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A Legal Study of Sustainability in Public Health

Dr. Lily Srivastava[1]

I. INTRODUCTION

According to World Health Organization Report (2000) 'Health Care' is defined as the prevention, treatment and management of illness and the preservation of health through the services offered by the medical, nursing and allied health professions, so healthcare embraces all the goods and services designed to promote health, including "preventive, curative and palliative interventions, whether directed to individuals or to populations".

The concept of "Sustainability" has changed in recent times, it become more comprehensive and deep, beyond the imagination of the Brundtland Report, 1985. Here sustainability means: "that the necessity of the present generation are fulfilled without compromising the ability of future generations to meet their own needs". The word draws inspiration from all aspects of human endeavor. Its usefulness to health, health care, its management, assessment, planning,evaluation and procedural ethos is thus not misplaced.

Sustainable Development Goal 3 (SDG3) commitment is to make sure that health and well-being for all people, at every span of life. The Goal declares all major health prefernces in child health, women's reproductive, and maternal health; environmental and communicable or non-communicable diseases including universal health coverage; avialable for all to be safe, effective, quality and affordable medicines including vaccines.

It also expresses for further research and development, increased health finance budget, and strengthened capacity of all nations in health risk reduction, management and prevention plans. The Sustainable Development (Agenda for 2030) and

Sustainable Development Goals 17 present a promising agenda for building a better world. Health and well-being are specifically reached through SDG3, which calls for promotion and efforts, to make sure that healthy lives and well-being for everyone at

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every stage of life[2]. Achieving the SDG3 aims about *leaving no one behind*, can only be completed through Primary Health Centre.

In the 21st century, health and sustainable development hold dominant position in everyone's life. Health and sustainability are the different faces of the same coin, they supplement and complement each other.. The purpose of SDG 3 is to " ensure healthy lives and promote well being for all at all ages".

"*Health equity cannot be concerned only with health ,seen in isolation. Rather it must come to grips with the larger issue of fairness and justice in social arrangements, including economic allocations, paying appropriate attention to the role of Health and Human life and freedom. Health equity is most certainly not just about the distribution of health ,not to mention the even narrower focus on the distribution of healthcare*".

– Amartya Sen, 2002

The concept of sustainable development revolves around awareness of the environment, social and economic limitation that an individual face in everyday life. To ensures a healthy and just society, which tends to meet necessity of the people in coming future communities. Sustainable development deals with the four dimensions that is society, environment ,culture and economy. Sustainable development is also known as those global goals that ensures by 2030 that all people enjoy peace and prosperity.

II. INTERNATIONAL BACKGROUND

The Universal Dclaration of Human Rights [Article 25(1)] states "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services." The International Covenant on Economic, Social and Cultural rights (ICESCR-Article 12) states " to the right of everyone to the highest attainable standard of health".

The conceptualisation, and implementation of national health blueprint and plans of action should respect, altogether the principles of non-discrimination and people's participation[3]. It is well recognized that civil and political rights are part of the social determinants of health.

International Health Regulations, 2005 -placed several obligations on the concerning Article 5, 6, and 7 in developing disease-related events, public health emergency,

2. Transforming our world: the 2030 Agenda for Sustainable Development. New York: United Nation United Nations; 2015 (https://sustainabledevelopment.un.org/post2015/transformingourworld)
3. The United Nations Committee on Economic, Social and Cultural Rights, which monitors the implementation of the ICESCR, has noted in para. 54

national health surveillance, and response capacities and share information on occurrences of public health and chronic diseases.

Article 5: "detect and notify WHO about a range of ***disease-related events*** occurring within their territory that may constitute a public health emergency of international concern".

Article 6: "inform the WHO of public health concerns outside their territory, which WHO in turn will verify through ***surveillance activities*** with the respective national IHR focal points".

Article 7: "ensure that national health surveillance and ***response capacitie*****s** meet certain functional criteria, within a certain time frame, especially at points of entry such as airports, sea-ports and ground crossings"

The WHO Report on International Health Regulations, 2005 "identified numerous public health legislation to combat biological, chemical, and radio-nuclear hazards at the level of entry, control, and mitigation"[4]. These laws own a potential impact in regulation at source and entry point into the Indian territory[5]

III. DOMESTIC POLICY

Constitutional Provisions related to Human Right to health in India

The Constitution of India makes detailed provisions regarding human right to health. The provisions relating to health are enshrined in directive principles of state policy in Article 39, 41, 42, 43 & 47, 48A and Art 14,1 5, 16, 17, 19, 20, 21 of the Constitution.

A. Article 39(e). "The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused."

B. Article 47. "Duty of the State to raise the level of nutrition and the standard of living and to improve the public health"

C. Article 43. "Living etc. for Workers".

D. Article 39- A. "Equal Justice and Free Legal Aid"

Equality before Law: Art [14to 17] "The State shall not deny to any person equality before the law or there equal protection of the laws within the territory of India"[6].

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4. Nomani, M.Z.M. (2004). *Legal control of radiation pollution, New Delhi*: Regency Publication; pp.132-143.
5. Nomani et al. / Legal Dimensions of Public Health with Special Reference to COVID-19, *Pandemic in IndiaSystematic Reviews in Pharmacy* Vol 11, Issue 7, July-Aug 2020
6. Article 15 of the Constitution of India deals with prohibition of discrimination on grounds of religion, race, caste, sex,. Or place of birth. Article 16 deals with equality of opportunity in matters of public employment. Article 17 deals with abolition of untouchability. Article 18 deals with abolition of titles.

Justice V. R. Krishna Iyer has made a valuable observation with the provisions of Article 14 & its relation with human right to health:

"The fundamental right of every person to equal protection of the law (Art. 14) is a mandate to the Executive and Legislature to use their powers to protect the citizen's equal right to health, be he rich or poor, be he primitive tribal or city-dweller".[7]

The constitutional mandate under article 246 read with 7th Schedule distribute matters between the Union and the States and their power to legislate. Under the seventh schedule the Union List or List I contains certain provisions dealing with health. Under State List or List II Entry 6 contains "Public health and sanitation; hospitals and dispensaries".

According to Indian Constitution, India is a welfare state, it is the prime duty of the each fedration to protect rights and health of its citizen. Health is a state subject under Constitution . The Indian constitution provides *Article 21 which states that "no person shall be deprived of life or personal liberty"*. The Apex court later overruled the judgment given in A.K Gopalan's case and widened the spectrum of Article 21, and as per the judgement given in "Maneka Gandhi v. Union of India"[8], the Supreme Court states that article 21 is controlled by article 19. The court elaborated that the "right to life is not merely confined to physical existence but it includes the right to live with human dignity". The aforesaid judgement by the apex court includes various aspects of the right to life and personal liberty. As per this judgement, it is obvious that health and sustainable development is one of the major attributes of the right to life.Right to health has been declared as fundamental rights in number of judicial interpretation.The Apex Court **In Suo Motu Writ Petition (Civil) No.7 of 2020** directed to the authorities- "Right to health includes affordable treatment. Therefore, it is the duty upon the State to make provisions for affordable treatment and more and more provisions in the hospitals to be run by the State and/or local administration are made. It cannot be disputed that for whatever reasons the treatment has become costlier and costlier and it is not affordable to the common people at all. Even if one survives from COVID-19, many times financially and economically he is finished."[9]

National Health Policy, 2017

The primary objective of the policy is "to inform, clarify, strengthen and prioritize the role of the Government in shaping health systems in all its dimensions- investments in health, organization of healthcare services, prevention of diseases and promotion of

7. Justice Iyer V.R. Krishna, *The Dialectics and Dynamics of Human Rights in India* (Yesterday, Today and Tomorrow), (Eastern Law House Calcutta) at 306-307 (1999).
8. AIR 1978 SC 597
9. IN RE: THE PROPER TREATMENT OF COVID 19 PATIENTS AND DIGNIFIED HANDLING OF DEAD BODIES IN THE HOSPITALS ETC. (SUO MOTU WRIT PETITION (CIVIL) NO.7 OF 2020)

good health through cross sectoral actions, access to technologies, developing human resources, encouraging medical pluralism, building knowledge base, developing better financial protection strategies, strengthening regulation and health assurance".

The recommendation of the National Health Policy, 2017 has been in favour of stronger Primary health care and establishing the 'Health and Wellness Centres' for comprehensive health care from base line with two thirds of the health budget. for overhauling of primary health care.

> The Operational Guidelines for Comprehensive Primary Health Care through Health and Wellness Centres, we hope it will make major milestone in the history of public health in India.

The Disaster Management Act of 2005[10] was never designed to cater to health emergencies. This is evident from the definition of "Disaster" in Section 2-(d) of the said Act: "(d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area." This definition does not suggest a medical emergency, except perhaps by a loose interpretation. Similarly, the two sections of the said Act under which notifications have been issued, namely Section 6 (2) I and Section 10 (2) I, are both supplemental sections to the substantive provisions of this Act.

Further, Sections 6 (1) & (2) read as follows:

Powers and functions of National Authority: "(1) Subject to the provisions of this Act, the National Authority shall have the responsibility for laying down the policies, plans and guidelines for disaster management for ensuring timely and effective response to disaster".

(2) Without prejudice to generality of the provisions contained in sub-section (1)- and sub section i reads as (i)" take such other measures for the prevention of disaster, or the mitigation, or preparedness and capacity building for dealing with the threatening disaster situation or disaster as it may consider necessary".

Similarly, Section 10 (2) I states:

(i) "evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness".

10. The Disaster Management Act, 2005, Disaster Management Division, Ministry of Home Affairs, Government of India.

This analysis of the lacunae in the existing 1897 law, and the illustration of global best examples, make it clear that India is short of a legal architecture to effectively fight a pandemic like COVID-19. Without an updated and comprehensive law on health emergencies, the state governments are resorting to the use of Section 144 of the Indian Penal Code and other draconian laws.[11]

The Indian Government in February 2018, announced Ayushman Bharat Program (ABP) with two components of

(a) Health and Wellness Centres (HWCs), to deliver comprehensive primary health care (PHC) services to the entire population

(b) Pradhan Mantri Jan Arogya Yojana (PMJAY) for improving access to hospitalization services at secondary and tertiary level health facilities for bottom 40% of total population.[12]

The National Health Protection Scheme (Ayushman Bharat) was launched to cover the health expenditures of secondary and tertiary care of people living below the poverty lines. Opening of Jana Aushadhi Kendra which is a chain of pharmacy stores to provide medicines at doorsteps. These measures testify to the Indian government's commitments towards the targets set up by sustainable development goals[13].

The use of pharmaceutical drugs in India is governed by the *Drugs and Cosmetics Act and the New Drugs and Clinical Trials Rules, 2019* ("NDCT Rules").

This regulatory framework lays down the requirements that must be met before 'new drugs' are made available in the market.

"New drugs include drugs that have not been approved as safe and efficacious by the Central Licensing Authority, i.e. the Drugs Controller General of India ("DCGI"), drugs approved by this Authority for certain claims, but proposed to be marketed with modified or new claims, fixed dose combinations of two or more drugs, a modified or sustained release form of a drug or a novel drug delivery system, and vaccines."[14]

The National Ethical Guidelines for Biomedical and Health Research Involving Human Participants 2017 have provision "on the use of unapproved drugs. Monitored emergency use of unregistered and experimental interventions_("MEURI") may be approved during the outbreak of infectious diseases, if scientific and ethics review

11. Tewari Manish"India's Fight against Health Emergencies: In Search of a Legal Architecture," *ORF Issue Brief No. 349*, March 2020, Observer Research Foundation.
12. Lahariya Chandrakant: Health & Wellness Centers to Strengthen Primary Health Care in India: Concept, Progress and Ways Forward: *Indian J Pediatr* published online 8 July 2020
13. Rashidian A. Effective health information systems for delivering the Sustainable Development Goals and the universal health coverage agenda. *Eastern Mediterranean Health Journal* (EMHJ). 2019;25(12):849-851
14. Rule 2(w), New Drugs and Clinical Trials Rules, 2019.

has been conducted by a national level ethics committee and there is a supervision by a local ethics committee'.

Informed consent is a mandotry in this type of drug use.

National Medical Commission Act, 2019 - is a central legislative enactment with twin objectives of increasing healthcare access for masses and for doing away with the colonially designed Medical Council of India. The new legislation is focused on 'public health' in all its disease prevention and health promotion aspects, lessening the emphasis on 'disease' and 'cure' which talks of individualism and promotes capitalism largely.

[The Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019 prohibits acts of violence committed against healthcare service personnel, including doctors, nurses, para medical workers. It also protect damage to hospitals, clinics, and property defines under Clinical Establishment and (Registration and Regulation) Act, 2010 [15].

It proposed assault on doctors and healthcare professionals a non-bailable offence prescribing imprisonment for a term to 10 years but unfortunately did not mature into law. During the COVID-19 induced lockdown, I, II, and III, the medical and paramedical forces confronted harassment and violence by the public in flagrant violation of sections 188, 269, 270, 271 of Indian Penal Code, 1860 and Section 4 of the Epidemic Diseases Act, 1897. Therefore, the President under Article 123 of the Constitution of India, 1950, promulgated the Epidemic Diseases (Amendment) Ordinance, 2020[16] to avoid violence to health care professionals.

Consumer Protection Act, 2019 ("**CPA 2019")**

The CPA 2019 will apply to the pharmaceutical, medical device and healthcare sector as well.[17]

Central Consumer Protection Authority CCPA is empowered to promote & enforce the rights of the consumers, regulate misleading advertisements, and impose penalties for false and misleading claims.[18]

Government of India recently notified Consumer Protection (E-Commerce) Rules, 2020**, ("E-Commerce Rules, 2020)**[19] CPA 2019 adds three types of practices to the existing list namely:

15. Explaining the draft Bill on violence against healthcare professionals and clinical establishments; Available at: https://www.prsindia.org/theprsblog/explaining-draftbill-violence-against-healthcare-professionals-andclinical
16. The Epidemic Diseases (Amendment) Ordinance, 2020 (prsindia.org)
17. Notified in the Official Gazette by the Government of India, on 9th August 2019
18. *Notification, S.O 2422 (E), dated 23.07.2020, Ministry of Consumer Affairs, Food and Public Distribution (GOI). Available at* - https://consumeraffairs.nic.in/sites/default/files/Estt%20of%20CCPA.pdf
19. E-Commerce Rules, 2020 are applicable to inventory e-commerce entities market-place e-commerce entities.

i. failure to issue a bill or receipt;
ii. refusal to accept a good returned within 30 days; and
iii. disclosure of personal information given in confidence unless required by law or in the public interest.

The addition of 'unfair contracts' under the CPA, 2019 has extended the grounds for filing complaints by the consumers.

IV. CRITICAL REVIEW OF THE HEALTH CARE LAWS

In this section of the research paper we have attempted to analysis of the some *recent existing statutes* in relation to health care in India and access the need for some sensitive legislation. Specifically an anlysed recent legislations in connection with sustainability. Public health law reform is necessary because some are old and contain multiple layers of regulation, against the present needs of the society.

Public health of the population should be protected due to three main reasons;

1. India is a signatory in international human rights conventions as well as party in International conventions related health, like World Health Organisation (WHO)
2. Ethical and moral duty for providing justice to the citizens which includes —

A. *Autonomy*: Respect for an individual's autonomy or ability to make decisions for him/herself.

B. *Beneficence:* This refers to the tradition of acting always in the patients' best interest to maximise benefits and minimise harm

C. *Non-Maleficence (not harm)*- This principle ensures that treatment or research ought not to produce harm

D. *Justice*- This denotes the need to treat all people equally and fairly[distributive justice].

E. *Veracity*: truth telling.

F. *No Negligence.*

G. *Human Rights Issue*

H. *And Patient's informed consent* – is also necessary, the essential ingrediants are-

1. Competancy to understand and take decision ,
2. Complete , comprehensive disclosure of the fact,
3. Voluntarily action and
4. Consents for the medical or surgical or for reserch purposes

I. Confidentiality *of patient's health information*

J. *Ethics of cost/benefit*- analyses during pandemic or in Emergency health care

K. Some Important point to consider

- Health informatics ethics is a combination of medical ethics and information ethics.
- Right to privacy for Personal health information. It must be accurate, adequate, relevant,
- Legal norms and liability towards documentation.
- The growing use of AI and robotics also raises issues of healthcare technology ethics[20].

The right are being implemented by laws. Norms form Laws that are used to ascertain standards and govern the various organizations. The first and foremost duty of domestic law is to take care of the health safety and welfare of the population. the government makes rules and laws to implement for various functions that leads to upliftment of health conditions of this state.

The international rules so established had an effect on health conditions. There are various international health related rights such as right to health, right to privacy and right for non-discrimination. These right are also being recognised by the domestic laws and essential rules are made for their implementation.

Law not only make norm for the implementations of the rules but also settles the dispute regarding national on international issues. The dispute can be resolved through traditional courts of law and various mechanics such as arbitration.

CHALLENGES OF HEALTH CARE INDUSTRY

1. India has been struggling with deficient infrastructure, with lack of well-equipped medical institutes, that is also the reason of poor state of medical teaching or training.
2. India remains have accute shortage of trained human resourses in the medical field for example- doctors, nurses, paramedicals and primary healthcare workers,health educators as compared to population.
3. Public hospitals which offer free services facilities are understaffed, poorly equipped and operates with less budget. They often surrenders with private institutes for test and dignostics, even for machines repaire.
4. Public health policy and proactive healthcare (strive to involve patients in their own care, allowing physicians and patients to work together to address health problems before they advance)

20. 5th IIMA International Conference on Advances in Healthcare Management Service

5. Unmanageable patient-load[21] due to population of India

ACHIEVEMENTS / PERFORMANCE

Here we have evaluated our performance on the basis of "WHO theme of 2018", which calls for "Universal Health Coverage-Everyone, Everywhere." Also have given emphasis on five main theme for good governance.

1. Awareness
2. Access (to healthcare)
3. Absence or the human-power crisis in healthcare
4. Affordability or the cost of healthcare
5. Accountability

India's ranking is down two places from last year to 117th about progress for meeting Sustainable Development Goals (SDGs)[22] Kerala ranked first in the NITI Aayog India SDG Index 2020-21, while Haryana, Mizoram and Uttarakhand are the top achievers in improving their rankings since 2019.

India's mixed public-private health system has witnessed a steady decline in public services, because of the unregulated growth of formal and informal private service providers.

The healthcare sector witnessed an increased public spend on health and well-being. (proposed outlay of INR 2 lac, 23 thousand, 846 crore for health and well-being, an increase of 137 per cent from the previous year, in which INR 35,000 crore have allotted for COVID-19 vaccine)— for improving infrastructure, shortage of man power, education, training and remove skill gap among private health providers and government institutions.[23]

Equity of access to Medical care,

Pradhan Mantri - Jan Aarogya Yojna promises to provide access to quality health care at fixed prices regulated by the government; it is an attempts to change the disagreeable reality of Indian public health care system where the poor and the vulnerable either fails to receive 'right care' from the ruling government health system or has to bear heavy costs for the 'right care' to the unregulated private health care services.[24]

21. https://www.thehindubusinessline.com/news/national/5-reasons-why-indias-healthcare-system-is-struggling/article34665535.ece dated 28/may/2021
22. Mir et al (Tavseef Ahmad Mir1, Manvendra Singh*): Int J Cur Res Rev* | Vol 14 • Issue 03 • February 2022: Indian healthcare sector and the sustainable development,
23. Mistri Lalit Director, Health Care, KPMG https://home.kpmg/in/en/home/insights/2021/02/india-healthcare-sector-transformation-in-the-post-covid-19-era.html
24. Dholakia Saumil: An Ethical Analysis of the 'Ayushman Bharat-Pradhan Mantri Jan Arogya Yojna (PM-JAY)' Scheme using the Stakeholder Approach to Universal Health Care in India : *Asian Bioethics Review (2020) 12:195–203*

PUBLIC HEALTH EMERGENCIES

We have seen working of two central legislations during Covid -19 in India

1. the Epidemic Diseases Act only grants powers, without creating any obligations / accountability on government either for resources or for limitations.Even most of states have followed same footprint during pandemic without creating any restrictions on state governments.
2. The Disaster Management Act- provides for government powers and duties to manage disasters, (Not specifically related with the emergencies in public health care system. Neither in preparedness nor in countermoves.

LESSONS –

Effect on health and sustainable development during pandemic.

The pandemic had a devastating effect on social, economic, financial, physiological, ethical aspects. Covid-19 not only destroyed the life of many but caused adverse effect on the economical growth of the country. As per the report of United nation on sustainable development presents Goal report of 2021-That pandemic has taken 2030 agenda. Millions of deaths, Poverty exposure to the infection.

Nearly 255 Million people lost their full time job which led to the decline of sustainable development. due to increase in the infection cases the people were unable to provide service today company and because of which they had to withdraw or they were removed from their jobs. The pandemic restricted the movement of human beings. International flights were constrained. Pandemic effected the tourism. It resulted in the loss of the economy. The global community needs to focus on the treatment of covid-19, to ensure fewer casualty rates, and speedy health recovery, in order to bring the economy back into it's track.

The United Nations agenda Of 2030 is to provide peace and prosperity to the people. As per 17 global goals it aims to direct on health and education .The sustainable development faced many challenges due to the emergence of COVID-19 developing countries than the developed countries. Covid -19 had unfavourable effect on 17 SDGs goals .It disrupted health care and curbed supply of food and nutrition. As per the Sustainable development goals report 2020, by United nation, States that "*the outbreak of 2020 causes 71 million people to return to extreme poverty*".

The health system is drastically influenced by the pandemic. People apart from being affected mentally or physically, are also suffering from financial hardships. Quality medication is indeed necessary not only to prevent life loss, but also for the disruptive economic conditions. Covid -19 had severely influenced ongoing health programmes, curative services and the accomplishment of SDG3.

V. CONCLUSION & SUGGESTIONS

Here we find out why the absolute public health protection is technically and politically not possible. For example emergency care in Covid period. Naturally Law cannot solve all, or even most, of the challenges facing public health authorities, but law can become an important part of the ongoing work of creating the environment necessary for human-beings to live healthier and safer lives.

Making "health" a citizen's right can motivate policymakers to propose increased investment in healthcare, accelerate industry reform, and improve health outcomes. India's mixed public-private health system has witnessed a steady decline in public services, because of the unregulated growth of formal and informal private service providers.[25]

The key elements necessary for ensuring sustainability are governance, partnerships and financing. Adopting a policy, setting up a multi-sectoral coordination mechanism with active involvement of all stakeholders with well-defined roles and responsibilities, and exploring options of funding are critical but not impossible. As the world being exposed to the pandemic more medication facility should be taken care off. Health is being considered as one of the important component in everyone's life which not only helps individual self growth but also contributes to the economy of ones country. There should be proper health care management for the treatment. As health contributes to the sustainable development it's the duty of the state to make necessary law and actions to be taken to implement those laws which aims at enhancing the health goals in the society. Gostin et al. state: "*Law can be a powerful tool for advancing global health, yet it remains substantially underutilized and poorly understood."*

With respect to the SDGs- law plays an important role in the area of health. Law acts as a catalyst, and set the framework through which government can perform a function in a proper manner and can work efficiently in respect of health for all. The health professionals and the lawyers should come forth and together advocate the health goals which would ultimately leads to a sustainable development.

❑❑❑

25. Mir et al Tavseef Ahmad Mir, Manvendra Singh): *Int J Cur Res Rev | Vol 14,* Issue 03 • February 2022: l: Indian healthcare sector and the sustainable development.

2

Environmental Justice through Litigation: Empowering Communities in India to Protect the Environment

Dr. Bhupal Bhattacharya[1]

I. INTRODUCTION

Environmental degradation is a pressing issue in India, with widespread pollution and degradation causing adverse effects on public health[2]. Despite the existence of environmental laws and policies, inadequate enforcement and implementation have allowed corporations and governments to exploit natural resources without any regard for the environment and public health. In recent years, there has been a growing trend of environmental litigation in India, which has enabled communities to seek redressal for environmental harm and hold those accountable for their actions[3].

The concept of environmental justice encompasses the idea that all individuals and communities have the right to a healthy and safe environment, and that environmental laws and policies should protect everyone, regardless of social or economic status[4]. Marginalized communities, including low-income neighborhoods and indigenous populations, often bear the brunt of environmental degradation and are disproportionately impacted by pollution and environmental harm[5]. Environmental litigation provides a mechanism for these communities to seek justice and hold powerful actors accountable for their actions.

1. Assistant Professor, Department of Law, Raiganj University, West Bengal, India, Email: bhupalbhattacharya@gmail.com

2. Singh, Katar. "Environmental degradation and measures for its mitigation with special reference to India's agricultural sector." Indian Journal of Agricultural Economics 64, no. 902-2016-66744 (2009), 1.

3. Berger Walliser, Gerlinde, and Inara Scott. "Redefining corporate social responsibility in an era of globalization and regulatory hardening." American Business Law Journal 55, no. 1 (2018): 167-218, 2.

4. Sexton, Ken, Kenneth Olden, and Barry L. Johnson. ""Environmental justice": the central role of research in establishing a credible scientific foundation for informed decision making." Toxicology and industrial health 9, no. 5 (1993): 685-727, 3.

5. Gallay, Erin, John Lupinacci, C. Sarmiento, C. Flanagan, and Ethan Lowenstein. "Youth environmental stewardship and activism for the environmental commons." Contemporary youth activism: Advancing social justice in the United States (2016): 113-134, 4.3. I Belong, Statelessness Report, UNHCR 2015, available at https://www.unhcr.org.

This article discusses the role of litigation in promoting environmental justice in India and empowering communities to protect their environment. It highlights several landmark cases that have set important precedents for environmental litigation in India and examines the challenges and opportunities for expanding access to justice for environmental issues. The article also explores the importance of legal aid in promoting environmental justice and the need for more effective enforcement of environmental laws.

Environmental justice through litigation is a powerful tool that has the potential to shift the balance of power towards marginalized communities, promoting the principles of democracy and justice in environmental governance. However, achieving environmental justice requires more than just access to the legal system. It requires public awareness, engagement, and education, as well as collaboration between all stakeholders, including communities, governments, and corporations. Ultimately, by empowering communities and promoting environmental justice, we can work towards creating a sustainable and equitable future for all.

II. REVIEW OF LITERATURE

Environmental degradation and its impact on public health have been a growing concern in India over the past few decades. A range of studies have explored the extent and effects of environmental pollution on various aspects of human health and well-being. For example, a study by Gulia, Nagendra, & Khanna (2015) found that air pollution in urban areas in India was responsible for a significant increase in respiratory illnesses and premature deaths[6]. Another study by Li, Lu, and Bin Li (2020) highlighted the negative impacts of industrial pollution on water quality and the subsequent effects on human health[7].

While environmental laws and policies exist in India to protect the environment, inadequate enforcement and implementation have been major challenges in ensuring environmental protection. A study by Ramachandra and Shwetmala Ramachandra, Aithal and Sreejith (2015) highlighted the limitations of the existing environmental regulatory framework in India and the need for more effective enforcement mechanisms[8].

Environmental litigation has emerged as a mechanism for communities to seek redressal for environmental harm and hold corporations and governments accountable

6. Gulia, Sunil, SM Shiva Nagendra, Mukesh Khare, and Isha Khanna. "Urban air quality management-A review." Atmospheric Pollution Research 6, no. 2 (2015): 286-304, 5.
7. Li, He, Juan Lu, and Bin Li. "Does pollution-intensive industrial agglomeration increase residents' health expenditure?." Sustainable Cities and Society 56 (2020): 102092, 6.
8. Ramachandra, T.V., Bharath H. Aithal, and K. Sreejith. "GHG footprint of major cities in India." Renewable and Sustainable energy reviews 44 (2015): 473-495, 7.

for their actions. Several landmark cases have set important precedents for environmental litigation in India. For example, the MC Mehta case (1986) led to the closure of polluting industries in Delhi and the relocation of others to designated industrial zones. Similarly, the Vellore Citizens Welfare Forum case (1996) resulted in the recognition of the "polluter pays" principle in India.

Research Gap:

Despite the growing trend of environmental litigation in India, there is limited research on the effectiveness and impact of litigation in promoting environmental justice and empowering communities. While some studies have explored the role of litigation in environmental governance in India, they tend to focus on specific cases or legal provisions, and there is a lack of comprehensive studies that provide a broader understanding of the challenges and opportunities for environmental justice through litigation.

While legal aid is essential for ensuring access to justice for marginalized communities, there is limited research on the availability and effectiveness of legal aid for environmental litigation in India. Studies on legal aid in India tend to focus on criminal and civil cases, and there is a need for research that specifically examines legal aid in the context of environmental litigation.

There is a need for more research on the role of public awareness and engagement in promoting environmental justice in India. While public awareness and engagement are crucial for creating a conducive environment for environmental litigation and advocacy, there is limited research on the attitudes and perceptions of the general public towards environmental issues and the role of litigation in addressing environmental harm.

III. RESEARCH OBJECTIVES

The primary objective of this research is to examine the role of environmental litigation in promoting environmental justice and empowering communities in India to protect their environment. Specifically, this research aims to:

1. Identify the key environmental issues and challenges faced by marginalized communities in India, particularly in relation to environmental pollution and degradation.
2. Evaluate the effectiveness of environmental litigation in addressing environmental harm and promoting environmental justice in India, by analyzing landmark cases and legal precedents.
3. Examine the role of public awareness and engagement in promoting environmental justice in India, by analyzing the attitudes and perceptions of the general public towards environmental issues and the role of litigation in addressing environmental harm.

IV. ENVIRONMENTAL ISSUES AND CHALLENGES

Marginalized communities in India are particularly vulnerable to environmental pollution and degradation due to their socio-economic status and lack of access to resources and information[9]. Some of the key environmental issues and challenges faced by these communities include:

1. Air pollution: Air pollution is a major concern in India, particularly in urban areas. Marginalized communities living in and around industrial areas and highways are particularly vulnerable to the negative health impacts of air pollution, including respiratory illnesses and cardiovascular diseases[10].
2. Water pollution: Water pollution is another major environmental issue in India, with many rivers and lakes contaminated by industrial waste and untreated sewage. Marginalized communities living in and around these water bodies are at risk of water-borne diseases and other health problems[11].
3. Land pollution: Land pollution is a growing concern in India, with many agricultural lands and forests contaminated by industrial waste and hazardous chemicals. Marginalized communities living in and around these contaminated areas are at risk of exposure to toxins and other health hazards[12].
4. Climate change: Climate change is a global issue, but its impacts are felt particularly strongly in India, with increasing frequency of extreme weather events such as floods, droughts, and heat waves[13]. Marginalized communities, particularly those living in low-lying areas and coastal regions, are particularly vulnerable to the impacts of climate change.
5. Environmental injustice: Marginalized communities often bear a disproportionate burden of environmental harm and are frequently excluded from decision-making

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9. Buheji, Mohamed, Katiane da Costa Cunha, GodfredBeka, BartolaMavric, Y. L. De Souza, S. Souza da Costa Silva, Mohammed Hanafi, and TulikaChetiaYein. "The extent of covid-19 pandemic socio-economic impact on global poverty. a global integrative multidisciplinary review." American Journal of Economics 10, no. 4 (2020): 213-224, 8.
10. Rashid, Rukhsana, Felisha Chong, Shahid Islam, Maria Bryant, and Rosemary RC McEachan. "Taking a deep breath: a qualitative study exploring acceptability and perceived unintended consequences of charging clean air zones and air quality improvement initiatives amongst low-income, multi-ethnic communities in Bradford, UK." BMC public health 21, no. 1 (2021): 1-16, 9.
11. Palaniappan, Meena, Peter H. Gleick, Lucy Allen, Michael J. Cohen, Juliet Christian-Smith, Courtney Smith, and Nancy Ross. Clearing the waters: a focus on water quality solutions. 2010, 10.
12. Nriagu, J. O., P. Bhattacharya, A. B. Mukherjee, J. Bundschuh, R. Zevenhoven, and R. H. Loeppert. "Arsenic in soil and groundwater: an overview." Trace Metals and other Contaminants in the Environment 9(2007): 3-60, 11.
13. Sivakumar, Mannava VK, and Robert Stefanski. "Climate change in South Asia." Climate change and food security in South Asia (2011): 13-30, 12.

processes related to environmental governance[14]. This results in environmental injustice and exacerbates existing social and economic inequalities.

V. EFFECTIVENESS OF ENVIRONMENTAL LITIGATION

Environmental litigation has emerged as a powerful tool for promoting environmental justice and addressing environmental harm in India[15]. Over the past few decades, there have been several landmark cases that have set legal precedents and established the role of environmental litigation in protecting the environment and promoting sustainable development.

Environmental litigation in India has played a critical role in promoting environmental justice by holding corporations and governments accountable for environmental harm[16]. The following leading cases highlight some of the most significant legal battles that have shaped environmental policy in India:

i. MC Mehta v. Union of India (1986)[17]: In this landmark case, the Supreme Court of India issued a series of directives to address the pollution of the Ganges River, including the closure of tanneries and other polluting industries along the river.

ii. Vellore Citizens Welfare Forum v. Union of India (1996)[18]: This case addressed the pollution of the Vellore region in Tamil Nadu and resulted in the establishment of the National Green Tribunal, a specialized court for environmental disputes in India.

iii. M.C. Mehta v. Kamal Nath (1997)[19]: In this case, the Supreme Court of India ordered the closure of hazardous industries in Delhi, including those emitting toxic gases.

iv. T.N. Godavarman Thirumulpad v. Union of India (1997)[20]: This case involved the protection of forests in India and resulted in a ban on mining activities in forest areas and the establishment of a Central Empowered Committee to oversee forest conservation.

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14. Julian Agyeman, Robert D. Bullard, and Bob Evans, "Exploring the nexus: Bringing together sustainability, environmental justice and equity," Space and polity 6, no. 1 (2002): 77-90.
15. Robert D. Bullard and Glenn S. Johnson, "Environmentalism and public policy: Environmental justice: Grassroots activism and its impact on public policy decision making," Journal of social issues 56, no.3(2000): 555-578.
16. Rebecca Tsosie, "Indigenous people and environmental justice: the impact of climate change," U. Colo. L. Rev. 78 (2007): 1625.
17. M.C. Mehta v. Union of India, 1986 SCR (1) 312.
18. Vellore Citizens Welfare Forum v. Union of India, 1996 5 SCC 647.
19. MC Mehta v. Kamal Nath, (1997) 1 SCC 388.
20. Rural Litigation and Entitlement Kendra v. State of U.P., (1997) 2 SCC 267.

v. Sterlite Industries (India) Ltd. v. Union of India (2013)[21]: This case addressed the pollution caused by a copper smelter owned by Sterlite Industries in Tuticorin, Tamil Nadu, and resulted in the closure of the plant.

vi. Alembic Chemical Works Co. Ltd. v. Union of India (1989)[22]: This case addressed the issue of hazardous waste disposal and resulted in the establishment of the Hazardous Wastes (Management and Handling) Rules in India.

vii. Indian Council for Enviro-Legal Action v. Union of India (1996)[23]: This case addressed the pollution caused by the ship-breaking industry in Alang, Gujarat, and resulted in the establishment of the Ship Breaking Code, which regulates ship-breaking activities in India.

viii. Narmada Bachao Andolan v. Union of India (2000)[24]: This case addressed the environmental and social impacts of the Narmada Dam project and resulted in the establishment of the Narmada Control Authority to oversee the project.

ix. Ratlam Municipality v. Vardichand (1980)[25]: In this case, the Supreme Court of India held that the polluter pays principle must be applied in cases of environmental damage.

x. Subhash Kumar v. State of Bihar (1991)[26]: This case addressed the issue of illegal mining and resulted in a ban on mining activities in the Sariska Tiger Reserve in Rajasthan.

xi. Goa Foundation v. Union of India (2014)[27]: This case addressed the issue of illegal mining in Goa and resulted in the cancellation of 51 mining leases.

xii. Samaj Parivartana Samudaya v. State of Karnataka (2013)[28]: This case addressed the issue of illegal mining in Karnataka and resulted in the cancellation of 49 mining leases.

xiii. Samatha v. State of Andhra Pradesh (1997)[29]: This case addressed the issue of illegal mining on tribal lands and resulted in the recognition of the right of tribal communities to control and manage their resources.

These landmark cases, and many others, demonstrate the effectiveness of environmental litigation in addressing environmental harm and promoting environmental justice in

21. Indian Council for Enviro-Legal Action v. Union of India, JT 2013 (4) SC 388.
22. Rural Litigation & Entitlement Kendra v. State of U.P., 1989 AIR 1913.
23. Indian Council for Enviro-Legal Action v. Union of India, 1996 AIR 1446.
24. M.C. Mehta v. State of Tamil Nadu, (2000) 10 SCC 664.
25. Indian Council for Enviro-Legal Action v. State of Gujarat, 1986 AIR 1622.
26. M.C. Mehta v. Kamal Nath, 1991 AIR 420.
27. Sterlite Industries (India) Ltd. v. Tamil Nadu Pollution Control Board, (2014) 6 SCC 590.
28. Salvo Mudgal v. Union of India, (2013) 8 SCC 154.
29. Vellore Citizens Welfare Forum v. Union of India, AIR 1997 SC 3297.

India. However, there are still challenges and gaps in the implementation of environmental laws and the enforcement of court orders. The next step is to evaluate the effectiveness of environmental litigation in promoting environmental justice for marginalized communities and to explore strategies for improving access to justice for those who are most vulnerable to environmental harm.

VI. AVAILABILITY AND EFFECTIVENESS OF LEGAL AID FOR ENVIRONMENTAL LITIGATION

Access to legal aid is a critical component in ensuring that marginalized communities in India have the ability to seek justice through environmental litigation[30]. However, the availability and effectiveness of legal aid for environmental litigation varies widely across the country.

One of the main challenges in accessing legal aid for environmental litigation is the lack of awareness among marginalized communities about their legal rights and the resources available to them. Many communities are also hesitant to approach the legal system due to the costs and complexities involved.

Even when legal aid is available, it may not always be effective in promoting environmental justice. In many cases, the legal aid providers may lack the expertise and resources necessary to effectively represent their clients, particularly in complex environmental cases involving scientific evidence and technical expertise[31].

To improve access to justice for marginalized communities in environmental cases, there is a need for greater awareness and education about legal rights and available resources. This can be achieved through community outreach programs and legal literacy campaigns, as well as through the use of alternative dispute resolution mechanisms such as mediation and arbitration[32].

There is a need to strengthen legal aid providers and ensure that they have the necessary resources and expertise to effectively represent their clients in environmental cases. This can be achieved through capacity-building programs and partnerships between legal aid providers and environmental NGOs, as well as through the establishment of specialized environmental courts and tribunals.

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30. Jamie Cassels, "Judicial activism and public interest litigation in India: Attempting the impossible?," The American Journal of Comparative Law 37, no. 3 (1989): 495-519.
31. Karen Bell, "Achieving environmental justice," in Achieving Environmental Justice, ed. Karen Bell, 213-236 (Policy Press, 2014).
32. David R. Boyd, "The constitutional right to a healthy environment," Environment: Science and Policy for Sustainable Development 54, no. 4 (2012): 3-15.

VII. ROLE OF PUBLIC AWARENESS AND ENGAGEMENT IN PROMOTING ENVIRONMENTAL JUSTICE

Public awareness and engagement are crucial for promoting environmental justice in India. The attitudes and perceptions of the general public towards environmental issues and the role of litigation in addressing environmental harm play a significant role in shaping policies and practices related to the environment.

There is growing awareness among the public about the environmental challenges facing India, including air and water pollution, deforestation, and climate change[33]. This awareness has been fueled by various campaigns and initiatives aimed at raising public awareness about environmental issues, including public rallies, social media campaigns, and environmental education programs.

However, despite this growing awareness, there are still challenges in promoting public engagement and participation in environmental litigation. One of the main challenges is the perception that environmental issues are often seen as secondary to other development priorities, such as economic growth and job creation.

Moreover, there is a perception that litigation is a time-consuming and costly process, which may deter individuals and communities from seeking justice through the legal system. This perception is particularly acute among marginalized communities who may lack the resources and knowledge necessary to engage with the legal system.

To address these challenges, there is a need to strengthen public engagement and participation in environmental litigation. This can be achieved through the use of alternative dispute resolution mechanisms, such as mediation and arbitration, which can help to resolve disputes in a more timely and cost-effective manner.

There is also a need to promote greater awareness and education about the role of litigation in addressing environmental harm and promoting environmental justice. This can be achieved through public awareness campaigns and legal literacy programs, which can help to raise awareness about environmental issues and the legal resources available to communities.

VIII. IMPLEMENTING CHALLENGES

While the promotion of environmental justice through litigation in India is an important objective, there are several challenges that may impede the effective implementation of the strategies and recommendations identified above. These challenges include:

33. Anthony Leiserowitz, "International public opinion, perception, and understanding of global climate change," Human development report 2008, no. 2007 (2007): 31.

a. Lack of resources and capacity: Many regulatory agencies lack the resources and expertise necessary to effectively monitor and enforce environmental regulations. Similarly, many community-based organizations and environmental NGOs lack the resources necessary to effectively engage in environmental decision-making processes[34].

b. Limited access to justice: Marginalized communities often lack the resources and knowledge necessary to engage with the legal system and advocate for their rights. This can result in a lack of representation for these communities in environmental litigation, which may limit the effectiveness of these efforts[35].

c. Political interference: The implementation of environmental regulations and policies in India can be influenced by political interests, which may undermine efforts to promote environmental justice[36].

d. Limited public awareness and education: Despite growing awareness of environmental issues in India, many members of the public may not fully understand the role of litigation in promoting environmental justice. This can limit the effectiveness of public engagement efforts and hinder efforts to build community support for environmental litigation[37].

e. Limited collaboration between stakeholders: Collaboration between communities, governments, and corporations is essential for promoting environmental justice in India. However, there may be limited incentives for these stakeholders to collaborate, which can hinder efforts to build effective partnerships[38].

f. Weak enforcement mechanisms: Despite the existence of environmental regulations and laws, enforcement mechanisms may be weak, resulting in a lack of compliance and accountability among corporations and other stakeholders[39].

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34. Melissa Leach, Robin Mearns, and Ian Scoones, "Environmental entitlements: dynamics and institutions in community-based natural resource management," World development 27, no.2 (1999): 225-247.

35. Deborah L. Rhode, Access to justice (Oxford University Press, 2004).

36. Glyn Williams and Emma Mawdsley, "Postcolonial environmental justice: Government and governance in India," Geoforum 37, no. 5 (2006): 660-670.

37. Lori G. Kennedy, "Transportation and environmental justice," in Running on empty, ed. Jonathan M. Harris, 155-180 (Policy Press, 2004).

38. Garvey, Niamh, and Peter Newell. "Corporate accountability to the poor? Assessing the effectiveness of community-based strategies." Development in Practice 15, no. 3-4 (2005): 389-404.[Garvey and Newell, "Corporate accountability to the poor? Assessing the effectiveness of community-based strategies," Development in Practice 15, no. 3-4 (2005): 389-404.]

39. Lloyd, Robert. "The role of NGO self-regulation in increasing stakeholder accountability." One World Trust 210180 (2005): 1-15.[Lloyd, Robert. "The role of NGO self-regulation in increasing stakeholder accountability." One World Trust 210180 (2005): 1-15.]

Strategies such as enhancing resources and capacity for regulatory agencies, improving access to justice for marginalized communities, promoting transparency and accountability in environmental decision-making, and enhancing public awareness and education can all help to overcome these challenges and promote environmental justice in India.

IX. CONCLUSION AND RECOMMENDATIONS

Promoting environmental justice through litigation in India requires a multi-faceted approach that involves a range of stakeholders, including communities, governments, and corporations. Based on the literature review and analysis of the research gap, several best practices and recommendations can be identified for promoting environmental justice through litigation in India.

Firstly, there is a need to improve the enforcement of environmental laws in India. This can be achieved by enhancing the capacity of regulatory agencies and providing them with the necessary resources and expertise to effectively monitor and enforce environmental regulations. Additionally, there is a need to ensure that penalties for environmental violations are sufficiently stringent and that they are effectively enforced.

Secondly, enhancing collaboration between communities, governments, and corporations can help to promote environmental justice in India. Community-based organizations and environmental NGOs can play a crucial role in facilitating collaboration between stakeholders and promoting community participation in environmental decision-making processes. Governments can also facilitate collaboration by creating forums for stakeholder engagement and by promoting transparency and accountability in environmental decision-making.

Thirdly, there is a need to strengthen the role of the judiciary in promoting environmental justice in India. This can be achieved by creating specialized environmental courts and tribunals, which can help to ensure that environmental cases are heard and adjudicated in a timely and effective manner. Additionally, there is a need to promote judicial training and education in environmental law and policy, which can help to build the capacity of judges to effectively adjudicate environmental cases.

Fourthly, there is a need to promote the use of alternative dispute resolution mechanisms, such as mediation and arbitration, in environmental cases. These mechanisms can help to resolve disputes in a more timely and cost-effective manner and can facilitate collaboration between stakeholders.

Finally, there is a need to enhance public awareness and education about environmental issues and the role of litigation in promoting environmental justice in India. This can be achieved through public awareness campaigns, legal literacy

programs, and environmental education initiatives, which can help to build the capacity of communities to engage with the legal system and advocate for their rights.

Promoting environmental justice through litigation in India requires a range of strategies and approaches, including improving enforcement of environmental laws, enhancing collaboration between stakeholders, strengthening the role of the judiciary, promoting alternative dispute resolution mechanisms, and enhancing public awareness and education.

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3

Single Parenting: A Study on Rights of a Single Mother in India

Dr. Satarupa Ghosh[1]

Upbringing of a child is the most challenging phase of one's life, especially when it has to be done singly. Single parenting has always been a difficult task in Indian society. It is often not suitable in Indian culture as people often judge single parents as incapable of raising children. Though children raised by single parenting can be as normal, healthy, and cheerful as children living with two parents.

It is often believed that single parenting has a negative effect on children but this is not at all true as a good single parent is better than two parents who create a toxic atmosphere for their child. Single parenting takes a little more effort as now it is a difficult task to manage both home chores and professional work along with the responsibility of their children.

Particularly in India's conventional yet evolving culture, single mothers has to handle with several problems like they are being blamed for divorce and immoral character, denied admission in schools for their children.

Single Parents

Single parents are those who usually stay with their child or children without any spouse or live-in-partners and the causes behind becoming a single parent is domestic violence, death of partner, divorce, rape, single parent adoption etc. Because of the unpleasant issues like divorce, domestic violence it is very difficult for single parents to live a stable life. In the developing society, women have progressed into a much stronger edition of themselves. Now, irrespective of all the teasing and humiliation, women take up the flight to triumph higher positions.

1. Assistant Professor, Dept. of Law, Coochbehar Panchanan Barma University. Wesley. p. 392. ISBN 0-201-70719-5.

Causes of single parenting

There are situations when the father is not a part in the upbringing of a child. Situations like child delivered out of marriage, renunciation of the World, desertion, divorce, adoption by a woman who is not married, surrogacy, In Vitro Fertility child, etc. where the mother has to perform the role of father and mother. In such circumstances, the mothers are known as single mothers. The enormous challenges in the lives of single mothers led them to ask for professional mental support as well.

1. Divorce: Nurturing a child is the most difficult phase of one's life, particularly when it has to be done single handedly. Single parenting after divorce can brake one down mentally, economically and physically. It is very difficult to streamline life and at the same time take care of the child. However, proper arrangement can make it very smooth to streamline one's life.

   Indian parents are not comfortable to discuss about divorce matters with their children. However, a child is sensitive enough to recognize the unpleasant fights and discussions about divorce settlements. It is important to take steps about receiving support from the ex-husband regarding the upbringing of child as per divorce settlement. It may be very difficult for single mothers in India to raise voice for their right, as maximum of them had no work experience in past life. It is also important to not make single parenting an encumbrance for the rest of the life for the single mother after divorce. To look after the mother herself is as crucial as that of your child.

2. Domestic Violence: The links between women and children in the perspective of domestic exploitation are well expressed in feminist literature. Kelly[2] explained domestic abuse as a 'double intentioned' form of abuse – a collective attack on women and children. In the marital dispute it is the children who undergo from the curse most. Domestic abuse is a concurrent outbreak both on children's and women's human rights. It is thus very significant to find out techniques to identify children as victims of domestic violence, there must be supportive links between the rights of children and the rights women.[3] Legislature and the judiciary at all times keep in mind the welfare of children and have kept their wellbeing as utmost importance while settling disagreements between their parents. The Protection of Women from Domestic Violence Act, 2005 is a statute which safeguards the interest of women and children victims of violence. This enactment provides provisions for safeguard,

2. A. Mullender and R. Morley (eds.), Children Living with Domestic Violence (London: Whiting and Birch, 1994).
3. Fiona Morrison and Claire Houghton, "Children's human rights in the contexts of domestic abuse and COVID-19", 26 The International Journal of Human Rights 1-5 (2022).

economic remedy etc. not only to the woman but also for the children. Along with the aids provided to a victim the mother can also seek temporary custody order of the child from the court.

3. Rape: Specifically, the women are susceptible to rape. There are lot of mental and health issues of rape counting from hurt, sexually transmitted disease and pregnancy. Mental health disorders, disgrace towards the child, maternal concern and depression and recognition of the mother and the child in the society negatively influenced the parents towards upbringing of the child, whereas acceptance by the family and the society is associated with the attitude of parents. The well-being of mothers and children and improvement of mental health of mother, initiatives to reduce stigmatization, acceptance by the society may improve the condition of a raped and conceived mother.

   Sometimes raped women choose for abortion of the fetus, whereas others abandon the child after the birth of the child. Relationship between single mothers and the child becomes very critical and diverse emotions of affection and hatred for their children is being noticed.

   Various factors of external influences like humiliation in society, recognition of family and community sometimes influence the relationship of the mother and child. There is a need to improve scientific understanding of the relationship between a rape survived mother and child and to develop interferences that will develop child outcomes.[4]

4. Death of one parent: The death of either of the spouse creates a complex situation in the lifecycle of the remaining family members. Empathetic situations of the loss and the secondary losses that comes with a death of a family member is part of the curing process for the whole family.[5] The loss of a spouse is one of life's most painful happenings., Widowed women experience more hostile emotional and physical consequences rather than the general people. the widowed at a younger age has to face the evil most.

   The young widow(er)s has to face challenges like handling pregnancy and single handed parenting. Comparing to the co-parenting families' single parents has to face greater risk of health hazards and security threats along with monetary insecurity.

   It is very challenging for the widowed parents to communicate the death of either of the parents to the children and handling their children's sorrow together with their own. They need to play the role of both the parents as a

4. Shada A. Rauhani, Jenifer Scott et.al., Stigma and Parenting Children Conceived From Sexual Violence, (PMC 2016).
5. E. Anderson, "Partner bereavement when parenting dependent children: What factors influence adjustment?", 46 Death Studies, (2022).

single parent. While playing this ironic character the single parent has sometimes to sacrifice their self and also to give priority of the need of the children over their own. But it is very important to attend one's own needs for the development of a confident self as a single parent. Support from the society and family for day-to-day demands after the death of the spouse can make it easier to move on as a single parent.

5. Single Parent Adoption: Adoption is the procedure where an adult agrees to take up the responsibility of accepting a child as his/her own through a legalized process. It is quite heartening to understand the fact that a child who had no one to care for him/her is now accepted as a son/daughter. Although it is generally a couple who adopts a child, there is now a growing trend of a single parent applying for adoption.

   The most intriguing progress is by the Central Adoption Resource Agency (CARA) Guideline, 2015 issued by the Ministry of Women and Child Development. The guidelines govern the adoption of children that allow a single female to adopt a child of any gender.

6. Single Parenting through Artificial Reproductive Technology:[6] Single parents are single men or women, who actively choose to parent a child without a partner. The term single mother by choice has been used to describe a distinct group of women who differ in a number of ways from mothers who either conceive accidently or become single after separation or divorce. A woman could embark upon single motherhood by choice through sexual intercourse, donor insemination (DI) at a clinic, self-insemination with a known or anonymous donor, as well as through adoption or fostering.

   Different women choose different methods depending upon their circumstances, the options available to them and their beliefs about the morality of different methods. Most common method used to become an SMC was DI at a clinic: single motherhood by choice was most commonly pursued through the use of ARTs.

7. Single motherhood through Surrogacy: Surrogacy refers to the procedure in which an embryo, created from a woman's egg and fertilized by sperm in a laboratory, is implanted into the uterus of another woman who carries the baby to term before handing it back to the couple who hired her services. Under The Surrogacy Regulation Act, 2021, single men and women, live-in couples and same sex couples are excluded. An unmarried woman can only have a surrogate baby if she is a divorcee or a widow aged 35 to 45. Even

6. Martin Rechards, Giddo Pennings, et. al. (eds.), Reproductive Donation, (Cambridge University Press, Cambridge, 2012).

married couples can only opt for commercial surrogacy if they cannot have children on medical grounds or have only one child.

Ever since the law was passed, Indians who work with infertile couples had predicted a challenge in the courts on the grounds that the law is discriminatory against Indians who are not heterosexual and married.

8. Child delivered out of wedlock: Illegitimate child is someone who is born out of lawful wedlock where apart from just the society, the law does discriminate against them but since the emergence of liberal thinking people according to whom the illegitimate children are not considered as a disgrace, there are amendments taken place accordingly. The idea of illegitimate child is determined by the status of his parents according to their marital relationship of the parents and is considered nullius filius which means having no legal relationship with the parents.

Rights of a Single Mother in India

Women have always been subjected to exploitation in India since long past, particularly when the woman is independent, fortunately Indian laws have taken initiatives to furnish women with large number of statutory rights that they can do upbringing of the children on their own. But often single mothers face problems such as delays by the authorities for registration of children only because the of the absence of the father of the child. Irrespective of the fact that Single motherhood is allowed and recognized by law, many officers are unknown by the perception of "single motherhood by choice" as there is no clear idea about single parenthood.

As a consequence, it becomes challenging for a single mother to register the of birth of a child, without revealing the information about the biological father. In the past ten years, numbers of women have moved to the judiciary to protect their rights as a single mother when the birth registration authorities sometimes delayed or sometimes declined to register the birth of children as a children of single mothers. Here some rights of a single mother protected by the judiciary listed as follows:

1. **Right to Privacy:** Judiciary in various cases recognized the right to privacy of a single mother if they do not want to disclose the name of the father of the child. In the case of R. Rajagopal vs. State of Tamil Nadu and others[7], it was decided that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21." It is a "right to be let alone." "A citizen has a right to safeguard the privacy of his home, his family, marriage, procreation, motherhood, child-bearing, and education, among other matters."

7. 1994 SCC (6) 632.

In a circumstances when the father renounces his wife and children, then woman is not bound to reveal the name of the father against her wish. Section 13 of the Hindu Maintenance and Guardianship Act, 1956 states that the wellbeing of the child shall be the utmost priority. As a mother knows the best for her child and if she considers that the welfare of the child may be affected by revealing the identity of the father, then it is her decision not to reveal it. The violation of the right to privacy and the child's welfare should not be hampered.

In a landmark decision in the case of ABC vs. State (NCT of Delhi)[8], the Hon'ble Supreme Court of India stated that there is no responsibility for an unmarried mother to reveal the name of the father of the child because she wants to be the legal guardian of her child solely. In this case, a woman delivered her son in 2010 and raised him up all alone without the help of the father.

2. **Right to Guardianship**: Commonly, the mother is the natural guardian of the child till the age of five, but after that, the natural guardian will be the father. Also, after the death of the father, a mother will get the full guardianship rights. The Guardianship and Wards Act, 1890, and The Hindu Minority and Guardianship Act, 1956, are the two principal statutes that regulate a parent's or another person's right to guardianship. Section 6 of The Hindu Minority and Guardianship Act, 1956 states that in the case of parents who are married, the father is the natural guardian of the child, and the mother's right is acknowledged after the father.

   However, if a child is conceived out of marriage, the mother becomes the natural guardian, and the father has no legal responsibility. The mother of the child has sole guardianship rights over the child.

In the case of Githa Hariharan vs. Reserve bank of India[9] the Supreme Court held that no preferential rights for either of the parents can be given as the welfare of the child is of paramount importance.

3. **Right to Use Mother's Surname**: In the case of Vindhya Saxena vs. East Delhi Municipal Corporation (decided on 24 March, 2022)[10] The Delhi High Court held that every single child has the right to use his or her mother's surname as his or her surname. Society now recognizes the fact that a woman has the right to use her last name even after her wedding. The child must have the right to pick his or her surname. A single mother with complete custody of a child may give the minor her surname.

8. (2015) 10 SCC 1.
9. AIR 1999 2 SCC 228.
10. Available at https://indiankanoon.org/doc/125050568/.

> The Supreme Court also sustained a child's right to know about his or her father, but it is important that these facts must be kept secretive, kept in a properly wrapped and sealed envelope, and only disclosed at the time the court thinks it to be important for the interests of the child. Nevertheless, since it is not always practical for everyone to move to the courts to declare their legitimate rights due to a numbers of issues, present legal framework about single mothers and guardianship must be amended as early as possible.

Laws that affect single parents are focused on the continuing relationship of parent and child following the dissolution of marriage; increasingly the same laws are being applied to never married parents. Although most laws affecting family relationships are state statutes, communication among states and accumulated case law have resulted in similarities in family laws across state jurisdictions. Drawing on social scientists, legal commentators, and appellate opinions, the status of laws and experiences of parents in the areas of child custody, child support, tax law, and court involvement in welfare reform are reviewed. A pervasive theme throughout is gender discrimination, a problem that exists more in the legal environment than in law. It is suggested that if the best interests of children are to be served, it will be necessary to resolve conflicting feelings and beliefs, set aside myths and stereotypes, and promote the development of competence and equality for parents.

Rights of a single mother – analyzing the social effects of the landmark Judicial pronouncements

ABC vs. The State (NCT of Delhi)[11]

In this landmark case Hon'ble Supreme Court came to the rescue of unmarried mothers. In the progressive judgment, the court stated that an unwed mother was allowed to apply for sole guardianship of her child without having to send 'the mandatory notice' to the uninvolved father. Moreover, she may not be forced to reveal the name of the father against her wish. At the same time, the identity of the father may also not be required for obtaining the child's birth certificate. This gave all the hurting women who wanted to have a child without having the implications of an unjust social barrier that the society had put up in the form of marriage and a husband, a much-needed relief.

The appeal was allowed after the following considerations-

'The maternity of mothers held supreme for children born out of wedlock.'

Many countries such as the United Kingdom, United States, Ireland, Philippines, and even India uphold the parental and custodian rights of a mother over that of a father, on a child born out of wedlock. For instance, the Hindu Minority and Guardianship

11. (2015) 10 SCC 1.

Act, 1956 gives priority to the mother concerning the provisions for natural guardians of illegitimate children; the Guardianship of Infants Act, 1964 (Ireland) says "the mother of a child illegitimate shall be the guardian of the child" etc. The same was remarked by the Hon'ble Supreme Court.

What led to the case and the judgment?

The appellant was a financially stable and secure woman who was a follower of the Christian faith, was very well-educated and gainfully employed. She was raising her son without the assistance of his biological father but when she wanted to appoint her son the nominee of her savings, she was asked to either reveal the name of the father or get a certificate of adoption or guardianship from the court.

She was not in favor of disclosing the name of the father and why should she. She filed an application under **Section 7** of **the Guardians and Wards Act, 1890** which gives the power to the court to make an order as to guardianship to be appointed the guardian of the child.

The procedure under **Section 11** requires that a notice has to be sent to the parents of the child, i.e. the father in the present case. She had to publish a notice in the local newspaper but was unwilling to reveal the name of the father. She also filed an affidavit swearing that the guardianship rights shall be altered if, in the future, the father of the child raised any objections to the same.

According to the Indian law, parents, if alive, have to be mandatorily made a party to such proceedings. Therefore, in this case as well, it was necessary to reveal the identity of the father to issue the process to him.

Given her constant refusal to disclose the name of the father, the Guardian Court and the Delhi High Court dismissed her petition. Aggrieved by the dismissal, she filed an appeal before the Supreme Court.

In all circumstances in which the father is not in custody of the matters of a minor due to his indifference or any other reason, he would be deemed to be considered 'absent' for the purposes of section 19(b) of the Guardians and Wards Act, 1890 and the mother can act as the actual guardian of the child.

In other words, the Hon'ble Supreme court clearly refused to prioritize the rights of a father over that of a mother on an illegitimate child if he is not involved in the upbringing of the child.

'Therefore, an independent mother can raise her child, and legal recognition of a deserting father is not required.'

India today witnesses several mothers who are willing enough to raise their child on their own when the assumed father has abandoned them both. Now a question arises

whether the 'biological father, who played no role of a father in the child's life beyond his conception, deserves legal recognition. The Supreme Court had answered this question in negative and held that, in the best interest of the child, he need not be thrust upon an uncaring father.

X vs. State of Kerala[12]

The Petition filed in the Kerala High Court. In this case, a petitioner of Kerala, who got pregnant by Assisted Reproductive Technologies (ART) (artificial insemination) which is a technique in which the sperm is accepted by a donor whose identity is kept anonymous, filed a petition in the Kerala High Court. She was in her 8th month of pregnancy and filed a petition in Kerala High Court in challenge of the validity of the Kerala Registration of Birth and Deaths Rules, 1970 as forms 1 to 9 of these rules mandate a father's name to register a child's birth. Rules require furnishing various information regarding the father of the child including name, education and occupation. The birth certificate to be issued under Rule 8 of the Rules also contains a column for mentioning the name of the father. The certificate of death in terms of Rule 8 of the rules provides for furnishing the name of the father or the husband, but it does not provide for furnishing the name of the mother.

She said that this provision is unjust, illegal, arbitrary, and discriminatory to single mothers as well as to their children. The forms have the provision of filling only the father's name and now since for the single mothers like the petitioner, it is impossible as she herself did not know who the donor was, so it was asserted that the provision is illegal.

She has submitted that she was once married to someone but her former husband is not the father of this child and also the information regarding the father is anonymous as the procedure does not disclose the same. She argued that this is unconstitutional as it infringes her right to equality and privacy as well as dignity as the fact that the child was not born out of wedlock is a piece of intimate information about her and her child and leaving the father's name column blank will infringe on her privacy. Moreover, she contended that since there is an exclusion of the mother's detail column in the death and birth certificate of the child/person and so it is discriminatory towards a particular gender, thus violating Article 14 of the Indian Constitution.

Another contention was that this also goes against the Registration of Births and Deaths Act, 1969, which provides for the mother's name as well.

Advocate Aruna A appeared on the behalf of the petitioner and the petitioner also mentioned that in India, every girl above 18 has the right to get pregnant by in vitro fertilization technique and so the law should also recognize her right especially when

12. Crl. MC. No. 3463 of 2020 (C) available at https://indiankanoon.org/doc/179333718/.

the father cannot be disclosed. The petition requests for removal of the father's name column from the certificate of birth registration of a child born to a single mother.

The petition highlighted that in cases ABC vs. State (NCT of Delhi)[13] and Mathumitha Ramesh vs. Chief health Officer and Ors[14] the rights of a single mother were recognized by Courts.

The judgment

The Kerala High Court held that the requirement of filling the father's name in the birth certificate and death certificate of a child born to a single mother is absolutely against her right to dignity. The Court allowed the petition of the single mother who conceived through IVF and ruled that the respondents should immediately provide separate forms for birth and death of children born to single mothers of such sort.

"The right of a single parent/ unwed mother to conceive by ART (Assisted Reproductive Technologies) having been recognized, prescriptions of forms requiring mentioning of the name of the father, the details of which are to be kept anonymous, is violative of their fundamental rights of privacy, liberty, and dignity," the bench ruled.

The Court agreed that her right to privacy might be infringed and that it is her fundamental right to make her reproductive choices and keep them private.

The Court very rightly ruled that as long as single mothers have the right to conceive through ART, there should be a provision of separate forms for registration of birth and death of the children born to such mothers.

Because the petitioner was in her eighth month of pregnancy, the court ordered the State to "immediately" take the necessary steps to have separate forms prescribed for registration of births and deaths, as well as for the issuance of certificates in cases involving conception through ART of a single parent/unwed mother.

Key points observed in the judgment

The Court asserted that Article 21 of the Constitution includes reproductive choices of women and this is a part of the personal liberty of a person. The right to procreate as well as to abstain from procreation has been recognized as a colour of the right of personal liberty. The Court in the present case said it is a personal choice and a matter of privacy regarding the reproductive choices of a person. Also, the Assisted Reproductive Technology (Regulation) Bill, 2020's guidelines mention maintaining the confidentiality of the donor name, etc. Not relieving the donor's name except as when asked by law is a matter of "right to privacy". The said right has also been recognized

13. AIR 2015 SC 2569.
14. Writ Petition (MD) No. 8319 of 2018 (Madras High Court).

in the guidelines for ART clinics, with very few exceptions. The right of a woman to reproductive decisions and personal choices has been recognized as a constitutional right.

The social impact of the judgment

In today's times, society is changing at a greater pace. The traditional/predefined roles are being challenged and changed. During the old days, no one would have ever thought of a girl being a mother without any requirement of a father to exist. But technology and the changing needs of the society with a modern mindset have made even this possible. Many women who are single, either because they are divorced or do not want to get married or due to several other reasons, but they want to have a child, can go for In-Vitro Fertilization where a donor donates the sperm and his identity is not to be revealed. The sperm and the egg combine outside the body in a laboratory.

Today, these technologies are highly in demand and are of great help for treating infertility. But, with these technologies becoming legal, questions are raised regarding the rights of such single mothers.

Shalu Nigam & Anr vs. The Regional Passport Officer & others[15]

In a landmark case, it was held that the name of the mother alone is enough in the passport as a single mother who is a natural guardian of the child and father's name is not compulsory.

The judgment upheld the right to equality, dignity, privacy, and liberty of single mothers. It set a precedent for future judgments as well as paved a way for a better societal position of single mothers, who must be treated with equality, and their privacy and personal choice must be respected by all too. It is very important to understand that even if a single mother is considered a guardian of a child, there need not be a compulsion of putting names of biological fathers too in such birth and death certificates. Even if the column demands this, it must be made completely optional. In the present case, the provision of not even including the mother's name column in the form was highly discriminatory as was recognized by the Court.

CONCLUSION

To conclude, the judgments came as a fresh ray of hope for numerous single mothers residing in Kerala and helped in amending the loophole given in the Kerala Registration of Birth and Deaths Rules. Such cases provide better entitlements for women following liberal interpretation, and amendments accommodating modern trends of family formation.

15. AIR 2016 DEL 130.

This is a myth that a single parent especially a single mother can't up bring a child properly. But now single mothers have come up with proving society's stereotypical thinking wrong. They have proved that a child raised by a single parent especially mothers can raise their children with utmost happiness, unaffected mental health and a healthy lifestyle.

As a single parent, one must fulfill the duties of both parents. A single mother has to look after of her child and afford them with all that they need, including her time, along with the fulfillment of all of her professional duties. But the rights of a single mother in India are yet very narrow. There must be some rules issued in protection of their rights to defend them from future violations of their rights.

The law must develop according to the moving tendencies of society. the days of conventional parenting are changed and legislatures must frame sufficient rules and regulations for the establishment of equilibrium in the society. So, to conclude it can be said that a single mother must have the right to privacy, and guardianship and there should be empowerment of women breaking the stigma about the single mothers.

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4

Globalization and Illicit Market for Human-Trafficking in India

Joshika Thapa[1]
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I. INTRODUCTION

Human trafficking is based on the objectification of a human life and that life as commodity to be traded in the economic market.[3] Traffic in persons is the most heinous crime of modern day. The definition of trafficking in 1904 included only exploitation of women but with the development of society the trafficking now includes all forms of exploitation in persons. The Palermo Protocol defined trafficking as 'recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving the payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

With globalisation the sexual exploitation and sex trafficking has become fastest growing criminal enterprise in the world. There is a clear correlation between globalization and human trafficking. Globalization means different things to different people. Some think that it is all the new possibilities, some think that it is a free flow of trade and so on. But it is a fact that there is a negative side of the globalisation. Not only it has produced immense economic inequality around the world, this inequality has pushed more people to migrate in search of work. As a result, human trafficking has become more prevalent now than ever before with estimates increasing from 20.9 million people enslaved in 2012 to 40.3 million in 2017.[4]

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3. Gangotri Chakraborty, Rathin Bandyopadhyay, *et.al* (eds.), *Trafficking in Persons: Prevention, Control and Rehabilitation* 137 (North Bengal University Press, Raja Rammohanpur, Darjeeling, West Bengal, 2017).
4. Pamela Encinas, *The Correlation between Globalization and Human Trafficking*, HUMAN TRAFFICKING CENTRE (Jan.8, 2022,10 AM), http://traffickingtraffickingcentre.org/the-correlation-between-globalization-and-human-traffikcing/.

The increasing use of modern technology has changed the nature of trafficking. With Information and Communication Technology platform, the traffickers are recruiting, grooming, buying, and selling their victims. Research and direct evidence show that technology is being misused by human traffickers during all the stages of the crime, including recruitment, control and exploitation of victims.[5] The globalization policy has improved the competitive strength of the country. The nature of globalization boosts the free flow of goods as well as people but it is a sad reality that free flow of people is done for exploitation purpose. Enhancements of transport and communications have increased the red light areas on the highways, in the form of small restaurants. Despite of having various laws, human trafficking is evolving because of frequent changes in methods of exploitation due to globalisation.

II. TRAFFICKING FOR SEXUAL EXPLOITATION

Human trafficking is the third largest crime in the world after drugs and the arms trade. The nature of human trafficking is complex one as it can be looked from different aspects. There is a violation of victim's right to movement through coercion and because of their commercial exploitation.[6] Their health is deteriorated. They become vulnerable even after recue period. From slavery to the organ transplantation, trafficking takes place in various areas all over the world. The following are the areas where the victims are exploited.

2.1. Prostitution

India is a home to approximately 20 million prostitutes.[7] While the exact ratio of prostitutes to trafficked victims remains unknown, a CEDPA-Pride report estimated that 80 per cent of all Indian women engaged in prostitution are victims of trafficking. Trafficking in women for sexual exploitation violates the right to life and liberty. The victims are subject to cruelty, torture, dangerous and degrading work and inhumane living conditions. It is always the low levels of education, lack of better livelihood, abusive practices at home, conflicts, disasters, lack of awareness and many other factors that contribute to an increase of exploitation. In the hope of getting better future women and girls leave their villages and move towards cities with their far-far known people believing that they will be provided the promised jobs but fell into the traps of traffickers leading to various abuse and exploitation. It is an unpleasant fact that many children are pushed into prostitution network by their families. A UNICEF report on child prostitution in India confirms that the family members of girls are acting independently.

5. EUROPOL Situation Report: Trafficking in human beings in the EU
6. Judicial Colloquium on Human Trafficking, 27th February , 2016 (Judicial Academy, Jharkhand).
7. *Ibid*.

2.2. Sex Tourism

India is a major destination for tourists. This tourism and economic booms have led to increased demand for cheap labour and subsequently increased the level of migrant workers who, far from home and mostly male, have a demand for sex workers.[8] A growing travel industry in the country has contributed to child sex tourism. Only children victims trafficked worldwide for sexual exploitation or cheap labour on an annual basis is 1.2 million.[9] 79% of all global trafficking is for sexual exploitation.[10] The demand for sex during mega sports like Olympics world cups, and super bowls are very common.[11] Despite that the government tries to curb trafficking in human beings still it is difficult to control the demand and supply.[12]

2.3. Cyber Trafficking/Pornography

Pornography is not at the root of this heinous business but it is surely associated with it. The National Human Rights Report has said that 'child pornography which is closely associated with child sex tourism is a technically advanced crime'. One of the researches has found that 80% of the victims freed from human trafficking were forced to re-enact specific acts of pornography by the people who enslaved them. Pornography continues to grow in today's culture it creates a desire for sex slaves. Porn trafficking is real and full of perpetrators where the victim overpowered by a whole set of men every night. Child pornography has been recognized as one of the emerging problems in India. A study of 12,000 children has shown that 4.46% of them have been photographed naked.[13]

2.4. Bride Trafficking

In India it is a tragic reality that the girls are married off by their parents at an early age. Socio-economic conditions are the main factor for early marriage in India. There is a pre-islamic custom called *Nikah-al-Mut-ah* which means 'pleasure marriage' which gives men a freedom to marry for a limited period. This marriage is limited for little time as less than 30 minutes and no divorce is necessary to void the marriage. This form of marriage is being used as a cover for legalized prostitution in many countries.

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8. Sadika Hameed, Sandile Hlatshwayo *et. al.*, Human Trafficking: Dynamics, Current Efforts and Intervention Opportunities for the Asia Foundation (March, 2010)
9. UNICEF calls for increased efforts to prevent trafficking of children, *available at:* http:// www.unicef.org/ media/media_40002.htm (Visited on: 17/08/2022).
10. UNODC, Global Report on Trafficking in Persons. *available at*: http://www.unodc.org/unodc/en/ human-trafficking/globalreport-on-trafficking-in-persons.html (visited on: 17/08/2022).
11. Veerendra Mishra, *Combating Human Trafficking: Gaps in Policy and* Law (Sage Publications, 2015).
12. *Ibid*.
13. Kacker, Loveleen, *et.al.,* Study on Child Abuse: India 2007, MWCD, Government of India, *available at:* http://wcd.nic.in/childabuse.pdf (Visited on 19/08/2022).

Child marriage which is prevalent in India is a form of forced marriage. According to ICRW,[14] child marriages are widespread in many developing countries and the number of child brides is more than 60 million worldwide. Everyday approximately 25,000 girls become child brides. It is estimated that one on seven girls in the developing world is married before she turns 15. Child marriage also prevents the girls from going to school, developing skills to get a job and growing to their full potential. Some states in India like Haryana, Punjab, Rajasthan, and Western Uttar Pradesh still practice the buying of brides. The *Paro* of Mewat region of Haryana or the *molki* of Jat land or the practice of buying of brides is still prevalent in India. The skewed sex ration in some states is considered to be the reason for spurt in trafficking for marriages.[15]

2.5. Community based Sexual Exploitation

In India, Nepal and some other countries the practice of prostitution is prohibited under the law but at the same time the practice of prostitution is still in their own locality. This social set-up eventually pushes the girls and women into trafficking. The *Badi* community in Nepal and *Bedia* community are some of the examples of community based sexual exploitation. In *Bedia* community, a girl once reaches to her puberty she is prostituted and in *Bedia,* a girl once reaches to her puberty, she will either marry or get into prostitution. This type of social ethos which is still prevalent in many countries encourages the pimps to flourish the human trafficking market. In India it has been reported from the statistic that 61% commercial sex workers in India belong to Scheduled Caste, Scheduled Tribes and other backward communities.[16]

III. Human Trafficking for Illicit –Market: Push and Pull Factors

The human trafficking generates 19 billion dollars from forced prostitution annually.[17] The global market for human trafficking is contributed by the demand and supply of the trafficking. The whole profit depends upon the supply of victims in the countries of origin and demand of the victims in the destination countries.[18] An study by ILO has analysed that the demand for trafficking victims is 'higher in countries that are more open to globalization and that have a higher incidence of prostitution' and the supply of trafficking victims 'increases when female youth unemployment is high in the countries of origin'.[19]

14. International Centre for Research on Women, "Child Marriage" *available at:* http://www.icrw.org/what-we-do/adolescents/child-marriage (Visited on 6/12/2022).
15. *Ibid*
16. Rekha Roy, *Women and Child Trafficking in India: A Human Right Perspective* (Akansha Publishing House, New Delhi, 2010).
17. Trafficking in Persons Report June, 2008.
18. Meredith Flowe, The International Market for Trafficking in Persons for the Purpose of Sexual Exploitation: Analyzing Current Treatment of Supply and Demand, 343 North Carolina Journal of International Law and Commercial Regulation (Spring 2010)
19. Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3, Nov. 14, 2000.

3.1. Push and Pull Factors of Human Trafficking

The global market of trafficking is influenced by the demand and supply of the victims. The two types of factors i.e. push and pull factors often influence this flesh market to flourish. Push factors comes under the supply side and pull factors comes under demand side. Pull factors are factors at the place of destination. These factors falsely promise the victim's freedom from push factors but actually dislocate them to a more vulnerable situation. However, the push factors can be minimized by development in a society. But pull factors contributes to an increase of vulnerability. For example, urbanization, industrialization, technological advancement etc. may pull the victims to their side. Both push and pull factors eventually entice the victims to fall into trafficker's trap.[20]

3.1.1. Push Factors

The victims of trafficking are supplied from the poor countries where the children and women are in an impoverished condition. The supply side is also known as push factors. Push factors are deep rooted in the societal way of life.[21] The following factors directly influence the victims to be supplied to destination countries for exploitation,

Poverty: The 2012 statistic showed that 270 million Indians remained trapped in extreme poverty. The magnitude of people living in poverty would surely make difficulties in every challenges required to be met by the government.[22] It acts as a factor for expanding many crimes including human trafficking. A link between poverty and international human trafficking patterns are statistically demonstrated by the Institute for Trafficked, Exploited & Missing Persons (ITEMP). Economic vulnerability and social exclusion are the causes that make the people vulnerable to being trafficked. The hope for better opportunity and the expectation of reliable income drive people into potentially dangerous situations where they are at risk of being exploited.[23]

Lack of education: With no better conditions at school the children often ignores the education and be a labour inter or intra state. The traffickers target the victims from rural communities where the society is driven by lack of education and poverty. It has been estimated that over 70% of all trafficked victims are illiterate and their income is less than INR 70. In India 78% of trafficked victims accounts from the state of West Bengal only.

20. *Ibid*.
21. *Ibid*.
22. India and the MDGS, "Towards a Sustainable Future for All" United Nations, Economic and Social Commission for Asia and the Pacific, February 2015.
23. An Introduction to Human Trafficking: Vulnerability, Impact and Action: United Nations, New York, 2008.

Unemployment: Unemployment is both push and pull factor. It pushes the people to move to cities or other countries and pull factor because the victims are promised a steady employment and better living conditions.[24] The weakening of women and girls in a society makes them disproportionately vulnerable to trafficking. After any kind of economic crisis and pandemic crisis, unemployment is likely to increase beyond expectation as it increases the level of vulnerability among people.

Cultural Practices: Most of the vulnerabilities are influenced by the social and cultural practices. As per UNDP report, India ranks 132 out of 187 countries on gender inequality index (GII). Gender inequality is a form of inequality which is distinct from other forms of socioeconomic inequalities. Gender inequality in India is a crucial reality. In modern times, women are performing exceptionally well in different spheres of activities. Still majority of Indian women are facing the problem of gender inequality and discrimination. The anti-female attitude and inequality in the society compel the women population to bring down in the traditional value system like too much households responsibility diminishes their opportunity to flourish. Discrimination of certain castes is one of the causes of trafficking in India.[25] The caste system in the country allows Indians to accept such issues causing human trafficking as part of the tradition or custom. Further, caste system allows many Indians to believe that human trafficking of the lower caste is a fact of life, rather a flawed tradition.[26]

3.1.2. Pull Factors

As globalization improves integration and interaction among people, cross-border transactions, technology and flows of investment, these opportunities are exploited by the traffickers. The development of a global economy encourages the movement of people both voluntarily and involuntarily.

Technological Advancement: Modern technology has created a world a single village where the buyers and sellers are introduced with the use of the internet. The use of the internet gives the ability to the traffickers to make any contracts without fear of detection. Technological advancement has a serious impact on human trafficking by severely stimulating demand.

Tourism: Holiday destinations are attracted by the tourists all the time. Hotels, pubs, disco, massage parlours are in high demand these days as tourists want to delight their

24. Gacinya John, Human Trafficking Prevalence in Rwanda: The Role Played by Unemployment, American Journal of Sciences and Humanities, American Journal of Social Sciences and Humanities Vol. 4, No. 1, 163-177, 2019.
25. Why is trafficking so rife in India? Dalit Freedom Network (UK), Underlying Causes, *available at*: http://www.dfn.org.uk/causes-of-trafficking/causes.html (Visited on: 19/09/2022).
26. Su Tina, Weblog Missing Jessie Foster and Human Sex Trafficking Missing and Abused, Human Trafficking and the Caste System in India: Something's Gotta Go, India Women, in crime Human Trafficking, available at: http://cjaye57.wordpress.com/2009/12/29/human-trafficking-the-caste-syatem-in-india-somethings-gotta-go/CJAYES57'S (Visited on: 19/09/2022).

holidays. This hotels, bars, massage parlour are in fact the place where the sexual activities are taken place. 70% of women and girls involved in these activities are the victims of the human trafficking. India is a source for child sex tourists and destination for child sex tourism. The victims from different communities are forced to work as 'orchestra dancers' in India. These girls perform with dance groups until they have repaid fabricated debts.[27] Even religious pilgrims have become a hub for sex tourism.

IV. IMPACT OF GLOBALIZATION ON HUMAN TRAFFICKING

The process of globalization is especially pronounced and entrenched in the world economy. This global economy helps every crime in the society to flourish. In developing countries some states rely on agriculture for their livelihood. Globalization fuels human trafficking by increasing socio-economic disparities. The development of information and communication technology has increased the exploitation of women and children through the easy access of internet. Prostitution and other exploitation are taking place through the use of the various websites and social networking sites. The buying and selling of women for exploitation are closely related with electronic and economic globalization.[28] About 199 million of immigrants are living as foreigners in host countries due to globalization.[29] The increase of sex workers all over the world is due to global technology. As a result of technology, the demand for client services in the sex industries in many developed countries in Western Europe and North America.[30]

In India, globalization has left its impact on the tourism sector. The demand for sexual services has rampantly increased. The teenage girls are being engaged for the sex service towards the tourists. Sometimes these young girls are even married to the rich tourist who then take them to their countries and ended up engaging them in various exploitative sectors including human trafficking.[31] If we categorize the importance of globalization in India, we can simply add that Indian economy has opened a market for worldwide competitors. The globalization policy has improved the competitive strength of the country. The nature of globalization boosts the free flow of goods as well as people but it is a sad reality that free flow of people is done for exploitation purpose. With this negative impact of globalization on women and children the sexual exploitation rate of women and children is increasing beyond limits.

27. India making significant efforts towards eliminating human trafficking: US Report.
28. Donna Huges, the Internet and the Global Prostitution Industry, (eds.) Susan Hawthorne and Renane Klein, Cyber Feminism: Connectivity, critique and creativity (pp. 157-184), Melbourne & Spinifex Press.
29. John Gacinya, Assessing the impact of globalization on human trafficking in Rwanda, 3 1 Sociology International Journal (2019).
30. *Ibid*.
31. Supra 12.

V. CONCLUSION AND SUGGESTIONS

It has become a concern for social and political issues globally. It is the sole individual whose basic human rights are violated. All forms of trafficking produce harmful effects on trafficked individuals. Human trafficking is in simpler terms exploitation of victim's vulnerability. These vulnerabilities could be situational, environmental, conditional or forced.[32] Globalization has always facilitated anonymous communications that benefits the traffickers to complete their activities.[33] With internet facilities sex tourism is advertised and brides are available for marriage through websites. The internet allows communication among buyers to exchange information on sex tourism[34] and internet chat rooms allows pedophile to distribute material of exploited children.[35] BUT globalization alone is not a reason for illicit human trafficking. The crimes against humanity and various natural disasters can possibly leave the millions of people displaced and impoverished.

The rise of globalization, unequal distribution of resources, economic disparities and conflicts are some of the factors for increasing trafficking. Thousands of laws and anti-trafficking programmes have been adopted for prevention, harmonization of laws, and protection of victims but these initiatives seems inadequate because the trafficking is deep rooted to the social factors where the people believe that trafficking is not an issue at all. The reason why human trafficking is difficult to combat is that it creates lots of financial advantage to many legal businesses. The present study confirmed the need for an integrated approach involving three components i.e. prevention, protection and prosecution. Since globalization involves an international interaction, there are multiple actors who are involved together in one chain, in such situation professional method for handling the criminals are required. Rescue and rehabilitation are essential for reintegration of the victims. Coordination and correlation must be strengthened in case of inter-state trafficking. The roles played by the non-governmental organizations cannot be ignored. A dedicated approach that accounts for various aspects for combating trafficking is required so that a girl or a woman be safe everywhere in this mother earth.

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32. *Ibid*.
33. Louise Shelly, *Human Trafficking: A Global Perspective* (Cambridge University Press, USA, 2010).
34. U.S. Department of State, Trafficking in Persons Report, 2008 (Washington, DC: US. Department of State, 2009).
35. Steve Ragan, British Police Break up Pedophile Ring, *available at:* http://www.monsterandcritics.com/tech/news/article_1319658.php/British_police_break_up_pedophile_ring_31_children_rescued (Visited on: 27/08/2022).

5

Cultural Feminist Jurisprudence: Revalidating Undervalued Feminine Attributes

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Ms. Devanshi Pokhriyal[2]

I. INTRODUCTION

"अतुलं तत्र तत्तेजः सर्वदेवशरीरजम्। एकस्थं तदभून्नारी व्याप्तलोकत्रयं त्विषा॥

The incomparable radiance that was born from all gods and pervaded the three worlds came to one place and took the form of a woman."[3]

It is unfortunate that society has wholly ignored such beautiful lines from our mythology and created an environment of injustice where one sex is subordinate to the other. Hence, 'feminism' and 'gender justice' had to emerge to ensure that no one is disadvantaged because of their sex. Division of labour, wages, work, colour, etc., based on sex is not just hurtful but also outrageous, and to fight these discriminations, terms like feminists were coined. Anybody who believes in gender equality and equal opportunity is a feminist, a man or a woman, capitalist or socialist, right-wing or leftist can be a feminist. In the words of Leslie Bender, "Feminists are portrayed as bra-burners, man-haters, sexists, and castrators .... We are characterized as bitchy, demanding, aggressive, argumentative, and uncooperative, as well as overly sensitive and humourless. No wonder many women, particularly career women, struggle to distance themselves from the opprobrium that is appended to the label. 'I am not a feminist; I'm safe; I'm ok, is the message they seek to convey. And for every woman that cowers from the word, even more, men recoil and raise defences that cloud their vision and deafen their ears." Such prejudices have made men and women resent the term feminism and created a feeling of disassociation with this term.[4]

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3. Devîmahâtmyam 2.13
4. Pranav Raina, "Feminist Jurisprudence: An Evolution from Fixed Mindset to A Growing Mindset," 5 *Amity International Journal of Juridical Sciences* 32–9 (2019).

After understanding feminism briefly, another question arises: What is feminist jurisprudence? And what are various schools of thought under it? Simply put, feminist jurisprudence studies women's position in the current world that men run and how they can eliminate patriarchy by using various schools of thought. Leslie Bender believes that "the purpose and the practice of feminist theory are to name, expose, and eliminate the unequal position of women in society."[5] Another legal scholar and a scholar of the feminist legal theory believe that there exist two aspects of feminist jurisprudence, "The first project is the unmasking and critiquing of the patriarchy behind purportedly ungendered law and theory, or, put differently, the uncovering of what we might call 'patriarchal jurisprudence' from under the protective covering of 'jurisprudence'... The second project in which feminist legal theorists engage might be called 'reconstructive jurisprudence.' The last twenty years have seen a substantial amount of feminist law reform, primarily in the areas of rape, sexual harassment, reproductive freedom, and pregnancy rights in the workplace."[6]

Feminist jurisprudence does not have a mono approach. Although every feminist wants equal rights for men and women, the approach and ideology differ from school to school. Currently, "traditional or liberal feminism", "cultural feminism", and "radical or dominant feminism" are the three leading schools of thought under feminist jurisprudence. Liberal or traditional feminists ask for equal legal rights such as the right to vote and believe that men and women have equal intelligence or rationality as a man. Hence, they should have a right to make their own decisions.[7]

On the other hand, cultural feminism focuses on the differences of both sexes and respects them. And finally, radical or dominant feminism believes that men have dominated all the significant societal roles, making women subordinate. Under this school of thought, the focus is on 'who holds power?' for this article, we will focus on the cultural feminist's approach.[8]

II. CIPHERING OF CULTURAL FEMINISM

As mentioned above, cultural feminists believe that men and women are different not just biologically but in various aspects. They have different approaches toward the ongoing day-to-day activities. Instead of criticizing women, we should cherish and celebrate these differences and accept them. Cultural feminists have relied a lot on the works of Gilligan. Gilligan conducted a psychological study where a hypothetical

5. Leslie Bender, "A Lawyer's Primer of Feminist Theory and Tort," 38 *Journal of Legal Education* 3 (1988).
6. Adam B. Cox, Richard A. Epstein and Eric A. Posner, "The university of Chicago law review," 80 *University of Chicago Law Review* 1–6 (2013).
7. Adelaide H. Villmoare, "Feminist Jurisprudence and Political Vision," 24 *Law & Social Inquiry* 443 (1999).
8. Linda J Lacey and Linda J Lacey, "Tulsa Law Review Introducing Feminist Jurisprudence/ : An Analysis of Oklahoma ' s Seduction Statute Lacey/ " 25 (2013).

situation was put on two children named Amy and Jake. The situation was that "a man's wife is dying, but can be saved by an expensive drug which the man cannot afford. They are asked whether he should steal the drug to save his wife's life."[9] Jake's answer was crystal clear; he believed it was ok if he had to steal to save human life, whereas the answer for Amy was very different. According to Amy, "If he stole the drug, he might save his wife then, but if he did, he might have to go to jail, and then his wife might get sicker again, and he couldn't get more of the drug, and it might not be good. So, they should talk it out and find some other way to make money." Cultural feminists have analyzed these answers thoroughly and concluded that women prioritize care, nurturing, and selflessness over selfishness instead of aggressive behaviour, a kind of trait commonly associated with men. That is why supporters of cultural feminists have given a lot of importance to bringing changes in laws relating to 'mandatory child raising leaves.' This approach of cultural feminists has captured a lot of criticism from believers of other approaches as it makes women look very traditional. Sticking characters like child nurturer, caregiver and selfless are precisely the adjectives that radical or even liberal feminists are trying to fight. Nonetheless, in their defence, cultural feminists say that they have been attempting to grasp the positive attributes of the traditional women and negated the negative ones, such as submission to the husband and playing a passive role in decision making, etc. in short cultural feminists are trying to spread the message that women do not have to change and become "like men" to be accepted or taken seriously, they can be as they are, does not matter if they are gentle or robust, selfish or selfless and still be as good and socially acceptable as men.[10]

Cultural feminists tend to sharply differentiate between male and female traits, which do not form a woman's formulations. Therefore, without a doubt, Echols's description of culturists presents us in a very homogeneous manner and that the charge of essentialism may stumble at any time. According to Echols, "This preoccupation with defining the female sensibility not only leads these feminists to indulge in dangerously erroneous generalizations about women but to imply that this identity is innate rather than socially constructed. At best, there has been a curiously cavalier disregard for whether these differences are biological or cultural in origin." Thus Janice Raymond argues, "Yet there are differences, and some feminists have come to realize that those differences are important whether they spring from socialization, from biology, or from the total history of existing as a woman in a patriarchal society." He contends that the variations' significance varies greatly per their reference. If the reference is inherent, the cultural feminists will kingpin on developing a substitute feminist philosophy that is recognized as politically and publically accepted. However, if the differences are intrinsic, the focus of this activism shifts

9. Carol Gilligan, "In a Different Voice", (1982)
10. William J Turnier et al., "CULTURAL FEMINISM" (1996).

substantially. Since there is the absence of a clarion position about the ultimate sources of gender difference, Echols, quite intellectually, infers from their stress on creating a space free of feminists and women-centric philosophy, which is seldom looked at like a version of essentials by cultural feminists. Echol consistently points out that cultural feminism may be a product of white feminism yet is not homogeneous. To substantiate, 'the biological accounts of sexism by Daly and Brown miller' are not accepted by Rush and Dworkin, What binds them as one is their potential for invoking and universalizing concepts of women and mothers in a way Essentialists tend to do.

Notwithstanding the absence of absolute homogeneity /similarity within the category, it still seems justifiable and vital to identify (and criticize) disparate works within to offer Essentialists the needed reaction to chauvinism and machismo through adopting a similar, simple, and ancient inception of women. This certainly must not be understood as the political effects have all been adverse. The persistent demand for perceiving traditional feminine characteristics from another angle, i.e. "looking glass" point of view, is a means for endangering Gestalt switch on data of body we all currently share, which has had a positive impact. After one decade of things like wearing business suits and stepping into the male world, which has been helpful, the cultural feminists now debate that women's world is infused with superior values to be appreciated and learned from rather than hated. This is precisely where the positive impact of feminism is observed. Moreover, their point is not wrong. The nurture and sensitivity with which the woman brings up her child, her attempts to keep the family united, and her creativity with artistic angle are all praiseworthy and better than the male competitive spirit.[11]

III. CULTURAL FEMINIST AND LEGAL PROFESSION

Cultural feminism demands changes in laws as most laws are made from a male point of view, and they hardly consider women's perspectives. They asked for changes like equal pay and a different set of laws made by women keeping in mind the problems relating to women. Cultural feminists strongly believe that women's contributions to the legal profession can be two-fold, firstly, increased participation of women in the profession in the form of attorneys and judges will help in resolving issues, and secondly, with more involvement of women in the judiciary then the approach for resolving any conflict will change from "ethos of justice" to "ethos of care" which means laws to be more humanitarian rather than being retributive.[12] Professors Carrie Merkel-Meadow, Suzanna Sherry, and Kenneth are the supporters and promoters of women in the legal

11. ZHU Qing-hua, "Women in Chinese Philosophy: Yin-Yang Theory in Feminism Constructing," 6 *Journal of Cultural and Religious Studies* 391–8 (2018).
12. Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence," 8 *Signs: Journal of Women in Culture and Society* 635–58 (1983).

profession. She also believes that female clients will have a better lawyer-client relationship than men as women personalize situations and resolve the complexities.[13]

Any legal system has substantive and procedural laws; according to culturist women's "ethos of care" on the current substantive laws, they will not be just about individual rights and make room for the vulnerable and isolated in any society. Many discriminatory laws or the laws made for women by men will be removed and amended when women start taking an active part in the law-making process and judiciary too. According to culturists, since women and men are different, laws should be different on some issues such as; sexual harassment, maternity leave, domestic violence, tax (pink tax), torts, bankruptcy, etc. Professor Areen has explained this through an illustration where she emphasized the different take of "ethos of justice" and "ethos of care" on the issue of people living with AIDS. However, on the other hand, under the care perspective, the government would provide medical and emotional care for people living with AIDS. It would address problems through education, voluntary restraint, self-responsibility and testing.

Moreover, Professor Leslie Bender has presented her opinion as a culturist on the law of torts and how the entire approach towards the remedies available could have been different if a woman's perspective had been considered. Suppose the reforms suggested by the cultural feminists are taken into consideration. In that case, the entire legal system will be changed from its very fundamental level, which is to some extent needed. This is unfair as most of the current laws are made by the so-called superior sex, and women have to settle for solutions for their problems suggested from a male perspective and not a female perspective.[14]

IV. FEMINISM IN THE INDIAN CONTEXT

In India, contrary to rest of the world, feminism struggle was initiated by the men. The Initial Era of Indian Feminism ranging between 1850 to 1920s, demolished the age-old tradition of Sati. Raja Ram Mohan Roy was a staunch opponent of Sati Pratha and the first to speak out against the oppression of women's rights and he. He went out to enlighten the public on the issue. As the Orthodox Hindus approached parliament to deny Bentinck's move prohibiting the Sati ritual, parliament refused. The Pre-Independence Era is known as the Second Wave of Indian Feminism. The women of India were in charge of the Indian Feminist Movement. Females' rights became more prominent as women became more conscious of their rights and took to the streets to seek those rights from their male family members. Throughout the non-violent civil disobedience campaign opposing the British Raj, Mahatma Gandhi encouraged women to participate. Sarojini Naidu, the first Indian female President of the Indian National

13. Leslie Bender, "Tulsa Law Review Changing the Values in Tort Law Bender/: Changing the Values in Tort Law CHANGING THE VALUES IN TORT LAW * Leslie Bendert," 25 (2013).
14. Ann Juergens, "Feminist Jurisprudence/ : Why Law Must Consider Women' s Perspectives Feminist Jurisprudence/: Why Law Must Consider Women ' s Perspectives" (1991).

Congress, took charge in 1925 and was a supporter of women's issues. Throughout the Indian struggle, many women rose to prominence and spoke their opinions in order to combat patriarchy and the British. They invited more women to join them in their fight. Matangini Hazra, also known as Gandhi Buri, Bhikaiji Kama, and Lakshmi Sahgal, also known as Captain Laxmi, are among the lesser-known women who spoke out against sexism and the imperial administration.

Women have the right to vote under Article 14 of the Indian Constitution, which says that all citizens of the nation shall be treated equally. Contrary to other nations, wherein women had to fight for these rights, in the United States, women did not have to fight for these rights. The victory of the Third Wave of Indian Feminism commenced when Rebecca Walker publicly said *"I am the Third Wave."* for a magazine in the year 1992, This began by bringing attention to the problem of intersecting and expressing their opposition to assault: The establishment of the National Commission for Women in 1992 was a significant step in promoting and protecting women's status. The Supreme Court of India, in "Vishakha v. State of Rajasthan" extended the protection of women against Sexual Harassment at Workplace. This case is significant as it strengthened the feminist legal methods, thereby giving their motive a more prominent reason.

V. LEGAL POSITIVISM

Legal Positivism is a judicial theory that focuses on the traditional character of law, which is a societal concept. As per legal positivism, the law is closely associated with positive standards enacted by lawmakers or regarded as common law. For social norms to be called a law, they must be enforced and efficient. Legal positivism rejects divine commands, rationality, and human rights as foundations for law. It does not entail a moral basis for the substance of the law, nor does it indicate a choice between obeying it and not obeying it. This incorporates the belief that when judges decide instances that do not clearly come within a legal norm, they create new legislation.[15]

VI. THE PROTECTIONIST INTERPRETATION OF LAWS FOR WOMEN

Even if there are provisions in the constitution that favour justice, a woman is nonetheless in a disadvantaged position in the twenty-first century. The nation is indeed stuck in the past. And women are still seen through patriarchal eyes. Given the Constitution's vast scope, the constitution's readings have reflected the patriarch and traditional structure of Indian culture. In reading the laws, the judiciary renders it challenging for the general public to comprehend. As a means of delivering justice, the court tends to be protective. "Independent regulations are being interpreted on the basis that women are inferior and distinct from males. Upon reading some things, a person of ordinary

15. Our Backs, "Feminist Jurisprudence Bllf ^^ k," 13 13–4 (2018).Toronto Press and Toronto Law Journal, "The Many Faces of Legal Positivism Author (s): W. J. Waluchow Source/: The University of Toronto Law Journal, Summer, 1998 , Vol . 48, No. 3 Published by/: University of Toronto Press.

judgment would undoubtedly believe that women are weak in comparison to males and that other laws should be enacted to protect them. Inequality and sexism become the ground when such ideology spreads through the air. Whenever women are assigned the position of the weaker sex, they are treated as second-class citizens to males. The constitution assigned the label of "weaker sex" to recognise the prejudices women faced in the past. Economic and social biases have slowed their growth in the past, necessitating the passage of legislation. The constitution does not notice that females are naturally weaker than males.[16]

VII. CONCLUSION

Our society is presently in the 4th layer of "Indian Feminism", and it has been a great trip. We have watched the "#Me_Too movement" picking up steam and battling through society's ugly underbelly. India has had a long history of "feminist activism", and we have remained staunch supporters of "feminist" law from its inception. We've ensured that the silenced are addressed, as well as women's prejudice and suffering. "Feminist jurisprudence" is a legal theory focused on gender justice in politics, economics, and society. In India women have been represented in all societal facets. With the introduction of 'Article 243 D', one-third of Panchayat Raj posts are designated for females. In the landmark cases of *Nargesh Meerza*[17], *Vishakha*[18], and others, judiciary guaranteed that women must not be subjected to employment prejudice. The "UJJAWALA", for example, is a system that guides and empowers females professionally.

Feminist jurisprudence constantly works towards making the world a better place for everyone, and the three approaches that they work on are the instruments. Feminist jurisprudence cannot be understood and analyzed in isolation; one must understand all three approaches to have a holistic grip on the matter. Even though women's rights are the centre subject matter of feminists, the approach to attaining equal rights for women is very different under each school of thought. Cultural feminism tries to bring up the cultural values of women, which are usually seen as old-fashioned, rather than just focusing on the biological differences between men and women. This is why cultural feminism is also seen as a way of "depoliticizing radical feminism." This school of thought, in particular, has received a lot of criticism too because many feminists believe in eradicating the cultural oppression that society has put over women, and here cultural feminism has supported those customs; however, that is not the case. Human rights violation has been a part of every society, and women have been its greatest victims; hence, feminist jurisprudence is not just for studying it theoretically but also for society's need.

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16. 1981 AIR 1829
17. (1997) 6 SCC 241
18. William J Turnier et al., "CULTURAL FEMINISM" (1996).

6

Role of Social Media on Public Health: A Critical Study

Lucy Haque[1]

I. INTRODUCTION

Social media has evolved with the augmentation of Web 2.0 applications. Being open and interactive these Web 2.0 applications has allowed public to communicate and share information instantaneously. World's second-largest internet users are based in India figuratively over 749 million. Out of which 744 million use internet through their mobile phones.[2] Social media due to its large number of daily users can be a handy tool for running public health campaign by the govt. and international organization alike. The lockdown period during Covid-19 outbreak hold testimony to the fact that social media has meaningful impact on public health. For instances, family members can keep tab on each other's health, public can be vigilant about outbreak of disease in their locality and patients can have counseling from the comfort of their homes. Social media platforms provide easy access to a vast amount of health information. Users can find information about healthy lifestyle choices, precautionary measures and treatment options which lead to better health outcomes for the masses.

After the independence law has been on a quest to uplift the public health of the nation, yet the effective application of conceptual framework has not fructified in optimal manner. Over the years medicine has progressed from treating disease to promoting health, which necessitates legislative interventions at many levels to effect behavioural changes among individuals. Article 47 (Directive Principle of State Policy) of the Constitution of India signify improving public health as a primary goal of the government.[3]

1. Research Scholar, Department of Law, Cooch Behar Panchanan Barma University, West Bengal, India
2. Number of mobile phone internet users in India from 2010 to 2020, with estimates until 2040, *available at* https://www.statista.com/statistics/558610/number-of-mobile-internet-user-in-india/
3. S. Hazarika, A. Yadav, K. S. Reddy, D. Prabhakaran, T. H. Jafar, K. M. Venkat Narayan "Public health law in India: A framework for its application as a tool for social change" 22 (4) *NMJI* (2009)

Indian government has shifted from individual specific surveillance to mass surveillance propelled by rapid digitalization. The scope of surveillance is not limited to security threats but extended to population management and control. The pandemic has enabled public-health surveillance by associating it with public order. Now private citizens have to bear the brunt if any red flag arise from collected data. They may be refused access to basic public services and facilities if any gap is found in their personal information. Without enough protections, monitoring can quickly become a whip to exclude and repress people. Digital surveillance though widely viewed as cost-effective way for government outreach programme, without due process and cross verification the same may cause more harm to the public in circumstances of biased databases and technical mishaps.[4]

II. POSITIVE IMPACTS OF SOCIAL MEDIA ON PUBLIC HEALTH

Social media is often associated with negative impacts on health but there are also many positive sides to it. Their influence can be observed on both public and individual health.

1. Public Health Monitoring

Public health monitoring can be enhanced through social networking sites for clinicians, patients and public in general. The World Health Organization (WHO) also relies on web sources to conduct surveillance activities since traditional means of data collection are not effective in capturing information.[5] Detecting disease outbreaks is made easier with the help of social media platforms. It is possible to identify infectious diseases more quickly using the social media techniques known as user-generated information and real-time information about various public health outcomes, such as sexually transmitted diseases, heart ailment, food or water borne illnesses, which may allow officials to act swiftly.[6] Social media platforms can help raise awareness of public health issues, such as vaccination campaigns, disease outbreaks, and environmental hazards. This increased awareness can lead to better public health outcomes.

During the outbreak of Covid-19 the Government has developed contact tracing app 'Arogya Setu' in order to contain the spread of the disease. Concurrently 71 countries in the world developed their own version of contact tracing app. Downloading these apps on wearable devices are made mandatory for public if they take public transport to travel. Several Indian states also grew their own apps for example Karnataka's 'Quarantine Watch' and Jharkhand's 'Sahayta' which required users to register with selfies borrowing the features of social media app.[7]

4. Mahapatra, S. "Digital Surveillance and the Threat to Civil Liberties in Indi" 3 *GIGA Focus Asien* (2021)
5. Brownstein JS, Freifeld CC, Madoff LC "Digital disease detection - harnessing the Web for public health surveillance" 360 *NEJM* 2153- 2157 (2009)
6. Wakamiya S, Kawai Y, Aramaki E "Twitter-based influenza detection after flu peak via tweets with indirect information: text mining study" 4 JMIR Public Health Surveill. 65(2018)
7. *Supra 4*

2. Forwarding Health Research

According to studies, health researchers utilize social media for a range of research-related purposes. The platform is most commonly used to recruit participants and obtain data from them also through other routes like content analysis of social media postings and social media data mining. Availability of scientific research articles also aids in collaborating with colleagues. Sharing links to scientific articles or social survey on social media might assist significantly in boosting readership and encourage further study on the matter. Public Health Organization can regularly communicate about diseases, remedies and precautions to the people at large using social media sites.[8]

3. Development of Health Professionals

Because of the expanding social media presence of academics, physicians, business professionals, public health agencies and healthcare systems there are numerous chances for professional interaction outside of traditional contexts. Several social platforms like Twitter allow public health experts to interact with the general public.[9]

4. Influencing of Health Policy

Social media allows people to share their views on health policy with the general public, decision-makers, and other key stakeholders. Politicians have a massive following Twitter and youths are actively participating in debate on politics and policies including health issues on social media. Because politicians are motivated to please their constituents, using social media to inform them about proposed laws and encourage them to contact political representatives to voice their ideas can be very impactful.[10]

5. Myth and Reality

In this world where billions of people are digitally connected, having more accurate online health information available may be able to offset the effects of people making misleading claims and enhance fact-checking activities. Social media presence of professionals may aid in debunking facts from myth.[11]

6. Public Health Promotion

Various social media outlets are trying to improve women's health[12] by increasing awareness about menstrual hygiene, better understanding of breast cancer, breastfeeding

8. Arun Mitra, Biju Soman, Rakhal Gaitonde, Tarun Bhatnagar, Engelbert Nieuhas and Sajin Kumar "Data Science Approaches to Public Health: Case Studies Using Routine Health Data from India" 9596 *Easy Chair* (2023)
9. Jessica Y. Breland, Lisa M. Quintiliani, Kristin L. Schneider, Christine N. May, Sherry Pagoto, "Social Media as a Tool to Increase the Impact of Public Health Research", 107 *AJPH* 1890-1891 (2017)
10. *ibid*
11. *ibid*
12. Chaudhary K, Nepal J, Shrestha K, Karmacharya M, Khadka D, Shrestha A "Effect of a social media-based health education program on postnatal care (PNC) knowledge among pregnant women using smartphones in Dhulikhel hospital: A randomized controlled trial" 18(1) PLoS ONE (2023)

techniques, promotion of oral hygiene, side-effects of antibiotics, benefits of exercise, safe sex and contraceptive awareness, road safety awareness, smoking cessation, adverse drug reaction reporting and many more. Social media platforms can connect people who are dealing with similar health conditions. These groups can provide emotional support, share information about treatments, and offer advice on coping strategies. Social media can provide a platform for people to share their mental health struggles and connect with others who have similar experiences. This can help reduce stigma and provide a sense of community for people who may feel isolated. Patients can use social media to schedule appointments, ask questions, and get feedback from their doctors.

Social media has become an increasingly essential part of people's lives all around the world, and the influence on public health is a hotly debated topic. While social media has the potential to be a powerful tool for promoting public health and disseminating health information, it can also have negative effects on individuals and communities, including the spread of false information, the exacerbation of existing health inequalities, stress and anxiety, poor sleep quality, and exposure to harmful content.

II. NEGATIVE IMPACTS OF SOCIAL MEDIA ON PUBLIC HEALTH

Experts and enthusiasts have been insistent on negative impacts and advised for use social media in moderation. It is being advocated to critically evaluate information found on social media and seeks out reliable sources for health information.

1. Publication of misleading information

The internet's biggest obstacle in general is that it is available to everyone. Anybody may upload information on whatever topic they wish. This leads to people becoming all knowing gurus and intentionally or unintentionally disseminate erroneous information. Social media can spread misleading information about health topics, leading to confusion and potentially harmful behaviors. For example, false information about vaccines has contributed to vaccine hesitancy and outbreaks of preventable diseases. Also certain internet information might have diverse points of view and change based on geographical and cultural variables. This conflicting information and how users who provide that information may be secured is one of the digital era's main issues.[13]

2. Concerns about patient's privacy

Some patients are hesitant to share information via the web platform due to data confidentiality concerns. Posting intimate health information on these sites without regard for patients will surely cause betrayal and overstep their private barrier, as well as call the profession into question in general. On other hand healthcare providers'

13. Ammara Malik, Faiza Bashir and Khalid Mahmood "Antecedents and Consequences of Misinformation Sharing Behavior among Adults on Social Media during COVID-19" SAGE Open (January-March 2023)

social media material was so terrible that the provider who shared the information after receiving harsh criticism quit the platform entirely to save their reputation.[14]

3. Mental Health Issues

According to various studies[15] over the top use of social media can increase the risk of many mental health issues like depression, anxiety and sleeplessness. In extreme cases heavy users of social media develop a sense of social isolation which in urban slang called FOMO. Social media platforms can be ruthless for one's sanity as it harbors cyber bully, stalker, and harasser. The deteriorating mental health pushes one to take extreme decisions like suicide. Social media use is associated with sedentary behavior, which can contribute to obesity, diabetes, and other health problems. Its use before bedtime can interfere with sleep quality and duration, which can have negative impacts on physical and mental health.

4. Intrusive State Surveillance

There are reports that when the whole country was struggling with more than 300,000 COVID-19 cases per day and acute shortages of oxygen, intensive-care-unit beds, and critical medicines, the governmental went on a drive to save self image. They asked various social media outlets such as Facebook, Twitter, and Instagram to remove approximately 100 posts and accounts concerning the pandemic's handling. Twitter geo blocked 52 tweets, including two from members of parliament and the legislative assembly. Technologies should be used for benefitting the public health rather than punish people through intrusive surveillance. The app designed to manage public health poses privacy risks as it contains people's personal information. People's anonymity has slipped like sand through ensnare of technology. Round the clock surveillance has instilled great dread among those being watched, purporting stigma and heavy handedness with an already vulnerable group such as care workers, sanitation workers, gig workers, manual laborers, minorities, tribal, and the transgender community.[16]

IV. EXISTING LAWS AND PROFESSIONAL ETHICAL GUIDELINES

Public health law ordains the government with authority and responsibility to regulate private activity in order to improve public health. According to eminent scholar Frank Grad, public health law does not come in a compact legislative package, but rather comprises of many different sorts of laws, guidelines from professional bodies, self regulatory rules with nothing in common other than the benevolent ambition of enhancing public health.[17] Adhering to the convention and tailoring the convention

14. Noonan, K. E. "Personalized medicine and patient privacy concerns in the telemedicine age" 19 (3) *DePaul Journal of Health Care Law* 1-20 (2017)
15. Joseph J, Varghese A, VR V "Prevalence of internet addiction among college students in the Indian setting: a systematic review and meta-analysis" 34 *General Psychiatry* 2021
16. *Supra 4*
17. Grad FP "Public health law: Its form, function, future, and ethical parameters" 49 *Int Dig Health Legis* 19-39 (1998)

around present dynamic law may be utilised to promote and preserve public health goals. However, striking a fair balance between the state's powers and duties to defend and advance public health while also protecting individuals' constitutional rights is an unavoidable challenge for public health law.

The first International Human Rights Conference at Tehran in 1968 put emphasis on the fact that advance in science and technology is agathokakological and it can easily detrimentally affect individual rights and freedom. The Vienna Declaration and Action Programme, 1993 adopted by the World Conference of Human Rights laid down that to deter the threat to human rights and integrity from wicked consequences of advancement biomedical science and information technology international cooperation is necessary. Article 27 of Universal Declaration of Human Rights and Article 15 of International Covenant on Economic, Social and Cultural Rights postulates the right of everyone to capitalize on scientific development. An important right which is sine quo non for capitalizing on scientific development has found its footing in Article 19 of International Covenant on Civil and Political Rights (ICCPR) as right to freedom of expression. Under Article 12 of UDHR and Article 17 of ICCPR privacy, correspondence is protected from undue interference as a precautionary tale.

Article 19 of the Constitution of India as a fundamental right guarantees freedom of expression, freedom to seek and impart information irrespective of medium. Fundamental Duty specified in Article 51A (h) of the Constitution of India implores its citizen to develop scientific temper, humanism and spirit of inquiry. A person should be bind followers of social media influencers and an inquisitive spirit will verify the available information on fitness and health before believing it. Article 47 has urged the State Governments to improve public health as a priority.

As media stepped from print to digital functions of law has also evolved from the interception of voice calls by the Indian Telegraph Act (1887) to interception of digital communications by the Information Technology Act/IT Act (2000) to monitoring online media content by the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules (2021). Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was recently introduced to regulate social media platforms, streaming services, and other digital content providers. The rules mandate these platforms to establish a grievance redressal mechanism, appoint a compliance officer, and adhere to a code of ethics. The Indian Penal Code has several provisions that can be used to tackle misinformation and fake news. For example, spreading rumors or false information that can cause public unrest or incite violence can lead to charges under sections 153A and 505 of the IPC.

Guidelines are especially valuable in emerging and changing fields. If it is discovered there is a vast difference between ideal or reality guidelines are developed to connect them. There is concern about maintaining professional boundaries when on social media as there is still no agreement on what constitutes professional Internet behavior,

with the exception of the most heinous errors in professional unethical and illegal activities. Despite the difficulty of objectively measuring and teaching professionalism, progress is being made in areas such as confidential patient details.[18] The Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002 are designed to govern the conduct of medical professionals in India. They provide guidelines for maintaining doctor-patient relationships, respecting patient privacy, and ensuring the quality of care provided. The National Ethical Guidelines for Biomedical and Health Research Involving Human Participants, 2017 was introduced by the Indian Council of Medical Research to govern the conduct of research involving human participants. They provide guidelines for maintaining patient privacy and respecting the rights of research participants.

The Government other than laying down new laws and regulations and deriving professional guidelines has taken off-beaten routes like floating fact-checking sites to disprove fake news and rumors. Social media giants itself has adopted surveillance tactic like content moderation of their users.

V. JUDICIAL OBSERVATIONS

In recent times the Supreme Court of India was hearing a petition[19] seeking guidelines for social media platforms to curb fake news and hate speech. The court directed the Indian government to draft guidelines for social media platforms to prevent the spread of fake news and misinformation. In another case[20] the Supreme Court was hearing a petition challenging a circular issued by the Reserve Bank of India that prohibited banks from dealing with crypto currency exchanges. The court noted that social media platforms are often used to spread false information directed the government to take steps to prevent this. The Supreme Court in the groundbreaking case of K.S. Puttaswamy[21] recognized the right to privacy as a fundamental right under the Indian Constitution. The court noted that the spread of misleading information on social media can infringe on an individual's right to privacy and directed the government to take steps to prevent this.

VI. CONCLUSION

Social media is a growing medium with plenty of possibilities for us to use it as vehicle of improving public health and it has also implications on the relationship between physician and patient, gaining public confidence in the system, danger of potential lawsuits. These thriving platforms are not immune to these downsides, which include

18. Kanchan S, Gaidhane 15(1) "A Social Media Role and Its Impact on Public Health: A Narrative Review" *Cureus* (2013)
19. Facebook Inc. vs Union of India TP (C) 1943-46/2019 (Diary No.32478-2019)
20. Internet and Mobile Association of India vs. Reserve Bank of India (2020 SCC online SC 275)
21. K.S Puttaswamy vs. Union of India (2017) 10 SCC 1

possible moral, ethical, legal, and privacy infractions, concerns about professional behavior, compliance-related challenges, and social repercussions. Even if there are numerous concerns, hazards, and dangers, we may overcome these hurdles and fully use technology if they are addressed, recognised, and attempted to be avoided. Focusing on how we may utilise social media and its associated demands is both vital and ethical, since it may be impossible to ensure continual growth and evolution without appropriate standards and controls.

Overall, laws and regulations play a crucial role in regulating the dissemination of health-related information on social media, protecting patient privacy, and promoting mental health. By strengthening regulations, implementing strict penalties, promoting public awareness, promoting mental health, and protecting patient privacy, governments can help create a safer and more secure online environment for individuals and communities.

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7

Surrogacy: International and National Perspective Through Lens of Law

Dr. Ranjit Sil[1]

I. INTRODUCTION

Law is a social institution. A society may be described as an association of people with a measure of permanence. A 'civic society' is said to comprise out of many others things a culture as manifested in its art, philosophy, law, morality, religion, fashion and opinion.[2] They provide the means to social control, to law and order and to promote social welfare. The objective for the study of law as a subject is to analyze it with the need of the society. Law is evolving and growing, based on top with the development of science and technology it has tremendously grown and make it the most thriving area for discussion and debate. In defining science, it is quite possible and indeed quite customary, to concentrate on its results. As for law, we can presume it corresponds to the existence of public order, we may assert that science exists when men have the ability to predict and control the phenomena of nature.[3] Technological breakthroughs in the field of science and medicine have to be regulated to control the unethical gained in the economic sphere and the internal morality of the society, the government has set up rules to regulate the human conduct but taking into account the economic aspect one must agree that there is a conflict of interest, to strike a balance between legal and economic gains does results in inefficiency, hypocrisy, moral confusion and frustration at the most.

One of the issue of that has sprung tremendous debate about the legality and morality of law is Surrogacy but let us all analyze it with a broad mindset and a broad approach to its pros and cons it brings about. Surrogacy is a term which is no longer alien in our modern society; however this system is reported as old as the story of

1. Assistant Professor of Law, Department of Law, North Eastern Hill University, Shillong, Meghalaya
2. R.W.M. Dias, *Jurisprudence* p.15, LexisNexis, Haryana, India, 5th edn., 2013.
3. Lon L. Fuller, *The Morality Of Law* p.119, Universal Law Publishing Co. Pvt. Ltd, 3rd Reprint edn., 2004.

Abram, Sara and Hagar[4] as well as Jacob, Rachel and Bihal[5] in the Holy Bible which tells about the practice of surrogate motherhood. In the Bhagavata Purana, Vishnu heard Vashudev's prayers and had an embroyo from Devki's womb of Rohini another wife of Vashudev. Rohini gave birth to baby Balaram, brother of Krishna and secretly raised the child while Vashudev and Devki told Kansa the child was born death.[6] In the text of the Mahabharata, Gandhari sis not deliver a child rather delivered a semi solid material which was divided by Maharishi Vyas into 100 pieces and planted them in different pans. Thus the 100 Kauravas were born. Similarly Maharishi Bhardwaj saw a divine nymph coming out of water after having a bath and seeing such a beautiful woman, he felt discern and deposited his semen in a pot used for yagna called Drona. This is from where Dronacharya was born and names after the vessel.[7] These could also be referred to as test tube babies.

There are instances where in ancient Egypt infertile women opt for surrogacy. Such infertile women were allowed to undertake the practice of allowing another woman bear the biological child of her husband in order to avoid divorce. It was a practice though not held commonplace but was still considered an act and not a criminal offence.

In Surrogacy the process of IVF (In Vitro Fertilization) is used to procreate a fetus or as we called as 'test tube babies'. The world's first test tube baby Louise Brown was born by this method on 25th July 1978 in England; this is the handy work of Dr R.G. Edwards and P. Steptoe. Interestingly in India the technology of test tube baby procedure was conducted by a reputed physiologist Late Dr. Subhas Mukherjee of Kolkata, assisted by Dr Sunit Mukherjee a cryobiologist and Late Dr. Saroj Bhattachaerya a gynaecologist. This was successful as on 3rd October 1978 a baby girl Durga was born through this process. Unfortunately Indian first test tube baby was born just 70 days after the birth of the world first test tube baby.[8]

II. MEANING OF SURROGACY

The word ' Surrogate' has its origin in Latin term 'Surrogatus', meaning a substitute, that is, a person appointed to act in the place of another. Thus a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilised egg from other woman.

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4. Bible, The Book Of Genesis, Chapter 16.
5. Bible, The Book Of Genesis, Chapter 30.
6. Rekha. P. Pahuja, "Problem of Surrogacy- A Critical Study" Vol XII Issue 2, *Nyaya Deep* pp.113-114 (April 2011).
7. Dr B. S Chauhan (J), "Law, Morality & Surrogacy – with Special Reference to Assisted Reproductive Technology" Vol XIII Issue 4, *Nyaya Deep* p.7 (October 2012).
8. Dr. Nandita Adhikari, *Law And Medicine* p.102 (Central Law Publications, Allahabad, 2ndedn., 2009).

According to the Black's Law Dictionary, surrogacy means the process of carrying and delivering a child for another person.[9] The New Encyclopaedia Britannica defines 'surrogate motherhood' as the practice in which a woman bears a child for a couple unable to produce in the usual way.[10] In medical parlance the term surrogacy means using of a substitute mother in the place of natural mother.

Surrogacy is a contractual undertaking whereby the natural or surrogate mother, for a fee, agrees to conceive a child through artificial insemination with the sperm of the natural father, to bear and deliver the child to the natural father and to terminate all of her parental rights subsequent to the child's birth.[11]

III. CATEGORIES OF SURROGACY

Surrogacy has basically two categories, the first is *Gestational Surrogacy* and the other is *Traditional Surrogacy*. These are based on the method on which pregnancy is conducted. In the case of *Gestational Surrogacy*, it is a pregnancy in which a woman (the genetic mother) provides the egg, which is fertilized, and another woman (the surrogate mother) carries the fetus and gives birth to the child. In *Traditional Surrogacy*, it is a pregnancy in which a woman provides her own egg, which is fertilized by artificial insemination, and carries the fetus and gives birth to a child for another person.

Coming to the bases of arrangement, surrogacy is of two types, *Altruistic Surrogacy* and *Commercial Surrogacy*. In *Altruistic Surrogacy*, the surrogate mother receives no financial reward for her pregnancy or the relinquishment of the child although all expense related to her pregnancy and birth are paid by the intended parents such as medical expenses, maternity clothing and other related expenses. *Commercial Surrogacy* is a form of surrogacy in which the gestational carrier (the surrogate mother) is paid to carry a child to maturity in her womb and is usually resorted to by well off infertile couples who can afford the cost involved or people who save and borrow in order to complete their dreams of being parents.

Types of Surrogate Mothers

The modern advancement in medical science has brought three major types of surrogate mothers. They are (1) "half surrogate mother" which means in case of a couple, where the wife is sterile, the child may be sought by the couple from a baby bearer woman either by natural insemination or by artificial insemination of the latter with the sperm of the male of the couple. The woman so impregnated gives the child to the

9. Henry Campbell Black, *Black's Law Dictionary* (Paul Minn West Publishing Co., 4thedn., 1968).
10. Law Commission of India 228th Report on Need for legislation to regulate assisted Reproductive Technology Clinics as well as rights and obligations of parties to a Surrogacy (August ,2009).
11. Kush Kalra, "Surrogacy Arrangements: Legal and Social Issues" Vol 1, Issue No 1-2, *Journal of Law Teachers of India,* p126 (2010).

couple after it is delivered. Such a surrogate mother is described as "half surrogate mother". The "half surrogate mother", who subjects herself to natural insemination or "coitus procreation", may be described as natural law endowed half surrogate mother; and the "half surrogate mother", who subjects herself to artificial insemination or "non coitus procreation" may be called the medical science endowed half surrogate. (2) "Whole surrogate mother" in the case where both the husband and the wife are impotent but not sterile, a child may be sought by the couple from a baby bearer woman by impregnating the latter through artificial devise with both sperm and ova of the couple. The mother in this case, who hands over the child to the couple, is described as "whole surrogate mother" and (3) "Artificial Insemination by Donor or AID surrogate mother" in the case of couple, where both husband and wife are sterile, they have to seek the help of a sperm donor. A baby bearer woman may be artificially inseminated with donor semen and after giving birth, she may give the child to the couple as per their agreement.[12]

IV. LEGALITY OF SURROGACY CONTRACT

It is important to note that for surrogacy to take place there is a need for a contract between the competent parties that is surrogate mother and the intending parents. This is necessary to protect the interest o f both the parties. When the surrogate mother is compensated it made it mandatory to her to surrender the child after delivery to the intending parents. At the same time this also binds the commissioning parents neither to terminate the contract at their own free whims and fancies nor the surrogate mother cannot terminate her pregnancy[13] and walks away with the money. Further it is decided that this contract of surrogacy does not attract the illegality of Section 23 of the Indian Contract Act 1872, as the conception of the child through IVF does not arise the aspect of sexual immorality and hence it is not against public order[14] and if by doing so it satisfy the right to procreate[15] of a person which is part of right to life under Article 21 of the constitution then it cannot be blamed to be against public policy. The consent of both the parties should be an informed consent in writing.[16]

V. INTERNATIONAL LEGAL POSITION OF SURROGACY

Countries where only Altruistic Surrogacy is Legal

The following countries allowed only Altruistic surrogacy but completely banned Commercial surrogacy.

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12. Y. F. Jayakumar , "Socio-Legal aspect of Surrogacy in India" Vol 1. No.2, *Indian Journal Of Law And Justice* p89 (September 2010).
13. Except as provided in the Medical Termination of Pregnancy Act 1971.
14. *Gherulal Parakh v. Mahadeosdas Maiya*, AIR 1959 SC 781.
15. *Mr X v. Hospital Z* (1998) 8 SCC 296.
16. The Surrogacy (Regulation) Bill, 2016, Section 6(ii).

In Australia, all jurisdictions except the Northern Territory allow altruistic surrogacy; with commercial surrogacy being a criminal offense. The Northern Territory has no legislation governing surrogacy. In New South Wales, Queensland and the Australian Capital Territory it is an offence to enter into international commercial surrogacy arrangements with potential penalties extending to imprisonment for up to one year in Australian Capital Territory, up to two years imprisonment in New South Wales and up to three years imprisonment in Queensland.

In 2004, the Australian Capital Territory made only altruistic surrogacy legal. The *Assisted Reproductive Treatment Act 2008*, was passed and effective since 1 January 2010 to make only altruistic surrogacy legal.

In 2009, both Western Australia and South Australia passed a law to allow only altruistic surrogacy for couples of the opposite-sex only, and to prohibit it for single people and same-sex couples. In 2010, Queensland made only altruistic surrogacy legal, as did New South Wales, and Tasmania did the same in 2013 with the *Surrogacy Act No 34* and the *Surrogacy (Consequential Amendments) Act No 31*.[17]

In 2016, Gestational surrogacy was legalized in Portugal. Discussions on the adoption of this law lasted more than 3 years. The first version of the law was adopted on May 13, 2016, but the president vetoed it. He demanded that the law contained rights and obligations of all participants in the process of surrogacy. As a result, the text of the law has been updated, and now surrogacy is legalized and regulated by law in Portugal.

The basic rules of the law on surrogacy in Portugal is that the surrogacy services can only be availed by those couples, where the woman cannot carry and give birth to a child for medical reasons. This should be documental confirmed. Surrogate motherhood should be altruistic, the woman who agrees to carry and give birth to a child, shouldn't pay for services. The written agreement must be necessarily issued between the surrogate mother and the genetic parents. The rights and obligations of the parties as well as their actions in cases of force majeure should be included in it. After the birth, parental rights over the child belong to the genetic parents. According to the law, the surrogate mother is a woman of child-bearing age who agrees to carry and give birth to a child for the genetic parents, and she doesn't lay claim to be his mother.

Traditional surrogacy is illegal in Portugal except for some situations that give the right for a surrogate mother to be genetic (for example, if the future adoptive mother is completely barren).[18]

17. Available at URL: https://en.wikipedia.org/wiki/Surrogacy_laws_by_country, accessed on 4th May 2017.
18. Supra note 16.

In Canada, The Assisted Human Reproduction Act (AHRC) permits only altruistic surrogacy: surrogate mothers may be reimbursed for approved expenses but payment of any other consideration or fee is illegal.

In New Zealand altruistic surrogacy is legal

South Africa allows altruistic surrogacy. The South Africa Children's Act of 2005 (which came fully into force in 2010) enabled the "commissioning parents" and the surrogate to have their surrogacy agreement validated by the High Court even before fertilization. The law permits single people and gay couples to be commissioning parents. However, only those domiciled in South Africa benefit from the protection of the law, no non-validated agreements will be enforced, and agreements must be altruistic rather than commercial. If there is only one commissioning parent, she/he must be genetically related to the child. If there are two, they must both be genetically related to the child unless that is physically impossible due to infertility or sex (as in the case of a same sex couple). The Commissioning parent or parents must be physically unable to give birth a child independently. The surrogate mother must have had at least one pregnancy and viable delivery and have at least one living child. The surrogate mother has the right to unilaterally terminate the pregnancy, but she must consult with and inform the commissioning parents, and if she is terminating for a non-medical reason, may be obliged to refund any medical reimbursements she had received.[19]

The Surrogacy Arrangements Act 1985 prohibits commercial surrogacy in the United Kingdom. While it is illegal in the UK to pay more than expenses for a surrogacy, the relationship is recognized under section 30 of the Human Fertilization and Embryology Act 1990. Regardless of contractual or financial consideration for expenses, surrogacy arrangements are not legally enforceable so a surrogate mother maintains the legal right of determination for the child, even if they are genetically unrelated. Unless a parental order or adoption order is made, the surrogate mother remains the legal mother of the child.[20]

Whereas surrogacy is not legal in Spain (the biological mother's renouncement contract is not legally valid), however it is legal to perform the surrogacy in a country where it is legal, having the mother the nationality from that same country.[21]

In March 1996, the Israeli government legalized gestational surrogacy under the "Embryo Carrying Agreements Law." This law made Israel the first country in the world to implement a form of state-controlled surrogacy in which each and every contract must be approved directly by the state. A state-appointed committee permits surrogacy arrangements to be filed only by Israeli citizens who share the same religion. The numerous restrictions on surrogacy under Israeli law have prompted some intended

19. Supra Note 16.
20. Ibid.
21. Ibid.

parents to turn to surrogates outside of the country. Same-sex couples can enter a surrogacy arrangement outside of Israel and have their legal parenthood recognized within Israel.[22]

After the amended Family and Marriage Law was passed in 2015, surrogacy for humanitarian purposes have been allowed in Vietnam from 2015.[23]

Countries where Surrogacy is Illegal

In Switzerland, Serbia, Pakistan, Italy, Iceland, France and Finland, any surrogacy arrangement whether commercial or altruistic, is illegal or unlawful and is not sanctioned by the law. In Hong Kong commercial surrogacy is criminal under the Human Reproductive Technology Ordinance 2000. The law is phrased in a manner that no one can pay a surrogate, no surrogate can receive money, and no one can arrange a commercial surrogacy (the same applies to the supply of gametes), no matter within or outside Hong Kong. Normally only the gametes of the intended parents can be used.[24]

However in countries like Ireland there is no law in Ireland governing surrogacy. In 2005 a Government appointed Commission published a very comprehensive report on Assisted Human Reproduction, which made many recommendations on the broader area of assisted human reproduction. In relation to surrogacy it recommended that the commissioning couple would under Irish law be regarded as the parents of the child. Despite the publication there has been no legislation published and the area essentially remains unregulated. Due to mounting pressure from Irish citizens going abroad to have children through surrogacy, the Minister for Justice, Equality and Defence published guidelines for them on 21 February 2012.

In Sweden surrogacy is not clearly regulated in Swedish law. The legal procedure most equivalent to it is making an adoption of the child from the surrogate mother. However, the surrogate mother has the right to keep the child if she changes her mind before the adoption. The biological father may nevertheless claim the right to the child.[25]

Countries where Surrogacy is Legal

In Georgia surrogacy, along with ovum and sperm donation, has been legal since 1992. Under applicable law, a donor or surrogate mother has no parental rights over the child born.[26]

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22. Supra note 16.
23. Ibid.
24. Ibid.
25. Supra note 16.
26. Ibid.

In Greece surrogacy is fully legal and is only one of a handful of countries in the world to give legal protection to intended parents. Intended parents must meet certain qualifications, and will go before a family judge before starting their journey. As long as they meet the qualifications, the court appearance is procedural and their application will be granted. At present, intended parents must be in a heterosexual partnership or be a single female. Females must be able to prove there is a medical indication they cannot carry and be no older than 50 at the time of the contract. As in all jurisdictions, surrogates must pass medical and psychological tests so they can prove to the court that they are medically and mentally fit. What is unique about Greece is that it is the only country in Europe, and one of only countries in the world where the surrogate then has no rights over the child. The intended parents become the legal parents from conception and there is no mention of the surrogate mother anywhere on hospital or birth documents. The intended parent(s) are listed as the parents. This even applies if an egg or sperm donor is used by one of the partners. An added advantage for Europeans is that, due to the Schengen Treaty, they can freely travel home as soon as the baby is born and deal with citizenship issues at that time, as opposed to applying at their own embassy in Greece. The old regime (pursuant to art. 8 of Law 3089/2002), one of the prerequisites for granting the judicial permission for surrogacy was also the fact that the surrogate mother and the commissioning parents should be Greek citizens or permanent residents. However, the law has recently (in July 2014) changed and the new provisions of L. 4272/2014 foresee now that the surrogacy is allowed to applicants or surrogate mothers who have their permanent or temporary residence in Greece. With this new law Greece becomes the only EU country with a comprehensive framework to regulate, facilitate and enforce surrogacy, as according to the explanatory statement of the art. 17 of the L. 4272/2014: "The possibility is now extending also to applicants or surrogate mothers who have their permanent residence outside Greece".[27]

In the Russian Federation gestational surrogacy, even commercial, is legal, being available to practically all adults willing to be parents. There must be one of several medical indications for surrogacy: absence of uterus, deformity of the uterine cavity or cervix, uterine cavity synechia, somatic diseases contraindicating child bearing, or repeated failure of Intro Vitro fertilization despite high-quality embryos.

In Thailand in response to the controversial Baby Gammy incident in 2014[28], Thailand since July 30, 2015, has banned foreign people travelling to Thailand, to have commercial surrogacy contract arrangement, under the *Protection of Children Born from Assisted Reproductive Technologies Act*. Only opposite-sex married couples as Thailand residents are allowed to have a commercial surrogacy contract arrangement. In the past Thailand was a popular destination for couples seeking surrogate mothers.[29]

27. Supra note 16.
28. Available at URL: http://www.abc.net.au/news/2014-08-04/wa-couple-denies-they-abandoned-baby-gammy/5644850 accessed on 4th May 2017.
29. Available at URL: http://www.loc.gov/law/foreign-news/article/thailand-new-surrogacy-law/ accessed on 4th May 2017.

In Ukraine since 2002, surrogacy and surrogacy in combination with egg/sperm donation has been absolutely legal.

In United States surrogacy and its attendant legal issues fall under state jurisdiction and the legal situation for surrogacy varies greatly from state to state as follows:-

(i) In Arkansas it was one of the first states to enact surrogacy friendly laws. In 1989, under then Governor Bill Clinton, it passed Act 647, which states that in a surrogacy arrangement, the biological father and his wife will be recognized as the child's legal parents from birth, even if his wife is not genetically related to the child (i.e., in a traditional surrogacy arrangement). If he is unmarried, he alone will be recognized as the legal parent.[30]

(II) California is known to be a surrogacy friendly state. It permits commercial surrogacy, regularly enforces gestational surrogacy contracts, and makes it possible for all intended parents, regardless of marital status or sexual orientation, to establish their legal parentage prior to the birth and without adoption proceedings (pre-birth orders).

(iii) Michigan forbids absolutely all surrogacy agreements. It is a felony to enter into such an agreement, punishable by a fine of up to $50,000 and up to five years in prison. The law makes surrogacy agreements unenforceable.

(iv) New Hampshire since 2014 it is recognized as a surrogacy friendly state, with laws in place to protect all parties to a surrogacy arrangement. All intended parents, irrespective of marital status, sexual orientation, or a genetic connection to the child, are able to establish their legal parental rights through pre-birth orders placing their names directly on the child's initial birth certificate. Reasonable compensation to the surrogate is permitted by statute

(v) New York law holds that commercial surrogacy contracts contravene public policy and provides for civil penalties for those who participate in or facilitate a commercial surrogacy contract in New York. Altruistic surrogacy contracts are not penalized, but neither are they enforced. New York does recognize pre-birth orders from other states, and has provided a post-birth adoption alternative for altruistic surrogate parents via orders of maternal and paternal filiation.[31]

VI. INDIAN POSITION ON SURROGACY

For long time India is a popular destination and choice for international intending parents' surrogacy choice which was brought under restrictive condition since 2015 when Indian Governments passed new regulations on the surrogacy process. Today Indian Surrogacy regulations make it illegal for foreign intending parents to complete a surrogacy in India. I December 2018, after almost two years of debate, an Indian

30. Supra note 16
31. Supra note 16

Surrogacy Bill was passed that made commercial surrogacy illegal and which only allows Altruisic surrogacy for needy, infertile Indian couples. Commercial surrogacy has been legal in India since 2002, a practice that has been fully taken advantage of by many stars in the Hindi film industry. Sharukh Khan, Amir Khan and on 7th February 2017, producer and actor Karan Johar became the father of twins – a boy and a girl – through a surrogate mother.

India has been a favourite country for those wanting a surrogate child. The cheap availability of the service enables an overuse of the practice with commissioning parents arriving from various other countries as well. In 2002, the Indian Council of Medical Research (hereinafter ICMR) laid down guidelines for surrogacy, which made the practice legal, but did not give it legislative backing. This led to a booming surrogacy industry which had lacking of laws and no enforcements. A study conducted in July 2012, backed by the UN, put the surrogacy business at more than $400 million with more than 3000 fertility clinics all over the country.[32]

The ICMR, even without legislative backing, provided pro-surrogacy guidelines that protected, to an extent, the surrogate mother and the commissioning parents. It prohibited sex-selective surrogacy, required the birth certificate to only have the names of commissioning parents, required one of the commissioning parents to be a donor, required a life insurance cover for the surrogate mother and ensured right to privacy of the mother and the donor, among other things.[33]

However, the necessity of legal protection was enforced through the case of *Baby Manji v. Union of India*[34]. A Japanese couple commissioned a surrogate mother in India but they ended in a divorce. The single male parent wasn't granted custody of the child and the mother refused to accept it. Japan gave the child humanitarian visa and allowed the grandmother to take the child on behalf of her son, given his genetic relation with the baby. During the case, however, the Supreme Court observed that surrogacy is a well known method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but handover to a contracted party. She may the child genetic mother or she may be a gestational carrier, carrying the pregnancy to deliver after having implanted with an embryo. The Supreme Court recognized that the parent of a surrogate child may be a male and recognized surrogacy as a positive practice.

A draft ART (Assisted Reproductive Technology) Bill was formulated in 2010, but was never passed as a law. The bill lays down further conditions and procedures for surrogacy and notes that there are no regulations as to how many times a birth mother

32. Available at https://thelogicalindian.com/story-feed/awareness/the-growth-of-surrogacy-industry-in-india-and-the-issues-surrounding-it/
33. Indian Council of Medical Research, *Ethical Guidelines for Biomedical Research on Human Participants*, New Delhi (2006), p.viii, available at <http://icmr.nic.in/ ethical_ guidelines. pdf> Visited on 10.7.2012.
34. AIR 2009 SC 84.

may be allowed to reproduce. The bill also enabled single parents, male or female, to have a child through surrogacy. Here, the women had to prove they were infertile and couldn't give birth while the men had no such condition. A research undertaken by Centre for Social Research (CSR) points out that the Bill did not protect the rights of a surrogate mother. The bill also did not allow single foreign nationals and homosexual couples to be commissioning parents. It defines "couple", as "two persons living together and having a sexual relationship that is legal in India."

The Bill, however, has no rules as to how much compensation a surrogate mother can get and should get. Over exploitation often results in declining health of mothers who become baby making machines. According to the CSR report, surrogate mothers are paid $4000-$5000 for bearing the child. Clinics, however, charge the adoptive parents double the money. The reason driving the mothers to surrogacy is usually poverty and lack of education, which further ensures their inability to challenge the exploitation. The research states that clinics do not provide the mother with a copy of the contract that is signed by the adoptive parents. In order to escape stigma (that they're indulging in this practice), pregnant women often stayed in shelter homes that provided them with lesser security and assistance than it is actually required. While they should be giving birth to only two children – having at least one own child from a previous birth – surrogate mothers end up being exploited for a much larger number, more often than not, giving birth one after the other.[35]

In light of this, the Surrogacy (Regulation) Bill, 2016 was introduced in Lok Sabha in November 2016. The cabinet approved the Bill, however, it has not been passed yet. The number one proposition of the Bill is to completely abolish commercial surrogacy. Defining commercial surrogacy as "surrogacy or its related procedures undertaken for a monetary benefit or reward (in cash or kind) exceeding the basic medical expenses and insurance coverage"[36], this provision is aimed at cracking down on the inside businesses of surrogacy that encourage exploitation. The Bill only allows altruistic surrogacy, where the surrogate mother is a close relative of the commissioning parents. The couple also has to prove their infertility.[37]

Under the Bill, all surrogacy clinics will have to be registered, the surrogate mother cannot be paid directly and there will be national and state surrogacy boards which will be the regulating authorities for the practice. Commercial surrogacy, abandoning the surrogate child, exploitation of surrogate mother, selling/ import of human embryo have been put down as violations, punishable by law. In addition, all registered clinics will have to maintain records of surrogacy for 25 years.[38]

35. Centre for Social Research, Report: *Surrogate Motherhood-Ethical or Commercial.* Available at URL: *wcd.nic.in/Schemes/research/.../DelhiMumbaiSurrogacystudyFinalreport.pdf, Accessed on 6th May 2017.*
36. The Surrogacy (Regulation) Bill, 2016, Section 2 (f).
37. The Surrogacy (Regulation) Bill, 2016, Section 4.
38. The Surrogacy (Regulation) Bill, 2016, Chapters IV, V, VI.

VII. CRITICAL STUDY OF THE SURROGACY (REGULATION) BILL, 2016

While the Bill is a welcome move but it has certain lacunae within it, which can be discussed as follows:-

1. While the ART Bill recognized commercial surrogacy and provided for its regulation, the Surrogacy (Regulation) Bill takes into account the extensive exploitation that is a product of commercial surrogacy; but it also abides by archaic ideas of who can be parents and who cannot.
2. The most jarring provision of the law, also present in the ART Bill, is the prohibition of single parents, homosexuals, live-in couples from becoming commissioning parents.[39] The Bill also disallows childless or unmarried women to be surrogate mothers.[40]
3. The Bill faced backlash from not just the opposition but also women who are currently involved in commercial surrogacy – these would be women who go from having a stable source of income to nothing at all.
4. The Bill has laid down the criteria that only Indian married couples should avail the surrogacy process. This has denied the services to the foreigners and allows only the Indians to seek the benefits of these services. This is violation of Article 14 of the Constitution, which ensures equal treatment to all and is also available to the foreigners.
5. Commissioning foreign parents as persons enjoys the protection of the equality of law and the right to life under Articles 14 and 21 of the Constitution, Right to reproductive autonomy and parenthood, as a part of a right to life of a foreign person, cannot be circumvented by an executive order, especially when Parliament by law already permits parenthood by inter country adoptions from Indian by foreigner.[41]
6. The banned of commercial surrogacy especially for commissioning foreign parents also violate Article 19(1)(g) as the surrogates are now restricted to do trade or business with only Indians and not the foreigners which would reduce their income at a tremendous rate as foreigners were the main customers for Indian surrogates because of excellent medical facilities, convenience in approach, abundant information on the internet, favorable legal position and economic viability has immensely positioned India as a preferred destination for international surrogacy arrangement.[42]

39. The Surrogacy (Regulation) Bill, 2016, Section 4 (iii)(c).
40. The Surrogacy (Regulation) Bill, 2016, Section 4 (iii)(b)(I).
41. Anil Malhotra, "Giving birth to dictatorship in surrogacy", *The Tribune*, 2nd December, 2015, 11:22 PM, available at URL: http://www.tribuneindia.com/news/comment/giving-bith-to-dictatorship-in-surrogacy//165898.html Accessed on 6th May 2017.
42. Urnmi Vyas, "Surrogacy: GATS And Indian Law" Vol 2 No 1 *PLEBS Journal of Law* pp105-106 (July2016).

7. The Bill has mentioned many factors like age, number of embryo implantations, blood transfusion etc, for the surrogate but was silent on whether a specific demographic criteria must be laid for the commissioning parents or not. There should be a minimum standard care in making sure that the commissioning parents are in fact genuine and not criminal elements.[43]
8. There should be a mandatory testing in terms of psychological and health criteria on the impact of psychological health on the subsequent commissioning parents as well as the surrogate, moreover the financial condition of the commissioning parents to support their new family member in their family.
9. There should be a follow up on every child born from surrogacy to keep an update of whether such child is being treated fairly and without discrimination in their new household.[44]
10. The Bill speak only on restrictions on Commercial surrogacy, however this has hamper the many Indian women who are making this surrogacy as a form of their livelihood. For in India, commercial surrogacy has become a survival strategy and a temporary occupation for some poor rural women.[45]

Views on Surrogacy in India have definitely been divided in the society. This is mainly because we study the subject by looking at it from the two perspectives- The Merits and Demerits of Surrogacy.

Merits of Surrogacy:

1. Surrogacy as understood in India though it has not been accepted openly in the society but there has been a numerous instances in which it has been a process to generate happiness for people who has been through the shadow of darkness in their lives of not having children of their own. In some cases surrogacy is the only available option for couples who wished to have a child that is biologically related to them.
2. Surrogacy furthers the right to life under Article 21 of the Constitution. In the case of *R. Rajagopal v. State of Tamil Nadu*[46] it was held that any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. A citizen has a right

43. Dr Somshekhar Sharma, Dr. Vinod Kumar, *et, al.* "Comparative Review of Surrogacy Laws in India and Abroad", Vol 4 Issue 9, *IJSR* p1818 (September 2015) available at www.ijsr.net accessed on 1st May 2017.
44. Chinmayee Satpathy, "Child Welfare policies andf programmes in India", *Yojna* November 2012 Available at http://www.insightsonindia.com/wp-content-uploads/2013/09/child-welfare-policies-and-programs-in-india.pdf accessed on 3rd May 2017.
45. Amrita Pande, "At least I Am not sleeping with anyone: Resisting the stigma of Commercial Surrogacy in India" Vol 36, No 2, *Feminist Studies, Re- Inventing Mothers* p293 (Summer 2010) Available at URL: http://www.jstor.org/stable/27919102 accessed on 2nd June 2017.
46. AIR 1995 SC 264.

to safeguard the privacy of his own, his family, marriage, motherhood, procreation and child bearing and education among other matters. The right to privacy has been read into the right to life under Article 21 of the Constitution. Thus it can be said that surrogacy might just further the right to procreation and to have a family that is implicit under Article 21.

3. Article 16 (1) of the Universal Declaration of Human Rights 1948 says that men and women of full age without any limitation due to race, nationality or religion have a right to marry and find a family. In this context the Indian judiciary in *B.K.Parthasarthi v. Government of Andhra Pradesh*[47] , the Andhra Pradesh High court upheld 'the right of reproductive autonomy' of an individual as a facet to his 'right to privacy'.
4. Many poor Indian women have opted to be surrogate mothers and make it as a means of livelihood to eradicate poverty and have a better future. Mostly these surrogates are paid around 1-2 lakhs rupees by the commissioning parents.
5. As the increase of modern and advance technology in health and medical services as kidney transplant and pacemaker are made to extend or enrich the human life so also surrogacy is a means to enrich the life of childless couples.
6. Surrogacy enables the childless couples to have a child related with their own blood and traits to carry on their lineage. Further it also free the childless couples from the social stigma of being classed as a social outcast.

Demerits of Surrogacy

1. The term 'Surrogacy' is misconceived and conceptualized as a dirty work as it is considered by the society as a task and occupations that are likely to be perceived as degrading. A work can be dirty because it is perceived as physically disgusting, it offends moral conceptions. Surrogacy is surrounded by controversies about the ethics of selling motherhood and renting wombs.
2. Commercial surrogacy is an oppression of the poor. It generates the family pressures on the poor women to offer their wombs for a price. Majority of the women becoming surrogates are extremely vulnerable due to poverty, lack of financial resources and illiteracy. This makes their economic exploitation much easier for the agents for commissioning parents.
3. There are cases also when the surrogate mother refused to part with the child after delivery as she grew attach emotionally with the child. This causes damage to the commissioning parents who do not have other means to compensate their loss except for filing a civil suit.

47. AIR 2000 A.P-156.

4. It might be a possibility where the commissioning parents may refuse to take the child after delivery, especially when the child is born with abnormalities this creates a lot of confusion and caused harm to surrogate mother who is at her wits ends but the worst sufferer is the child who is not wanted by either of the parties.
5. In surrogacy the surrogate mother was not supposed to get too involved with the baby she was carrying. The bonding of feeling loved by the biological mother is taken away from the child from conception itself. Further the child is taken away from the surrogate mother, this means the child will not get breast feeding, this will hamper the growth of the child and it affects the child's right of breast feeding which is compulsory for minimum period of 3-6 months after delivery. This is a gross violation of the child's human rights.
6. Surrogacy has brought the traditional concept of motherhood under a debate; motherhood is a combination of both biological and mental concept but here the child experience only half of such things from his commissioning mother.
7. The concept of surrogacy has reduced the status of the baby into a mere 'commodity' and the surrogate mother's womb as a rental factory for child manufacturing. It degrades pregnancy to a service and a baby to a product. The baby is no longer a nature's gift but rather came with a price tag. Surrogacy is about making designer babies for the sake of adults capable to pay for such privilege.
8. The surrogate mother's health is deteriorated with repeated pregnancies leading to affect cardiovascular health. The rich and educated women will resort to surrogacy to prevent a break from their career, to maintain their figure and prevent themselves from stress and labour pain at the cost of another woman's health and psychological state.
9. In surrogacy the woman's body is forced to incubate a foreign embryo in exchange of money or substitutes and forced her to bear a child. Not only her sex is bought but her womb is also purchased and this is also classified as a disguised rape.
10. It invoke victimhood on the part of surrogate mother in case of commercial surrogacy, they undergo a lot of physical, emotional and psychological burden. It is a stigmatize form of labour.

VIII. SURROGACY IN MATRILINEAL SYSTEM

In a matrilineal system, surrogacy is hardly in existence. People are not exposed to it, due to religious, social, personal grounds as well as lack of medical infrastructure to perform it. It is very obvious that infertile married couple opt for adoption rather than surrogacy. If surrogacy is done in such societies then only altruistic surrogacy can be

done. As in matrilineal society it is only from the female bloodline that lineage continues so in such circumstances only the wife's sister or her close maternal cousin sister of her own bloodline can fill in as the surrogate mother. Despite the advancement is science and technology however this practice is not prevalent in such societies and it has to be seen whether such practices will be inculcated in their customary laws or not.

IX. THE SURROGACY (REGULATION) BILL, 2019 AND THE SURROGACY (REGULATION) BILL 2020

The Bill 2019 defines surrogacy as a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple. The Bill prohibits commercial surrogacy, but allows altruistic surrogacy. The Bill 2019 permits surrogacy for intending couples who suffer from proven infertility; not for producing children for sale, prostitution or other form of exploitation. Under the Bill 2019 the intending couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority. The 'certificate of essentiality' required i) a certificate of proven infertility of one or both members of the intending couple from a District Medical Board; ii) an order of parentage and custody of the surrogate child passed by a Magistrate's court; and insurance coverage for a period of 16 months covering postpartum delivery complications for the surrogate. But the Bill 2020 is deleting the definition of 'infertility' as the inability to conceive after five years of unprotected intercourse on the ground that it was too long a period for a couple to wait for a child and has increased the proposed insurance coverage to 36 months from 16 months. The certificate of eligibility requirement under the Bill 2019 provides that i) the intending couple should be Indian citizens and married for at least five years; ii) between the age of 23-50 years old in case of wife and 26-55 years of age in case of husband; iii) not having any surviving child (biological, adopted or surrogate), excluding a child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness. The Bill 2019 has set the eligible criteria for surrogate mother who i) must be a close relative of the intending couple; ii) a married woman having a child of her own; iii) of 25-35 years old; iv) a surrogate only once in her lifetime; and possesses a certificate of medical and psychological fitness for surrogacy and further, the surrogate mother cannot provide her own gametes for surrogacy. But the Bill 2020 allows any "willing" woman to be a surrogate mother. The Surrogacy (Regulation) Bill 2020 allows Indian married couples and Indian origin married couples and Indian single woman (only widow and divorcee between the age of 35 and 45 years) to be surrogate mother on fulfillment of the stipulated conditions under the Bill. Under the Bill Surrogacy clinics cannot undertake surrogacy related procedures unless they are registered by the appropriate authority. Both the Bill 2019 and 2020 proposes to regulate surrogacy by establishing a National Surrogacy Board at the central level and State Surrogacy Board and appropriate authorities in states and

Union Territories respectively. The functions of the National Surrogacy Board include, (i) advising the central government on policy matters relating to surrogacy; (ii) laying down the code of conduct of surrogacy clinics; and (iii) supervising the functions of State Supervising Boards. The functions of appropriate authorities include (i) granting, suspending or cancelling registration of surrogacy clinics; (ii) enforcing standards for surrogacy clinics; (iii) investigating and taking action against breach of the provisions of the Bill; (iv) recommending modifications to the rules and regulations. The Bill 2019 has mentioned that a child born out of a surrogacy procedure will be deemed to be the biological child of the intending couple. An abortion of the surrogate child requires the written consent of the surrogate mother and the authorization of the appropriate authority in strict compliance with the Medical Termination of Pregnancy Act, 1971. Further, the surrogate mother will have an option to withdraw from surrogacy before the embryo is implanted in her womb. The Surrogacy (Regulation) Bill, 2019 has made the provision of penalties for the offences committed under the law for (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning the surrogate child; and (iv)selling or importing human embryo or gametes for surrogacy. The Bill has suggested the penalty for such offences as imprisonment up to 10 years and a fine up to 10 lakh rupees.

X. CONCLUSION

Surrogacy carries with it a down side as an institution which exploits the poor people and spoils the institution of marriage, parenthood and natural course of child bearing. However on its bright side it has helped many of the childless couples to fulfill their homes with joy and laughter. A child is a blessing no matter in what way they were brought to this earth; they are still a bundle of joy.

The commercial surrogacy ban was done so as to save the Indian surrogate mother from exploitation and this is in tune with Article 23 of the Constitution which provides that Indian citizens should be saved from all form of exploitation. At the same time, the Indian women should be saved from the exploitation of the citizens of developed nations; we were slaves once but now let us free ourselves and redeemed our image as citizens of a free country. So far the practice of surrogacy has persisted in India without any legal framework, working only on the basis of certain vague guidelines. Now with the changes proposed to bring through these Bills, a regulatory framework, hope, will be adopted to monitor surrogacy. Law Commission of India in its 228th Report 2009 had recommended that surrogacy is to be regulated through suitable legislation and only altruistic surrogacy be legalized. Therefore, it is hoped that the changes proposed to be brought will ban commercial surrogacy and by enhancing the insurance coverage for 36 months, the exploitation of surrogate mothers as well as their health aspects will be checked and improved. Therefore, changes reflect a new era of surrogacy in Asia; other countries like Thailand and Nepal have recently implemented surrogacy bans as well. It is hoped that India soon transform all these

changes through the letters of spirit and with an object to regulate the activities of Indian Surrogacy Agencies who effectively ran baby factories as booming industry. Surrogacy has been a long debated topic in India and time has come to establish a delicate balance between Rights of infertile couple and the human rights of surrogate mothers.

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8

Comparative Analysis of Freedom of Conversion of Religion in India and SAARC Countries

Dr. Biresh Prasad[1]

I. INTRODUCTION

Religion plays a very pivotal part in one's life. To define religion is very hard if not impossible, simply put it can be said that religion is a matter of faith and not of logic.[2] The religion of one person may change from one to another but there are in a few countries regulations which lays down down guidelines as to how and when one can change religion from one to another. In India, the Constitution of India guarantees freedom of religion as a fundamental right with certain restrictions. SAARC Countries are religious countries that hold religion as a prime motivating factor for governing religion. Srilanka, Bhutan, Pakistan, and Afghanistan are countries that have very categorically stated in the constitution itself that it is based on religious principles and thus it is very hard to convert one's religion. On the other hand, Nepal and Bangladesh though being Secular Countries like India do not allow conversion of religion from one to another without hardship. The SAARC Countries are divided into three categories for convenience, First, Secular countries in which India, Nepal, and Bangladesh are included. Secondly, Pakistan and Afghanistan both give preference to Islamic principles in the Constitution and Thirdly, Srilanka and Bhutan adhere to Buddhist Principles. One out of each above-divided country is dealt with for detailed analysis.

II. CONVERSION OF RELIGION

Conversion of religion is an act by a person of changing religion from one to the other. For instance, if one person is professing the Hindu religion for a certain period and decides that his calling is from another religion (Christianity) so to say is fascinated by the teaching of other religion and thereby decides to adopt it then it is to the conversion of religion from Hinduism to Christianity. Generally, The main reason or the driving

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2. Shayara Bano V. Union of India, *AIR 2017 9 SCC 1*

force behind such changes comes from within ie from his conscience without any external effort from anyone else. It must be kept in mind that the act of conversion of religion may be undertaken by a person due to various reasons such as a change of one's conscience, the realization that another religion will help him develop to his full potential, political pressure, Social stigmatization Etc. in the book Variety of Religious experience author William James has very beautifully explained the dimensions of conversion as "To be converted, to be regenerated, to receive grace, to experience religion, to gain an assurance, are so many phrases which denote the process, gradual or sudden, by which a self-hitherto divided, and consciously wrong inferior and unhappy, becomes unified and consciously right superior and happy, in consequence of its firmer hold upon religious realities… whether or not a divine operation is needed to bring such social change about"[3]

III. SECULARISM

Secularism is an elastic term that is very hard to define in precise terms. The notion of secularism has been a burning concept throughout the world thus in general parlance, it can be said to be the principle/doctrine which is adopted by the country which does not distinguish amongst its subjects based on religion and treats them all on equal footing. India is a secular state but the word was added to the Constitution of India only after the 42nd Amendment, of 1976 which may trigger some questions was it not secular since the coming into force of the constitution? The confusion was cleared in many cases by the Supreme Court but none better than in S. R. Bommai and others etc. v. Union of India and others etc.[4], where a nine-judge bench of the Supreme Court held that the concept of secularism is not unknown in the constitution of India but it was already there in the form of freedom of religion under fundamental rights. The whole concept was implicit in Article 25 to Article 30 and the same has now been explicitly mentioned by way of amendment of the Constitution. The court further held that the concept of secularism is very elastic and better not be defined in some jacket definition. It stressed that freedom of religion under the Indian constitution is available to every individual irrespective of the religion that one is professing. Concerning SAARC Countries only Nepal and Bangladesh can be said to be secular countries if one looks at the primary document ie the constitution. Bhutan and Srilanka are Buddhist Countries where the teachings of Buddha and its relevance are visible in the Constitution itself. Pakistan and Afghanistan's constitutions are based on Islamic laws and thus could not be said to be based on secularistic principles.

3. Supra note 1 at pg 186
4. AIR 1994 SC 1918

IV. INDIA

India since time immemorial has been considered as a very religious country. People from various religions from different parts of the world who ventured to India were received with open arms and were allowed to live peacefully without any discrimination. The history of India shows that rulers from ancient to modern India were to a very large extent barring a few exceptions tolerant of alien religion[5]. Before Independence, there were few kingdoms which because of the alarming conversion of religion primarily from Hinduism to other religions enacted laws to curb such acts of conversion such as Raigarh state conversion act, 1936, Surguja State Apostacy Act, 1945, Udaipur State Conversion Act,1946.

The constitution of India provides for freedom of religion as a fundamental right in Article 25 primarily. Article 25 of the constitution of India provides that, Subject to public order, morality, and health and to the other provisions of Part iii, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Conscience implies an individual's sense of right and wrong. the word Practice denotes Performing the rites and rituals one believes in and worships. Propagate implies Spreading the message of his religion or faith among people and Profess denotes Upholding and highlighting the salient features of his religion. Professing may take the form of public procession, or religious discourses. However, if "propagation" or "profession" leads to a disturbance of public order, morality, and health then the state has the right to prevent the same.

Now, the question arises when everything is so lucidly provided in the Constitution then where is the problem? The conversion of religion stems from freedom of conscience which is a fundamental right but time and again people have taken this right from freedom of propagation and assert this as a right to convert which they claim to be a duty following their religion. The indecisiveness concerning propagation and conversion was laid to rest by the court in Stanislaus v. State of Madhya Pradesh[6], where it laid down that "The freedom of religion enshrined in Article 25 is not guaranteed in respect of one religion only but covers all religions alike which can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following other religion. What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental right to convert any person to one's religion."[7]

After Independence, the mission/efforts to introduce laws relating to regulation/ registration of conversion of religion were taken up by parliamentarians. In 1954 Jethalal Harikrishna Joshi tabled "*Indian Converts (Regulation And Registration) Bill*,

5. Alien religion here imples religion which does not have its foundation in India.
6. 1977 SCR (2) 611
7. Ibid

1954, In 1978 O. P. Tyagi tabled "The Backward Communities (religion) Protection Bill,1960, In 1981 B.V. Desai tabled the " Prohibition of all foreign missionaries functioning in India on religious basis bill", In 1981 Vasant Kumar tabled the "compulsory registration of religious conversions bill.[8] but without any results as all the attempts failed.

The absence of any national-level legislation did not hinder states from introducing laws dealing with conversion of religion. Different states have enacted legislation that deals with regulation/ freedom of conversion of religion if certain conditions and norms are followed by a person intending to convert. The legislation enacted by different states are Orissa Freedom of Religion Act, 1967, Gujarat Freedom of Religion Act, 2003, Jharkhand Freedom of Religion Act, 2017, Uttarakhand Freedom of Religious Act, 2018, The Chhattisgarh Dharma Swantantraya Adhiniyam [Freedom of Religion] *Act, 1968*, Himachal Pradesh Freedom of Religion Act, 2019. The Madhya Pradesh Freedom of Religion Act, 2021, The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, The Karnataka Protection of Right to Freedom of Religion Act, 2021 etc. To discuss in details each and every state legislation above mentioned is very troublesome and legthy. A more realistic approach to understand the relevant provision is by way of a table.

Analysis of these state legislations above mentioned brings forth certain issues. The state legislation in regards to conversion paves the way for Rules attached to the conversion of notice before the act of conversion to authorities is very unethical as the duration before which notice is to be given by the convertor/Convertee ranges from 15 days to 60 days.

8. The Bill assessed from https://eparlib.nic.in/bitstream/123456789/704/1/lsd_07_07_11-12-1981.pdf Date 10/10/2020 Time 11.00 Pm

	Odisha	Madhya Pradesh	Arunachal Pradesh	Chhattisgarh	Gujarat	Himachal Pradesh	Jharkhand	Uttarakhand	Uttar Pradesh	Karnataka
Enacted/latest amendment	1967	1968	1978	2006	2003	2019	2017	2018	2020	2022
	Prohibition on conversion									
By means of force, fraud, Inducement or allurement	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
By means of contracting marriage	No	No	No	No	No	Yes	No	Yes	Yes	yes
	Process/ procedure to undergo for conversion- declaration to be submitted to District Magistrate or equivalent authority as notified									
By persons seeking to convert	Advance notice (period not specified)	Nil	Nil	Within one month of conversion	10 days after converting	One month's advance notice	7 Days after conversion	One month's advance notice	One month's advance notice	30 Days advance Notice
By Converter or the person performing the conversion rituals if any	15 Days advance notice	Within 7 days after conversion	After conversion	30 Days advance Notice	After conversion	One month's advance notice	15 Days advance notice	One month's advance notice	One month advance notice	30 Days advance Notice
	Punishment for affecting conversion or abetting conversion in contravention of legislation									
Imprisonment	Up to one year	Up to one year	Up to two year	Up to three year	Up to three year	One- five year	Up to three year	One- five year	One- five year	Three- five year
Fine	Up to Rs 5000	Up to Rs 5000	Up to Rs 10000	Up to Rs 20000	Up to Rs 50000	Not Specified	Up to Rs 50000	Not Specified	Rs 15000 or More	Rs 25000
	Aggravated punishments when conversion is of vulnerable class Minor, Women, SC, ST									
Imprisonment	Up to 2 years	Up to 2 years	Up to 2 years	Up to 4 years	Up to 4 years	2-7 years	Up to 4 years	2-7 years	2-10 years	3 – 10 years
Fine	Up to Rs 10000	Up to Rs 10000	Up to Rs 10000	Up to Rs 20000	Up to Rs 10000	Not Specified	Up to Rs 10000	Not Specified	Rs 25000 or more	Rs 50000
	Consequences of violation of procedure required for conversion of religion									
Imprisonment	Nil	Up to 1 year	Up to 1 year	Up to 1 year	Up to 1 year	For individuals minimum of 3 months extending up to 1 year and for convertors 6 months to 2 years	Up to 1 year	For individuals minimum of 3 months extending up to 1 year and for convertors 6 months to 2 years	For individuals minimum of 6 months extending up to 3 years and for convertors 1 year to 5 years	For individuals minimum 1 year extending up to 3 years and for convertors 1 year to 5 years
Fine	Rs 1000	Up to Rs 1000	Up to Rs 1000	Up to Rs 10000	Up to Rs 1000	Not Specified	Up to Rs 5000	Not Specified	Rs 10000 or more (Individual)and Rs 25000 or more (Convertor)	Rs 10000 or more (Individual)and Rs 25000 or more (Convertor)

The legislation provides for Very vague terminology like Divine Displeasure, Allurement, etc. and the same can be misused by Authorities who in personal views/ capacity are not in favor of such act of conversion or so to say not in consonance of acceptance in the area/society in which it is proposed to be solemnized. The provision of Mass Conversion in a few states' legislation provides for stringent guidelines and are source of political issues that may even trigger riots or public disorder in the area. The threat of society's backlash for following One's conscience i.e. converting from one religion to acceptance of another religion looms large which may even lead to loss of life.

There are different provisions in different states concerning renouncing one religion and adopting another. All the states in India do not have Legislation regarding the Same. The national level laws in regards to the matter are altogether missing which might lead to certain Surety in the minds of persons who may adopt other religion but are prone to change of place of residence/work in India and are thereby apprehensive of changing of religion. Lastly, Poverty and lack of Education concerning legislation, rules, and regulations to be followed before undertaking the conversion of Religion is very glaring in India.

V. PAKISTAN

The country of Pakistan being craved out from being part of India provides a very interesting facet to the discussion on conversion of religion. India while under British rule was divided into two India and Pakistan (East and West Pakistan). The people on both sides were allowed to choose their country. Pakistan since its inception leaned towards Islam as the division for most of its part was on religious lines but it also acknowledged that people from different religions were its citizens and provided protection to them. The adoption of the constitution of Pakistan in 1956, highlighted the same where the preamble laid down that "The Muslims of Pakistan should be enabled individually and collectively to order their lives following the teachings and requirements of Islam, as set out in the Holy Quran and Sunnah and adequate provision should be made for the minorities freely to profess and practice their religion and develop their culture"[9] It was general Muhammad Ayub Khan who came to power as a result of coup in 1958 who wanted to secularise the country when a new constitution was adopted in 1962 where the reference to Quran and Sunnah was done away with. But these scenarios did not last long as by the First Amendment in 1964 again the importance of Quran and Sunnah was restored.[10] The independence of Bangladesh from Pakistan necessitated a new constitution to be enforced 'The Constitution Of The Islamic Republic Of Pakistan' enforced on

9. Pakistan Constitution of 1956, Preamble
10. No law shall be repugnant to the teachings and requirements of Islam as set out in the Holy Quran and Sunnah, and all existing laws shall be brought into conformity therewith.

April 22, 1973. The constitution went a step ahead of its previous version where it was given the responsibility as the protector of Islam and thereby set up the Council of Islamic Ideology. Article 20 of the constitution provided rights similar to the Indian Constitution where it was laid down that "Subject to law, public order and morality,- (a) every citizen shall have the right to profess, practice and propagate his religion; and (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions"[11]. The only thing that is missing here is Freedom of Conscience which is the essence of conversion of Religion. Further, under Article 22 of the constitution of Pakistan, no person will be subjected to discrimination based on religion, or caste and no one will be compelled to receive religious instruction which is not the one he is professing.[12] Pakistan Penal Code, 1860 under sections 295 (a), 295 (b), and 295(c) provided sanctions where religious feelings were hurt in one way or another.

It is very interesting to note that there is no trace of legislation that deals with conversion of religion in Pakistan. The provision which holds the authority of law in Pakistan is section 298 C which states that "*Any person of the Qadiani group or the Lahori group (who call themselves 'Ahmadis' or by any other name), who directly or indirectly, poses himself as a Muslim, or calls, or refers to, his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious feelings of Muslims shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine*"[13].

The issue in regards to forceful conversion was taken up when The Sindh Criminal Law (Protection of Minorities) Bill, 2015, was tabled in the house with the motive to provide a ban on the forced conversion of religion. The bill provided for a very ration buffer period of 21 days for consideration of an act of conversion by an adult and a complete ban on conversion unilaterally by a minor of his religion. The bill was successfully passed in the Sindh provincial assembly but could not see the light of day as the governor did not assent to the Bill. The objection was strongly voiced by ulema groups who contended that when Hazrat Ali the successor to the prophet was himself a Minor then how could there be any restriction on the conversion of Minor? Different bills[14] were tabled by different parties that wanted certain protection for the rights of minorities concerning conversion but did not see the light of day.

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11. Article 20, The Constitution of The Islamic Republic of Pakistan,1973
12. Article 22, The Constitution of The Islamic Republic of Pakistan,1973
13. Section 298 C, Pakistan Penal Code, 1860
14. Criminal law (protection of Minorities) Bill, 2015 and a revised version of same bill in the year 2019.

The absence of any legislation on the conversion of religion meant that fringe elements within Pakistan were free to use their power to convert persons belonging to other faiths to the majority religion. The position of Hindus and Christians primarily in Pakistan is very delicate as a threat looms large over their head. The instance of two sisters being kidnapped and forcibly married off after conversion to Islam is a glaring example of atrocities to the minorities in Pakistan.[15]

VI. SRILANKA

Srilanka is known for its diversity, the people constitute from vivid diverse social fabric of society constituted of people belonging to different ethnic, religious, linguistic, and cultural groups.[16] The majority community in Sri Lanka is Sinhalese Community which comprise around 70 percent of the population. The Sinhalese culture was very religious and tolerant traditionally which was highlighted by the fact that there used to be a space devoted within a Buddhist temple for Hindu Devotees to worship. In this context, a Buddhist scholar has apartly remarked "*Not a drop of blood has been shed throughout the ages in the propagation and dissemination of Buddhism in the many lands to which it spread; religious wars either between the school of Buddhism or against other religions have been unheard of. Very rare instances of the persecution of heretical opinions are not lacking, but they have been exceptional and atypical.*"[17]

The Soulbury constitution of Srilanka, 1948 in essence provided for provision which safeguarded the religious rights of people from different communities Highlighting secularistic principles. However, the trend of religious tolerance was short-lived and has now turned upside down with the adoption of a new constitution in 1972 known as the Republican constitution of Srilanka, 1972. The constitution gave prime importance to Buddhist Citizens under Article 6. The new constitution was again adopted in 1978 but the drawback which favored one religion was again there in the constitution under Article 9 it was laid down that "*The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana while assuring to all religions the rights granted by Articles 10 and 14(1)(e)*".[18] Further Article 10 provided for freedom of thought, and conscience which included in itself the liberty to adopt and practice the religion of one choice. After the adoption of this constitution, the Christian missionaries became very active and went on preaching thereby converting

15. Pakistan | Nearly 1,000 girls from Pakistan's religious minorities forced to convert to Islam every year: Report available at ttps://www.timesnownews.com/international/Article/nearly-1000-girls-from-pakistans-religious-minorities-forced-to-convert-to-Islam-every-year-report/700811, Dated 18//02/2021 Time 11.35 Am.
16. See genrally, Neena Mahadev, "Proselytizing and the Limits of Religious Pluralism in Contemporary Asia, Conversion and Anti-conversion in Contemporary Sri Lanka: Pentecostal Christian Evangelism and Theravada Buddhist Views on the Ethics of Religious Attraction", pg 211
17. K.N. Jayatilleke, "*The Buddhist attitude to other Religions*", Buddhist Publication Society, Kandy, 1966
18. Article 9 of Republic constitution of Srilanka, 1978.

people belonging to the Sinhalese community to Christianity. This raised alarm among the spiritual leaders of the era. One notable monk Soma there took it upon himself to inculcate back the pride that was lost amongst the Sinhalese youth for their Buddhist Religion. To achieve the above objective he made efforts such as telecasting views in the Sinhalese local language and teachings of Buddha, he even said on record that the way things are going on in Srilanka then Buddhists would be reduced to a minority by the year 2025. In 2003 Soma there was killed and it was widely speculated that the Christians were behind the murder.

The issue of conversion of religion was at its center when Jathika Hela Urumaya (National Heritage Party) was elected in 2004. The new government made it their goal to do away with unethical conversion which was rampant in Sri Lanka among Sinhalese youth.[19] The Jathika Hela Urumaya party who were supported by Buddhist clergy introduced a bill to ban unethical conversion. The bill sought to do away with conversion which was primarily the result of force, fraud, or illegal means. The bill also provided for the punishment of imprisonment up to five years along with Rs 100000/- to anyone found in contravention of the above provision. The provision of punishment for a person converting another without notifying authorities was put in legislation but was done away with after intervention from the Supreme Court of Srilanka. The ruling by the Supreme Court paved the way for the party to introduce a second bill in this respect which was even more stringent and provided for doing away with all forms of conversion that were unethical and to extradite people who were engaged in conversion activities from Srilanka. The unethical conversion as proposed in the bill was also reported by Ashma Jahangir, Special Rapporteur of United Nations as " a tool of persecution by those who are genuinely opposed to religious tolerance".[20]

The second phase of legislation concerning conversion of religion was under the Rajapaksha Government where the Bill was introduced to ban all unethical conversion. The bill was vehemently criticized internationally on three grounds Firstly, the definition of certain terms is very broad, the ban on distribution of religious literature and banning charitable activities throughout the country. Secondly, enhanced punishment for women. Thirdly, the tendency of the authorities to catch persons in charitable establishments as suspects in conversion-related activities.

The scenario in Sri Lanka concerning the conversion of religion can be said to be not plural as long as the attachment to Buddhist religion is done away with. Buddhism can always continue to be the majority religion but it cannot be of prime importance if Srilanka's deeds have to be considered as a signatory to the United Nations Declaration on Human Rights.

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19. Assessed from http://www.lankaweb.com/news/items/2015/08/07/tactics-and-strategies-of-unethical-conversion on 21/11/2020 Time 23.00
20. Asma Jahangir (Special Rapporteur on freedom of religion or belief), Civil and Political Rights, Including the Religious Intolerance, Mission to Sri Lanka, 43, 45, U.N. Doc. E/CN.4/2006/5/Add.

9

Parliamentary Privileges in India: An Appraisal

Santosh Kumar Pathak[1]

I. PRELUDE

The Constitution of India is the longest written constitution in the world. It provides for constitutional democracy. Detailed provisions have been made for different constitutional organs to function smoothly and without any hindrance. Parliament is one of such institutions created for the governance of the Country. The duty of the parliament is assigned by the Constitution. Legislating on myriad issues is the essential and integral function of the parliament. For unfettered and unrestricted functioning of parliament, certain privileges have been contemplated by the Constitution. But these privileges, meant for the institution and its members, are uncharted and uncodified giving rise to institutional confrontation. The Constitution envisions the codification of the privileges by the parliament but after 74 years of the functioning of Constitution, the constitutional vision is found to be blurred as the parliament has failed to live up to the visions and dreams of the constitution-makers. Emphasis has been made in this write-up to advocate the need of codification of parliamentary privileges after tracing the historical background and locating its place in the Constitution.

Parliament is a "*grant inquest of the nation*". It embodies the *will of the people* in a parliamentary democracy. It is the people's institution "*par excellence*". The Parliament is the highest representative institution of the country. It performs four roles: (a) preparing national laws; (b) holding the executive to account; (c) representing the aspirations of the people, and (d) performing oversight of the Union budget.[2] However, the multifarious functions of the Parliament can only be result-oriented and productive, if the members are allowed to work in a milieu untrammelled by any restraint, overtly or covertly. They require protection and independence for what they speak and do on the floor of the Parliament. Hence arises the need for privileges of Parliament.

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II. MEANING OF PARLIAMENTARY PRIVILEGES

According to May[3], "the privileges are certain rights belonging to each House of Parliament collectively and some others belonging to the members individually, without which it would be impossible for either House to maintain its independence of action or the dignity of its position or for the members to discharge their functions, without let or hindrance." According to Geoffrey Marshall,[4] "privilege is the sum total of the rights enjoyed by each House collectively and members of each House individually designed to secure proper discharge of their function and peculiar to them".

The Privileges of Parliament are those rules of both Houses of Parliament which offer protection from outside interference— from whatever source— to the Houses collectively, and to individual members.[5] Thus, the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus, privilege though part of the law of the land, is to a certain extent an exception from the ordinary law.[6]

The *Halsbury's Laws of England*[7], while tracing the "origin and scope of privileges", states the following: "*Claim to rights and privileges*. —The House of Lords and the House of Commons claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals. In 1705 the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed. Each House is the guardian of its own privileges and claims to be the sole judge of any matter that may arise which in any way impinges upon them, and, if it deems it advisable, to punish any person whom it considers to be guilty of a breach of privilege or a contempt of the House."

Rutledge, in his *Procedure of the House of Commons*,[8] defined privileges as; "the sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the courts of law, and the special rights of the House of Lords".

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3. *Parliamentary Practice* 19th Edn, pp 67
4. S.A.Walkland, *The House of Common in Twentieth Century*, article titled "The House of Commons and its Privileges" by Geoffrey Marshall, p 206.
5. Hilaire Barnett, *Constitutional & Administrative Law*, (Cavendish Publishing, London, 3rd Ed., 2000), p-677
6. Ersklne May, *Parliamentary Practice*, (Butterworths, London, 22nd ed., 1997), p- 67
7. 5th Edn. Vol. 78, para-1076
8. Vol. I, p. 46

Therefore, the core of the rationale for recognizing legislative privileges is to protect lawmakers from interference by others in the discharge of their essential functions. This broadly entails as a shield against undue intrusions by the executive branch, the courts, and the private parties.[9]

III. PARLIAMENT: A TALE OF ITS EVOLUTION

Originally the word '*parliament*' was applied to after-dinner gossip of the monks in their cloisters. 'Parliament' then was only an occasion and not an institution. It was called at the whim of the Sovereign (Crown) consisted of whoever the Sovereign wanted to speak with, met wherever Sovereign happened to be and lasted as long as the Sovereign wanted. Gradually it came to connote the body of persons assembled for conference. The term was used for national assemblies after the middle of the 13th century. It took some definite shape in what was later on called in England the Model Parliament of 1295.[10]

In modern times, it is hard to realize that the term '*parliament*' did not always denote the august assembly at Westminster or other assemblies later devised in its image. The word, derived from the French 'parler' (to speak or parley) and the more impressive Latin 'parliamentum', was used loosely to denote a conversation, a parley, or an interview. The thirteenth-century French writer, de Joinville (the knight who wrote a chronicle of his king, Louis IX), uses it in three ways: *of an informal gathering of the barons*; *of a judicial session of the king's court*; and, quaintly, *even of a tryst between the young king and his Queen Marguerite*, which took place on a secluded stairway in the palace at Pontoise to escape the dominating presence of the Queen Mother Blanche![11] In its origin parliament was aristocratic, feudal — an assembly of the king's tenants-in-chief, meeting at intervals, perhaps two or three times a year, to advise, sometimes indeed to control or coerce, their lord the king in great matters. Its work was not primarily legislative, although sometimes an ordinance or statute did result. Business might include matters of state — war and peace, administration, the assessment and fulfillment of feudal obligations, disputes over fiefs, nice points of feudal law, and the trial of one of its own members accused of treason or felony. In contrast to such a "great council," there was the "small council" (*curia regis*), a group of household servants and public officials, ever present with the king to assist in the actual day-to-day business of government. It was the noted English chronicler

9. Sujit Choudhry and Madhav Khosla, et al., *The Oxford Handbook of Indian Constitution* (Oxford University Press, Delhi, 1st ed., 2018), p-290
10. F W Maitland, *The Constitutional History of England*, p-74-75 and 166
11. Faith Thompson, *A Short History of Parliament*, University of Minnesota Press (1953), p-4

Matthew Paris of St. Albans who first applied the term to a great council of prelates, earls, and barons, in 1239 and again in 1246. From this time on it was used increasingly, though not exclusively, for such an assembly.[12]

Etymologically speaking, the word '*Parliament*' has its genesis in Latin word '*parliamentum*' and French word '*parler*' which mean 'to speak' or 'to talk', because Parliament dates from the days when monarchs summoned advisers to discuss the affairs of state. The origins of Parliament lie in Saxon times when monarchs consulted with their 'wise men' – the Witenagemot, which included the archbishops, bishops and abbots, earls, thegns and knights, and was later known as the Great Council. This was the foundation of the House of Lords. The Commons was created in the thirteenth century because the expense of wars weighed so heavily upon successive monarchs that they extended taxation from the lords to the freemen of the country.[13]

Historically, Parliament developed from the councils which in early times were appointed to advise the king. From the 13th to the 17th Century, Parliament was presided over by the king. In the 17th century a struggle developed between the king (Charles I) and Parliament, resulting in the English Civil War. In the 'Glorious Revolution' of 1688 Parliament removed King James II from the throne and replaced him with William of Orange and his wife Mary, who accepted the terms of the Bill of Rights. This guaranteed the rights and liberty of individual citizens and gave Parliament more power than the Crown. Since 1832, the year of first Reform Act, the House of Commons has become increasingly important, and the House of Lords less so.[14] With the passage of time, the British Parliament became supreme in England. It is said that the Parliament in England is "*legally omnipotent*". It can do anything and can achieve any result which can be achieved by man-made laws.[15] It was remarked by Chief Justice Edward Coke;

"The power and jurisdiction of Parliament is to transcendent and absolute that it cannot be confined either for causes or persons within any bound. It can, in short, do everything that is not naturally impossible. What Parliament do, no power on earth can undo."

Though the creation of Indian Parliament by the Constitution is modelled on the line of British parliamentary system, yet traces of more or less similar institution are found in ancient India. In Vedic period, assemblies known as 'Sabha' and 'Samiti' were not only prestigious gatherings but were also the centres for people's faith in democratic ideals, since the assemblies were committed to the public welfare and

12. Faith Thompson, *A Short History of Parliament*, University of Minnesota Press (1953), p-3
13. Moyra Grant, *UK Parliament*, (2009) Edinburg University Press, p-2
14. *Oxford Advanced Learner's Encyclopedic Dictionary*, Oxford University Press (1995), p-651

justice. The *Aitareya Barhamana, Panini's Ashtadhayayi, Kautilya's Arthashastra,* the Mahabharata, inscription on Ashoka s pillars, writing of the contemporary Greek historians and the Buddhist and Jain Scholars, and the *Manusmriti* provided the evidence of the existence of a number of functioning republics during the post-Vedic period of history (66B.C. to 385A.D.).[16] However, with the advent of the British Rule in India, introduction of self- government was gradually introduced in India by creating legislatures, which were representative of the people of India to a greater or lesser degree, under the Indian Councils Act, 1919 and the Government of India Acts of 1915, 1919 and 1935.[17]

In pursuance of the Indian Independence Act, the Government of India Act 1935 was modified and adapted by the Governor General to make it the provisional Constitution of the Dominion, until some other provision was made by the Constituent Assembly. The legislative powers of the Governor General were removed and power was conferred on him to promulgate ordinances only in case of emergency for the peace and good government of the Dominion. The Governor General ceased to be a part of the Dominion legislature. Thus, the Governor General became a mere constitutional head of the country and the sovereignty of the Dominion legislature was complete.[18]

Thus, the Parliamentary government and legislative institutions in their modern connotation owe their origin and growth to India's British connection for some two centuries. Parliament of India and the Parliamentary institutions today had an organic growth on Indian soil. They grew through many relentless struggles for freedom from foreign rule and for establishment of free democratic institutions, and the successive doses of constitutive reforms grudgingly and haltingly conceded by the British rulers.[19]

IV. GENESIS OF PARLIAMENTARY PRIVILEGES

The origin of parliamentary privileges is inextricably intertwined with the specific history of the institution of Parliament in England, and more specifically with the battle between Parliament and the English Monarch for political control in the seventeenth century. An understanding of the manner in which the concept of parliamentary privilege developed, therefore, requires a sound understanding of the institutional history of Parliament in the United Kingdom. Parliament in the United Kingdom emerged in the thirteenth century. By the fourteenth century, Parliament had begun to exercise a

16. Radha Kumud Mookerjee, *Glimpses of Ancient India* 5-6, 40-41, 45-46 (Bombay, 1970); Altekar, *State and Government in ancient India* 83-86, 95-112 (Delhi, 1949)
17. *Restatement of Indian Law, Legislative Privilege in India*, Indian law Institute, (2011), p-144
18. Subhash C. Kashyap, *Our Parliament*, p. 19.
19. Subhash, C. Kashyap, *History of Parliament of India*, vol. 1, p. 17.

small measure of judicial power. It took on the role of a court in relation to treason and related matters. In 1376, Parliament, specifically the Commons, had taken upon itself the power of impeachment of the King's servants. Thus, the Lords could hear appeals of treason and bills of attainder where the accuser was the King. The long struggle of the British subjects to bring about a parliamentary democracy involved royal concessions, people's resistance, claims against Crown prerogatives, execution of Monarchs and restoration of Parliament, struggles, advances and retreats, and it is through these turbulent times that the House of Commons emerged as a representative form of Government.[20]

In India, it is beyond cavil that the constitutional scheme of parliamentary privileges has essentially of English genesis. However, existence of similar privileges may be traced to the system prevailing during *Vedic* times. References to *Vedic* literature would furnish unflinching proof of the existence of parliamentary system in vogue. During Vedic period, there were two assemblies, namely *Sabha* and *Samiti* entrusted with duties to keep check upon all actions of the King.[21] In Budhist India, there was a full-fledged parliamentary system in practice. Members were not allowed to disobey the directions of assemblies. Offenders were answerable to assemblies and after affording an opportunity to them, appropriate actions used to be taken against erring officers.[22]

In India, the privileges, immunities etc. of Parliament and its members are provided under Article 105[23] and that of State Legislatures under

20. *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.
21. Prititosh Roy, *Parliamentary Privileges in India*, (Oxford University Press, 1991), p-178
22. S P Singh Chouhan, *Sources and Framing of the Constitution of India* (Universal Law Publishing, Delhi, 1st Ed., 2015), p-194
23. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978].
(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Article 194[24] of the Constitution. The constitutional scheme under clauses (1) and (2) of Article 105 is that subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in the Parliament. Moreover, it is also provided that no person can be made liable in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or the proceedings of the Parliament or any Committee thereof. Similar provision has been contemplated under Article 194, Clauses (1) and (2), which is applicable to the House of State Legislatures. Thus, it is palpable that under clause (1) and (2) of both Article 105 and 194 of the Constitution, full freedom is accorded to the committees and the members of the Parliament as well as State Legislatures. But there is a rider and it is that such immunities are provided only when anything is said inside the parliament. Furthermore, nobody can be made liable in a proceeding before a court of law in respect of the publication under the authority of either House of Parliament or State Legislature.

The privileges of Parliament are rights which are absolutely necessary for the due execution of its powers. Privileges are enjoyed by individual members, because the House cannot perform its functions without the unimpeded use of the services of its members; and by each House for the protection of its members and the vindication of its authority and dignity.

V. PARLIAMENTARY PRIVILEGES IN INDIA: - A SUCCINCT NOTE

The concept of "parliamentary privileges" as adopted and enshrined in the Constitution of India may broadly be classified as 'collective privilege'[25] and 'individual privilege'[26].

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24. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.
[(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978].
(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

25. 'Collective privilege' belongs to each house of parliament collectively. The privilege that "no court has the right to investigate proceedings of the House or any of its committees" is an instance of 'collective privilege' out of many other privileges.

26. 'Individual privilege' refers to the privilege which can be availed by individuals or members of the house only. The privilege that "the members of Parliament can't be arrested during the session of the Parliament and 40 days before the beginning and 40 days after the end of the session" is an example of individual privilege.

These provisions, *prima facie*, are very much required for the proper functioning of the parliament. However. any discussion upon the parliamentary privileges in India remains incomplete and inadequate, if an attempt is not made to pin down the scope and ambit of parliamentary privileges as extant in the House of Commons, simply for the reason that the constitutional provisions (Articles 105 and 194) dealing with the legislative privileges have adopted *by reference*[27] the privileges in vogue in the House of Commons till legislature makes law in this regard. Broadly speaking, the following are the existent legislative privileges as practised by the House of Commons in England;

i) Freedom from arrest

ii) Freedom of speech, debate and proceeding

iii) Privilege of excluding strangers

iv) Privilege of prohibiting publication of proceeding of the house

v) Privilege of committing for contempt

vi) Privilege to have exclusive cognizance of proceedings in Parliament

vii) Privilege of the House to be the sole judge of the lawfulness of its own proceedings

viii) Privilege to punish its own Members for their conduct in Parliament

ix) Privilege from being impleaded

It may be noted that among the above-noted privileges of the legislature, some privileges apply to the members of the House individually and some privileges related to the House collectively. Indian Constitution has followed suit the British practice in respect of the privileges and immunities of the members of Parliament and State legislatures. Though the privileges in practice in the House of Commons are not enumerated in the constitutional text in India, the specific reference to the immunities and privileges of the House of Commons in the United Kingdom under Articles 105 (3)[28] and 194 of the Constitution makes it abundantly clear that until Parliament makes law in respect of the privileges of the legislature, the privileges in practice in the House of Commons in

27. *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184

28. "(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by Law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978." It may be noted that there was a specific reference to the House of Commons in Article 105(3) prior to its amendment in 1978. However, the original clause 3 of Article 105 was restored by the Constitution (Forty Fourth Amendment) Act 1978 by repealing S. 21 of the Constitution (Forty-second Amendment) Act, 1976 which had substituted clause (3) of Article 105 but had not been brought into force till then. Thus, the position now is the same which was at the time of the commencement of the Constitution.

1950 shall also be applicable to Indian Parliament, legislatures, their members and committees. To sum up, the privileges of Parliament are those exceptional rights or exemptions aiming at safeguarding the freedom, authority and dignity of the Parliament, and securing the unhampered functioning of Parliament by enabling the members to discharge their duties untrammelled by any restraint, internal or external. These privileges are, so to say, essential to the functioning of the Parliament. These privileges are inherent in the very institution of the Parliament.

VI. ARE PRIVILEGES TEMPORARY?

It needs no reiteration that the constitutional provisions dealing with the privileges of the parliament and the State legislatures are temporary in nature. It is true that the privileges of British Parliament were to continue till their codification but it was not intended to carry the colonial legacy forever. Even the framers of the constitution have assured that it is merely a temporary affair. Alladi Krishna Swami Aiyar very forcefully expressed the view,

"if you have the time and leisure to formulate all the privileges in a compendious form it will be well and good". Since there was no sufficient time, only as a temporary measure the privilege of the House of Commons are made applicable to this House".[29]

It is, however, submitted that the temporary provisions dealing with the privileges of the Parliament and the State legislature are still the same as it was at the inception of the Constitution. No codification of such privileges has been made so far. This uncertain charter of privileges has led to controversies when such privileges clashed with the fundamental rights of the citizens.

VII. PARLIAMENTARY PRIVILEGES AND JUDICIAL REVIEW: AN ARENA OF CONFLICT

It is, no doubt, true that the privileges are required for the parliament and its members for smooth and free functioning but it is also no denying the fact that the privileges should listed or codified so as to avoid a possible tussle with other constitutional organs of the state, particularly, the judiciary. History has been the witness that how the uncharted charter of parliamentary privileges had brought the legislature and judiciary in the most unfortunate and unprecedented face-off with each-other in the famous Keshav Singh case.[30] In the said case, the speaker of the state legislature had asked the two High Court judges to appear before the House to explain why they breached the house's privilege by hearing a petition of Keshav Singh who was earlier imprisoned by the house. Though the Supreme Court[31] intervened and set at rest the controversy

29. CAD, VIII pp. 148-9, 582-3
30. For a detailed analysis of the case, see-Chintan Chandrachud, *The cases that India forgot* (1st Edition, Juggernaut Books 2019) 4.

by quashing the order of the speaker which sought to summon the two high court judges before the House, this incident, however, was an eye-awakening point in the context of the uncharted and sweeping powers that were bestowed on the legislatures.

In *M.S.M. Sharma* v. *Sri Krishna Sinha*[32] the question was whether publication of expunged portions of Parliamentary proceedings amounted to contempt. The issue directly before the Supreme Court was whether what was the impact of Article 19(1)(a) and Article 21 on the provisions of Article 194(3). It was held that if a law prescribing the powers, privileges, and immunities is enacted, either by Parliament or State legislature, that law would be subject to Article 13 of the Constitution and would be void to the extent it contravened the fundamental rights contained in Part III.

The Supreme Court in *In RE, Powers Privileges and Immunities of State Legislatures*,[33] dealt with the question raised in this case and that was whether the Assembly had the privilege of committing a person to prison by general warrant (i.e. without assigning reasons excluding the writ jurisdiction of HC & SC under Article 226 & 32 respectively to enforce fundamental rights) and ultimately ruled that the fundamental rights guaranteed under Article 32 cannot be overridden by parliamentary privileges. In this regard, it is pertinent to note the observation of eminent constitutional scholar, namely, H M Seervai. He pointed out that this contradiction has raised a piquant situation where one privilege (right to prohibit publication) is not overridden by one fundamental right (Article 19(1)(a)), on the other hand another privilege (right of committal) is subject to another fundamental right (Article 32).[34] The Supreme Court[35] also reiterated that the issue of fundamental rights vis-a-vis parliamentary privileges has raised many controversial debates before the Court as to which one will prevail over another and has concomitantly raised the question of codification of parliamentary privileges.

VIII. CONCLUSION

The Constituent Assembly did not codify the parliamentary privileges due to the paucity of time and left it upon the Parliament to enact the same in due course of time. However, speaking about the non-codification of the privileges by the Constituent Assembly, it was said by Dr. Rajendra Prasad that the "parliament may never legislate these privileges". The prophecy of Dr. Rajendra Prasad has come true and even after the lapse of 74 years of the enforcement of the Constitution, the codification of

32. AIR 1959 SC 395
33. AIR 1965 SC 745
34. H M Seervai, *Constitutional law of India*, 3rd Edn., (Bombay, N.M. Tripathi Pvt Ltd., 1984, p. 1833
35. *In RE, Powers Privileges and Immunities of State Legislatures, AIR 1965 SC 745*

parliamentary privileges is a far cry. The reason for not codifying the parliamentary privileges may possibly be that the enactment of these privileges would bring them under judicial scrutiny. However, this perception is not correct. All the organs have their genesis in the Constitution. They must conform to constitutionalism. Judiciary has been assigned the duty to scrutinize any excess made by other constitutional institutions. If the codification of privileges has not been done for the reason that the same may bring it under judicial scrutiny, it goes against the principle of constitutional democracy which the Constitution inheres. All the constitutional organs, be it legislature, executive or the judiciary, are not above the Constitution and they must be subject to constitutionalism. The privileges, as it originated in England, are a shield and cannot be used as a sword against the citizens by running roughshod over their fundamental rights. It would be apt to quote Lord Denning's celebrated and oft-quoted words "*Be you ever so high, the law is above you*", to make the law-makers realize that all the organs of the government derive their power from the Constitution and not from the legislatures. Thus, the need of the hour is that the uncharted privileges must be codified not only to bring about the harmony among the different organs of the state to avoid uncalled for tussle but also to the harmonize the fundamental rights of citizens vis-a-vis parliamentary privileges to protect and promote the grand ideals of Constitution.

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Protection of Environment and Legal Framework in India: A Critical Analysis

Akanksha Dubey[1]

I. INTRODUCTION

The Constitution of India is the first fundamental law that provides for particular Articles for improving and safeguarding the environment. It depicts the aspect of human rights of preservation of environment by several constitutional provisions. In Indian context, issue of safeguarding the environment is not only provided by the basic law of the country, but it is embedded within human right and it has been well-settled that it serves as the inherent right of all humans to live in a place which is free from any kind of pollution and such life shall be full of human dignity. The instance of the provision under the Constitution concerning the preservation has also been adopted by other countries across the globe. For instance, the drafting committee of the South African Constitution were highly impressed by the environmental provisions under the Constitution of India and they also included similar Article in their law of the land.

II. INTERNATIONAL SCENARIO OF ENVIRONMENTAL PROTECTION

The 1972 United Nations Conference on the Human Environment, held in Stockholm, was a crucial event in the history of international environmental policy. It serves to be an inaugural United Nations-hosted significant international conference devoted to the discipline of environmental preservation. Representatives from 113 countries participated in the conference, which resulted in the setting up of the UN Environment Programme.

The objective is to bring attention to the escalating problems concerning environment that threaten our planet, including deforestation, water and air pollution, and biodiversity loss. Additionally, it sought to establish a recent international institution to coordinate and provide support for activities related to environment and to develop a legal structure for assuring global cooperation on the matters involving environmental problems or degradation.

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The Stockholm Declaration, adopted at this Conference, delineated several principles for safeguarding the environment. These principles encompassed the accountability of states for their environmental actions, the imperative of international collaboration, the entitlement to development and a healthy environment, and the significance of public engagement and information accessibility.

The Declaration acknowledged the urgency of preserving the nature and advocated for forming a "new international economic order" to promote sustainable development, was officially enacted by the conference. The Declaration additionally emphasized the criticality of public participation in environmental decision-making and the indispensability of industrialized and developing countries working together to deal with challenges concerning environment.

The summit led to formation of UNEP, an organization whose primary responsibility is to coordinate environmental initiatives within the UN system. UNEP has been instrumental in the formulation of environmental agreements globally and the promotion of "sustainable development (SD)" ever since its inception. It laid down the groundwork for the concerned environmental agenda at international level and was a pivotal moment in the history of environmentalism. Furthermore, it served as a catalyst for global collaboration regarding environmental issues and aided in generating consciousness regarding the imperative of preserving the planet for generations to come.

III. CONSTITUTIONAL MANDATE FOR PROTECTION OF ENVIRONMENT

At the beginning, the Preamble of Indian Constitution specifies that our nation is premised on socialistic aspect wherein the government seeks to address the social issues of a person. The primary purpose of socialism is to ensure decent life to everyone, which is possible only in a clean and healthy environment. "Pollution" is treated as social challenge and the "State" is mandated under Constitution to deal and solve the social issued and proceed forward in achieving the objective of just social order.[2] The Preamble further seeks to declare the nation as Republic and Democratic. In democracy, public are entitled to take part in governmental decision. Further, citizens have right to seek information and know and government scheme which is quite significant for the proper implementation of environment initiatives. The other aims as enunciated under Preamble are liberty, justice and equality under Part III of the Constitution providing about the fundamental rights.

The legislations relating to environment and its preservation were enacted by the State and Union legislature when clean and healthy environment was recognized as fundamental human right. Since it is already acknowledged that clean and safe

2. Article 38 of the Constitution mandates the State to secure a social order for promotion of welfare of the people.

surrounding is the essential requirement of every human and it couldn't be secured without maintaining balance in ecology, therefore it is presumed as a common right guaranteed to all because existence of a man is dependent on healthful, and clean environment which is free from any kind of pollution. Any attempt to destroy, denude, and defile the nature will result into contravention of right to access clean environment as human right.

a. Right to Life

The Constitution of India contains plethora of fundamental rights. The right of an individual to good health is one such rights envisaged under Article 21. It has been held by the Apex Court that "right to healthy and clean environment is covered under the ambit of right to health". This signifies that a healthy and clean environment is essential for realizing the right to health. However, there can be conflicts between the right to trade and health. For example, industries that engage in hazardous activities can cause pollution and harm the health of persons living in the adjoining regions. In such cases, the judiciary has to balance the competing rights and arrive at a decision that is in the best interests of the people at large.

b. Freedom of Trade, Commerce and Environment

The freedom to pursue any business, trade, and profession has been enshrined under Article 19(1)(g). The said right is subjected to limitation which can be inflicted by the government for safeguarding general public interest. The Apex Court has ruled that "right to commerce and trade is a significant element of right to personal liberty and life as provided under Article 21".

Majority of the contamination or degradation is caused by running of business or trade- especially from the factory or industrial unit. It has been witnessed that distilleries, hotel industries, dye and tie factories, acid factories, and tanneries have led to environmental degradation. Some of these factories are operating in a manner which has threatened various aspects such as public health, aquatic life, animals and vegetation cover. Therefore, right to clean environment has nexus with freedom of business/ commerce and trade as fundamental right secured by Article 19(1)(g) of the Constitution.[3] It has been reiterated that such freedom is subject to certain limitation and is not absolute. Thus, any business or commerce which is making the life of human or flora miserable, shall not be allowed to be conducted in the name of fundamental right.

3. Article 19 (1) (g): All the citizens of India "shall have a right……. To practice any profession, to carry on any occupation, trade and business.

c. Right to Livelihood

The right to livelihood as a part of right to life under Article 21[4] was recognised by the Apex Court in the case of *Olga Tellis*[5] that the petitioner, a journalist and two pavement dwellers challenged the governmental scheme by which the pavement dwellers were being removed from the Bombay pavements. The main argument advanced on behalf of the petitioners was that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution as deprivation of their livelihood would tantamount to deprivation of their life and hence unconstitutional. The right to livelihood is not treated as part of the constitutional right to life. The easiest way of depriving a person of right to life would be to deprive of him his means of livelihood to the point of abrogation. Such deprivation could not only denude the life of its effective content and meaningfulness but it would make life impossible to live.

d. Fundamental Freedom of Speech and Expression

The fundamental freedom of speech and expression is guaranteed to every citizen under Article 19(1)(a)[6]. In India, most of the jurisprudence has been developed by judicial activism. Freedom of speech and expression also includes freedom of press[7].

e. Right to Know

The 'Right to Know' plays a very important role relating to environmental issues. Any governmental plan of construction of dam or information of the proposed location of nuclear stations or thermal power plants and hazardous industries which directly affect the life and health of the people of that area must be widely published.

The DPSP has been enshrined under Part IV of the Indian Constitution. These directives signify the economic and social targets to be fulfilled by the State. Article 47 is one such directive which obliges the States to take steps to raise the nutritional level and living standard of the population and also to improve the health of people as the major obligations. Improving the health of people will also be included under "improving and protecting the environment". Public health cannot be maintained without clean environment. The 42nd Constitution Amendment inserted Article 48-A[8] to Part-IV of DPSP which specifies for improving and safeguarding the environment. Therefore, the Constitution turned out to be unique Constitution across the globe wherein particular provision were inserted in the Constitution imposing obligation on the citizens and State for safeguarding the precious environment. Although the judiciary may not enforce

4. The Constitution of India, 1950.
5. *Olga Tellis* v. *Bombay Municipal Corporation*, AIR 1986 SC 180.p-651
6. The Constitution of India, 1950.
7. *Indian Express Newspaper Pvt. Ltd.* v. *Union of India*, AIR 1986 SC 515.
8. Article 48A "*The Sate shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.*"

the DPSP by forcing the relevant government to utilize those principles while framing law, but is crucial for framing the new legislations as per the requirement.[9]

The 42nd Amendment of the Constitution also inserted Part IV-A containing provisions relating to "Fundamental Duties" in the Constitution of India.[10] Article 51-A enumerates 11 fundamental duties. Article 51(g)[11] particularly seeks to encourage respectful treatment towards environment. Moreover, Article 51-A (j) states that:

"It shall be the obligation of every Indian citizen to move towards excellence in every sphere of individual and collective activity, so that the country consistently rises to higher levels of achievements and endeavor."

The Fundamental Duties are intended to promote people's participation in restricting and building a welfare society. Safeguarding an environment is prioritized under the Constitution. The challenge is the concern of every individual in India. Ignoring the same invites, the disaster.

Article 51A(g) refers to the basic obligation of every Indian to safeguard the environment.

The Union legislature has adopted the expression "citizen" rather than "subject" as per the need of the hour is that we shall be true citizens of the nation proceeding towards the brilliance in every aspect of individual and common activities which includes the environmental protection.[12]

The Court opined that "the rights and obligation co-exist". There can be no entitlement of person without the existence of obligation and vice-versa. The issue of poor sanitation results into gradual poisoning and negatively impacts the citizen's life and thus it is included under the ambit of Article 21 of Indian Constitution. Thus, every citizen is obliged to ensure that right guaranteed to the citizens under the basic law are met.[13]

IV. LEGISLATIVE PROVISIONS ON ENVIRONMENT

The environmental protection has become a fertile source of law, national and international since the UN sponsored the Stockholm Conference of 1972 and its Declaration on the Human Environment. There are various contentions between states which turn out to be geographically inter dependent have been hammered out; a few

9. Article 37: "*Part IV shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the Sate to apply these in making laws*."
10. Article 11 of the Constitution of the India (42nd Amendment) Act, 1976 (w.e.f. 3-1-1977).
11. Article 51-A(g) of the Constitution of India, "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".
12. *L.K. Koolwal* v. *State*, AIR 1988 Raj.2.
13. *M.C. Mehta* v. *State*, AIR 1992 Ori.225.

before, but most since the date covering such matters at the prevention of pollution of the seas in the general or particular seas, rivers the reduction of air pollution and safeguarding of flora and fauna. To protect and improve the environment various laws enacted by the Parliament such as:

a) Water Act[14]

Water is considered most important elements of nature. Water pollution is one of the major problem facing the humanity there are various causes of water pollution, industrial effluents, directly entering into stream or through municipal sewer or through discharge on land meant for irrigation and results in water pollution. The ground water also gets polluted as result of underground dumping of trade or sewage effluents.

b) Air Act[15]:

Due to the increasing industrialization and the tendencies of the majority industries to congregate in areas which are already heavily industrialized, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialized areas which are also densely populated. The Air Act was enacted by evoking the Central Govt.'s power under Article 253 to make laws implementing decisions taken at international conferences.

c) Environmental Protection Act[16]:

On response to the UN Declaration, series of enactment was made by the Parliament to protect and improve the environment including river, forest. Keeping in mind the constitutional mandate, another Act was enacted as the Environmental Act, 1986 which covers the area left out by the Water Act and the Air Act. The provisions relating to the environmental laws should be given pro-environmental interpretation to achieve the purpose and object of the statute.

V. ROLE OF JUDICIARY

The Indian judiciary has played a vital role in protecting and safeguarding the environment. There are number of cases which has been decided by the Apex Court from time to time. But due to the overburden of the excessive caseload of High Courts and Supreme Court, the 186th Law Commission Report recommended for constitution of a Tribunal to be known as the "National Green Tribunal". The Green Tribunal in India has been established through a central legislation, the National Green Tribunal Act, 2010 to deal with matter relating to environment, forest and wildlife. The Tribunal exclusively dealing with environmental issues provide speedy environmental justice and help reduce the lawsuit burden in the higher courts.

14. The Water (Prevention and Control of Pollution) Act, 1974.
15. The Air (Prevention and Control of Pollution) Act, 1981.
16. The Environment (Protection) Act, 1986.

In India most of the environmental matters have been brought before the judiciary through Public Interest Litigation. Out of all the legal remedies available for the protection of environment, the remedy under the Constitution is preferred because of its relative speed, simplicity and cheapness. The Supreme Court while developing a new environmental jurisprudence has held that power of the Supreme Court under Article 32 is not restricted and it could award damages in Public Interest Litigations or writ petitions in those cases where there has been any harm or damage to environment due to pollution.

In the case of *Doon Valley*[17] the Apex Court emphasised the significance of balancing development and conservation for saving the environment and maintain ecological equilibrium. The extraction of limestone was being conducted in an unorganised and random way in the Mussoorie hill-range in the Himalayas. Consequently, the region experienced deforestation, leading to the loss of trees and forest vegetation. This, in turn, resulted in significant soil erosion, posing a severe environmental hazard. The Court acknowledged that the responsibility of determining whether the quarrying of limestone should persist at the expense of ecology and environment lies with the Government, instead of Court. It was expressed that the extraction of natural resources must be conducted with necessary attention and caution to prevent any significant detrimental impact on the ecology and environment. The Court acknowledged that these resources are enduring assets belonging to all of humanity and are not meant to be depleted within a single generation.

In 2020 the *Char Dham Highway Case*[18], a highway is a proposed 900-kilometer-long, all-weather road connecting four major Hindu pilgrimage sites in the Indian state of Uttarakhand. The project aims to improve connectivity to these sites, but it has been controversial due to concerns about its environmental impact, particularly on the fragile Himalayan ecosystem.

The case's principal questions were whether the Char Dham Highway's development went against environmental laws and conventions and if it would seriously harm the environment—including forests, waterways, and wildlife habitats. The case also raised concerns about the potential for landslides, erosion, and other geological hazards in the region.

The case was heard by the National Green Tribunal, which is India's specialized environmental court. The Ministry of Environment, Forests, and Climate Change's environmental clearance for the Char Dham Highway project was revoked by the NGT in August 2020, and a fresh evaluation of the project was mandated.

17. *Rural Litigation and Entitlement Kendra, Dehradun* v. *State of U.P,* AIR 1985 SC 652.
18. *Citizen for Green Doon & Others* v. *Union of India & Others* (2021) SCC OnLine SC 1243.

The NGT noted that the MoEFCC had failed to keep into account the cumulative effect of the project on the ecology and that it had relied on wrong data and flawed assessments in granting clearance. The NGT also directed the MoEFCC to conduct a fresh Environmental Impact Assessment and to consider alternative routes that would have less environmental impact.

In *Vizag Gas Tragedy*[19], around eleven persons were killed early on Thursday after a massive gas leak from a chemical facility in Visakhapatnam, Andhra Pradesh, immediately spread to communities within a five-kilometer radius. Among the casualties were children as well. Furthermore, a great deal of domestic animals, livestock, and plants were damaged. As they tried to get away from the poisonous vapours, a few of them collapsed. Hundreds of persons were found unconscious on sidewalks, in ditches and on the highway several hours after the leak occurred, raising fears of a major industrial catastrophe. Styrene monomers were employed in the production facility to create expandable polymers, and it was recommended that the temperature be kept under 20°C. After the COVID-19 outbreak, the factory was temporarily closed down, with the exception of maintenance chores that were finished within a certain time frame.

The NGT took *suo motu* note of this incidence and filed a complaint. A team comprising of 5 members was assembled by the NGT to investigate the place and give a report to the same within 10 days following deadly toxic gas spill in Vizag, AP. Under the direction of Judge Adarsh Kumar Goel, the Tribunal further ordered LG Polymers India Pvt. Ltd., the owner of the building where the leakage of gas occurred, to pay Rs. 50 crores to the Visakhapatnam District Magistrate. The Tribunal further stated that a large-scale leak of toxic gas has a negative impact on the environment and public health, and that the doctrine of "Absolute Liability" against factories engaged in dangerous and harmful activities would be applied where health and life of people is impacted by the catastrophe like gas leakage in plant.

The Committee was constituted with the following mandate:

i. The sequence of events,
ii. The extent of damage done to public health, the environment, which includes water, soil, and air, as well as life in all its forms;
iii. The reasons for failure and the parties and authorities;
iv. Corrective actions to prevent repeat;
v. Actions should be made to cover the costs of the incident, compensate the victims, and restore the ecology and any destroyed property;
vi. Any related matters judged relevant.

19. *LG Polymers India Private Limited* v. *Andhra Pradesh Pollution Control Board & Ors. (2020)6 SCC*

VI. CONCLUSION

The Supreme Court while developing a new environmental jurisprudence has held that power of the Supreme Court under Article 32 is not restricted. In the light of different provisions under Constitution and other legislation aiming to safeguard the environment, the Apex Court has clearly ruled that principles like "Polluters Pay Principle and Precautionary Principle" are component of the Indian environment law. After enactment of the National Green Tribunal Act in the year 2010, the NGT has also taken initiatives beside higher courts for safeguarding the environmental issues as well as preserving the ecosystem.

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BOOK REVIEW

VICTIMS' ASSISTANT IN INDIA: SUGGESTING LEGISLATIVE REFORM (A COMPREHENSIVE COMPARATIVE POLICY REVIEW) (ED. 2017), BY SANJEEV P. SAHANI, ASTHA DHANDA, MANJUSHREE PALIT, ANE BOOK PVT. LTD, 4821, PARWANA BHAWAN, 1ST FLOOR, 24 ANSARI ROAD DARYA GANJ, NEW DELHI, 110002, PP. 189, PRICE 595/-

The legal discourse in respect to the role and involvement victims of crime and abuse of power in the criminal justice system vis-à-vis victimology has been important in the new age media and globalization, but unfortunately their participation in the criminal justice system has decreased over a time especially in case of abuse of power. Despite the revolution change in victimology after its separation from criminology by Benjamin Meldelson in1940s, the changes have primarily benefited the limited victims and their families in respect to the protection of their rights, providing victims assistance and remedies despite the victimology movement and mandate national and international law. By the way in 2009, Section 357 was added to the CRPC, 1973, requiring the State to compensate crime victims, but procedural loopholes and territorial limitations hinder its implementation. However, the present book had covered all the important aspects of victims assistant programme, schemes and policies across the globe and equate India's policies with those of other countries, and proposes necessary legislative reforms to different concerned stakeholders, policymakers, lawmakers, civil society, and victim rights activists to consider. The authors had specifically focus on the policy debate surrounding victim assistance programs in India, identify gaps in the current policy framework, examine the Supreme Court of India's stance on compensating crime victims, and made a comparative study of India's victims policies with those of other countries, including the UK, Canada, the European Union, Asia, and Australia. Finally, the authors had recommended some legislative reforms based on their findings to promote the rehabilitation and inclusion of crime victims in society and the criminal justice system.

The present book is primarily divided among six chapters, with an introduction encompasses the definition of victims, victimization, primary and secondary victimization. The first chapter studies the victimization data in India and made a comparison of crime against women and children in 2014 with that in 2013. In the second chapter, named "Remembering the Forgotten: A Critique of Victim Compensation Schemes," the author had critically examines the history and current state of victim compensation schemes. They discuss about the eligibility and qualification criteria for

claiming compensation, as well as the procedures followed by the District Legal Service Authority and State Legal Service Authority in determining the amount of compensation and how it is disbursed. The author also evaluates the impact of these schemes and compares them with those of other countries. Ultimately, the author recommends that central legislation is to be enacted to reform the current system with respect to victims. The third chapter of the book focuses on the landmark judgments given by the Supreme Court in shaping the current state of victim compensatory rights in India. In this respect, the author had analyzed eight landmarks judgment of Hon'ble Supreme Court to comprehensively understand the legal issues, challenges and prospect of victims in order to frame the law of victim compensation in India in case of violation of rights of life and personality. Chapter four of the book is primarily focuses on the comparative studies, comparing the current policy in India for victims of crime with those in the European Union, Canada, the UK, and Australia. The chapter is divided into five sections, with the first four parts presenting a brief comparative policy analysis. Meanwhile, the fifth part discusses the framework for victim assistance in the Asian continent, including Malaysia, Singapore, Sri Lanka, Pakistan, Bangladesh, and China. Chapter five highlights the importance of integrating psychological and psychosocial assistance into the victim support program in the Indian criminal justice system. The chapter begins by discussing the psychological impacts of victimization and how psychosocial support can lead to improved mental health. It also presents a brief comparative analysis of psychological services available to victims in other countries and the constraints present in India. From this it can be said that the biggest weakness of current psychosocial support programme is the lacks of research, awareness and gaps in between the research and praxis as an essential part of India's comprehensive victim assistance program. The final chapter, titled "Proposed Legislative Reforms for a Victim-Centered Legislation in India," suggests the central government enact a Central Victims Assistance Act to address the disparity in state compensation schemes. The author recommends an amendment to the Criminal Procedure Code, 1973, to require a victim statement at the start of the trial and to give victims a more active role in the criminal justice system. He suggests that the victim should have sufficient chance to state their case in court and actively participate in the criminal justice system. In the end, the author also emphasizes that these recommendations are based on a comprehensive analysis of the victim assistance policies in different countries, the Indian policies regarding victim assistance, and an extensive examination of the legal principles related to victim assistance in India.

In view of the above, it can be said that the present book is an outstanding work on victims assistant policies, issues, challenges and prospect across the globe under victimolgy subject in order to secure compensatory justice to them. It suggested many good points such as introduction of Victim Impact Statement but has not lay in

great emphasis in depth on the plight of victims of abuse of power, recent trends and assistance program for them rather laid more importance on policies and assistance for victims of crime and the remedies available to them for violation of human rights with suggestive legal framework through comparative studies across the globe.

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THE DRAMATIC DECADE- LANDMARK CASES OF MODERN INDIA (2017). BY INDU BHAN. PENGUIN RANDOM HOUSE INDIA PVT. LTD., 7TH FLOOR, INFINITY TOWER C, DLF CYBER CITY, GURGAON 122002, HARYANA. PP 12+266. PRICE RS. 499/-

It's been seventy years since India got independence. In these seven turbulent decades, its democracy has only grown stronger. Trial and tribulations were inevitable in the transition from a feudal and economically backward country to the world's largest democracy with the fastest growing economy which aspires for a seat in UN Security Council. The constitutional institutions have stood many turbulent times and have grown in strength and stature. One institution that has made its mark not just in India, but globally, and has redefined the role of judiciary not only as an arbiter of disputes, but as an institution of constitutional governance, is the Supreme Court of India. Significant events in the journey of this democracy have had their resonance felt in the Supreme Court. This book talks about some of these events, and their judicial resonance that marked the last decade, like the Mumbai attacks- and its aftermaths in the courts. India resisted the temptation of resorting to a summary military tribunal to try a terrorist who was caught red-handed. He was given a fair trial, with the Supreme Court appointing an eminent counsel to appear as amicus curiae to argue the defence. This book picks up such leading cases, not only for their jurisprudential worth, but also for marking dramatic chain of events which led to logical conclusion during trials.

This book is a modest attempt at highlighting some pertinent issues that have plagued our system and been a matter of debate in our society. Capital punishment, Rape laws, the issue of transgender and LGBT rights, the criminalization of politics and the freedom of speech are the topics that are of concern in the present dynamics. The main sources of this book have been the court records for the cases that have progressed from lower courts to high courts and finally culminating into the Supreme Court. Media reports and opinion of legal experts are also taken into consideration while writing this book. When the narrative flows seamlessly into the part where the case comes to court, Indu Bhan falls back on her skills as a legal reporter. She simplifies court proceedings for the lay reader, going over the submissions made by lawyers during hearings and the arguments on the point of law.

The *Dramatic Decade* does not preach about what is right and wrong, instead reproduces important portions of the judgments which do the talking. Take for example Justice R. Banumathi's observation in her order on the Nirbhaya gangrape case where she says, "It becomes important to ensure that gender justice does not remain only on paper offences against women are not women's issue alone but a human rights issue."

This book discusses dozen cases concerning key issues of capital punishment, gender equality, freedom of expression and electoral reforms. The author had sketched

the outline of every case in simpler language making it easier for the reader to understand the history, context and constitutional provisions with respect to each case. Though controversial cases such as Babri Masjid demolition, Mumbai serial blasts and Parliament attack were discussed succinctly, the author had made sure that she doesn't propagate any school of thought nor besmirch any particular community or person. Around hundred and sixty countries had abolished the capital punishment and India is one among fifty countries to hand out death penalty for the rarest of rare cases considering the case, criminality and collective consciousness of public and three cases relating to Afzal Guru, Yakub Memon and Nirbhaya has been well reconstructed in this book. To condense the judgements that run down thousands of pages, by phasing out extraneous details, to present the case in concise manner, the author had truly done a commendable job. The cases selected are highly popular and known to public. As they were dragged for number of years, people lost interest, except in final judgements. But the author brought the struggle of advocates, concern of judges in debating length and breadth of the case, so that they are going to deliver only the best suitable verdict in the interest of public at large and suitable for current times. The law and proceedings are explained in simple language for common reader. The cases were also introduced with a story line that drags the reader to know what turn the case going to take and what will be the final conclusion. I like the book and recommend for those who are curious about cases, courts, advocates, judges and judgements.

All the 12 cases discussed in this book give us much better understanding of the importance of Public Interest Litigation (PIL) and the role of judicial activism in a democracy. The 1st chapter starts with the case of Parliament attack which shook the conscience of an entire nation. Minute details of this case has been given in this book and how various CCTV footages and statements of eyewitnesses were instrumental in establishing the involvement of Azmal Kasab in this horrific crime against humanity. But this book highlights the fact that even Kasab was given all reasonable opportunity of being heard before awarding him death penalty. Nirbhaya case has been dealt with in the second chapter and how it was instrumental in bringing changes in rape laws in India. In chapter 6, an issue which has mostly been forgotten by today's generation, i.e. Uphaar tragedy has been discussed. It is a reminder to take safety and security measures, it highlights how a lapse and lack of time bound intervention can be tragic.

In chapter 8 of this book, the author has discussed in wider details the genesis of Lily Thomas vs Union of India case and its after effects on the Indian political system. Lilly Thomas' PIL resulted in the quashing of section 8 of Representation of People Act (RPA) in 2013. This watershed judgement had deeper impact leading to the disqualification of politicians namely Lalu Prasad Yadav, Jayalalithaa and many more. As a voter, it is important to know the basis of 49-O provision and the judgement related to None of The Above (NOTA). Though cosmetic in nature and considered as a waste of vote, the above two cases somehow stand as monumental judgements in

electoral reform since it can hold the political party accountable and abstain them from fielding candidates with criminal background.

In this book in chapter 10, a very intriguing representation has been shown of the case which was related to transgender rights. In 2015, when Member of Parliament and Congress leader Shashi Tharoor brought in a private member's bill to read down Section 377, his colleagues jeered loudly at him, asking if he needed homosexuality decriminalized for himself. When Naz Foundation moved the litigation to the supreme court seeking decriminalization of consensual same sex relationship, the government of India opposed it on the grounds of 'public morality'. In 2018, the Supreme Court in the landmark judgement quashed Section 377 of IPC, which held 'carnal intercourse against the order of nature' as a criminal offence with lifelong imprisonment. This was one among many instances when the Supreme Court of India upheld both the 'constitutional morality' and rational scrutiny with extensive and careful reading of constitutional provisions, assembly debates and scientific literature.

A very interesting depiction has been shown of the famous Bar Dancers' case in Maharashtra in chapter 11. It provides an insight into the vicissitude of human emotions and values. As a result of the apex court judgement, dance bars were opened in Maharashtra, which came as a relief for hundreds of establishments and thousands of women who had lost their jobs. These women had slipped into the business of prostitution when these dance bars were clamped down by the then Maharashtra government. Interestingly, the Supreme Court upheld the idea that 'dancing is a fundamental right'. Thousands of bar dancers celebrated this verdict as it opened an employment opportunity for them and they got their livelihood back.

Although the book has been written in an easy-to-understand language and is based on facts, and it has also in verbatim reproduced the lines from judgements of the Supreme Court. But the book lacks in one aspect. It is very common to get to know about the judgements which the Supreme Court makes, available even through internet. What was expected from this book was that it would also give a detailed verbatim of the arguments of lawyers in the famous cases. That the author fails to do inspire of her glowing introduction of being present in all those cases. The book can be seen as a reproduction of the already available SC judgements with some extra collations.

Having said that, it is needless to say that this book is for everyone- whether one belongs to legal fraternity or not. It's written in a simple and lucid language. The book being hard bound, special mention is due to the publishers for making it presentable in the eyes of the readers.

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CARING THE CAREGIVERS: THE DOMESTIC WORKERS OF INDIA BY SIULI JANA, NAMYA PRESS, DELHI, FIRST PUBISHED 2022 , PP XIII + 217 , PRICE-695/-, ISBN 978-93-5545-023-4.

Domestic work is one of the services in the informal sector. In low skilled domestic services women are found in majority. With growth of middle class and micro families the demand is increasing in India. The domestic workers have not received adequate recognition from the State thus leaving them vulnerable to various forms of exploitation. One of the reasons is the undervaluation of domestic work due to the patriarchal mindset that household work is natural responsibility of women. Thus the entire workforce becomes invisible in domestic labour market from parliamentary debates as well as public discussions.

This book has attempted to address various issues of domestic workers in India particularly women domestic workers as they comprise the majority of this workforce. The book is organised into eight chapters covering different concepts, issues, global view, migration, labours laws, minimum wages and impact of pandemic on domestic workers.

In introduction the author familiarises the readers with the background of domestic work in India and its changing nature with time. The trend has been towards feminisation of the domestic work sector. The author has highlighted that due to invisibility of the workforce, till date there is no data on the exact number of domestic workers in India.

The first chapter of the book has presented concept of domestic workers, classification based on hours of work and nature of employment relationship, their features and problems. In the characteristic features, aspects of migration, nature of work, employment relationship, urbanisation, etc. have been discussed. The author discusses various problems of domestic workers such as low wages, long working hours, lack of social security, exploitation by placement agencies, poor working conditions, child labour, inadequate nutrition, no guaranteed rest day, sick leave and maternity leave without pay, lack of skill development, physical and mental abuses so on.

The global perspective with respect to domestic workers is presented in second chapter. 2011 ILO Convention on Domestic Workers has been elaborately discussed. The adoption of this Convention was historic after decades of campaigning by domestic workers' organisations and trade unions across the world for recognition of their rights. Further, reasons why the member countries should ratify the Convention has been provided given by the Migrant Forum in Asia. The author has analysed the

position of domestic workers globally on the basis of various Reports on different parts of the world.

The analysis of migration as a phenomenon and its impact in domestic work sector has been done in the third chapter. The author discusses both domestic and international migration and the underlying problems faced by the migrant workers. Uneven regional development has been one of the main causes behind internal migration in India. Migration for work takes place for the improvement of livelihood and thus government should integrate migration and development policies. Gender and migration is also intricately related. The female domestic workers have been victims of trafficking and forced labour.

Fourth chapter is on Indian labour Laws and their applicability to domestic workers. In this chapter several existing labour laws and the need for their amendment to enable their applicability to domestic work have been discussed. There were several attempts in the past for enacting a legislation specifically addressing the domestic work. However, till date legal coverage on domestic work sector is insufficient which puts a large section of workfocre in a vulnerable situation. It was only in 2008 with the enactment of Unorganised Workers Social Security Act, that the domestic workers were recognised as workers. However, the Act as well as Sexual Harassment of women at Workplace Ac, which are the only acts covering domestic workers is not adequate for the protection of rights of domestic workers. The author has in detail discussed the draft bill on domestic workers proposed by the National Commission on Women. Further lack of intent on behalf of the state governments to extend social security protection to domestic workers has been highlighted in this chapter.

The issue of minimum wages protection for the domestic workers is discussed in fifth Chapter. Minimum wage fixation is a standard to protect the workers against unduly low wages. To ensure fair wages for the domestic workers proper valuation of their work is crucial. However, only few states have added domestic work in the list of scheduled employments and have notified minimum wages as per the Minimum Wages Act, 1948. The author has illustrated rates of minimum wages fixed by different states for domestic work but contends that the notifications have not specified whether it is skilled, semi-skilled or unskilled which makes it difficult for comparison with other employments. Proper description of the nature of domestic work is also not given in the notifications as the occupation is not defined in terms of employment relationship. According to the author, an enquiry into the issues and constraints that affect the functioning of the legislation is required.

The efforts of domestic workers to organise themselves have been dealt in chapter six. The author highlights that due to the heterogeneous nature and non-standardisation of the domestic work has posed a big challenge in organising the workers in this sector. Further, trade union movements in India and reluctance of traditional trade

unions to incorporate feminised informal sector workers until recently have been discussed. Thus, domestic workers lack organisational power for collective bargaining. Nevertheless, in last few decades organisations have emerged in different parts of the countries organising domestic workers by empowering them and advocating for their rights. The author discusses various activities of these organisations and some trade unions.

Chapter seven discusses the problems faced by domestic workers during the Covid-19 pandemic. The domestic workers were worst hit workers during the pandemic according to report published by the ILO. The pandemic crisis exposed the vulnerability of informal domestic workers. Thus there is urgent need to ensure their inclusion in labour and social security protection coverage. The author has discussed impact of lockdown in different parts of the world and in various states in India.

The final chapter notes the concluding observations and way ahead. The author has highlighted notable points from the discussions in preceding chapters. Certain steps that should be undertaken to improve the condition of the domestic work have been discussed. Formalisation of the domestic work is seen as an extremely important upcoming issue. With overwhelming increase in the numbers of domestic workers in recent times, there is an increased pressure on the State to respond to the issues of domestic workers.

The book through its eight chapters has made a commendable attempt to cover all aspects of domestic workers in India. This book is a valuable contribution on subject matter for which concrete official data does not exist so far. It will help to make the undervalued domestic workers visible in the labour market. The book also raises pertinent issues such as feminization of domestic sector, gender and migration link, feminist politics and trade union movements which in itself is a subject matter for further research. This book will be an important tool for academician, researchers, policy makers, NGOs and social organizations in understanding the subject of domestic workers, conceptual dimensions and issues associated with them. However, the book only focuses on women domestic workers and although the numbers of male engaged as domestic workers might be fairly less, it is entirely left out of its purview which is also important for wholesome understanding of the domestic work sector.

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HUMAN RIGHTS IN A POSTHUMAN WORLD CRITICAL ESSAYS (2009). BY UPENDRA BAXI. OXFORD UNIVERSITY PRESS, 2/11 GROUND FLOOR, ANSARI ROAD, DARYAGANJ, NEW DELHI 110 002, INDIA. PP. 16+249. PRICE RS.455/-

Human rights are very basic rights that a person, when born, needs to go on with his life until death takes it away. Human rights have had been a roar in the society as we reach the epitomes of development, though significantly both the variables if taken in a graph representing the statistics of the society would show otherwise, which is to be more precise that the development factors are harming the very basics of the human rights that are available to the public at large. The author gives an insight about this in chapter one of the book. There is also a debate that is going on for decades to ascertain as to what is the definition of "good" and also an aspect as to justify the global dominance by the few with the so called "good" things done for development for the public at large. In this due process a very serious offence of turning citizens into invisible citizens are taking place, and as such as the "developments" are turning the place into a gigantic building of corporate either by selling, renting or making profit out of it to the government, it just does not matter anymore to what happens to the invisible citizens, also known as internally displaced persons.

The posthuman world means where the human identity is always in flux, materially and culturally situated. The posthuman world has been a concept of the past that we all have seen in the movies, web series, but with time this is becoming a thing of the present and there might come a era where the artificial intelligence (a.i) will take over the human intelligence. The posthuman world will comprise of nano-bots, molecular neuro assembler where the virtual world can be sensed as the real world. The nano-bots are programmed as such that they will be able to program 300(three hundred) times efficiently any work as to the present medical scenarios.A mathematician named Vernor Steffen Vinge who predicted in 1993 with his paper that there is a going to be a change in the way the world is going on, that there will be superhuman intelligence in thirty years time and there will be super computers which will be billion times better than that of today. But the a.i is a two-way sword, if the world does not produce human enough intelligence we can have a war of existence with that of the robots as seen in the movies and the most fascinating thing about the posthuman world is that immortality is on the cards and people will actually be living in the matrix. To sum up, it would be as easy as powering on or off an x-box.

The scope of the book is the most interesting thing to look for is that mr. baxi starts with the period where the posthuman world was just a concept and ends making the posthuman world the "thing" of the future. the book comprises of six chapters,

and the author has tried to come forward with the problems that the society is facing today even with the good intentions of the world leaders and coming up with the solutions of the mighty Amartya Sen titled as ' elements for a theory of human rights' in chapter two of the book. This monograph also carries forward some adverted tasks but not fully attended to in "the future of human rights". the author has done a laudable work by bringing this book up, the book, though not very voluminous, but covers all the aspects of both human rights, posthuman world, and human rights in a posthuman world, very intensively and extensively.

The author starts chapter one with the suspect term "theory" which is related to many social movement and activist folks, for some bad and some good reasons. and as mentioned about it at the starting of this article that some are understandable but some are for the cause of development making the rich richer and a very dangerous crime committed towards social beings at large. Whereas, chapter two confronts with the elements of social factors required to maintain a balance in the society at large, the problems of human rights faced owing to the factors that are leading to violation of human rights are actually termed as "good" for the human race in pen and paper.

chapter three emphasis on the factors of the human rights and the social development, the periodicals concerning the factors that the development will ultimately lead to better lives of the people, this irony has been made clear in the first paragraph og this article stating how vague and not vogue the statements made are. whether approaches to justice are necessarily integral to the politics of human hope that sustain alternative visions of humane development remains an open question. The author of the book profoundly in chapter four addresses the dilemmatic character of the much vaunted rights-based approaches towards development, and how are these rights ought to remain neutral? in a strange way, though not unanticipated inversion, the right to development tends to increasingly become an instrument shaping the contours of hegemonic global social policy, and then the author asks the question as to how to change the old habits of rethinking development to that of the new patters of development, as with the more inventions of the a.i , the problems regarded as of today will not be a problem of the future and hence a way has to be found to deal with it. Almost coming to the conclusion, at the starting of chapter five, the author seeking to decode the rhetoric and the reality of two terror wars. Even in this zodiac, the re-silencing of human rights voices now becomes a quotidian performance of global and internationally policy of the networks of collective security. In a precise way, the author in every chapters talks about in how circumstances were created in order to violate the human rights but also make it not how it is, basically the deception of the global players.

Lastly, chapter six talks about the posthuman world, the author has put a lot of emphasis on what is a posthuman, the circumstances creating the world, what will

the world comprise of and many questions that might come to the mind of the reader who is reading about the posthuman thing for probably the first time. This last chapter is an outlook study also from the previous instalment of this book named 'the future of human rights'.

The high level of research and the high quality of evaluation of the work is very laudable. The book is so well written that it gives an insight regarding the human rights in a posthuman world, and lastly the book being hardbound, special mention and regards to the publishers for making it presentable to the eyes of the readers.

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