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Editorial

" It took me fifteen years to discover I had no talent for writing, but I couldn't give it up because by then I was too famous," says Robert Benchley. Myself as an editor is not different in any way from Benchley's experience. Therefore I earnestly persevere in my editorial writing, not much worried about what good it is going to deliver to this world. And I don't think it is necessary that my editorial should certainly deliver some good to the world before the world ends. Moreover, I don't believe that the world is going to end today with or without my editorial doing any good to it. This audacious optimism is due to my firm belief in the feigned truth that 'you don't have to worry about the world coming to end today. It is already tomorrow in Australia."

Ouch! Now my pen stops working, as it always does, when I sit down with the immaculate intention to write the editorial for 'S. P. Law review', and today this labour pain is for its fifth issue. I don't know where those subtle feelings and the so-called emotions have fled leaving my mind empty, barren and sluggish. As Tagore's Postmaster felt the loss of 'the movements of the leaves and the clouds of the sky which he tried to give expression in poetry and it seems that some genie from the Arabian Nights had in one night swept away the trees, the leaves and all, replaced them with a macadamized road, hiding the clouds….' That is my feeling now with an empty brain. I remember what Robert Frost said: "The brain is a wonderful organ; it starts working the moment you get up in the morning, and does not stop until you get into the office." With several articles, of course scholarly and peer-reviewed, lying scattered all over my table, and more pandemonium in my mind as they lie muddled in my mind; I am confused as to which article I should start with and what order I should follow and the mind is empty. Confused, undecided, I let my hand to pick one randomly; with neither any order nor any scheme. Thus one by one I covered all, got satisfied with their content and style; though some of them underwent minor pruning at the hands of our experts; I decided to put away all to write down this editorial with this thought

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that 'even a stopped clock is right twice every day. After some years it can also boast of a long service of success.'

You may not like it the way I presented this writing. Well, please excuse me; this is my style: 'can I not have the freedom of expression to own my own style?' 'Oh! I am wrong: I don't need to explain this to you. Let me have my style and be with it.' "It takes less time to do things right than to explain why you did it wrong." I am a staunch believer of this saying of Henry Wordsworth Longfellow. But one thing I can assure you that down through the pages of this journal you will encounter erudite people, you will come across scholarly articles and you will richly profit from the plethora of knowledge and wisdom it offers. This was our guarantee and we have achieved it even the fifth time as was our habit for all previous four times. We don't bask and take pride in this achievement because we believe in the saying of Malcolm Forbes: 'The key to success is not through achievement but through enthusiasm." Zest was and is there in plenty and passion was and is there in abundance towards this enterprise and success cannot evade us and it is here; with us.

Vow! It has become a long editorial even with the brain doing nothing and people say that nothing is impossible and I did have mastered the art of doing 'nothing' fairly well. I need to get my brain activated and for that I need to put a full stop here because "the difference between genius and stupidity is; genius has its limits..." (Albert Einstein)

Dr. Benny M. J.

Executive Editor

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ISSUE -V

Legal Education In The Era Of Globalisation – Vision Ahead

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Legal education is a human science which furnishes beyond techniques, skills and competencies, the basic philosophies, ideologies, critiques, and instrumentalities all addressed to the creation and maintenance of a just society. It is a subject of great importance in view of its dynamic role in molding and envisioning the legal system of the country - thus being instrumental in the accomplishment of the cherished objectives of justice, liberty, equality and fraternity of a sovereign, socialist, secular, democratic republic.

Since Law is the foundation of every society or a nation, Legal Education of the people is essential. Legal Education does not only create law-abiding citizens, but also produces brilliant academicians, visionary judges, astounding lawyers, and awe-inspiring jurists. Since law is a means for social changes and economic progress, since these four classes of men acts as catalyst for the growth of the society, the creation of these four groups of men should be the aim of the Legal Education.

The significance of legal education in a democratic society cannot be over-emphasized. Knowledge of law increases one understands of public affairs. Its study promotes accuracy of the expression, facility in arguments and skill in interpreting the written words, as well as some understanding of social values. It is pivotal duty of everyone to know the law. Ignorance of law is not innocence but a sin which cannot be excused. Thus, legal education is imperative not only to produce good lawyers but also to create cultured law abiding citizens, who are inculcated with concepts of human values and human rights.

Law, legal education and development have become inter -related concepts in modern developing societies which are struggling to develop into social welfare States and are seeking to ameliorate the socio-economic condition of the people by peaceful means. The same is true for India. However, legal education throughout the world undergoing rapid changes in the present day context of globalization, which make it imperative for Indian legal education system to introduce necessary changes to cope up with global challenges. A need, therefore, arises to adapt the policy of legal education in tune with the rapid contemporary changes occurring as a result of scientific and technological developments. The paper, therefore, make an attempt to throw light on the changing dimensions of legal education in the present context of globalization and the necessity to revamp the legal education system in India to address the contemporary concerns and challenges.

Legal Education & Globalization:

Globalization has increased demand for competent professional workforce and this holds true for legal profession as well. Globalization no doubt brings greater challenges but along with it provides us with new emerging opportunities for legal professionals. It has widened the role of legal professionals. A law professional's work is no longer limited to filing suits or preparing briefs or analyzing judgments or arguing in law courts. It goes beyond

litigation and diversifies into non-litigation works such as legal process outsourcing, arbitration, client interviewing, client counseling, patent attorney etc. This poses serious challenges to our legal education system to groom the students as competent legal professionals capable of grabbing the emerging opportunities.

Under the impact of Globalization, the very nature of law, legal institutions, law teaching and law practice are on paradigm shift. Globalization has posed multiple challenges to the future of legal education in India but at the same time it has provided an opportunity to revise the present legal education in India in tune with global pattern and standards. One of the most challenging tasks before the country's legal education system is to strike a proper balance to ensure that students are taught a fair mix of courses that give them knowledge and training in Indian law, but at the same time prepare them to face the challenges of globalization, where domestic legal mechanism interact with both international and foreign legal systems.

Challenges of GATS:

General Agreement on trade in Service(GATS) which is a part of the WTO deals with the issue of trade in legal services and presents a new legal regime for transnational legal practice. The rules in this regard are now under discussion and by the year 2020, a broad agreement in this regard is supposed to emerge. Instead of opposing the entry of foreign lawyers, our legal education system should be made ready to develop our law students to grab the opportunity of transnational legal practice. Ignoring the present opposition from Indian legal professionals and the government to resist the entry of foreign legal professionals in India, the law schools in the country will have to take cognizance of the writing on the wall and prepare for the global competition. Their immediate task in this globalized society is to convert our law students as professionally competent legal professionals in order to have a fair share in 100 billion dollar trade in legal services and at the same time make them socially responsible and public spirited. In fact, globalization is a blessing in disguise for indian higher education, particularly in law.

Embracing Science and Technology:

In present day technological world, a number of laws are being enacted basing upon scientific and technological inventions. However, the legal education and legal practice is not adequately responding to the technological revolution that is sweeping across the world. The lead for change in this direction should come from the institutions teaching law. They have to revamp the curriculum with an emphasis on techno-legal subjects like cyber law, environment law, forensic sciences, intellectual property rights, energy law, health law, air & space law etc. to enable the future lawyers and judges to understand the legal intricacies of scientific disputes.

Clinical Legal Education- The need of the hour:

Knowledge of law is best understood not in the classrooms but in the complex society in which we live. In order to meet the challenges of globalization and to convert them as opportunities, there is every need for Indian legal system to shift focus from traditional legal education through class room teaching to practical oriented clinical legal education. The term "clinical legal education" refers to "learning by doing" what a lawyer does in the real world. It attempts to make legal education system socially relevant and professionally competent. It enables students to take on the real clients problems and work with them, which enables them to understand the variety of roles which a lawyer plays in the society. The students are initially exposed to simulative exercises such as moot courts, mock trails, mediation, conciliation, arbitration and later presented with actual cases. They are made associated with law firms, legal

aid organizations, NGOs, consumer societies to learn the law through on hand experience and make the students understand the operational parameter of legal doctrines and statutory principles and the techniques of applying them in actual practice and real life situations. Introduction of this method of learning the law has obvious advantages over other methods as it involves student active participation.

However, clinical legal education and practical training are often confused with each other. Practical training technique is primarily directed towards skill development of the student whereas clinical legal education not only attempts to develop skill set of the students but also to develop critical and contextual understanding of law as it affects the people in the society. This methodology adopts both doctrinal and empirical approaches to the study of law. Hence, it is highly recommended in the present context of globalization and to make the students ready to grab the opportunities presented by globalized society. There is urgent and imminent need to revamp the legal curriculum on clinical basis. It is also suggested to award incentivize marks to the students who actively involved in clinical programmes like legal aid, legal literacy campaign, public spirited advocacy, moot courts, mock trails, internship programmes. At present such incentives are available to the law students for extracurricular activities like sports and cultural events. This general tendency should be replaced with special incentive marks for law students to encourage clinical activities.

Conclusion and Suggestions:

In view of the challenges as well as opportunities being presented by ongoing process of globalization, it is high time for the Bar Council of India, which is the apex regulatory authority of legal education to restructure curriculum and legal education system in the country on the pattern of clinical legal education in consultation with State Bar Councils, Universities across the country, representatives of the Bench and the Bar, legal academicians and professionals, law schools and colleges, students and other stakeholders. No doubt, some efforts have recently been taken B.C.I in this regard through constituting Curriculum Development Committee. However, a wider dialogue and discussion with all the stakeholders is needed to revamp the legal education system to address the current challenges with the vision to groom our law students as professionally competent and socially relevant legal professionals capable of grabbing the opportunities at global level that will certainly arise in the context of globalization process.

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Global Climate Change: A Warning Call for Nations

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It is disgraceful to red and notice the meltdown of glaciers in Himalayan Mountain regions which are the world famous mountain and this will soon impact the climate in the entire Asian region. It is difficult to postulate the consequent tragedies in the near future. This phenomenon can possibly be related to the deteriorating global climate their by damaging our environment and bringing changes in the atmosphere.

Environment on the face of the earth is affected by the growth of human species. Human beings acquire excellent abilities in terms of physical sustenance, intellectual, moral, social, and spiritual growth which now has contributed in damaging the environment of mother planet. Civilization and growth of mankind from ancient times to modern times have immensely changed climate and atmosphere of the earth through the advancement of science and technologies. Modernization and industries, agriculture, housing colonies and infrastructure facilities has laid to the environment destruction ultimately resulting in jeopardizing the ecosystem. The present environment has reached a critical state in which man has entangled himself with several hurdles to his own life. Not only the human beings but the other species are also endangered due to the growth of civilization and activities of human beings causing increase in temperature and resulting in climate change bringing global warming.

Global Warming: Meaning

Global warming is an average increase in the temperature of the atmosphere near the Earth's surface and the troposphere, which can contribute to changes in global climate patterns. Global warming can occur from a variety of causes, both natural and human induced. In common usage, "Global Warming" often refers to the warming that can occur as a result of increased emission of greenhouse gases from human activities

The Earth is the only planet in our solar system that supports life. The complex process of evolution occurred on earth only because of some unique environmental conditions that were present: water an oxygen-rich atmosphere, and a suitable surface temperature. Only the earth has an atmosphere of the proper depth and chemical composition. About 30% of incoming energy from the sun is reflected back to space while the rest reaches earth, warming that air, oceans, and land, and maintaining an average surface temperature of about 15 Degree C. The chemical composition of the atmosphere is also responsible for nurturing life on our planet. Most of it nitrogen (78%): about 21% is oxygen, which all animals need to survive and only a small percentage (0.036%) is a made up of carbon dioxide which plants require for photosynthesis.

The atmosphere carries out the critical function of maintaining life-sustaining conditions on

Earth, in the following way" each day, energy from the sun (largely in the visible part of the spectrum, but also some in the ultraviolet, and infrared portions) is absorbed by the land, seas, mountains, etc. If all this energy were to be absorbed completely, the earth would gradually become hotter and hotter. But actually, the earth both absorbed and, simultaneously releases it in the form of infrared waves(which cannot be seen by our a heated car engine). All this rising heat is not lost to space, but is partly absorbed by some gases present in very small (or trace) quantities in the atmosphere, called GHGs (greenhouse gases). Greenhouse gases (for example, carbon dioxide, methane, nitrous oxide, water vapour, ozone), re-emit some of this heat to the earth's surface. In simple words, these gases in the atmosphere form a blanket of gases that does not allow the solar radiation to escape back into space. This phenomenon, the greenhouse effect is essential to maintain the earth's temperature at the habitable level. Unfortunately, the human activity has been making the blanket of greenhouse gases (GHG) "thicker" or enhancing the greenhouse effect. If they did not perform this useful function, most of the heat energy would escape, leaving the earth cold (about-18 c) and unfit to support life.

However, ever since the Industrial Revolution began about 150 years ago, man-made activities have added significant quantities of GHGs to the atmosphere. An increase in the levels of GHGs could lead to greater warming, which in turn, have an impact on the world's climate to the phenomenon knows as climate change.

Effect and Consequences of Climate Change

As a result of the continuous increase in levels of greenhouse gases effect, earth has been suffering from fever there is a need of an action for its cure. Climate change has become one of the prime issue threatening the sustainability of world's environment. It has an adverse effect on weather, agriculture, sea-levels, animals and plants, human and health etc. Besides environment climate change also has impact on Livelihood, health and ultimately the economy of the global. The other effect of climate change are as follows:

- A rise in global temperature causes sea levels to rise as polar ice caps and glaciers to melt along thermal expansion of water.
- The word will become more humid as a result more water evaporating from the oceans.
- Erratic monsoon with serious effect on rain-fed agriculture, peninsular rivcers, water and power supply
- Forest may disappear.
- There will be a drastic change in weather patters bringing more droughts and floods in some areas.
- More terrible storms.
- Many more hot days.
- Biological diversity may reduce, some species could become extinct.
- Animals and plans will find it difficult to adjust to the effects of global warming.
- More diseases like malaria, yellow fever and dengue.
- Rising incidences may occur of allergies and respiratory disease as air will grow warmer.
- Impact on ecosystem would change the crop production potential.
- Billions of people will be affected by problems of drinking water supply.

It is pertinent to note here that, the most affected due to climate change are the poorest on the planet. Poor developing countries, particularly small island nation-states will be the worst hit of climate change. Life style of future generations will be compromised. Plants and animals around the world will be drastically affected due to changing weather and some may become extinct.

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Climate Change: International Regulatory Framework

International law has responded to the problem of global warming and climate change in quite a positive manner. The bedrock of this initiative can be traced in Principal 21 of the Stockholm Declaration which captures tension between sovereignty and environment protection under international law. States have in accordance with the Charter of United Nations and the Principles of the International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies and the responsibilities to ensure that activities within their Jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of National Jurisdiction.[1] The concept of state responsibility by UN International Law commission in its draft articles on State Responsibility also deserves a special mention as imposes the responsibility on state for wrongful act of negligence.[2] Subsequently, the ILC addressed environmental harm that his unintentional or occurs in spite of due care and diligence by establishing a parallel basis for remedies when there is no fault. The ILC called it state liability and gave it the title of draft articles on international liability for injurious consequences arising out of Acts not prohibited by international law. Thus, there are two alternative jurisprudential bases for rectifying harms to the environment law.

It is important to note hare that, this Principal 21 of Stockholm Declaration and ILC'Ss liability approach could not achieve its goal of protecting human environment as a whole. Fort achieving this goal, international co-operation is required. This co-operation towards protection of human environment was reflected in the UN's effort to establish a multilateral treaty to address the challenge of climate change. After years of studies and negotiations in 1992, the UN adopted the framework Convention on Climate Change.[3] This convention was the first step in addressing one of the most urgent environmental problems facing human kind. The convention has set an ultimate objective of stabilizing the atmospheric concentration of greenhouse gases at a level that would prevent the dangerous human interference with the climate system. Under the convention, the development and transfer of environmentally sound technologies is an important part of the global response to climate change, both to slow the process and enable people and societies to adapt to change that may occur. Since then, the parties have taken decisions to promote the development and transfer of technologies at each session of the conference of the parties.(CoP).

The Convention established the goal of reducing greenhouse gases emissions to 190 levels by the year 2000, but provided no concrete target or timeframe achieving that goal. Five years later in 1997, at the third conference of the Parties to the climate convention (CoP) held in Kyoto, Japan, the parties signed the Kyoto Protocol with was created as a framework for future action. The Protocol advances the implementation process envisaged in the climate conventions it included commitments by specifies developed countries to reduce greenhouse gases. It also included commitments by the developing countries and introduced flexibility mechanism for implementations. The Kyoto protocol to combat global warming became law on February 16, 2015, binding the industrialized nation to reduce by 2012 their greenhouse gases emissions to 5.2% below the 1990's. A flexible trading mechanism for emissions provided in the treaty also opens up opportunities for developing countries to secure investment in cleaner technologies. Kyoto Protocol has provision of clean development mechanism as a trading scheme, where industrialized nations. Investors would capitalize on

cheaper emission reduction technology development in the developing countries. It must be noted here that, the clean development mechanism cannot be a long term solution. However, the Kyoto Protocol has not solved the question of allocating emission rights, i.e. Nations to use more than allotted emissions space. Asking countries to reduce emissions would not work for developing countries. In 2011, parties adopted the "Durban Platform for Enhanced Action". As part of the Durban Platform, parties have agreed to "develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties". At Durban] and Doha, parties noted "with grave concern" that current efforts to hold global warming to below 2 or 1.5 °C relative to the pre-industrial level appear inadequate.

In 2015, all 196 parties to the convention came together for the UN Climate Change Conference in Paris 30 November - 12 December and adopted by consensus the Paris Agreement, aimed at limiting global warming to less than two degrees Celsius, and pursue efforts to limit the rise to 1.5 degrees Celsius. The Paris Agreement is to be signed in 2016 and will enter into force upon ratification by 55 countries representing over 55% of greenhouse gas emissions.

The Paris UN Climate Conference represents an historic opportunity to put the world on course to meet the climate change challenge. The world needs a new model of growth that is safe, durable and beneficial to all. COP21 seeks to deliver a clear pathway with short and long term milestones, and a system to help us measure and increase progress over time until we get the job done. The Paris Agreement is not only possible, it is necessary and urgent. We are counting on everyone's contribution.

Conclusion

Climate change poses a formidable challenge to all countries but its major impact is on developing countries especially the least developed countries as they lack the resources and capacity to fulfil the obligations and to undertake adaptation activities. The assistance of developed countries becomes imperative. International Environmental law as well as International Human Rights Law can play a robust role as appropriate mechanism in supporting the developing countries to face the adverse impacts of climate change. The matter is urgent and calls for strong political will both at national and international level to make it happen.

Not to forget, illiteracy, poverty and uncontrolled increase in population are some of the unending challenges before the 21st century. At the same time ability to reduce the chloro-fluro emissions in the atmosphere is also the greatest task for planners and scientists, to which due concern change is not just an economic or ecological issue. Above all it is a moral and ethical issue. Climate change has become global co-operative enterprise in which all big and small. Rich and poor, powerful and powerless must co-operate to achieve a global objective for global good. Since global warming is mainly caused of the energy consumption of the rich nations they owe the prime responsibility of preventing the climate change, the world has to be prevented from catching high fever.

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Cyberspace And Its Regulation

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As the world moves into the new century we are faced with an ever increasing reliance upon technology, and particularly the internet, in our day to day lives. The nature of the internet means that it is impossible accurately to estimate the number of people with access to it. However, its importance and pervasiveness are certain to continue to expand. Given the exponential growth of the internet, legal institution face serious question, not only about how to regulate the internet, but also about whether it should be regulated at all. As was the case with all of the previous technological revolutions throughout history, the law has been and will continue to be, stretched to its practical and theoretical limit in its effort to overcome the challenges raised by the internet. It is these effort, and these challenges, which form the foundation for the materials in this book.[1]

The smooth continued operation of human relationships depends upon functional institutions be they formal or customary, written or oral. As the relationships grow in number and complexity, so too must the institutions. Currently, 'Internet law' is still little more than an embryonic collection of laws and principles which, through design or necessary, have been applied to the internet. despite the publicity surrounding the growth of the internet, there are still very few professionals who can credibly call themselves internet lawyers Indeed it might be argued by some that there is in fact still no firm jurisprudence which can be collectively referred to as internet law. An electronic transaction over the internet become important the question arises whether they will be controlled on the national and international levels. Many internet enthusiast dismiss this question as irrelevant. They believe in the myth
that you cannot regulate the internet. there is a related platitude that a bit is a bit meaning no bit can be treated differently from any other, and attempts at control.[2]

An electronic transaction over the internet become important the question arises whether they will be controlled on the national and international levels. Many internet enthusiasts dismiss this question as irrelevant. They believe in the myth that 'you cannot regulate the internet.' There is a related platitude, that 'a bit can be treated differently from any other, and attempt at control are therefore doomed to fail. Both claims originate with technology determinists. But both myths are wrong even as a matter of technology a bit is bit with a certain priority, which can be indeed must be made to vary. In most computer communication a bit does not travel naked but in an envelope a packet. a packet is identified by its destination and sender. And once one can differentiate one can control. Of course, there can be ways to electronically defeat such identification. Which lead us to the second fallacy.[3]

The second fallacy is to believe that the internet is only electronic, which indeed is hard to control. But communication are not just a matter of signals but of people and institutions. senders, recipients, and intermediaries are living, breathing people, who live somewhere in real space or they are legally organized institutions with physical domiciles and physical hardware. The arm of the

law can reach them . it may be possible to evade such law, but the same is true when it come to tax regulations. Just because a law cannot fully stop an activity does not prove that such law is ineffective or undesirable.[4]

This most emphatically, does not mean that we should regulate the Internet. But that is a normative question of values, not one of technological determinism. We should choose freedom because we *want* to, not because we *have* to. And that choice will not be materially different from those which societies generally apply to the panoply of activitiess.

Why should computer communications be different? As the Internet moves from being in the main a nerd-preserve, and becomes an office park, shopping mall and community center, it is sheer fantasy to expect that its uses and users will be beyond the law. This would seem obvious. Just consider what will happen when the cooperative spirit of the Internet is broken by software programs deliberately set to lie, cheat, and harm others. Yet, many deny the obvious, that the Internet will be dealt with like the rest of the society. Today, for better or worse, each society will apply its own accumulated wisdom, prejudices, self-interests and misconceptions to the rules governing the Internet. This is not to say that such rules, or similar ones, are desirable. But they are unavoidable. China is building an Internet backbone that is connected to the world through only set control points. Arab nations are not allowing their citizens full Internet access and are censoring the WWW. Singapore has laws against "improper" usage of the net, and controls all ISPs.[5]

In communications, one should take cognizance of a simple but basic principle: every time one makes a communications flow relatively more convenient, powerful, and cheap, one also makes a traditional communications flow relatively less convenient, less powerful, and more expensive. If one develops new routes of communication, old ones atrophy. When Columbus and Vasco de Gama opened up new trade routes, Venice became a museum. When highways were built, cities emptied. When airplanes speeded up intercontinental travel, professional sports teams could relocate, and Brooklyn lost the Dodgers[6]

Crime is both a social and economic phenomenon. It is as old as human society. Many ancient books right from pre-historic days, and mythological stories have spoken about crimes committed by individuals be it against another individual like ordinary theft and burglary or against the nation like spying, treason etc. Kautilya's Arthashastra written around 350 BC, considered to be an authentic administrative treatise in India, discusses the various crimes, security initiatives to be taken by the rulers, possible crimes in a state etc. and also advocates punishment for the list of some stipulated offences. Different kinds of punishments have been prescribed for listed offences and the concept of restoration of loss to the victims has also been discussed in it.[7]

Crime in any form adversely affects all the members of the society. In developing economies, cyber crime has increased at rapid strides, due to the rapid diffusion of the Internet and the digitization of economic activities. Thanks to the huge penetration of technology in almost all walks of society right from corporate governance and state administration, up to the lowest level of petty shop keepers computerizing their billing system, we find computers and other electronic devices pervading the human life. The penetration is so deep that man cannot spend a day without computers or a mobile. Snatching some one's mobile will tantamount to dumping one in solitary confinement. Cyber Crime is not defined in Information Technology Act 2000 nor in the I.T.

Amendment Act 2008 nor in any other legislation in India. In fact, it cannot be too. Offence or crime has been dealt with elaborately listing various acts and the punishments for each, under the Indian Penal Code, 1860 and quite a few other legislations too. Hence, to define cyber crime, we can say, it is just a combination of crime and computer. To put it in simple terms 'any offence or crime in which a computer is used is a cyber crime'. Interestingly even a petty offence like stealing or pick-pocket can be brought within the broader purview of cyber crime if the basic data or aid to such an offence is a computer or an information stored in a computer used (or misused) by the fraudster. The I.T. Act defines a computer, computer network, data, information and all other necessary ingredients that form part of a cyber crime, about which we will now be discussing in detail. In a cyber crime, computer or the data itself the target or the object of offence or a tool in committing some other offence, providing the necessary inputs for that offence. All such acts of crime will come under the broader definition of cyber crime.[8]

Thus the corporate responsibility for data protection is greatly emphasized by inserting Section 43A whereby corporate are under an obligation to ensure adoption of reasonable security practices. Further what is sensitive personal data has since been clarified by the central government vide its Notification dated 11 April 2011 giving the list of all such data which includes password, details of bank accounts or card details, medical records etc. After this notification, the IT industry in the nation including techsavvy and widely technology-based banking and other sectors became suddenly aware of the responsibility of data protection and a general awareness increased on what is data privacy and what is the role of top management and the Information Security Department in organizations in ensuring data protection, especially while handling the customers' and other third party data. In view of the foregoing, it has now become a major compliance issue on the part of not only IT companies but also those in the Banking and Financial Sector especially those banks with huge computerized operations dealing with public data and depending heavily on technology. In times of a litigation or any security breach resulting in a claim of compensation of financial loss amount or damages, it would be the huge responsibility on the part of those body corporate to prove that that said "Reasonable Security Practices and Procedures" were actually in place and all the steps mentioned in the Rules passed in April 2011 stated above, have been taken. In the near future, this is one of the sections that is going to create much noise and be the subject of much debates in the event of litigations, like in re-defining the role of an employee, the responsibility of an employer or the top management in data protection and issues like the actual and vicarious responsibility, the actual and contributory negligence of all stake holders involved etc. The issue has wider ramifications especially in the case of a cloud computing scenario (the practice of using a network of remote servers hosted on the Internet to store, manage, and process data, rather than a local server, with the services managed by the provider sold on demand, for the amount of time used) where more and more organizations handle the data of others and the information is stored elsewhere and not in the owners' system. Possibly, more debates will emanate on the question of information owners vis a vis the information container and the information custodians and the Service Level Agreements of all parties involved will assume a greater significance.
Adjudication: Having dealt with civil offences, the Act then goes on to describe civil remedy to such offences in the form of adjudication without having to resort to the procedure of filing a complaint with the police or other investigating agencies. Adjudication powers and procedures have been elaborately laid down in Sections 46 and thereafter.

The Central Government may appoint any officer not below the rank of a director to the Government of India or a state Government as the adjudicator. The I.T. Secretary in any state is normally the nominated Adjudicator for all civil offences arising out of data thefts and resultant losses in the particular state. If at all one section can be criticized to be absolutely lacking in popularity in the IT Act, it is this provision. In the first ten years of existence of the ITA, there have been only a very few applications made in the nation, that too in the major metros almost all of which are under different stages of judicial process and adjudications have been obtained in possibly less than five cases. The first adjudication obtained under this provision was in Chennai, Tamil Nadu, in a case involving ICICI Bank in which the bank was told to compensate the applicant with the amount wrongfully debited in Internet Banking, along with cost and damages. in April 2010.[9]This section should be given much popularity and awareness should be spread among the public especially the victims of cyber crimes and data theft that such a procedure does exist without recourse to going to the police and filing a case. It is time the state spends some time and thought in enhancing awareness on the provision of adjudication for civil offences in cyber litigations like data theft etc so that the purpose for which such useful provisions have been made, are effectively utilized by the litigant public. There is an appellate procedure under this process and the composition of Cyber Appellate Tribunal at the national level, has also been described in the Act. Every adjudicating officer has the powers of a civil court and the Cyber Appellate Tribunal has the powers vested in a civil court under the Code of Civil Procedure.[10]

After discussing the procedures relating to appeals etc and the duties and powers of Cyber Appellate Tribunal, the Act moves to the actual criminal acts coming under the broader definition of cyber crimes. It would be pertinent to note that the Act only lists some of the cyber crimes, (without defining a cyber crime) and stipulates the punishments for such offences. The criminal provisions of the IT Act and those dealing with cognizable offences and criminal acts follow from Chapter IX titled "Offences" Section 65: Tampering with source documents is dealt with under this section. Concealing, destroying, altering any computer source code when the same is required to be kept or maintained by law is an offence punishable with three years imprisonment or two lakh rupees or with both. Fabrication of an electronic record or committing forgery by way of interpolations in CD produced as evidence in a court (Bhim Sen Garg vs State of Rajasthan and others, 2006, Cri LJ, 3463, Raj 2411) attract punishment under this Section. Computer source code under this Section refers to the listing of programmes, computer commands, design and layout etc in any form.[11]

However some fundamental issues like if the mail of someone is hacked and the accused is a resident of a city in some state coming to know of it in a different city, which police station does he go to? If he is an employee of a Multi National Company with branches throughout the world and in many metros in India and is often on tour in India and he suspects another individual say an employee of the same firm in his branch or headquarters office and informs the police that evidence could lie in the suspect's computer system itself, where does he go to file he complaint. Often, the investigators do not accept such complaints on the grounds of jurisdiction and there are occasions that the judicial officers too have hesitated to deal with such cases. The knowledge that cyber crime is geography-agnostic, borderless, territory-free and sans all jurisdiction and frontiers and happens in 'cloud' or the 'space', has to be spread and proper training is to be given to all concerned players in the field. Evidences: Evidences are a major concern in cyber crimes. Pat of evidences

is the 'crime scene' issues. In cyber crime, there is no cyber crime. We cannot mark a place nor a computer nor a network, nor seize the hard-disk immediately and keep it under lock and key keep it as an exhibit taken from the crime scene.Operating Systems that are from the West especially the US and many software utilities and hardware items and sometimes firmware are from abroad. In such cases, the actual reach and import of IT Act Sections dealing with a utility software or a system software or an Operating System upgrade or update used for downloading the software utility, is to be specifically addressed, as otherwise a peculiar situation may come, when the user may not know whether the upgrade or the patch is getting downloaded or any spyware getting installed. The Act does not address the government's policy on keeping the backup of corporate including the PSUs and PSBs in our county or abroad and if kept abroad, the subjective legal jurisprudence on such software backups.[12]

UK

The UK is one of the world's leading digital nations. Much of our prosperity now depends on our ability to secure our technology, data and networks from the many threats we face. Yet cyber attacks are growing more frequent, sophisticated and damaging when they succeed. So we are taking decisive action to protect both our economy and the privacy of UK citizens. Our National Cyber Security Strategy sets out our plan to make Britain confident, capable and resilient in a fast-moving digital world.

From the most basic cyber hygiene, to the most sophisticated deterrence, we need a comprehensive response. We will focus on raising the cost of mounting an attack against anyone in the UK, both through stronger defences and better cyber skills. This is no longer just an issue for the IT department but for the whole workforce. Cyber skills need to reach into every profession. The new National Cyber Security Centre will provide a hub of world-class, user-friendly expertise for businesses and individuals, as well as rapid response to major incidents. Government has a clear leadership role, but we will also foster a wider commercial ecosystem, recognising where industry can innovate faster than us. This includes a drive to get the best young minds into cyber security.[13]

The cyber threat impacts the whole of our society, so we want to make very clear that everyone has a part to play in our national response. It's why this strategy is an unprecedented exercise in transparency. We can no longer afford to have this discussion behind closed doors. Ultimately, this is a threat that cannot be completely eliminated. Digital technology works because it is open, and that openness brings with it risk. What we can do is reduce the threat to a level that ensures we remain at the vanguard of the digital revolution. This strategy sets out how.[14]

Our primary responsibility is to keep the nation safe and deliver competent government. This strategy reflects these duties. It is a bold and ambitious approach to tackling the many threats our country faces in cyberspace. Managing and mitigating those threats is a task for us all but the Government recognises its special responsibility to lead the national effort required. The Government is committed to ensuring the commitments set out in this strategy are carried out and that we accurately monitor and regularly report on progress in meeting them. We will also keep our approach under review and respond to changes in the level of threat we face as well as evolutions in security technologies. Government also has a special responsibility to the citizen, to companies and organisations operating in the UK, and to our international allies and partners. We should be able to assure them that every effort made has been to render our systems safe and to protect our data and our networks from attack or interference. We must therefore set ourselves the highest standards of cyber security and ensure we adhere to them, both as the

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cornerstone of the country's national security and economic wellbeing and also as an example for others to follow. We shall report back on progress made on an annual basis.

The UK Government will draw on its capabilities and those of industry to develop and apply active cyber defence measures to significantly enhance the levels of cyber security across UK networks. These measures include minimising the most common forms of phishing attacks, filtering known bad IP addresses, and actively blocking malicious online activity. Improvements in basic cyber security will raise the UK's resilience to the most commonly deployed cyber threats.

We have created a National Cyber Security Centre (NCSC) to be the authority on the UK's cyber security environment, sharing knowledge, addressing systemic vulnerabilities and providing leadership on key national cyber security issues. We will ensure that our Armed Forces are resilient and have the strong cyber defences they need to secure and defend their networks and platforms, continuing to operate and retaining global freedom of manoeuvre despite cyber threats. Our military Cyber Security Operations Centre will work closely with the NCSC and we will ensure that the Armed Forces can assist in the event of a significant national cyber attack. We will have the means to respond to cyber attacks in the same way as we respond to any other attack, using whichever capability is most appropriate, including an offensive cyber capability. We will use the authority and influence of the UK Government to invest in programmes to address the shortage of cyber security skills in the UK, from schools to universities and across the workforce. We will launch two new cyber innovation centres to drive the development of cutting-edge cyber products and dynamic new cyber security companies Understanding the threats to networks, and then devising and implementing measures to proactively combat or defend against those threats. See Glossary for an explanation of all technical terms.[15]

Of equal concern are those insiders or employees who accidentally cause cyber harm through inadvertent clicking on a phishing email, plugging an infected USB into a computer, or ignoring security procedures and downloading unsafe content from the Internet. Whilst they have no intention of deliberately harming the organisation, their privileged access to systems and data mean their actions can cause just as much damage as a malicious insider. These individuals are often the victims of social engineering – they can unwittingly provide access to the networks of their organisation or carry out instructions in good faith that benefit the fraudster.[16]

Cyberspace also strengthens open societies. It acts as a vast repository for many forms of knowledge. It allows individuals to connect with one another, share ideas and express views, and take new approaches to shared problems. It provides new and more effective ways to participate, allowing larger numbers of people to solve problems support each other and get involved in the issues they care about. As more people connect to the internet the flow of new and innovative ideas increases. With a reach that continues to expand, cyber space is becoming democratised and can now enable,cyber space is becoming 'democratised' and can now enable social change. It is now being used to empower people by making governments more transparent, accountable8 and efficient in the way they provide public services.9 93% of children aged 12-15 now use the internet at home. This group are more likely to say they would miss the internet than television. Of com, Children and Parents: Media use report 2011 and which will continue to grow.[17]

Since the 1970s, we have witnessed remarkable transformational change that has helped drive the growth of cyberspace. The amount of information created or replicated using digital technology continues to grow. In 2010 it was estimated to be 1.2 zeta bytes and by 2011 it is predicted to grow to 1.8 zeta bytes[10] (enough information to fill 380 billion DVDs). A zeta byte is a staggeringly large number – a *billion* terabytes – where a terabyte is typically the largest hard disk available for home computers in 2011.

1.12 But in many ways the most exciting developments in cyberspace are still to come. As more people and organisations around the world connect, it becomes more and more useful in a variety of new and often unexpected ways. The introduction of cloud computing and smart-grids, the continued growth of mobile working and the growth in the number of users of cyberspace each demonstrate that the pace of change will not let up: cyberspace will become increasingly valuable and important to the UK, and to countries across the world.[18]

USA:

We live in a wired world. Companies and countries rely on cyberspace for everything from financial transactions to the movement of military forces. Computer code blurs the line between the cyber and physical world and connects millions of objects to the Internet or private networks. Electric firms rely on industrial control systems to provide power to the grid. Shipping managers use satellites and the Internet to track freighters as they pass through global sea lanes, and the U.S. military relies on secure networks and data to carry out its missions The United States is committed to an open, secure, interoperable, and reliable Internet that enables prosperity, public safety, and the free flow of commerce and ideas. These qualities of the Internet reflect core American values – of freedom of expression and privacy, creativity, opportunity, and innovation. And these qualities have allowed the Internet to provide social and economic value to billions of people. Within the U.S. economy alone, anywhere from three to 13 percent of business sector value-added is derived from Internet-related businesses. Over the last ten years Internet access increased by over two billion people across the globe. Yet these same qualities of openness and dynamism that led to the Internet's rapid expansion now provide dangerous state and non-state actors with a means to undermine U.S. interests. We are vulnerable in this wired world. Today our reliance on the confidentiality, availability, and integrity of data stands in stark contrast to the inadequacy of our cyber security. The Internet was not originally designed with security in mind, but as an open system to allow scientists and researchers to send data to one another quickly. Without strong investments in cyber security and cyber defences, data systems remain open and susceptible to rudimentary and dangerous forms of exploitation and attack. Malicious actors use cyberspace to steal data and intellectual property for their own economic or political goals. And an actor in one region of the globe can use cyber capabilities to strike directly at a network thousands of miles away, destroying data, disrupting businesses, or shutting off critical systems. State and non-state actors conduct cyber operations to achieve a variety of political, economic, or military objectives. In conducting their operations, they may strike at a nation's values as well as its interests or purposes. As one example, in November, 2014, likely in retaliation for The Department of Defence Cyber Strategy planned release of a satirical film, North Korea conducted a cyber attack against Sony Pictures Entertainment, rendering thousands of Sony computers inoperable and breaching Sony's confidential business information. In addition to the destructive nature of the attacks, North Korea stole digital copies of a number of unreleased movies, as

well as thousands of documents containing sensitive data regarding celebrities,

Sony employees, and Sony's business operations. North Korea accompanied their cyber attacks with coercion, intimidation, and the threat of terrorism. The North Korean attack on Sony was one of the most destructive cyber attacks on a U.S. entity to date. The attack further spurred an already ongoing national discussion about the nature of the cyber threat and the need for improved cyber security. The increased use of cyber attacks as a political instrument reflects a dangerous trend in international relations. Vulnerable data systems present state and non-state actors with an enticing opportunity to strike the United States and its interests. During a conflict, the Defence Department assumes that a potential adversary will seek to target U.S. or allied critical infrastructure and military networks to gain a strategic advantage. Beyond the attacks described above, a sophisticated actor could target an industrial control system (ICS) on a public utility to affect public safety, or enter a network to manipulate health records to affect an individual's well-being. A disruptive, manipulative, or destructive cyber attack could present a significant risk to U.S. economic and national security if lives are lost, property destroyed, policy objectives harmed, or economic interests affected. Leaders must take steps to mitigate cyber risks. Governments, companies, and organizations must carefully prioritize the systems and data that they need to protect, assess risks and hazards, and make prudent investments in cyber security and cyber defence capabilities to achieve their security goals and objectives. Behind these defence investments, organizations of every kind must build business continuity plans and be ready to operate in a degraded cyber environment where access to networks and data is uncertain. To mitigate risks in cyberspace requires a comprehensive strategy to counter and if necessary withstand disruptive and destructive attacks. That some of these new ways are really quite old will be one of the central ironies of the information age.[19]

WIPO

WIPO means world intellectual property which includes industrial property, such as inventions, trademarks, and design, on the one hand, and the objects of copyright and neighbouring right on the other. Until a century ago, there were no international instruments for the protection of inventors, writers dramatist, and other creators of intellectual property varied from country to country and could be effective only within the borders of states adopting them . It came to be widely recognized that adequate protection of industrial property encourages industrialization, investment, and honest trade. That art would be advanced by legal safeguard in favour of their practitioner had long been argued , but such safeguards were difficult to devise and enact into law. The Paris convention of 20 march 1883 and Bern convention of 9 September 1886 represented initial steps toward systematic provision of two sorts of International protection that led eventually to the creation of the world intellectual property organization (WIPO).[20]

The 1883 Paris convention established the international union for the protection of industrial property, also called the Paris Union. The convention is open to all states. Its most important functions have to do with patents for inventions and marks for inventions and mark for goods and services. The term industrial property is applied in its widest sense in the convention. In addition to inventions, industrial designs, trademarks, service marks, indications of source, and appellations of origin, it covers small patents called utility models in few countries trade names or the designation under which an industrial or commercial activity is carried on, and the suppression of unfair competition. The convention state that members must provide the same protection of right in industrial property to nationals of the other members as they

provide to their own nationals. It permits foreigners to file for a patent that will apply in all members state within a year after first filing in the country of origin.[21]

The 1883 Bern convention established the international union for the protection of literary and artistic works also called Bern union for the protection of copyright, the main beneficiaries of which include authors of books and article; publisher of books; newspaper and periodicals; composers of music; painters; photographers; sculptors; film producers; and creators of certain television programs.

The purpose of WIPO is to promote the protection of intellectual property throughout the world through cooperation among state and, where appropriate, in collaboration with any other international organization; and to ensure administrative cooperation among the union. Intellectual property comprises two main branches industrial property, chiefly in literacy, musical, artistic, photographic and cinematographic works. The WIPO convention lists rights in intellectual property relating to literary, artistic and scientific works; performances of artistic; phonogram; broadcast; inventions in all field of human endeavour' scientific discoveries; industrial design; trademark; service marks; and commercial names and designations. The convention also offers protection against unfair competition and cover all other right resulting from intellectual activity in the industrial, scientific, literary, or artistic field.[22]

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Fair Pricing and Fair Dealing in Copyright Laws in India

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Fair dealing is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work. Fair dealing is found in many of the common law jurisdictions of the Commonwealth of Nations. Fair dealing is an enumerated set of possible defences against an action for infringement of an exclusive right of copyright. Unlike the related United States doctrine of fair use, fair dealing cannot apply to any act which does not fall within one of these categories, although common law courts in some jurisdictions are less stringent than others in this regard. In practice, however, such courts might rule that actions with a commercial character, which might be naïvely assumed to fall into one of these categories, were in fact infringements of copyright, as fair dealing is not as flexible a concept as the American concept of fair use.

India a fair dealing with any work (except computer programmes) is allowed for the purposes of -

1. private or personal use, including research criticism or review,
2. Reporting of current events and current affairs, including the reporting of a lecture delivered in public.

The term **fair dealing** has not been defined anywhere in the Copyright Act 1957. However, the concept of '**fair dealing**' has been discussed in different judgments, including the decision of the Supreme Court of India in Academy of General Education v. B. Malini Mallya (2009) and the decision of the High Court of Kerala in Civic Chandran v. Ammini Amma .

Civic Chandran and Ors. v. C.Ammini Amma and Ors, is a 1996 Kerala High Court judgement,that deals with the concept of fair dealing in India. In this case, a drama called "Ningal Enne Communistakki" was written by Late Thoppil Bhasi in Malayalam. It dealt with some of the burning social and political problems of those days, especially espoused by the then Communist Party of India to come to Power in Kerala during the assembly elections in 1957. The plaintiff brought a claim in this suit because the defendant, according to the plaintiff, had fabricated another drama called "Ningal Aare Communistakki", which was a counter drama to the drama written by Thoppil Bhasi and had published the same in the 1995 annual issue of İndia Today". It was alleged that the defendant had copied substantial portions of the original drama in his work and such reproduction was done without any bona fide intention and to take undue advantage of the creative talent and labour of Thoppil Bhasi. The defendant on the other hand, claimed that the counter drama is a new literary innovation 'where a play is counter-posed by using the very same theme and characters. The counter drama was written for the purpose to provide critical analysis of the original drama and to show how the ultimate purpose intended by Thoppil Bhasi has failed. Hence, copying of certain portions can only be treated as 'fair

dealing'. The lower court ruled in the favour of the plaintiff and said, "Copying down or extracting substantial portions of the drama, and using the same characters and dialogues of the drama with some comments here and there through two-three characters in the counter-drama cannot be treated as fair dealing for the purpose of criticism" and hence, no relief could be provided. Thus, he was not provided any protection under section 52 of the Copyright Act. An appeal was filed against this judgement in the Kerala High Court, where the Court looked at the case while referring to sections- 14,51 and 52 of Copyright Act. Herein, the defendant claimed that since there was high probability of the defence of fair dealing being applicable in the case, irreparable injury that could have been caused, especially, looking at the current political scenario in Kerala, which would also show a lack of balance of convenience. If the counter-drama is not staged, there essence would be lost. Plaintiffs' argued that the lower court's decision should not be reversed unless the same is found to be completely illegal or perverse.

The Indian Copyright Act does not provide for a definition for 'fair dealing' but section 52(1) (a) and (b) specifically refers to fair dealing of the work and not the reproduction of the work. Hence, the court needs to take into account the following 3 aspects: a) The quantum and value of the matter taken in relation to the comments or criticism; b) The purpose for which is was taken; and c) The likelihood of competition between the two works.

Section 52(1)(i) of the Copyright Act: "in the course of instruction"

Section 52 of the Copyright Act, 1957 enumerates acts which do not amount to infringement.

"*As for fair dealing, fair dealing is a stricter approach to exceptions to infringement than fair use. Under fair dealing, limited situations are envisaged whose metes are bounds are almost clear. Therefore, use of fair use principles to broaden the scope of such limited situations may not be permissible.*

Section 52 of our Copyright Act uses fair dealing for a few instances and fair use for a few other. When it comes to literary works:
A. Section 52 (a) permits "fair dealing" for private use and criticism,
B. 52(b) permits "fair dealing" for the purposes of reporting,
C. 52(c) permits reproduction in a judicial proceeding,
D. 52(d) permits reproduction or publication for Legislative purposes,
E. 52(e) permits reproduction for the purposes of a certified copy,
F. 52(f) permits only reading and recitation of a reasonable extract,
G. 52(g) permits publication in a collection of essentially non-copyright matter for use in "educational institutions"
H. 52(h) permits reproduction during the course of instruction or in examinations
I. 52(i) permits performance in the activities of an educational institution
J. 52(j) permits making sound recording of the work with the license or consent of the owner of the work
K. 52(l) permits performance in an amateur club to a non-paying audience, or in a religious institution
L. 52(o) permits making of three copies for a library if the book is not sold in India

There are a few other provisions besides the above, but none of the provisions seems broad enough to employ "fair use" principles propounded in the US. This is because "fair dealing" provisions in most jurisdictions appear

to be restrictively worded and are treated as such too."

In this research paper ,researcher is specifically interested in understanding the import of Section 52(1)(i)(i) which deals with "*reproduction of any work by a teacher or a pupil in the course of instruction*".

In understanding the scope of the non-infringing use envisaged in the provision, regard must be had to the other two exceptions spelt out as part of Section 52(1)(i). The provision reads as follows:

The following acts shall not constitute an infringement of copyright, namely:

(i) the reproduction of any work- by a teacher or a pupil in the course of instruction; or

(ii) as part of the questions to be answered in an examination; or

(iii) in answers to such questions;

IS FAIR DEALING REALLY FAIR IN INDIA?

Every student in India, has become familiar with the issue of fair dealing of copyright, all thanks to the Rameshwari photocopy case. The case has emerged as one of the most-egregious abuses of copyright law. Leading publishers, Oxford University Press (OUP), Cambridge University Press (CUP) and Taylo & Francis (T&F) filed a lawsuit against Delhi University and Rameshwari Photocopy Service, the licensed photocopier for creating and distributing course packs to the students of the University. They took a clear stand that through this lawsuit that they were not trying to fall under the "fair dealing" exceptions provided for under Section 52 of the Indian Copyright Act. They were challenging the illegal duplication of copyrighted materials for commercial purposes by the photocopying shop. But what they conveniently forgot was that their material was protected by copyright and was very essential for academic purposes. It was photocopied since the students could not buy the course books at such unaffordable prices. It is important to understand the context in which the Rameshwari Press was working. There are two aspects to it: a) One simple way to look at it is that it was involved in a commercial activity & hence the application of Section 52 in this case cannot be attracted. b) However, the other, more realistic aspect is the context in which it was operating. There was a tender taken out by the Delhi University to select a photocopier for this purpose. Hence, Rameshwari Press was acting as an agent of the University & in light of the same, its involvement in producing the course packs was not towards a commercial purpose but rather driven towards meeting the university s purpose. In this case, Rameshwari photocopy had a license from the University for being the exclusive „agent for creating and distributing course packs. It is very pertinent to note that use of the copyrighted work for the purposes of an educational institution is an exception to copyright infringement. 2 The end purpose of these course packs is the education of the students. This purpose falls squarely within the ambit of „permissible purposes as enshrined in Section 52 of the Indian Copyright Act. On this very point, the Canadian Supreme Court, which has a similar copyright system like 2 Section 52 (1)(i) of the Indian Copyright Act, 1957 Vol. 1 Issue 1 RGNUL Student Law Review 44 that of India, have ruled that distribution of extracts for educational purpose comes under the ambit of „permissible purpose in the case of Alberta (Education) v. Canadian Copyright Licensing Agency. 3 One of the more clichéd arguments then contended by publishers is that, „Authors are not philanthropists & publishing houses not charities. While no legal jurisdiction has

overlooked the commercial aspect of this whole exercise, one needs to remember that the underlying philosophy of the TRIPS Agreement, Indian Copyright Act & similar enactments is that reproducing parts of a copyrightable work in certain situations without making payments to the copyright holder is permissible on grounds of equity or as laid down by legislature. This is the primary purpose of the concept of Fair Use or Fair Dealing. Here, raises the question of the instances wherein these course packs are sold by the Press to students not belonging to Delhi University. In such a scenario, one can take a view and propose that this does not fall under the ambit of fair dealing as the Publishers contend. The other view based on equity would be that even a non-DU student cannot possibly afford such steep prices of all of the individual books. Moreover, another view that has been advanced recently is that the objective that a whole book seeks to achieve & the objective which a course pack, made after selecting different portions of different books seeks to achieve are completely different. In such a case, the existence of cheap course packs is not affecting the sales of books at all since buyers interested in the objectives that can be fulfilled by the book will purchase books only. It is this subjectivity that is sought to be highlighted by means of this paper. The fact that real life circumstances relating to such a subjective aspect tend to get complicated when subjected to a rigid set of exceptions mentioned in a statute.

Another case that can be pointed out here is that of India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private Limited & Super Cassettes Ltd. 4 In this case, the TV Channel broadcasted an exclusive segment focused on singers & (and) when these singers were singing their songs live on TV, certain clips of the movies to which those songs belonged were shown. Infringement of 3 Alberta (Education) v. Canadian Copyright Licensing Agency, [2012] 2 SCR 345 4 India TV Independent News Services Pvt. Ltd. v. Yashraj Films Private Limited & Super Cassettes Ltd, FAO (OS) 584/ 2011 45 Is Fair Dealing Really Fair in India? copyright was claimed by the publishers at Oxford, Cambridge, etc. and the Delhi High Court released a judgment restraining the Channel from distributing, broadcasting or otherwise publishing or in any other way exploiting any cinematograph film, sound recordings or part thereof that is owned by the producers. This is where an interesting point stems up. Would it not be unethical, even cruel, to restrain a singer from singing his song in front of an audience merely because the legal rights subsisting over it are possessed by someone else? The deficiency of Section 52 of the Indian Copyright Act in this regard thus becomes a handicap which ultimately acts to the detriment of tenets of justice & equity.

Conclusion:

While UK developed a mature licensing system, Canada & USA saw the courts intervene in order to protect the interests of the public at large & considering the overall socioeconomic status of India, it's high time for India to follow suit. To this end, while the Court can come up with guidelines in the present Rameshwari case but the best course of action would be to amend the law & taking cue from the other major democracy of the world by adopting a more "fair-use" biased model in India. Probably the only difference was that fair use applied to any situation and not merely to an enumerated purpose.

Since the Indian judiciary has never dealt with the "limit of permissible copying" for educational purposes in India, we would have to refer to decisions from other jurisdictions. In 2012 one of the US courts decided in Cambridge University Press v. Becker, that the University would not require a license for reproduction of less than 10% of the total page count of the book. Following this example, we should also permit

copying of at least 15-20% of the total page count of the book to accommodate the needs of the Indian educational system. Permissible purpose and a permissible limit would definitely bring in some life to our fair dealing provisions. Fair dealing also needs to be defined somewhere to bring out more clarity in Section 52 of the Copyright Act. It can be concluded that, such a rigid approach to fair dealing should not be followed in India keeping in mind the technological and societal changes. Intellectual Property Laws have not fully taken their shape yet and, therefore, confining them to such strict interpretation of statues would leave no room for fairly judging the cases and for judicial creativity. Instead of adopting the "fair use doctrine in its entirety, an alternative such as" approach or the expansion of fair dealing" should be adopted. Since we are already referring to parameters laid down in different judgements to judge fair dealing, why not incorporate them into the statute and simultaneously introduce a "such as" clause in the provision. Fair use is based on utilitarian principles and fair dealing is based on the natural law theory where author takes centre stage.. It is now up to the legislators, in the present day circumstances, to approach & analyse this issue so as to best serve our interests.

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Right to Health- A Global Perspective

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Abstract

The Right to Health is an indispensable part of the very broad spectrum of Human Rights. The significance of this right lies in a fact that it enables the human beings to live, prosper and develop to their fullest extent. The scientific advancements in the modern era has provided new dimension to this right with newer means and methods to achieve highest status of healthy living. The provisions for effective protection of the right finds place in different International Instruments. Also, there are several international organizations that are engaged in effective realization of this right across the globe. The present paper attempts to analyze these International Instruments and examine working of these organizations.

Keywords

Right to Health, International Instruments, International Organizations, Medical Science

The 'healthy living' is one of the most basic needs of a human being and has received significant importance in all human societies across the globe. The right to health has always received a status as one of the most basic human rights of mankind. However, the right was not very well protected in human societies of different ages. The right was seriously compromised in the eras when territorial expansions of the kingdoms received highest priority. The rampant poverty and lack of resources in treatment of the ailments also contributed heavily for the serious violation of this basic right of human beings. The loss of life and health was the most dreaded outcome of the First and Second World Wars that caused excessive destruction all over the world. The Human Rights movement that started after the end of Second World War provided much needed impetus to the protection of right to health worldwide. The international community after having experienced the dangerous effects of the World War realized that maintaining peace and stability can only save the world from being vanished. It was also sensed that for maintaining peace it is necessary to satisfy basic human wants and provide deserved protection to their basic human rights. The United Nations Organization that was established after the War emerged as a World forum to evolve and enforce guidelines for the protection of human rights. It was resolved in its Charter that the UNO and its Member States shall strive hard to develop mechanism whereby the basic rights of the people all over the world receive constructive recognition and sufficient protection. The UNO in tune with its objectives took effective steps and adopted measures for protection of human rights. The efforts of the UN include formation of specialized agencies for the protection of human rights, developing conventions for human rights and providing platforms for the exchange of ideas and deliberation for the protection of human rights. The efforts of UN resulted into lot of positive

outcomes in this direction. The human right scenario all over the world improved by leaps and bounds. The nations and the governments therein understood the importance of human rights and responded positively to their obligations in this regard. The changing nature of the governance of the State also contributed for the rapid growth and development of human rights all over the world.

The Human Rights Movement had a lot of positive bearing on the protection of right to health. The right to health being one of the most important human rights received a very high consideration in the human rights jurisprudence that developed under the auspices of the United Nations Organization. The right has received special attention and place in the Human Rights Instruments developed with the aim of protecting Human Rights. Not only that but few specialized agencies to give effect to this right were also established at the international level.

International Conventions

The UNO has played the most profound role in developing the modern Human Rights Jurisprudence. The right to health has always been the indispensable element of this jurisprudence. The measures for protecting the right to health can be described as follows:

United Nations Charter

The Charter of the UNO in its Preamble itself reaffirms its faith in fundamental human rights and in the dignity and worth of the human person and commits itself to achieve the goals set out in the Charter that also includes attaining highest standards for the protection of human rights. The UN charter under Art.55 pledges to promote highest standards of living and find solutions of health related problems. The UN Charter seeks joint and separate action from the Members to achieve the above said purposes.[1] The Charter also refers to establishing relationship with the various specialized agencies working in the health sector so that the objective of securing standards of health can be achieved.[2]

Universal Declaration of Human Rights

The Universal Declaration was the first International Instrument concerning Human Rights that was adopted under the auspices of UNO. The Declarations was given effect on 10th December 1948. The Declaration was bought by UN with the objective of letting its Members know about the concept of human rights and various rights of the humans that the Member Nations were expected to recognize and protect. The UDHR, though was not binding on the State parties nevertheless it proved to be a milestone in the development of International Bill of Rights which later became the guiding star for policies concerning human rights. Article 25 of the Universal Declaration states that "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control". It is further provided in the second clause of Art.25 that "Motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same special protection." The UDHR thus formally recognized right to health as one of the most important human right of individuals. The human rights philosophy expressed in the non-binding Declaration then was carried forward by adopting two Covenants in this regard.

International Covenant on Civil and Political Rights, 1966

The adoption of the ICCPR in the year 1966 was a very significant step forward to enforce human

right standards on the State parties to the Covenant. For the first time human rights received the force of sanctions. The ICCPR paved the way for formation of International Human Rights Institution like Human Rights Committee which was empowered to receive reports from the State parties regarding the status of human rights in their respective territories. The Covenant also provided for the complaint mechanism to address the global human right concerns. Though there is no direct and specific provision in ICCPR concerning right to health, there are several provisions that indirectly refer to right to health and aid its purposes. The most important of all these provisions is Article 6 that provide for right to life. The right to life is the most important of all human rights provided in the Covenant. The word life is quite broad in its scope and includes all those dimensions of the human survival and existence that makes the life of a human being dignified and meaningful. The right to health is very important aspect of dignified human survival. The healthy well-being of an individual is necessary to enable him lead a life with the natural dignity of a human being. For this the State parties are required to recognize and protect right to health of their respective citizens by adopting suitable measures in this regard.The ICCPR under Article 7 also casts a responsibility on State parties to protect individuals from being subjected to any inhuman and degrading treatment. The lack of healthcare and medical facilities those are required for healthy well-being of an individual if are not available, amounts to inhuman and degrading treatment. The State therefore has to ensure that proper health care and medical facilities are made available for the citizens so that they can enjoy uninterrupted right to health.

International Covenant on Economic, Social and Cultural Rights, 1966

The Economic, Social and Cultural human rights are known to be the second generation human rights. These rights are very important for the overall progress and development of the society at large. The UNO in its scheme of developing international standards for human rights adopted the Covenant on Economic, Social and Cultural Rights in the year 1966. The Covenant furthers the objective of establishing human society based on the principles of equality and justice wherein highest importance is attached to the welfare of the society. The Covenant is similar to the Covenant on Civil and Political Rights except the reservations that are allowed therein. The Covenant allows the State Parties to have reservations about the implementation and enforceability of its various provisions. This is because full realization of the rights stated in this covenant requires enormous financial and other resources which may not be available with several States. The lack of essential resources therefore may make it impossible for the State Parties to effectively implement and give effect to the different rights mentioned in the covenant. The Covenant therefore allows the State Party a window period that State may require to empower itself economically and otherwise for effective realization of rights stated therein. The rights provided in the Covenant however are very significant from the perspective of an individual as well as the society as a whole. The Covenant provides for several rights like right to self-determination, right to social security, right to work, right to education etc. There are several provisions in this covenant that are very much relevant to the protection of right to health. It is provided under Article 11 of the Covenant that it is responsibility of the State Parties to ensure that everyone receives adequate standards of living that includes healthy food, clothing and housing. It also mandates the State parties to take steps for improving food production and distribution so that the wants of

hunger all over the world can be satisfied. Article 12 of the Covenant directly refers to the right o health as fundamental human right. It says that the State Parties are bound to recognize the right of everyone to the enjoyment of the highest attainable standards of physical and mental health. It also provides for the manner in which the above said objective is to be achieved. The State is directed to reduce the still-birth rate and infant mortality, improve all aspects of environmental and industrial hygiene, prevent and control epidemic, endemic and occupational diseases and to create conditions where everyone receives proper medical care and assistance. The special need of Mothers and workers in the matters of protecting health is also addressed in Article 10 of the Covenant.

Apart from the above described international instruments there are several other international instruments wherein the right to health finds explicit mention. The Convention on the Rights of Child, 1989 is the Convention that is primarily aimed at protecting the basic rights of child and ensures their overall development by adopting special measures. The Convention recognizes need of protecting right to health of children all over the world in light of the fact that majority of countries in the world are poverty ridden and children there suffer with the problems like malnutrition, lack of primary healthcare etc. There is yet another Convention named Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, which plays an instrumental role in protecting the right of women in general. In particular this Convention also refers to right to health as one of the most important rights of the women and mandates the State parties to take effective measure for ensuring proper healthcare facilities to the women. The human rights are not only protected by International Instruments but certain regional mechanisms have also been adopted to address the regional needs of protecting human rights. These regional instruments also lists right to health as one of the most important human rights and provide for several measures to be adopted in this regard.

International Organizations

If international instruments have played a phenomenal role in protection of human rights in general and right to health in particular all over the world then contribution of International Organization established with the objective of implementing these instruments is also immensely important. There are several organizations that include protection of right to health in their respective mandates. These organizations have played a cardinal role in developing jurisprudence on right to health and ensuring effective realization of this right in all parts of the world.

World Health Organization

The World Health Organization is the premier international organization established solely for the purpose of giving effect to international measures adopted for protection of right to health and realize right to health for everyone in the world. The need for establishing an organization for ensuring sound health to the world population was expressed at the very first time representatives of different countries met to discuss formation of United Nations Organization. It was expressed in this meeting that there is a dire need to establish an organization that will be responsible to look after improving the health scenario in world and thus help people of different States to realize and enjoy highest attainable standards of health. The Constitution of the World Health Organization was adopted in the Conference held in New York on 22nd July 1946 when representatives of 61 States signed it. The Constitution entered into force on 7th April 1948. The Constitution of WHO is based on the following principles,

- Health is a state of complete physical mental and social well-being and not merely the absence of disease or infirmity.
- The enjoyment of the highest attainable standards of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
- The health of all peoples is fundamental to the attainment of peace and security and is dependent on the fullest co-operation of individuals and States.
- The achievement of any State I the promotion and protection of health is of value to all.
- Unequal development in different countries in the promotion of health and control of diseases, especially communicable diseases, is a common danger.
- Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development.
- The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.
- Informed opinion and active co-operation on the part of the public are of the utmost importance in the improvement of the health of the people.
- Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

The World Health Organization has its head quarter at Geneva, Switzerland. More than 7000 people work for WHO with a mission of providing global leadership in public health. The mandate of WHO also includes, shaping the research agenda and stimulating the generation, translation and dissemination of valuable knowledge; setting norms and standards and promoting and monitoring their implementation; articulating ethical and evidence based policy options; providing technical support, catalyzing change, and building sustainable institutional capacity; and monitoring the heath situation and assessing health trends.

Food and Agricultural Organization

The scarcity of food and lack of nutrition has always been one of the most prominent reasons for falling standards of health worldwide. Especially for expectant mothers and children the value of good nutritious food is beyond explanation. The need therefore is felt to increase production and supply of food so that security of food for all could be attained. The Food and Agricultural Organization is primarily established with the purpose of achieving this objective.

The FAO was established in the year and 1943 when forty three countries in the world agreed to form a permanent food and agricultural organization. In 1945 the FAO was recognized as one of the specialized agency of the United Nations Organization. The FAO aims at achieving food security for all to make sure people have regular access to enough high-quality food to lead active, healthy lives. The three primary goals of the Organization include, eradication of hunger, food insecurity and malnutrition; elimination of poverty and driving forward economic and social

progress for all; and sustainable management and utilization of natural resources, including land, water, air, climate and genetic resources for the benefit of present and future generations.

The World Bank

The World Bank is another UN agency actively involved in realization of right to health all over the world. The World Bank formed in 1944 is engaged in funding the healthcare programs worldwide. The World Bank is founded with the objective of extreme poverty alleviation and achieving the goals of equitable prosperity for all States in the world irrespective of their economic inequalities. The healthcare facilities are the cornerstone for achieving the ends of poverty alleviation and prosperity in any society. For this reason, the World Bank spends enormous economic resources on assisting those countries where the health scenario is in a deplorable condition.

The United Nations Children's Fund (UNICEEF)

The UNICEF came into existence in the year 1946 with the objective of providing food, clothing and healthcare to the children affected by World War II. In 1953 it became the permanent organ of United Nations Organization with a mandate of providing extensive services for improving the status of children all over the world; especially in the States wherein the children were not meeting their basic needs due to poverty, violence disease and discrimination. The Convention on the Right of Child adopted in the year 1951 is the guiding spirit behind the functioning of UNICEF. The convention recognizes Right to health as one of the most important right of the children considering its importance in overall progress and development of the Child. The UNNICEF ensures that children all over the world receive proper nutrition and health facilities.

There are several other UN organs like World Food Program (WFP), United nations Development Program (UNDP), United Nations Population Fund(UNFPA), and United Nations High Commissioner for Refugees (UNHCR) etc. who are actively involved in the process of realizing right to health for the humans. Apart from these UN affiliated organizations, several Non-governmental organizations like Red Cross (ICRC), CARE International etc. are also contributing substantially for protection and realization of right to health.

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(Footnotes)

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[2] Art,57

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Judicial Appointments : Whose Prerogative ?[1]

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Independence of Judiciary is one of the basic features of the Indian Constitution. Various provisions of the Constitution have safeguarded the independence of the Judiciary. How should the appointment of the Judges to the High Courts and the Supreme Court be done was greatly debated in the Constituent Assembly and a middle course has been adopted in our Constitution. The Judiciary had carved out the Collegium formula and for the last two decades the judicial appointments were done accordingly. However, questions began to arise over the transparency of these appointments which led to the introduction of the 99th Constitutional Amendment . This Amendment and the National Judicial Appointment Commission Act, 2014 was challenged in the Supreme Court, which was struck down by the Apex Court. In this article, an attempt is made to have an overview of the cases on Judicial appointments.

Independence of Judiciary and Appointment of Judges

In the Constituent Assembly it was expressed in unequivocal terms that that the Judiciary should be independent of the Executive.

B.R. Ambedkar said:

Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T.T. Krishnamachari very aptly called an *"Imperium in Imperio". We do not want to create an Imperium in Imperio, and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, if they will carefully examine the provisions of the new amendment which I have proposed in place of the original Article 122, will find that the new article proposes to steer a middle course. It refuses to create an Imperium in Imperio, and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour.*[2]

There were three proposals on the issue of appointment of Judges to the Supreme Court. The first proposal was, that the Judges of the Supreme Court should not be appointed by the President in "consultation" with the Chief Justice of India, but should be appointed with the "concurrence" of the Chief Justice of India. The second proposal was, that like in the United States, appointments of Judges to the Supreme Court, should be made by the President, subject to confirmation by the Parliament, through a two-thirds majority. The third proposal was, that Judges of the Supreme Court, should be appointed by the President in "consultation" with the Rajya Sabha.

When the Constituent Assembly used the term "consultation" its intent was to limit the participatory role of the political-executive in the matter of appointments of Judges to the higher judiciary. It was the view of Dr. B. R. Ambedkar, that the draft article

had adopted a middle course, by not making the President-the executive "the supreme and absolute authority in the matter of making appointments" of Judges.[3] The judgments in the Second and Third Judges cases cannot be blamed, for not assigning a dictionary meaning to the term "consultation". If the real purpose sought to be achieved by the term "consultation" was to shield the selection and appointment of Judges to the higher judiciary, from executive and political involvement, certainly the term "consultation" was meant to be understood as something more than a mere "consultation". Thus, Article 124 was clearly meant to propound that the matter of "appointments of Judges was an integral part of the "independence of the judiciary". The process contemplated for appointment of Judges would therefore have to be understood to be shielded from political pressure and political considerations. Thus, the court on a harmonious construction of the provisions of the Constitution in the Second and Third Judges cases rightly held that primacy in appointments vested with the judiciary; leading to the inference that the term "consultation" should be understood as giving primacy to the view expressed by the judiciary through the Chief Justice of India.

Constitutional Provisions

124. Establishment and constitution of Supreme Court

(1) There shall be a Supreme Court of India constituting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty five years: Provided that in the case of appointment of a Judge other than the chief Justice, the chief Justice of India shall always be consulted:

(a) a Judge may, by writing under his hand addressed to the President, resign his office;
(b) a Judge may be removed from his office in the manner provided in clause (4)

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I .—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II .—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

99th Amendment brought amendment in Article 124 and inserted new Articles 124A, 124B and 124C.

Judicial Appointments before 99th Amendment Act

There are three cases of pertinent importance when one examines the position of judicial appointments. S.P. Gupta v. UOI[4] (1982) popularly called as Judges Transfer Case I . S.C. Advocates on Record Association v. UOI[5] (Second Judges Case) and re Presidential Reference[6]. In S.P. Gupta's case, the Supreme Court had held that judicial appointment is the sole prerogative of the Executive and had upheld the validity of non- extension of term . It had held that the Constitution obligates the President of India to consult three functionaries namely, the Chief Justice of India, Chief Justice of High Court and the Governor. However , this Judgement was overruled in the Second Judges case.

In 1993, in a case commonly referred to as the *Second Judges Case*, the Supreme Court, sitting as a nine-judge bench, interpreted the word "consultation," used in Articles 124 and 217, to mean concurrence. The majority held that the appointment to the office of Chief Justice of India should be made on the basis of seniority . This case laid down the guidelines .

The President had sought the Supreme Court's clarification on the consultation process as laid down in Second Judges Case, under Art. 143 of the Constitution. In re Presidential Reference [7] , a nine judge bench of the Supreme Court has unanimously held that the recommendation made by the Chief Justice of India on the appointment of Judges of the Supreme Court and the High Court without following the consultation process are not binding on the Government. The Court also widened the scope of Chief Justice's consultation process. The Court held that the consultation process to be adopted by the Chief Justice of India requires consultation of Plurality of judges. The sole individual opinion of the Chief Justice of India does not constitute 'consultation' within the meaning of Art. 217 (1) and Art. 222(1) of the Constitution. The majority held that in regard to the appointment of judges to the Supreme Court under 124 (2), the Chief Justice of India should consult 'a collegium of four senior most Judges of the Supreme Court' and made it clear that if ' two Judges give adverse opinion The Chief Justice should not send the recommendation.

99th Amendment Act and NJAC Act

On 13 April 2015, the Constitution 99th Amendment Act and the National Judicial Appointment Commission Act, 2014 came into force. The first, Article 124-A, created the National Judicial Appointments Commission (NJAC), which would comprise the Chief Justice of India, his two senior-most colleagues, the Law Minister, and two eminent persons, who would be jointly appointed by the Prime Minister, the Leader of the Opposition and the Chief Justice of India. The second, Article 124-B, vested in this NJAC the power to make appointments to both the Supreme Court and the various High Courts.

And the third, Article 124-C, accorded express authority to Parliament to make laws regulating the manner of the NJAC's functioning.

Judicial Challenge

Facts

Two acts, the Constitution (Ninety-ninth Amendment) Act, 2014 and National Judicial Appointments Commission Act, 2014 were enacted by Parliament to set up a National Judicial Appointments Commission (NJAC) for selection, appointment and transfer of Judges to the Higher judiciary. The Commission would replace the prevailing procedure under Articles 124(2) and 217(1) of the Constitution, otherwise known as the Collegium. The Commission was purported to introduce transparency in the selection process.

Articles 124 and 217 of the Constitution were accordingly amended by the Constitution (Ninety-ninth Amendment) Act, 2014, which received Presidential assent on 31.12.2014. The National Judicial Appointments Commission Act, 2014 was simultaneously assented to. The proposed NJAC would be comprised of the Chief Justice of India, next two senior most judges in the Supreme Court, the Union Minister for Law and Justice and two eminent persons nominated by a separate committee. The committee to nominate the eminent persons would include the Chief Justice of India, the Prime Minister and Leader of the Opposition. Hence, the present petition questioning the constitutional validity of the two acts.

Hearings at the Supreme Court of India on the NJAC were initiated before a three-Judge Bench, which referred it to a five-Judge Bench, which included Justice Anil R. Dave. On 13.4.2015 the Constitution (Ninety-ninth Amendment) Act, 2014, and the National Judicial Appointments Commission Act, 2014, were notified, making Justice Anil R. Dave, J. an ex-officio Member of the National Judicial Appointments Commission, for being the second senior-most Judge after the Chief Justice of India, under Article 124A(1)(b) of the Constitution. The Bench was reconstituted with Justice J.S. Khehar replacing Justice Dave. Submissions were made for Justice Khehar to recuse himself from the matter as he was a member of the Collegium of five Judges of the Supreme Court which recommended judicial appointments to the Higher judiciary, which was directly affected by the creation of the NJAC and the validity of which was under challenge.

In their submissions bolstering the validity of the NJAC , Respondents relied on the decision in S.P. Gupta v. Union of India (First Judges case), which was overruled by Supreme Court Advocates-on-Record Association v. Union of India (Second Judges case), affirmed in Re: Special Reference No. 1 of 1998 (Third Judges case). Respondents sought to prove correct the interpretation in the First Judges case and challenged the correctness of precedent laid down in Second and Third Judges case.

From the opinion in the First Judges case emerged: Chief Justice of India, Chief Justice of the High Court, and other Judges of the High Court and Supreme Court were constitutional functionaries, having a consultative role, and the power of appointments rested solely and exclusively in the decision of the Central Government. This power was not unfettered in that the Central Government could not act arbitrarily, without consulting fully and effectively the constitutional functionaries specified in Articles 124 and 217 of the Constitution. With reference to appointment of Judges of the Supreme Court, it was held, that the Chief Justice of India was required to be consulted, but the Central Government was not bound to act in accordance with the opinion of the Chief Justice of India even though his opinion was to be considered with due importance. Consultation with

the Chief Justice of India was a mandatory requirement. but while making an appointment, consultation could extend to other Judges of the Supreme Court and High Courts, as deemed necessary by the Central Government. Moreover, Article 222 of the Constitution conferred expressly a power on the President to transfer a judge from one State to another to have 1/3rd of Judges in the High Court from outside the State. The President possessed an implied power to lay down the norms, the principles, the conditions and the circumstances, under which such power was to be exercised. With regards to the independence of the judiciary", it was observed that while the administration of justice drew its legal sanction from the Constitution, its credibility rested in the faith of the people. Thus, it was held that the ultimate power of appointment rested with the Central Government.

The Second Judges case decided: The process of appointment of Judges to the Supreme Court and the High Courts was an integrated 'participatory consultative process' for selecting the best and most suitable persons available for appointment. Initiation of the proposal for appointment in the case of the Supreme Court must be by the Chief Justice of India; and in the instance of High Court, by the Chief Justice of the High Court. In the event of conflicting opinions by constitutional functionaries, the opinion of the judiciary, the Chief Justice of India, has primacy. No appointment, to the Supreme Court or a High Court, could be made unless conforming with the opinion of the Chief Justice of India. Only in exceptional cases, stated with strong cogent reasons, should the appointment recommended by the Chief Justice not be made. Provisions of the Constitution, and its scheme, should be construed and implemented in a manner conducive to such an interpretation.

Finally, in the Third Judges case it was held: "consultation with the Chief justice of India" in Articles 217(1) of the Constitution of India required consultation with a plurality of Judges in the formation of the opinion of the Chief Justice of India. The sole, individual opinion of the Chief Justice of India did not constitute "consultation". The Chief Justice of India was not entitled to act solely in his individual capacity, without consultation with other Judges of the Supreme Court, in respect of materials and information conveyed by the Government of India for non-appointment of a judge recommended for appointment. "Strong cogent reasons" did not have to be recorded as justification for a departure from the order of seniority in respect of each senior Judge who has been passed over. What has to be recorded is the positive reason for the recommendation. The views of the Judges consulted should be in writing and should be conveyed to the Government of India by the Chief Justice of India along with his views to the extent set out in the body of this opinion.

Attention was also drawn to several speeches, debates and deliberations of the Constituent Assembly. Dr. Ambedkar had in the course of the Assembly observed: there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creatingWe do not want to create an *Imperium in Imperio*, and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive.

In asserting the validity of the Constitution (Ninety-ninth Amendment) Act, 2014, Respondents submitted that Parliament's power to amend the Constitution was plenary, subject only to it not altering the "basic structure" of the Constitution. As such, a constitutional amendment must be presumed to be constitutionally valid unless shown otherwise. The

Constitution (Ninety-ninth Amendment) Act, 2014 only introduced checks and balances, which were inherent components of an effective constitutional arrangement. Further, it was not within the ambit of this Court to suggest an alternative combination of Members for the NJAC or an alternative procedure to regulate its functioning. In conjunction with the issue of "independence of the judiciary", which emanated from the concept of "separation of powers", the Respondents submitted that the scheme of the Constitution envisaged a system of checks and balances. With each organ of governance while being allowed the freedom to discharge the duties assigned to it, was subject to controls in the hands of one or both of the other organs. In the matter of appointment of judges, whereas Articles 124 and 217 provided executive control under the scheme of checks and balances, the Second and Third Judges case had done away with the same.

For the nomination of the two "eminent persons", the Selection Committee comprises of one member of the executive, one member of the legislature, and one member of the judiciary. For the two eminent persons, purported to not be identified with either the executive or legislature, there were no guidelines, for appointment. The sensitivity of selecting Judges is so enormous, and the consequences of making inappropriate appointments so dangerous, that if those involved in the process of selection and appointment of Judges to the higher judiciary, make wrongful selections, it may lead to chaos. The two "eminent persons" would also have the absolute authority to reject all names unanimously approved by the remaining four Members of the NJAC. That would include the power to reject the unanimous recommendation of the entire judicial component of the NJAC. Vesting of such authority on persons who have no nexus to the system of administration of justice is arbitrary. The inclusion of "eminent persons", would adversely impact primacy of the judiciary, in the matter of selection and appointment of Judges to the higher judiciary. Article 124A(1)(d) is liable to be set aside and struck down as being violative of the "basic structure" of the Constitution.

In the NJAC, the Union Minister in charge of Law and Justice would be a party to all final selections and appointments of Judges to the higher judiciary. It may be difficult for Judges approved by the NJAC, to resist a plea of conflict of interest where the political-executive is a party to the lis. It would have the inevitable effect of undermining the "independence of the judiciary". Therefore, the role assigned to the political-executive, can at best be limited to a collaborative participation, excluding any role in the final determination. Merely the participation of the Union Minister in charge of Law and Justice, in the final process of selection, as an ex officio Member of the NJAC, would render the amended provision of Article 124A(1)(c) as ultra vires the Constitution, as it impinges on the principles of "independence of the judiciary" and "separation of powers".

"... We have already concluded in the "Reference Order", that the term "consultation" used in Articles 124, 217 and 222 (as originally enacted) has to be read as vesting primacy in the judiciary, with reference to the decision making process, pertaining to the selection and appointment of Judges to the higher judiciary, and also, with reference to the transfer of Chief Justices and Judges of one High Court, to another.[8]

The 'collegium system' postulated by the Second Judges case and the Third Judges case gets revived. A 'consequence hearing' is required to assist in the matter for steps to be taken in the future to streamline the process and procedure of appointment of judges, to make it more responsive to the needs

of the people, to make it more transparent and in tune with societal needs.[9]

Dissenting Opinion

A Constitutional Bench of Supreme Court struck down the NDA government's National Judicial Appointments Commission (NJAC) Act. However, one of the five-member bench, Justice Jasti Chelameswar, differed from the majority opinion and wrote a strongly-worded dissent against the collegium system that the judgment effectively restored.

Chelameswar was the lone judge in the Bench to uphold the validity of the NJAC, arguing that to entirely eliminate the government from the selection process was against the country's democratic principles. Here are the top five things he said in his note:

1) "Transparency is a vital factor in constitutional governance....Transparency is an aspect of rationality. The need for transparency is more in the case of appointment process. Proceedings of the collegium were absolutely opaque and inaccessible both to public and history, barring occasional leaks."

2) Assumption that "primacy of the judiciary" in the appointment of judges is a basic feature of Constitution "is empirically flawed."

3) There were cases where the apex court collegium "retraced its steps" after rejecting recommendations of a particular name suggested by the High Court collegium giving scope for a great deal of "speculation".

"There is no accountability in this regard. The records are absolutely beyond the reach of any person including the judges of this Court who are not lucky enough to become the Chief Justice of India. Such a state of affairs does not either enhance the credibility of the institution or good for the people of this country.

4) "To hold that it (government) should be totally excluded from the process of appointing judges would be wholly illogical and inconsistent with the foundations of the theory of democracy and a doctrinal heresy," adding Attorney General Mukul Rohatgi was right in his submission that exclusion of the executive branch is destructive of the basic feature of checks and balances - a fundamental principle in Constitutional theory.

5) "For all the above mentioned reasons, I (Justice Chelameshwar) would uphold the Amendment. However, in view of the majority decision, I (Justice Chelameshwar) do not see any useful purpose in examining the constitutionality of the Act," .

Later Developments

On 3 November 2015 the Supreme Court upheld that it is open to bringing greater transparency in the collegium system within the following existing four parameters, with opinions from both the parties(petitioners who challenged the NJAC and the government)[10].

- How the collegium can be made transparent.
- The fixing of the eligibility criteria for a person to be considered suitable for appointment as a judge.
- A process to receive and deal with complaints against judges without compromising on judicial independence.
- Debate on whether a separate secretariat is required, and if so, its functioning, composition and powers.

On 19 November 2015 the Attorney General Mukul Rohatgi informed the Supreme Court that the central government will not prepare a draft memorandum

for judicial appointments contrary to committed earlier and suggested the same to be done through a judgement.[11]

Conclusion

The NJAC Act, 2014 and the 99th Constitutional Amendment were struck down by 4:1 by the Supreme Court . It also held that the Collegium system has again become operative. This judgement evoked a mix response. A few welcomed the judgement while others criticized it. The critics call the judgement anti-constitutional. The points of argument are :

1. No collegium mandated by the Constitution.

2. Collegium system of appointment of judges was opaque. And Independence of judiciary would be more protected.

The Union of India, in defending the Amendment, did not dispute the fundamental proposition that the maintenance of an independent judiciary is a part of the Constitution's basic structure. Rather, it contended that the Amendment did not affect this admittedly vital feature of the Constitution. The primary question that the Supreme Court had to, therefore, decide was this: does the removal of the prerogative solely vested in the collegium in appointing judges to India's higher judiciary violate the Constitution's basic structure?[12]

The verdict upholds an extra-constitutional forum, created by the Supreme Court's own members to serve its own ends, in the place of a system lawfully enacted by a popularly elected Parliament. What's more, the judgment fails to adequately answer the fundamental question at the root of the controversy: how is judicial primacy in making appointments to the higher judiciary a part of our Constitution's basic structure? Consequently, the decision acquires an entirely political character. It is subsumed not by constitutionalism but by an anti-democratic temper.

(Footnotes)

[1] Dr. Archana Gadekar, Assistant Professor, Faculty of Law, The Maharaja University of Baroda, Vadodara

[2] Constituent Assembly Debates on 24 May, 1949 Part II

[3] Constituent Assembly Debates on 24 May, 1949 Part II

[4] AIR 1982 SC 149

[5] (1993)4 SCC 441

[6] AIR 1991 SC 1

[7] AIR 1999 SC 1

[8] S.C. Advocate on Record Association and another v. UOI MANU/SC/1183/2015

[9] S.C. Advocate on Record Association and another v. UOI MANU/SC/1183/2015

[10] "SC asks Centre to compile views to improve judge appointments" The Hindu. *3 November 2015.*

[11] "AG pulls out of drafting procedure to appoint judges" The Hindu. 19 November 2015.

[12] Suhirith Parathsastry, NJAC verdict : An anti constitutional Judgement, The Hindu, Oct. 30 2015

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Law Governing Extradition: An Insight

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INTRODUCTION:

Extradition may be briefly described as the surrender of an alleged or convicted criminal by one State to another. More precisely, extradition may be defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State[1].

The purpose of extradition is to bring the individual within the requesting country's boundaries in order to make a determination of guilt or innocence, or to impose punishment[2]. Extradition plays an important role in the international battle against crime. It owes its existence to the so-called principle of territoriality of criminal law, according to which a State will not apply its penal statutes to acts committed outside its own boundaries except where the protection of special national interests is at stake. In view of the solidarity of nations in the repression of criminality, however, a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate otherwise in bringing the perpetrator to justice lest he goes unpunished.

Traditionally, extradition law is based on treaties. Two states typically agree in a bilateral treaty to surrender to each other fugitives charged with any offences considered extraditable under the agreement. A state seeking extradition of a fugitive (the requesting state) addresses its requests to the government of the state where the fugitive is present (the requested state), and the government invariably acts upon these requests. Domestic extradition statutes occasionally supplement substantive treaty law, but in general they merely specify extradition procedures[3].

The extradition law that developed from these beginnings assigns a major role to government officers, leaving a very restricted one for courts. The law prevents judges from inquiring into judicial and penal conditions in the requesting country and creates a pattern of judicial deference to government decisions at all levels of the process. It was after early nineteenth centuries that sovereigns began to concentrate on extradition treaties for common crimes because of the development of new, better, and quicker forms of transportation, which allowed criminals greater ability to commit crimes over a larger region[4].

Position in India:

In India the provisions of Indian Extradition Act, 1962, govern the extradition of a fugitive from India to a foreign country or vice-versa. The basis of extradition could be a treaty between India and a foreign country. Under section 3 of this Act, a notification could be issued by the Government of India extending the provisions of the Act to the country/countries notified.

Information regarding the fugitive criminals wanted in foreign countries is received directly from the concerned country or through the General Secretariat of the ICPO-Interpol in the form of red

notices. The Interpol Wing of the Central Bureau of Investigation immediately passes it on to the concerned police organizations. The red notices received from the General Secretariat are circulated to all the State Police authorities and immigration authorities[5].

The question arises that what action, if any, can be taken by the Police on receipt of information regarding a fugitive criminal wanted in a foreign country. In this connection the following provisions of law are relevant:

1) Action can be taken under the Indian Extradition Act Article No. 34 (b) of 1962. This act provides procedure for the arrest and extradition of fugitive criminals under certain conditions, which includes receipt of the request through diplomatic channels ONLY and under the warrant issued by a Magistrate having a competent jurisdiction.

2) Action can also be taken under the provisions of Section 41 (1) (g) of the Cr.P.C., 1973 which authorizes the police to arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.

In case the fugitive criminal is an Indian national, action can also be taken under Section 188, Criminal Procedure Code, 1973 as if the offence has been committed at any place in India at which he may be found. The trial of such a fugitive criminal can only take place with the previous sanction of the Central Government.

As far as India is concern this issue is always in light because of number of cases, such as Nadeem's extradition for involvement in Gulsan Kumar Murder case and demand of Dawood for involvement in Bombay Bomb Blast of 1992, in which we are still waiting for positive response. When one talks of extradition, quite a few names come to mind. The most tragic case was that of Rajan Pillai, who was sentenced to jail in Singapore for economic offences. He, however, took refuge in India. The Singaporean government requested his extradition. He would possibly have been sent back to Singapore, but he died under mysterious circumstances while in judicial custody in the Delhi jail. Underworld don and prime accused in the Mumbai blasts Abu Salem, who has been extradited from Portugal along with wife Monica Bedi is also a land mark in this regard. Most of us know about the concept of extradition rightly or wrongly with respect to the cases named above but this paper examines one of the important aspect of extradition which is in relation with extradition of political offenders which though is not in much lime light as far as Indian Public is concern but much debated among the others as well as among intellectuals in India.

Intervening in the discussion on the draft resolution on international terrorism in the 70th Interpol Annual General Assembly at Budapest(2001)[6], the CBI-Interpol India chief, Mr. P.C. Sharma, urged member-countries to give serious thought to putting in place certain legislation relating to extradition of wanted terrorists.

"It is not sufficient to merely locate and identify suspected terrorists. At this stage, it is imperative on all nations to demonstrate the will to help in the fight against terrorism. This can be done only by handing over the wanted persons who could be made to face fair trial and answer for the consequences of their action," As India has not been successful in getting criminals who have taken refuge in Western countries returned to the subcontinent, there is a growing feeling in government circles that those countries are siding with the accused.

Judicial Approach: Obligating the Extradition Agreement

It is essential here to give a glance at the earlier decided case of Gill & Sandhu[7]. In early 1987, the government of India requested the United States to extradite Ranjit Singh Gill and Sukhminder Singh Sandhu, claiming that the two were responsible for robberies and murders committed in the Punjab, in India. Magistrate Ronald J. Hedges, however, found that he could not consider evidence of the mistreatment to which Gill and Sandhu could be subjected if returned to India.

The court stayed their release pending an appeal by the Indian government. In reaching his decision, Judge Robert J. Sweet considered four primary issues:

(1) The scope of the district courts' review of extradition proceedings;

(2) The fairness of the hearing procedures;

(3) The probable cause determination; and

(4) The possible antipathetic treatment awaiting Gill and Sandhu in India.

Also in the case of Daya Singh Lahoria v. Union of India[8] The grievance of the petitioner Daya Singh Lahoria, in the Writ Petition is, that the Criminal Courts in the country have no jurisdiction to try in respect of offences which do not form a part of extradition judgment by virtue of which the petitioner has been brought to this country and he can be tried only for the offences mentioned in the Extradition Decree.

It was the contention of the petitioner that he cannot be tried for the offences other than the offences mentioned in the extradition order as that would be a contravention of Section 21 of the Extradition Act as well as the contravention of the provisions of the International Law and the very Charter of Extradition treaty.

Therefore in view of these it is clear that both on international law as well as the relevant statute in this country entail that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition Decree and for no other offence and the Criminal Courts of this country will have no jurisdiction to try such fugitive for any other offence.

Conclusion:

Hence, Section 34 C of the Indian Extradition Act, 1962, will be applicable which states that "notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central government."And therefore the laws of that foreign state do not provide for the death penalty for such an offence, such fugitive criminal shall be liable for punishment for life only for that offence.

Extradition has been defined by Oppenheim[9] as "the delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed, or to have been convicted of, a crime by the State on whose territory the alleged criminal happens for the time to be." The right to demand extradition and the duty to surrender an alleged criminal to the demanding State is created by a treaty.

As the question of surrendering an alleged criminal to the demanding State always involves the question of human rights, therefore the essence of maintaining the sanctity of the agreement shall be attributed to the concept of human rights involved in extradition laws, which lays emphasis on the law of the country in which

the offender seems to be at the time of extradition.

Endnotes:-

[1] 'Interpol Guide-Extradition ' http://cbi.nic.in assessed on 28th February, 2006

[2] The United States defined extradition to be "the surrender by one nation to another of an individual accused or convicted of an offence outside of its own territory and within the territorial jurisdiction of the other which, being competent to try and punish him, demands the surrender." 18 U.S.C.A. § 3181 (1988). See also the joint declaration of judges Evensen, Tarassov, Guillaume, anf Aguilar Maudsley, The Lockerbie Case, ICJ Reports, 1992, pp. 3, 24

[3] This pattern holds true especially in common law countries. In the United States, for example, the only extradition statute, the Extradition Act of 1848, 18 U.S.C. §§ 3181-3195 (1988), does no more than specify the procedures by which a foreign state must request a fugitive, and by which officials must arrest and surrender the fugitive. An alternative formulation occurs when a state promulgates extradition law in domestic legislation, and then moulds extradition treaties to fit its national law.

[4] Perry, G.C. The Four Major Western Approaches To The Political Offense Exception To Extradition: From Inception To Modern Terrorism, 40 Mercer L. Rev. 709

[5] 'Interpol Guide-Extradition' http://cbi.nic.in assessed on 28th February, 2006

[6] 'India calls for global laws on extradition' The Hindu (New Delhi, September 27, 2001)

[7] In re Singh, In re Gill, 123 F.R.D. 140 (D.N.J.1988); In re Singh, In re Gill, 123 F.R.D. 127 (D.N.J.1987); Gill v. Imundi, 715 F.Supp. 592 (S.N.N.Y.1989); and Gill v. Imundi, 747 F.Supp. 1028 (S.D.N.Y.1990).

[8] AIR 2001 SC 1716

[9] Oppenheim, International Law 645-46 (H. Lauterpacht ed. 7th ed. 1948) as cited by Perry, G.C., The Four Major Western Approaches To The Political Offense Exception To Extradition: From Inception To Modern Terrorism, 40 Mercer L. Rev. 709

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Consumer Rights against Call Drops

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Consumer rights derive mostly from private law such as Contract law, Tort law and Consumer laws. While freedom of trade and business is a human right, Consumer right is not yet recognized as human rights. However, with the changing time, it is necessary to consider consumer right as human right. United Nations Guideline for Consumer Protection, 1999 in paragraph 18 declares,

> "***Government should adopt or maintain policies that make clear the responsibility of the producer to ensure that it meet reasonable demands of durability and reliability, and are suited to the purpose for which they are intended, and that the seller should see that these requirements are met. Similar policies should apply to the provisions of service"***

With this background this paper highlights the rights of consumers in mobile services by service providers and their liability in cases of call drop.

Services for the mobile user are maturing rapidly and poised to change the nature and scope of communication. With the demand of mobility in telecommunication system, businesses are coming up with various technologies and products such as analog, cordless, paging and cellular to meet mobility needs. The key feature of the mobile computing is that the user need not maintain a fixed position in the network.

The menace of call drops, which get automatically disconnected due to network issues, has become one of the biggest problems for the consumers/ subscribers in the country in recent times. This paper focus on the issues related to the consumer protection in terms of zero tolerance on call drops against telecom companies. This paper also try to find out the technical reasons for call drop in the light of supreme court judgment in the case of*Cellular Operators Association of India and Others v/s Telecom Regulatory Authority of India and Others*[2].

Evolution of Mobile Technology

There are different technologies which were used from time to time before we have got the present technology on which our mobile works. Some of these major technologies are discussed below.

Cellular Radio- there is increasing competition from a system that uses radio waves instead of wires and fibers for communication. This system will play an increasing important role in the networking of notebook computers, shirt pocket, telephones and personal digital assistants in the coming years.

Paging system- people who want to be paged wear small beepers, usually with tiny screens for displaying short incoming messages. A person wanting to page a beeper wearer can then call the beeper wearer is to call or message. The computer receiving the request then transmits it over land lines to a hilltop antenna, which either broadcasts the page directly or sends it to an overhead satellite for long distance paging which then rebroadcasts it. When the beeper detects it unique number in the incoming radio stream, it beeps and displays the number to be called.[3]

Cordless telephones: cordless telephones are standard telephones with radio handsets. Unlike mobile phones, cordless phones use private base stations that are not shared between subscribers. It is connected to a landline.

Analog Cellular Telephones- mobile radiotelephones were used sporadically for maritime and military communication during the early decades of the 20th century. To talk, the user had to push a button that enabled the transmitter and disabled the receiver. In the 1960s, IMTS (Improved Mobile Telephone System)[4] was installed. It , too used a high powered (200 watt) transmitter, on top of a hill, with two frequencies, one for sending and one for receiving, so the push to talk button was no longer needed.

Advanced Mobile Phone System- It was invented and first installed in the united states in 1982. The key idea that gives this system far more capacity than all previous systems is using relatively small cells, and reusing transmission frequencies in nearby cells. In a small system, all the base stations are connected to a single device called a mobile telephone switching office.

Digital Cellular Telephones- first generation cellular system were analog. The second generation is digital. Wireless data schemes use packet techniques for transferring data. Cellular communication requires careful monitoring and switching of calls from cell to cell as the user moves between them. Without dynamic switching to facilitate a smooth transition, the calls would be terminated as the user crosses the boundary of a cell.

Despite of constant upgrade in the mobile technology, dropped calls are the biggest problem for cell phone users today. The Call drop is the fraction of the telephone calls which, due to technical reasons, were cut off before the speaking parties had finished their conversation.[5] The Telecom Consumers Protection Regulations 2015 defines 'Call Drop', "*a voice call which, after being successfully established, is interrupted prior to its normal completion, the cause of early termination is within the network of the service provider*"

The operators of telecommunication networks aim at reducing the call dropped rate. In mobile networks this is achieved by improving radio coverage, expanding the capacity of the network and optimizing the performance of its elements.

Reasons for call drop

Call drop may occur due to following technical reasons:

1. Lack of radio coverage;
2. Radio interference in concentrated area;
3. Shortage of spectrum;
4. Increased usage than capacity;
5. Radio interference with neighboring cell users.
6. Power failure and load shedding especially in rural areas.

Thus it can be due to lack of tower infrastructure, improper network planning and non-optimization of network. Numbers of subscribers are growing day by day and most of them are using smart phones. The network capacity is simply increased up to 24 base while usage grew up to 68 %. Thus network capacity is not being ramped up at the same pace resulting in overloaded networks.

Mobility of individual during travelling while talking results into switching between towers , and therefore chances of call drop are high when it is between over loaded networks. Spectrum shortage is a major problem in a crowed area and peak wireless rush hours.

Builder owners and land owners assumed cell tower radiation fear. Telecom companies are facing problem of resistance from these landowners and building owners to decommission or relocation of towers. World Health Organization (WHO) fact sheet 2015 reveals that there is no adverse effect on health due to cell towers.[6] Blame more tilts towards

operators. Therefore, these problems can be addressed by better management of spectrum.

In an open house discussion held on 1/10/2015, in New Delhi with the stakeholders,consumers wanted relief in the event of dropped calls under two broad heads; excess charging and inconvenience caused too them. Service providers stated their difficulties in the matter of sealing and closing down existing sites for towers by municipal authorities and other related issues together with spectrum shortage. They informed the authority that a large proportion of call drops are beyond their control.

Moreover, the Telecom Regulatory Authority of India (TRAI) notified Telecom Consumers' Protection (Ninth Amendment) Regulation 2015 on 16.10.2015. By the aforesaid amendment, every originating service provider who provides cellular mobile telephone services is made liable to credit only the calling consumer[7] and not the receiving consumer with one rupee for each call drop. Further, the service provider is also to provide details of the amount credited to the calling consumer within four hours of the occurrence of a call drop either through SMA/USSD message. In the case of post paid consumer, such details of amount credited in the account of the calling consumer were to be provided in the next bill with effect from the January 1, 2016.

The decision was challenged by telecoms, which lost their case in the Delhi High Court. The Supreme Court bench comprising of Hon'bleJusticesKurian Joseph and R.F. Nariman, struck down TRAI's regulation making it mandatory for telecom companies to compensate subscribers for call drops saying it was manifestly arbitrary and an unreasonable restriction on the fundamental rights of telecom companies to carry on the business. The Hon'ble Apex court said the regulation was *ultra-vires* the Telecom Regulatory Authority of India (TRAI) Act as imposition of penal liability was on an "erroneous basis" that the fault of call drop was entirely with service provider.

Internet service provider (ISP) is a person (commercial or non-commercial entity) which connects user to the internet. However, under Information Technology Act 2000 the term "ISP" is covered under the term "intermediary"who has been defined as follows:

Section 2(1)(w): "intermediary"

> *"Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives stores or transmits that record or provides any service with respect to that record and includes* ***telecom service providers,*** *network service providers, internet service providers, webhosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes".*[8]

Thus according to the definition telecom service providers very much come within the ambit of the definition.

These ISPs are further connected to regional ISPs which operate at the regional level. These regional ISPs are then connected to the National ISPs which when interconnected together form the Internet backbone. They are known as network service providers. The different NSPs that together consist the internet backbone, carries the heaviest amount of traffic on the internet. An internet backbone is a high speed network that connects many regional and local networks.Due to this technical nature of work an exemption is provided to intermediary in certain cases from liability. ISPs are not liable if access to a communication system over which informationis made available by third parties is transmitted and not initiated, modified and received by the ISP.

Court held that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Court further held that the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. Court held regulation ultra vires the TRAI Act and violative of the appellant Telecom company's fundamental rights under article 14 and Article 19 (1) (g) of the Indian Constitution.

In this case court opined that the service provider is made to pay for call drops that may not be attributable to the fault of the consumer himself, and that makes the challenged regulation a regulation framed without intelligent case and deliberation. The Honorable Court rightly held that the regulation is arbitrary, ultra vires, unreasonable and not transparent. However, while the regulation is strike down by the court, the issue at stake remains. Consumers in India need protection from poor service quality by telecom companies.

While telecom companies can expand telecom services to the nook and corner of the country, it is well expected that they must improve the service quality. Moreover, amendment to existing policies to hold telecom service provider accountable for poor quality of services is the need of an hour. Otherwise in future, consumers will have to switch over the landlines.

Following suggestions can be provided to the above problems.

- Digital media can spread awareness to allay radiation fears.
- Signal boosters can be provided to connections.
- Generators or solar energy can be used to tackle power failure.
- Government can set up new cell towers. Problems may further deteriorate unless operational difficulties of service providers are tacked in installing towers and sought a national policy in this regard.
- In the future contracts with telecom companies, provision of penalty also must be included in case of call drop and denial of service.
- Service provider must enhance their investment in infrastructure when they are dealing with public service sector to ensure quality as they are earning huge revenues.

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[2]Civil Appeal no. 5017/2016

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[4]IMTS was the radiotelephone equivalent of land dial phone service

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[7]Calling consumer means a consumer who initiates a voice call. (rule 36 (bc) of the notification)

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Hurdles in Effective Implementations of Protection of Women from Domestic Violence Act , 2005

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Abstract

Women are always facing violence within homes therefore on demand for comprehensive law on domestic violence this Act comesin to existence. There had been a significant lacuna in the legal system to accommodate for cases of everyday domestic violence in the lives of women. The Domestic Violence Act was enacted by keeping in view the rights guaranteed under articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law, which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.In a society that treats issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupulous and unbridled male of the species. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing legal framework. This article focused the implementation of the act and the difficulties before the act.

Keyword:- Women, Violence, Domestic, Implementation.

In a country, where constitution guarantees equal rights to women and men, it is a shame that women still have to struggle even for small things.A simple example of this is the domestic violence against women.Constitutional law is considered as an apex law of our country. There can be no law above our Constitutional Law. Hence, Laws relating to the protection of women against domestic violence are enacted in accordance with the Constitution of India. This legislationis passed keeping in view the Fundamental Rights guaranteed by Part III of the Constitution under Article 14, 15 and 21.

The passing of domestic violence act may be considered as an important step in addressing the issue of domestic violence. It recognizes for the first time the occurrence of continual violence within the home, which may go beyond mere physical abuse and seeks to rectify it, but domestic violence act promulgated by the Parliament of India with much fanfare and the avowed purpose of protecting the women is largely ill advised as it is structured to add to their miseries rather than providing succor.In September 2005, the Indian Parliament passed The Protection of Women from Domestic Violence Act (PWDVA), which came into force from October 26, 2006. The PWDVA was the result of a long and concerted campaign against domestic violence by the women's movement in India. It was landmark legislation as it in some measure vindicated the constitutional promise of equality, nondiscrimination and the right to life and liberty for women. It also marked compliance by the Indian state with its international obligations, especially under the Convention against Elimination of All forms of Discrimination against Women (CEDAW). The Act was a civil law that sought to provide emergency relief to women in the form of protection orders, residence orders, and monetary relief and compensation orders. It also provided for an inbuilt mechanism to facilitate the entire system of access

to justice. It identifiesspecific functionaries such as the Protection Officers and Services Providers whose primary duty was to assist women in accessing reliefs provided under the law.

The Act, in a bold break from prior legislations, gives a very expansive definition to the term 'Domestic Violence', a term hereto not even used in legal parlance.Domestic violence is defined in a comprehensive way in Sec 3 of the Act, comprising physical, mental, verbal, emotional, sexual and economic abuse harassment for dowry, acts of treating to abuse the victim or any other person related to her.

Numerous advocates pointed to the lack of training of police officers and magistrates regarding the Act's requirements and its purpose, as well as a lack of sensitivity training towards the issue of domestic violence, an old evil but newly recognized concept in Indian society. This lack of training has led to the re-victimization of women within the justice system, either through police non-response to calls for help, sending women back home to their abusers by branding their victimization as mere domestic disputes, or magistrates allowing for numerous continuances of cases, prolonging the court process and forcing victims to come to court to face their trauma time and again[1].

Difficulties' in effective implementation

1.There is an institutional bias and lack of political will in implementing policies and legislations despite specific provisions under PWDV Act, the protection officers have yet not been appointed in all the states.

2.States that have identified Protection officers have deputed officials as opposed to the required full – time appointments. There is still inadequate legal aid to support litigation despite legislations mandating provisions of legal aid; women are often unable to avail of the services.

3. Services are also often not of quality high cost of litigation deters court action by women lack in awareness of rights amongst community prevents women from taking or sustaining actions.

4. There were inadequate responses and lack of co-ordination by multi-agencies in combating violence and discrimination against women but now situation got change and many agencies coming forward to the protect the women from all sorts of violence.

5. The Act, by and large, is a valuable piece of legislation. Its shortcoming do not, on final analysis, blot out the immense benefit the Act could be the women. A good thing about the Act is the fact that it deals with the domestic violence regardless of the religion of the parties as many as time wrongs are prepared using the protection afforded by the personal laws...

6. The Act can be called as an initial step in the field of the women's emancipation. There is lot of steps yet to be taken for doing complete justice. As long as the mentality of the Indian male class is changed, the women can never come up.

In spite of the prevailing laws for the protection of women from domestic violence, many women are suffering mental and physical torture in their in –laws houses. Their husband demands more and more dowry. They consider their wives as good source of getting dowry. The women can get back their rightful place in society if law is property framed and enforced. The experience of violence undermines the empowerment women and certainly is a barrier to the socio-economic and demographic development of the country. In view of the prevalence of the problem, it is suggested to have programmes that take into account involvement of the community and especially the males for effective as well as fruitful amelioration of the issue

Conclusion and Suggestions:

In a society that treats issues of the welfare of women too casually, some stringent measures are necessary to keep in check the unscrupulous and unbridled male of the species. But this needed to be brought about not by adding to the statute book with-ill-advised measures but through proper enforcement of the existing legal framework.A strong crusade against domestic violence could be launched only when we try to implement the already-existing measures. Making more laws is not the only solution. Its only when we are sincere in our efforts at the grassroots level also, we can expect a change to happen. It is through a collective determination to support women's rights not only 'outside' but also 'inside' the hitherto restricted boundary of home, that we can attain the objective of destroying the well-embedded thorns of domestic violence from our society.Some improvement is needed in the law as well as in the behavior of the officials. Similarly, Dr Seema Sakhre, President of Stri Atyachar Virodhi Parishad said, "It comes under civil law and it is helpful for women. But, the mechanism is not properly working. The Revenue Officers holding the additional post of Protection Officer in Maharashtra are not working up to the mark. Hence, the major rectification needed is that government should appoint separate Protection Officers for domestic violence. A separate PO will concentrate on the responsibilities allotted to him. "Also, author suggested the following things to remove the hurdles-

1. Allocation of adequate budget by the central and State Government
2. Generate awareness about the Act among the community
3. Increase access of survivors to institutions and its coverage
4. Emphasis on Skill Building Training Programmes for various actors on the Act
5. Coordination among the various actors/institutions: There are various actors operating under the PWDV
6. Effective Delivery of Legal Services
7. Ensure medical assistance within Health System

There is need of political will in implementing policies and legislations despite specific provisions under PWDV Act. For better implementation of Act, Protection officers should immediately appointed in all states and also there is need to spread awareness regarding this enactment and rights under this act.

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India Towards Cashless Society And Its Legal Implications on Cyberspace

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We know that cyber security in India may face increased threats as digital connectivity enhances following demonetisation of Rs 500 and Rs 1000 notes and government commitment towards cashless society. With the increase in digital connectivity and with demonetisation, cyber security becomes a crucial element for India. Developing the local markets into a technology consuming market will be a key challenge. Demonetization of high value currency will bring a behavioural change in Indian society. In this scenario it is necessary for every individual to know about cyberspace and how to combat with cyber crimes.

Cyberspace :

The word ' cyberspace' was coined by the science fiction author William Gibson, when he sought a name to describe his vision of a global computer network, linking people, machines and sources of information in the world, through which one could move or 'navigate' a through a virtual space. Cyberspace means that "The notional environment in which electronic communications occurs or virtual reality.

Cyberspace undoubtedly is space without frontiers, offering infinite opportunity and utility for the mankind. Cyberspace traffic is not as visible and therefore, for a common man, it is difficult to appreciate the size and volume of the cyberspace traffic, Indeed, the world has become a global village and to quote Bill Gates, " a global republic" and no section of humanity anywhere in the world would be immune from its far- reaching impact. Like the nuclear fission, cyber technology too is value neutral and it is for the man to decide whether to put it to good use for the benefit of mankind or to bedevil daily human life with evil and unhappiness. Cyberspace the new frontier, is the common heritage of mankind but unfortunately some people misuse the common heritage and therefore, cyberspace is also a new frontier of different type of crimes.

Legal implications of cyberspace :

From a legal perspective, the term Cyberspace and the concept of a quasi-physical territory are helpful in attempting to analyze the issues involved with computer communications. The geographical location where conduct occurs is one of the major factors determining which county's laws apply to activities. The operations of global networks pay little heed to national boundaries and one of the arguments frequently mooted is that there is need for a new legal perspective and regime in cyberspace. In the context electronic commerce, comparison is sometimes made with the development of the mercantile law developed in the Middle Ages, a body of law and courts developed and administered by those responsible le for commercial transaction and which provided a consistent legal basis for international trade for avoiding the vagaries and discrepancies of national legal systems. Therefore, cyberspace can be defined as a conceptual world of information and electronic networks accessible via the internet and can be rightly called space without frontiers, whose boundaries seem limitless.

We know that computer and internet have converted the entire world in to global village by

creating what we call as cyberspace. Cyberspace is the common heritage of mankind but unfortunately some people misuse the common heritage and therefore, cyberspace has also become a new frontier of different type of crimes. While Internet has been providing immense opportunities to individuals, organizations and nations in diverse areas, but it has also given birth to a new form of crime, now known as cybercrime. Cybercrime is causing mind boggling financial losses to the order of trillions of dollars worldwide. Unfortunately, most individuals and organizations are not aware of the enormity of this crime and its effects. This is one area where ignorance is not bliss. Although many attempts have been made to control this fast spreading menace of cybercrime at international and national levels yet it has borne little results.

Computers are not only used to perform the industrial or economic unction of the society by are also affecting the human life in one-way or another. Though cyberspace has helped the country in development but it also has opened new avenues for more organized crime.

The emergence of World Wide Web (www) has transformed the way, communication is performed and business is carried out, by way of e-commerce but even the inventors of Internet could not have anticipated the potential of cyberspace in crime. Today, there are many disturbing things appending in cyberspace.

Internet makes it a heaven for criminals to commit crimes through this medium with little possibility of getting caught. This raises the very basic need of study of emergence of different kinds of crimes on cyberspace. The importance of the issue has highlighted in recent newspaper only when a broker agreed to supply hundreds of credit and debit cards details each week at a cost of $10 a card. India is still silent on these emerging issues.

The emerging trend of cybercrime coupled with the tremendous growth of cyberspace in India made India forerunner in cyber law when Indian Parliament adopted IT Act in the year 2000. But the pace if development of cyberspace is so fast that the law fails to cope up. The Indian legal system has been wise enough to introduce the new changes in 2008 Amendment.

It has been observed that earlier in the Information Technology Act 2000. Only few cybercrimes were recognized by the Act i.e. tempering with computer source code, hacking and Cyber pornography. But now with the new Amendment, new offences i.e. Cyber stalking, cyber terrorism, phishing, child pornography, violation of privacy, has been recognized. But it fails to recognized cyber money laundering, cyber venting, cyber defamation, etc. The Act has been prepared with the objective of controlling and regulating cyberspace. Though Act has been act was enacted with very good intentions, has many inherent grey areas. For instance jurisdiction is a major area of concern in the Act, wherein unlimited jurisdiction has been conferred for cybercrimes, which has many practical problems of different laws in other countries from where a cybercrime is committed or absence of bilateral arrangement for extradition with some countries and long legal procedures where extradition arrangements exist and so on. The most serious concern is about the enforcement of IT Act, as the law enforcement agencies specifically the police and courts are not fully equipped with the required infrastructure for combating the menace of cybercrime. It can be concluded that the Act is not comprehensive.

Cybercrime has emerged as a major source of concern for governments across the world. It was found that legal efforts have been made at international level but are not enough to combat or control unabated cybercrime. The absence of any established international law on cybercrime further complicate the matter with different countries assuming distinct national approaches for controlling, regulating and preventing cybercrime. The Convention on Cybercrime at Budapest was the first-ever international treaty on criminal offences committed against or with the help of computer networks such an internet. It has an Additional Protocol making it a criminal offence to disseminate racist or xenophobic propaganda via computer networks. Many countries have enacted their national laws or amended their existing laws yet cooperation to solve a crime, as well as the possibility of extraditing the criminal to stand trial, may not be possible.

Jurisdiction was found to be one of the major impediments in administration of justice in cybercrime. The whole trouble with internet jurisdiction is the presence of multiple parties in various parts of the world who have only a virtual nexus with each other. This has resulted in compete confusion and contradictions in the area of internet jurisdiction. Any territorial jurisdiction, passed by the legislature of a nation will not enforceable in other nation, as it is contrary to the principles of international law to assume jurisdiction over citizens of another country. So, it is likely to lead it conflict if jurisdiction of different courts situated in different national jurisdictions.

Conclusion and Suggestions :

After all this observations it has been concluded that no matter how we enact laws and various control regimes, in the end it is the judiciary, which in any legal system, is responsible for administration of justice. Since cybercrime is relatively a recent phenomenon, the judicial response is very less which act as precedent. This judicial response in cybercrime so far has not been very encouraging.The analysis of cybercrime and the control regimes has established that the controls are not sufficient.

It has also been concluded that cybercrime and its impact on nearly every sphere of life, the following suggestion are given:-

Firstly, all the countries need to reach a consensus on computer- related activity to be termed as crime. Bilateral cooperation in such criminal activities is important, yet multilateral efforts will prove to be more effective in developing international policy and cooperation.

As we have seen that legal control regimes at International and National levels have not borne any substantial results in combating cybercrime, it is suggested that should be a universal legal framework to check the fast-spreading menace of cybercrime.

It would be essential to have a comprehensive International Convention, where, after taking cognizance of the bulging dimensions of cybercrime, a universally applicable legal framework is prepared. After ratification of such convention, the member-countries must take necessary legislative

Steps for its effective implementation :

Further, appropriate infrastructure would be required to ensure proper implementation and monitoring of the Action Plan. It is also suggested that an International Cyber Tribunal should be constituted, which has global jurisdiction to investigate, try and punish cyber criminals. Moreover, International Forensic Standards will have to be suitably developed and employed for retrieving and

authenticating electronic data for criminal investigations and prosecution. It is agreed that this will be a gigantic task due to diverse legal structures of different countries but for long-term sustainability of this wonderful medium of communication and to protect the mankind, the concept of universal cyber law appears to be the only answer.

Disparity in developed and developing countries in terms of technical expertise on internet is another issue which needs to be taken care of at the very outset. This might require bilateral and multilateral agreements between counties to pool all their relevant resources, transfer cyber technology to each other so that their people and trade could be protected from cybercrime.

In view of the fact that cybercrime is a recent phenomenon, there are very few judicial decisions to act as guide and precedent, it would be essential to constitute special courts for cybercrimes. This would ensure not only fast disposal of cases of cybercrime but would also provide much needed case law for future guidance as precedents.

At the operational level, it is suggested to institute a National Cyber Coordination and security Centre, which can act as a research Centre. Resource office and professional body for tendering expert information and assistance in investigations.

Appropriate legal provisions for cybercrime will not be enough for checking the menace of cybercrime but creating awareness among general public and the law enforcement agencies will prove to be vital in effectively controlling the crime. A massive awareness campaign to educate people about their rights and remedies would also be essential.

The study carried out on cybercrime, its international and national legal control regimes has established that the growth of technology in this field has been stupendous but the growth of cybercrimes has been even faster. Although there have been many efforts at national and international levels to control and regulate cybercrime yet these efforts have not proved to be sufficient so far. The result is that cybercrime is many steps ahead of any such attempts. Researcher think about universal legal framework, duly adopted globally, backed by specialized & fully equipped law enforcement mechanisms and with appropriate awareness among masses would go a long way in controlling the menace of the white collar crime. In the end, it is hoped that if this implemented effectively in coordinated manner, would go a long way to make this scientific marvel of all ages, sustainable not only for this generation but also for future generations as well.

As a part of the demonetization process, the Government of India has begun laying greater stress on facilitating a cashless society or a 'less cash' society. It may take years and to reach to the results and there is an urgent need to look into that direction. Finally, programmes like Digital India and the goal of cashless economy cannot be successfully achieved unless the common man is aware of cyber issues. In India, 82 percent of the population is vulnerable to physical disasters but 100 percent to cyber disaster, because people lack basic cyber awareness. A systematic campaign needs to be undertaken for inculcating cyber awareness among the Indian public especially the rural people otherwise people become victims in large numbers and it would be great set back to government ambitious object of cashless society.

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The Relevance of Constitutional Guarantee of Right Against Exploitation With Reference to Recent Incidences of Bonded Labour in India

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ABSTRACT

The Constitution of India guarantees to all its citizens justice, social and economic security, and political freedom of thought, expression, belief, faith and worship, equality of status and of opportunity, fraternity, dignity of individual and unity of nation. There are many laws which are made for securing welfare of weaker sections, women, children, labourers, disabled's and aged persons.Despite of the Constitutional provisions and welfare laws, various social evils such as caste discrimination, bonded labour, prostitution, gender discrimination are still prevalent in India and are hindering the growth of our nation.Bonded labour is one of the evil which still exists in India. The bonded labour system designates the practice of pledging labour as payment or collateral on a debt. It is one of the main characteristics of feudal hierarchical society, designed to enable a few socially and economically powerful sections of society to exploit the weaker sections of the society. Bonded labour in general violates "the inherent dignity and of the equal and inalienable rights of all members of the human family" which constitute "the foundation of freedom, justice and peace in the world", as the universal declaration of human rights (UDHR) sets out in its Preamble.The practice of bonded labour is prohibited in India by law. Though the Constitution of India prohibits the practice, wide Article 21, 23(1) and 24, a specific law that prohibits the practice i.e. the Bonded Labour System Abolition Act was legislated in 1976. It outlaws all debt bondage including that of children, and it requires government intervention and rehabilitation of bonded labourers. Despite the abolition of zamindari system, land reforms, Bhoodan movement, enactment of legislation (Bonded Labour Abolition Act 1976), establishment of Panchayati Raj, interest shown by Social Action Groups and spirited individuals from society, lakhs of bonded labourers continue to be exploited and suffer hardships.

THE RIGHT AGAINST EXPLOITATION IN THE CONSTITUTION OF INDIA

Articles 23 and 24, though fundamental rights, lay dormant for almost thirty-two years after the Indian Constitution came into force and there was hardly any significant judicial pronouncement concerning these constitutional provisions. Since 1982 however, these Articles have assumed great significance and have become potent instruments in the hands of the Courts to ameliorate the pitiable condition of the poor in the country.[1]

Article 23 of the Indian Constitution prohibits traffic in human beings and beggar and similar other forms of forced labour. The second part of this Article declares that any contravention of this provision shall be an offence punishable in accordance with law. Clause (2) however permits the State to impose compulsory service for public purposes provided that in making so it shall not make any discrimination on

grounds only of religion, race, caste of class or any of them.[2]

"Traffic in human beings" means selling and buying men and women like goods and includes immoral traffic in women and children for immoral "or other purposes.[3] Though slavery is not expressly mentioned in Article 23, it is included in the expression 'traffic in human being'.[4] A significant feature of Art.23 is that it protects the individual not only against the State but also against private citizens.[5]

In Peoples Union for Democratic Rights v. Union of India,[6] the Supreme Court held that the scope of Art. 23 is wide and unlimited and strikes at "traffic in human beings" and "beggar and other forms of forced labour" wherever they are found.

Ever since the dawn of civilization in every society, the stronger exploited the weak. Slavery was the most prevalent and perhaps the cruelest form of human exploitation.

Prohibition of Employment of Children in factories etc:-

Art. 24 forbid **employment of child-labour in factories or in hazardous works.** The Article reads *"No child below the age of fourteen years, shall be employed to work in any factory or mine or, engaged in any other hazardous employment."* Employment of child labor is a form of traffic in human beings. Hence it is justifiably forbidden. But employment of child labor cannot be effectively checked unless there is overall improvement of economic conditions of the poorer sections of the society. This provision of the Constitution remains a pious wish even today.[7]

BONDED LABOUR

'Bondage, bond labour, or bonded labours are appropriate terms to use when economic penalties are linked to forced labour. Bonded labour is a sort of patronage in which the minimum wage is barely enough to cover the living costs of the employee and the relation between employer and employee is often characterized by unfixed and exploitative payment agreements which benefit the employer.[8] Characterized by a creditor-debtor relationship that a laborer often passes on to his family members, bonded labor is typically of an indefinite duration and involves illegal contractual stipulations. Contracts deny an individual the basic right to choose his or her employer, or to negotiate the terms of his or her contract. Bonded labor contracts are not purely economic; in India, they are reinforced by custom or coercion in many sectors such as the agricultural, silk, mining, match production, and brick kiln industries, among others.[9]

CAUSES OF BONDED LABOUR

There are many different reasons for bonded labour in India. Foremost among its causes are widespread poverty, inequality, caste-based discrimination and the inadequate education system.

ELIMINATION OF BONDED LABOUR

The Preamble of the UDHR recognizes dignity as an inherent in the human family and as a foundation of freedom, justice and peace in the world. Article 1 says that all human beings are born free and equal in dignity and rights. Further the general assembly proclaimed abolition of slave labour, by Articles 4, 13(1), 23(1) as shown hereunder:

Article 4 – no one shall be held in slavery or servitude.

Article 13(1) – everyone has the right to freedom of movement and residence within the borders of each state.

Article 23(1) – everyone has the right to work, to free choice of employment and to protection against unemployment.

Article 4 of the European Convention of the Human Rights 1956 is to the same effect and forced labour or slavery is rightly declared inhuman.

Indian Constitution

Article 21 of the Constitution of India guarantees the right to life and personal liberty. The Indian Supreme Court has interpreted the right of liberty to include, among other things, the right of free movement, the right to eat, sleep and work when one pleases, the right to be free from inhuman and degrading treatment, the right to integrity and dignity of the person, the right to the benefits of protective labor legislation, and the right to speedy justice. The practice of bonded labour violates all of these constitutionally-mandated rights.

Article 23 of the Constitution prohibits the practice of debt bondage and other forms of slavery both modern and ancient. Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 24 prohibits the employment of children in factories, mines, and other hazardous occupations. Together, Articles 23 and 24 are placed under the heading "Right against Exploitation," one of India's constitutionally-proclaimed fundamental rights.

Article 39 requires the State to "direct its policy toward securing":

(e) that the health and strength of workers... and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Bonded Labour System (Abolition) Act, 1976

The Bonded Labour System (Abolition) Act purports to abolish all debt agreements and obligations arising out of India's longstanding bonded labour system. It is the legislative fulfillment of the Indian Constitution's mandate against beggar and forced labour. It frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements, and orders the economic rehabilitation of freed bonded laborers by the state. It also criminalizes all post-act attempts to compel a person to engage in bonded labour, with maximum penalties of three years in prison and 2,000 rupees fine.

JUDICIAL ACTIVISM IN RELATION TO THE ERADICATION OF BONDED LABOUR

Bonded labourers are non-beings, exiles of civilization, living a life worse than that of animals, for the animals are at least free to roam about as they like; This system, under which one person can be bonded to provide labour for another for years and years until an alleged debt is supposed to be wiped out, which never seems to happen during the lifetime of the bonded labourer, is totally incompatible with the new egalitarian socio-economic order which we have promised to build.-Justice PN Bhagwati,

In ***Sanjit Roy v. State of Rajasthan***[10], the Supreme Court restricted the State from extracting labour by paying less than the minimum wages in the name of public utility services, considering such amounts to forced labour and is violative of Article 23 of the Constitution.

In ***Bandhua Mukti Morcha v. Union of India***[11], the Supreme Court issued directions for the release and rehabilitation of bonded labourers engaged in the mining operations.

In ***Neerja Chaudhary v. State of M. P***[12], the Supreme Court expressed anguish over the indifference of the government towards the rehabilitation of released bonded labourers.

In ***P. Sivaswamy v. State of A.P***[13] , the Supreme Court found that the rehabilitation money payable under the Bonded Labour System (Abolition) Act, 1976, the assistance was certainly inadequate for rehabilitation and unless there was effective rehabilitation the purpose of the Act would not be fulfilled. AIR 1984 SC 802 : (1984) 3 SCC 161.

In ***M.C. Mehta v. State of Tamil Nadu***[14], the Supreme Court has held that children below the age of 14 years cannot be employed in any hazardous industry, mines or other works and has laid down exhaustive guidelines how the State authorities should protect economic, social and humanitarian rights of millions of children, working illegally in public and private sections.

RECENT INCIDENCES ON BONDED LABOUR IN INDIA

- **Trapped in a web of silk**

Few things are associated more closely with the Indian identity than the lovely traditional attire, the sari. The Rajasthan newspapers of 5th August 2012 carried news of the 9 children whose childhood was lost in the beautiful folds of saris.

The news announced was a huge victory for 9 child labourers hailing from Midnapur, West Bengal. After 5 years of continuous legal battle, the Jaipur Labour Court gave the verdict that the 9 children be paid their full due wages amounting to Rs.3.32 lakhs and the employer was also asked to compensate them with 13.29 lakh as per the Workmen's Compensation Act. The case was being pursued with the support of ActionAid India along with the Child Rights Network Khiltee Kaliyaan.[15]

- 273 bonded labourers from Odisha rescued in Tamil Nadu In Chennai, a major operation, as many as 273 persons from Odisha employed as bonded labourers in a brick kiln in Tiruvallur district near Tamil Nadu were rescued.The labourers, belonging to 98 families, were rescued in the raids led by Revenue Divisional Officer R Abirami in coordination with an NGO[16].

- Bonded labour at mills for unmarried girls.In Chennai, poor girls in rural Tamil Nadu are being exploited by spinning mills promising them a lump sum for their wedding if they work for three years. Similar to the bonded labour system, it clearly violates labour laws. Perhaps for the first time, the victims themselves lead an expose of the racket in a public hearing. At seventeen, Shanthi agreed to work for a spinning mill in Coimbatore on a three year contract. In addition to her daily wages, the employer had promised her family Rs. 30,000 at the end of her contract. But six months before her tenure ended she met with an accident at work and lost her fingers. She was sent back home with no compensation or the promised amount.

According to government estimates more than thirty seven thousand adolescent girls are trapped in this system across Tamil Nadu. But ironically this public hearing was limited to working out cash compensation and there was no action on human rights violations.[17]

- The Gruesome Incident Of Cutting Off Of Right Hands Of Two Bonded Labourers In Odisha

Justice PN Bhagwati, Indian Supreme Court, 1982.On 15 December 2013, right hands of two bonded labourers, Dialu Nial (30), an SC, and

Nilambar Dhangda Majhi (28), an ST, were chopped off by a labour contractor and his accomplishes in Odisha as they had taken Rs 14,000 each from the contractor but and refused to go to work in a brick kiln in Andhra Pradesh.[18]

While in train to Andhra Pradesh dispute aroused between the contractor and the labourers over the distribution of the paid money and 10 of them got off from the train. Dialu and Nilambar were left back in the train and were taken captive by the labour contractor. The contractor made phone call to Nilambar's family and demanded Rs two lakh for their release and threatened to kill them if they failed to give the amount. The family pleaded them to release them and told him that they are too poor to pay the amount.

The next day the family lodged a complaint before the local police station, SP, Collector and the district labour officer with a written statement having the mobile numbers of the labour contractor, but the police did not take our complaint seriously. Two days later i.e on 15 October a labour contractor Parame and five of his associates after keeping Dialu and Nilambar captive for a week in a house, took them to a nearby jungle in Kalahnadi district and chopped off their right hands one by one.

One day after the incident the Kalahandi police arrested all the six accused involved in the incident and the Odisha government announced a compensation of Rs four lakh each to the victims.

According to a research report there are more than 11 million bonded labourers in India and Odisha is one of the worst affected states. Unfortunately, despite several laws and welfare schemes these poor labourers continue to suffer and are often subjected to such inhuman torture.[19]

COLLECTIVES OF SOCIAL ACTION GROUPS AND TRADE UNIONS DEMAND FOLLOWING ACTION:

1. Chief Minister of Odisha should take immediate and urgent steps to ensure relief, compensation and justice in this most gruesome incident.
2. A fact finding team, comprising judicial body, government, social action group and trade union representatives should be constituted to investigate the situation of migrant workers in western Odisha
3. Government and District administration should call trade unions and social action group to work on the protocol to ensure fair, participatory and transparent recruitment process which should be legally binding on the recruiters and recruitment process should be institutionalized.
4. Action should be taken against all the labour contractors 'SARDARs' against whom any complaint is pending.
5. Principal employers to be held responsible as without their abetment such incidents are not possible.
6. Immediate rescue, relief and rehabilitation in the short run and working sincerely towards elimination of all forms of bondage among migrant labours especially in western Odisha.[20]

CONCLUSION:

The eradication of bonded labor in India depends on the Indian government's commitment to two imperatives: enforcement of the Bonded Labour System (Abolition) Act, and the creation of meaningful alternatives for already-bonded laborers and those at risk of joining their ranks. In addition to genuine government action, it is essential that non-governmental organizations be encouraged by the government to collaborate in this effort. The government has the resources and authority to implement the law, while community-based organizations have the grass-roots contacts and trust necessary to facilitate this implementation. Furthermore, non-governmental groups can act as a watchdog on government programs, keeping vigil for corruption, waste, and apathy. The elimination of current debt bondage and the prevention of new or

renewed bondage therefore require a combination of concerted government action and extensive community involvement. Bonded labor is a vast, pernicious, and long-standing social ill, and the tenacity of the bonded labor system must be attacked with similar tenacity; anything less than total commitment is certain to fail.

Footnotes:

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[2]J.N.Pandey, *The Constitution Of India* 317 (Central *Law* Agency, Allahabad47th edn., 2010).

[3]*Raj Bahadur* v. *Legal Remembrance, Govt. of West Bengal*, AIR 1953 Cal. 522.

[4]*Dubar Goala* v. *Union of India*, AIR 1952 Cal. 496.

[5]*R.C. Cooper* v. *Union of India*, AIR 1970 SC 564: (1970) 1 SCC 248.

[6]AIR 1982 SC1943: (1982) SCC 235.

[7]Vijay Jaiswal , "Right against Exploitation in Indian Constitution" 1, (2013).

[8]A comprehensive definition of bond labour is found in the Supplementary Convention on the Abolition of Slavery. See also, ILO, Report of the Director-General, Stopping forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labor Conference, 89th Session 2001 Report I (B), ILO, Geneva, 2005, 5; and Anti-Slavery International, Poverty, Discrimination and Slavery. The reality of bonded labour in India, Nepal and Pakistan, 2008,5.

9 www.Topical Research Digest: Human Rights and Contemporary Slavery Bonded Labor in India by Devin Finn. (Visited on November 30, 2013).

[10] AIR 1983 SC 328: (1983) 1 SCC 525.

[11] AIR 1984 SC 802 : (1984) 3 SCC 161.

[12]AIR 1984 SC 1099: (1984) 3 SCC 243.

[13]AIR 1988 SC 1863, 1868: (1988) 4 SCC 466.

[14] AIR 1997 S.C.699.

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[16]http://www.ndtv.com/south/273-bonded-labourers-from-odisha-rescued-in-tamil-nadu-525102 (Visited on March 16, 2015).

[17]http://www.ndtv.com/india-news/bonded-labour-at-mills-for-unmarried-girls-402738 (Visited on March 18, 2015).

[18] **http://www.hindustantimes.com/india-news/hands-of-migrant-labourers-chopped-off-by-contractor-in-odisha/article1-1163531.aspx** (Visited on March 18, 2015).

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Human Rights Of Disabled Persons
In the Light of " JEEJA GHOSH's Case"- A Bird's Eye view.

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In, ***JEEJA GHOSH & ANOTHER v. UNION OF INDIA & OTHERS***[2] ,

Facts of the Case:

The Petitioner is an Indian citizen with celebral palsy[3]. Ms. Ghosh is an eminent activist on a National level involved in disability rights. She is a live example of how a person suffering from cerebral palsy can overcome the disability and achieve such distinctions in her life, notwithstanding various kinds of retardation and the negative attitudes which such persons have to face from the society. Ms. Ghosh was invited to an International Conference in Goa, from 19th to the 23rd of February, 2012, hosted by ADAPT (Petitioner no. 2) who had purchased return plane tickets for the Petitioner, including a seat on flight SG 803, operated by SpiceJet Ltd. (Respondent no. 3) scheduled to fly from Kolkata to Goa on the morning of 19th February, 2012.

After being seated on the flight, the members of the flight crew ordered her off the plane. Despite her tearful protestations and informing them that she needed to reach Goa for the conference they insisted that she de-board. After returning to the airport and arguing with airlines officials, she later discovered that the Captain had insisted that she be removed due to her disability. As a result of the shock and trauma of this event she had trouble sleeping and eating, so she was taken to a doctor the following day where she was prescribed medication. Because of this, she was unable to fly to Goa and thus, missed the conference all together. The Petitioner No. 1 made a complaint to the Ministry of Social Justice and Empowerment. However, in reply to the show cause notices issued to the Respondent Airlines, it was stated that the refund for flight, less 1,500/- as a cancellation fee from the airlines on which the return luggage had been booked through Jet Konnect, will be made.

As quoted by Helen Keller:

"*Some people see a closed door and turn away. Others see a closed door, try the knob and if it doesn't open, they turn away. Still others see a closed door, try the knob and if it doesn't work, they find a key and if the key doesn't fit, they turn way. A rare few see a closed door, try the knob, if it doesn't open and they find a key and if it doesn't fit, they make one!*"[4] which is the minimal expectation from a State which is approaching towards the concept of idealistic State. In such a State the treatment given to the present petition is not only a great violation of Human Rights but also a great stigma on the name of the country on international scenario.

The Fundamental Rights, embodied in Part III of the Constitution, guarantee civil rights to all Indians, and prevent the State from encroaching on individual liberty while simultaneously placing upon it an obligation to protect the citizens' rights from encroachment by society. Six fundamental rights are provided by the Constitution – right to equality, right to freedom, right against exploitation,

right to freedom of religion, cultural and educational rights and right to constitutional remedies. The purpose of the Fundamental Rights is to preserve individual liberty and democratic principles based on equality of all members of society.[5]

RIGHTS OF DISABLED IN CONSTIUTION OF INDIA:

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally). Under the Constitution the disabled have been guaranteed the following fundamental rights: The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.

a) Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.

b) There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.

c) Every person including the disabled has his life and liberty guaranteed under Article 21[6] of the Constitution.

d) Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32[7]

Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

Thus it is clear from the above discussion that it is the duty of the State to provide equal protection of laws to all its citizens. Therefore the State has miserable failed to protect the Petitioner's fundamental rights.

INTERNATIONAL COVENANTS ON RIGHTS OF DISABILITIES:

Convention on the Rights of Persons with Disabilities[8]: Persons with disabilities should be able to live independently and participate fully in all aspects of life. To this end, States Parties should take appropriate measures to ensure that persons with disabilities have access, to the physical environment, to transportation, to information and communications technology, and to other facilities and services open or provided to the public. Accessibility can be grouped into three main groups.

a) Physical accessibility
b) Service accessibility
c) Accessibility to communication and information

As flying becomes a routine part of our lives, it must be considered that a wide range of international instruments and national laws on disability guarantee persons with disabilities rights the thrust of which is on dignity and autonomy. **Article 3 of** the Convention on the Rights of Persons with

Disabilities guarantees to individuals with disabilities the rights of accessibility and full participation and inclusion in society. **Article 9** of the Convention places an obligation on the State to ensure that persons with disabilities have access to transportation on an equal basis with others. **Section 44**[9] of the Persons with Disabilities Act specifically deals with non-discrimination in transport, and places an obligation on establishments in the transport sector to take reasonable steps to adapt the vessels/ crafts and the toilets in them in a way that makes it comfortable for persons with disabilities to use them with ease[10].The Respondent State as well as the Airlines have failed miserably to extend the protection and comply with the provisions of the foregoing provisions.

The Hon'ble Apex Court in **Indra Sawhney Vs. Union of India[11], has observed that** the Part-III of the Constitution (mainly deals with FUNDAMENTAL RIGHTS)& Part V of the Constitution (mainly deals with FUNDAMENTAL DUTIES)are the core sections the constitution which was enacted for removal of historic injustice and inequalities either inherited or artificially created in the INDIAN society. The concept of inequality is unknown in the kingdom of God who creates all beings equal, but some people have created the artificial inequality in the name of castism with selfish motive and vested interest. In this respect the court also pointed out the view of SWAMI VIVEKANANDA where he one of his letter referred "Caste or no caste, creed or no creed, or class, or caste, or nation, or institution which bars the power of free thought and action of an individual - even so long as that power does not injure others - is devilish and must go down".[12]

Thus in the present case the State has failed to strike the balance between Part III of the constitution and Article 41 of the Constitution of India.

It is held by Apex Court while dealing with the importance of protection of rights of differently abled persons that: We have examined the matter with great care having regard to the nature of the issues involved in relation to the intention of the legislature to provide for integration of persons with disabilities into the social main stream and to lay down a strategy for comprehensive development and programmes and services and equalization of opportunities for persons with disabilities and for their education, training, employment and rehabilitation amongst other responsibilities. We have considered the matter from the said angle to ensure that the object of the Disabilities Act, 1995, which is to give effect to the proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific Region, is fulfilled.[13] The said observation clearly states out that the State is not to discriminate against the handicap of the disabled but it is responsibility of the State to involve the physically challenged in the mainstream. Thus the Respondent State has miserably failed to perform its duty under Article 14 of the Constitution of India.[14]

Conclusion:

The Petitioner No. 1 was scheduled to fly from Kolkata to Goa on the morning of 19th February, 2012, who was ridiculously asked to step down from the air-craft for the reason of her disability. The Petitioners referred the grievance to the Respondent No. 1 and 2 however, the Respondent No. 1 and 2 miserably failed to understand the gravity of this human rights violation. The Petitioner was left with no other alternative but to approach this Hon'ble Supreme Court in its original jurisdiction under Article 32 of the Constitution of India.

In International human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that

all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. The Petitioner was not given appropriate, fair and caring treatment which she required with due sensitivity, and the decision to de-board her, in the given circumstances, was uncalled for. More than that, the manner in which she was treated while de-boarding from the aircraft, depicts total lack of sensitivity on the part of the officials of the airlines. The rights that are guaranteed to differently abled persons under the Equal Opportunities, Protection of Rights and Full Participation Act, 1995 are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution justifying human dignity. Supreme Court awarded a sum of Rs 10000/- as damages and petition is allowed in her favour.

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2) UNHCR Charter on Rights of Disabled
3) 'Civil Aviation Requirements' dated 1st May, 2008
4) The Aircraft Rules, 1937
5) Vienna Convention on the Law of Treaties, 1963
6) United Nations Charter on Physically Disabled

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3) NHRC Handbook on Rights of Disabled

Footnotes:-

[1] Asst Prof Navjeevan Law College, Nasik under SavitriBai Phule Pune University, Pune(BSL.LL.M, NET,SET, Ph.D(Law)from RTM Nagpur University, DIPR, DCL, DADR, DBL, CCIHR,CCIFMJ),shahista.inamdar@yahoo.com

[2] Decided on 12th May 2016

[3] Cerebral palsy (CP) is a disorder that affects muscle tone, movement, and motor skills. The ability to move in a coordinated and purposeful way.

[4]https://en.wikipedia.org/wiki/Helen_Keller

[5] Constitution and Fundamental Rights : A Critical Study, by Mr. P. Devidas, NLSIU Newsletter, Pg. 32

[6] No person shall be deprived of his life or personal liberty except according to procedure established by law

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

[8]https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_Persons_with_Disabilities

.The Convention defines "reasonable accommodation" to be "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms"

[9] Section 44: Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to-(i) Adapt rail compartments, buses. Vessels and aircrafts in such a way as to permit easy access to such persons;(ii) Adapt toilets in

rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently

[10] Non-discrimination in transport.—Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to

(a) adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;

(b) adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

[11] AIR 1993 SC 477

[12] Page 578 para 86 (SUPRA)

[13]Government of India Vs. Ravi Prakash Gupta
, 2010 (7) SCC 626

[14] The State shall not deny any person equality before law and equal protection of laws.

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Local Governance –Rural and Urban Development in India

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The Urban problems in respect of Environmental Management had been first addressed by the Honourable Supreme Court of India in the matter of Ratlam Municipality V/s Vardhichand[1]. The Apex Court directed Municipality for maintenance of **'public health '** with regard to removal of open drains and prevention of public excretion by the nearby slum dwellers.The Court relied up on Article 47 of the Constitution of India, which is covered under the Part IV of constitution relating to the Directive Principles of State Policy.The said judgment was further followed in the matter of B.L. Wadhera V/s Union of India, wherein the Directions were issued to the Municipal Corporation of New Delhi[2].

In the matter of Virendra Gaur V/s State of Haryana, the Honorable Supreme Court observed that the word "environment is of broad spectrum which brings within its ambit **'hygienic atmosphere and ecological balance. '** It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment .The Court further noted that there is a constitutional imperative on the State Government and the municipalities , not only to ensure and safeguard proper environment , but also to perform imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment[3].

Kolhapur city had been identified in the United Nation's survey as one of 12 cities in the world that supplies polluted water for drinking purposes. The Bombay High Court had issued directions to check the industrial pollution by the Maharashtra Pollution Control Board (MPCB) and also directed Kolhapur Municipal Corporation to provide full –fledged SewageCollection, Treatment and Disposal arrangements as per the proposal submitted by it before Court. The Court also set up a committee of experts in water technology to augment the supply of potable water to Kolhapur **Dhanaji Jadhav vs. State of Maharashtra**[4]. Similar order was passed by Honorable Supreme Court in the supply of drinking water in Delhi matter, by designating a senior official within each government department to take responsibility for implementing an improvement plan. A committee was appointed by the Court, surveyed the existing sewerage system over a 10 months period, and drafted a "time- bound Action Plan" to improve sanitation.Sector 14 Residents Welfare Association vs. State of Delhi[5], Municipal solid waste (MSW) management or garbage disposal is one of neglected area of urban and rural development.In a no of cities, half of the MSW remains unattended.

[Government of India, Planning Commission Report of High Power Committee on Urban Solid Waste Management in India1 (1995)]. Another important grey area is Bio- Medical Waste Management (BMWM) in urban and rural areas.Though, on account of rigorous follow up by the Bombay High Court of Judicature at Mumbai, adequate no. of common facilities for treatment , storage and disposal of bio - medical waste [CBMWTSDF] have been made fully operational due compulsory joining of common facility by the generators of BMW. However, 100% institutes generating BMW not joined

waste-management facility. Bombay High Court has directed State Government to sanction separate posts on the establishment of the MPCB.

The next important urban and also to some extent rural waste is e-waste generated from the local body areas. Though, some private facilities have been established on commercial basis , on state-level or on local -self government level or even at the level of manufacturer hardly any serious efforts made by them to have effective collection , processing and disposal of e- waste by way of adopting life-cycle approach. Similar is situation of lead acid battery manufacture and disposal thereof, wherein through hard efforts , we could have reached to the collection of used batteries 45 to 50 % as against target of 90% collection and reprocessing after 3years, ie by end of 2004 in Maharashtra.

We have tried to empower our local-self-government through Panchayat -Raj and also through making them self-sufficient. Unfortunately, in spite of empowerment to them, we could not develop for them infra-structure facilities and skilled manpower for them.Therefore, after 58 years of independence, we could not do urban development from the point of view of environment protection and improvement as well as sustainable development. We are still facing the following serious environmental issues

1) **Sewage Collection, Treatment and Disposal-** More than 80% of local bodies do not have 100% collection, treatment and disposal systems, thereby causing serious water and environmental pollution, which resulted in total pollution of our riverine system. Parliament has enacted the Water (Prevention and Control of Pollution) Act, 1974, however, in-spite of its applicability for more than 40 years , we could not able to collect 100% sewage generated from all the local authorities jurisdiction nor our local bodies able to provide 100% sewage treatment and disposal systems for it.

In fact, on the lines of raw sewage being utilised by RCF from Mumbai Municipal Corporation to the extent of its requirement, time has come to encourage and promote re-utilisation, re-processing and recycling of sewage for various activities.

2) Municipal Solid Waste Management - The Second important responsibility entrusted with the local bodies is municipal solid waste collection, transportation, segregation, processing and disposal thereof after recovery of valuable material to the extent possible. Ministry of Environment and Forest, Government of India framed separate regulation for its management in the 2000, namely, Municipal Solid Waste (Management & Handling) Rules, 2000. These rules make easy to follow provisions for proper collection , transportation , segregation of municipal solid waste (MSW) , recovery , processing and disposal thereof to the secured landfill site/s identified and approved by the competent authority. MSW (M & H) Rules, 2000 make provision for implementation period to make improvement in existing dumping site by 31.12.2001, identification of a new site for secured landfill adequate enough for next 20-25 years by 31.12.2002 & development of new approved site by 31.12.2003. The rules also provide for segregation of bio-degradable , non-bio-degradable and recoverable waste either at source or at site , so that recoverable & valuable waste will be brought in use, bio-degradable waste will be converted in to useful commodity(manure/ compost, bio-gas/bio-energy, briquet/ RDF etc and only non-biodegradable/ inert waste will go to secured landfill site. Unfortunately, on account of not having habit of segregation at source, throwing of waste - mix without following proper method and dumping it at a designated site without following scientific procedures, has created a serious problem for all local authorities . The non- compliance in respect of MSW Management is more than 80% in the State of Maharashtra. There are strong opposition not only forunauthorized dumping of MSW, but also for scientific processing and disposal thereof. Everybody oppose MSW -Management at his/her/

their backyard, in spite of generation of it by all of them.Nobody wants to perform his /her role in waste-management. In coming future, MSW - Management will be a very big challenge before every local authority.

3) Plastic / Rubber/Tyre Wastes Processing- Plastic Waste has become another unsolved problem for its use, collection, segregation and disposal. After heavy rains of 2005, Maharashtra Government tried to impose complete ban on its manufacturing of carry bags and containers by issuing draft notification, however, on account of not having cost-effective substitute and solution, it has prescribed strict standards for the manufacture of plastic carry bags having thickness more than 50 microns and further prescribing size of carry bags, as against 20 microns under the Central Rules.Now, the Central Government has also prescribed thickness of minimum 40 microns and further regulated plastic waste by empowering various enforcing authorities like revenue, local bodies etc.However, there is still considerable gap between provisions of the rules and it's enforcement, thereby plastic carry bags of the size and thickness, violating rules are still manufactured and sold as well as used in the State.

4) E-Waste - Besides Battery Wastes , E-Waste have become another categories of modern wastes , for which separate rules are promulgated , however , adequate no of re-processors of lead acid used batteries and e-waste processors are yet to be established . The local bodies and manufactures of e -waste will have to play proactive role in its management.

After going through above categories of wastes, the urban & rural authorities will have to play more effective role in the above waste-managements. The local authorities will have to establish separate environmental management cell with integrated waste management and with qualified experienced personnel, Accordingly Chandrapur Municipal Corporation have established separate Environmental Management Cell recently vide their order no. 111 dated 20/03/2017. Recently, National Green Tribunal, Western Zone Bench at Pune directed various local bodies in the Applications filed before it to deposit substantial amounts in the Escrow Account opened in the name of concerned District Collectors for utilisation thereof for MSW-Management only.For example, Sangali, Miraj and Kupwad Municipal Corporation has been directed to deposit Rs. 60/- crores, Mira-Bhayandar Rs 70 /-crores, Kalyan-Dombivali and Ulhasnagar Rs 30/-crores , so that effective steps will be taken by them with financial provisions in a time-bound manner.Now Rural & Urban Bodies will have to play more responsible and proactive role in the Waste-Management,otherwise, their Administrators will have to face music.

Footnotes:-

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Kafka's Novel *The Trial* – A Portrait of Criminal Law From A Literature Perspective

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Introduction

Franz Kafka was an attractive writer who was mysterious at the same time. He was known as one of the most influential writers of this century. The topics of his works are mystical. He described humans and society in a very abstract way. He expressed his personal feelings and thoughts to the world by combining elements of vagery with reality and reasonable and unreasonable in the same way.. His chief works concentrated on the lonely people and unknown world in Western life. It brought forth the ugly realities in Western life. There was everyone from middle-class people to scholars featured in his works. There were the sad and helpless. And they compromised all the time. However, in the end they still could not avoid their lonesome destiny. His work expressed the confusion of Western people during his century. It demonstrated their negative thoughts: condemnation but no fighting; a trapped feeling unable to find a way out.

This paper is an attempt to see his famous novel *The Trial* as a portrait of criminal law from a literature point of view.

The bizarre story of "The Trial"

In the beginning of *The Trial*, our attention are drawn in by the first sentence: "Joseph K. must have been maligned by somebody, for without having done anything wrong; he was arrested on one fine morning." The wardens caught Mr. K without showing their identification cards. K was arrested in his rented apartment on the morning of his 30th birthday. Before that, he had fallen in love with Miss Bürstner who recently moved into the same apartment building.In the beginning, Mr. K thought it was only a joke. He could not figure out why he would be caught or what kind of criminal activity he had been involved in. Although at first Mr. K was allowed to live as usual, even the wardens told him that he was free to move around, for the court would contact him, still he felt a great deal of pressure. All hints showed that "he would never have freedom."

After that, Mr. K tried to defend his innocence. He tried to discover the name of the writ and crime he has been accused of. Try so hard as he might, but he never grasped the meaning, procedure and laws of the secret court. Mr. K devoted a great deal of time to his case; he even had hired a lawyer, still he never knew what crime he had committed, nor was released from the summons of ordering to appear on the court. His lawyer told him that the court was a bribery system. Mr. K also heard from others that once you get into the courtroom, you could never free yourself from it. Mr. K tried to seek for help, but everyone tried to avoid him. Then he realized one thing: although truth does exist, it was unattainable.

Mr. K met a priest in the dark Church and he told him a fable: Before the Law stands a door-keeper on guard, and a man came from the countryside begging for admittance to the Law. But the door-keeper says that he cannot admit the man immediately. So there he stays, waiting for days and years. He makes many attempts to be allowed in, and finally his eyes grow dim. He asked the door-

keeper, "it seems that everyone should strive to attain the Law. But how come that in these years, no one but me has come to seek for admittance?" The door-keeper perceives that the man is at the end of his strength and his hearing is failing, so he bellows in his ear: "no one but you could gain admittance through this door, since this door was set only for you. I am now going to shut down it."

After continued failures in defending his innocence. Mr. K began to believe he was guilty and wanted to be punished. On the eve of Mr. K's thirty-first birthday, two strangers with suits came into his apartment without any prior notification, while unexpectedly Mr. K was sitting there and waiting for them to take him away. On the way, Mr. K suddenly realized that he could not resist the present situation any longer, so he submitted to taking the penalty, and received his final verdict. On a desolated quarry, those two officers acted like wild dogs and killed him without mercy. To Mr. K, the trail of law was such a cruel procedure.

Discussion of "The Trial" from the perspective of criminal law

There were many scholars who have analyzed *The Trial* with different views. However, the legal view on Criminal Law is that, "Guilt" "Court" and the "the trial procedure" would be the main structures of *The Trial*. Through irony plots, this work expresses the unclearness and inefficiency of the bureaucratic system. It described the helplessness that people feel nowadays under these ridiculous circumstances and the distress when they find out that the way out has been blocked.

Of course, it is impossible to examine the whole law procedures in *The Trial*, because of the different times and backgrounds of laws in different countries. However, since the rule of "due process of law" relating to human rights protection is a universal principle, one can try to analyze the inner-connection between law and literature, their complexity of accord, and conflicts by the studies of comparison between literature with Criminal Law as follows.

1. "Presumption of innocence" is far from "no law, no punishment"

"No law, no punishment" and "no crime, no punishment." All countries had followed this principle for years. Under this rule, law should be clear. On the other hand, "presumption of innocence" means that a suspected or a defendant in a criminal action is presumed to be innocent until the contrary is proved. In *The Trial*, it's unknown what crime Mr. K had committed. He was presumed of guilty before he was placed under arrest.

Kafka has explained in the novel that one could not judge the standards in life by unclear Criminal Law. People did not know what law actually was. The ridiculous administration and omnipresent uncertainty of a dictatorship were demonstrated in the book. Waster said, Kafka was an author who could criticize right to the point in the society (Richard A Posner, P. 275). A system that arbitrarily decides which behaviors can be punished without the guard of "presumption of innocence" would let the bureaucratic system kill its people at any time.

2. The conflicts of "doctrine of guilt"

When a sentence is imposed, all circumstances of the case shall be considered and special attention shall be given to determine the severity of the sentence. It is forbidden for a defendant to be penalized outside the law without any probable reason. Upon the ignorance of the "doctrine of guilt," lawmakers could only deter people through very strict Criminal Law. Under this doctrine, the crucial criminal policy might come out. The dignity of the individual would disappear. In fact, the effect

of punishment should come from the probable penalty upon the criminals' behavior instead of the strictest penalty. Only this probable penalty can develop people's law conscience. Then it can become a system of moral principles.

There should be a crime, then follows a punishment. So, no crime, no punishment. Judging from a single behavior instead of personality guilt. An actor could not be punished by the consideration of his or her ex-behavior or bad records. Moreover, "single behavior" depends on what an actor had done right then. And we should not even consider one's guilt or innocence when an actor is unconscious (Chang, P. 27). Mr. K was under arrest as an accused. However, Mr. K did not know what crime he had committed. Or, we could say, he did nothing but was presumed guilty and accused. And it seemed that what Mr. K had done did not matter at all. Kafka pointed out, Mr. K was under arrest because of his bad records instead of what he had done in the criminal case. And this was so called "ex-behavior" trial. This rebelled the doctrine of guilt.

3. The authority of the "The Court" in the cabinet

Mr. K was under arrest on his 30th birthday. His first trial was in a secret "cabinet." Mr. K could not even know what his accused name was. And he was executed immediately in a secret way. From the point of view of criminal law on this case nowadays, it was obviously not due process of law.

Due process of law, means that law should rule the whole procedure. The procedure should be fair and reasonable. The procedure of the court in the novel "The Trial" was very secretive. Mr. K tried hard to discover what his accused name was. However, in the end he still could not know it. The uncertainty of the trial opposes the principle of "due process of law." Justice would not exist. "The Court" was settled in a dark corrupt cabinet. Kafka tried to protest the vagaries and inefficiencies of the court. The symbolization can be seen throughout the novel.

In the first interrogation, K realizes that there can be no doubt that behind all the actions of the court of justice, behind his arrest and interrogation, there is a great organization at work. An organization which not only employs corrupt wardens, stupid Inspectors, and Examining Magistrates of whom the best that can be said is that they recognize their own limitations, but also has at its disposal a judicial hierarchy of high, indeed of the highest rank, with an indispensable and numerous retinue of servants, clerks, police, and other assistants, perhaps even hangmen. And the significance of this great organization is that innocent persons are accused of guilt, and senseless proceedings are put in motion against them.

Later, K finds that the senselessness aspect of this whole process is that even the highest Judge in this organization will have to admit corruption in his court. It is this fact that Leni tries to communicate to K when she says one can't put up a resistance against this Court, one must admit one's fault. Make one's confession at the first chance one get. Until one does that, there's no possibility of getting out of their clutches.

In the church, the priest told K that the court makes no claims upon you. It receives you when you come and it relinquishes you when you go. The painter also tells this: "you see, everything belongs to the Court" (Weisberg, P. 134) . All these show that no matter how hard Mr. K tried, he just could never get out from under the control of the Court. And this is how Kafka described the court in a bitter way.

Mr. K followed the order of the courtroom. In the first trial, He was notified of coming to the courtroom with a summons. But on Sunday, he showed up in the courtroom without any summons. In the scene at the church, Mr. K heard someone's screaming.

He wondered about going back or not. He knew he was free then. However, if he turned back, it meant he admitted what the screaming actually meant to him. He just decided to obey. He followed the calling from the priest. Kafka described the struggle inside of Mr. K. Although K had tried to resist, he was waiting for them when he was placed under arrest without any resistance or fighting. In the first trial, Mr. K even had an emotional speech in the courtroom. After then, two executors took him away. Although he did fight at first, He realized it was useless to resist when Miss Bürstner came. Mr. K struggled with whether to obey or resist. Mr. K once tried his best to resist. However, he was under the authority of the courtroom. And the power of the courtroom was just too great for him.

4. "Under arrest" with violence

The wardens would not show their identification card or any writ when Mr. K was placed under arrest. And they did not know what crime Mr. K had committed. They shouted to K, saying that the officials of the court will never go hunting for crime in the populace, but, as the Law decrees, are drawn towards the guilty. That is the Law here. How could there be a mistake in that?

In the first interrogation, K said that some ten days ago he was arrested, in a manner that seems ridiculous even to himself, though that is immaterial at the moment. He was seized in bed before he could get up, perhaps – it is not unlikely, considering the Examining Magistrate's statement – perhaps they had orders to arrest some house-painter who is just as innocent as he was, only they hit on men. The room next to his was requisitioned by two coarse warders. If he had been a dangerous bandit they could not have taken more careful precautions. These warders, moreover, were degenerate ruffians, they deafened his ears with their gabble, they tried to induce him to bribe them, they attempted to get his clothes and underclothes from him under dishonest pretexts, they asked him to give them money ostensibly to bring him some breakfast. Then I was led into a third room to confront the Inspector.

All of the above demonstrated that the rule against actions of force without writ and human rights was un-respected. Actions of force in the Criminal procedure were used in evidence gathering, evidence saving and to ensure the defendant would be present in the courtroom. Actions of Force would encroach on human rights when people are forced to be searched or attacked. Therefore, actions of force cannot go on without due process of law. Human rights need to be protected under the rule of the constitution. The codes of criminal procedure all over the world nowadays will not allow for actions of force without a writ.

Mr. K had been caught. His properties were searched and attacked without any warnings. The whole procedure was excessive. The arrest should have followed the rule of "principles of excess." Especially since it was all conducted without a writ. The arrest was excessive and unnecessarily brutal. Kafka tried to describe that unknown law is like walking in the dark. People could not see any light. And once falling inside, you could speak nothing but endure this entire ridiculous situation all alone.

5. Secret procedure of the "Trial"

Two roles were distinguished as "Judge" and "the one to be judged" in the system. The prosecution and the trial are together. Prosecution and execution would be the job of the judges. In the book of *The Trial*, there was no public or private prosecution. The duties of prosecution and trial fell on the judge. Through the secret trial, nobody would know how these events transpired. Imagination and uncertainty were present throughout the trial.

According to the law, an advocate should protect his defendant from assault and encroachment by improbable force. An advocate should help seek out the truth to prevent an unjust verdict. Although K employed a lawyer, he still did not get real help. Lawyers could not be present when Mr. K was examined and this impugned his rights seriously. In this case, it was contrary to the rule that the defendant should be helped by his attorney, which all countries provide for in their codes of criminal procedure.

6. Hopeless End

Execution in criminal case shall follow due process of law. The death penalty could take one's life away. Once it happens, one can never be alive again. So, punishment should be conducted more carefully. Therefore, the procurator should execute the punishment utilizing the due process of law. Mr. K was arrested on his 30th birthday. In the end, he was executed, for reasons we still do not know. The whole procedure pointed out, that no matter how hard Mr. K tried, or how much effort he expended, it had no effect in countering his sentence. Two officers killed Mr. K. They did it in an unmerciful way. K was executed without a verdict. The death penalty was carried out without due process of law. The defendant was like a stray dog waiting to be killed.

Kafka tried to describe, how Mr. K tried hard to live, however, in the end he received no justice. Justice and truth might exist, but it was like the light through the door of law. It seemed so real but the man could not get in. Mr. K's life had been arranged before he was born. No matter how hard he tried, his fate was unavoidable. And this is the helpless end Kafka tried to present to us (Kafka, the last scene of *The Trial*).

Conclusion

By the comparison of Law and Literature, we discover how two different subjects integrate. Law people learn through these classics. It makes them more sensitive to humanity and society. Law is the standard of human behavior. The subjects of Law were limited by real society. But it has the same situation with Literature. Law people can find inspiration and direction by the unlimited Literature. Through these classics, law people may also write more fluently. The more important thing is, we learn though the sensitivity and compassion in Literature. Its riches enter our lives and through it, "literature keeps one's conscious" (Kao, P. 12). In the novel of *The Trial* from Franz Kafka, we found the greatest part would not be the critics of justice, but the fallacy of the judicial system. It alerts us to the importance of a reasonable system. If there's no reasonable judicial system, people might be killed at a man's will in anytime.

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Parsi Outlook in Rohinton Mistry's Such a long Journey

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Such a Long Journey is a brilliant novel written by Rohinton Mistry and is an important contribution to the corpus of Parsi fiction in English. It is a fine work of art and it lends itself to multiple inte5rpretations. Mistry derived the title from Eliot's poem "The Journey of the Magi." Eliot's poem is highly symbolic, which is adoitly applied in *Such a Long Journey*. It is emblematic of Man's spiritual expedition in which he has to endure many difficulties. This poem underlines the fact that man's life is an arduous journey, and signifies the way in which obstacles and hurdles can be removed if man sustains and retains his faith. In the novel, Gustad, the protagonist is accosted with hindrances which are beyond his wildest imaginations. But he keeps surging ahead with indomitable spirit and determination.

Gustad's crumbling aspirations due to the refusal of Sohrab to join 1.1.T., the loosening of family ties, the reticent attitude of Dilnavaz, Roshan's protracted indisposition, Dinshwaji's death and, above all, the inexplicable intricacies are compounded when he is confronted by the betrayal of Jimmy Billimoria. In his frustration he says to Dilnavaz:

> First, your son destroys our hopes - Now this rascal. Like a brother I looked upon him what a world of wickedness it has become (pg.142)

The variegated experiences help Gustad become inwardly strong. Through the character of Gustad, Mistry has overtly presented the Parsi way of thought, which constitutes the controlling point. Gustad's eventual acceptance of his lot with dignity is the triumph of the Zoroastrian faith. His progression is from uncertainty to certitude, from apprehension to affirmation, and from obscurity to clarity of vision. Narendra Kumar rightly states:

> As a typical Parsi, he demonstrates the quintessential Zoroastrian values—charity and benevolence. He also demonstrates the 'crisis' in the Indian mind in general, and the Parsi mind in particular. His life is negotiated in the context of his total social environment in India.

In this novel, Mistry has competently communicated the feelings and apprehensions of a minority community and has exploited history to delve into the broader concerns of Parsis. The life-style of Parsis living in Khodadad Building is the microcosm of the Parsis in India expressing the psyche of a dwindling community. For instance, the protagonist in the novel is placed in a peripheral community in Bombay. The distinction of the novelist lies in adroitly handling the .perspective of this marginalized community and in delineating the transition and evolution of his characters, especially the central character, Gustad Noble.

The author, with his graphic description, provides a vivid picture of the anguish, the apprehension, the insecurity, the sense of alienation and the sense of displacement that is strongly felt by the Parsis. The centuries of suffering, segregation and loneliness have brought the Parsis to an understanding of life where nothing is amiss and perhaps this is how they are

ready even for their extinction. For instance, Gustad thinks about the position of the Parsis in Bombay and comments thus:

> No future for minorities. with all these fascist Shiv Sena politics and Marathi language nonsense. It is going to be like the black people in America twice as good as the white man to get half as much. (pg.55)

The notion of displacement is voiced through the character of Dinshwaji, when he comments on the change of the street names in Bombay:

> Names are so important. I grew up on Lamington Road. But it has disappeared; in its place is Dada Saheb Bhadkhampar Marg. My school was on Carnac Road. Now suddenly it is on Lokmanya Tilak Marg. I live at Sleater Road. Soon that will also disappear. My whole life I have come to work at Flora Fountain. And one fine day the name changes. So what happens to the life I have lived? Was I living the wrong life, with all the wrong names? Will I get a second chance to live it all again, with these new names? Tell me what happens to my life. Rubbed out, just like that? Tell me! (pg. 74)

The main interest in this novel lies in the real-life scandal involving Sohrab Nagarwala, the State Bank cashier, who was at the centre of the sixty-lakh rupees scam, which had shaken the indira Gandhi government. Through the enactment of the Nagarwala case, Mistry not only succeeds in making an important political statement, but also in giving an impressive portrayal of the main character, Gustad. Gustad's grit and steadfastness facilitate his ultimate triumphs in life. It is through his character that Mistry presents the transition and progression of the Parsi mind.

Many times, miracles and misfortunes occur simultaneously. In *Such a Long Journey*, Mistry says that when people are desperate, their prayers seem to go unheard, the future seems to be depressing and there appears to be no alternative. Then they take recourse to exorcism. Fortuitously, it works and at least for the time being, things seem to be set right. This idea is suggested in the utterance of the pavement artist:

> Miracle, magic, mechanical trick, coincidence—does it matter what it is, as long as it helps? Why analyse the strength of the imagination, the power of suggestions, power of auto suggestion, the potency of psychological pressures? Looking too closely is destructive, makes everything disintegrate. As it is, life is difficult enough — why to simply make it tougher? After all, who is to say what makes a miracle and what makes a coincidence? (pg.289)

The notion of the supremacy of Divine Power is manifested through the persona of Tehmul, Gustad's mentally retarded neighbour. When Tehmul dies, hit by a brick on the forehead, Mistry writes: Tehmul dropped without a sound, his figure folding gracefully. The dance was over. (pg.333) The word 'dance' in this frame of reference becomes pregnant with symbolic connotations. It symbolizes man's impotence at the hands of relentless destiny. God, the puppeteer, maintains absolute control over man, the puppet, and makes him dance according to his own inscrutable design. He manoeuvres the puppet at his own will. The 'dance' of life has to cease at the time predetermined by the puppeteer. Considering all the thematic concerns in *Such a Long Journey*, one comes to the conclusion that different themes and ideas are strands which are interwoven and exist only in relation to the main

thematic purpose, i.e., the evolution of the central character, Gustad Noble —the rebellion of Sohrab, the sickness of Roshan and the tragic plight of Tehmul. If Sohrab's episode illuminates the character of Gustad, Rohan's protracted indisposition tests his strength of mind. On the other hand, Tehmul's pathetic condition and suffering focusses on the unrevealed facet of Gustad's personality — love for humanity.
Gustad is basically altruistic. At the church of Mt Mary, he wishes Roshan a speedy recovery, and also prays for Sohrab, but considers his own handicap as unimportant. At the end of the novel, Gustad is seen praying for Tehmul, for Jimmy, for Dinshwaji, for his parents and for his grandparents. He prays for the mercy of the Alimighty on all souls. Gustad stands for compassion and love for humanity, which is essentially a Zoroastrian trait.
The magnificence *Such a Long Journey* attains is due to the leading character, Gustad Noble, in whose life and affliction a universal pattern is carved out. Speaking of Gustad's triumph as a man, Narendra Kumar points out:

> His long journey in a cold and malevolent world in which all forms of happiness and misery are woven inseparably is the journey of an ethnic group, a community which is on the verge of extinction. From a purely subjective plane of self-indulgence, he moves on to a much deeper and complex level to examine truths of life. Myopic at the beginning of his journey, attains full vision towards the end. His long journey is a manifestation of the universal phenomenon — the conflict between good and evil and his survival is the triumph of the Zoroastrian faith (pg.76).

Through the tribulations of Gustad, Mistry presents his perception of the transitory nature of happiness. Considering all the incidents and happenings in his life, Gustad realizes the presence of some inscrutable power, which shows itself in the form of inexplicable, unexpected blows of chance. He makes obeisance to the will of God, and finds dignity in compassion and greatness in fortitude. He understands these two aspects as driving principles in human existence.
At the end of novel, we see Gustad forgiving Sohrab, who comes to him with a sense of regret. The hard feelings between father and son are superseded by a sense of real appreciation for the relationship. In complete surrender, they reach out to each other. Even the destruction of the wall by Municipal authorities does not disconcert Gustad. He accepts the demolition with amazing equanimity and perceives it as a positive happening because it inspires him to tear down the blackout papers he had pasted on his windows and ventilators at the time of the Chinese attack in 1962. According to Nilufer E. Bharucha:

> This letting in of the light can be seen as a metaphor for the letting in of Indian reality into the cocooned isolation of the Parsi world. The tearing down of the blackout sheets could also signal a readiness on the part of the Parsis to let the Iranian past go and to let "new melodies break forth from the heart; and where the old tracks are lost, new country is revealed with its wonders." (pg.30)

Thus, *Such a Long Journey* has, besides 'urgent political agendas', made a vital contribution to the corpus of Parsi fiction. Gustad's progress is the journey of the Parsi community which is now at the crossroads. As a member of the marginalized community, Mistry provides rich insights into the troubled Parsi psyche.

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Exploring Myriad Characters in Kiran Desai's Hullabaloo in the Guava Orchard

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It has been observed that first novel of Kiran Desai, *Hullabaloo in the Guava Orchard* was instantly well received, much praised as a zany gentle satire, a clever, haunting parable, an amiable fabulist representation of provincial India. *Hullabaloo in the Guava Orchard* tells the story of the Chawla family who live in Shahkot, in north India somewhere, in the foothills of the Himalayas, possibly even somewhere near Kasauli, where Anita Desai's *Fire on the Mountain* has set and which is named on page 97. Sampath, a brown birthmark on his cheek, is born to Mr Chawla and his wife, Kulfi, during a severe drought caused by a late monsoon. His birth coincides with the fortuitous arrival from the skies, a crate of Swedish Red Cross relief supplies which lands in a jamun tree outside. However, Sampath's early good fortune does not amount to anything much, at least until he takes to his guava tree. He fails at school and hardly sets the world on fire at his job as a postal clerk, until he distinguishes himself at his boss's daughter's wedding by emptying rather too many glasses of sherbet and rose water, then dropping his strides and mooning the assembled guests.

After his disgrace at the wedding, Sampath sulks at home, yearning for freedom. His mother Kulfi sympathises. She pulls his ear and offers him a guava, 'the first of the season and still a little hard' (46 *Hullabaloo in the Guava Orchard*). He asks the fruit what he should do, and; he felt it expand in response, rising under his fingertips ... before his amazed eyes, the surface of the guava rose ... and exploded in a vast Boom! Creamy flesh Haying, droplets showering high into the sky, seed scattering and hitting people on the balconies and rooftops, arid down on the street ... Sampath felt his body fill with a cool greenness, his heart swell with a mysterious wild sweetness. He felt an awake clear sap flowing within him, something quite unlike human blood . ..He could have sworn a strange new force had entered him that something new was circulating within him (47 *Hullabaloo in the Guava Orchard*).

Extraordinary fruit, these guavas. Sampath then heads for the hills, metaphorically. He etches the first bus he sees in the bazaar, 'leaving the world, a world thai made its endless revolutions towards nothing' (48 *Hullabaloo in the Guava Orchard*). Then he takes up residence in the branches of a guava tree: Concealed in the branches of the tree he had climbed, Sampath felt his breathing slow and a wave of peace and contentment overtook him. All about him the orchard was spangled with the sunshine of a November afternoon, webbed by the reflections of the shifting foliage and filled with a liquid intricacy of sun and shadow. The warmth nuzzled against his cheek like the muzzle of an animal and, as his heartbeat grew quiet, he could hear the soft popping and rustling of plants being warmed to their different scents about him. How beautiful it was here, how exactly as it should be ... And then, as the afternoons grew quick and smoky and the fruit green-gold and ripe, he'd pick a guava ... He'd hold it against his cheek and roll it in his palms so as to feel its knobbly surface with a star at its base, its scars that were rough and brown from wind and rain and the sharp beak of some careless bud. And when he finally tasted it, the fruit would not let him down; it would be the most wonderful, the most tasty guava he could

ever have eaten...Yes, he was in the right place at last. (50-51 *Hullabaloo in the Guava Orchard*)

This passage is obviously intended by Desai to explain Sampath's epiphanic perception of his place in the world from the lofty heights of his guava tree. This representation of Sampath's awareness of the minutiae of the orchard life and of his sense that life's mysteries might be contained in a single knobbly guava are not sufficiently persuasive to overwhelm my reaction that this writing is on first impressions rather cute. Sampath, like his mother, Kulfi, is a strange one, a naive, not quite an idiot servant but a wise simple man, a South Asian Forrest Gump.

Bombalapetty, Pudukkottai, Aurangabad, Tonk, Coimbatore, Koovappally, Piploo, Thimpu, Kampala, Cairo, Albuquerque. He held them [the letters] up against the light, the envelopes filled with promise, with the possibility of different worlds. He steamed them open over mugs of tea, or just prised them open, the humidity in the air having rendered the gum almost entirely in-effectual, and lazily, through the rest of the day, he perused their contents. Since he had started work in the post office, he had spent much of his time in this fashion. He had read of family feuds and love affairs, of marriages being arranged, of babies being born, of people dying and of ghosts returning, of farewells and home-comings. He had read of natural disasters, floods and earthquakes, of small trivial matters like the lack of shampoo. Of big cities and of villages much smaller than Shahkot. In some countries people took a bath only once a week and the women wore short dresses even when they were old. He picked up all sorts of interesting information. Once in a while, there were postcards sent from foreign countries to addresses in the posh local-ities of Shahkot, and Sampath sat for hours mulling over, say a picture of a palm tree by a sea as blue as if it had been dyed with paint, or of a village belle from Switzerland in a tight-laced frock and two fat yellow plaits that resembled something good to eat. Switzerland was a cold country where there was not a speck of dirt. There in the afternoon heat of Shahkot, Sampath would imagine the cold and the clean so vividly, every hair on him would stand on end (34-35 *Hullabaloo in the Guava Orchard*).

For the rest of the novel Sampath remains in his guava tree, a 'skinny, long-legged appari-tion', a man of unlikely if unfathomable wisdom (73 *Hullabaloo in the Guava Orchard*), He finds first local and then national lame, his father cashing in on the supplicants who come for advice and counsel or to hear the Sermon in the GuavaTree. The logistics of guava tree-top living do not prove too daunting for his family. Mr Chawla finds a string cot and a large striped garden umbrella which are hoisted up into the boughs for his son, who then greets his visitors 'propped against numerous cushions; tucked up, during chilly evenings, in a glamorous satin quilt covered with leopard-skin spots ... On his head ... a tea-cosy-like red woollen hat (70 *Hullabaloo in the Guava Orchard*). Sampath's meals are lifted up to him in a wooden crate using a pulley system, as are buckets of hot water for bathing and disposable earthenware pots for the calls of nature. It is satisfying to discover that a local potter delivers batches of new ones at regular intervals (72 *Hullabaloo in the Guava Orchard*).

Writing about Indian cuisine connects her international readers with what for most of us most creatively represents India in our day-to-day lives—Indian food. Kulfi is an inspired and courageous cook; her interest in food and her obsession with collecting strange and unlikely ingredients suggests a great deal about her idiosyncrasies. She is a memorable creation, a very successful character, reminiscent of some of Anita Desais individualistic women; She was producing meals so intricate, they were cooked sometimes with a hundred ingredients, balanced precariously within a complicated and delicate mesh of spices—marvellous triumphs of the complex and delicate art of seasoning. A single grain of one thing, a bud of another, a moist fingertip' dipped tightly into

a small vial and then into the bubbling pot; a thimble full, a matchbox full, a coconut shell full of dark crimson and deep violet, of dusty yellow spice, the entire concoc-tion simmered sometimes for a day or two on coals that emitted only a glimmer of faint heat or that roared like a furnace as she fanned them with a palm leaf. The meats were beaten to silk, so spiced and fragrant they clouded the senses; the sauces were full of strange hints and dark under-currents, leaving you on firm ground one moment, dragging you under the next. There were dishes with an aftertaste that exploded upon you and left you gasping a whole half-hour after you'd eaten them. Some that were delicate, with a haunting flavour that teased like the memory of something you'd once known but could no longer put your finger on (101-102 *Hullabaloo in the Guava Orchard*).

Kulfi searches the hills for bush tucker: she catches and cooks a 'pigeon and a sparrow' a woodpecker, a hoopoe, a magpie, a shrike, an oriole, a Himalayan nightingale, a parrot... She had cooked a squirrel, a porcupine, a mongoose ... the small fish in the stream .,. snails ... grasshoppers' (154 *Hullabaloo in the Guava Orchard*). As she wanders the hills searching for new taste thrills, she daydreams about becoming the royal cook of a great kingdom where she might send ouf for all kinds of extraordinary ingredients to prepare 'non-veg' meals. She calls for 'tiger meat and bear, Siberian goose and black buck. ... For turtles, terrapins, puff adders and seals. For armadillos, antelopes, zebras and whales ... elephants, hippopotamuses, yaks and cranes* macaques and ... monkeys! Monkeys! Oh, to cook a monkey!' (155 *Hullabaloo in the Guava Orchard*).

To this piquant, gently cooking curry add some further ingredients. A larrikin tribe of monkeys appears, led by the notorious Cinema Monkey, who had made his name by grab-bing at the saris of patrons attending Shahkot's cinema. They move into the orchard, grouping around Sampath like a silver-haired and graceful bodyguard' (108 *Hullabaloo in the Guava Orchard*). Add a spy, a solemn and humorist teacher by day but, lurking in and around the orchard, an undercover agent from the Atheist Society (AS) and a member of the Branch to Uncover Fraudulent Holy Men (BUFHM). Then there is Pinky, Sampath's sister, who falls in love with the Hungry Hop boy, the ice-cream seller in the bazaar. She shows her passion for her man by biting off a piece of his ear, precipitating a passionate arid turbulent relationship that runs through the novel. The monkeys discover an unquenchable taste for alcohol and begin to terrorize the town on foraging missions in search of booze. Shahkot's motley mob of academics, bureaucrats and officials, representatives of good government in his neck of the woods, must then mobilize to deal with the monkey menace.

There is a Chief Medical Officer who deals with the stress posed by the menace by putting himself on a herbal diet of fenugreek sprouts and onion juice. He writes elegantly worded memos (with carbon copies) recommending that liquor licenses for all shops and restaurants be revoked and that Shahkot become a prohibition town.

There is the Superintendent of Police who makes no plans at all to deal with the monkeys because he works out that a successful campaign might lead to his promotion, which would mean moving from Shahkot. By doing nothing, he reasons, he might even be demoted, leaving him with more time to wander the bazaar chatting with his cronies or eating golguppas in the Shahkot gardens with his wife while tickling her with flowers picked from the flowerbeds that have signs reading: 'Do not pick the flowers'. Add the head of the biology department at the local Lady Chalterji University, an expert on human-languor interaction. He is the one who advises his wife to leave the dishes in the sun to save time drying and who invents a fan to draw the monsoon clouds over Shahkot. He leaves sleeping-pill-laden food out for the monkeys, only to find that street urchins knock

off the food intended for the monkeys and sleep for up to forty-eight hours. Then there is u bird-watching Brigadier whose life will be complete when he manages to spot a green pigeon and who must lead the Indian army into battle against the monkeys.

Then a new District Collector arrives from Delhi, a very shy man, on his first posting, who descends from the train with, thirty-five pickle jars which his mother has packed for him. One of his biggest worries is the cook whom he discovers goes with the position, a custom left over from the days of the Raj, a man who will only prepare cutlets with caramel custard, who sulks when asked to cook vegetable pulao and mutton curry and who seems incapable of cleaning either the crockery or himself. While these Keystone Cops forces of law and order gather to do something about the threat to civil order posed by the monkeys, Kulfi continues to dream about cooking one. Bake it in a tandoor? Simmer and stew it? Stuff or fry it? Roll it in banana leaves; fill it into chickens or goose eggs? Mix it into a naan? Seal it in an earthen pot? Season it with saffron? Scent it with cloves? Cook it with pomegranate juice?' (181 *Hullabaloo in the Guava Orchard*). Eventually there is a plan to round up and disperse the monkeys, involving the army, the District Collector, the Chief Medical Officer and sundry other functionaries gathering ; I am with jeeps and nets and other monkey-catching paraphernalia. Naturally, things go : wrong. The DCs cook decides that very morning to resign and leave for his ancestral home. Just as the Brigadier gives the order to march out, he spots a green pigeon but in the con fusion he is unable to capture it. The CMO then informs his colleagues that he is taking vacation leave in Kasauli. The hullabaloo is considerable as the army heads to the guava ! orchard in a convoy of jeeps.

The convoy draws closer, but between them and the orchard is the Hungry Hop boy's ice-cream van. He has arranged an assignation with Pinky but now has cold feet, and while fleeing in the other direction he is arrested by the Brigadier, bound up and taken to the orchard in the back of a jeep. There they all gather under the guava trees, the langurs stirring as the dawn breaks.

Sampath has disappeared. He's metamorphosed into a guava (complete with birthmark), which the Cinema Monkey picks up and carries with him away through the treetops with his fellows, heading for the hills. Kulfi sees them pass as she collects orchids from a magnolia. The crowd gives chase, but the monkeys disappear. The spy who has hidden himself in the guava tree then falls into Kulfi's cooking pot with the spices and seasonings, herbs and fruit, a delicious gravy. The crowd hears the bough break and return to the orchard: the novel ends with them approaching the bubbling cauldron.

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Origin of Communalism in India during the Pre-independence Era: A Historical Analysis

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The word 'communalism' simply reflects a conflict between two separate and opposite religious communities. The modern period of Indian history provided a big theatre in which the act of communalism witnessed its rehearsal and enactment a thousand times. Even after more than seventy years of independence the ghost of communalism continues to haunt the Indians from time to time. News of communal flare-ups is now-a-days very common to the Indians in particular, posing a grave threat to the age-old Indian concept of 'Unity in Diversity' and shattering the social fabric of India. It is very difficult to say whether communal activities in present form existed prior to the coming of the British or not. Though wars were fought in the name of religion yet, historians of both past and present, are not unanimous in their opinion that harmony in the Indian society ever disturbed by communal tensions prior to the British ascendancy or not. We have seen so many kings both in ancient and in medieval times championing a specific religion like Buddhism, Jainism, Hinduism and Islam. But it is very difficult to ascertain whether people of different communities fought against each other on the basis of communal tension. Most of the historians are of the opinion that communalism took its roots only in the modern period of post-colonization and had nothing to do with ancient and medieval eras. In fact, during the British period, India witnessed a communal triangle where the Hindus, the Muslims and the English stood against each other.

It is a well-known fact that the British conquered India from the Muslim rulers. There is no doubt in the fact that prior to their arrival in India many fanatic and orthodox Muslim rulers carried out the policy of conversation either by hook or by crook throughout the medieval period. Thus, any sort of communal activity prior to the coming of the British was in a slumbering condition. It was the British who took benefits of difference between two separate religious communities through a well-known policy of 'Divide and Rule' and went on ruling for a period of more than two hundred years. Beyond doubt we could say that communalism has had a shattering impact on India's glorious culture, civilization and last but not the least the unity and diversities of India as a whole.

The political expansion of the British brought about a complete change in the entire power structure. Though they conquered India from the Muslim rulers yet, in course of time Muslims were relegated to the background with the rapid progress of modern age in India. Majority of the Muslims failed to keep pace with the changing times and therefore remained backward. The upper and middle class Hindus, on the other hand, gained an advantageous position as they could successfully able to keep their pace with the changing conditions and grabbing the new opportunities with both hands. The Muslim society continued to remain feudal with little or no signs of change. They hardly succeeded in coming out of the narrow channels of religious restrictions, superstitions and insular ideas. When the British East India Company opened up new vistas of jobs, a struggle appeared for jobs among various different religious communities in India educationally, politically and economically. Hindus, being more suitable with modern education, grabbed the Company's jobs with both hands leading to distrust

among the Muslims in general. The difference between the Hindus and the Muslims in India continued to grow under the British as the Muslims mostly failed to maintain their pace with changing times and appeared backward in course of time. Thus, both the communities failed to develop a common ground for trust, cooperation and mutual admiration among each other. When the Hindus developed a concept of nationalism under the British imperialism, the British cunningly played their policy of 'divide and rule' to their advantage for injecting new life into their colonial rule.

The unwanted British policies were greatly responsible for the growth of communalism in India. There is no denying in the fact that communalism flourished in India because of the whole-hearted support of the Britishers. The prevailing social, economic, cultural and political conditions also favoured the growth of communal sentiments in India. Communal tendencies started feeding the political benefits of the British. On the other hand it also stared feeding the social needs of a particular section of the Indian society. The British adopted both liberal and imperialistic policies in the post-Mutiny (1857) period. So the British policy of coercion, concession and counterpoise resulted in the growth of communalism. They exploited and utilized to their benefit every possible ideological, social and cultural difference between the Hindus and the Muslims. Communal demands, communal leaders and their organizations were always incited and extolled by the British. On the other side Muslim leaders were kept away from the mainstream Congress Party and the ground was prepared for the creation of a separate Muslim organization called Muslim League (1906) and even the Hindu Mahasabha(1915)

The revivalist tendencies in 19th century acted as a contributory factor leading to the rise of communal feelings among the Hindus and the Muslims in India. Revivalism, in fact, used to be a very general phenomenon under imperialistic governments world over. The Hindus went on comparing themselves with the original Aryans. Slogans like 'Go Back to the Vedas' and 'India for the Indians' and the famous Suddhi Movement under eminent Hindu reformers like Swami Dayanand Saraswati and Madan Mohan Malaviya vitiated the atmosphere to a great extent, shattering the concept of mutual cooperation among various other communities. Some of the Hindus regarded the medieval age as an age of barbarism, where as their Muslim counterparts looked to the history of the Arabs for pride and glory. So, at a time when the Hindus and the Muslims needed to be united in every sense, they were shown to be different people. Because of this unusual trend a hero for one appeared as the villain for the other. It was under these circumstances Mohammad Ali Jinnah's 'Two Nation's Theory' for the Hindus and the Muslims became widely popular among the conservative Muslims.

Political trends are also associated closely with the 19th century revivalism. The growing tendency of communal politics in India not only shattered the fabric of secularism in India but also created a wide chasm between the Hindus on one hand and the Muslims on the other hand. In the beginning people like Sir Sayyad Ahmed Khan and Mohammad Iqbal continued their reformist zeal without any communal bias and the reputed institutions created by them even received financial and moral support from liberal Hindus. But the formation of the Congress Party in 1885 altogether changed the atmosphere and both Hindu and Muslim organizations went on preaching communal ideologies. On one hand the majority of the Muslims developed a loyal attitude towards the British government. The inept handling of matters by the Congress Party failed to bring conservative Muslims

and their organizations that thereafter started opposing the nationalistic and democratic process.

Once communalism rose successfully in India then it got tremendous encouragement from the ruling class. Communal organizations like All India Muslim League and the All India Hindu Mahasabha played a pivotal role in this process being greatly opposed to each other's ideologies. Even Sir Sayyad Ahmed Khan and his Aligarh Movement in its latter stage brought the Muslims more closer to the British. His Scientific Society, Anglo-Oriental College, Aligarh Muslim University and Mohammedan Defense Association gradually became communal in their approach. Sir Theodore Brek, the then principal of Aligarh College openly preached communal ideas. So communal organizations made the Hindus and the Muslims distrust each other and helped in spreading communalism among the people of both Hindu and Muslim communities.

Communal ideologies could have been successfully defended by nationalistic forces during the pre-independence period had the Indian National Congress adopted some calculative measures keeping in view of dissatisfaction of Muslim leaders and community as a whole. Though the Congress Party was committed to secularism, nationalism and unity of the Indian people yet, the members of the Party failed to understand the nature of communalism. They also failed to develop a central strategy to combat the communal forces. The party failed to keep pace with the fast changing characters of communalism. The growing revivalist tendencies and the use of religious symbols acted as barriers. Even the method of granting concessions and making too many compromises added fuel to the fire of communalism. In the meantime the British government also prevented every possible settlement between different communal groups on some selfish grounds.

One of the biggest factors leading to the growth of communalism was the partition of Bengal into East and West Bengal or a Muslim and Hindu majority portions in 1905 by the then Viceroy Lord Curzon. This partition was simply a brainchild of Lord Curzon who being a shrewd politician realized the necessity of playing the card of 'divide and rule' in order to provide some extra life to the British Raj in India that had come under great threat due to increasing pressure from the Congress Party. The famous Swadeshi Movement was followed by the formation of All India Muslim League in 1906 which included eminent Muslim leaders like Agha Khan and Prince Salimullah. From the very beginning one of the basic objectives of the Muslim league was to be loyal follower of the British Government. Subsequent communal riots and the British propaganda that partition would benefit the Muslims and the revivalist tendencies appeared during the Swadeshi Movement completely poisoned the entire atmosphere.

The declaration of communal franchise and award of separate electorates in the legislative bodies as a part of Morley-Minto Reforms Act (1909) came as land mark in the history of Indian communalism. Declaration of separate electorates regarded the Muslims as a separate, distinct and monolithic community. The government prevented all possible settlements between the members of the Congress Party and the Muslim League during the famous Lucknow Pact (1916) and the Khilafat Agitation (1919). Even the Nehru Report of 1928 appeared unwanted as Muhammad Ali Jinnah repeatedly stressed on his fourteen points. Three separate Round Table Conferences in between 1930 to 1932 also failed because of growing and unsolved communal demands. By 1937 almost all the fourteen demands of Jinnah were fulfilled by the British, giving hope to a separate homeland for the Muslims in the event of independence to India in future. The creation of the *Rashtriya Swayamsevak Sangh* in 1925 also

intensified communal propagandas by leaps and bounds.

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Women As the Torch Bearers of Indian Culture in the Caribbean: A Critical Study of Naipaul's A House For Mr. Biswas.

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Human life and its existence are greatly dependent on the culture of the society. The dominant culture of the society is responsible for fine-tuning the life of the individuals. Every society has some unique features which are handed down through generations. Every community has a distinct culture since the members share similar types of values, beliefs and lead a particular life-style. Literature is the product of the dominant culture of the society and the age. It mirrors the prevailing social, economic and political power bases in the particular era. The civilization of any country gains its firm foot-hold due to the constant practices of the traditions, rituals and norms. The socio-political phenomenon like migration helps in dispersion of the seeds of ethnic practices to the places where the migrants start residing. The people who migrate to a new land are termed as diaspora and they display various shades in their behaviour ranging from staunch sustenance of the indigenous culture, flexibility and amalgamation of their inherited cultural qualities with the culture of the new land. V. S. Naipaul as a writer with a diasporic sensibility delineates the life and culture of several societies in his fictional as well as non-fictional works. His birth place, Trinidad consisted of heterogeneous groups hailing from distant races, religion and culture. The multi-ethnic milieu of the Caribbean island gives him an insight into the cultural phenomenon of the indentured society. He uses the Caribbean experience for writing in English; his stance is that of a distant observer of the life as an expatriate in London. His observations are ingenuous and objective; though they are characterized by coarse humour and biting satire. He is described by the critics as a truthful delineator of post-colonial Caribbean society. Singh writes about the theme and technique of the author in his first phase of writing in book *The novels of V.S.Naipual: Immigrant-Angst across the Seven Seas*: "The description of Trinidadian milieu and flotsam existence of the peoples of various origins and races in the postcolonial upheaval is quite farcical, satiric and even sardonic but truthful without any reservation at all." (Singh, 2011, p. 26)

The history of Indians in the Caribbean begins with the official abolition of slavery in 1838 when a second wave of "Voluntary immigration" was mobilized from India in the form of indentured labour trade. Indian immigrants settled in Surinam, Martinique, Guadeloupe, Jamaica, Trinidad and Guyana. Among them, Trinidad and Tobago Islands boast of the largest Indian population in the Caribbean. They hail mostly from the agricultural provinces of Bihar and Uttar Pradesh; they were lured with promises of better financial prospects in the new lands. Thousands of male and female farm workers migrated to the Caribbean islands to work in sugar estates. These female farm workers were the wage earners under indentureship who achieved economic independence for themselves. Many of these women workers had to suffer sexual depredation from the white overseer

class. However some of them remained restricted within the reconstituted "Indian" family structure. These women sincerely tried to preserve the Indian cultural heritage of mythology and folk-lore in the new land. They were not only votaries of the Indian cultural tradition; they preserved and shaped it afresh in the Indo-Caribbean society. Assiduous efforts of maintaining their ethnicity is one of the prime factors that can be discerned among the women characters created by the Indo-Caribbean authors in their literary works. The works of authors like Samuel Selvon, Shiva Naipaul, Seerpersad Naipaul, Roy Heath and most prominently V. S. Naipaul depict the inner essential ethnic identity which was preserved and conserved by the Indo-Caribbean women. These womenfolk tried to maintain their cultural lineage through customs, costumes, arts, culinary skills etc. The present paper is an attempt to study the cultural life of the people through the description of women characters in V. S. Naipaul's seminal work *A House for Mr. Biswas*. Since women are traditionally considered as the preserver and the carriers of culture, the study of their social life is extremely important in order to understand the cultural nuances of the society. It will be interesting to find out how the Indo-Caribbean women characters maintain their cultural legacy by preserving their food habits, religious practices, rituals ceremonies and cultural practices etc.

V. S. Naipaul's seminal work, *A House for Mr. Biswas* provides us with a panoramic view of men and women spanning three generations after indentureship and settlement in Trinidad, hence it is considered as a prose epic of the modern age. Bipti (Mr. Biswas's mother), Tara (Mr. Biswas's Aunt) and Mrs. Tulsi seem to be the representatives of the women from that phase of civilization in Trinidad which has witnessed the turbulence of indentureship and the immediate settlement of the Indo-Caribbean populace in Trinidad. Shama and the other Tulsi sisters are the carriers of Indian ethos in Trinidad which has been consciously preserved by the women of the preceding generation. Whereas Savi, Mr. Biswas's daughter is portrayed after the image of the Indo-Caribbean women from the contemporary period, who receives colonial education and goes to study abroad. As a whole, the novel provides us with an evolving image of the life of East Indian women in Trinidad.

In the first chapter, which is named as 'Pastoral' in the book, we find the description of Bipti, Mr. Biswas's mother being driven out of her house by her merciless and stingy husband Raghu. Bipti is pregnant and goes to her mother Bisoondaye along with her three children, walking all the way. Here, she gives birth to Mr. Biswas, who is born with six fingers, at an inauspicious hour that too in a wrong way. Soon, bad-luck follows; Raghu is drowned in a lake. Followed by Raghu's death, a detailed account of the Bipti's initiation into widowhood and Raghu's funeral is described in the novel; the whole act is expertly organized and managed by Tara:

Bipti was bathed. Her hair, still wet was neatly parted and parting filled with red henna. Then henna was scooped out and parting filled with charcoal dust. She was now a widow forever. Tara gave a short scream and at her signal, the other women began to wail. On Bipti's wet black hair, there were still spots of henna like drops of blood. (1969, p. p.29)

The incident holds significance in the novel, since it hints at the rituals that are followed in the Hindu community. After Raghu's death, Bipti shows her passive resignation to fate. She is completely incapable of providing any support and solace to Mr. Biswas owing to her widowhood and dependence on Tara. Traditionally, widowhood of a Hindu woman is supposed to bring the spiritual death of a woman whereby she is considered non-existent. Bipti, too, becomes morally broken and increasingly ill-tempered

owing to her poverty and dependence on Tara's charity.

Apart from this, the social history of the Caribbean reveals the fact that the Indian women have made tremendous efforts to establish and preserve cultural practices of traditional India in the Caribbean. Indian women in the Caribbean society preserved the oral cultural tradition by narrating the fables of the Hindu Gods and Goddesses, especially through the recitation of Ramayana. The reference to such practices can be found in Ramabai Espinet's conference paper titled *Singing Ramayana: the Text of Sita's Fidelity*, whereby she questions the treacherous patriarchal domination that idealizes a woman's domestic virtues such as fidelity, self-abnegation etc. In Naipaul's works, we come across the references to the female characters either promoting or blindly following the religious rituals and cultural practices in the Indo-Caribbean society. Aunt Great Belcher in *The Mystic Masseur* and Tara in *A House for Mr. Biswas* are on the top rank of the cultural advocates. Tara organizes Raghu's funeral and the ritual of Bipti's widowhood; she does it solely owing to her own reverence for the Hindu cultural practices and insistence upon the same.

Dipti's sister Tara is extremely traditional and orthodox in her attitude. She also disapproves of the idea of a Hindu wedding without dowry, and the practice of the son-in-law staying at the mother-in-law's house which is against traditional Hindu norms. According to the traditional custom, a bride should leave her house and come to stay with her in-laws after marriage. Tara displays her penetrating vision and foresight. She senses the threat of Mr. Biswas losing his identity both as an individual and as a husband in the coercive matriarchal Tulsi organization, where a person's identity is completely annihilated and absorbed into Tulsidom. Her statement, "You have got yourself into a real gum-pot.", is extremely significant and a kind of warning for Mr. Biswas. She makes him aware of the fact that all the male members from outside are leading a cowardly and oblivious existence at Hanuman House. Tara makes him cautious of the perils of succumbing to the overbearing Tulsi domination. The following conversation is extremely suggestive,"…he asked Tara, "I suppose they vex with me now over there, eh?" His tone angered her. "What's the matter? Are you afraid of them already like every other man in that place? " (p. 103)

We find the admixture of traditionalism and modernity in the character of Mrs. Tulsi which is a typical characteristic trait of East Indian people in the Caribbean. Basically Mrs. Tulsi is a traditional Hindu woman. She marries off all her fourteen daughters to proper Hindu grooms. In spite of her rigidity so far as the caste of the groom is concerned, she shows extreme flexibility regarding the wedding rituals. She marries her daughter, Shama with 'a simple little ceremony at the registrar's office', since that is both economical and modern. At Hanuman House, we find a simple organization. Although the Tulsi family has a Negro servant Miss Blackie, her duties and services are extremely vague in nature. The Tulsis exhibit Hindu attitude towards food, as the women in the family wish to contribute towards the family well-being through their control of the kitchen. By providing home-made food, they try to maintain the family equilibrium. Since the presence of a black woman in a Hindu kitchen is regarded as the violation of the sanctity of the Hindu kitchen, we find sisters themselves doing the job of cooking and serving food either at home or during some community gathering. At 'the Chase', a house-blessing ceremony is organized by Shama. It is to bless the house and the shop at the hands of Hari, the holy man at Hanuman House. We find the Tulsi sisters gathered there along with their husbands and children to cook, sing and chat to the best of their abilities. One can find an

elaborate description of cooking on this occasion which almost sounds like some ritual.

The cooking was being done, under the superintendence of Sushila, over an open fire-hole in the yard. Sisters stirred enormous black cauldrons brought for the occasion from the Hanuman House. They sweated and complained but they were happy. Though there was no need for it, some had stayed awake all the previous night, peeling potatoes, cleaning rice, cutting vegetables, singing and drinking coffee. They had prepared bin after bin of rice, bucket upon bucket of lentils and vegetables, vats of tea and coffee, volumes of chapattis. (p. 160)

It is interesting to note that Indian food and cuisine invariably holds a significant place in the life of the Indo-Caribbean people in Trinidad. It helps in the transmission and the re-establishment of Indian culture in Trinidad. Food for the Indians in the Caribbean society becomes a symbol of their 'racial otherness'. The Indo-Caribbean people especially women tried to preserve their ethnic otherness and nostalgic continuity with their homeland through diligent preservation of culinary skills from India with some adaptation of the new ingredients available in the Caribbean, Brinda Mehta in her book, *Diasporic (Dis)locations: Indo-Caribbean Women Writers Negotiate the Kala Pani* quotes Laxmi Gill's poem *Immigrant Always*, to emphasis the importance of food and culinary skills for Indian Women: "We carry our spices/each time we enter new spaces,/the feel of newness/is ginger between teeth." (p. 106)

It is observed that among the traditional women either in India or in any part of the world, food is an indicator of the gender division of labour in the family. In the book titled *The Sociology of Food: Eating, Diet and Culture* edited by Stephen Mennell, Anne Murcott and Anneke Otterloo, it is stated that, "…foodways promote a hierarchal organization of gender relations within the home by creating binary division between men, as income earners and providers of food and women as preparers and servers of food." (qtd. in *Diasporic (Dis)locations*:…, p. 118)

Beside this, we also come across the description of the celebrations of the Christian festivals along with the Hindu religious ceremonies. There are descriptions of Christmas celebrations at Hanuman House, when Sumati, one of the Tulsi daughters bakes some cakes and Chinta prepares her ice-creams that are 'tasteless and rust-rippled'. The children anticipate some gifts from Santa Clause and keep their stockings ready. At Hanuman House, all the children receive similar kinds of gifts that leave them with little reason for jealousy and contention. Downstairs, Mrs. Tulsi waits for the children at a long pitch-pine table to be kissed for the gifts. On that day, they receive special delicacies for lunch, which is followed by dinner that is extremely bad as usual.

In the Tulsi household, the brothers often perform *puja* in the prayer room. Apart from them, it is Hari, one of the brother-in-laws who performs *puja* when the brothers are not there and conducts some of the religious ceremonies for close friends and relatives. He is a pundit, both by training as well as inclination. He reads huge Hindi religious book by placing it on a stylishly carved Kashmiri book-rest. It is an accepted fact in Hanuman House that Hari is a sick man, who spends long hours in the latrine and this makes Mr. Biswas sardonically call him 'the constipated holy man'. Hari's physical weakness symbolically reflects the weakened hold of Hindu religious ethos and practices at Hanuman House. After his death, the existing religious ethos in the family turn decrepit and invalid. We read about Chinta who is the first woman in the family to set the target of reading the Ramayana from beginning to end. She often reads the holy books in the leisurely hours of the afternoon when the

other sisters are playing cards. In the midst of this religious practice, she finds herself incapable of resisting the temptation of card-playing and eventually plays a hand or two. In the novel, Naipaul describes the occasion in a highly satirical manner,

Chinta was reading the Ramayana;…Occasionally card-players chuckled. Chinta was sometimes called to look at the cards one sister had; often the temptation was too great,...she played it, throwing down the winning card with the crack she could do so well, then, still silent, going to the Ramayana. (p. 307)

Thus, the occasion furnishes the example of rituals done without any conviction, that too, in the most mechanical manner.

Apart from this, we find the East Indian women acting as the transmitting agents of Indian culture in Trinidad. They weave the web of interpersonal relationships among themselves in order to perpetuate Hindu cultural practices in the Caribbean island. Among the women characters portrayed by Naipaul, Aunt Great Belcher and Tara are at the top ladder as the cultural advocates. In this context, the famous West Indian critic Ameena Gafoor, in her article titled "The Depiction of Indo-Caribbean Female Experience by The Regional Woman Writers" writes:

Caribbean Indian women have struggled to achieve, not self-integration, but the security and integration of the family unit…the Caribbean Indian nuclear family is matriarchal in nature although patri-archal in appearance. The crucial role played by the woman is ambivalent, in that she is not the location of power, and her status is devoid of opportunities for independence. Yet she wields an unquestionable influence in the home and in the consolidation of the family. If the preservation of the family unit is any indicator of the stability and wholeness of society, then the fictional Indian Caribbean woman has made a significant contribution to the social and spiritual development of the plural Creole society. . (p.p.128-129)

It is observed that Naipaul is sensitive in his portrayal of traditional Indian women since he feels a sense of kinship with them. The author seems to respect the selfless attitude of the women from his community who contribute for the well-being of the family. The welfare of the society strongly depends on solidarity of the family units. On studying the life of the women from the Indo-Caribbean society in the fictional as well as non-fictional work of Naipaul, we learn that the East Indian women in the Caribbean have immensely contributed to the establishment of their community in the alien land by perpetuating Indian cultural values in their family life.

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Demonetisation: A Boon Or Bane for Indian Economy !

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Abstract:-

This paper is an attempt to study the basic concept of Demonetization and its impact on the Indian economy which aims at sustainable development in India. On 8th November, 2016 Indian economy witnessed a reform that was unprecedented and aimed towards changing the socio-economic picture of the nation in the long run. The reform was coined as 'Demonetization'. In simple words it talked about a paradigm known as 'currency Reforms'. In basic sense demonetization means an act of stripping a currency unit of its status as legal tender. Demonetization is necessary whenever there is a change initiated in existing national currency. The old unit of currency must be retired and replaced with a new currency. The present paper explains the impact of demonetization on Indian urban and rural economy which has tremendous influence on overall India's economic structure. It has a very insightful impact on both Indian urban and rural life. As a result today one can observe that demonetization has shown remarkable impact on India's existing monetary system.

Keywords: **Rural, economy, currency, sustainable, development, demonetization, legal tender, digital payment, tax evasion.**

INTRODUCTION

On 8th November, 2016, the world's largest demonetization happened in India. Hon'ble Prime Minister Shri. Naredndra Modi in his address to the nation announced that in order to put a check and curb the parallel black money economy prevailing in India and also to prevent channelization of money in unproductive areas like terrorism, the step of demonetization has been taken by the Indian Government. The move was initiated to revitalize the Indian economy and bring it out of the dungeon of circulation of fake currency. Indian government has demonetized the high value currency notes of 500 & 1000 with the objective to control the black money, and to overcome the problem of corruption, counterfeit currency as well as financing the terrorist activities. This decision of the government is considered as biggest cleanliness drive against the black money in the history of Indian economy. It is a major decision and it had a big hit to all the citizens of the country because overnight all the money that one has become a piece of paper which has no value if it is not exchanged in a stipulated time.

Government of India had demonetized bank notes on two prior occasions (i.e once in 1946 and then again in 1978) and in both cases, the very purpose was to fight against the problem of heavy tax evasion and quantum of black money outside the formal economic system. The Central Board of Direct Taxes had recommended that demonetization is not a better solution to deal with the problem of tax evasion and

black money because it is largely held by the public in the form of benami properties, bullion and jewellery.But still the government has adopted the policy of demonetization due to the fact that on 28th October,2016 the total Bank notes in circulation in India was 17.77 trillion and as per RBI statistics nearly 86% of total circulated currency is in 500 and 1000 rupee notes. So the policy of demonetization has huge impact on Indian economy and is one of the sources of curtailing bad things of economy.

This paper entitled, "Demonetization: A boon or bane for Indian Economy" focuses mainly on the phenomena of demonetization which has brought drastic change in the economy of developing country like India. It has no doubt that the decision of demonetization has great impact on every class of people in India but it is the common man, daily wage earners and casual labour which had face a sever hit. Many economist and financial thinkers are of the view that it is the common man who is going to pay the price and they are the real sufferers.

OBJECTIVES

1. To study and understand the concept of demonetization.
2. To discuss the possible advantages and disadvantages of demonetization policy of the government.
3. To study the impact of demonetization on Indian economy especially on common man.
4. To suggest the measures to make demonetization policy effective.

Scope and Limitation:

This research paper focuses mainly on the concept of demonetization and its advantages and disadvantages in broad terms.

Research Methodology:

The present research paper is purely based on the secondary data which is collected from reference books, websites, published books and journals etc.

ADVANTAGES OF DEMONETIZATION

1. Black Money:-

The first and the foremost advantage of demonetization is a control over the issuing of black money in the economy. Black money stored in the form of Rs 500 and Rs 1000 notes has been taken out of our system through the policy of demonetization.. As predicted by ICICI Securities Primary Dealership the government's plan to scrap Rs 500 and Rs 1000 notes will uncover to Rs 4.6 lakh crores in black money.

2. Funding to Terrorist:-

One of the major advantages of demonetization is a sudden break to funding of terrorist activities through fake currency. Fake Indian Currency Notes (FICN) network has been dismantled by the demonetization measures. Taking out 500 and 1000 rupee note out of circulation have a lasting impact on the syndicates producing FICN's, thus affecting the funding of terror networks in Jammu and Kashmir, North-eastern states and Naxalite hit states. Move has also helped the government to fight menace of Black money and help in to root out counterfeit currency being circulated by non-state actors in India.

3. Significant course correction in Real estate:-

The demonetization decision is expected to have far reaching effects on real estate. Resale transactions in the real estate sector often have a significant cash component as it reduces incidence of capital gains tax. Black money was responsible for sharp appreciation of properties in metros; real estate prices may now see a sharp drop. The recent decision of builders from Mumbai and Pune to reduce the prices of fully constructed flats by 20 to 30% shows the positive There is currently a lot of debate happening on how government's demonetization move will impact the real estate sector. The NIFTY Realty Index fell by almost 12% as a reflection, purely

on sentiment. The fear it has produced is unpredictable. There will be a minimum impact on office/ industrial leasing and transactions, given that cash components do not play a significant role in such transactions. The primary sales segment is largely by home finance players, and deals tend to be facilitated in a transparent manner. This segment will, therefore, see at best a limited impact in the larger cities, through some tier 2 and tier 3 cities where cash components have been factor even in primary sales will see a business crunch. The secondary or resale market will, however, certainly be impacted, since this segment does see the involvement of cash component.

4. Political parties in crisis ahead of polls

With nearly five state elections in 2017, demonetization has stunned political parties. Especially, in large states like Punjab and Uttar Pradesh, cash donations are a huge part of "election management". In one stroke, big parties will find themselves hamstrung as cash hoards are often undeclared money. Parties will have to completely restrict the campaign strategies in light of expected cash crunch.

5. Shifting of economy to cash less and promoting digital payments:-

Demonetization is likely to result in people adopting virtual wallets such as Paytm, Ola Money etc. The announcement that currency notes of Rs. 500 and Rs. 1000 denomination would no longer be legal tender has brought down the currency in circulation by 85 per cent. It now appears that it would take several weeks to replace the Rs. 15 trillion of currency demonetized. In assessing the impact of this development on the economy and the markets, Indian economy is in an uncharted territory. At least in recent memory, there seems to be no precedent globally of a country attempting this. In the often cited 1978 episode in India, the demonetized notes were just 1.6 per cent currency in circulation by value, and therefore not as significant for the broader economy.

6. **Developers**: There will be minimal impact on large institutionalized players with a solid brand and governance framework. Sales, largely driven by the salaried class or investors with limited cash involvement would not suffer. Smaller developers are understandably very concerned right now because many of them have depended on cash transactions. It is likely to see a clean-up of non-serious players due to this 'surgical strike' on the parallel economy.

As most of the unaccounted wealth is particular widespread in real estate sector, the central government's this decision on note ban is expected to cause problem for developers. As there will be the liquidity stress on them, they may slow down the construction works and it would eventually increase the number of residential projects getting delayed on its completion.

The government has pulled off arguably the most significant reform measure in its tenure. While this expeditious move to boldly counter the black money and parallel economy threat is likely to have significant repercussions, importantly, this effort will have a visible impact on how the current government's policies are perceived in international circles of economic power. Most of the macroeconomic impact will be felt in the short-term, though there are larger implications in the medium to long-term.

DISADVANTAGES OF DEMONETIZATION:

1. **Recession in Tourism**:-
   The policy of demonetization has negative impact on tourism sector. The sudden decision has slow down the tourism business and had large impact on economy of tourism.

2. **Cash crunch**:-
   There is a huge cash crunch. As, the small denomination are accounted to only 14 to 15% of the total currency in the market, more and more small denominations would have been supplied. The currency may not be

supplied in a large number, due to the ideology of digitalizing the currency.

3. Economic slowdown:

The major industries like real estate, infra, gold etc. have been affected and sales would come down and that impacts the growth of the economy. Many transactions have been halted, until the markets get no clarity on how to go ahead in terms of buying a land or a house. Government has to come up with some sort of awareness campaigns about how the future of real estate could be seen, whether any new laws comes in to picture, if customers has to wait or may go ahead and buy them is a great challenge before India's common man.

4. Corruption at different levels:-

This step proved that, given a chance, every individual is prone to corruption. Indian banking system is supposed to be one of the most stable, rigid and strongest across the globe. Our banking system is so stronger that it could even face and withstand the global recession in 2008, but all that reputation is at stake now. This bold step leads to many banking frauds and illegal transactions across the country. Bankers, currency been supplied illegally. Also, poor people are prone to corruption. There are huge deposits in Jan Dhan accounts, bank accounts of poor people, which shows even poor people are corrupted and are ready to save the corrupted. So, given a chance, at least 95% of people are prone to corruption. We expect a very serious action with respect to banking frauds, as we common people are facing the trouble and can't afford to see things happen this way. But, it is the responsibility of the government to take out all the law breakers in order to gain the credibility, as it shouldn't be very difficult to track the new currency as it is just a few months old.

5. The new digital Laws:-

A step towards a cashless economy is a great step, but government has to bring in more laws, that help people understand about the safety in digital banking. It is the government's responsibility to make people aware about, how safe and good, the digital banking is. There are high charges now for digital transactions like as POS, Internet banking etc., which has to come down.

6. Recalibration of ATM's:

Recalibrating of ATM's was not done at a great pace as it has to be done in such critical situation. May be cash crunch and recalibration of ATM are both intentionally done in order get people into digital mode.

7. **Agriculture and Related sector**:-

Small and marginal farmers who are generally fruits and vegetable vendors typically require off-loading of their produce in the local market in cash and could see an immediate impact. A sudden demonetization has adverse impact on this segment of the economy and witnessed immediate contraction.

CONCLUSION:

The main objective of demonetization decision is to eliminate the corruption from India, i.e.to make India corruption free. Though the objective is good but there is the problem in the system of implementation. The impact of demonetization on Indian urban and rural economy has tremendous influence which is both positive as well as negative. It is claimed that demonetization will increases the economic prosperity and opportunity in the developing world. It will contribute a lot towards the more efficient use of resources and corruption free economy. As a result, there are lower prices, more employment and a better standard of life can be achieved in rural area with the proper implementation policy measures. The impact of demonetization on Indian rural economy has shaped the modern India into more competitive

economy. Rural economy is the pillar of India's economic development. Despite the inconvenience caused people are supportive of the move as the measure taken would help to eradicate corruption and would certainly revolutionize the Indian economy in long run. If handled properly and followed up by successive reforms by enactment of stricter legislation, the demonetization policy is going to be a blessing for Indian economy. The demonetization measure gives a valuable message that the country people need to be well versed in non cash transactions. It will help us to move towards a cashless economy.

As rightly said, **"Change is an unchanging law of nature".** Let us accept the change and joined hand together for corruption free economy.

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Critical Evaluation on the Appointment and Removal of Governors of States in India in the Light of Supreme Court and Various Commissions

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Introduction: The office of governor has faced much ire in independent India with an abrupt removal and resignations of various governors during the past decades.

Due to the unclear procedure of appointment and removal of governor, as mentioned in the constitution, the ruling parties over time have used the office as a way to reward loyalists, by removing the person appointed to the post, by the previous ruling party. Such exercise does put the dignity of the office of the governor to question, but we also know that it is necessary for consensus to occur between the Governor and the ruling party in a state, so as to ensure the smooth functioning of the state administration.[1]

Most of the time, the governors are ruling party loyalists, and there is a chance that they may not agree with some policies of different party. To avoid such happenings, the Supreme Court and other commissions and committees gave certain recommendations from time to time.

The main issue regarding the appointment of the Governor is whether he should be elected or appointed. He is not elected due to the following reasons:

If the Governor of the state is elected directly by the people of the state, his position would not be a Constitutional head and will be that of a real head. This can result in a friction between the council of ministers in the state and the governor.[2]

If the governor of the state is elected by the elected representatives of the state assembly, there are possibilities the Governor rather than being impartial may become the pawn of the political parties. That suggests his/her victory in the Governor 'elections.

Recently, the new government sought the resignations and transfers of the governors appointed by the previous regime. Article 156 states that the Governor can hold the office for maximum tenure of five years, and he/she holds the office during the pleasure of the President.

As per Article 155 and 156, Governor of a state is appointee of the President and he holds the office until the pleasure of the President is maintained on him but in reality governor is appointed by Central government because President acts according to the aid and advice of the Central government (Article 74).

Recommendations of various committees on the appointment and removal of governor:

1. Sarkaria Commission- (1988)

Recommended that governor should not be removed before the completion of tenure, except in rare and compelling circumstances and he must be informed on what ground he had lost his governorship. It further noted that frequent removals and transfers of governors before the end of the tenure have lowered the prestige of the office.

2. Venkatachaliah Commission- (2002)

Recommended to allow governor to complete five years term and if removed it should be done by the central government after consulting Chief Minister of the respective state

3. Puncchi Commission- (2010)

Suggested that the phrase "during the pleasure of the President" should be deleted from the Constitution and he should be removed only after the resolution of the State Legislature.

But none of these recommendations had been accepted by the successive governments.

4. The Rajmannar Commission-(1971)

In 1969, the Tamil Nadu government appointed Rajmannar Commission to look into the smooth working of centre-state relations. It demanded readjustment of the VII schedule and residuary powers to the states.

Secondly, it suggested setting of an Inter-State council .

Thirdly, it stressed on setting of a finance commission as a permanent body.

Fourthly, it focused on deletion of Articles 356, 357 and 360, which dealt with the President rule.

Sixthly, abolition of All-India Services (IAS, IPS and IFS)

Further, it suggested planning commission to be replaced by a statutory body.

It also recommended that the governors should not be removed except under proved misbehavior or incapacity after inquiry by the Supreme Court.

The central government completely ignored its recommendations.

5. Anandpur Sahib Resolution-(1973)

In 1978, the Akali Dal came out with a controversial resolution called the Anandpur Sahib Resolution. It demanded greater autonomy for the States seeking Centre's authority to be confined to only Defence, Foreign relation, Communications, Railways and Currency. It also demanded residuary powers of the state. In the decade of 1980, as the regional parties became very assertive, they put forth the demand for State autonomy in an organized manner. Their 'Conclaves' were held at Vijaywada, Delhi and Srinagar which raised the demand for redefining the Centre-States relations. But the Central government did not accept these recommendations.

6. Bengal Memorandum (1977)-

In December 1977, the Communist government in West Bengal published a memorandum called the West Bengal Memorandum which made the following recommendations:

- The word 'union' in the constitution should be replaced by the word 'federal'.
- The centre's jurisdiction to be restricted to only defence, foreign affairs, communications and economic co-ordination of Articles 356, 357 and 360.
- Rajya Sabha to have equal powers with that of the Lok Sabha.
- Abolition of All-India services.
- Seventy five percent (75%) of the revenue raised by the centre should be allocated to the states.

7. NCRWC-

The National Commission to Review the Working of the Constitution opined that the President should appoint the Governor of State after consultation of Chief Minister. Normally five years tenure should be adhered to, and removal or transfer must also be done in consultation with Chief Minister of State. Both above recommendations are yet not applied, centre don't want to give away control of states (indirectly).[3]

Supreme Court had not given any opinion regarding the appointment of the governor but given in respect of the removal in 2010, also considered the recommendations of the Sarkaria Commission and NCRWC during case in **B.P. Singhal Vs. Union of India,** [4] and stated that arbitrary removal or transfers of Governors is arbitrary, capricious or unfortunate unconstitutional or unfortunate if the aggrieved party approaches the court. Its recent

verdict only cautions that the pleasure of the President cannot be withdrawn on grounds of political incompatibility or any arbitrary grounds. It does not provide any pre-emptive relief, but only asserts the jurisdiction of the court to look into the matter post-facto if the aggrieved were to approach the court.

Secondly, a change in central government cannot be a cause of removal of governors.

Thirdly, a decision to remove governors can be challenged in the court of law, removing the President as the sole authority to decide on removal of governors.

Similar types of recommendations are stated by Puncchi Commission to remove the term "Pleasure of President".

Analysis of Governor's role in Government- While the President of India is 'elected', the governor is 'selected' by the incumbent central government. [5] That's why there have been many instances when governors pointed by previous government are removed by an incoming government. The reasons are more political. The Supreme Court has ruled that governors should be given security of term but this is generally not adhered to.

Political observers have described governorship as "plush old age homes" wherein the governor does not stay impartial and act against popular state leaders.[6]

In the context of recent example of Arunachal Pradesh issue, it is a good event in Indian polity by giving a strong message to the state governors that they shouldn't come under the influence of the ruling party at the centre to commit unconstitutional acts.[7]

Most importantly, appointment and removal procedure looks like Viceroy appointing his plenipotentiary in the provinces. There is serious need to bring change in order to evolve real "co-operative federalism".

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