MR LAW REVIEW

MANAV RACHNA STUDENTS' LAW REVIEW

HUMAN RIGHTS

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MANAV RACHNA
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FACULTY OF LAW

Manav Rachna University

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FOREWORD

MR Students' Law Review is an initiative of the students at the Faculty of Law, Manav Rachna University, for the promotion of a legal environment at the department, and to advance legal ideas. The Law Review will publish research papers, articles, policy and legislative critiques and commentaries, case briefs and comments, and book reviews inter alia.

As the Head of the Department, it gives me immense pleasure to see the students, with the support from faculty and mentors, are trying to widen the scope of their knowledge. The journal aims to ensure dissemination of legal research in education and reflect upon the high aspirations of the legal profession in contemporary society. In keeping with the finest traditions of legal spirit, vision and mission of the Manav Rachna University and its Faculty of Law, students we have taken this initiative.

The MR Students' Law Review focuses on providing students with opportunities to be involved in writing and editing articles in a structured manner. This, in turn, shall help them appreciate the rigours of writing cogently and help them develop critical thinking skills. I hope the Law Review will give the necessary fillip to the students and scholars who want to share their ideas with the wider world.

I commend the committee members, board of advisors and the authors, who have contributed to the first volume of the Law Review for their initiative, vision and efforts. We look forward to your submissions for future volumes too. With the fervent hope that this journal shall become something more than just the sum of its parts I present this journal to you, the reader!

Prof. Versha Vahini
Associate Dean and HoD, Faculty of Law-MRU

EDITOR'S NOTE

The Manav Rachna Students' Law Review is a student-run organization whose primary purpose is to publish a journal of legal scholarship. It shall be published twice a year. All the editorial and organizational decisions are taken by the students.

The idea behind this law review was to provide students with opportunities to be involved in editing legal material, practicing critical thinking, writing in a wide array of legal fields, and being a member of the latitudinarian community of students who are publishing high-quality legal research and reviews devoted to specific substantive areas of the law.

This Law Review accepts contributions on all areas of law, and even issues in social sciences that bear a legal slant. Undergraduate and postgraduate students of any discipline are invited to contribute. Submissions from full-time doctoral students may also be considered for publication, All publications are at the sole discretion of the editorial board

Priyanka Walter
B.A.LL.B. (Batch 2019)

Content

Articles

Essays

COMPENSATORY MEASURES TO RESITUATE LIVES OF VICTIMS OF CRIME

By Sanmati Rathore[1]*

ABSTRACT

The compensation to the victims of crime is not only a legal obligation over the state but also a moral responsibility of society towards the sufferer of the wrong. The research herein has attempted to give clear understanding regarding the concept of compensation to victims, its origin and the implication of the concept in the modern criminology. The research has also significantly presented the current schemes that India and USA criminal justice system has adopted to grant the complete justice to victim and its family members. The whole jurisprudence behind the theory of victim compensation points towards reducing the risk of revictimization and to make the victim overcome from the losses he/she has suffered mentally, physically and economically.

INTRODUCTION

"The carriage of justice is often misconceived to halt at the signature on a judgment; however, the true destination lies at the lap of the victim."

The term 'Justice' has often been misinterpreted by the term 'Judgement'. The quote above clearly implicates that justice is not what the Court or a Judge declares, but it lies in the ultimate satisfaction of the victim of the crime that has been committed to him by the society. It is not only the court that preserves the legacy of justice, but the society and the state play a major duty in supporting the pillars of justice. The question always comes under the debatable radar that whether the state is only responsible for registering the complaint or case, does the responsibility of state and police ends after the investigation and interrogation or does the court only holds its duty till the announcement of sentence or conviction. The truth is that the efficiency of justice mechanism of a particular nation is represented by the completely satisfied victim.

The term *'Victimology'* is defined as the study of the victims of crime and the psychological effects of their experience. And by victim compensation, it refers to payment made to the victim of the crime by the offender himself or by the government. The concept of victim compensation is however different from the theory of restitution. The punitive concept of restitution ideally focuses on the potential of rehabilitation while the compensatory concept of payments either in form of money or services to victim focuses on spreading the losses occurred to the victim due to the crime against him.

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RESEARCH QUESTION

i. What are the needs and requirements of additional compensation to the victim apart from the legal remedy?
ii. Whether the existing compensation scheme of India and USA are adequate to provide the justice to victims?
iii. What all are the necessary changes and alteration that need to be made in the existing compensation scheme to satisfy the losses that victim suffered mentally or physically?

LITERATURE REVIEW

The concept has its own long history and relevance. The social and economic evolution of the society at large has accelerated the ideology which had its deep root in the early literatures and writings. Since the origin of human rights, the concern towards the victim has its own place in the mind of makers of human rights theories and jurisprudence.

A review report by Minnesota Law Review has a descriptive mention of the concept in it which significantly talked about the historical background of the victim compensation and how the concept initially embedded into the earliest document of human rights i.e., The Code of Hammurabi. Previously, the concept of compensation has been practiced at the wide extent. It was 1800's when Jeremy Bentham proposed the theory of restitution; however, in few the cases he has advocated the compensatory measures to provide the ultimate remedy to the victim. The collabourative study by ***Burt and Rudman*** has a special mention of the historical background of the theory and which has pointed that later with passage of time the concept got its place in the jurisprudential autonomy of various positivists and has also secured its position in the discussions of criminology.

In India the primary pillar of the theory is Article 21 of the Constitution of India which provides the base to the reformative principle of justice as V N Shukla has rightly mentioned in his book. However, the legislative body that looks after the law making has inserted the definition of the term 'victim' and the provisions and procedure regarding the scheme of the compensation to the victims in the Code of Criminal Procedure, 1973. The complete and enhance knowledge of the procedural mechanism of the concept can be exerted from the book of C.K. Takwani and along with it, the paper published in Manupatra by Vibha Anand also gives the in-depth study of the issue and recommendations that has been made by the committees that were formed to evaluate the relevance of the concept in the modern criminology.

The concept is not prevalent only in India but USA, UK and other countries of the world that immensely follows the Universal human rights norms also includes the talks and recommendations regarding the compensations to victim. The concept is even more prominent in USA as Kenneth R. Feiberg in his book has penned down about the worth of the lives of survivors of the 9/11 queens tower attack and the amount that need to be paid to such victims as per their "needs".

RESEARCH GAP

i. The literatures that were gone through does consist of crystal ideas regarding the need of the scheme and its importance in improving the existing criminal justice system but has lost its way in the political domination over the scheme.

ii. A need differs from person to person and with priorities, circumstances and changes in economic, political and social factors and agreeing the fact that it is not easy to figure the quantitative equation of the "needs" of a person who has been victimized of a crime. The literature available has failed to classify the quantitative figure of the "needs" of the victims claiming the compensations.

iii. The literatures only focus on the vulnerability of the "victimized group" but does not efforts to emphasis on the other side of the coin, where sometimes somewhere person gets accused and convicted wrongfully due to misjudgement of the court for the crime that has not been committed by him and the victim gets the undeserving compensation.

SCOPES AND LIMITATIONS

The research is centralized towards the losses that a victim suffers and the amount of compensation he gets which is adequately enough to satisfy the losses that the victim has gone through. The compensation not only covers the penny payment but also the other help and support that the survivor is going to need to live with the dignity. The study has attempted to compare the execution mechanism of the compensatory scheme in two major countries that is India and USA and has also tried to project the cases where they had failed to implicate the concept for its proper execution. The research has broadly covered the analysis of the recommendations that has been made by the various law committees that were formed to look after the victim compensation scheme till date and has also identified the suggestions and recommendations that has been adopted by the government of these countries in its existing policies to compensate the loss bearers.

Additionally due to the pandemic scenario in hand, the researcher has done not conduct the private survey and interviews of the victims who has though been promise by the government for the adequate compensation however weren't consequently paid.

HISTORICAL BACKGROUND OF THE CONCEPT OF VICTIM COMPENSATION

Since the development of human rights, the documents and declaration has never forgotten to requisite the concept of victim compensation as an essential element of justice and which is why since back then, the theory of restitution of the life of the victim has tries to fill the vacuum in the grey area of criminology. It all started with the principle of restitution, the jurisprudence regarding about the reimbursement to the victim and his/her family by the offender and if the offender is not capable of reimbursement, the duty lies in the hands of the state. However, the primary motive behind the theory has been misplaced since it was meant to protect the offender from violent retaliation by the victim or the community as opposed to the compensating victim. Gradually, the founding principles of law with the passage

of time developed the theory of compensation and have also recognized it as the right of victim where they can not only claim the legal remedy but also seek for the additional compensation from the State.

The oldest document of human rights that is the Hammurabi Code had the slide touch of the theory that was limited only to the crime of robbery and murder wherein if the person gets robbed, he could seek for the compensatory remedy from the city mayor of the city where the robbery took place and if the person got murdered then he can expect the mayor of the city to pay a limited monetary compensation to the family of the victim or any other survivor of the victim. The code of Hammurabi must have been the first ever statute that talked about the "Victim's right" in the history after which the glance of the victim's right was seen in Mosaic Code in the teaching of Moses of Israel. The Mosaic Law codifies that if any person suffers harm because of any dangerous animal, the owner of the animal is held liable for the paying the compensation to the aggrieved person the Mosaic Code of Israel is the foundation for the modern rule of liability and provided a forward push to the concept of compensation.

Later in mid 90's, the concept of damages emerged and gave the support hand to the progressive criminal justice system. During this time, the non-cognizable offence such as robbery, murder or maiming were punished with the imprisonment and monetary penalty by of the guilty person however other minor crimes such as fraud, money laundering, mob lynching etc. used to be considered under the discretionary money penalty where the damages were assessed by the courts or tribunals and the proper compensation used to be decided by the authorities which were paid to the sufferers.

NEED AND RELEVANCE OF VICTIM COMPENSATION IN MODERN CRIMINOLOGY

Until the emergence of the concept of victimology, the criminal justice system used to be the offender-based system. Previously the victim's used to be shredded a little attention in the widespread regime of criminology but with passage of time the matter of 'need' has transformed into the matter of 'rights' for the victims. During 1960's the wide-broadcasted movements like women's rights and civil rights took place and gave emergence to rights to claim damage for the crime committed against women like rape, sexual victimization, domestic violence etc.

The question arises is when the court assures the legal justice to the victim then what is the need of additional compensation by the state or opposite party. It came out that the "victim" is not only the person who has suffered harm including physical and mental injury and emotional suffering but also includes the immediate family or deponents of the person who have suffered harm in intervening to assist victims in distress or to prevent victimization. Everyone has the right to an effective remedy by the competent national or international tribunals for acts violating the fundamental rights granted to him by the Constitution or by law in order to run the modern criminal justice mechanism and to secure justice at all ends.

VICTIM COMPENSATION SCHEME IN INDIA

The Constitution of India has been provided the responsibility to guarantee certain fundamental right to all the citizens. It contains provisions that mandate *inter alia* that the state shall take necessary measures to "secure the right to public assistance in case of disablement and other cases of unnecessary want." Also, the fundamental duties provided under Article 51-A can be considered be the inspiration for the concept of victimology in India. Under the Constitution, criminal jurisdiction belongs concurrently to the central and state governments. The Definition of Victim in Indian law is under Code of Criminal Procedure, section 2(wa), 1973 that states that:

> *"Victim is a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir".*

The concept of compensation to the victim embedded its roots in Indian law back in 1898. The Code of Criminal Procedure 1898 directed that the court on its own discretion may issue the direction for the payments of compensation to any person for any loss or injury caused to him by the offence if the substantial compensation is recoverable by such person in a civil court. Later in 1969, the 41st Law Commission Report was submitted which remarkably stated that the "Substantial" should be excluded because the word has demarcated the gravity of the compensability and after number of debates and based on the recommendation the revised bill named 'the Code of Criminal Procedure Bill, 1970' was passed that introduced Section 357 in the code. The amendment added a sub-clause (3) that provides the payment of compensation to victim of crime when the fine does not form a part of sentence and on the satisfaction of the court it may order the accused to pay the compensation to the victim for the losses occurred. The Apex Court held that the grant of compensation to the victim of crime is equally a part of just sentencing and the trial judge must record the reasons when it is not possible to grant compensation to the victim of a crime. Various law reports and judgements have mentioned the requirement of the national and state level commissions fund schemes for the victims. The 154th law commission report has stated that "the State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases where the offence is proved".

In India, the provisions that regulates the compensation rights to victims are contained in Section 357, 357 (1), 357 (2), 357 (3), 357 A, 358, 359 and 250 of the code of criminal procedure, 1973 where under Section 357 it is the offender who is made to pay compensation however the amended provision of Section 357A held the responsibility to the state to pay the compensation to the victim in accordance with the state's victim compensation scheme wherein, the state can provide interim compensation to the victim as listed under the state' victim compensation scheme,

regardless of whether the case has resulted in conviction. The question arises is what if the case dismissed or the accused person gets acquitted. Does that change the fact that the victim of the crime has suffered the loss? The Malimath Committee in year 2003 in this regard has recommended to establish the Victim compensation fund and suggested that the State to be held responsible and obligated to compensate the victim, whether the offender is apprehended or convicted or acquitted. And the result is that each state formulated a victim compensation scheme as provide under Section 357 A.

VICTIM COMPENSATION SCHEME IN USA

In United States, victimology has been given a magnificent position in the world of criminal justice system. The theory has achieved a special recognition and the adaptation of the scheme found to be due to separate public fund for compensating the victims. The nation holds a separate statue that governs the entire compensation scheme named the Victim of Crime Act 1992 which talks about the compensation for the monetary losses that victim has suffered, however, the Act has failed to provide the compensation to the victims for the emotional pain and sufferings but for the record, there are few laws in America that includes the "mental harm" and "emotional injuries" under the definition of losses and sufferings and compensates the victims who go through such situations.

In USA, Texas Criminal Procedural Code precludes the injuries that are non-physical, stating that it can be claimed fraudulently which can cost the extra burden on the administrations to prove and pay them. The state and federal government both effectively works in framing policies to ensure the adequate compensation to the victims. There are various policies and programme in existence that promotes and advocates the proper governance of the scheme in USA like The California compensation programme 1965, Additional Victim Support Services and other compensation programmes took place in various states of US. The federal and state government makes funds for compensating victims when the situation occurs, and the government finds it necessary.

The Basic Principle of Victim states that the victims have right to receive the compensation and restitution and it should include the return of money and property due to which the victim suffered loss if the case is about civil wrong and if the case is criminal wrong then the compensation consists of not only the monetary payment to the victim either by the offender or the State Government but also the rehabilitation cost that includes medical treatment, court proceeding cost, and mental health treatment cost.

ANALYSIS AND FINDINGS

Internationally, the concept has got an open arm welcome in the legislatures of different countries like US, UK, Netherland, Germany, France, India etc. The Basic Principles analysed the concept in three parts that are: Restitution, Compensation and Satisfaction of the victim and for which all the three branches of democracy that is legislative,

executive and judiciary are responsible for its proper implication to secure the justice.

After comparing the current victim compensation scheme with the predetermined objective behind the introduction of the concept, it can be analysed that the problem is not in the policy framing or resource allocation, but the problem is in its implications. The state or central government make policies and generate funds regarding the same, but the money gets lost in between the political and administrative hierarchy. The landmark case of *Rudal Shah V. State of Bihar* in 2013, the Apex court of India stated that despite the existing statutory provision and scheme of compensation of the state, the victims of crimes rarely receive any compensation and the court made it mandatory for trial court to consider the grant of interim compensation to the victims. Compensatory relief is the right of victim to get the purpose to the life after the loss is done to him. The compensation should not only the remedy for the civil or criminal wrongs, but it should also remediate the violation of fundamental rights of the victims. In *M.C. Mehta v. Union of India***,** the Hon'ble Supreme Court held that the power under Article 32 is not confined to preventive measures when fundamental rights are violated or threatened to be violated but it also extends to remedial measures including compensation when the rights are already violated.

The issues regarding implications are allocation of responsibility between the state and central or federal government. The major lacuna of the policy implication is that it has been left vulnerable to the flexibility of interpretation for the courts. It is found that the victim's compensation scheme does have potential to reduce the risk of revictimization. With the possible benefits of the compensation to the victims and a positive experience with the program it is possible that applicant's satisfaction and compensation may lead to a reduction in the risk of being revictimized and it could emotionally and physically rebalance the individual who suffered the losses.

The research works analysed the entire jurisprudence behind the compensation policy and answered the questions of the research.

i. What are the needs and requirements of additional compensation to the victim apart from the legal remedy? The victim has suffered not only because of the offender but also because of the negligence of the society and state and only legal conviction or punishment of the offender is not sufficient for the victim to provide them the ultimate justice.

ii. Whether the existing compensation scheme of India and USA are adequate to provide the justice to victims? The answer is a clear No. the policies and schemes are adequate on the papers, but the non-implication or poor implication of the law is an abuse to the law. The compensation schemes need to be re-evaluated and the government requires figuring the way for the proper execution of the policies that are made.

SUGGESTIONS

The answer to the question of the research work is that Victim Compensation Scheme in both the countries is to be given a greater

importance and significance than the available legislative norms and policies. Following are suggestions came up after the research analysis:

i. Spreading awareness of the available rights to the people who suffer losses because of the crime committed against him.
ii. State and central government must look after the changing needs and requirements of the victims in the nation and accordingly make requiring policies.
iii. Separate Victim Compensation Machinery to be formed that would look after the proper execution of the policies made.
iv. Human Rights Commission should step ahead to investigate the breaking point and lacunas that the scheme faces so that the rights of victims can be awarded to them.
v. An effective redressal to be provided to the victim where it is found that the compensation is denied by any competent authority.
vi. No victim to be left helpless by the law and justice whether the offender gets conviction or not.

CONCLUSION

The harsh punitive measures are not the sole way to provide the justice to the victim but to reimburse the losses whether mental or physical is the best alternative to gain the faith of victim. Its old saying that "what's done is done" and if one can't change what is done, the best way to overcome the situation is to figure the alternative way out. However, law cannot wash its hand from the wrong happened to anyone by the harm that has been caused, the Courts have potential to provide both the legal remedy and restitution. Victim is a vulnerable part of the criminology and must be treated with the special preference. Victim may live with the fact that the offender of his losses is roaming freely but he may not live with the losses he suffered and after all it's the State's responsibility to reduce the damages and sufferings as much as it can.

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COUNTER HUMAN TRAFFICKING: A HUMAN RIGHTS APPROACH

By Alisha Syali[*2]*

ABSTRACT

Under this paper, the author shall attempt to explore the "human rights-based approach" in this regard which could prove to be a more prudent solution in solving the menace of human trafficking globally by treating any such incident as a violation of human rights of an individual instead of solely countering human trafficking by treating it as a law-and-order issue and punishing the criminals by force and might.

As per the "human rights-based approach", we shall study various measures undertaken on national, regional and international levels and ensure these measures are grounded in international human rights law and result in ensuring the rights and obligations to as many people as possible.

INTROUCTION

Human trafficking also called trafficking in persons, is a social evil that involves the illegal transportation of human beings by the means of force or deception and uses the exploited individuals as forced labour, sexual slaves, or other such activities. It has taken the shape of a major humanitarian crisis affecting millions of people every year.

Trafficking has taken the shape of slavery in modern times. Trafficking in modern times is acting as a facilitator for many problems globally such as bonded labour, forced labour, child labour, and prostitution and sex work. The connection between human rights and trafficking though increasingly being acknowledged in the present times but this connection has still not properly found its place in international intervention against human trafficking. For example, cross-border trafficking is often thought of as an immigration issue and the human rights aspect of this issue is not brough in question. Over the past decade, however, an international consensus has developed around the need for a rights-based approach to addressing human trafficking. The UN General Assembly and the Human Rights Council have advocated such an approach, as have relevant human rights mechanisms including special procedures and treaty bodies. In line with this perspective, the Office of the High Commissioner for Human Rights (OHCHR) advocates a victim-centred approach to trafficking, which emphasizes the primacy of human rights in efforts to prevent and address trafficking.

Adopting a human right–centric policy implies that national, regional, and international responses to trafficking be prominently based on the rights and obligations under various treaties of international human rights law.

As per the human rights approach to trafficking, when approaching an incident of human trafficking whatsoever may be its cause, our priority shall be safeguarding the human rights of the victim and not the cause or purpose of trafficking such as human trafficking for sexual exploitation or forced labour among others. This approach shall

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instead of solely focusing on the criminal aspect of the incident, also focuses on the rights of the victim and it is considered that the rights of the victims are often ignored while dealing with such incidents.

Further, at its heart, the human rights approach works under the guiding principle of humanity and believes that all victims of human trafficking must without any discrimination with respect to gender, age, or field of work and it must be ensured that equal access to aid mechanisms, protection, and justice is ensured for them.

All these arguments in favour of bringing the human rights aspect of trafficking to the centre stage of the movement with respect to combating human trafficking certainly do not mean that that the legal machinery regarding bringing the criminals to justice is of any less important and without it, our response would not be complete and efficient. Therefore, it is of utmost importance that while framing laws and policies as a part of our legal response to human trafficking, we shall ensure that apart from focusing on punishing the perpetrators of these heinous crimes, we must also think about the ways in which we would be able to give justice in true sense to the victims as well giving due consideration to their peculiar conditions by providing them compensation and rehabilitation, thus, not compromising on the human rights aspect of the whole issue.

Thus, if the international community, genuinely wants to actually find a solution with respect to human trafficking must approach the same in a more comprehensive manner and approaching the problem with a human rights approach which will help us in solving the concern not superficially but as we would be approaching the same and targeting it at its very roots, the solution at which we will arrive at through this process will be long lasting and will help us deal with such issue in a more efficient and comprehensive manner.

The key points of this approach include the following:

i. In the fight against human trafficking, countries across the globe must substantially focus on the rights of the victims of human trafficking and plan of action to ensure that their rights and liabilities are secured whilst ensuring that the criminals involved in this crime are properly brought to justice and are penalized as per the due process of law. Also, it should be kept in mind that after the rescue of any such victims stuck in the vicious cycle of trafficking are not just physically restrained but also have been stripped off of their dignity and have been suffering owing to the constant abuse inflicted upon them, thus it is of utmost importance that they are not just left on their own pursuant to their rescue but must be helped gain autonomy over their own body and equipped with their rights under the international human rights framework.
ii. It is essential that the international community recognizes who is the victim of the crime or the requisite rights-holders in this regard such as the trafficked persons and even the potential victims, among others and recognize their entitlements or rights under not only the

domestic legal framework but also under the international law. It also must be seen that the institutions or governments responsible in this regard are clearly identified so that the legal machinery is able to efficiently enforce the rights and obligations in question.

iii. International Human Rights Law should be kept as a guiding principle when formulating standards and legal framework for the purpose of combating human trafficking. Some of the key principles in this regard could be equality and non-discrimination, the universality of rights, and the rule of law.

TRAFFICKING AS A VIOLATION OF HUMAN RIGHTS AND THE RIGHT TO DIGNITY

Humankind's journey has been filled with constant struggle and even though there have been quite a lot of advancements with respect to making a person's life more comfortable, its struggles have not reduced drastically, rather they have just transformed into other forms, and has become so much more than just protecting themselves from mere physical pain inflicted upon them by fatal war weapons.

Nowadays we must battle to protect our dignity as well as be wary from other crimes such as organ smuggling, experimental dummy, slavery, forced prostitution, etc., thereby, affecting millions of people across the world. Combating these challenges are of utmost importance as without ensuring dignity for every human person without taking into consideration his background or circumstances in which he is stuck, human civilization cannot survive and flourish in a true sense.

Whenever we deal with persons involved in it, we treat them as mere objects or pawns and fail to firstly treat them as human beings or victims (survivors), as a result, what happens is that the authorities take them into their custody and conduct criminal trials, treating them as criminals without any sort of sensitivity towards their conditions and their human rights. This process shoves them into an endless and vicious cycle of human trafficking as they are not given their due respect as a human being, nor does anyone think about their rehabilitation or works to ensure that they are pulled out of this vicious cycle and then go on to accommodate in a respectable life.

The right to dignity has been a very important right bestowed upon the members of humankind and one of the most important international documents in this regard is the- the Universal Declaration of Human Rights. The declaration across its length contains various provisions concerning human dignity such as a golden thread. For example, The Preamble itself provides for consideration to dignity twice: '*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world …* ', further, it also says: ' *Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have*

determined to promote social progress and better standards of life in larger freedoms…'.

Article 1 also revolves around the theme of human dignity and goes on to state that: '*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*'

Some of the other examples are; Article 22 of the Constitution of India which deals with the matter of social security and says: 'Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. Further, Article 23(3), talks about the dignity context of the right to work.

This shows that all the efforts which a human undertakes throughout his life are to ensure that he leads a respected and dignified life and various international human rights instruments along with various international organizations constantly strive to ensure for peoples around the world are ensured their right to dignity.

Thus, it can be said that it is high time that we acknowledge, that "Right to Dignified Life" is one of the most important aspects of the International Human Rights jurisprudence and thus when it comes to solving a major humanitarian crisis- Human Trafficking, we simply cannot afford to ignore this matter and it shall also help the international community to have a long-lasting solution and not a forced solution which doesn't last.

HUMAN RIGHTS AND TRAFFICKING UNDER INTERNATIONAL LEGAL INSTRUMENT

The International Human rights legal framework emphasizes and recognizes stringently that human beings shall not be sold. 'The 1926 Convention to Suppress the Slave Trade and Slavery' is a prudent example displaying the spirit of the international human rights jurisprudence taking a stand against this practice which plays a major role in facilitating human trafficking across the world. The basic premise behind the same is that this practice is inherently unlawful and immoral as it involves one individual snatching away the legal personality, dignity and basic rights which reside in an individual owing to the principle of humanity, from another. Further, discrimination on the grounds of race or sex is also prohibited. It demands equal or at least certain key rights for aliens.

Also, when it comes to combating human trafficking, a comprehensive plan of action is required, thus, following this line the International Human Rights Law declares the practices of forced labour, labour due to debt, marriage by force, arbitrary detention of individuals and the sexual exploitation of women and children of commercial nature and freedom of movement, which is one of the most crucial aspects in this regard.

Another, significant facet of the practice of human trafficking which must not be ignored is forced labour. Very often, people are forced to continue to work with their

employers involuntarily due to a debt which they were unable to pay and thus are exploited under poor conditions. A recourse under human rights law which prohibits forced labour, as laid down under the ILO 'Convention 29' as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." This exploitation exists in the form of- Slavery, servitude, child sexual exploitation, forced marriage, among others.

It must be noted that human trafficking is not a straightforward problem but that it runs deep with other problems attached with it, for a reasonable policy formation, the root caused must be addressed. In furtherance of this statement, we must understand that there exist several treaties which separately targets the various facets of human trafficking as framing one single treaty in this regard is a task of its own.

Such treaties can lie in diverse areas such as slavery and the slave trade; or forced labour; child labour; the rights of women; the rights of children, migrant workers, and persons with disabilities, as well as more general treaties dealing with civil and political rights or economic, social, and cultural rights, are all applicable to trafficking. Further, certain treaties which primarily deal with respect to crime control and prevention, such as the 'UN Convention Against Transnational Organized Crime' and 'the UN Convention Against Corruption', and even the 'Statute of the International Criminal Court'. Further, the UNGA adopted 'the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children' in 2000 which specifically deals with respect to prevention and punishment regarding human trafficking. This proved to be a major positive development in this regard.

Also, some other sources in the arena of international law which can prove to be torchbearers in this regard are customary law and general principles and the decisions of international tribunals. An example in this regard can be that of judgement in the case of '*Rantsev v. Cyprus and Russia'*, as decided by the European Court of Human Rights in 2009. In this landmark judgment, the ECHR held that 'human trafficking' was well covered under the scope of Article 4 (prohibiting slavery, servitude and forced labour) of the '*European Convention'*. The Court held that "the positive obligations upon States to investigate allegations of trafficking and to implement measures to prevent and protect people from human trafficking".

Also documents in the arena of soft law, for example, '*Recommended Principles and Guidelines'*, or 'the UN Special Rapporteur on Trafficking', also play a vital role in guiding the States with respect to regulating the conduct in matters involving human trafficking.

STATE RESPONSIBILITY REGARDING HUMAN TRAFFICKING

Often it is seen that States are hesitant to own up to their obligations with respect to the trafficking of human beings and do not pay much heed to the concept that human rights are an intrinsic part of combating the evil of human trafficking. The reasoning often given by states is that the basic responsibility behind human trafficking lies with the private criminal individuals and or organizations

involved in this crime and the state is devoid of any culpability in this regard and that they have used every possible safeguard to prevent the same.

Further, apart from the unwillingness of states to assume responsibility, another major hurdle is that of determination of liability or deciding that who is responsible for the functioning of the criminal nexus behind trafficking which is of international nature. This very nature of trafficking makes the task of fixing responsibility rather difficult.

The 'Commentary on the Recommended Principles and Guidelines on Human Rights and Human Trafficking' as produced by 'Office of High Commissioner for Human Rights' is an impressive document which composes of detailed discussions pertaining to various principles and rules with an aim to settle certain guidelines which would help in deciding the specific obligation of states regarding trafficking. It essentially states that States shall be responsible with respect to fulfilling their obligations as undertaken through various tools under international law and specifically under human rights law, they also must be made answerable for any acts or omissions in this regard.

Also, States will not be permitted to easily evade their responsibility when it comes to individual acts regarding trafficking and determination of responsibility in such cases. The States will be responsible in cases involving individual culpability if found that they indeed possessed the power to influence the use of an alternative which could have resulted in a better situation, but they didn't. In such a situation, it is considered that the responsibility instead of lying with the individual actor, lies with the State as it could have played a more proactive and positive role in this regard but chose not to, this determination of responsibility will be considered in comparison to the relevant established standards.

The main substantive obligations on States with respect to trafficking and the rights that are found or implied in these obligations can be listed as follows:

i. The States have the obligation to "identify, protect, and support" victims of trafficking.
ii. States are to understand that being the victims of human trafficking, they must be given an adequate amount of aid in the form of rescue, rehabilitation, and other forms of legal and financial assistance, etc., along with protection from any wrongful prosecution as well.
iii. Further, it is duly recognized that trafficking is a rather complex issue and thus it cannot be dealt with in a one-dimensional manner. Therefore, along while addressing human rights concerns in this regard, it must be ensured that criminals involved in trafficking must be properly punished through the States' criminal justice system.
iv. It also should be ensured that while taking steps in a comprehensive manner against human trafficking, the quest to ensure already existing rights (such as a prohibition on discrimination, right to dignity, etc.).

CONCLUSION

It is important to understand that at its core trafficking is a case of human rights

violation. We tend to forget that apart from law-and-order concerns, trafficking involves the victim being devoid of any means to protect himself in any manner and is stripped of his dignity which is a concept situated at the core of the principle of humanity. Therefore, it would be rather wrong to separate human rights concerns from the process of trafficking.

In furtherance of this discussion surrounding the matter, the international community apart from addressing the legal side of the concern, also give due attention and devote significant efforts towards the human rights of the victims concerned as well.

Further, it is to be investigated that the human rights approach is a comprehensive approach covering the various aspects involved in this regard instead of having a myopic point of view. This nature of the human rights approach makes it effective in real life as well, thereby helping the victims also alongside giving a long-lasting solution in this regard. This discussion pertaining to the adoption of the human rights approach towards the issue of trafficking is even more important in the times when actual humans stuck in such hellish circumstances are given less priority than headlines and sensational breaking news.

In such a situation, instead of giving relief and solace to the victims stuck in huge trafficking rackets, both the national and international institutional framework as well as the society, display an insensitive attitude towards them which not only associates untoward stigma towards them but also makes it almost impossible to retain even basic human rights, let alone a normal life.

It can be reasonably said that the protection of human rights is an integral task if we want to secure justice for the victims of trafficking in a true sense and breaking the vicious cycle of trafficking by the formulation and application of the approach in the jurisprudence pertaining to the trafficking of human beings, we can achieve a legal framework that is not superficial and is sustainable in nature.

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INTERNET: A FUNDAMENTAL RIGHT

By Manan Gupta[*3]*

ABSTRACT

Internet, a fundamental right ka abstract: A famous quote by Bill Gates is "The internet is becoming the town square for the global village of tomorrow". The in depth meaning of the quote is that the internet will be like the daily bread and butter for the human beings without which no one will be able to survive. This article is about the internet and its importance and how it has become fundamental right now after a long stretch. It also deals with why the internet has been a bread and butter for a human being and why it should be a fundamental right not only for the people of India but also for the people all over the world.

WHAT DOES THE CONSTITUTION SAY?

Man, Government and Society are in every way related to each other. We are living in a democratic country in which every natural as well as artificial entity(companies, for example) are given fundamental rights. In a democratic state like ours that is India, "The government is for the people, by the people and for the people". The government/state gives rights and duties to every person who is citizen or non-citizen of India. Article 13 to 21 talks about the fundamental rights that are given by the state to citizens and non-citizens, and they can enjoy them but pertaining with some restrictions to these rights. During restrictions, internet plays an important role by providing people with the news, knowledge, etc. that is going on nationally as well as internationally. Such information proves to be useful most of the times and not only during emergencies but in everyday lives of the people. Internet plays an important role as it helps to entertain the people, to educate them as well as to make people aware about the current happenings that happened around the globe. In the case of *PUCL v. Union of India*, it was stated that the Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution of India. It was particularly stated that the word 'freedom' means freeness to express one's opinion by speech, writing, picture or in some other manner.

The framework of internet access as a moral benefit in need of meaningful constitutional recourse was first developed in the late 1990s and, more notably, at the First World Summit on the Information Society in Geneva in 2003. Due to this it created an awareness of the use of information and communication technologies throughout the world. We know that internet is the most powerful and important instrument of the countries like India and not only India it is a most effective instrument throughout the world. For example, US who is known as the progenitor of the major changes around the globe is also the one which accompanied the technological revolution and has placed the world at the mercy of one click. ARPAnet was the brainchild which was used by the US military

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which was the origin of the internet in 1969. Internet puts a huge impact on the lives of the people in every type of society in every country. According to statistics of 2017 about 34.4% of the population uses internet. According to a report of 2016, India is supposed to have 730 million users by the end of the year 2020. According to a report, of 2010 a lot of people seem to have emphasized that internet access should be a fundamental right. We know that the internet has a large importance in lives of the people. Many of the people earn their bread through the platform of internet only. According to a report of a newspaper from 2014 there are about 350 shutdowns till now. These shutdowns cost India a huge every time. If we take recent examples, then the best example will be of Madhya Pradesh, Uttar Pradesh, Meghalaya, Manipur and other states who called off their internet services because of the protest CAA bill. Recent example which has longest shutdown is seen in Kashmir, Jammu and Kashmir having a shutdown of 213 days between 4 August 2019 and 4 March 2020. The second longest was seen in Kargil for 145 days. Internet has positive as well as negative aspects it's on the user how he/she uses it. We know that everything has its own positive and negative points. These internet shutdowns are a backdrop, and everyone strongly argues against it. Many a time in history it is argued on platforms whether everyone should have right to internet or not. After many such arguments it was resulted out that right to internet should be made fundamental right as it will help to run and participate more effectively and will facilitate citizens as well as non-citizens.

RIGHT TO INTERNET

Right to Internet is a concept which says that every citizen should have a right to access the Internet in order to exercise so that no one is deprived of his right. Right to internet is also known as right to broadband and freedom to connect. The internet is and should be viewed as a fundamental right in order to practice and enjoy their right to access information, freedom of speech and opinion, and other fundamental human rights. There are two types of rights: Positive Right and the Negative Right. A negative right or negative freedom which means freedom from something. The negative rights impose a negative duty which means that a duty to do nothing and not to interfere. Someone's negative right only requires that it is not interrupted by anyone else. Negative rights are essential to every human being and the constitution guarantees the protection of these negative rights. Right to equality (Article 21), Right to Freedom of Speech and Expression (Article 19(1)), Right to religion, freedom from violence, freedom from slavery, property rights and many others are all negative rights. A positive right is a right in which it enables a person to get claim against the state. For example, right to free schooling, getting a minimum wage, free healthcare is a positive right. According to me, Right to Internet is a positive right. The right to internet contains two important aspects, first is that everyone should have the access to the internet, the second is that everyone should have that much of the technology that no one's right is infringed. Articles that are related to the Right to Internet are Article 19(1)(a) of Constitution of India, Article 19(1)(g) of Constitution of

India and Article 21(A) of Constitution of India and Article 19 of the United Nation's Universal Declaration of Human Rights. According to these articles everyone has right to internet having restrictions. There should be very less restrictions on the use of internet.

Article 19 of the United Nation's Universal Declaration of Human Rights have declared that the internet access is under the umbrella of the freedom of expression through any media.

DIGITAL INDIA

As we are living in a digital era, we know that without digital equipment's we cannot live. Even our current Prime Minister Narendra Modi promotes "Digital India". We know that internet is the biggest and largest source of knowledge today. If anyone wants to know the current scenario in any of the countries, then it is very easy with the help of the internet. Not only this information related to any topic can be found on internet, but moreover new feature of payment has also forced people to use internet because it is reliable and there is no headache of going to someone and taking money and coming back safely. After demonetization in India, 61% of spike has been seen in the online or digital payment. Internet has made this world a small place where we can connect with anybody at any time. Taking from Aadhar to other government authorized documents are issued and are made with the help of internet. These documents are saved and showed on internet with our authorities. Taking from filling tax returns to very small transactions internet is used rather than going to somebody and submitting application for the same. So, in everything internet is being used again and again and we can't deny that it has become a basic essential in our lives and not only in our lives, but it has also become an essential at such a level just like water for a man etc.

According to a survey as stated earlier of 2017, we have 34% of the people who use internet. Even if we estimate this number cannot rise above 55-60% till the end of this year. Everyone has already or have will start using internet this will create more transparency and nothing can be better, if everyone has transparency of the things in the work done by the government and by other sectors. Not only this we will have a better connection with other nations with the help of the internet.

Right to Internet will always be a fundamental right and not constitutional right. Today Internet has become like bread and butter of everybody no one can live without internet like Commodity broker, so we cannot make it a constitutional right it will be better if we make it a fundamental right. This right will obviously be given pertaining to some restrictions but after a few years everything starting from day to night will be operated through internet and now it has now become a necessity which cannot be taken back from the public. Many a time there is a total ban on use of internet which is also not right; there can be a restriction which can be imposed. If we ban the necessity, then the country cannot grow at a faster rate. Even constitutional rights do not apply on everyone, but fundamental rights apply to everyone, so right to internet is a fundamental right and not a constitutional right.

If we talk about the articles of our constitution then articles like Right to freedom of speech and expression (Article 19(1)(a)), Right to practice any profession or to carry on any occupation, trade or business (Article 19(1)(g)) and right to education (Article 21-A) these articles are directly related to internet. Right to freedom of speech and expression is a big right that is given to the people and according to this right every citizen of India has the right to express himself/herself on any platform which the person deems fit. This right is a fundamental as well as a constitutional right. On internet a person can gain knowledge and express himself. Today, internet is the largest platform to express ourselves. This article explains the same that if a person gets a platform and if he/she wants to express something then it's his/her fundamental right. If we compare internet with media then it's moreover the same as both provide information and is knowledgeable for a person and if we talk about internet, it is same it also provides the same. With the development of jurisprudence of the right of speech and expression can be traced in the case of *Indian Express v. Union of India* where it was said that the freedom of print medium is covered under the freedom of speech and expression. Moreover, it was said that the expression by the means of internet has gained contemporary relevance and is a major means of information distribution and therefore the freedom of speech and expression should be included in Article 19(1)(a) of the constitution and there will be some restrictions on the same which will be in accordance with the 19(2) of the Constitution of India. On internet everyone can write and form his/her own opinion. These things will create a foundation of social organization. So, we now know that the internet is a major means of speech in this period, which is why the right to the internet is included in Article 19(1)(a) of the Indian Constitution. The right of people to show films on Doordarshan, subject to the terms and conditions imposed by Doordarshan is part of the constitutional right to freedom of speech guaranteed by Article 19(1)(a), which can only be curtailed in the circumstances set out in Article 19(1)(a) (2). In the same way right to practice any profession or to carry on any occupation, trade or business is also a major framework of internet which is a fundamental right also have a link with internet. We know that India not only have started expressing themselves, but they have also started trading with the outside world with the help of the internet. These buyers and sellers keep on connecting each other with the help of the internet and keeps on doing business in this way. These people for carrying on business have a necessity of internet. Here also in this way right to occupation comes into picture and makes internet a necessity for the same. If they won't be able to trade, then their right will be infringed in this manner. In the case of *CPIO v. Subhash Chandra Aggarwal* it was said that if it is crucial for the standard of proportionality to be clear with its use, it is to be ensured that the right is neither restricted greater than it is necessary to fulfil the legitimate interest of the countervailing interest in question.

In the recent case of *Anuradha Basin v. Union of India* it was an issue whether the government's action of prohibiting internet

access in Jammu and Kashmir is valid or not? So, in this case it was said that the prohibition on access to internet will only be valid when there will be certain circumstances otherwise it will cease to be exist. In this case the judgement sis did not give any immediate effect but laid down the principles for the future suspension orders and their procedure to prevent the state for abuse of power.

Restriction under Section 144 of the CRPC, enables the state to take measures to deal with the imminent threats to public peace. It gives the power to the Magistrate to issue a mandatory order requiring certain actions to be taken or to pass a prohibitory order restraining citizen from doing anything. Certainly, these powers are given but it is also ensured that the power is not violated in any way possible, so in the case of *Madhu Limaye and Anr. V.Ved Murti and Ors.,* the court held that the exercise of such a power must be in an urgent situation to prevent harmful occurrences. This power can be exercised absolutely or ex-parte the emergency should be sudden, and the consequences must be grave. Moreover, it was said that the exercise must be in a judicial manner which can withstand judicial scrutiny. So, these points are to be kept in mind while restraining the public from exercising the fundamental rights.

In the same way 'Right to Education' that is covered under Article 21-A of the Constitution of India which is a fundamental right. This right can also be infringed if these internet shutdowns will keep going on. Internet Shutdown is a merely a blanket ban imposed by the state on access to Internet services. In total 155 internet shutdowns around the globe, India accounted for about 109 internet shutdowns. Many people have now made the internet as a source of education. So, it has become a necessity now on. In the case of *Maneka Gandhi v. Union of India*, it was held that a person has personal liberty but if it is denied then there is a golden triangle that plays an important role, and that tringle consists of Article 19, Article 21 and Article 14 and these are important human rights. It was firmly said that the Article 14 and Article 21 are absolute fundamental rights, and these can't be curtailed. Hence, we cannot deny that fact that the internet access is our fundamental right.

The reasonable restriction that was talked of in *CPIO v. Subhash Chandra Aggarwal* means that the limitations imposed on the people or a person' enjoyment should never be arbitrary or of an excessive nature.

*Faheema Shirin R.K vs State of Kerala***,** the Court used the judgment that "the international conventions and norms are to be read into the fundamental rights guaranteed in the Constitution of India in the absence of enacted domestic law occupying the fields when there is no inconsistency between them" in the light of Articles 51(c) and 253 of the Constitution of India. Accordingly, the Court concluded that "the right to have access to Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India."

In *Maneka Gandhi v. Union of India* it was held that the right of freedom of speech and expression has no limitation in maps, and it carries right to carry information from the citizen and to exchange different thoughts with others in other country as well. Even if

we see in this case also the internet is treated like a necessity for life.

In *Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal* it was held that the citizen has the right to receive and give information or knowledge through any electronic media even with the help of internet connection. Even in this the internet was treated as the necessity.

CONCLUSION

Countries that have already declared Internet access a basic human right are Estonia in February 2000, Greece in 2001, France in June 2009, Spain in November 2009, Canada in 2016 and many more have done it so far. In India it has also been declared by the Supreme Court of India that the Right to have internet access is a fundamental right.

Indian democracy gives freedom for public participation which is the basic which is needed on the internet. Right to Access Internet is a draconian measure for any state or country. Internet is endless even if a person tries in his/her life to read everything from internet he/she cannot, for that even whole life will be too small. The way internet users are raising day by day it will be very difficult to live without internet and this clearly means that it will become a very basic necessity, even today also it has already become a necessity and that's why we can't term 'right to internet' as constitutional right. Right to Internet is included under the fundamental rights like Article 19 and 21 which are also basic rights which are given to everybody. We know that the internet is purposeful but also destructive, but nobody is allowed to take the fundamental rights of a citizen. The move of taking off the internet from the lives of citizen for a particular period is satisfactory but for always is not at all satisfactory under the rule of law. Hence the right should be a fundamental right and not constitutional right and should be free from all types of hindrances. After the case of *Anuradha Basin v. Union of India* it was clear that even in the case where there is a regular worst condition like of terrorism the people of that community also have the fundamental rights of internet access and that cannot be curtailed cannot be curtailed.

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NON- RECOGNITION OF THE THIRD GENDER

By Abhinav Kumar[4]*

ABSTRACT

Over the past many years, transgenders have been continuously suppressed by the Indian society. This article examined how the Indian laws and recent amendments are incompetent, vague, and discriminatory towards the people of the transgender community. They have been deprived of basic human rights which should be available to every human being irrespective of their sexual orientation. This article investigates the arbitrary and vague laws and amendments which were to be made for helping and uplifting the transgenders and addresses some welcome changes which might alter the course of the concerned law.

INTRODUCTION

India's most recent census yielded the first official count of transgender people, at more than 490,000 Transgenders. Activists in the country estimate this number to be six to seven times higher than that of the census. A country consisting of a huge number of trans people, without a doubt, should have specific and dedicated laws just like the laws which are assured to the people of other genders.

This fight for rights for transgender started way long back, with the help of trans activists and advocates of the LGBTQ communities. Back in 1999, when a group of 15 attendees, organized India's first-ever LGBTQ parade, in West Bengal, Kolkata the fight for the rights of Transgender people started.

In 2016, a bill was proposed in the Parliament of India regarding the protection of transgender people, The Transgender Persons (Protection of Rights) Bill, 2016. This bill didn't solve any of the problems which were faced by the people of transgender communities. India is not the first country that has thought about the rights and protection of the people of transgender communities. Our neighboring countries like Nepal and even Pakistan have laws related to the protection of Transgenders. The Supreme Court of Nepal in the case, *Sunil Babu Pant v/s Nepal Govt. (2008)***,** held that:

"The fundamental rights under Part III of the Constitution are enforceable fundamental human rights guaranteed to the citizens against the state. For this reason, the fundamental rights stipulated in Part III are the rights similarly vested in the third gender people as human beings. The homosexuals and third gender people are also human beings as other men and women are, and they are the citizens of this country as well… Thus, people other than 'men' and 'women' including people of 'third gender' cannot be discriminated against on the grounds of sexual orientation. The State should recognize the existence of all-natural persons including the people of the third gender other than the men and women. And it cannot deprive the people of the third gender of

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enjoying the fundamental rights provided by Part III of the Constitution."

Also, the supreme court of Pakistan in 2011 in the case of, *Dr. Mohammad Aslam Khaki & another vs. Senior Superintendent of Police (Operation) Rawalpindi & others*, held that:

"Needless to observe that eunuchs in their own rights are citizens of this country and subject to the Constitution of the Islamic Republic of Pakistan, 1973, their rights, obligations including the right to life and dignity are equally protected. Thus, no discrimination, for any reason, is possible against them as far as their rights and obligations are concerned. The Government functionaries both at Federal and Provincial levels are bound to provide them with the protection of life and property and secure their dignity as well, as is done in case of other citizens."

In India, the recognition of transgenders as a third gender was accepted by the law in the year 2014 only. In 2014, the supreme court in the case of *National Legal Services Authority v. Union of India* talked about the rights and protection of the transgenders in India and held that the transgenders are also citizens of India, therefore the Fundamental Rights which are given to the "citizens" and "people of India" would also be given to them and they would be treated equally. The Supreme court held that –

"Article 14 has used the expression "person" and the Article 15 has used the expression "citizen" and "sex" so also Article 16. Article 19 has also used the expression "citizen". Article 21 has used the expression "person". All these expressions, which are "gender-neutral" evidently refer to human-beings. Hence, they take within their sweep Hijras/Transgenders and are not as such limited to male or female gender. Gender identity as already indicated forms the core of one's personal self, based on self - identification, not on tragical or medical procedure. Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as third gender.``

"We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of nullifying or transposing equality by the law or the equal protection of laws guaranteed under our Constitution, and hence we are inclined to give various directions to safeguard the constitutional rights of the members of the TG community."

THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

After the judgement of The Supreme Court of India, in 2019 a bill was passed in the Parliament of India, for the enhancement of the living conditions for transgenders in India. This bill was passed by both the houses, i.e., Lok Sabha and Rajya Sabha. In November 2019 Rajya Sabha passed the introduced bill, due to which on 26th Nov. 2019 a new law was made, for the betterment of transgenders in India, this law was named "The Transgender Persons (Protection of Rights) Act, 2019".

The main purpose of this Act was to bring upliftment, protection and a sense of equality

which was ensured by the Supreme Court of India for the Transgenders. But on the other hand, this Act was completely vague in nature. The Transgender Protection Act was not helping the transgenders in any way, the law was highly insufficient and was full of vagueness.

In the year 2019, many transgender activists and advocates of LGBTQ communities raised their voices against the vagueness of the law. The law was supposed to help them, the law was supposed to uplift them and provide them equality but, the law was the exact opposite of what was actually needed and what actually the transgenders wanted. This law was so vague and unjustified that the day this law was passed by the Rajya Sabha, i.e., 26th Nov 2019, was marked as "The Gender Justice Murder Day". This left a huge question mark on the law-making system of India, internationally.

DRAWBACKS OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

LACK OF INVOLVEMENT

One of the major drawbacks of the law was that no person of the transgender community was involved in the drafting committee of the Act. the govt. didn't even ask the people belonging to the transgender community, openly about their needs, wants necessities, and the problems that they were facing and what kind of help these people need. The government only made assumptions about their needs and wants which was based on stereotypes that resulted in making a very bad and vague law that was not helping the transgenders in any way.

SEX REASSIGNMENT SURGERY

According to this new law, a transgender must follow a Two-Step procedure. The law states that-

"A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents."

After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

This certificate provides proof of Sex Reassignment of the transgender.

The Supreme Court of India recognized Transgender as a "Third Gender" and held that "recognition of one gender lies at the heart of the fundamental right to dignity. Legal recognition of gender identity is therefore part of the right to dignity and freedom guaranteed under our constitution." Now after the judgement of the Supreme Court, it would be completely vague to ask transgenders to Reassign their sexual orientation for the sake of living a life with dignity and respect. Rather than uplifting and helping the transgenders the new law is asking them to reassign their sexual orientation for living a life with dignity, even after the Supreme Court has recognized the

transgender as a Third Gender. This new law is ultra vires and is violating the Fundamental Rights, given in Part III of the constitution. It is violative to the Article 14, 19 and 21 of The Constitution of India.

Moreover, this Sexual reassignment is a very costly procedure, and the people of the transgender community does not earn so much that they can undergo these kinds of surgery. Moreover, liberty and life with dignity should be free to a person and should not be dependent on a specific race or sexual orientation. Also, Sexual reassignment is not something that every transgender wants. This new law is completely ultra vires and violates the fundamental Rights of the Transgenders.
Also, in the case of *National Legal Services Authority v. Union of India***,** the supreme court held that, -
"At the time of birth of a child itself, sex is assigned. However, it is either male or female. In the process, the society as well as law, has completely ignored the basic human right of TGs to give them their appropriate sex categorization. Up to now, they have either been treated as male or female. This is not only improper as it is far from the truth but undignified to these TGs and violates their human rights."

PROTECTION FROM SEXUAL HARASSMENT

In the Chapter 8, of the act, it talks about the protection of sexual harassment of the transgenders and laid out the punishment for any person who abuses or harasses the transgenders either physically, mentally or sexually.
Now, according to the implunged Act, any person who sexually harasses or sexually abuses a transgender would be liable for minimum imprisonment for 6 months and the maximum punishment for sexually abusing a transgender is imprisonment for 2 years.

Now replacing the sexual orientation here, with a cisgender woman. In India, if a cisgender woman is sexually harassed or sexually abused, the minimum punishment is of 7 years of Imprisonment and the maximum punishment for sexually abusing a cisgender woman is life imprisonment. Comparing it to sexual abuse/ assault of a transgender person, it is only 6 months which can be extended to only 2 years. The bill makes sexual abuse of a transgender person a criminal and punishable offence but fails to clarify the definition of sexual abuse. Moreover, the sexual harassment and sexual abuse is a very severe crime, and the gravity of the offence is very high. But why there is a huge difference in the punishment for offenders in the case of a cisgender woman and a transgender person. Is it means that raping/ abusing a transgender sexually is a less severe offence? Is it ok or normal to sexually abuse a transgender? This implies that according to this new law, sexual abuse of a cisgender woman will only be seen as a grievous offence, and not the sexual abuse of a transgender person. This again raises a huge question on the Right to Live with dignity, which is guaranteed to all the people, irrespective of their religion, sexual orientation etc. hence this new Act violates Article 21, which is in Part III of the Constitution of India that guarantees Fundamental Rights to Every Citizen of India.

MEDICAL AID

The new impugned act has talked about giving the transgenders a help and upliftment in the sector of medicines. The act is completely silent on the procedure and what type of medical aid will the government provide to them. According to the act, only the medical aid which will be given to them will be at the time of surgery of sex reassignment. This is completely vague, as being in the marginalized section of society, the transgenders only want a helping hand from the government, through which they can be successful and could live a normal human life just as a normal citizen lives, without reassignment of their sexual orientations. This act only gives the transgenders medical aid if they are willing to reassign their sexual orientation which is completely violative to the Article 14 and 21 of the Constitution of India. The law, under the Constitution of India, ensures that equals would be treated equally - differently would be treated differently (Art.14) and the right to Life and Liberty (Art. 21).

Transgenders face many health issues throughout their life and one of the most common health issues faced by them is Gender Dysphoria. This is a disorder that can occur at any point of their life suddenly at any age. It created an enormous amount of pain in their body including the head and chest. This happens because of the change of hormones in the body from man to women or vice versa. This isn't an easy thing to get rid of and it needs proper medication to be cured (though it cannot be cured permanently). The govt could have helped them in giving medical aid for these types of disorders which could be proven extremely helpful for them rather than making laws that are not helping the transgenders in any way.

MARRIAGE

Article 21 of The Constitution of India ensures the right to life. The right to marry a person of choice comes under the ambit of the right to life and is an integral part of Article 21 of the Constitution of India. This right cannot be overruled/ taken away from any person unless reasonable. The right to marry a person by choice is a universal right. This right is available to every person irrespective of their gender. The apex court in its 2019 judgement recognized the right to choose a sexual identity as part of the Right to Privacy and individual autonomy under Article 21, Right to Marry is a part of the Right to life and is included under the same act in the constitution.

The Supreme Court in the case of *National Legal Services Authority v. Union of India* recognized the right of transgenders to marry according to their own choice, by declaring transgenders as a "Third Gender." The people of the transgender community are also a human being. Just like any other human being, they are also emotional beings. Just like normal people, living their life with their loved ones, these people also want to start a family. But in the solemnization of a marriage, the procreation of a child is essential in every law. Be it Hindu law, or any other laws, procreation of a child is essential. And the whole concept of procreation of a child is defeated in the concept of transgender marriage. But this alone shouldn't be a reason to violate the fundamental right of a person.
As stated above the Supreme Court also agrees with trans marriage and advises the

central to make laws for the solemnization of transgender marriage. But again, in the impugned Act, there were no laws that assured the Right of marriage i.e., a Fundamental Right guaranteed under Article 21, to transgenders. Moreover, the Act was completely silent on the grounds of marriage, adoption, property, social security or pension of the transgenders.

Internationally also, many of the countries have successfully amended and changed their personal laws. Just like with the case of India, earlier their laws didn't recognize the marriage of the Transgenders as a legal marriage and no statutes were made for their recognition. But, the progressive minds of the lawmakers, have helped many of the countries, in recognizing the rights of transgenders.

Australia, in 1961 had amended their personal laws and defined marriage as a union of 2 people. Similarly, in the year 2005, Canada also amended their civil law and defined marriage as a lawful union of 2 people. In the year 2013, the United Kingdom, also enacted their Marriage (Same-Sex Couples) Act and stated a "relevant marriage" is a marriage between two marriages.

RESERVATION

In the case of *National Legal Services Authority v. Union of India,* the Supreme Court of India held that the transgender community would be now considered as a socially and educationally backward class. The Supreme Court directed the central govt to provide the transgenders with proper education and proper employment and all the benefits regarding education and employment which are provided to the ABC's (leaving out the creamy layer). This judgement was declared in the year 2014, and the Act came out in the year 2019.

"The judicial role is not only to decide the dispute before the Court, but to uphold the rule of law and ensure access to justice to the marginalized section of the society. It cannot be denied that TGs belong to the unprivileged class which is a marginalized section."

So according to this judgement, even the supreme court of India assures that the transgenders should be kept in the preview of OBC's, and the Supreme Court directed the center to make laws for helping the transgenders in the education sector and employment sector. But in the impugned Act, no direction was followed. Neither the transgender community was given reservation in the education or employment, neither they got any specific clause that would help them in the upliftment of transgenders educationally or in getting employment. The transgender's community faces a lot of discrimination, and it is very difficult for them to get mainstream education and to get mainstream jobs. Being marginalized and lack of jobs for transgenders, they are forced to work as dancers, strippers, basically sex workers. "In India alone, the proportion of transgender people who sell sex is as high as 90 %."

Even after seeing this reality, the government didn't bother to give the transgenders reservation. Which indeed, if was given, could be a golden opportunity for them to prove themselves and would give them an opportunity to stand shoulder to shoulder with the rest of the world.

Kerala is the first state in India that provided transgender's reservation in the education sector. According to the guidelines by the govt, released in 2018, the university in Kerala has to reserve 2 seats for the people of the transgender community, under graduation and post-graduation courses. The state has also directed all the universities, to make sure that transgender students are not discriminated against amongst the other students and should be treated equally in every manner. The department of Higher Education released a statement stating that "Due to social issues and pressure these students are often forced to discontinue their studies. This trend has to be stopped and we should bring them to the forefront."

This is a great step taken by the Kerala govt, which would literally help transgender people. Earlier the transgenders were forced to discontinue their studies and indulge in sex works and other inhuman works. But now, they would be able to conquer many heights and would be able to hold their shoulders high in a crown just like a normal human being.

The govt. of India should sincerely opt for the view of the Kerala govt, which are making the laws for the upliftment and equality of transgenders.

CONCLUSION

The Transgender Persons (Protection of Rights) Act, 2019 was passed by the Rajya Sabha for the upliftment of transgenders. But the Act instead of helping and uplifting the transgenders is depriving them of their important rights. There are no provisions for marriage, adoption and pension, social security etc. These are fundamental Rights that a person/citizen of India is guaranteed to have. These are the basic Human Rights, which should be available to each person irrespective of their sexual orientations.

One of the major problems in India is the absence of gender-neutral laws. In India, what we need are the new laws that should be gender-neutral and complete reconstruction, and necessary amendments should be made in all the statutes, including the Indian Penal Code for the accommodation of the gender-neutral laws.

For instance, the definition of rape in section 375 of The Indian Penal Code recognizes only women as the victims of rape. The rape laws In India are not gender neutral. Fighting against this, a Supreme court lawyer, Rishi Malhotra, in 2018 filed a petition in the Supreme Court demanding gender-neutral laws in India. The last amendment in the sexual assault laws was made in the year 2013, in which the definition of rape was widened but the amendment was completely silent on the gender-neutral laws. The Supreme Court of India rejected this appeal for the demand of gender-neutral laws stating that the issue for making rape laws gender-neutral laws falls within the ambit of Parliament completely. It is the discretion of the Parliament and Central Govt to make the rape laws gender neutral.

India as a country, has failed to treat the people of transgender communities equally. The lack of gender-neutral laws, the lack of laws for the protection of transgenders, and even their basic human rights have been ignored by Indian Lawmakers. The fact that in 2014, the Supreme Court of India has recognized transgenders as a third gender and

in 2019 an Act has been passed for recognition and upliftment of the third gender. But this Act contains no provisions regarding the recognition of the third gender. Moreover, there is no inclusion of the third gender in the laws and statutes which clearly shows that the legislatures do not really want to treat the transgenders equally, nor do they really want the upliftment of the transgenders. The typical stereotype thinking is still prevailing in the mind of the lawmakers in India that the transgenders are the people from the red-light areas who are indulged only in the sex industries and don't deserve the chance of living a normal life just like a normal human being.

One of the ways which would enable transgender people to live a life with dignity lies within the legislative competence of the Parliament. Only the Parliament can carry out the amendments in all the laws like in The Indian Penal Code, and the personal laws like marriage laws, laws for Adoption, and laws of Inheritance. These amendments should be in the preview of introducing gender-neutral laws in India, or redefining the terms like a person, husband, wife, bridegroom, bride, etc., and including the aspect of the third gender in them. Though many amendments were made in the 2019 Act these things which could be proven essential and important for the upliftment of the transgenders were neglected and were ignored by the lawmakers, which again raised a big question on the Indian law-making decision of the government.

There is an utmost need for gender-neutral policies and legal reforms for the inclusion of the third gender and the laws for the people of the transgender communities so that they can also be empowered and free in their private and public life. They are also entitled to live a happy and prosperous life just like normal people and normal citizens of India.

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CUSTODIAL TORTURE AND HUMAN RIGHTS OF PRISONERS

By Jai Mittal[*5]*

ABSTRACT

The absence of a codified law makes it difficult for the authorities to keep a check on the atrocities committed on the prisoners. Not only legislations but a systematic execution of the plans is also important. Stricter measures at ground level, better vigilance over police officers in charge of prisoner will make them think twice before taking any illegal steps to commit these atrocities on prisoners. This paper first describes the issue in detail and the extent to which the problem is prevalent. It also establishes the reason as to why the quantum of the cases reported are less. Further, the author has established the possible solutions in the form of suggestion which might contribute to solving the problem which prevalent since time immemorial.

INTRODUCTION

"*Life means not only physical existence. It means the use of every limb or faculty through which life is enjoyed. The right to life includes the right to a healthier environment*". ~Justice P.N. Bhagwati.

The conditions of prisoners in India have been tremendously bad since the British period in India. Since then, there has been negligible improvement in the prison systems of our country. There have been various reports since the 1980s which talk about the torture to prisoners in our prisons. Although there have been various Supreme Court cases and reports which have been made on this ignored issue for so long, the ratio of the cases happening and being reported is very high. Such cases barely are even reported off because the people who such torture must be reported to are colleagues of the officers committing the wrong or in worse case are the same people. Therefore, the statistics show very less cases of such atrocities by the police on convicts are ever reported. But the few reports from International and National Organizations , the cases referred to the Supreme Court show us a clear picture of what these convicts go through in the jail and how there is no law in force which can protect them from the State itself. The problem of torture to prisoners has been prevalent since time immemorial. The United Nations had hence formed the Convention Against Torture in the year 1987. India although signed the convention back then has till date not ratified it. The debate of the rights of prisoners has been on since a very long time. There are many texts and studies which say that becoming a prisoner does not take away the aspect of the person being human from him or her. Hence a prisoner too deserves basic human rights of which even the walls of the prison cannot deprive him of. Even after giving so much importance to rights of prisoners by international communities and most of the states being the signatories to these international conventions, the rights of prisoners are violated in some form or

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another. The Constitution of India and other criminal legislations also lacks specific provisions regarding the same.

RESEARCH QUESTIONS

1. What are the existing International and national legislations against the torture of prisoners and what are the rights they have against such torture?
2. What are the drawbacks in the current system which lead to the existence of this unlawful torture to prisoners and what can be done to improve present conditions?

SUPREME COURT'S VIEW

The system of torture in prison has been prevalent since a very long time and since India got independence, we have been looking for making reforms in these systems. The prisons during the British period were dens of torture. Hence though the prison system was adopted from the British, it surely needed reforms. The pioneering effort in this direction took place in 1951when the government of India invited Dr. W. C. Reckless, a technical expert of the United Nations on Crime prevention and treatment of offenders, to suggest recommendations on prison reforms. On his recommendation a committee was appointed to prepare an All-India Jail Manual in 1957. The All-India Jail Manual Committee (1957-59) prepared a model prison manual. Later in 1980 an All-India Jail Reforms Committee was formulated under the leadership of Justice Anand Narain Mulla. It is very normal for not many cases to torture in prisons to be recorded. This is because the authorities who take down the complains are either the colleagues of the people who torture or they are the wrongdoers themselves. But there are many laws in the international level and many Supreme Court cases in India which have addressed the issue of torture and other atrocious conditions of prisons. One of the very basic issues which were brought up and is still under debate is the "fundamental rights" of these prisoners and especially their right under Article 21 of the Constitution of India. The Supreme court in 1978 held that 'the prison laws do not swallow up the fundamental rights of the legally unfree' and reminded itself and other courts to guard freedom behind bars of prisoners. Fundamental rights do not flee the person as he enters in prison, they may suffer shrinkage necessitated by the incarceration. Hence the apex court of India has clearly stated that a person when convicted does not become "less human". Hence, he or she cannot be denied the basic human rights as result of his or her conviction. Although it is very apparent that the judiciary can curtail the rights of prisoners to a large extend. The same was laid down in *Charles Sobraj v. Superintendent Central Jail*, Tihar, New Delhi where the court held that, Imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognize the full panoply of part III of the Constitution enjoyed by a free citizen.

The convicts in the prisons though are serving their punishment for committing criminal activities which are anti-social deserve to live with dignity. Right to life under Article 21 of the Constitution also includes right to live with dignity. They are imprisoned as punishment but not to punish them in these prisons. Torture in prisons is

unconstitutional as it is goes against Article 21 of the Constitution and is all not allowed by any legislation in the country. The judiciary in a famous case also held that any act that offends or impairs human dignity, therefore, constitutes deprivation of the right to live.

The apex court in a case in 1983 held that, the fundamental rights that are provided under 'Articles 14,19 and 21' under Part III of the Indian Constitution are always available to prisoners as are given to the freemen. The court further stated that the walls of prisons cannot keep fundamental rights out. It can be seen that time and again the judiciary has accepted the adverse conditions of prisons and the torture that prisoners face. They have established the importance of the fundamental rights of prisoners and the need for governing methods for maintaining the dignity of the prisoners and hence protecting the rights mentioned in the ground norm of the land.

STATISTICS ON THE PROBLEM

The very first problem in cases of tortures of prisons is the number of cases actively reported. Like mentioned before most of the prison torture cases are not even reported due to various reasons. First, such cases are submerged and grounded at the lower level itself. Second and the most important reason being that these prisoners have no one to whom such cases can be reported. They must either report it to the colleagues of the police officers who commit the crime or the same people who take down such complains are the ones committing this atrocious act. Despite all this there are certain number of cases which have been reported and also few organizations which have taken up the study and collected various statistics regarding the same.

The National Crime Records Bureau publishes the Annual Prison Statistics which has all the relevant details regarding the prisons in India. It should be remembered that the people who pass the data to the National Crime Records Bureau, are the prison officials themselves Although these people try to hide the actual atrocities, they commit they still must be answerable to for the few recorded deaths in prisons. The Prison Statistics Report of 2018 had reported a total of 1845 prison deaths in 2018, including 1639 natural deaths and the remaining 149 as natural deaths.

Apart from this there are various Human Rights organizations which have conducted studies on the custodial torture of prisoners. Although these reports are full not able to establish the gravity of the problem, but it at least establishes the existence of the problem. The National Human Right Commission Report of the year 2016-2017 has given details of specific cases of custodial deaths and torture in prisons. This report not only highlights on physical torture by the police but also other forms of their brutality that lead to this death in prisons. Deaths caused due to negligence of management; electrocution of prisoners all shows the various ways by which the prisoners suffer at the hands of the policemen in charge. This report has significantly highlighted on the facts of certain cases of torture and how till date the legislature has failed to establish any national law to prevent such atrocities against prisoners.

Torture has been persistent in Indian prisons which go unheard but the few which ger reported are the cases where the torture leads to death. The National Human Rights Commission (NHRC) recorded 117 deaths in police custody across the country in 2019. The reason for death in custody was torture. The NCAT in its India: Annual Report of 2019 reported that 75% of death or prisoners in 2019 was due to torture in these prisons.

The method of torture revealed by the report show the level of criminality in the police and jail officials. It also shows how operating in closed systems, they have a sense of entitlement and impunity. The report said from acts like slapping, kicking with boots, beating with sticks, pulling hair, torture also includes barbaric methods like hammering iron nails in the body, applying roller on legs and burning and 'falanga' or beating with sticks on the soles. Sometimes, the police and jail staff even go to the extent of stabbing people with a screwdriver or giving electric shock. Often, private parts are also targeted. There have been instances of cops pouring petrol on private parts or applying chili powder to them.

One of the most astonishing cases which had come to light this year is the case of Jayaraj and Bennix in Tutocorin, Tamil Nadu. On June 18, Sathankulam police admonished J. Bennix for keeping his small mobile phone and accessories shop open for 15 minutes beyond the state-government-imposed curfew of 8 pm the during the COVID-19. Bennix's father P. Jayaraj was arrested and taken into custody. Bennix rushed to the police station with his friends when he heard the news. He witnessed the police beating up his father. When he sought to intervene, he too was taken into custody and thrashed. At least five policemen including the sub-inspector and constables beat him black and blue. All this happened in front of Bennix's friends. The duo was so brutally assaulted by a team of policemen that they were soaked in blood. Relatives said that the police assaulted Bennix and inserted a baton into his anus, triggering uncontrolled bleeding; they kicked Jayaraj on his chest multiple times with their shoes. He was seen bleeding profusely even as he was in police custody at Sathankulam police station. Bennix succumbed to his injuries on June 22 and his father died the following morning. Bennix's elder sister Persis, after seeing the bodies ahead of the autopsy, told reporters in Tuticorin on June 24 that they had been tortured to death and demanded justice.

In a country with population around 1.2 billion people, even if one person's human rights are affected it must be taken up seriously. But in the case of torture of prisoners in custody, the quantum of the damage is not known. More than 1000 cases are reported every year, but the legislature has failed to pass any such legislation which governs such atrocities.

THEORIES AND JURISPRUDENCE

There are many jurisprudential theories which talk about the different views on the torture in prisons. While certain theories are completely against the concept of torture there are certain jurists who believed in the concept of torture in prisons if it was for a productive purpose like for extracting evidence.

Ethical Arguments by Emmanuel Kant

Immanuel Kant developed a theory based on the belief that reason is the final authority for morality. At the core of Kantian ethics was his categorical imperative, which was a set of universal rules that outlined: 'that only the good will, a will to act out of a sense of duty, has unqualified moral worth'. Therefore, according to his theory, in which actions were intrinsically right or wrong, torture could be seen to be unacceptable, regardless of the circumstances and consequences. Kant held that one could not undertake immoral acts like torture. This was so, even if the outcome was morally preferable, such as ending a war earlier than would otherwise have been possible or saving lives. Hence, this theory establishes that torture for any reason is wrong and hence must be avoided irrespective of the intensity of the crime it has caused.

Utilitarian Theory

According to Utilitarianism, the best decision for the betterment of the society must be taken out of the two. Hence laws should be used to maximize the happiness of society. Because crime and punishment are inconsistent with happiness, they should be kept to a minimum. Utilitarian's understand that a crime-free society does not exist, but they endeavour to inflict only as much punishment as is required to prevent future crimes. Hence therefore in the case of convicts when they are sentenced to a certain punishment, the punishment must be in such a way that the cumulative happiness of the society is not affected to a large extent. Hence once a person is convicted for a certain crime then his or her punishment must be as much as it assigned by the judiciary. Torture of the prisoners is only curbing the fundamental rights of the prisoners and hence later making their life miserable in the prisons, in which they already are due to the consequences of their actions. The utilitarian theory is "consequentialist" in nature. It recognizes that punishment has consequences for both the offender and society and holds that the total good produced by the punishment should exceed the total evil.

Rehabilitation is another utilitarian rationale for punishment. The goal of rehabilitation is to prevent future crime by giving offenders the ability to succeed within the confines of the law. Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behaviour. Rehabilitation also includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market. The prevalent torture in the prisons is completely contrary to the concept of rehabilitation. Where the theory of Utilitarianism brings forth the environment in which the prisoners can be made better individuals, the prisoners are provided with an environment which is completely contrary. They are tortured to such an extent in the prisons that they sometimes are motivated even to kill themselves. Even though certain prisoners are in prisons for a limited period even then they decide to kill themselves because it becomes almost impossible to handle such torture daily.

Reformative Theory

The theory of reformation is based on the positive school of thought. As per the reformative theory the prisoners are sent to

prisons with the motive to make them better individuals and hence make them better citizens of the country. This is by education in such a way that once they are out of the prisons and back in the society then they would engage in the society more effectively and in a better way. But on our case where a prisoner is tortured to death, he or she loses the will to live itself. He or she thinks that if they are not respected in the walls of a prison by a certain number of people itself then how will the society accept them at all. For instance, in the case of women prisoners, when a woman is brutally assaulted and raped everyday by the prison officials , a fear will set in the minds of these women. They will now thing that their worth in the society is nothing but of a sexual object and that is why the society would not accept them even if they are made to leave the prisons and set free in the society.

EXISTING MUNICIPAL AND INTERNATIONAL LAWS

INTERNATIONAL LAWS

Human Rights are even to every individual in the world. The Universal Declaration of Human Rights emphasizes on the importance of human rights to everyone around the world. India has also adopted provisions on similar line in the Constitution. Like it was emphasized on before, a person does not lose on their basic human rights once they are deemed as convicts or prisoners. **Article 1** of the Universal Declaration of Human Rights states that, " All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." Hence, every human being in the world has the right to live with dignity and torturing prisoners to such an extent where they are deprived of their dignity is considered as detrimental to a basic human right. The same was upheld in the Francis Coralie case in India. Further, Article 5 of the Universal Declaration of Human rights states that, " No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The words 'no one' clearly establish that right against cruelty and torture are available to every person irrespective he is a prisoner or not. Hence, it is a human right and just because a person is convicted for some crime, he does not become less human and is therefore entitled to such a right.

Apart from the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights which included rights against torture was adopted by the United Nations in the year 1966. Article 7 of the covenant states that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This provision is on the lines of the Article 5 of the UDHR. This Article of this convention was interpreted by the Human Rights Committee in such a way that it included even the mental integrity and dignity of a person. The same convention was ratified by 153 countries to prevent the use of torture in their countries. This again emphasizes on the fact that every person in this world is immune from torture due to his basic human right to life and dignity.

The most important international convention in relation to torture of prisoners is the UNCAT or the United Nations Convention Against Torture. This was adopted by the

United Nations in the year 1984. This was with the aim to reduce the struggle faced by prisoners against torture in the prisons. India was one of the 177 countries who had signed the convention but never ratified it. Although India had realized the need of certain laws or guidelines are needed to curb the torture in these prisons, we have still not ratified the convention and hence torture in Indian prisons continues and the need for a regulation is still persistent. Article 4 of this Convention states that,

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which consider their grave nature

There is no specific law to criminalize torture in prisons in India. Neither is there any mechanism to govern the torture. The existing criminal laws are not full proof to help these prisoners who are being denied their human rights in the name of justice.

MUNICIPAL LAWS

There is no specific law in India which governs the torture in prisons specifically. The basic laws enshrined in the Constitution of India deal with the Fundamental Rights of every citizen of the country.

Article 14 of the Constitution of India talks about the Right to Equality. The very first fundamental right available to every citizen or non- citizen in India is the right of equal protection by law and before law. Hence the prisoners who have curtailed freedom also have the right to equality before law but with restrictions. Irrespective of a person being a prisoner he or she is entitled to the protection before law and hence when the police who are here for protection itself abuse their power and later end up hindering the investigation into the torture, the right to equality before of these prisoners is hindered. **Article 21** of the Constitution of India talks about the Right to Life. As it is stated in several case laws that Right to life mentioned in the Constitution constitutes the right to live with dignity. Hence every prisoner continues to have the fundamental right as per Part III of the Constitution irrespective he is the prison or not. Such a right to live with dignity cannot be pulled away from him. Hence the torture he goes through in the prisons is detrimental to his fundamental right to life.

Article 38(1) of the Indian Constitution states that " the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic, and political shall inform all the institutions of the national life." Hence the prison authorities that is basically the State must look for the welfare of the prisoners in their custody. They can do this by creating just and humane conditions for the prisoners and not torture them unlawfully.

Therefore, it is very evident, that there are international laws which directly govern the Human Rights of prisoners while the municipal laws are to be interpreted in a way to understand human rights of prisoners. Therefore, either the existing laws in India

must be made direct and more in the favour of the prisoners or there must be new legislations or rules which directly address the issue at hand. This paper provides for certain suggestions which can help the prisoners in India and establish a strong framework to govern with respect to human rights of the prisoners.

SUGGESTIONS

Passing of the Prevention of Torture Bill, 2017

The Prevention of Torture Bill was introduced in the Lok Sabha in the year 2010. In August 2010, it was referred to a select committee of parliament, which was chaired by Kumar and comprised 13 members of Rajya Sabha. The Bill was to be considered as a step towards the ratification of the United Nations Convention Against Torture which India has signed in 1997 itself. The Bill was passed by the Lok Sabha without any public debate. After the submission of the report by the committee there was further step taken and on being questioned in 2016, the Ministry of Home Affairs stated that the Prevention of Torture Bill, 2010 has lapsed due to the dissolution of the 15th Lok Sabha. The Prevention of Torture Bill was again introduced in 2017 and appended to the Law Commission. The new Bill in 2017 had included suggestions of the Kumar committee from 2010. In 2018, the Supreme Court had ordered the States and the Union Territories to place their views on the Bill and move further for the enactment of the Bill. Clause 4 of the Prevention of Torture Bill, 2017 criminalizes the act of torture by a public servant.

Amendment of Indian Evidence Act, 1872

The researcher in consensus with the Law Commission in its 113th Report on the following suggestion. Section 114 of the Indian Evidence Act talks about the " presumption of certain facts".

The section states that-

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the case.

The suggested amendment of the Section is the addition of another part to the section which talks about a presumption of certain facts in relation to crimes in custody. The section could state that, "In a prosecution (of a police officer) (SIC) an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period." Further the Section also states that the *presumption* can be made based on the relevant facts like the period of custody, statement of the victim, examination of the victim by a medical examiner and so on. The proposed suggestion will be very effective in cases of gruesome torture of prisoners. The major problems with custodian torture not being in control is because the policemen manipulate with the facts and use the delay in the justice system in their favour. With this proposed change, the *burden of proof* would shift on the policemen, and they must prove that did not

torture the prisoners. This will help to uplift the human rights of the prisoners.

Anonymous Complaints Portal

The prisoners must be given an option to anonymously report their problems to the National Human Rights Commission without any interference from the police. The main problem as to why this torture continues is because the people who take complaints are the ones who commit the atrocities at the first place. Therefore, if there is a different mechanism which maintains the anonymity of the prisoners and lets them complain to higher officials not associated with the police then more cases will be reported and faster action against the police will be taken. The lives of the prisoners are made more than miserable by the prison officials and the anonymity reduces the risk that the prisoners have on their lives.

Implementation of Istanbul Protocol

It is often easier for the police officers to tamper with or erase all traces which could prove that the crime has been committed by them during the police custody. A major step towards reducing or rather reporting torture is documentation. If the documentation and investigation is done properly and effectively from the very beginning, the reliable evidence can be provided against the alleged policemen who have committed the crime. The Istanbul Protocol which was adopted by the United Nations released the first set of guidelines to be followed for effective documentation in cases of custodial torture. The IRCT or International Rehabilitation of Victims of Torture had launched the "Prevention through Documentation" project in 2003 to implement the above protocol in states like Egypt, Ecuador and so on. If the exact same or even similar rules were incorporated and legislated in India, it would be of great help to the victims to provide with evidence of the torture that leads to severe injury or even their deaths at times.

Use of Technology and advanced standards

One of the main reasons the police officers get away with the atrocities they commit is because there is no evidence or proof of the same. As already established, only a few cases get reported about custodial torture, and these few cases are not taken forward or seriously considering the lack of evidence. CCTV Cameras, electronic attendance machines and access to telephones to reach the portal, although will cost a fortune but will make such cases easier to solve and will pressurize the policemen and control their steps towards harassing and abusing prisoners under their control.

Compensation on behalf of the State

Although there can be no quantitative method to determine the cost of someone's life or disability, compensation in the form of money can most defiantly help in two major ways. Firstly, the family of the prisoner who had been succumbed to torture would get monetary benefit which will make their life a little better than it is. Secondly and most importantly, if the State is made to pay heavily for every time the policemen commit such crime, then they would make sure that the standards they set and the execution of the rules for the police is not being abused by them. Even in the case of *M. Ranjani v. The Home Secretary, Government of Tamil Nadu* when 19 years old died under suspicious

conditions in custody, his family was awarded with a compensation of Rupees five lakhs. The State was held liable for the actions of the police officers after it was clear after the post-mortem report that the death was due to the police torture.

Strict laws to be formulated on basis of NHRC's Recommendations

The NHRC or the National Human Rights Commission since its establishment has been working towards putting an end to custodian torture. In 1993, the NHRC issued orders to the Chief Secretaires of all States, asking them to direct all District Magistrates and Superintends of Police to report any instance of death in custody to the Commission within 24 hours. Further the Commission also recommended for video recording of the post-mortem to be submitted to the Commission at the earliest. However, what must be noted is that these are mere recommendations made by the NHRC. The implementation of the same cannot be carried out unless a law is codified to direct the people responsible for taking the necessary steps.

CONCLUSION

It is evident and established through numerous case laws and statistics of various organizations that the problem of torture in prisons is not only prevalent but also has created a certain amount of uprising and roar in the society. International Laws and National laws indirectly have tried to create an impact in a way that torture n prisons could be curbed. But the absence of a direct legislation in this regard and the inefficient implementation of the existing laws. The author feels that if these suggestions were implemented exactly or with a certain deviation then the prevailing problem of torture could be possibly reduced and even completely gotten rid of in the upcoming future.

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SENTENCING GUIDELINES AND PRISON CONGESTION IN NIGERIA

By Festus Oktu Agbo[*6]

INTRODUCTION

Crimes of various forms, including terrorism which has been on the increase lately, have threatened the survival of man since creation. Different means and methods have been employed to prevent commission of crimes, detect ones already committed and punish the criminals depending on the generations and climes involved. Nations all over the world have developed methods of protecting the lives and property of their citizens and foreigners found within their borders, which is one of the primary duties of any country. Nigeria has her own overflowing share of the burden of preventing and detecting crimes and punishing the criminals involved in the commission of crimes.

The attitude of a society to crimes and punishments for them tends to help in reducing the incidence of crimes. In the olden days, say in the African societies, crimes were not tolerated. Any breach of the criminal law of the land was visited with severe punishments ranging from caning, shaming, restitution, ostracization, death, etc. Today, even though new criminal sanctions have evolved besides these traditional ones, the general attitude of the society towards offences and offenders, the developments in the science and technology, urbanization and expansion of human populations have combined to favour criminal activities, sometimes involving persons from different countries very far apart.

In almost all the civilized nations of the world, the police have the responsibility to prevent, detect, investigate crimes; arrest criminals who breach the criminal law of the land. They, in conjunction with the Ministry of Justice, prosecute the offenders. The courts of law and tribunals try the offenders and inflict sanctions upon them if the offenders are convicted of the alleged crimes. The correction institutions such as the prisons, remand homes, borstals, etc, ensure that the convicts serve the punishments impressed upon them by the courts and tribunals after they have been lawfully tried, convicted and sentenced by the courts and tribunals. These three institutions: the police, the courts and the prisons work together for the smooth running of criminal justice system.

PROVING GUILT

To prove the guilt of a defendant beyond reasonable doubt is a herculean task. It is equally difficult on the part of the courts or tribunals to discharge and acquit a man who is not found guilty as charged. The prosecution must be fair to the defendant. Therefore, he is not to try to secure conviction. The duties of trial courts can be divided into two:

1. To try the offender, which includes hearing evidence from both the prosecution and the defence and their witnesses, evaluation of such evidence and concluding that the

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accused person is either guilty or innocent of the offence with which he is charged, and

2. To impose sanctions if the defendant is found guilty of the offence or to discharge and acquit him if he is found innocent.

We are proceeding on the understanding that the defendant has been tried and convicted in accordance with the substantive and procedural laws of the select jurisdictions: Nigeria and England. Whereas it is very easy to discharge and acquit a man who has been found innocent of a crime with which he is charged, or whose guilt over the alleged offence has not been proved beyond reasonable doubt; it is very difficult for a judicial officer to decide as to what punishment to impose on a guilty defendant. This is, among other reasons, because criminal sanction serves a lot of ends, some of which are: to deter convicts or potential offenders from reoffending or offending in the future and to pay the offender back in his own coin. The imposition of punishments on the defendant after his trial and conviction is technically called "sentencing". It comes after the accused person has been found guilty of the offence as charged. The finding of guilt is technically called Conviction. Conviction must come before sentencing.

IMPORTANCE OF SENTECNING

Sentencing is a very critical stage in the criminal justice administration. The way it is handled will, to a very large extent, determine the public confidence in the criminal justice administration or erosion of such confidence. It, also, goes to the in corruption and impartiality of the judicial officers. It has to do with the equality and certainty of punishments in the same or similar circumstances.

An important input in the development of sentencing guidelines is an assessment of current sentencing practice. The Sentencing Council for England and Wales, for instance, uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. It produces a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice system. This requires the periodic review of sentencing guidelines to ensure that all sentences are appropriate to the offences committed and in relation to other offences. Harm and culpability factors in offences are determined. Data from the Ministry of Justice, Court Proceedings Database, Crown Court Sentencing Survey and opinions of experts and stakeholders in the criminal justice sector are used to ascertain the desirability or otherwise of developing new sentencing guidelines.

SITUATION IN NIGERIA

In Nigeria, as in most countries of the world, laws define offences and prescribe punishments for committing such offences. It is noteworthy that there are facts and factors which may make judicial officers to impose different punishments for the same offences. However, the gap should not be too wide to cause confusion, inequality and uncertainty in a matter as weighty as sentencing. It is to cure the confusion, inequality and uncertainty attendant to wide, subjective and indiscriminate use of judicial discretion in sentencing that sentencing guideline come

handy. In *EFCC v John Yakubu Yusuf & Ors*, the accused persons who were tried for criminal misappropriation of N27.2b under section 309 of the Penal Code were sentenced to two years imprisonment with the option of N750, 000 fine.

Sentencing guidelines, as the phrase suggests, can be described as a set of guidelines which aid judicial officers to arrive at just, certain, objective and fair sentences or punishments to inflict on convicts in criminal trials. They equally help to assess and upgrade or downgrade punishments for some cases on continual bases depending on the increase or decrease in the incidence of such offences. Sentencing guidelines do not admit of wide and unguided exercise of discretional powers in sentencing. They streamline the discretions and spell out in details the punishments available and how to apply them in the given cases to ensure some form of uniformity. In essence, sentencing guidelines guide judicial officers in choosing from a range of criminal sanctions which sanctions are also the creations of substantive penal laws and the sentencing guidelines laws.

SITUATION IN UNITED KINGDOM

In the United Kingdom, there is Sentencing Guidelines Council for England and Wales. In the United States of America, there is the Federal Sentencing Guidelines Commission. The Nigerian legal system in general, and her criminal justice, are the offshoots of the English legal system by reason of our colonial experience. Whereas our former colonial master has established sentencing guidelines to ensure specificity and certainty in the administration of criminal sanctions, Nigeria is still operating in the era in which Britain left it more than 54 years ago.

We have been static while the rest of the world is changing their criminal justice system to conform to the changing orientations. Sentencing Guidelines Council is responsible for making sentencing policies. The process is continual, involving inputs from the legal experts and the general public. The sentencing policies will ensure that there are more criminal sanctions from which the judicial officers must choose while administering criminal justice, depending on the offences or class of offences committed. This is the first part of this Study. It aims at critically examining the impacts of sentencing guidelines on the administration of criminal justice in England with a view to creating similar sentencing guidelines for use in the administration of criminal justice in Nigeria. This is more so when one considers that our criminal justice is almost in all respects like that of England except that ours has remained largely retributive.

A problem that flows directly from the absence of comprehensive sentencing guidelines in Nigeria is the overuse of imprisonment as a criminal sanction in Nigeria. Almost all the penal statutes creating offences provide for imprisonment as punishment for them, almost always as lone punishment or in lieu of or in addition to fine, forfeiture, caning, probation, binding over, etc. The reality is that over 90 percent of convicts in Nigeria are sentenced to various terms of imprisonment, even for simple offences, despite the presence of other non-custodial options provided for in our penal statutes. Not only that imprisonment is

overused, but its terms could also be varied in similar circumstances and for same offences depending on the whims and caprices of the judicial officers. This leads to prisons overcrowding. It is a truism that prisons and facilities meant for few inmates now accommodate triple the intended number of inmates. The initial objective of prisons which is rehabilitation is practically lost, and the human rights of inmates are roundly abused. The overpopulation is made worse by the number of awaiting trial inmates in the prisons. The police and the magistrates are the guiltiest in this regard. Judicious and judicial use of sentencing guidelines will ensure the use of more non-custodial sentencing options which the Sentencing Council will enforce compliance with. This second part of the Study seeks to establish relationship between sentencing guidelines, excessive use of custodial sentences and prisons overpopulation. The overall aim is to encourage the use of non-custodian sentences in deserving cases, reserving imprison for fewer and more serious offences. The result is that the population of the prisons will be reduced to the barest minimum. Using non-custodial options will also help in rehabilitation of offenders, which is more restorative than retributive in its approach. Recidivism will be reduced.

The use of sentencing policies and non-custodial options will reduce prisons overpopulation and build the confidence of the general public in the administration of criminal justice in Nigeria since punishments for same or similar offences will be more certain and more specific.

PROBLEM

Having attempted in some details at showing how uncertain, unspecific, and varied criminal sanctions are imposed on convicts for same or similar offences due to the absence of comprehensive sentencing guidelines and the overuse of imprisonment and judicial discretions by the courts or tribunals in matters of sentencing, it is important to study the institutions that administer criminal justice in Nigeria, especially the judiciary. The frequent resort to imprisonment as a form of punishment, and its direct consequence which is prisons overpopulation also deserves serious consideration. This is, more so, as crimes will never cease if the world exists. Crimes, rather, increase in volumes and complexity in reaction to the development of the society, science and technology. Despite these changes, the operators of the Nigerian criminal justice system and the system itself have maintained the statuesque, failing, neglecting or refusing to move with the trends.

The problems associated with sentencing in Nigeria resulting from the absence of detailed and harmonized sentencing guidelines, which absence encourages the overuse of imprisonment as a criminal sanction by the courts, and the attendant prisons overcrowding, can be identified as follows:

i. Absence of comprehensive sentencing guidelines,
ii. Overuse of imprisonment as a criminal sanction,
iii. Continual sending of convicts to prisons without building more prisons,

iv. Unwillingness to adapt to changing trends in crime prevention, detection and investigation by the police,
v. Reluctance in amending the relevant penal statutes such as the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code, Police Act, Prisons Act, etc,
vi. Maintaining prisons on the Exclusive Legislative List in the Constitution,
vii. Neglecting the use of alternative criminal sanctions to imprisonment,
viii. Uncertainty of punishments for same or similar offences and circumstances,
ix. Not making use of our local experiences, circumstances or culture in correcting and rehabilitating social deviants,
x. Absence or inadequacy of trained personnel to man alternative criminal sanctions in Nigeria,
xi. Lack of political will on the part of the executive arm of the government to undertake reforms and
xii. Wide discretional powers exercisable by the judicial officers in sentencing.
xiii. In establishing these problems, the researcher shall consistently refer to our substantive and procedural penal laws and the laws setting up the courts, police, prisons to show how the above listed problems have hindered the effective administration of criminal justice in Nigeria, contributed to prisons overpopulation, serious violation of human rights of inmates and erosion of public confidence in the system. Recommendations shall be made at the end of the Study to remedy these ugly situations.

CONCLUSION

For a very long time in the past, it was customary for legal practitioners to be insular in this sense, and to a reasonable extent it is still being practiced. However, this approach is no longer tenable. Comparative legal study offers the only way by which law can become international and consequently scientific. The importance of some level of consistency and certainty in the punishment's courts must impose on convicts in our criminal justice cannot be over-emphasized. Some points which a detailed study done by the judicial system in Nigeria can help in bringing out are:

i. It will bring about consistency and certainty in the practice of sentencing in the administration of criminal justice in Nigeria and such study will help to reduce and define precisely the discretional powers of judicial officers in punishment of convicts.
ii. Curtailing wide judicial discretions in sentencing will reduce corruption among judicial officers which in turn will restore public confidence in our criminal justice.
iii. Such study must encourage the use of non-custodial options in dealing with offenders thereby encouraging restorative justice which will also help in the enhancement of human rights of prisoners.
iv. The appropriateness and certainty of sentences for crimes encouraged using sentencing guidelines will check recidivism.

v. Effective forensic policing advocated for in this research will stop indiscriminate arrests by the police in the vicinity of crime scenes which lead to prisons congestions.

vi. Jobs will be created for the paralegals who will man the non-custodial options such as probation and parole.

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ARBITRARY DETENTION: HUMAN RIGHTS VIOLATIONS IN INDIA

*By Shreya Rawat**[7]

ABSTRACT

The arbitrary rule is never a sign of civilization. Any kind of detention is a nightmare but when it is coupled with arbitrary actions then it becomes a disaster. Still, the most civilized and law-abiding countries are haunted by arbitrary detention. The government often uses it as an intimidation tactic to gag up the voices of political dissent. The international bodies and the judiciary have pointed this issue several times, but this remains a massive problem. This paper strives to illuminate the recent incidents of arbitrary arrests in India and attempts to find a solution for this problem.

INTRODUCTION

Arbitrary detention refers to an arrest made arbitrarily by the state. Arbitrary detention is inappropriate, unpredictable and unjust confinement. However, the terms illegal arrest and arbitrary arrest are not synonymous. The illegal arrest is simply when an arrest has not been made in compliance with conditions given under the law of the land. On the other hand, an arbitrary arrest is a pre-trial arrest, without any evidence of a violation of law, where due process of law is not followed. The latter is much more dangerous as it exposes the arrestee to other human rights violations such as cruelty, ill-treatment, extrajudicial executions and torture. It is mainly committed in three ways:

(a) Detaining a person without legal grounds

(b) Delaying the delivery of detained persons to the judicial authorities

(c) Delaying release of a detainee.

There can be deprivation of the right to bail or the right to legal representation.

STATUTES RECOGNISING RIGHT OF LIBERTY

At the international level, The Universal human rights declaration charter recognizes the right to "life, liberty and security" and also provides that "No one shall be subjected to arbitrary arrest, detention or exile." The International Covenant on civil and political rights states the rights of an arrested person that includes information of charge against him, ability to seek release, judicial oversight and trial without delay. As far as India's domestic laws are concerned, the Constitution which is the ground norm for all other statutes itself declares that "No one shall be deprived of life and liberty except according to the procedure established by law." There are some provisions which are to be followed while carrying on preventive detention given under Article 22 of the constitution. The Code of Criminal Procedure also asserts that a person should be informed of the ground of his arrest and that no arrest shall be made except in accordance

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with the provisions of CrPC or any other relevant law for arrest.

JUDICIAL INTERPRETATION

The landmark case in this regard is *Maneka Gandhi v. Union of India* which clearly tells us that liberty has its variants and the basic is to move on one's own will. In *Joginder Kumar v. State of U.P*. the apex court held "No arrest should be made without a reasonable satisfaction reached after some investigation. Denying a person his liberty is a serious matter." *In D.K. Basu v. State of West Bengal* the court held "Personal liberty is a sacred and cherished right under the constitution. It also includes a guarantee against assault by state." In *Romila Thapar v. Union of India* Justice Chandrachud emphasized that no deprivation of liberty can be compensated for. Pointing out to the arbitrary arrests and court's right to intervene when the police commit procedural lapses, he held "the court's jurisdiction is wide enough to reach injustice in any form"

Even with all this, arbitrary arrest continues to be a frequent practice in India. This can be seen through the following hot off the press examples of such arrests.

BHIMA KOREGAON ARRESTS (2018)

Violent clashes took place between right-wing and left-wing political parties in Maharashtra while a good number of people gathered to celebrate the 200th commemoration of the Bhima Koregaon battle. Several human rights activists, advocates, intellectuals were arrested by the police alleged to have delivered inflammatory speeches. Ironically, there was no charge sheet file till days ago. Some of the arrestees were not even named in the FIR. They were booked under the draconian Unlawful Activities Prevention Act, infamously known as 'the New Rowlatt'. This act is problematic in the sense that it keeps the custody period longer than usual without any trial (30 days in place of 15 days of police custody and 90 days judicial custody in cases where the usual period is 60 days) Also, it is very stringent when it comes to bail. It is very vague at some places, a fault that gives ample power to the authority to misuse it.

ANTI-CAA ARRESTS (2019-2020)

The central government proposed a law in late 2018- The Citizenship Amendment Bill, which later got passed in both houses. From its very inception, it received dissents and there were huge protests all around the country. Although the protests were wholly peaceful, several people were detained by the police under sedition laws. There were allegations of torture and inhuman treatment. A very relevant name Safoora Zargar (one of the protesters, a research scholar in Jamia Millia) also came to light who was three months pregnant during her arrest. She was in police custody for three months and was allegedly kept in solitary confinement and denied proper medical care and diet. The UN body WGAD (Working Group on Arbitrary Arrests) criticized the arrest saying there were severe human rights violations and it "lacked legal justification." The UN experts also urged the government to release the arrestees. The government, however, turned a deaf ear to it and called it an "internal matter."

ARRESTS IN JAMMU KASHMIR (2019-2020)

In late 2019, India was taken aback by the shocking incarceration of some significant political leaders of Kashmir. This was done just before the scrapping of Article 370 or the special status of Jammu and Kashmir. They were house arrested for more than seven months under the controversial law Public Safety Act which AMNESTY called "a lawless law." The law is arbitrary in the sense that it has the following provisions

(a) Detention without trial for two years

(b) No need of producing before the court of law in 24 hours

(c) No right to file bail applications

(d) No bar on government passing another detention order just after detention. It also has ambiguous provisions that give the administration immense power to interpret it the way they want. It was said by the rights group that India has used the law to stifle dissent and circumvent the criminal justice system, undermining accountability, transparency and respect for human rights.

CONCLUSION

A government should know how to handle criticism positively and be open to suggestions instead of suppressing dissenting opinions with tyrannical power. The draconian laws must be repealed. Under the Indian legal system, there is no enforceable right to compensation for violation of unlawful arrests or detention against the state. That must also be paid heed to. There must be some good remedies or recourse so that the government does not become uncontrollable. The importance of the right to liberty cannot be emphasized more. It is required that this right is safeguarded at all costs as it is a bulwark against excess state power and abuse. In the end, it is about individuals and a person's right to live with dignity.

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DALIT ATROCITIES: A SYSTEMATIC CONCEALMENT

By Manshi Shankar[8]*

ABSTRACT

Turn in any direction you like; caste is the monster that crosses your path. You cannot have political reform, you cannot have economic reform, unless you kill this monster.

- B.R. Ambedkar

The reason for this discrepancy is the improper implementation of the laws. One of the vital reasons for the persistence of these atrocities is misuse of the law in filing false cases which resulted in new orders to be passed by apex court but however were repealed due the massive outcry it resulted in. The law however is flawless on paper and is subjected to amendment, but the rate of atrocities can be curbed only by proper implementation of laws.

INTRODUCTION

In country like India, where secularism is the basic structure of the Constitution and fundamentals right such as Right to Equality has been enshrined to avoid any kind of discrimination, violence against communities has been prevalent since time immemorial. The same resurfaced during the pandemic with #Dalitlivesmatter trending on social media. During this time of global crisis when health and financial emergencies are concern of the world, India is also being bothered by atrocities to Dalit and other marginalized community. Multiple instances of murder, attempt to murder, rape, brutality in police custody, domestic violence is doing the rounds on social media. These atrocities are generally committed either by higher class or police officials. To make it all worse, the cases are sometimes even not registered and if registered, the convicts are acquitted owing to their power, money, or higher class. These atrocities violate the fundamental rights and other clauses of international treaties meant for the protection of marginalized communities which India is a signatory of.

HISTORY OF DALIT ATROCITIES

The origin of caste system is unknown; many scholars have tried to unearth this mystery but have failed to do so. But the history of caste is known to everyone, it is Gritty, cruel, and Baffling. Scholars had predicted that caste would inevitably collapse once capitalism was established, reforms like green revolution and capital-intensive technologies would act as a catalyst and completely uproot the caste system. But alas, the caste system which is so close knitted with religion and has buoyant admirers in high places, it sensationally survived. The reason being caste cannot be easily seen unlike the apartheid. Also, the admirers of caste continue to practice it as they think caste is something which binds as well as separates people in the community. Caste in India is far from restricted solely to the Hindu population it has infiltrated the country's

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practice of Islam, Christianity, Buddhism and Sikhism as well. Conversion did not affect caste system, as the low caste converts continued to be treated as outcasts in their religious community.

According to the 2016, National crime records Bureau over 40,000 cases of atrocities were recorded against Dalits. The first case that comes to mind after listening to the word Dalit atrocities is the Khairlanji Massacre. Revolutions can, and often have, begun with reading. If you have heard of Malala Yousafzai but not of Surekha Bhotmange, then you haven't read enough about Dalit atrocities. In 2006, a Dalit family moved to Khairlanji, a village in the state of Maharashtra, to cultivate five acres of their newly purchased land. This piece of land, being a common passage for the villagers, became a bone of contention. Although the matter was taken to court, the Dalit family remained unscathed. This spurred tension between the family and the upper caste Hindus, leading to a series of unpleasant events. The latter inflicted torture on the family, and this resulted in parading the women of the house naked to the center of the village, crushing the genitals of the two sons with stones, gang raping the women, and dumping the corpses in the canal.

What is the way to move forward this? Is it stringent new laws, or can democratic change can only be made through structural reforms through proportional representation? When the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Rules, 1995 was put into force, it came as a glimmer of hope for Dalits, the clear objective of this act was to bring justice to the Scheduled Castes and Scheduled Tribes communities with active efforts so that they could live in dignity in the society. But has it been fruitful?

LEGAL PROVISIONS AGAINST DALIT ATROCITITIES

The Government of India is obliged under various international conventions, domestic laws, and Constitution to guarantee basic rights to Dalit and to punish those engaged in Caste based violence. Despite the existence of such laws and Constitutional provision that proclaims social, economic, and political justice for all a steep rise can be seen in the atrocities faced by the Dalit in India.

PROTECTION UNDER THE INDIAN CONSTITUTION

The Indian Constitution provides for right to equality under Article 14 and 15 and abolishment of Untouchability under Article 17 but the ground reality is that even after years of independence people still face the same humiliation and discrimination, they have been facing for centuries now. Right to life under article 21 means right to live with dignity as it was upheld in the case of *Kharak Singh v State of Himachal Pradesh*. Right to live with dignity means that all people are at equal footing, and they should not be discriminated because of their caste and treated as untouchables or object for exploitation. In the case of *PUCL v Union of India* it was observed that along with gender injustice, pollution, malnutrition etc. Dalit ostracism is Human Rights Violation.

Initially there used to be Protection of Civil Rights Act, 1955 and Indian Penal Code which were inadequate to check the crimes against marginalized community. Owing to

the rise in atrocities against them Indian Parliament enacted the Prevention of Atrocities Act, 1989 followed by rules of Rules of Prevention of Atrocities in 1995. This act classified the crime against Dalit as atrocities and mandated the designation of special courts for speedy trial of the cases of atrocities and imposed more stringent punishment on those found guilty of this crime. The act also provides for enhanced punishments for some offences.

The act took a major turn on March 20, 2018, in the Supreme Court judgement of *Dr. Subash Kashinath Mahajan v State of Maharasht*ra. Taking note of rampant misuse of SC/ST Act the Supreme Court in a judgement diluted the provisions of SC/ST act by passing orders such as

1. Ban of registration of criminal cases and automatic arrest
2. The arrest of public servant would be done only at the order of appointing authority
3. Preliminary inquiry by deputy superintendent of police before arrest of non-public servant

This order caused a large outcry among the Dalit community as it was against the consonance of the constitution. These orders passed by the court meant that where Dy S.P would be needed to file the case of Dalits the cases of upper caste would be filed without any hurdle. These provisions would be in contradiction with protective discrimination meted out for the schedule caste in Article 15, 17 and Article 21. To neutralize the effect of the same, Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2018 was passed by the Parliament.

THE SCHEDULE CASTE AND SCHEDULE TRIBE (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018

After the contradictory judgement of apex court on March 20, 2018, the Centre filed a review petition in the Supreme Court seeking a review of its order passed on March 20.it was said that the schedule caste was subjected to same social stigma, poverty and humiliation which they had been subjected to for centuries. Quashing the above-mentioned order, the bench headed by Arun Mishra said that preliminary inquiry was not necessary before lodging an FIR and approval of appointing authority was also not needed.

On the outset, the SC/ST act flaunts a very positive picture, on paper it looks flawless. But the implementation is confusing and inefficient. There are the National Commissions for SCs and STs (NCSC and NCST), which though not statutorily mandate to recommend the Centre appears to monitor the implementation of the Act but can't effectively do so because of their lack of resources and motivation. According to section 15 (4) of the Indian Constitution-

"*Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes*" In our opinion, separate commission should be made for the state and district level as well so that there is an able monitoring system to ensure effective implementation of the act at the ground level itself. The

prevention of atrocities act has failed to acknowledge the need for and importance of rehabilitation. The victims should be provided with financial support so that they become economically independent, and they should not have to go back to work for the oppressors. Further, according to the prevention of atrocities act, an offence committed under the Act is to be investigated by a police officer not below the rank of a deputy superintendent of police (DSP). But this rule has been violated number of times and thus, the onus is on the police and administrative system to solve this problem, there should be some process to monitor the working of administration and a monitoring committee should be set up which meets regularly to discuss and solve the discrepancies and to make sure that the cases are registered under correct provisions and the police should make sure that there is no under-reporting of cases. Dalit are under-represented in the administration and as a result are hesitant to come out and fight against injustice, thus, there is urgent need to set up an independent commission at district level with representation from the Dalit community which will ensure proper filing of cases without fear of upper caste officials and authorities who refuse to file the cases and try to protect the perpetrators.

CONCLUSION

It has been 73 years since India has achieved independence and 25 years since the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and Rules came into force and yet majority of our population faces caste discrimination. The upper caste dominated administration and the bias shown by the police and other departments when dealing with cases involving atrocities of the marginalized caste reveals the rot in every organ of the system. The cases continue in court for a long period of time, and it becomes unsustainable for the victims to fight the case for such a long time. The designated special courts are already overburdened with cases, and they do not give priority to atrocity cases. There is a major criticism that the implementation of the SC/ST act is ineffective, and the weak judiciary system is to be blamed for it. Shortage of Special courts, delay in trials, overburden of cases, the misuse of the act, the list is endless. The law has been amended and will continue to be amended in the future but as a society we are ignorant and divided and thus, we have failed to raise our voice and stand up to the cause. We have, collectively as a society failed to eradicate the curse of the caste.

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DISCRETIONARY DETENTIONS

By Ayush Mishra & Tanya Mishra[*9]

INTRODUCTION

Law is the measure of tendencies. The formation of law (especially criminal law) has always revolved around understanding the human behaviour and the actions coupled with it. When we say that "law is the common sense" we generally assume that the human mind is intellectually and evolutionarily adept to predict such tendencies and the natural human behaviour which takes birth from such tendencies.

What is the source of such assumptions and predictions? Let us start by taking an example: a mother told his teenage son that you should stop lying otherwise no one will believe you even if you were telling the truth and they will assume that you are still lying. The young man asked his mother as to the reasons of such assumptions and his mother replied that people assume that it is your tendency to lie because of your already proved past conducts. That is the common sense we are talking about i.e., a person's ability to attach weight to the past conduct and pattern of society and person and evaluate all these to come at a logical conclusion. These principles aptly apply to the criminal justice system in India and around. Even though all our penal laws have already been codified by competent legislatures, the law does provide at places for authorities and Courts to exercise well-reasoned discretions and here the authorities are expected to come at a logical conclusion after evaluating the situations and circumstances including the past conduct. These all conclusions derived come to standstill when Indians are encountered with the lawlessness of the law of preventive detention and the way it is being implemented in India.

The law of preventive detention is an aberration from the basic understanding of human behaviour or the way it is exercised presents a grim picture of the society at large. The history of preventive detention laws is marred by the complete refusal on part of society to accept such laws. Starting from the introduction of some the infamous preventive laws like the Anarchical and Revolutionary Practices Act, 1919, also called the Rowlatt act to the introduction of Maintenance of Internal securities Act, The Preventive Detention Act,1950 and the now prevailing and often misused National Security Act. It is said that people learn from experiences. The continuous tyranny of the preventive detention laws formed the consensus among the Indians to do away with such laws once they gain independence and never allow such tyranny to be repeated in independent India.
Then what were the reasons that led to the inclusion of preventive detention in the constitution? While presenting the bill to include preventive detention laws in the Constituent Assembly, Sardar Patel described it as a "necessary evil". This brings out a very clear picture that despite putting provision for preventive detention under Part III of the Constitution, the assembly without

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an iota of doubt accepted the fact that indeed these laws are evil for the society. Mindless communal violence around the time of partition, anti-national and subversive forces, war with Pakistan over Kashmir, Razakar movement in Hyderabad and problems over the integration of States into the Union weighed heavily on the minds of members of the Constituent Assembly. They felt that the Government needed the power of preventive detention under the prevailing circumstances. The fact that the first preventive detention act, 1950 was enacted only for 1 year to deal with the imminent threat solidifies the argument that it was never the intention of lawmakers to keep these detention laws permanent. The tyrannical nature of these detention laws and their need in the time of independence is best described by Patanjali Sastri, J : In *A.K. Gopalan v. State of Madras*, in the following words:

"This sinister-looking feature, so strangely out of place in a democratic Constitution, which invests personal liberty with the sacrosanctity of a fundamental right, and so incompatible with the promises of its Preamble, is doubtless designed to prevent the abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the infant republic."

These observations paint an even more clear picture. The need for the introduction of these laws and keeping these laws under the direct check of Supreme court and High courts under Article 32 and 226 respectively was born out of the ruckus and lawlessness created by the unavoidable circumstances and it gave an iron hand to the state to deal with such inadvertent situation. But addressing the elephant in the room; do we still need such laws, and if yes, where to draw the line?

The answer lies somewhere in the evolution of the way the Indian courts have become wary of such laws. After many years of independence, India as a nation has evolved so much and no democratic, republic and the independent nation would want its citizens whose individual liberty is valued so much by the Constitution to be subjected to the tranny of preventive detention laws. When the constitution-makers dreamt of a sovereign, socialist, democratic, republic India they inserted so many safeguards for the protection of life and liberty of the individual. The provision of detention laws is like anathema to part III. It goes on to negate the very basic edifice on which our Constitution was framed and it's high time to do away with these laws.

PREVENTIVE DETENTION

The term "preventive detention" is nowhere strictly defined. However, roughly it can be described as detention without trial which is made on mere apprehension that a person may be dangerous for society. It is different from punitive detention. Preventive detention invests too much discretion in the State(executive) which is usually exercised arbitrarily. The constitution under Article 22 of the constitution provides the fundamental rights to an arrested person but then goes on to create an exception within the same article for two types of arrestees:

(1). An enemy alien

(2) a person booked under preventive detention law. These two categories of person will not be eligible for basic rights under

Article 22 like; Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest and No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

The exclusion of enemy aliens is justified in sense that many democratic countries provide for similar provision like USA and UK and by the fact that we still face threats to national security from outside forces. During the First and Second World Wars, the British Parliament empowered the government to pass orders of preventive detention.

During the First and Second World Wars, the British Parliament empowered the government to pass orders of preventive detention and the courts upheld the power on the ground of necessity. However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment, namely national success in war or escape from national plunder or enslavement. But no power of preventive detention has been exercised by the British Parliament during peacetime. The Indian Constitution, however, recognizes preventive detention in normal times and there lies the reasons for its misuse. Let us understand why and how.

The most common feature of criminal justice system like India is the presumption towards innocence of a person and the liability put on the state to prove otherwise in the court of law. It was never the intention of the constitutional makers to make detention laws as an excuse for the lawlessness of a state and to use these laws as a simple and speedy tool to present a flowery picture of the law-and-order problem of state. The detention laws give arbitrary powers to the state to circumvent the criminal justice system and emasculate the lower criminal courts of their power to try offences. Detaining someone without trial might seem justifiable when there are threats to national security. The same cannot be said when it is used to deal with issues such as video piracy and offences under cow slaughter act. Let us take an example to see how the detention laws are making a mockery of the criminal justice in India.

A person was allegedly arrested by the State of Uttar Pradesh under the relevant provisions of the U.P. Prevention of Cow Slaughter Act,1950 (which now has been made more stringent to make it exclusively trailable by Sessions court). The person arrested was granted bail by the court considering his past conduct and saying that a poor man was in no position to pose any danger. The accused was overjoyed and his faith in judicial system was strengthened. But, as soon as he was about to be released from jail, he was allegedly booked under the provisions of the National Security act for preventive detention. This mischief which arises from these laws need be stopped to prevent blatant violation of human rights. In normal times the executive can arrest and detain a person for months together without even seeking the confirmation of the advisory board. The rights of the detainee are confined to making a representation to the very

authority which has detained him. The very basic natural human rights of hearing the other side (audi alteram partem) are violated by denying the detenu any chance of cross examination to check the veracity of the very substances on which he is detained. These preventive detention regime's sanction for arrest and detention for up to three months, without periodic review and no judicial oversight, is against the basic principles of our republic that is supposed to "zealously" guard liberty.

Moreover, these laws interfere with the power of the Magistrates and criminal courts to act as a check on criminal investigations and act as guardian of the human rights at the basic district level, as it is not at all possible and practical for constitutional courts to keep checks on police investigations which the lower courts are quite adept in doing. Moreover, it is not possible for every poor man so detained to approach the high courts and supreme courts under habeas corpus petition and hence indirectly denying him the right to make any representations, violating his right to life and basic human rights and hence, leaving him no other option other than to accept his detention as his destiny.

Moreover, during the proclamation of emergency, the President under article 359 suspend the right of citizens to move court for enforcement of fundamental rights. In the event, the safeguards guaranteed by article 22(4) and (5) are affectively abolished and no redress is available. Citizens are wholly at the mercy of the executive, and the courts have held that they are utterly powerless in several cases viz. Makhan Singh v State of Punja AIR 1964SC 381, Mohd. Yaqub v State of Jammu & Kashmir AIR 1968 SC 765 and ADM Jabalpur v S Shukla AIR 1976 SC 1207. It may be mentioned that the number of detenus, during the Emergency of 1975-76, had soared up to 1,75,000. On the eve of coming to power, the Janata Party promised to abolish detention without trial. The Janata Government sought to alleviate the rigors of the procedure for preventive detention, by effecting changes in Cls. (4) and (7), enacting the Constitution (44th Amendment) Act, 1978. But these amendments are yet to be notified to make them effective, hence doing nothing to protect human rights. These laws provide an easy way out to the executive and readily available preventive detention may cause society to ignore other, potentially fairer and more effective interventions to prevent violence.

CONCLUSION

Renounced advocate Nani Palkhiwala in the famous Minerva mills case, on a lighter side but quit aptly argued before the bench that the decisions and debates in the constituent assembly were made in the dust and din of politics and situations at that time, and now as constitutional courts it is our duty to review such laws if they don't pass the muster of individual freedom and liberty. There should be some checks and balances on the discretion exercised by detaining authority and the judiciary needs to step in during the detention period and specially the lower criminal courts. Prior conviction of at least one serious crime of violence, or at least one prior occurrence of serious violent conduct should be proved to prima facie detain a person. Conscious awareness of high degree of harm that a person can cause should be objectively proved for detention and the unchecked discretion given to state should be

lowered by notifying the 44th amendment of A.22. Our Constitution is not just a bare document made for vanity purpose, its spirit highlights the wishes and aspirations of our society and laws which don't adhere to such aspiration have outlived their validity.

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THE SOCIAL CONSTRUCTIVIST AND THE LIBERAL INSTITUTIONALIST SCHOOLS OF THOUGHT: CASE STUDY OF TUNISIA

By Mibin Mammen[10]*

INTRODUCTION

Arab Springs is one of the events that shook and change the perception of the Arab World as we know it from the hub of a conservative approach to an area that can transform or change the regime according to the people's will and desire. The Arab Springs according to Nicholas Onuf as a Famous International Relations theorist is considered as the system of International Order that is in the making. The event saw the rise of several schools of thought which were considered as not relevant to International Relations.

The following research will try to look at the success and the perspectives of two major schools of thought i.e., Liberal Institutionalism and Social Constructivism towards Arab Springs using the case study of Tunisia which was one of the starting points of the Arab Springs.

HISTORICAL BACKGROUND

The Arab Springs as it is called by the international media and scholars started in Tunisia after Mohammed Bouazizi a Street vendor set himself on fire as a symbol of protest the police officers seizing his vegetable stand for the reason of not having a Permit on December 17, 2010. This can be considered as a trigger cause as there was a great resentment among the Tunisian public that was represented by Mohammed Bouazizi. But there are many causes for the beginning of the Arab Springs or the Jasmine Revolution in Tunisia that is connected to the history and the political system that existed in Tunisia during 2010 and 2011.

Tunisia in the year 1564 was the part of the Ottoman Empire that ruled much of Africa and Asia. But the invasion of Algeria by the French Empire in 1830 threatened the security of the Ottoman possessions in Tunisia. This was continued with the subsequent colonization of the French forces in Tunisia in 1881 when Tunisia became a French Protectorate. The French helped Tunisia in the stabilization of the economy and many reforms were introduced that brought about a revolutionary change in Tunisia economically and politically. (Britannica, n.d.)

The First wave of movements in Tunisia started in the 1890s with the French-educated group 'Young Tunisians' that launched a publication in French called *La Tunisien.* This first wave of movement was very nascent and called for more modernization reforms with the coordination of the French authorities in Tunisia. There was a sudden shift in the movements which started after the First World War with the formation of the Detour Party that called for the increased participation of Tunisians in the Political process and equality of the Tunisians. The movement by the Destour Party along with Neo-Destour Party led to the further independence of Tunisia on March 20, 1956, with Habib Bourguiba as the Prime Minister.

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He became the President of the newly formed Republic on July 15, 1957. (Britannica, n.d.) The major political parties in Tunisia at that time Destour Socialist Party and the Democratic Constitutional Rally until 1988. The subsequent events in Tunisia led to the rise of General Zine al-Abidine Ben Ali who was the Prime Minister before 1988 and became the President of the Republic. He promised a restoration of Democracy in the nation and the institution of the Multi-Party System with the signing of the National Pact in 1989. This Pact saw unity among the various ruling parties in Tunisia including the Islamic fundamentalists who rose during the time of Bourguiba Presidency. But the system was short-lived and in 1989 elections that accompanied the RCD won most of the seats in the Chamber of Deputies and the Zine al-Abidine Ben Ali won 99% of the votes in the same elections. But in the local body elections that followed saw the rise of the Islamic opposition parties which were subsequently crushed due to their opposition to the First Gulf War. (Fawcett, 2019)

His regime saw an increase in political arrests and several gross human rights violations and destroyed the Democratic framework in the country. He won the subsequent elections in 2004 and 2009 which were seen as rigged elections with less participation of the Opposition parties and the opposition forces in the nations. This growing authoritarianism under Ben Ali led to the Jasmine Revolution in Tunisia in the year 2010. (Fawcett, 2019) This movement saw a huge ripple effect in many parts of the Middle East and North Africa including Egypt, Syria, Yemen, and Libya. The movement led to the subsequent resignation of Ben Ali as the President in January 2011. He subsequently fled abroad, and a state of Emergency was declared in Tunisia with Mohammed Ghannouchi assuming power. This did not end the unrest and the Jasmine Revolution which led to the subsequent resignation of Mohammed Ghannouchi and the entire cabinet that belonged to the RCD party. The Beji Caid Sebsi became the Prime Minister and promised to conduct free and fair elections towards the Constituent Assembly. The elections were held on October 23, 2011, which saw the rise Ennahda Party winning the 90 seats in the elections and the subsequent assembly elected Monsef Marzouki as the President and Hamadi Jebali who was the leader of the Ennahda Party becoming the Prime Minister. (Fawcett, 2019)

The Revolution had a huge ripple effect with various movements in many parts of the Arab World and inspired and changed the notion of the Arab World among many International Scholars and observers. These aspects of how the International Relations schools of thought Liberal Institutionalism and Social Constructivism the movement in detail will be looked at in the subsequent sections of this paper.

LIBERALIST INSTITUTIONALIST VIEW OF THE DEMOCRATIC TRANSITION IN TUNISIA

Liberal Institutionalism is a mix of schools of thought that attribute importance to the International Institutions and Organizations that give importance to Absolute gains and considers the importance of economy and trade as compared to warfare. The schools of thought have been divided into 2 forms that

focus on Neoliberal institutions (Keohane and Nye, 1987). and International Regime theorists (Krasner,1982). These schools of thought also focus on the importance of international organizations, Non-Governmental Organizations, and Multi-National Cooperation that act as important actors in the relations within and between the states.

One of the major viewpoints of the Liberal institutionalists towards the movement is attributed by Cerny who considers the importance of Democracy and the Rule of law in the security of the state which according to him led to the transition in Tunisia towards Democracy (Cerny 2015). This viewpoint is shared by various other Liberal institutionalists such as Robert Keohane also Krasner who says that the internal factors and the openness of the political class in the state have a huge impetus in the formation and the transition of the state into a different political system. This aspect can be seen in Tunisia which saw a rise in authoritarianism and a closed political system which led to the Jasmine Revolution of 2010 and the formation of the Democratic Governance in the region.

The other arguments of the Liberal Institutionalists revolve around globalization. They argue that globalization is an unstoppable force in the international order and continues to change the international order from time to time. The importance of globalization as an unstoppable force has been first put forward by Andrew Moravcsik in his statement:

"Liberals argue that the universal condition of world politics is globalization. States are, and always have been, embedded in a domestic and transnational society, which creates incentives for economic, social and cultural interaction across borders" (Moravcsik,2010)

The Democratic Transition in Tunisia explains according to these authors and the Liberal Institutionalist school in general the importance of globalization and how the tools of globalization can lead to the rapid expansion of ideas which led to the Jasmine revolution (Baylis, Smith and Owens,2011).

SOCIAL CONSTRUCTIVIST VIEW OF THE DEMOCRATIC TRANSITION IN TUNISIA

Social Constructivism is one of the major schools of thought in the Constructivist theory. The Theory was developed by Alexander Wendt through his seminal Work '*Anarchy is what states make of it*' (Wendt,1992). He tends to look at how Anarchy is a constructed system and how the states tend to fall into the trap of Anarchy. The theory was an off shoot of the Critical Theory school of thought in International Relations that spread as a criticism towards the domination of the Liberalist and the Realist schools of thought. The main scholars in the school include Finnemore, Sikkink, Kubalkova, Onuf, and others. The main viewpoint of this school of thought is the importance of social dimension in understanding a state and focuses on the idea of languages and identities involved in a state.

When coming to the Democratic transition in Tunisia there is a division between the various scholars of the Social Constructivist school of thought. One of the groups of

scholars tends to investigate the diffusion of norms which is done through International Organizations (Barnett and Finnemore 1999). This group looks at the importance of the European Union as a normative power that helped in the diffusion of ideas that may have inspired the Jasmine Revolution that led to the democratic transition in Tunisia. Unlike the Liberal school which gives importance to democracy, this group of scholars tends to also look at the negative aspects of such diffusion of democracy which can be seen from the works of another scholar Natorski who gave the idea that such an involvement of European Union diffusion of ideas can also have consequences and can create an economic downfall in the nation (Natorski, 2015).

The second set of social constructivists tend to consider the advent of globalization and the increased use of social media which caused a spread in democratic norms as one of the reasons for the events in Tunisia. There are various scholars including many of the Arab scholars who tend to stand by this strand of Social Constructivist. One of the most famous is Dalia Mogahed who gave importance to the increase of the use of social media and the embrace of Western values of freedom and Liberty that led to the movement (Mogahed, 2012). This can be considered contradictory to the previous school that gave credit to the European Union for the diffusion of norms that started the Democratization wave in Tunisia. This school also believes that these mediums of communication and dissemination caused a change in the mindset of the Tunisians and subsequently of the entire Arab world towards human rights and rule of law that led to the movement's success. The movement also shaped the identity of the Arab World and caused an uproar among the leaders of the Arab World on the fragility of their regimes (Korany and Mahidi, 2012).

Another viewpoint presented by the Social Constructivist theory is the importance given to human interactions and the human consciousness involved that made the transition towards democracy easier and led to the structural change in Tunisia. This can be connected to the idea of the norms that have been propagated by Finnemore who in his article '*International Norm Dynamics and Political Change*' the importance of change in the micro-level through human interactions that can bring about a structural change in the system associated with a state and this can be seen in Tunisia were Mohammed Bouazizi represented the micro-level change requirement that inspired the continuation of such a huge movement and also towards the structural change in Tunisia towards democracy. (Finnemore and Sikkink, 1998)

In Conclusion, the Social Constructivist school of thought tend to look at the structure of the Democratic movement in Tunisia and the forces that were involved in this transition according to some the European Union and according to others the spread of globalization and the use of social media and the destruction of tradition. There is also another viewpoint which gives importance towards the human connections and consciousness that gave importance towards a structural change that inspired the movement.

ANALYSIS

Social Constructivism and Liberal Institutionalism presented different viewpoints towards the Democratic transition in Tunisia. These viewpoints have been represented by the scholars of both the theories including Moravcsik and others from the Liberal Institutionalist School and Finnemore and others from the Social Constructivist school. These viewpoints have similarities and differences which makes them unique.

One similarity between the viewpoints of the Liberal Institutionalist School and Social Constructivist school regarding Democratic Transition in Tunisia is the importance given to globalization and how globalization to an extent has contributed towards the events of the Jasmine Revolution. Both viewpoints tend to give importance to how globalization has led to the spread of the movement. But the Social Constructivist went deep on this aspect and tried to discuss in detail the use of social media and the importance of the requirement of change in the political system that inspired the Jasmine revolution in Tunisia.

There are also several differences between the schools of thought of Social Constructivism and Liberal Institutionalist viewpoints towards democratic transition in Tunisia. One of the major differences in the Social Constructivist emphasis on the internal matters of the state and how that inspired the movement along with the importance of the International Actors such as globalization and social media and European Union. This can be seen as a different approach as compared to the Liberal Institutionalist view which emphasizes the importance of democratization without concentrating much on the factors that inspired the democratic transition in Tunisia. This makes the Liberal Institutionalist school on a weaker side as compared to the Social Constructivist theory.

In conclusion, the Social Constructivist school tends to give huge emphasis on the domestic and the international aspects of the Democratic transition in Tunisia as compared towards the Liberal Institutionalists who concentrates on the macro-level aspects of the movement. This gives Social Constructivists an edge over the Liberal institutionalists in the study of the Democratic transition in Tunisia and how the movement has been successful in various fronts to inspire other nations in the MENA region.

CONCLUSION

The Social Constructivist school of thought has been more successful in the explanation of the events leading to the Democratic transition in Tunisia as compared to the Liberal Institutionalist school. But there needs to be more research done to understand the various other aspects that led to the movements and the consequences that had on Tunisia and subsequently the MENA region.

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ROHINGYA CRISIS

By Shubhankar Kar[11]

INTRODUCTION

Myanmar or Burma, also known as the Republic of the Union of Myanmar, is a country in Southeast Asia and is surrounded by Bangladesh and India to its northwest, China to its northeast, Laos and Thailand to its east and southeast respectively and the Andaman Sea and the Bay of Bengal to its south and southwest. There is a huge crisis going on for several years with a group of immigrant people. The Rohingya people are from the historical region of Arakan, an old coastal country in Southeast Asia. By the 4th century, Arakan became one of the earliest Indianized kingdoms in Southeast Asia. Many Sanskrit's Inscriptions stated that the founder of Arakanese city was an Indian. Arakan was ruled by the Chandra dynasty. Many people believe that Arakan is mainly today's Rakhine where the maximum number of Rohingya Muslims are living today. Over 100 years of British rule (1824-1948), there were huge migrant labourers sent to what is now known as Myanmar from today's India and Bangladesh.

After Independence the government found that the migration which took place was completely illegal and refugees, the Rohingya Muslim were sent to the Myanmar who then became stateless. This has led many Buddhists to consider the Rohingya Bengali, rejecting the term Rohingya as a recent invention created for political reasons. Right after Myanmar's independence from the British in 1948 followed by India in 1947, the Union Citizenship Act was passed by Myanmar defining which ethnicities could gain citizenship. According to a 2015 report by the International Human Rights Clinic at Yale Law School, the Rohingya right after the statistics were not included in that group and a huge number of Rohingya were already stuck in Myanmar. The act, however, did allow those whose families had lived in Myanmar for at least two generations to apply for identity cards. Thus, this was the beginning of the crisis which was going to be faced by the Rohingyas Muslims in future with such a huge population stuck in Myanmar.

The Rohingya people are now stateless Indo-Aryan ethnic group of people who follow Islam and used to reside in Myanmar (previously known as Burma) and currently after the genocide in 2017 fled to Bangladesh and started living in refugee camps as they don't have specific state. There were around 1 million Rohingya living in Myanmar before the incident took place of Rohingya genocide in 2017. The Rohingya population is denied citizenship under the 1982 Myanmar nationality law. They are also restricted from any freedom which the other citizens of any country easily get. Some of the freedom which the Rohingya Muslims are waiting for them to be open is such as Freedom of Movement, Freedom of Speech, and Right to Vote etc. The difficulties which are faced by Rohingya Muslims are both legal and physical and we can also say mental difficulties, depressions, harassment are

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discussed by many scholars and bureaucrats in several places in many issues and debates.

Before the genocide in 2007 in Myanmar the Rohingyas faced brutally hardship and been tortured as per the report before the genocide of 2017 occurred in Myanmar in which tremendous difficulties were faced by the Rohingya before that around 1 million Rohingya used to live in the country of Myanmar. The torture of Rohingya Muslims in Myanmar started in 1970s, since then, the Rohingya people have been persecuted on a regular basis by the government and nationalist Buddhists. In 2005, the United Nations High Commissioner for Refugees assisted with the repatriation of Rohingyas from Bangladesh, but allegations of human rights abuses in the refugee camps threatened this effort. In 2015, 140,000 Rohingyas remained in IDP (Internally Displaced Persons) camps after the communal riots which took place in 2012 . Since the past many Rohingya Muslims have been tremendously afraid about their existence on world earth and cautiously worried about their and the future of their children .

GENOCIDE OF 2017

The exodus began on 25 August 2017 after Rohingya Arsa militants launched deadly attacks on more than 30 police posts. The tremendous incident started happening right after the militants of the Rohingya started attacking the police of Myanmar and since it is followed by the attack from the other side as well. Myanmar security forces continued to perform abuses against Rohingya Muslims throughout 2018, deepening the humanitarian and human rights catastrophe in Rakhine State. The number which is not less than 730,000 Rohingya have escape to neighbouring since the operations of military of Myanmar started for the cleansing of the Rohingya Muslims. The government denied extensive evidence of atrocities, refused to allow independent investigators access to Rakhine State, and punished local journalists for reporting on military abuses. In August, the United Nations started a mission and found that the military abuses which were happening started in Kachin, Rakhine, and Shan States since 2011 and caused the gravest crime in the words of International Law and they have called for senior military officials, including Commander-in-Chief Sr. Gen. Min Aung Hlaing, to face investigation and prosecution for genocide, crimes against humanity, and war crimes. Over 30,000 civilians were newly displaced by fighting in Kachin and Shan States in 2018 and left increasingly vulnerable by government restrictions on humanitarian access. More than 14,500 Rohingya fled to Bangladesh between January and November 2018 to escape ongoing persecution and violence in Myanmar, joining almost 1 million others from 2017 and previous years in precarious, overcrowded camps. Conditions remain dire for the estimated 500,000-600,000 Rohingya still in Rakhine State. The refugees who fled from Myanmar and who arrived in Bangladesh in 2018 reported continuing abuses by Myanmar security forces, including killings, arson, enforced disappearances, extortion, severe restrictions on movement, and lack of food and health care. They also reported sexual violence and abductions of women and girls in villages and at checkpoints along the route to Bangladesh. The Rohingyas who are returning from

Myanmar also gave news about the severe tortures which they have faced and are also facing as well. Over 4,500 Rohingya remained stuck in the Bangladesh-Myanmar border "no-man's land," subject to harassment by Myanmar officials and regular threats via loudspeaker to induce them to cross into Bangladesh. There was a report that from January to March 2018, no less than 34 villages in Myanmar were completely or partially destroyed, bringing the total number of predominantly Rohingya villages destroyed between August 2017 and March 2018 to 392 and we can say that mostly which was through fire and several incidents . The government was not left to seize and clear by bulldozer the dozens of Rohingya villages, to destroy the evidence of the crime which they have spread, or which are left with it. Authorities began construction over the demolished villages, including new security force bases.

The government denied the UN fact-finding mission and the report which they prepared on Myanmar after scrutiny of all the incidents which took place. Authorities have repeatedly denied that significant security force abuses took place, setting up successive investigations that lacked independence or credibility. A committee was also established to look after the reports which were taken from the or made from the fact-finding mission, they are not exact and deals with less of accountability. It has been also reported that in June 2018, UNHCR, the UN Development Programmed, and the Myanmar government together signed a memorandum of understanding on returns which lacked guarantees of citizenship. The UN agencies began limited assessments in Rakhine State in September.

The beginning again reflected with the armed conflicts which were between the Myanmar military and ethnic armed groups intensified over the course of 2018 in Kachin, Shan, and Karen States which started regarding the dispute in natural resources. The civilians were most affected by this conflict; they were endangered by the military's indiscriminate attacks, forced displacement, and aid blockages. The UN fact-finding mission determined that the military's actions in Shan and Kachin States since 2011 amounted to war crimes and crimes against humanity. The Myanmar Government failed to control this kind of situation. After the genocide of the 2017 number of Rohingya people fled to Bangladesh to search for a shelter

PRESENT STATUS OF ROHINGYA PEOPLE

In Myanmar at present there are some Rohingya people who still don't have any permanent address, and some are there who have got their citizenship in that country. Rohingya Refugees who are living in Bangladesh at the current time have also been given a name of Forcibly Displaced Myanmar Nationals (FDMNs) from Myanmar who are living in Bangladesh. Hundreds of thousands have fled to other countries in Southeast Asia, including Malaysia, Indonesia, and Philippines. Maximum number of them have fled to Bangladesh and started staying in refugee camps. Recent violence in Myanmar has escalated, so has the number of refugees in Bangladesh.

On 28 September 2018, during the 73rd United Nations General Assembly, Bangladesh Prime Minister Sheikh Hasina said there are 1.1 million Rohingya who are staying in Bangladesh. Making the Bangladesh population increase and overcrowding the refugee camps makes the situation worse day by day. The refuges were facing crises in services, education, food, clean water, and proper sanitation, they are also vulnerable to natural disasters and infectious disease transmission and viruses. In June 2018 World Bank announced nearly half a billion dollars in monetary support to help Bangladesh so that they can provide the necessities to the refugees who are living there. On 1 March 2019 Bangladesh clearly announced that it would no longer accept Rohingya refugees. A study estimated that at least 18,000 Rohingya Muslim women and girls were raped, 116,000 Rohingya were beaten, and 36,000 Rohingya were thrown into fires set alight in an act of deliberate with this data we can clearly understand that how much human rights violation those people were facing from generation to generation.

The poor resources and sanitization have become a major problem for the refugees as they were facing many waters related issues and diseases. The recommended number of residents per latrine to reduce risk for waterborne disease is 20, according to the Minimum Standards in Humanitarian response. In the Rohingya refugee camps in Bangladesh, the actual prevalence of latrines is one latrine for 37 individuals. There was a lack of clean water as well which one could drink for good health and mental condition. Many people started drinking water from the river that time and the same river was also used as the source of bathing for everyone. Such a problem in the world with full accessibility of everything is available. A huge number of people are facing such kinds of problems from generation to generation.

COVID 19 AND ROHINGYA

During COVID-19, the World Health Organization and the health Centre of Bangladesh were very much afraid about the future condition of the Rohingya Refugee camp in Bangladesh . The World Health Organization and health partners in the Rohingyas camps in Cox's Bazar, Bangladesh, have been working all day that time with tremendous effect to stop the pandemic from touching the height in the refugee camp. WHO early attention and early response have till now not allowed the deadly virus to touch the height in the Rohingya Refugee camp. WHO also took the initiative to train around 300 volunteers to work and make them familiar with COVID-19 and how to deal with those kinds of situations in emergency phases?

As on 28 June, as many as 2456 cases of infection have been confirmed in Cox's Bazar District and 50 refugees have tested positive in the Rohingya camps. Testing kits and all other necessary equipment which was needed to control the situation of COVID-19 have been given to the people. With this we can say that the World health organization has taken the early step to control the peak of corona virus entering the Rohingya Refugee camp .

Today, Myanmar's laws leave the Rohingya in stateless status even though they can trace their family roots back generations.

Previously some have enjoyed the right to citizenship and the right to vote and hold office. For these reasons, many Rohingya reject being considered stateless. To them the fact that Myanmar is their state is clear.

Myanmar is the country where the people with many people still living in the refugee camp want to go there and live with full dignity and honour.

In India also in the North-eastern part of the country where several Rohingya Muslims are leaving here illegally and specially in the state of Assam who are facing huge problems with these refugees. Assam and other North-eastern States of India have enacted very strict laws and are looking in very serious note to stop the entry or the entry of the Rohingya people in their land. Rohingya people after the genocide of 2017 are scattered all over the Southeast Asia in search of place where they can stay. This kind of Human Right violation is very rare to see which is ever faced by any community. Rohingya Muslim are not only worried about their present condition but also their future condition and about their upcoming generation and kind of live their going to live into.

In January 2016 Government of Bangladesh have initiated a plan to relocated numbers of Rohingya Muslim who are there in the Bangladesh and send them in an island. The refugees are to be relocated to the island of Bhasan Char. This plan has received a huge protest and many human rights organizations have also stepped in to avoid these kinds of things from taking place. Right before the genocide in 2017 in Myanmar Bangladesh was planning to do this. The living condition in that island was not at all good as it is a flood prone area. The island has been described as "only accessible during winter and a haven for pirates." It is nine hours away from the camps in which the Rohingya currently live.

At the current day or in the present position the Rohingyas are considered stateless because they don't have any specific country in which they can live with dignity and with full of all the fundamental rights which are enjoyed by every citizen of a country .

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DISAPPEARING LAND AND THE MISSING LAW

By Anjali Ann D'cunha & Coral Shah[12]*

INTRODUCTION

The climate change situation has exacerbated the problems for international law. Climate change causes submersion of present land boundaries, changing the dynamic of coasts around the world, thereby causing issues of sovereignty, territorial, political and economic disputes, etc. The premise that climate change contributes to rising sea levels is based on two reasons: First, climate change may result in a warmer climate thereby warming the water bodies, which would occupy more space through expansion. Second, a warmer climate would result in the melting of snow, ice which would increase the ocean and sea level. The rising sea level may cause human rights issues, territorial issues. However, the issues are not restricted to this as it impacts the world at large.

The issue relating to sea level cannot be adjusted merely because of changes to the law, or amendments to the treaties. The problem of climate change reached an agreement when the UN agreed that global warming is real and is causing rising sea levels. Because of this emerging threat, various international agreements were signed including the 1992 United Nations Framework Convention on Climate Change, Kyoto Protocol and the Paris Climate Convention which set the goals to reduce global warming. However, very few member states have lived up to their commitment.

The most impacted due to these climate changes will be the small islands and countries surrounded by the river like Bangladesh, Egypt etc. as they may lose their territories or maybe at the risk of disappearing altogether.

PLIGHTS OF THE FAMILIES OF TUVALU AND KIRIBATI

The islands of Tuvalu are gravely impacted by climate change and are at a threat of disappearing by 2050. Tuvalu, a cluster of eight islands together, is situated in the Pacific Ocean and is just less than 2 meters above sea level. They relied on Australia and New Zealand for migration but to no avail. Australia refused to accept refugees and New Zealand's policy is inadequate to deal with the crisis. The Government of Tuvalu decided to forgo a solution of migration and decided to live in their country and fight for its existence by addressing climate change. However, in absence of a regulatory framework of law to address climate change, the families of this country will suffer, and the lands will extinguish.

Kiribati is also located in the Pacific Ocean and is gravely impacted by climate change. In 1999, two islands of Kiribati were already victims of rising sea levels. To add to the plight of the people, coastal and land erosion are quite frequent and therefore, many families have lost their homes. Kiribati is also predicted to disappear by the year 2050 as a result of rising sea levels. The country proposed internal migration as a solution to

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the crisis, however, it failed. As opposed to the government of Tuvalu, the president of Kiribati is garnering the support of the international community to identify and deal with climate change.

GAPS IN INTERNATIONAL LAW

The issue surrounding sea-level rise is not about the extent of the sea level rise, but more about the pace of the problem. The question before us is how these changes will impact the regulatory framework for international law. Is the international law well-framed to adapt to changes or will it require drastic amendments?

One of the main issues is the responsibility of irreversible climate changes. Following are the gaps under the international law that require urgent attention in case of such permanent changes.

Law of the sea is the law of the land

The law of the sea is predominantly what the states dictate to be the law of the land i.e., land dominates the sea. However, it is not a fundamental principle per se in the UNCLOS Convention, 1982. It is a device made by the courts to assess equity in boundary disputes. The United Nations Convention on the Law of the Sea's entire code depends on the 'baselines.' These baselines determine the maritime boundaries and maritime zones of the sea. Rising sea levels will disrupt these certainties of boundaries and zones. There is no provision or recognition for geographical changes caused due to climate change within UNCLOS.

Territorial issues

Submersion of rising sea levels and international law may raise severe territorial issues such as what happens to the States if the lands disappear, would they remain a State in absence of territory, what happens to the Maritime Zones when the territory through which they are measured disappear. Will this change the right of exploitation and other similar rights afforded to the Coastal States?

The role of international law is significant in determining maritime boundaries. Increasing changes in sea level may not only disrupt the land territories but also result in loss of maritime boundaries due to disruption of baseline.

It is important to examine if any existing law addresses these issues. Does Article 62 of the Vienna Convention on the Law of Treaties regarding fundamental change or circumstance expand its scope to cover maritime boundaries and rising sea level? It is pertinent to note that international law has many principles dealing with securing land boundaries. The consequence of climate changes on national territory must be seen through the provisions UNCLOS. Provisions relating to depth, definitions of various zones, the extent of land, etc. under UNCLOS must be addressed.

Let us look at some of the maritime boundary issues under international law.

First, Treaties on Maritime Boundary such as exclusive economic zone, Continental Shelf etc. are binding on Parties. The rising sea levels will cause severe complexity in determining coasts and zones since it will impact maritime claims. Second, several treaties have stated that the limits determined shall be 'final and binding.' It is imperative

we devise novel solutions to correct all these gaps.

Human rights issue

Due to the rising sea level, many countries may lose their land, as a result of which many inhabitants will lose their homes, lands for production etc. For instance, as per the World Bank Prediction, millions of people will have to migrate to other places by 2050 due to climate change and face displacement.

The main humanitarian issues these displaced people will face is they will have no place to relocate. They do not qualify to be a refugee under the 1951 Convention Relating to the Status of Refugees. They do not qualify as people in need of social protection as per international law.

POSSIBLE RESPONSE SOLUTIONS

To resolve the conflict over maritime jurisdiction, there are three possible remedies. The first is freezing baselines. Proponents of this remedy may argue this is permitted by Article 5 of UNCLOS. Coastal State is defined as including baseline and internal waters with national legislation. Outer limits remain intact, and the maritime territory remains with coastal zones. Those against this remedy may argue that the risks in new maritime space may increase due to navigation issues, high seas may be refrained from expanding causing a major public interest issue.

The second remedy proposed is freezing outer limits. The proponent of this remedy suggests physical existence. By using this remedy, the zones and maritime boundaries remain intact protecting the people from being affected due to climate change. Those against this remedy may argue, this may infringe the provisions of the UNCLOS as the limits of maritime zones may exceed the limit provided under the Convention.

After examining the pros and cons of both the remedies, a logical remedy that can be derived is 'freezing baselines and freezing outer limits.' Adopting this remedy may address the concerns raised by the previous two remedies.

To provide the people displaced due to climate change refugee protection, it is advocated that a treaty to give distinctive rights to such people is introduced. However, introducing a treaty will not be sufficient as many states may be reluctant to sign such a treaty. Countries may specifically plan and devise strategies for internal displacement within the country. International law provides legal right to emigrate refugees or grant the right to citizenship in other countries.

CONCLUSION

The various issues of sea level rise under international law have been discussed and some solutions to address these challenges have been provided. The objective of doing this is to protect the present marine rights of all the coastal states. The countries need to be motivated to adapt to these changes and actively provide solutions for dealing with the consequences. However, it is important to highlight that these remedies would not change the consequence of the situation. It is merely an adaptive solution devised to deal with the consequences. These solutions are just temporary in scope, and we need to develop a more holistic approach to deal with the situation.

THE CHOICE BETWEEN PRIVACY AND SECURITY OF A NATION: A HUMAN RIGHTS APPROACH

By Ridhima Sinha & Sneha Krishnamurthy[13]*

ABSTRACT

The increasing technological developments have many counterattacks which have constituted in criticizing the right to privacy in various ways. It specifies the impact of such an intrusion on a citizen which can be harmful and violative of the fundamental rights. Not only has the technology influenced privacy rights, but also been infringed by other means. This article also deals with Information Technology Rules, 2021 and how the liability of the intermediaries is beyond the scope of the act.

INTRODUCTION

The reformation brought about by the internet holds the capacity of communication interconnecting the world. According to the International Telecommunication Union (ITU), United Nations Body, almost 3.2 billion people out of the world population of 7 billion utilize the internet as of 2018. The wave of the internet has allowed street vendors and small businesses to adapt themselves to the digital world. The presence of people from every field has also given scope for risks including hacking, misuse of data, scamming, etc. The multiplication of data has been making the protection and security of online privacy more complex. The right to privacy is at stake for millions of users and the need to protect it is felt now more than ever.

WHAT DOES OUR CONSTITUTION SAY?

Our constitution embodies fundamental rights and empowers the citizens to enjoy these rights. The Indian Constitution has been influenced by the English law of the Magna Carta in one way or the other. This charter has established certain laws and customs and with this emerged the Rule of law. The essence of a developed country is determined by its growth and level of development. In a country like India, technology is the fastest emerging asset which supports in boosting our economy majorly. Generally, privacy rights are intrinsically intertwined with Information Technology. There has been a massive advancement in the Indian Constitution which has given a new facet to Article 21. Right to Life is said to be the core of the constitution as it provides various dimensions by giving an extended meaning to 'life' and 'liberty'. The principle of Fundamental Rights enshrined in Part 3 of the constitution act as a requisite for the intellectual, moral and spiritual development of the citizens. There is no specific legal definition for privacy.

Privacy is said to be constituted under Article 21- Right to Life and Personal Liberty. It is such a term whose meaning can be interpreted in various ways as the case may be. In *Justice K.S. Puttuswamy and Ors vs Union of India*, right to privacy as a fundamental right was recognized which was termed as a landmark judgement.

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In layman's language, privacy amounts to bodily integrity, dignity, confidentiality, compelled speech and freedom to dissent or move or think. Therefore, in a nutshell, it varies from case to case. On 1st January 1942, India signed the Universal Declaration of Human Rights for the validation of economic, social and cultural rights. Article 12 of the UDHR, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, legally protects one against "arbitrary interference" with one's privacy, family, home, correspondence, Honor and reputation. It has been included in various other conventions and charters in over 130 countries.

The history of Human Rights dates to the principles of Buddhism, Jainism and Hindu religious books like Geeta, Vedas, Arthasastras, Dharmasastras which contained provisions of Human Rights. Over a period, privacy has become a dynamic concept. People tend to have a wider scope of their rights to protect themselves. The impact of social media on privacy rights in the present time has been aggravated. Although there is no absolute recognition of this right in our constitution, it has been expounded by the Supreme court through article 21.

Social media platforms like Facebook, Google, LinkedIn, etc. obtain information from the user which no longer remains entirely private. The Delhi High Court in a recent case on social networking platforms held that any such information or content which is perilous in nature must be put to an end, failure of which would lead to a total ban. After subsequent changes, these platforms have made necessary changes by introducing more privacy options to a user the restrictions of posts, photos, status and other information which is available to other people.

The Internet isn't the only way privacy rights are infringed. This also takes place in gender priority by invading into one's private life especially that of a woman. Every woman is empowered to privacy, and no one has the right to overrun it. We also come across privacy cases in the health sector wherein there is a professional and commercial relationship established between a doctor and a patient. A doctor is bound to maintain confidentiality in society as the propensity of one is such that in matters of health one wants to be private and considers it fragile.

In Kharak Singh's case, a seven-judge bench of the Supreme Court where the question was – whether the police regulations authorize the police to do any domiciliary visit and surveillance of people with a criminal record and the same was challenged. The court held that it is violative of personal liberty under Article 21.

Yet again, the government intervened by proposing the Aadhaar scheme because of welfare policies to its citizens where it would collect all the data and biometrics of the people. As an outburst to this, several petitions were filed against the Government which was adducing a breach of the right to privacy. While, on the other hand, the government contended that informational privacy is insignificant, and it is not an absolute right and stated reasons for the same. The nine-judge bench, in this case, held that one would not want their data to be kept in the open for the public domain easily accessible to anyone. With the increase in

technology, there must be a robust data protection mechanism to safeguard the data and the privacy of the people.

Thus, the right to privacy though not an absolute right it is subject to reasonable restrictions. When we compare the growth of these rights from Maneka Gandhi's case to the most recent case of the Government's Aadhaar, there is a huge development in privacy rights which are to be enjoyed without the prying eyes of the rest of the world.

IMPORTANCE OF ENCRYPTION

The golden rule of online privacy of an individual depends on encryption and protection of the individual's personal information. Any hindrance in these two aspects infringes the right to privacy and carries the potential of misuse of personal information. India's revised Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code), Rules, 2021, hereinafter referred to as IT Rules, can be illustrated to explain the same. In order to understand these Rules, it is firstly essential to understand what an intermediary is. According to Sub-rule (w) of Rule 2 of the new IT Rules, "'social media intermediary' means an intermediary which essentially enables online interaction between two or more users and permits them to make necessary changes and modifications by using its services". It is any service provider that publishes and arranges user content without exercising editorial control over the content. The Rule in question is the sub-rule (2) of Rule 4 of the new IT Rules which states the following:

"A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009, which shall be supported with a copy of such information in electronic form".

The first proviso to the sub-rule provides the circumstances under which the intermediary shall do so only on order passed for the purposes of "prevention, detection, investigation, prosecution or punishment of an offence related to the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material, punishable with imprisonment for a term of not less than five years". Although this regulation aims at reducing the spread of fake news or carrying out illegal activities through WhatsApp, Signal, etc, such a motive is not guaranteed. This regulation requires the breaking of end-to-end encryption of messaging applications without which this Rule cannot comply. The term end-to-end encryption is the act of applying encryption to a device for messages where only that device to which it is sent can decrypt it and it cannot be done by any other device or messaging application. Therefore, various platforms employ end-to-end encryption in order to retain the reliability,

security and privacy of their users. It additionally helps in preventing identity theft, code injection attacks and other threats. Encryption becomes more necessary now as much of an individual's personal and professional life depends heavily on social media platforms.

The outcome of this Rule would be a major setback to the digital India of today since many messaging applications are used by Indians each of whom would begin to lose trust in such applications. There are some potential issues arising from this Rule, some of which are:

i. A mere guideline does not prevent criminals from committing crimes. This Rule could easily motivate criminals to shift their platform to lesser-known platforms in order to continue their activities while not falling into the scope of the current rules.
ii. There is a potential misuse of this Rule by the people who are in power given the presence of corruption in the field. Those who are in power can easily use this Rule in order to meet their ends and infringe the right of privacy of innocent users.
iii. This rule could also be a threat to democracy wherein any message or report circulated online which is factually correct but is criticizing the government, could be traced to the originator and punished for merely criticizing. Such an infringement is not only to the right of privacy of such users but also an infringement of their right to freedom of speech and expression envisaged under Article 19(a) of the Constitution of India.
iv. Owing to the importance of social media in today's world and the cyber-crimes prevalent concurrently, there is a need to give the new IT Rule an analysis and bring about a solution that prevents infringement of privacy and simultaneously fulfils the aim of upholding sovereignty and integrity of India and public order.

CONCLUSION

The breakout of the Covid-19 virus has caged people of all ages and professions in their homes owing to the usage of the internet for all purposes from ordering grocery, conducting classes, carrying out work from home, etc. The need for proper guidelines and legislation for online safety is felt now more than ever. The government shall make rules in order to facilitate the same and not create policies that weaken the online privacy of the citizens. It is necessary to protect the nation from terrorism, threat and danger in all forms by applying every tool available to protect the citizens from such infiltrators. However, one must not forget that in order to live a dignified right as a human, privacy is a necessity and a balance of privacy with that of national security is the path that shall be taken in order to sustain a cohesive development of the nation.

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THE FALLACY OF BIRTHRIGHT DEMOCRACY

By Arshaan Afaq & Owais Ashraf[14]

INTRODUCTION

"No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms of Government that have been tried from time to time".

Winston Churchill, House of Commons, November 11, 1947.

Mr. Churchill's philosophy in one of the extracts from his speech in the House of Commons in November 1947 is over the course of a very dynamic timeline which probably commenced from the beautiful gardens of Athens and looms to this day, the revered ideals of our ever too beloved 'Democracy' especially 'birthright democracy' have been left unchecked and seldom tried against the devices of reason. This article aims at chiefly presenting an argumentative overarch pertaining to close proximities between birthright democracy and human rights violations and in fact examines the cause-and-effect relationship shared respectively by the former and the latter.

WHAT DOES THE PHILOSOPHERS SAY?

A lot has been expressed regarding the idea of a democratic state over the years, be it the more contemporary philosopher's passion to link it with 'freedom' or his distal counterpart's advice about its contrariety, a very few amongst them have matched the mark to what is colloquially known as 'expose' this long-standing discourse.

To establish a philosophical account of one of history's most controversial philosophers, Friedrich Wilhelm Nietzsche. Nietzsche who was a literal personification of the 17th century philosopher Rene Descartes' theory of sceptic argument and in one of his works had even elabourately refuted Descartes' foundational philosophy Cogito Ergo Sum (I Think, Therefore I Am) therefore proving his allegiance to skepticism was not a man who would conflate a political order he considered as weak and sickening. Though a lot of his philosophies have been considered as E.Y Melekian in 'The Monist' had described it 'reverberations of a vanity filled prophetic aspiration' and have been time and again erratically confused by both left and right leaning scholars as a voice of their own but since this paper only aims to explain Nietzsche's stance concerning the democratic detriment owing to which I may not bother myself at deconstructing the very complex nature that his philosophies do manifest.

To understand Nietzsche's views on democracy one must first get introduced to his religious standpoint because it is only his religious commentary that can be said to have begotten his opinions about the former. Nietzsche in his book *The Anti-Christ* has elabourately despised the Christian religion terming it as 'weak' and accusing it of generating a dormant liking for 'slave

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mentality'. He puts weight on his accusations by explaining how institutionalized religion and especially Christianity has been used since ages for mass indoctrinations and intellectual murder. A similar cycle of imputations can be seen in his critique of democracy. According to him the idea of a democratic state which has been in its longevity used as a charade to mislead people into believing that they have been delivered into an era of freedoms and free choices is nothing but an heir of *Christianity.* Like Christianity democracy in its spirit makes sure to inculcate as Nietzsche puts it a 'herd morality' where it becomes almost impossible to hold a digressed opinion different from the popular vogue therefore hindering an individual's intellectual development as he/she must always bracket his/her views which would calibrate with the majority interest. Therefore construing Nietzsche's views on democracy it is evident that his despising the idea of democracy is deeply rooted somewhere in his will to create a system which prompts an individual to achieve the heights of development but the same is only possible if a specialized society which is thoroughly aware of a region's political whereabouts rather than every single person is allowed to influence the outcome of government policies, the latter's foreseeable implication being what is and has always been a gross marginalization of the minorities. Though there are in every democracy a plethora of written and embodied documents and laws which do apparently detest such mis happenings, but they can be said to have little to no actual dominion as an impending trail of a well-documented history also does suggest the same.

Another account of philosophy which this article has interested itself to explore is one which is rather a bit poignant and coming from such a personality who can perhaps be termed as the first martyr of reason, Sir Socrates. Ancient Athens, the city for which the world seems to have its reservations for granting it the title of ``The Cradle of Modern Civilization", was certainly the nursery where the seed of modern democracy was first sown. The idea did receive quite a flak by some of the prolific figures like Aristotle, Socrates and Plato but those accounts appear to be muffled along the course of history chiefly by those to whose interests the lacunas of the present political system seem to conspicuously cater.

In Book Six of 'The Republic' Plato deliberately draws attention to the Socratic philosophy about democracy by describing Socrates as falling into a conversation with a character named Adeimantus and trying to illustrate to him the very cons of democracy. According to Plato, Socrates for the context of discussion created an analogy between a working society and a ship.

The Socratic critique of democracy may not be confused as an advocacy for any form of elitism or a belief in furthering an aristocracy but rather the only remedy that would be able to mend the democratic lacuna. Socrates' point is that voting in an election is a skill and not a random intuition and like any other skill it needs to be taught systematically to people in order they develop it accurately for a fruitful result. He believed that the only people that should be let near a vote should

be the ones who would have thought about issues deeply and rationally and were not likely to confluent to any sort of socio-political bias therefore constituting an intellectual democracy rather than a birthright democracy in which all sorts of citizens who are very likely to get attracted by their resembling biases be it communal, sectarian, gender or ethnic are given a voting right without connecting it to wisdom. According to Socrates the latter would give rise to a system the Greeks feared above all i.e., demagoguery. Athenians had a firsthand painful experience of such demagogues, for example the sordid figure of 'Alcibiades' a rich, charismatic and smooth-talking wealthy man who eroded basic freedoms and helped to push Athens to its disastrous military adventures in Sicily thereby causing a plethora of Human rights violations in the garb of national interest.

THE BIG FAT INDIAN DEMOCRATIC DANCE

Post its independence in 1947, India, now the not so mystic Mecca of the world showed a conceivable stimuli reaction and announced its political and social set up to be drawn on democratic lines. It was a fair decision by a country that had just been emancipated by a millennia long imperialism and was willing to give its people a somewhat better social system than the one they had so long been subjected to. So, the ballads of democracy were acquired as they had already proven to resonate with the world's so-called idea of 'freedom'. The subsequent Indo-Pak partition begotten by a logistical disaster and whose plinth was solidified on a not-so-subtle deluge of two million corpses poked the conscience of the Indian democratic forefathers who unlike Pakistan stressed and paved the way for the inculcation of India's democracy to be an inclusive one and to whose evidence words like 'Secular Republic', 'Equality', 'Liberty' and 'Fraternity' do stand in the Indian preamble.

Though the tenets were verily adopted in the Preamble, a vicious history of human rights abuses in the sub-continent since its independent inception poses a very strong question. Was the whole hullabaloo about declaring India a democratic republic with promises to uphold justice and human dignity a fat fed facade to demonstrate a leap into an era of modernity and 'just' social values while the system on its own was too fragile to withstand severe intrinsic disparities? The answer is both yes and No. The latter because India's Independence also almost coincided with that of the commencement of the cold war, a time during which allegiance was demanded by both the communist and the capitalist blocks, so a strong and substantial political stance was needed by every developing country to denounce fealty. And the former because the political system embraced by the Indian constitutional forefathers which may have been a hastily reasonable step considering the developments of the time was never put to questioning although it displayed several overt operational inconsistencies.

Since it has already been furnished that this paper would only engage itself with the topical political developments of India, not to mention the evolution of India's democratic spirit and the devolution of human rights in the sub-continent and their hand-in-glove relationship which includes some headers

like the 1975 emergency, the 84' Sikh massacre, the infamous Bhopal Gas tragedy and Congresses' semi centennial governance and its resemblance to an absolute primogeniture. The following accounts will provide ample elucidations to break into the nature of such developments shedding a light simultaneously on the present-day situation and the historical debauchery born out of India's birthright autonomy.

It has been almost two years since the Indian General elections got over; the said elections which delivered a colossal win for the Bhartiya Janta Party and a second tenure for its chief figurehead Mr. Narendra Modi was a mammoth affair and has several credentials in support of its enormity. In consonance with the statistics which were televised and printed by several media houses and online portals and have thoroughly been checked by me before them getting penned, there were a total of ten lakh (1,00,000) polling stations across the country set up by the election commission which was a 10 percent more than the total set up in 2014. With the rise in the voting populace since the last general elections, 84.3 million people were supposed to cast their votes for the first time among the lot of 900 million eligible voters.

The surfeit of the voting percentage and the extensiveness of the event itself which lasted for almost forty days were praised by everyone including the leaders of foreign democracies, opposition parties, national celebrities and various others. A lot many seemed to relish the democratic process while some by various means even appealed to the public at large 'to come out and vote' as it was their "Janam Sidh Adhikar", the 'Birthright' which gives voting right to everyone irrespective of the good old fashioned periodically appearing assemblage of nouns i.e., (gender, caste, creed, color or financial locus) and of course a meager extra of 'electoral intellect'. Acquiescing to the developments of the democratic process the ministers were sworn in and allocated with their respective portfolios recently, but it was a very disparate display of a cabinet remitted by the likes of BJP in which at least 30% of the ministers (16 out of 58) have criminal charges against them including charges like rape, murder and disrupting communal harmony.

CONCLUSION

A general inkling of such a build out seems to have been absorbed by a manifold and reflected not so sophisticatedly on times amongst India's social set up, a claim that can be easily validated by paying a nominal head to a growing wave of communal hatred and social discontent which by now has ceased to be an undercurrent. The above-mentioned stats are obviously not meant to besmirch a particular political party but are there only to draw a reference about an ever-present lacuna in the Indian political set up drawn on the lines of birthright democracy. A series of nefarious events like mob lynching's, rapes, communal tensions and an imminent apprehension of war are nothing but an unswerving result of such a political system that stands evidence of a country's eligible majority succumbing to political manipulations and getting seduced by their resembling collective biases.

Such incidents which are obviously very few amongst the surplus of mis happenings pose

a very searing question that how in a system which advocates for public good and collective prosperity, the representatives that have been elected by vote manifest such characteristics that are against its vision and soul? In the Indian context, the recent developments in the country's electoral process have attested Socrates' claims regarding the discrepancies of a birthright democracy. The dearth of an electoral intellect with the simultaneous presence of a vast array of religions and cultures which have since time immemorial provided for readymade biases in India have brought us to a time where the government's office which should be looked upon as an edifice of justice rather more or less resembles the French revolution Maximilien Robespierre's 'Committee for Public Safety'. The hints of demagoguery that Uncle Socrates managed to have prophesied quite a spell ago coupled with India's inseparable fetish for 'Nationalism' makes for a proper breeding ground for an 'organized tyranny to swell, which according to Socrates is always next in line once the modals of a birthright democracy start to fail.

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CHILD LABOUR- A PERPETRATOR OF EVIL ISSUES

By Aditi Vishnoi[15]

INTRODUCTION

Child labour- a perpetrator of evil problems in society, has been enrooted for decades as a global issue. Its presence in hazardous industries is a gross violation of human rights. It is one of the biggest hurdles to social development. The ratio of child labour is very high in Africa and Asia. Children below the age of 15 should not be engaged in any kind of jobs, factories, industries, etc. according to International Labour Organization (ILO).

Child Labour is a situation where a child is expected to perform duties as an adult and perform responsibilities such as fending for themselves. It affects their mental as well as physical development and a right to grow with dignity in society. Children are bereft of their right to education and lots of other rights. These kids get trapped in the circle of responsibilities, starvation, hunger, and poor living conditions at the age when they should be set free to explore worldly wisdom. They are engaged in the most hazardous processes in industries that adults do not want to touch. Taking an instance of the glass industry, children are primarily engaged in removing molten glass from the furnaces. Since the furnaces are designed for adults, the child's face is nearly touching the wall of the furnace. Children are compelled to work for long hours, sometimes more than 18 hours a day, at very minimal wages and sometimes were given one time meal. Families in the greed of small amounts of money force their kids into such industries risking their life thus depriving them of a school of wisdom. They consider their children as a burden and feel free if they get some food in return for doing some work. Children hold the future of the nation and those raised in an environment of education, mental, physical, and social development, moral values, and with an opportunity to build their career on their own develop into a dignified and profitable human being. Child Labour takes away the glory of childhood and burdens the child with responsibilities and duties.

International organizations have tried to prevent this by making legislation to prohibit it. According to the International Labour Organization (2013), around 215 million children work as child labourers across the world. At this rate, the issue is of utmost concern and needed to be addressed and prohibition is required for societal development.

CAUSES OF CHILD LABOUR

There are a lot of reasons for child labour however it differs from region to region. It happens due to various causes and some of them are:

Child labour and its problems are intimately related to extreme poverty. These children belong to usually the families who don't have the other means to boost their income except the human asset it invests during a bid to supplement it. These children intrinsically contribute to the pool of

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income of the family to fulfil their needs. But parents cannot justify sending their children to work in such industries on the grounds of poverty. The problem of poverty gives rise to hunger and starvation and a lack of social security. Unemployment also leads to poverty hence it creates a vacuum for child labour. Hence poverty is the main root of this issue.

Family size also arises this problem. It is difficult to handle the expense of a large family so parents prefer to send their children to work at hazardous places. The household expense of large families is difficult to manage so it depends on the needs. In fact, children having large families are engaged more in child labour than the children of smaller families.

There is a lot of corruption in the political system, and it is the responsibility of politicians and police to prevent child labour and provide basic rights to children of education, healthcare, and infrastructure. The resources are not provided to the children hence they are suffering from poverty and are forced into hazardous factories.

Globalization no doubt has played a boastful role in developing countries by increasing trade between different countries, but it adversely affects child labour as the companies set up in different regions prefer cheap labour and engage young children to gain more margins.

Lack of education is also a cause of child labour. Due to illiteracy parents do not know the importance of education and do not give their children the opportunity to attend school. Sometimes it is a family tradition that passes down to indulge in the work at an early age. It also exists as the employers get benefitted from the cheap labour and consumers prefer cheap products over artisanry or handmade products, this in return promotes child labour in various classes of society.

There are many other factors like urban migration, expensive education, and lack of awareness that contribute to the evil issue of child labour, and it is the need of the hour to curb it as it is a pity for the children who suffer from this.

EFFECTS ON PSYCHOLOGY

It challenges the psychology of healthy adults striking them down with inadequate opportunities in education and jobs, poverty, gender inequality, malnourishment, etc. It is necessary to address the issue as it provides the basis for the solutions to cope up with the problems children encounter and fights with that throughout their lives. It is important to aware them that they are not alone in this fight, but all are together to combat this evil and to release them from the chains of child labour. Such children also experience isolation and depression, which frequently prevents them from continuing to develop healthy emotions as they get older and may cause many physical consequences. They are at high risk of developmental delays due to high health risks arising from hazardous working conditions and taking on tangible jobs that are too advanced at their age. Child labourers are often younger than those who are allowed to play and grow up naturally. They are at high risk for diseases such as respiratory infections and are exposed to

harmful chemicals that can interfere with their physical growth. Often, these children also suffer from malnutrition that leads to more serious health and mental conditions later in life.

MEASURES TAKEN TO AVOID CHILD LABOUR

International conscience is flustered by this issue. Germany and the USA have now refused to permit the import of things like Indian carpets, which are made by young children.

In India, the cause of youth has been attacked by the Center of Concern for Child Labour (CCFCL) in Delhi, which also has camps in Bhopal, Aligarh, and Sonabhadra, CCFCL, which provides support and rehabilitation of child workers, non-governmental and non-governmental, and community-based networks to improve child welfare programs also run programs to educate child workers.

In India, the existing Employment of Child Labour (Prohibition and Regulation) Act of 1986 provides for the prohibition of child labour in hazardous industries and regulates their employment in non-hazardous industries. The child labour act is applicable up to 14 years of age. But the reality is that in many industries the child labour has been shown higher than the actual age. Consequently, many young children are languishing in slavery in various industries.

Various schemes are adopted by international organizations to prevent this act but then too it prevails in our society at a great rate. Laws need to be amended and formed to curb this act from our society.

LEGISLATIONS TO PREVENT CHILD LABOUR

1. Right of youngsters for free of charge and Compulsory Education Act, 2009-

   According to this act, every child up to the age of 14 years is entitled to free education and even 25 per cent of seats in private institutions are reserved for such children as it is the fundamental right of every child to gain an education.

2. Juvenile Justice (care and protection) of youngsters Act, 2000-

   It is an act that penalizes the person with imprisonment if anyone infringes the provisions of the act.

3. The Mines Act, 1952-

   Mines is one of the most hazardous places to work in, so this act prohibits the employment of children below 18 years in mines.

4. The Factories Act, 1948-

   This act prohibits the employment of anyone below the age of 14 years to engage in factories.

STEPS THAT CAN PREVENT CHILD LABOUR

Child labour is a global problem, and every country is suffering from this evil. It requires a solution to remove this act from our society. Education can play a major role in its prevention as it is the lack of education that such acts are being promoted in our society. Education brings with it awareness regarding the problem and highlights its pros and cons. Society needs to change its mindset for

engaging people in child labour and this education should be made easily accessible.

Awareness could be made among people through campaigns and workshops. The awareness could also be spread through civil activists, celebrities, government officials, and politicians as they have many followers and their opinion in this matter can affect people's mentality. Various NGOs could also help with campaigning and surveying through the reports.

Strict implementation of laws should be there so government interference is necessary. It should be taken care that not only laws are made but they should also be implemented properly in our society through government bodies. Policy implementation can take place through programs engaging different communities.

Several unions for child labour should be formed solely to work for child labour prevention. Family control measures should also be adopted so the family burden to feed large families would lower down and parents would not force their children to indulge in such acts.

Hence this act requires the institution and society to work together and stop child labour. Poverty needs to be reduced for the abolition of such acts as they are deteriorating to the development of the nation and maximum employment should be produced in a country to feed the people with necessities. Real changes require a big move and together we can make this happen.

CONCLUSION

Child labour must be stopped at any cost. The gravity of this issue should cause concern to us and therefore the world at large. Gradually millions of children are being pushed to work in factories, industrial areas, etc. in a slave like situation, as they are not old enough to understand what it means for them. Every day various accidents occur to child labourer but are not reported. They are even harassed but in today's era, the situation has improved due to the realization of the severity of the issue by establishing various charitable organizations are set up and people are donating to the cause. The laws in place are stringent but only for those offences which are reported, hence, the solution to his problem can be to create awareness among the society of the illegality of such actions and create legal awareness camps in populations where education cannot be easily acceesd.

CONSTITUTIONALITY OF COW VIGILANTE VIOLENCE AND COW MOVEMENT IN INDIA

*By Alfred Aaron Joseph**[16]

INTRODUCTION

This paper talks about the current scenario of the rapid rise of Cow vigilantism and the ongoing trend of violence in Cow protection, and the Cow movement in various parts of India. The paper emphasizes the politics behind the cow protection movement, considering the bias of police officers in response to violence and lynching rooted in Cow vigilantes.

After implementing Cow protection laws throughout the country, the nation has seen a widespread rise of Cow vigilantism and violence by specific groups based on religious and national sentiment. Mob lynching of groups or individuals in the name of 'Gau Matha' has been widely prevalent since 2014. Cow vigilantes have been convicted of assaulting Muslim men and women in trains and railway stations in Madhya Pradesh, of stripping and assaulting Dalit men and women in Gujarat, of force-feeding cow dung and cow urine to two men in Haryana, of raiding a Muslim hotel in Jaipur, and of raped two women and killing two men in Haryana for allegedly consuming beef at home. Since 2014, the number of recorded cases of communal violence against minorities has been steadily increasing, reaching a high point in 2018. Since 2010, 28 Indians have been killed and 124 injured in cow-related abuse, with 24 of them being Muslims. There have also been various cases of hate speech and threats made by various politicians, all from the Bharatiya Janatha party claiming to hurt anyone who violates the cow protection law. Politicians like Gyan Dev Ahuja, Yogi Adityanath, T Raja Singh Lodh, Mukhtar Abbas Naqvi, Sakshi Maharaj are all well know politicians from the BJP have openly made statements in support of the Cow vigilantes.

The paper also puts forward various cases that validate the unconstitutionality and unjust nature of such crimes. The bias of police that persists in such cases is one of the most disturbing aspects of the situation. Instead of investigating the attacks and prosecuting perpetrators, the police, in at least a 3rd of the reported cases, has filed complaints against victims. Counter complaints against witnesses and family members tend to make them afraid to approach justice. The paper will also further detail the lynching of Imteyaz Khan and Mazlum Ansari in Jharkhand, Akbar Khan, who was killed in the Alwar district in Rajasthan, and Alimuddin Ansari in Jharkhand. Which further clarifies the existence of police bias in such states.

The paper also justly questions why the Indian laws refuse to provide such special protection for all animals in general and why Cows and other cattle and milch are considered unique in the eyes of the law. The paper also questions whether these laws result from religious and communal motives of the ruling party and are not rooted in love towards animals.

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THE POLITICS BEHIND COW VIGILANTISM

In most parts of Hindu-majority India, cow slaughter is prohibited. However, over the last few decades, there has been a change., Hindu nationalists have led a political campaign accusing authorities of failing to enforce the ban and prevent cattle smuggling. Since beef is consumed mainly by religious and ethnic minorities, BJP leaders, in order to cater to Hindu voters, politicians have made strong claims about the need to protect cows, which has aided and even incited communal violence. According to a survey by New Delhi Television, there was an almost 500 per cent increase within the utilization of communally divisive language in speeches by elected leaders—90 per cent of them from the BJP—between 2014 and 2018 to the five years before the BJP came to power. Cow protection formed an essential theme during a variety of these speeches.

Between January 2009 and October 2018, Hate Crime Watch, a collabourative website run by the Indian organization Fact Checker, tracked 254 confirmed cases of crimes targeting religious minorities, with at least 91 people killed and 579 wounded. Approximately 90% of these attacks occurred after the BJP took power in May 2014, with 66 per cent occurring in BJP-controlled states. Muslims were the victims in 62% of the incidents, while Christians were the victims in 14%. Communal clashes, assaults on interfaith couples, and abuse involving cow security and religious conversions are among them. Maja Daruwala, the senior advisor to the civil society group Commonwealth Human Rights Initiative, said. "The apparent impunity for the series of crimes that have occurred, and their hugely shameful valorization by some leaders, is distinctly a strong factor in their continuation,"

CONCLUSION

In criminal cases, especially when the perpetrators are influential or have potent connections, witnesses and families are vulnerable to threats from the accused because of the police. In some cases, police negligence or complicity contributed to the victims' deaths, and thus the police then tried to cover up the crimes to protect the perpetrators. Nearly 55 per cent of India's population is engaged in agriculture and associated activities, contributing 17 per cent of the country's Gross Value Added. The cow protection movement is hurting farmers and herders and impacting their right to a livelihood.

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HUMAN RIGHTS IN INDIA

By Gopi Chitaliya[17]*

INTRODUCTION

Human rights are inherent rights that all humans must enjoy, and anyone who abuses, exploits, or violates them should be held accountable under the law. Through this article, the author will express his or her thoughts on a few Human Rights and how they should be implemented. Every country has its own set of principles and applicability, which may differ depending on the issues at hand. Every country has its own set of principles and applicability, which may vary depending on the issues that are prevalent in that sovereign state. Anyone with absolute power should not abuse it by taking advantage of another person. If he or she does, that person should be held accountable and strict action should be taken against him or her. If he or she does, that person should be held accountable and strict action should be taken against him or her. Virtually every single nation's law has made violation of human rights a criminal offence, and the people can use this right to protect themselves.

HUMAN RIGHTS IN INDIA

A. CASTEISM

Even though The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and The Untouchability Offences Act of 1955 (renamed to The Protection of Civil Rights Act, 1955) has laid down stringent punishments there is still discrimination against anyone based on their caste, creed, religion and sex. Section 3 of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 provides punishment with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine. Further sections of the said Act also provide punishment under various other offences listed in the act. Whereas, The Protection of Civil Rights Act, 1955, also provides punishments for offences committed against disabilities that are religious and social in nature.

In many parts of India people who are a minority in tribal areas are not allowed to use the water from the well, are not allowed to visit the temples, must pay extra on their lands for farming, etc. In rural areas, such instances have been reduced and the cases of violence have dropped significantly. Unfortunately, we still hear cases of mob lynching, beating, rape, killings, honor killings, false allegation, etc. and later it is brought to the light that such offences occurred due to the victims being from a certain minority class.

B. SOCIAL AND GENDER ISSUES

Indian society has seen many advertisements where it is shown that girls look good and get confidence only when they are fair. The names of the leading brands are fair and lovely, Ponds and Lux and many other. Further, due to the filing of a case by 22-yearold Chandana Hiran against HUL stating, "they change their narrative after years of regressive advertisements and

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branding in order to sell a whitening cream." Consumer Protection Act, 1986 defines the term "Unfair Trade Practices" under Section 2(r) it includes the false and misleading representations and facts under the purview of unfair trade practices allowing consumers to file complaints against such representations being made by any trader or service providers. Whereas, Consumer Protection Act, 2019 Section 2(47) also talks about "unfair trade practices." Section 6 of the Cable Television Regulations Act, 1995(Cable Television Amendment Act, 2006), states that no person will transmit through cable service Advertisement unless Advertisement is in conformity with the Advertisement code. Rule 7 ensures that the Advertisement code should not offend the morality, decency and religious aspect of the people. In response to the online petition filed HUL changed the name of the brand from "fair and lovely" to "Glow and Lovely". After years, the death of George Floyd was the one that started protests in India as well and resulted in honestly brutal conversations on "skin color" and how our Indian society perceives gender based on skin color and discriminates against them.

The trope that girls are materialistic in nature is not something that is taught in schools or by the parents, instead, it is inculcated in the minds of the young via modes of advertisements and movies. In a similar fashion advertisement related to perfumes and deodorants, it is shown that when the boy uses the deodorant which is contrary causes all the girls want to be with him and the same is objectionable in nature. Such male gaze influences the children and adolescents in a negative manner and puts not only body images issues but also a sense of "girls want only this." Not only that one cannot watch such advertisements with children around the house.

Leading male celebrities promoting fairness creams while doing stunts or being surrounded by girls who are scantily clothed to build trust in consumers for the brand or product or leading female celebrity endorsing instant noodles to her kids as a healthy snack while staying at home or doing other household work that makes the customer believe in the product and use the product. This subtle sexism is difficult to notice but it puts the genders under stereotypes which are directly infringement of the right to equality When a product is endorsed by a celebrity, it increases the sales of product due to their influence, even though some of the viewers are aware that it may be not more than a marketing gimmick and that celebrity may not use the product. Though there are no stringent laws in India that make the celebrities endorsing the product for misleading Advertisement, a consumer can bring an action towards the celebrity promoting any food product under section 24 of Food Safety and Standards Act,2006 if it does not meet the prescribed standard and is misleading. It is a harsh reality that most of the Advertisements are ignored by the consumers and go unnoticed by the Statutory Bodies so, in order to enforce the strict regulations, the need of the hour is whenever an advertisement breaches public confidence, the Regulators should take immediate actions and impose the heavy penalty on such advertisements.

C. CHILD MARRIAGE

Any boy or any girl who has attained the age of majority can marry anyone irrespective of race, nationality or religion. However, there are still cases of Child marriages and Honor Killings. As per National Crime Records Bureau Data 2015, 251 honor killing cases were reported in India. Most of the honor killing cases were reported from Haryana and Uttar Pradesh. Punjab also had many honor killings. Punjab state had reported 34 honor killings between 2008 and 2010. The Child Marriage Restraint Act, 1929 (Amended in 1978) states that the minimum age for women is 18 years and for men is 21 years. As per the study released by NGO Cry in the year 2020, there were 17.26 million married children and adolescents within the age group of 10-19 years or 7 per cent of the population in the same age group (census 2011) were married in India. The data also reveals that girls between 10-19 years of age account for 75 per cent of all married children in India. It also pointed out that girls in rural areas account for 57 per cent of all married children. Child marriages in urban areas have increased to 41 percent. Even though there are laws to prevent Child marriages such as The Child Marriage Restraint Act of 1929, Prohibition of Child Marriage Act (PCMA), 2006, Indian Penal Code, 1860 they are not implemented strictly.

CONCLUSION

To strengthen Human Rights so that maximum people get the benefit of it, the government should set up various NGOs and full monetary, as well as infrastructure support, must be provided to them. Goals should be set, and a working plan should be prepared so that concerned issues are addressed. Further, country participation should be increased in various treaties and conventions. Local people should be included and with their help, the issue can be resolved. The Government should also, ensure that the law is implemented in rural areas and must take various efforts to educate them. Any person who violates the law is punished in a fast-track mode so that other persons will not try to do the same.

HUMANITARIANISM: CHANGING NATURE AND EVOLVING HUMAN RIGHTS

By Saurabh Singh[18]*

INTRODUCTION

"Life's most persistent and urgent question is, 'What are you doing for others?'"

– Martin Luther King Jr.,

As humanitarian aid has become more institutionalized over the years, so has its definition. According to the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD-DAC)— which brings together the major international aid donors

"Humanitarian aid is assistance designed to save lives, alleviate suffering and maintain and protect human dignity during and in the aftermath of emergencies. To be classified as humanitarian, the aid should be consistent with the humanitarian principles of humanity, impartiality, neutrality and independence."

HUMANITARIAN AID

There are three elements that stand out which further clarify the constitutive characteristics of humanitarian aid:

Humanitarian aid aims to save lives and alleviate suffering, but people apparently oversee the less obvious objective of upholding human dignity. In other words, humanitarian aid through assistance and the growing spectrum of protection activities, aims primarily to tackle the effects on human beings of extraordinary circumstances.

Humanitarian aid is basically a short-term endeavor which is carried out "during and in the aftermath of emergencies." As provocative as it may sound, once the Band-Aid is applied to an open wound, and a minimum follow-up is undertaken to ensure it does not infect, the work of humanitarians is done.

It is informed by a set of humanitarian principles that, according to the definition above, distinguishes it from other forms of aid: it should be motivated by the sole aim of helping other humans affected by disasters (humanity), exclusively based on people's needs and without any further discrimination (impartiality), without favoring any side in a conflict or other dispute where aid is deployed (neutrality), and free from any economic, political, or military interests at stake (independence).

INTERNATIONAL HUMANITARIAN PRINCIPLES

The humanitarian principles were first given international recognition by the twentieth International Conference of the Red Cross and Red Crescent Movement in 1965, along with three other Red Cross–specific principles: voluntary service, unity, and universality. Charity and philanthropy have been embodied for centuries in most cultures and religions, and early examples abound of actions by states and religious institutions or orders to alleviate human suffering in situations of man-made or natural disasters. However, the modern humanitarian system

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can be traced back to the Battle of Solferino in 1859 that Development Initiatives, "GHA Report 2011," led to the creation of the International Committee of the Red Cross (ICRC) by Henri Dunant and, later, of the broader Red Cross and Red Crescent Movement (hereafter, the Red Cross Movement). The ICRC is closely related to the birth of international humanitarian law and is also at the origin of the humanitarian principles of humanity, impartiality, neutrality, and independence. In effect, the development of the Red Cross Movement marked the emergence of organized nongovernmental humanitarian action.

International humanitarian nongovernmental organizations (NGOs) appeared throughout the twentieth century and as noted by Elizabeth Ferris, "all of the major international NGOs—from CARE International to Oxfam—first started out by providing assistance in times of war." Save the Children was created in 1919 to pressure the British government to lift its blockade against Germany and Austria-Hungary; the Second World War prompted the creation of Oxfam and CARE; the Biafran War in Nigeria in the late 1960s saw the birth of the "without borders" movement, best illustrated by the French organization MSF; and successive Cold War conflicts in the 1970s and 1980s triggered the creation of a new generation of NGOs such as Action Contre la Faim (Action Against Hunger) in France, Merlin in the United Kingdom, and GOAL in Ireland. The picture would not be complete without mentioning the entrance after the Second World War of a new major player on the then nascent humanitarian scene: The United Nations (UN) and its different agencies. Reflecting to some extent the development of NGOs, three of the five UN agencies having a humanitarian mandate were created out of concerns for people affected by the scourge of conflict or oppression: the UN Children's Fund (UNICEF, 1946) was originally created to respond to the needs of Europe's war-affected children, while the UN Relief and Works Agency for Palestinian Refugees (UNRWA, 1950) and the UN High Commissioner for Refugees (UNHCR, 1951) were established for refugees fleeing conflict and persecution.

The international humanitarian system has evolved, somewhat organically, and has continuously adapted to the challenges of the time. It grew to maturity in a century characterized by the two World Wars, the Cold War, colonization and decolonization, the increasing dominance of the West, the advancement of human rights, the imposition of free-market capitalism as the dominant economic model, and a strong belief in the capacity of humans to domesticate forces of nature through scientific and technological developments. The humanitarian system is a by-product of the environment in which it has evolved. As the world is becoming increasingly globalized and interconnected, different global trends are shaping the international order and raising a new set of challenges—but also opportunities—that no one nation can address in isolation. Some of the said challenges are-

i. The world population is growing and becoming increasingly urban. Recent

estimates forecast the world population reaching ten billion by the end of the century. However, this growth is uneven. While most developing nations' populations grow and become disproportionately young—a trend referred to as the "youth bulge"—the population of developed countries tends to stagnate, if not shrink, as it grows increasingly old.

ii. Climate change and environmental degradation increase stress on the world population. Global warming is happening now and is bound to continue, worsening pre-existing environmental degradation—notably deforestation and desertification—linked to human activities like industrialization and intensive agriculture. Climate change results in more frequent and intense extreme-weather events, such as floods, tropical storms, and droughts, while it aggravates the stress on vital resources like water and food, even as the population is growing and demanding more resources.

iii. Global inequalities are rising. As global poverty is progressively retreating, economic and social disparities are becoming more acute, both between countries and within countries. Since 1960, the difference in average per capita GDP between the twenty richest countries and the twenty poorest has doubled, while studies show that inequalities have risen within both developed and developing countries. The threats this creates for social peace and international security prompted the World Economic Forum to qualify economic disparity as one of the two crosscutting global risks that "can exacerbate both the likelihood and impact of other risks."

iv. The world's economic and geopolitical landscape is changing. In the last decade, economic influence has started to move from Western countries to emerging powers. The so-called BRIC countries (Brazil, Russia, India, and China) have grown from one-sixth of the world economy to almost a quarter and are likely to match G7 countries' share of GDP by 2040–2050. This shift of economic power is accompanied by changes in the political balance of power. Increasingly, traditional Western powers (including the United States) must cope with the new assertiveness of the Global South. Soon, the world affairs will be run by the G-Zero, where no single power or group of states will be able to impose its will on the rest of the world.

v. The nature of conflicts and violence is changing. Recent studies show that the number of recurring conflicts is increasing. Globalization has nurtured new forms of violence by international terrorist networks and transnational criminal organizations, which further complicate the situation in some of these "ungoverned" areas. "The remaining forms of conflict and violence do not fit neatly either into 'war' or 'peace', or into 'criminal violence' or 'political violence'," challenging states and systems of global governance to adapt their approaches to address new forms of fragility and threats.

vi. The pace of technological development is unprecedented. The development and spread of technologies, notably of information and communication technologies (ICT), during the last decade has been phenomenal: the

world has never been so interconnected, and the diffusion of information has never been so immediate. However, technological developments can also have unintended consequences and present the international community with new challenges— such as cybercrime and the diversion of technologies to terrorist ends.

These underlying global trends have several implications for humanitarian aid and the humanitarian system, which can be further grouped into broad challenges.

A. AN INCREASING HUMANITARIAN CASELOAD

The converging effects of climate change, population growth, and rising inequalities point to an increase in the humanitarian caseload, as more people are more vulnerable to a growing number of disasters. Oxfam estimated in 2009 that, by 2015, there could be a 50 percent increase in the average number of people affected annually by climate related disasters compared to the decade 1998–2007, bringing the total to 375 million people per year. It concluded that, given the current capacity of the international humanitarian system, the world would be overwhelmed. Natural hazards do not discriminate between the poor and the rich, "poorer communities suffer a disproportionate share of disaster loss." The increased vulnerability to natural disasters due to poverty was made clear in the aftermath to the 2010 earthquakes in Chile and Haiti. Although the quake in Chile scored higher on the Richter scale, it killed far fewer: 562 people died in Chile, while more than 200,000 died in Haiti. This disproportionate share of loss is particularly true of slow-onset processes such as droughts. Wealthier people or countries have resources to better cope with such events that can have a disastrous humanitarian impact on people living in extreme poverty or amid protracted conflicts, as illustrated by the 2011 famine in Somalia.

B. THE CHANGING NATURE OF CRISIS

Beyond the expected increase of the humanitarian caseload, the nature of the environment in which crises occur and the nature of crises themselves are changing. As the world grows increasingly urban, so does the likelihood that natural hazards or conflicts occur in complex urban environments for which humanitarian actors are ill-equipped. This was illustrated by the Haiti earthquake in 2010, the floods that submerged Bangkok in October and November 2011, and the conflict in Syria in 2012, where major battles took place in the cities of Homs, Aleppo, and Damascus. The nature of violence itself is also changing. As noted above, the boundaries between war and peace, or between criminal violence and political violence, are increasingly blurred. Some countries, although not formally in conflict, are affected by levels of criminal violence and human suffering that are akin to those of a civil war. In Mexico, the five-year-old "drug war" launched by the government against drug cartels has resulted in the death of more than 47,000 people, according to official accounts making it tempting to draw a parallel with conflicts in Somalia or Afghanistan.

C. THE RENEWED ASSERTIVENESS OF HOST STATES

Humanitarian actors have always had to deal with issues relating to the national sovereignty of host states, particularly in conflict situations where the internal threats posed by insurgent groups often create hostility toward what is perceived as external interference. As a matter of fact, UN General Assembly Resolution 46/182 recognized the centrality of host states when it stated that "the sovereignty, territorial integrity and national unity of States must be fully respected," and "humanitarian assistance should be provided with the consent of the affected country and in principle based on an appeal by the affected country." Yet, what the respect of sovereignty means in practice—especially in terms of host states' control of international actors' actions within their territory—has evolved over time. Or, as Barnett and Weiss have put it, "the meaning of sovereignty has varied from one historical era to another, and these variations matter greatly for what humanitarian actors can and therefore should do."

D. THE FINANCING OF HUMANITARIAN ACTION

The year 2010 saw the largest annual humanitarian response on record, with an estimated $16.7 billion from governmental and individual donors. In other words, the formal international humanitarian system is better funded than ever before. Yet, this positive assertion masks other underlying trends that raise questions for the future of humanitarian financing. The humanitarian system needs more resources because it must face a likely increase of the humanitarian caseload, as discussed previously. The system is also demanding more resources because it has substantially expanded its activities. Major humanitarian agencies no longer limit themselves to traditional relief activities like food assistance, health, nutrition, sanitation, and shelter; they increasingly engage in protection activities, human rights advocacy, disaster risk reduction, and peacebuilding programs. This is further compounded by the fact that humanitarian assistance is also more expensive now than before, not least due to the substantial increases in food and oil prices over the last few years.

CONCLUSION

Humanitarianism has been an ever-evolving state of matter which needs a thorough understanding at all levels. This statement stands for itself given the complex circumstances the world is witnessing now with respect to Corona virus pandemic. There were countries which were already suffering through major internal conflicts in terms of economic, political and societal instability. The pandemic has been a cherry on the cake overwhelming the authorities and concerned governments expanding the horizons of their said problems. Pandemic knows no jurisdiction or sovereignty. The entire world has been overwhelmed especially the health infrastructure. At the time when the entire world is facing a similar crisis on a great scale, the question stands how effective can be the humanitarian assistance and how much it's going to cost? The world was never prepared to handle such a catastrophe, yet it is tackling the misfortune with all its strength.

With the changing world and complexities, one can notice the changing nature of HR too. But still some of the questions remain debated that are deeply rooted tensions in this ambitious agenda of the humanitarian rights and principles which must undertake a thorough and honest self-examination, starting with a series of difficult questions - Is the humanitarian right and its foundations truly universal? How can it adapt to a changing international landscape and open to actors who did not participate in its development and might have different values and practices? Are the humanitarian principles always relevant? Is the systematic reference to humanitarian principles undermining them, given a recurrent lack of respect? No doubt there have been a significant shift in the definition and meaning of the humanitarianism and human rights but still there is a long way to go.

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IS DEATH SENTENCE REALLY THE ANSWER TO ALL YOUR QUESTIONS ?

By Reet Nagpal[19]*

INTRODUCTION

"Why do we kill people who kill people to show people that killing people is wrong?"

Death Penalty unfolds multiple layers to its existence. You may stand at any side of this bridge, but it is evident that the never-ending debate on death penalty is valid. Every horrific rape case in the country reignites the discussion around capital punishment.

Coming to the human rights lens of capital punishment, it is crystal clear that Human Rights enshrine the Right to life with dignity. It is a fundamental human right. Important to note, that it is a right, something that cannot and should not be violated. Death penalty gives the government the status to take someone's life, which is violative of the rights given to us.

LAW AND ITS PRINCIPLES

The right to life of every person is recognized by The Universal Declaration- "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Talking about our very own Constitution, Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty. Right to death is included in Article 21. (Common Cause (A Regd. Society) v. Union of India & Anr)

According to Justice P. N. Bhagwati, death penalty is violative of Article 14 of the Constitution, which guarantees equality before the law and equal protection by the law.

Even the Justice Verma Committee highlighted that deterrence by death penalty is a 'myth'.

ANALYSIS

The reason for the favorability of death sentences is a result of some unresolved myths around the subject. Might come out as an unpopular opinion, but death penalty does not lead to deterrence. Hence, it defies the very purpose of its applicability. There has been no concrete evidence of observation of deterrence because of death penalty. However, there have been instances where it has been proven that death penalty led to a surge in the crime rates.

In fact, research suggests that regions with most executions have the highest murder rates. Surprisingly, as per *deathpenalty.org*, the murder rates have fallen in New York, New Mexico, Illinois and Connecticut in the years they repealed the death penalty.

The introduction of death penalty in the POCSO Act of 2012 raised a lot of questions. NCRB confirms that 95 % of the offenders in Child Sexual Abuse cases are people they know. Now the provision of death penalty may lead to underreporting because the child may fear leading a family member to his/her death.

Another factor that goes unseen is that death penalty is applied disproportionately. Bias and discrimination are so predominant now, that even during justice, we forget the basis of justice- equality. Newspaper reports,

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headlines and social media handles reflect the racial, socio-economic bias that make capital punishment a mechanism to suppress the vulnerable sections of the society. Death Penalty of India Report from Project 39A revealed that a disproportionate impact of the death penalty was on socio-economically vulnerable categories of people. The world has witnessed the disparate enforcement of death penalty to suppress the Black people. Sadly, the system does not work the same way for everyone.

This also highlights the skewed legal and criminal system of the country. Undoubtedly, we have all known that the actual criminals escape the judicial trials by making the best use out of the loopholes of our system.

Death Penalty is the harshest form of punishment. Adding to its irrevocable nature, does the State and the legal system truly have the right to kill a person? Is it justified to hand-over a life-and-death role to the system that has a history of false accusations? The death of an innocent man by the hands of the state is a crippling thought. The underlying question is whether the state has the responsibility of choosing the life course of an individual? If yes, to what extent? If yes, at what cost if a mistake is made?

Another point of contention is that 'Two wrongs cannot make a right'. The state can cover up the cases of death penalty in the name of 'greater good', but it is believable that killing a human is a human rights violation. No matter what the actual status of the criminal is, it is to be noted that Human Rights is for all- the good, and the bad.

"You can release an innocent man from the prison, but you cannot release him from the grave." A wrong death sentence- and there is no going back. It will be a mistake that cannot be corrected. It takes away the right of the victim to justice as well as leaves no chance for the system to rectify its mistakes. Witnessing the Ryan School case or the Shimla Gangrape, we have also noticed that innocent individuals are arrested to satisfy public outrage.

Often, justice is confused with vengeance. Not always does the victim's family want the death of the criminal. Again, since there is a lot of subjectivity in the wants of the victim's families, which is why we cannot create a universal structure and a clear difference between who gets to die and who doesn't.

CONCLUSION

Death penalty is a primitive concept. No matter how deplorable and ghastly the actions of the criminal are, it is equally grotesque to take a life for a life. Countries are on their ways of believing that death penalty is not the right form of justice mechanism especially in the 21st century. It is inhumane, outdated, arbitrary and barbaric.

This, in no way means to normalize crime, but seeks to find out alternatives to capital punishment. Life imprisonment without parole seems like the ideal option available. It must be the preferred choice of punishment, because the death sentence comes with a lot of risks, and its graveness makes it forbidden to make mistakes.

Abolishing death penalty still has a long way to go, because of the multiple layers that surround this issue.

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