traditional way whereas the latter is contemporary way which is known as the Digital Signatures. Hence Digital Signatures provides a means to do work through e-governance between the Government machinery and the administered subjects i.e., the public at large. Technology is a dynamic concept which keeps on improving and hence the latest security techniques can help in avoiding any mischievous acts from anti-social elements. Hence it is the duty of the government machinery to ensure that the public data is secured properly. The selection of type of digital signatures must be in correlation to the administrative need of the government machinery. It is pertinent to note that even at the international level like the European Union, the concept of e-signatures and e-seal has been recognized in the realm of public administration.

MEANING OF DIGITAL SIGNATURES CERTIFICATES

Digital Signature Certificate (DSC) is a kind of electronic signature which is used to put authenticity on any document which has been signed as such by the signatory. The DSC certifies the identity of the signatory, and the digital signature cannot be copied by any person. It also certifies that the original content of the message has not been edited after the signature. It can be put on any electronic document including messages, letters, contracts, etc. It contains the name of the signatory along with the timestamp and place of signature when the document was digitally signed. Such digitally signed instruments are legally enforceable on the signatory as in case of manual signature. It can be said that the digital signatures are like biometric impression of any person which cannot be copied. The DSC has been recognized under the Information Technology Act 2000 in India. The digital signatures are based on primary ingredient known as public key infrastructure which has global acceptance and recognition along with highest level of security. Though the words digital signature and electronic signature are used interchangeably, yet these are different terms as per the Information Technology Act. Though the digital signature is one of the modes of electronic signatures, but it is based on cryptographic system which consists of binary digits 0 and 1. All the digital signatures in India are issued by the Controller of Certifying Authorities which is also known as CCA which is the principal authority governing digital signatures and authentication in India. The role of CCA is immense considering the application of digital certificates in the sphere of e-commerce and also pertaining to the modern-day concept of e-governance in India.

LAW GOVERNING DSC IN INDIA

The Information Technology Act 2000 governs the use of digital signatures in India. The concept of public key infrastructure is based on the theory of public key cryptology. It is primarily based on the concept of public key and private key. The former is open code where is the latter is confidential. Either of the two keys can be used for encrypting or signing the instrument whereas to decrypt the document it requires the second key. Public key infrastructure is consisting of software, all encryption modes, and security protection service applicable to the concerned Institute. The primary job of CCA is to ensure compliance of the IT Act and infuse confidence in the e-signatures in India. The CCA issues licenses to the CA which are the certifying agencies or authorities. CCA is also the supervising agency for the certifying authorities. The CCA certifies about the technology and the practices followed by the CA who issues the DSC. All the standards that are required to be followed by the certifying authorities is specified by the CCA. Other functions of the CCA includes dispute redressal pertaining to the CA. The CCA is also bound to do and conduct audit pertaining to the infrastructure relating to the DSC. The root certifying authority performs the function of issuing public key certificates to the CA. This enables the certifying authorities to issue the DSC to the general public applicants. There is also provision for appointment of sub certifying authorities. The Sub certifying authority functions under the certifying authority. There cannot be more than one Sub certifying authority under the main certifying authority. If any certifying authority has a sub certifying authority then the entity certificates are issued by the Sub certifying authorities. However there is no such restriction for issue of timestamp certificate and also the code signing certificate.

SCOPE OF USE OF DSC IN DIFFERENT DEPARTMENTS

Administration and Enforcement of Law

The use of DSC in public administration should be understood in the context of various administrative subjects and echelons. The general Administration Department is the most important wing of the governments which puts in place and controls the overall functioning of the Government machinery. Use of DSC in general administration saves time and money and enhances efficiency. It helps reducing the cost of the stationary involved in the process of storing physical files and fast communication for approval and circulation. Use of Digital Signatures for Law enforcement agencies can help in smooth policing in the areas of lodging FIRs, investigation, filing chargesheets in courts and non-crime policing etc. in a transparent manner. This helps earn people's trust in police administration. It is useful in delivery of justice by courts in various areas of judicial procedures like

signing and issuing the judgments, making them easily accessible to the parties, and communicating them to concerned parties. Once the Digital Signature is applied, the orders, judgment, instructions etc. cannot be modified or doctors.

Education, Agriculture, and Industrial Sectors

It has special significance in education sector by way of encouraging the young generation to use it in managing the records related to the students like number, examinations, results, certificates, grievance redressal etc. In short it facilitates the MIS in education. Similarly, it becomes important for efficient delivery of health services like maintaining the data pertaining to the various schemes, beneficiary cards, medical records, health insurance, medical claim reimbursement etc. quickly. All the case papers pertaining to the patients can be managed in the system by way of digital signatures thereby maintaining confidentiality and monitored online. In case of agriculture sector, the DSC facilitates the farmers getting authentic information about subsidies, modes of benefit, grants etc. of several schemes launched by the government and empowers them to raise for their such rights. Tourism is one more such industry where the concept of digital signatures can be implemented. All the applications for various permits, passes which are required by the taxi operators, bus operators can be made fully online in an authentic shape. This helps in ease in business and accrue earnings. In industry sector, it becomes helpful from getting environmental clearance and installation to storage and marketing of the produce. All such procedures which are required to completed during the lifetime of the industrial units can be simplified and provided with Single Window System with the help of digital signatures. All the permissions can also be obtained and updated on the dashboard of the industrial units.

Registration and Certification

People require various kinds of registration like registration of cooperative and participative societies, Trusts etc. and certificates of right from marriage registration to partnership deeds. By DSCs, all these authentications become easy to obtain and save citizens to wander from pillar to posts. The identity of the applicant would be certified by the digital signatures itself. Once the benefit of digital signatures are made known to the public, it will help to bring in more support from the public as well.

Land Reforms, Revenue and Public Works: All the registration services provided by the Government like registration of land from the Sub Registrar office. With the DSCs, the work of revenue generation by government in an effective way. Certain services like the land record certificates, survey plans, tehsildar inspection reports, etc .can be sent by email to the applicants with the use of digital signatures . This will

ensure that there is less paper work and also faster service delivery. The updation of land records can also be made time bound with the help of digitization and use of digital signatures. The DSCs come to the rescue of many formalities involved in public works like the tendering process and bids for the Government contracts which takes considerable time when files moves from one office to another. The use of digital signatures can help in bringing into reality the concept of e-files wherein there would be digital files duly signed with the help of digital signatures of the officers concerned and the file would move from one office to another at the click of a button on the computer.

TECHNICAL BENEFITS OF DSC

The Digital Signatures gives conclusive proof pertaining to the document signed and the identity of the signatory. In view of same, the evidentiary value of the document is to the highest level and the document cannot be denied in evidence. Efficiency and authenticity become guaranteed and also available in time. It checks the red tapeism.

It ensures transparency and generates people's trust in government and its agencies.

Except in cases of confidential matters the matters of public importance can be disclosed to the general public which they have a right to know. The Government officials will also function in a transparent manner if e- governance and digital signatures are employed in their day to day functioning of offices. The use of digital signatures and e- governance help in bringing about accountability in Government offices. The delivery of public services in a time bound manner can be attained by use of digital techniques such as Digital Signature Certificates. Accountability can be at all levels of public functionaries including the clerical staff and the officers involved in the day-to-day work. This will help in getting overall efficiency in Government functioning and further any dereliction can be viewed seriously.

The very purpose of use of computers in Government is to ensure better manpower use in Government functioning in order to perform the tasks efficiently and in a time bound manner along with bringing in economy in the functioning . Human resource development is most important concept in public functioning since the computers installed in the offices will be operated by the manpower employed. Use of digital signatures and by giving proper training to the personnel will help in bringing about optimum use of human resource in the Government. Accordingly the work force if in surplus can be re-directed to the deficit departments whereby the overall efficiency of the Government will improve.

Digital signatures save transit costs as it is made available electronically. Since DSC being applied, there is minimum requirement to make any enquiry

as regards the authenticity of the document. This also helps in eliminating the delays in Government functioning. There is no need to personally scan the signed documents since the digital certificates are applied to the document directly. The digital signatures cannot be easily replicated and are safeguarded by public and private keys. Unlike handwritten signatures there is minimum chances that the digital signatures of any person can be impersonated. Only safeguard that should be taken by the authorised signatory is that he should keep the token in safe custody and should not disclose the password of the digital signature to any person whatsoever.

LEGAL OPINION ON DSCS

In the case of State Bank of India v. Ajay Kumar Sood: the Honorable Supreme Court has also held that digital signatures should be used for signing judgments. The court has held that the judgments should be accessible to all members of the society including persons with disability. This observation was made by the Honorable Supreme Court when it was hearing an appeal filed against the decision of the Hon'ble High Court of Himachal Pradesh. The court has observed that the judgments of the court should be accessible and also readable to majority of the public. Certain observations were also raised pertaining to watermarks that were put on the judgments which hamper the reading of the judgments by visually disabled person through help of screen readers. The court has further observed that the orders should be signed digitally and uploaded directly on the system. The process of printing, scanning and uploading of the judgments is pointless since it leads to wastage of time and resources. Another important point raised in the judgment by the Honorable Supreme Court was that the judge should mention in the judgment detail facts, the issues involved in the case and further the judgment should be in paragraph form duly numbered, containing index which will help to make it accessible to persons with disability as well.

DRAWBACKS OF DSC IN GOVERNMENT DEPARTMENTS

Along with the benefits of digital signatures there are also drawbacks pertaining to it. some of the drawbacks are listed as follows:

1. Change of functionaries: Major hurdle pertaining to use of digital signatures in Government departments is pertaining to transfers and postings of the Government officials. The digital signatures are issued in the name of the person and not pertaining to the designation of the office. Hence in case when there are transfers of officers, new incumbent should possess his digital signature and if he does not have his digital signature then the whole process of providing the

services through e governance by use of DSC comes to a standstill till the time the new incumbent obtains his Digital Signature Certificate.

2. Designated agency: Another drawback pertaining to use of digital signatures in Government departments is pertaining to absence of a designated agency for providing the Digital Signature Certificates to the Government officers. In case a designated agency is appointed for the purpose of providing Digital Signature Certificate to the Government employees and also for the renewal of the expired Digital Signature Certificates then this will help in lessening the time taken for getting the new Digital Signature Certificates and also pertaining to renewal of the DSC.
3. Acceptance: The basic problem pertaining to digital signatures is pertaining to the acceptance of the digitally signed documents in various offices, companies etc. Whenever a digitally signed certificate is used to sign a document and the document gets printed on a paper, then only a sentence appears on it that a document is digitally signed. Due to absence of a simple way to verify the authenticity of the signed document, the public generally find it problematic to submit such certificates to the other offices since there is absence of stamps, seals on the said document.
4. Lack of awareness: Digital Signature Certificate is a modern-day concept and there is absence of a large-scale awareness pertaining to it in the society and more particularly so in the rural areas. The concept is slowly getting publicity with the use of digital payments, internet facilities in the rural areas also.
5. Password issues: There is limited provision for OTP based signature which becomes one of the drawbacks of Digital Signature Certificate. The password used for the digital signature is required to be stored secretly by the holder of the DSC. Incase the token and the password is leaked to any person then it can lead to serious consequences. Hence the physical safety of the token is very important along with the password. The use of OTP for the purpose of signature would have given additional security for the token.

In the case of Daujee Abhushan Bhandar Pvt. Ltd. v. Union of India And 2 Others, the Hon'ble High Court of Allahabad has clarified mere signing documents (such as notice under the Income Tax Act) with digital signatures does not amount to issuance of the notice. When a digital signature is put on any document then it becomes a signed document. However, the said signed document needs to be informed to the addressee. Mere signing the document by way of DSC does not amount to sending of the notice. The notice should actually go from the signatory to the addressee. Hence the process of dispatch of the signed document is very important even when a document is signed by way of a Digital Signature Certificate.

CONCLUSION AND SUGGESTIONS

We can safely conclude that the process of use of digital signature can lead to simplification of legal and administrative procedures. If used properly, DSC can go a long way in simplification of procedures and making life easy of the common man. The process of manual intervention can be minimized by way of Digital Signature Certificate. Similarly a lot of stationary can be saved and a lot of unwanted physical files can be disposed off since the records can be made online. Evidentiary value of a DSC signed document is same as compared to the manual signed document. The process of manually signing and then scanning and uploading can be avoided if the document is directly signed by way of a DSC. Along with the advantages it should also be taken into consideration that no technology is full proof and hence any technology will definitely have some defects which has to be negated by way of appropriate measures. DSC should be used in a prudent manner and its safety should be always safeguarded by the signatory using it. DSC if properly used can save lot of time, energy and resources of the Government, enhancing efficiency and general delivery of services to the public at large. DSC can be used in almost all the departments of the Government.

The digital signatures should be used in such a manner that benefit is given to the end user directly without any intermediary or any hurdle in between the Government and the public. This will ensure that there is less time taken for disposal of the work. Before using and implementing DSC it should be ensured that the remote areas have proper connectivity since everything is based on internet in today's world. The Government should look into the aspect of employing its own agency for issuance of DSC to the public functionaries in order to ensure that there is less time taken for issuance of the certificates to the public functionaries. This will help during the transfers of the Government officials, and the new official can get his Digital Signature Certificate in an instant manner without any time waste. The Government should also explore the possibility of putting a QR scan code so that the public can verify the DSC through online mode which will help in bringing about public confidence and also ensure the authenticity of the signed document. Government should also undertake various awareness drives in order to bring about publicity pertaining to the use of DSC particularly in the remote areas. The awareness drive should focus more on the benefits that the public at large can gain by use of DSC and more particularly with the Government functionaries. The awareness drives can be undertaken with the help of NGOs as well as schools, colleges and other educational institutions so that the students also get an insight into the benefits of the use of Digital Signature Certificates. To conclude we can safely say that DSC if used properly can be a boon for the society.

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END NOTES

1. Civil Appeal No 5305 of 2022 (arising out of SLP (C) No 4038 of 2021) before the Hon'ble Supreme Court of India
2. Writ Tax No. 78 of 2022 before the Hon'ble High Court of Judicature at Allahabad

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RESEARCH NOTE ON

OPERATIONALISING ORGANISATIONAL WISDOM IN THE INDIAN LAW AND GOVERNANCE: A DIGITISATION, DIGITALISATION AND DIGITAL TRANSFORMATION PERSPECTIVE

Ana Sinha* and Pooja Lakhanpal**

Abstract

The rapid technological adoption and adaptation in Indian state's programmes – both at the policy making and policy implementation stages – has set a benchmark in comparison to similar efforts by other states around the world. We use the organisational wisdom concept to understand this process from three avenues of digitisation, digitalisation and digital transformation in Indian law and governance at the implementation level from four vantage points of – time, contextual relevance, power, and dialogue. We argue that these vantage points build up the aesthetic appeal of these policies and instruments result in their implementation and execution in the governance practices.

Keywords: Organisational wisdom, law, governance, technology adaptation, aesthetics, digitisation, digitalisation, digital transformation, etc.

The 'Digital India' campaign at its outset in 2015 primarily looked at what we today call digitisation – connecting the rural areas with high- speed internet, improving digital literacy and building digital infrastructure for governance and services on demand and the digital empowerment of all citizens. Today, however, this approach has evolved to an extent that we are not only looking at a digitised India, but also a digitalised and digitally transformed India, especially in law and governance mechanisms.

There are key differences between digitisation, digitalisation and digital transformation. Digitisation is a computerisation of a conventional process, such

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as, applying online for a scholarship, or maintaining a bank account online, or filing an affidavit online. Digitalisation occurs when a manual process is improved using technological usage, such as, virtual court hearing, live case status, and DigiLocker mechanism making the process faster and cost efficient. Digital transformation, would however, occurs when the working values and consumer proposition changes with the technological opportunities, such as bringing in citizen participation as stakeholders in policy formulation, or online legal aid services.

The above example in its simplicity shows the sheer potential of technological penetration in governance, despite all that has been achieved in the last decades. The basic technological infrastructure and awareness localised in the late twentieth century and the early 2000s led to a service sector based economic growth, despite international shocks and pressures of the 2008 recession and globalised logistics networking as part of digitisation initiatives. In the early NDA government of 2014-19, the focus remained primarily on digital literacy and digital infrastructure in terms of open source APIs, JAM integration, direct benefit transfer (DBT), UPI interface, optical fibre networks, etc as part of digitisation and digitalisation approaches. However, the second term of the NDA government post 2019- saw a rapid interest in Artificial Intelligence (AI), 5G and blockchain technologies, to ramp up the speed, efficiency and effectiveness of the governance in terms of its very structure and its processes as part of digital transformation. The decluttering of digital initiatives with respect to payments and information, as suitable for a common person's usage irrespective of socio-economic or educational backgrounds, has helped in developing an aesthetic appeal for replication and adaptation of the rapidly evolving technologies in all aspects of governance.

An important question to be asked here therefore is why has this transformation in governance approach been internalised in the government? The digitisation and digitalisation initiatives from a broader view takes away the local authority as it makes most of the verification and authorisation capacities of the human officials tech based, making their presence redundant in many cases.

Although the global rise of technological, particular internet and AI based digital governance can be posited as one of the knowledge and learning based argument from a resource point of view, it would be remiss of us to not acknowledge the organisational wisdom aspect of Indian governance in the recent years.

Traditionally defined as the judgment, selection and use of specific knowledge for a specific context, organisational wisdom in the present sense, also takes into account the aesthetic appeal of certain decisions in their contextual suitability with time and ability to replicate and execute them using power and dialogue. Organisational wisdom goes beyond the mere application of trending governance approaches. It also takes into account the integration of individual wisdom and

socio-institutional processes unique and local to the particular geography and time.

In the last ten years alone, with the Covid 19 pandemic, frequent natural disasters, growing population, growing digitally literate young demographic, geopolitical threats, among other reasons, there has been a growing need for time saving, cost efficient, resource efficient, speedy governance, where both the timing and the time period have had critically important roles in deciding the scope of state's role and influence in responding to these challenges within its legal permissibility. Especially during the Covid-19 pandemic, real time geo-spatial tracking and surveillance of both the patients, and the vaccination programmes have proved critically important in limiting and restricting the infection rates. The National Judicial Data Grid (NJDG), an online platform, provides information on pending cases and their status across various courts in India. It allows litigants, lawyers, and judges to track the progress of their cases online, reducing the need for physical presence in courts and increasing transparency and accountability. In combination with the virtual courts, these two mechanisms were helpful in dispensing with litigations even during the pandemic. Thus, time and context have established the urgency of the appeal of widespread digital transformation in reimagining governance.

The execution however, has been bound by both power and dialogue. The use of technology, especially AI and generative AI is useful in establishing and using the state's power and authority in its governance. The E-courts project aims to digitize all court processes and make them paperless. It includes the provision of electronic case management systems, e-filing of cases, and electronic display boards in courts, among other things. This project has been implemented in over 16,000 courts across the country and has significantly reduced the backlog of cases. eSahayataa is an online grievance redressal portal that allows citizens to file complaints related to law and governance issues, including corruption, delay in service delivery, and harassment. This portal allows citizens to track the status of their complaints online and receive updates on the actions taken by government officials. Crime and Criminal Tracking Network and Systems (CCTNS) is a nationwide network of interconnected police stations and databases that allows for the sharing of information on crimes and criminals across different states and jurisdictions. This system can help in improving the efficiency and effectiveness of law enforcement and reducing crime.

The geographical distance between the national capital and border areas notwithstanding, frequent virtual meetings, direct benefit transfers, and a replication of the commercial organisation like customer support service from the government has helped in integrating the population as a whole within the governance patterns of the state irrespective of geography and resources. The social media usage as a

support service in key resources of railways, education, roadways, water, food, and electricity among many others have brought in the citizen participation in the policymaking and implementation of the government. Invitation of suggestions from citizens as stakeholders and interaction of the government with the citizens on social media platforms is helpful in recognising their role in the governance of the state and bridges the gap between the state and its citizens. The Indian governance model in this sense is unique among other nations in bringing in the citizen participation more actively at all its stages.

The organisational wisdom approach is helpful in recognising, understanding and analysing governance patterns in the Indian government. The traditional markers of assessing governance also need modernising. The e-governance is now not a part of the state ecosystem, but is the state ecosystem, as part of the digital transformation in the recent years. Its assessment therefore needs more agility and nuance beyond the macroeconomic fundamentals to look into the nitty gritties of AI and machine learning as tools in analysing textual and visual evidences offered during litigations, generative AI usage as legal aid tools, technological adoption rates, contingency based adaptation rates of digital government portals and windows, privacy and surveillance balance ratios in digital identification interfaces, new technology introduction rates, server architecture cost to benefit ratios by district, village, city, and state, and complaint to disbursal speed ratios in citizen engagement among others.

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