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INCUBATOR

..... Writing for future

AN IN-HOUSE STUDENT MAGAZINE

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SYMBIOSIS LAW SCHOOL, HYDERABAD
Expertise | Justice | Service
(Constituent of Symbiosis International University, Pune)

Editors' Desk

We are happy to bring out the first issue of the fifth volume of INCUBATOR – An In-house student magazine. This issue has a kaleidoscopic and a judicious blend of opinions, research papers, poetry, photographs, and article series.

The highlights of May-June 2016 issue is a "sci-fi' story which is presented as a series and shall be published in installments; a couple of empathetic narrations about organizations and gender strength, and some very strong research papers covering the burning issues. It is surprising and delightful to see a host of writings being presented. Every issue is an improvement over its predecessor in terms of number of articles received and the quality of articles being presented, which indicates the rising enthusiasm and an acknowledged demonstration of empathy amongst students towards socio-political issues.

In future we wish bring INCUBATOR as a monthly magazine because the response to "call for papers" is overwhelming.
We acknowledge the contribution of each and every student to make this issue a very special one and we bow down to the Director – SLSH for his encouragement at every stage.

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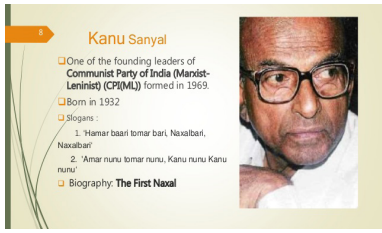
THE NAXALITE STORY: THE 50 YEAR OLD JOURNEY FROM FIGHTING CAPITALISM TO BECOMING TERRORISTS

"*Corn can't expect justice from a court composed of chickens*"

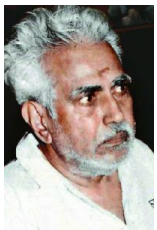
-African Proverb



What do you do when someone threatens to usurp your way of life and there is no way of getting relief from any redressal forum? You take up your arms and fight against this oppressive way of life. Through the years, many cultures have used this measure to ensure a peaceful living for their future generations. But what do you do when this measure makes one a killer instead of a liberator. India has faced a lot of oppression to save its sovereignty and economic welfare both from external and internal sources. The infamous Naxalites rank high on that list. What started as a protest against the land ceiling laws later turned out to be a armed guerilla warfare to overthrow a supposedly 'bourgeois' government. This 50 year old internal security threat could have been solved if there would have been astute statesmanship from both the sides.

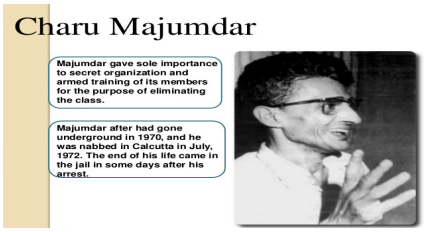
The Naxalites follow the theory of Communism and Maoism. They believed that the peasant class, just as in China, is better suited to be the revolutionary class in the society. They fight for the betterment of their tribe and protection from encroachment. The earliest occurrence of a Naxal like uprising occurred in the Nalgonda district of Andhra Pradesh in 1946. The uprising spread in Warangal and Bidar districts, where the peasants and landlords took up arms against the landlords who were ruling the villages known as *Samsthans*. Such communal agitation resulted in freedom of 10,000 acres of land from the clutches of the landlords. By 1948, around 2500 villages had communed to be a part of the Telangana struggle. The Andhra Thesis demanded to follow the Chinese path of protracted People's War and thus Peoples War Group was born and Kondapalli Seetharamaiah (picture below) from Vijayawada, Andhra Pradesh was its founder.

The term 'Naxal' comes from the village Naxalbari in West Bengal. It was founded by three revolutionaries, Charu Majumdar, Kanu Sanyal and Jangal Santhal. It began as a violent uprising to redistribute the land to the landless when the government failed to do so.



The Naxalites were closely associated with the Communist party of India (Maoist) as they shared the same ideologies. The Naxalites were dissented against the 5th and 6th Schedule of the Indian Constitution. These Schedules limited the tribal autonomy with respect to exploiting their natural resources, mining, and land ceiling.

The instances when the government had used extreme counter measures to combat these militants are glaring. Citation of a few will suffice. When CPI (M) split off from the Naxalites, they formed a coalition government with Indian National Congress. Charu Majumdar called it as betrayal and wrote the famous "Historic Eight Documents' which contained the communal way of life and thus formed the basis of Naxalite ideology. Such ideologies attracted the middle class youth in West Bengal who often fled to join the Naxals. The police used to abduct such kids when they commute from their home to their colleges. It was rumored that the house of Soumen Mitra (MLA of Congress party) was used as a torture house to illegally incarcerate the youth. They were then shot and dumped in some pit. Such instances had affected thousands of families in West Bengal and when the government was asked to answer on this issue it said that it was fighting a civil war and there was no place for democratic pleasantries when the opponent did not know the concept of civility and democracy. Another instance of atrocity on Naxalites was Operation Steeplechase. During the notorious regime of Indira Gandhi, she mobilized the Indian army and the police officers to launch a colossus insurgency operation which resulted in death of hundreds of Naxalites. This operation was so discrete that there are no public records of such insurgency.



Are the claims of the Naxalites so perverse that they are branded as political extremists? The Fifth Schedule states briefly that all scheduled areas of the country which are forest reserves and inhabited by scheduled tribes are to be administered by the governors of the states by appointing tribal advisory councils from among the tribals of a particular forest reserve or a scheduled area. It is said to notice that no governor till now has constituted a council for the tribal in scheduled states. In this vacuum created by the corrupt, the reserve forests have been leased to MNC's who have been evicting the

tribals since last millennia. These land ceiling laws were implemented in three states – J&K, West Bengal and Kerala in which the latter two were ruled by Communist states. The landlords whose lands were to be redistributed amongst the poor had deceived the government by falsifying records with the help of some government officials. Kerala was saved from facing the grunt because the laws were successfully implemented.

The failure of rural development plans have caused a lot of unemployment in the rural and tribal areas which made them believe in the concept of Naxalism which can liberate them from poverty and overthrow the existing government which can't even provide them a decent square meal. Thus, from the above instances, we can fairly infer that mistakes occurred from both the sides- the naxals killing and kidnapping people to meet their needs and the government on the other hand not rehabilitating them as they should have.

Former President Dr. APJ Abdul Kalam had proposed a very proficient way of tackling this problem and it is my belief that this is the way this problem can be solved. He said that the solution was twofold – land reform through PURA (Providing Urban amenities in Rural Areas) and effective counter terrorism measures. He argued that wherever there are no land reforms, conflicts arise rapidly. Implementation of urban amenities like world class schools, proper electricity, and economic welfare can resolve this problem. It is also true that it is imperative for the judiciary to expedite to prosecute terrorists, but in order to abolish terrorism, poverty alleviation is also important.

Every episode of injustice to the discriminated, gives rise to rebel and extremism. Lack of interest to justice alienates the victims and this alienation leads to disunity and disintegration. An unprejudiced society can usher in social reform. India cannot boast of a just society as yet. The failure to provide justice lies at the root of extremism.

SOURAYANBHATTACHARYA
BBA LLB 2nd Year

THE SIACHEN GLACIER –WORLD'S HIGHEST BATTLEFIELD

It felt like heaven on earth, when I first saw the golden rays of the sun on the white snow caps of Siachen Glaciers. I knew it wouldn't last forever, but all I was sure about was that moment of joy. The beauty of the glaciers pulled out all my stress.

The name – Siachen (land of wild roses) is carved from recollections of the considerable number of Indians and brethrens from over the fringe for being world's most noteworthy war zone and misfortunes of thousands of lives battling about an icy mass persisting up to minus 50 degree Celsius temperature.

The Siachen Glacier is situated in the eastern Karakoram extend in the Himalaya Mountains simply north-east of the point where the Line of Control amongst India and Pakistan closes. At 70 km long, it is the longest icy mass in the Karakoram and second-longest on the planet's non-polar territories. It tumbles from an elevation of 5,753 m (18,875 ft) above ocean level at its head at Indira Col on the China outskirts down to 3,620 m (11,875 ft) at its end.

The Siachen Glacier lies promptly south of the considerable watershed that isolates the Eurasian Plate from the Indian Subcontinent in the broadly glaciated segment of the Karakoram some of the time called the "Third Pole". The icy mass lies between the Saltoro Ridge promptly toward the west and the primary Karakoram Range toward the east. The Saltoro Ridge starts in the north from the SiaKangri crest on the China outskirt in the Karakoram Range. Counting every single tributary ice sheet, the Siachen Glacier framework covers around 700 km sq (270 sq miles).

Both India and Pakistan assert sway over the whole Siachen area. In 1984, India propelled a fruitful military operation and has since kept up control over the greater part of the Siachen Glacier and its tributaries. In the vicinity of 1984 and 1999, visit clashes occurred amongst India and Pakistan. In any case, more fighters have been killed in Siachen from brutal climate conditions than from battle. Both India and Pakistan keep on deploying a huge number of troops in Siachen and endeavors to neutralize the area have been so far unsuccessful. Besides the Indian and Pakistani military nearness, the ice sheet district is uninhabited. The closest non military personnel settlement is the town of Warshi, 10 miles downstream from the Indian base camp.

As indicated by legend, some Yarkandi men once plunged the Ghyarinullah and stole a Balti lady. The exasperated Baltis went to a mullah for guidance. The mullah gave them a talisman to be set on Bilafond La and trained them to return by means of the Nubra valley. The Baltis did not regard this and rather, backtracked the course they had taken. Before long, a vicious tempest on the Siachen ice sheet devastated the Yarkandi settlement, deserting and destroying the rough zone. But since the Baltis had not returned by means of Nubra, the tempest saved wild roses on the moraine and along the dividers. The icy mass came to be known as Siachen.

"Sia" in the Balti dialect alludes to the rose family plant broadly scattered in the locale. "Chun" references any protest found in wealth. In this way the name Siachen alludes to a land with a plenitude of roses.

The ice sheet's liquefying waters are the principle wellspring of the Nubra River in the Indian district of Ladakh, which channels into the Shyok River. The Shyok thusly joins the 3000 kilometer-long Indus River which courses through Pakistan. Along these lines, the ice sheet is a noteworthy wellspring of the Indus and sustains the biggest water system framework on the planet. The district is home to uncommon species like snow panther, chestnut bear and ibex which are on the verge of extinction because of gigantic military nearness.

Strife (Cut to 1984): The Indian armed force touched the base in spring and positioned itself at Siachen, the Saltoro edge, Sia La and Bilafond La passes. This was depicted as a pre-emptive move as India felt that Pakistan's mountaineering undertakings in the area could prompt regional clashes. The TeramShehr (the wrecked city) and Rimo ice sheets, next to Siachen, were all the more open from Pakistan and it was suspected that approved campaigns to the range had "contact officers" from the Pakistani protection administrations.

The ice sheet's district is the most astounding battleground on Earth, where India and Pakistan have battled discontinuously since April 1984. Both nations keep up a changeless military nearness in the locale at a stature of more than 6,000 m (20,000 ft).

On 7 April 2012, a torrential slide hit a Pakistani military camp arranged at Giyari Sector in the Siachen district, 30 km west of the Siachen Glacier end, covering no less than 124 Pakistani warriors and 11 regular people.

Sia La, as well as nearby passes such as Bilafond La and Gyong La, saw military action starting in 1984 during Operation Meghdoot, the first military action of the Siachen conflict.

The Indian Army controls a few of the top-most heights, holding on to the tactical advantage of high ground. However, with Pakistani forces in control of Gyong La pass, Indian access to K-2 and other surrounding peaks has been blocked effectively and mountaineering expeditions to these peaks continue to go through approval of the Government of Pakistan. The situation is as such that Pakistanis cannot get up to the glacier, while the Indians cannot come down. Presently India holds two-thirds of the glacier and commands two of the three passes. Pakistan controls Gyong La pass

that overlooks the Shyok and Nubra river Valley and India`s access to Leh district.

India has also built the world`s highest helipad on this glacier at a place called Sonam, which is 21,000 feet above the sea level, to serve the area and ensure that her troops are kept supplied via helicopter support.

The highest battlefield in the world, the Siachen glacier, hides a warming truth, that is recently discovered. Geologists have discovered hot water from geothermal sources in the glacier which is nearly 15 degrees warm in plunging minus 50 degree Celsius weather. The hot source has come as a relief in the freezing conditions as it can now be used for growing vegetables, setting up green houses on the glacier besides cutting down heavy reliance on expensive fossil fuels.

The Siachen Glacier is India's most beautiful place and is surely worth a visit. Aren't we blessed to have it protected by the military forces of our country? Every Indian Citizen needs to recognize the sacrifice of every soldier standing there and guarding the Nation.

SHREYA ANANTH
BBA, LLB 1Year

REPRESENTATION OF WOMEN IN LEGAL PROFESSION IN INDIA

"*It is impossible to think about the welfare of the world unless the condition of women is improved. It is impossible for a bird to fly on only one wing.*"

– Swami Vivekananda

Cornelia Sorabji (*picture below)* is the first woman law graduate in India; served as Advocate in Allahabad High Court. She is the inspiration for women to enter into legal profession. Women were allowed to practice law only after the passing of Legal Practitioners (Women) Act, 1983. Sorabji has brought enlightenment on the rights of pardanashin women during her time, who due to lack of formal education and ignorance could be easily deceived by anyone. The customs followed by the women in our culture prevented them from exercising their rights and they could not seek the assistance from men because they were not allowed to. However, there were only a handful of women who stepped into the profession and slowly this brought a reformative change thus, inspiring other women to undertake legal profession. As the time went on, there came a realization that development of women could have happened had they been educated and enabled with skills to free them from stereotypical roles and promote independence to make them decision makers in the society. It is the battle fought by the educated men and eager women of that era which paved the way for women entering into this noble profession.

According to Indian constitution, citizens were given right to equality and right against discrimination based on gender from acquiring any education or practicing any profession of their choice. Although, there were many rights for women, legal profession was not a popular choice for women. A large portion of women were illiterate due to various reasons such as poverty, caste restrictions, social customs and practices restricting women and forcing them to work at home only. British government established schools, colleges, and universities for women during 1860 but it was a dream for many girls to even think of attending schools or graduating until 1920s. There were few fortunate educated women who qualified as doctors and writers who gained recognition in the feminist movements. Education enabled women to understand empowerment.

Thus, there was a great increase of women getting educated and occupying many professions and the task of spreading awareness about the rights of women took more than 20 years in this country. During this time, the Judiciary in India created many opportunities for women to take up legal profession and appointed first woman Judge Hon'ble Justice Anna Chandy (right picture below) to Kerala High Court. She started her career as an advocate in 1929 and had appointed as a Munsiff in 1937 who became the first woman judge in pre-independent India. During this era, two eminent lawyers, Hon'ble Justice

Leila Seth (left color picture) and Hon'ble Justice Fathima Beevi were introduced in this profession at Delhi High Court and Kerala High Court respectively. Justice Leila Seth was the Chief Justice of Himachal Pradesh in 1991 and Justice Fathima Beevi (black & white picture above left) rose up from a Munsiff to High Court Judege and then to Supreme Court Judge. In spite of this, the representation of women did not increase in the Judiciary corresponding to the initial number of women Judges. So there has been a demand of 33% reservation for the women in Judiciary to bring out equality between the number of men and women judges.

The reasons for lesser number of women entering legal profession in the bygone days may be due to the following:

- Absence of female law teachers.
- The inability of female lawyers to work under senior male lawyers was a major issue as even Sorabji was gibed and thus could not practice much in Kolkata High Court due to her gender.
- An old opinion that law is a male dominated profession and women can't deal with practical issues. Empowering women by abolishing social evils developing education reforms and giving them equal rights on properties shall enable women to opt for this field.

The Indian Legal system is not as same as 10 years ago and there has been a constant advancement in this profession due to technological introductions. For instance, E-Courts in India shall certainly improve the justice delivery system and convenience of being able to argue online from the advocate's office will be helpful for women advocates to practice in India. The number of female judges did not increase over many years when compared to male judges. Surely, the perception regarding this profession is changing because it is being perceived that female judges are capable of sensitively handling gender issues than males, thus, enabling more women to study law and enter into legal profession.

MADIREDDY LAKSHMI BHAVANA
BBA, LLB 1 Year

THE STORY OF THE INFAMOUSLY FAMOUS OPERATION BLUESTAR

"I had heard stories about the mob burning them alive in Raj Nagar. I thought they were rumors. But, around 6:30 in the evening, there were about 8 people on my door demanding to see me. When I didn't answer, they tried to break in and throw stones. This continued for about 6-7 minutes until my neighbors, who were Hindus, intervened and tried to calm them down. I had never felt so vulnerable and helpless."

This is exactly what my grandfather told me when I asked him to recall those horrific nights of 1984. Yes, those nights when 3000 Sikhs were butchered on the streets of Delhi. When men were burnt alive and women were raped. Yet after 33 years, what remains absolutely bizarre is, despite many witnesses, only 31 people were convicted for the riots. The rest who had a clear role in instigating the mob are members of parliament who were given a clean chit by the CBI; some of them are well established actors in the Bollywood.

The riots were an outcome of the assassination of Indira Gandhi who was shot by her two Sikh body guards on the morning of 31st October, 1984. Indira Gandhi's assassination was led by an extremely sensitive operation called Bluestar wherein, the army was sent inside the Harminder Sahib (Golden temple) which not only killed the civilians but completely ruined the

holy shrine in the month of June, 1984. It was claimed that this operation was imperative and its motive was to flush out rebels from Harminder Sahib. What struck the most was the date when this operation was chosen. It was 3rd June 1984 which was the martyrdom of the 5th Guru of Sikhs which brought in many pilgrims across the country to worship at the golden temple.

The roots of Operation Bluestar were initiated from the Khalistan movement. It was a political Sikh nationalist movement that wanted to create separate independent state for Sikhs, inside the North Western Republic of India. These were the group of people who were extremist and did not believe in inclusivity. The idea however, remained inactive until the late 1970's.

In 1977 there was a massive wave against Indira Gandhi and her congress party. This was the post emergency period. She was overthrown from most of India. In Punjab, her staunch enemies, Akali Dal formed an alliance along with Janata Dal to be a part of the ruling coalition in Delhi. There emerged a young leader named Jarnail Singh Bhindranwale (later, known as 'Saint' Jarnail Singh Bhindranwale), who was known for advocating orthodox rules. He was brought to centre of attention by Sanjay Gandhi and Gyani Zail Singh and soon he was elected as a leader of a prestigious Sikh religious school. The congress believed that he would undermine the religious authority of Akali Dal.


Crackdown in Punjab

Operation Bluestar

INDIA TODAY, JUNE 30 1984

However, the situation in Punjab still remained critical. A series of clashes erupted amongst Sikhs and Hindus. In 1978, a group of Sikhs were killed. The injustice rallied the Sikhs behind Bhindranwale. Call for retribution spread across Punjab and the demand for a separate independent state resurfaced within the extremists. Things went out of control when Bhindranwale locked himself in the Golden temple. Riots and strikes took place during this period. There were rumours of Pakistan getting involved and supplying Bhindranwale and his supporters with arms and ammunition. There was a scary prospect of Punjab ripping away from India.

Therefore, it was decided that the army would be sent inside the Golden temple. The operation was code named 'Bluestar'. What shocked the Sikhs was the date when the operation initially took place. The questions that remains unanswered till date is, "Why did Indira Gandhi choose to send the army inside the golden temple on the martyrdom of 5th Guru when she knew that there would be thousands of pilgrims trapped inside"?

When Lieutenant General Kuldip Singh Brar who conducted this operation was questioned, his only answer remained that decisions like these were merely political and he had no role to play in this decision making. The civilians who were trapped inside the golden temple later revealed that there were no necessary measures taken to evacuate them. Anyone who was in sight was shot. The stated aim of the government still remained that the army would be checking and controlling extremist and terrorists by providing security to the civilians. There were thousands of worshippers trapped inside the Golden temple after an all Punjab 36-hour curfew was suddenly imposed.

During Operation Bluestar, the media in Punjab faced a blackout. Journalists were reportedly put in a military bus and abandoned at the border of Haryana. Punjab faced a curfew and there was no transportation across the state.


THE HINDU

Five-hour gun fight at Golden Temple

Bhindranwale's arrest denied

No permits for transit via Attari

Thousands of vehicles line G.T. Road

In an interview, General Brar who led this operation said, "*During the entire operation, it was difficult to differentiate between a civilian and a militant. The motive of the army thus remained to complete the operation before dawn and cause minimal damage to the Harminder Sahib.*"

This "minimal damage" included firing that took place at the 'Guru Ram Das Langar' building inside the temple, bombarding the historic Ramgarhia Bunga, the water tank, and other fortified positions; Frontal attack launched on the Akal Takht including an attack on Hotel temple view and Boota Akhara and finally bringing 3 army tanks inside the premises of golden temple and firing 20 odd rounds of main gun at the Akal Takht.

Four months later, Indira Gandhi was shot by her two Sikh bodyguards, Satwant Singh and

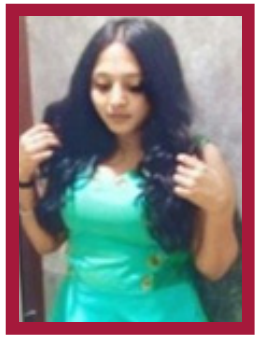
Beant Singh on the morning of 31st October,1984. The assassination was an outcome of Operation Bluestar which further led to anti-Sikh riots that took place on 1st November, 1984.

These riots continue to remain as one of the darkest chapters in the history of Independent India. 33 years later, the horror of those 72 hours, when frenzied mobs butchered thousands of Sikhs, continue to haunt the families of those who suffered. Slogans like '*Kill all of them,they have killed our mother*' reverberated on the streets of Delhi.

On 19th November 1984, the birth anniversary of Indira Gandhi, Rajiv Gandhi made a statement condoning the murder of Sikhs. He said, "When *a mighty banyan tree falls, the earth beneath it is bound to shake, "thus*, offering no sympathies to those innocent Sikhs.

People arrested were set free on the intercession of the Congress party. The investigation that occurred later included glaring lapses so much so that the investigating officers were told to stop their investigations and nobody even felt the need to record the statements of the witnesses.

In 2017, The Delhi High Court ordered retrial in five 1984 anti-Sikh riots in which all the accused were acquitted in 1986. However, Justice continues to elude the screams of those Sikhs who were killed for a crime they did not commit.



DIVYA BASAN
BBA, LLB 1st Year

INCLUSIVE INDIA = DIGITAL INDIA

Digital India is a product of telecom and Internet revolution in 1987. Sam Pitroda, the advisor of former Prime Minister of India, late Rajiv Gandhi, was responsible for six technology missions related to telecommunications, water, literacy, immunization, dairy, and oil seeds. The goal of telecommunication was to improve service and accessibility of telecommunications across the country. Drinking water was made available at rural areas by drilling new wells to overcome water scarcity. Literacy mission had dual goals of motivating people for vocational learning for adults and providing teachers. Immunization policy was focused on eradication of polio. Dairy mission was to develop technologies related to breeding and animal health and fodder. Oil seeds mission primarily focused on overcoming costly economic situation of importing oil seeds.

Although all the technologies developed by Pitroda were successful, and Pitroda had an idea to make India's connectivity digital, it was not possible due to less efficient existing technology, manpower and capital present in India.

To improve technologies in telecommunication and literacy (in addition to digital governance, digital communication, and high-speed internet), to connect rural areas with urban areas, to deliver services electronically, the present Prime Minister of India, Shri Narendra Modi has launched The Digital India campaign. Digital India campaign was envisaged as an inclusivity strategy.

Digital India campaign was launched on 1st of July, 2015 in New Delhi to provide government services to citizens through a virtual online platform so as to connect rural areas with high–speed internet networks thus calling for improving digital literacy. Bharat Broadband Network Limited is the custodian of Digital India campaign. The three core contents of the campaign are:

- Creation of digital infrastructure.
- Digital delivery of services.
- Digital literacy.

The vision of Digital India targets at inclusive growth in field of electronic services, manufacturing products and raise of job opportunities.

The government has launched some key projects under Digital India which include:

- **Digital locker system** – It minimizes the usage of physical document and promote e-documents through ensuring the authenticity.
- **My Gov.in** – It helps a citizen's engagement in governance through a discussion approach.
- **Swachh Bharat Mission (SBM) Mobile App** – It is used by the government to attain the goals of Swachh Bharat Mission.
- **E-sign framework** – It would enable citizens to do digital signature using Aadhar Card.
- **Online registration Form (ORF)** – It has been introduced under e-hospital app to provide core services like online appointment fees, payment of appointment fees, etc.
- **National Scholarships Portal** – It is a scholarship app which provides scholarship for meritorious students.
- **Digitize India Platform (DIP)** – It facilitates the delivery of efficient services to the citizens.
- **Bharat Net** – A Digital highway to connect Gram panchayats.
- **Next generation Network (NGN)** – It is introduced by BSNL to handle services related to multimedia.

The government has taken up some interesting policy initiatives to achieve its mission of a digitized India.

- **BPO Policy** – It will help to create BPO's in North Eastern states.
- **Electronic Development Fund –** It is created for the promotion, innovation and product development to create resource pool of Information property.
- **National Centre for Flexible Electronics (NcFlexE)** – It promotes Research and Innovation.
- **Centre of excellence on Internet on things** – Joint initiative of department of Electronics and IT.

<u>The advantages of the Digital India Mission :</u>

- Delivery of all Government Services.
- A mobile for worldwide access.
- A digital bank account for immediate transactions.
- It helps in decreasing crime.
- It helps in decreasing documentation.
- It helps in creating employment in IT and electronic sector.
- It will raise the standard of living.
- It will improve literacy rates.
- It is a boost to industry which will lead to a rise in GDP.

The disadvantages of the mission:

- Illiterates cannot use advantages of Digital India.
- There is an absence of legal framework.
- Civil liberties give rise to possibilities of abuse.
- There is lack of e-surveillance by parliament of India.
- Presence of insecurity in Indian Cyberspace.

The Digital India campaign is a commendable project with efficient ideas and implementation. The expected impact of Digital India by 2019 would be ranging from Wi-Fi connections in schools and universities, and broadband connections in Panchayats, and public Wi-Fi spots. The campaign would generate a large number of employees to IT, telecom and electronic sector. The success of this campaign leads India to be a leader of IT in delivery of services leading to empowerment of Indian citizens.

T. SREENITYA
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SEXUAL HARASSMENT OF MEN – A GLOBAL CONCERN

Murderers kill the body, harassers and rapists kill the SOUL

Justice Krishna Aiyer

Right to equality, women empowerment, legislations protecting women's right, remedies for female rape victims, equal pay at workplace, protection against sexual harassment and etc. Living in a country filled with women empowerment acts and legislations, don't we lack in protecting the sexual rights of "MEN". An individual's interpretation of sexual harassment is limited up to harassment of women of various religion, caste, class, place, and background. But the basic point that remains unnoticed is that sexual harassment victim and culprit can be of any gender and the place of harassment can be school, house, coaching, office, and any other place.

Firstly let's know that, **WHAT IS SEXUAL HARASSMENT????**

Sexual harassment is directly or indirectly torturing a person from a sexual perspective. It is touching or getting intimate or unreasonable interference with a person without his/her will and consent. It basically involves making of unwanted sexual advances.

Now the question arises that, **CAN MEN BE SEXUALLY HARASSED???**

Men being harassed!!?? May be that sounds strange but according to PEW research statistics, in 2014, 25% of women and 13% of women between ages 18 to 24 years has experienced sexual harassment. Here we cannot ignore the statistics of male sexual harassment. There exists too much legislation protecting women from sexual harassment, but our constitution lacks in securing sexual rights of men. Due to these legislations protecting women's right, reports of women sexual harassment is seen to be decreasing in past few years, but the cases of men sexual harassment is increasing at a lofty rate. We usually come across a no. of harassment cases of women and this is the reason why legislations are made for protecting women only. But we fail to see that sexual torture

can happen to any soul, irrespective of their age, color, place, caste and GENDER.

According to Roberta Chinsky Matuson "Many people mistakenly believe that harassment is limited to females,"

Take for instance, the hindi movie "AITRAAZ" (see the still picture) where the female director tries to seduce the executive with her charms and lures him with promotion. After undergoing repeated rejections from the executive, the female director goes to court alleging attempt to rape on the male executive.

Also the perpetrators against the victims are using physical force, psychological force or many other emotional coercion tactics. At workplaces, males sometimes are mentally tortured for the sake of their job. If a male needs a job and he is not having any other substitute then he although unwilling to accept sexual advances, have to accept from females or male colleagues. But, these kinds of brutal incident not only physically ruin the body of the victim but also destroy his soul.

WHAT OUR CONSTITUTION HAS TO SAY ABOUT THIS ISSUE?

Talking about the Indian constitution, under article 14 we have right to equality. But our constitution itself ignores the necessity of making rules protecting sexual rights of men, and focuses mainly on women's rights and protection, and **THIS IS NOT EQUALITY.** There is no law, no statue that talks about protecting men against harassment and rape, except section 377 of Indian Penal Code that talks about 'sodomy'. Except this, all other laws are meant for women only.

"According to the Indian law, modesty, if at all, exists only in women," says ex-IPS officer Uday Sahai on the issue of male sexual harassment. "The only form in which a wrong sexual advancement on a man is recognized as an offence is as sodomy under the 377 section of the IPC. Apart from that there is no law to punish a person for molesting a man," he further explains. The sections 354, 509, and 376 of the Indian Penal Code which deal with sexual assault, namely, outraging the modesty of a woman, eve teasing and committing rape of a woman**, all assume that men cannot be subjected to these crimes.**

MALE HARASSMENT IN INDIA

Our Indian Judiciary, society everyone talk about equal treatment of men and women and women empowerment. But on their way to uplift women, they fail to notice that rights for men are somewhere lagging behind.

If we look at the Economic Times- Synovate survey, about 527 men were enquired across 7 cities that includes; Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, Delhi and Pune. 19% of them faced sexual harassment at workplace. In Bangalore 51% of the respondents have been sexually harassed, while in Delhi 31% and in Hyderabad 28% has been sexually harassed. The major reason why these cases are never reported is that they think no one would believe them due to typical Indian mentality that thinks that only women can be victim of sexual harassment, NOT MEN.

Men are as vulnerable to sexual harassment as women.

Sexual Harassment ACROSS THE WORLD

Not only in India, this is a matter of concern in the outside world also. In US, during 2009, 16% of sexual harassment cases were filed by men and more than 2000 men filed cases in 2008.

According to the government study in United Kingdom during 2006, two out of five sexual harassment victims in the UK were male, with 8% percent of all sexual harassment complaints to the Equal Opportunities Commission (Britain's EEOC), coming from men.

In 2014, SSH commissioned a 2000 persons national survey in USA, it was found that 25% of men were harassed on street and their most common form of harassment was homophobic or transphobic slurs (9%).

Now as we already discussed about Indian and outside world's situation on male sexual harassment, now let us look at some common

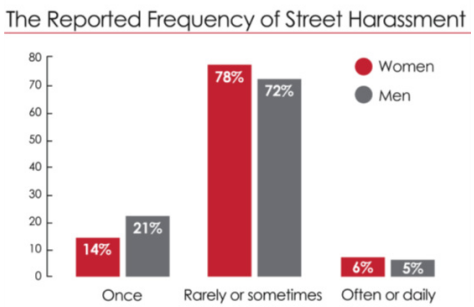
PLACES OF GETTING SEXUALLY HARASSED

Harassment on street

You will be amazed to see that in today's world people irrespective of their gender are unsafe everywhere, home, school, and office and even on the **STREET**. Be it India or any other country there are a number of cases where men are been harassed on streets by the opposite gender or by same gender.

According to the National Report on Street Harassment, about 50% of harassed men were below the age of 17years. About 79% of men who reported being harassed said that they have been harassed more than twice.

This is a matter of concern that even men are not safe in public places like street. Being harassed by men is very common for



women (70%) as well as for men (48%). About 20% of men said that their harasser was a lone woman.

Here though the percentage of women harassed is more but we cannot ignore the percentage of men being harassed these days.

Harassment at workplace

This is a very common place where men are being harassed daily. According to Equal Employment Opportunity Commission, workplace sexual harassment is "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that explicitly or implicitly affect an individual's employment, unreasonable interferes with an individual's work performance; or creates an intimidating, hostile or offensive work environment." Starting from Michael Douglas in Disclosure to Akshay Kumar in Bollywood movie "Aitraaz", the cases of men been harassed is constantly brought into our noticed but still remains unnoticed.

She grabbed me; I wanted to slap her, but couldn't, as I've been taught to respect women.

Men are either harassed by their coworkers, other staffs, or subordinates but they are more likely to be harassed by their female bosses as the higher authority has got power and in most of the cases people don't complain in the fear that they may lose their job. According to a survey, suicide cases of men at workplace are 4 times more than women and the concerned authority is still silent!!!!!

Likewise we hear a no. of stories but there is only a handful of cases that are registered, others remains somewhere deep inside the heart of the harassed men that constantly kills their soul. So now as we come to end of our discussion one question that hits is, WHY DON'T MEN REPORT????

WHY CASES OF SEXUAL HARASSMENT OF MEN ARE NOT REPORTED????

If we see then we won't find a proper statistics that will show the no. of men been harassed. The reports under EEOC; Equal Employment Opportunity Commission shows just a small portion of total no. of men who are sexually harassed (at workplace). We live in a society

where harassment is attributed to females by men and not vice-versa and perceiving male as a victim is difficult**.** They mostly remain silent thinking that no one would believe them or they might get mocked by their coworker (in case of harassment at workplace) or parents of the victim suppress victim's voice in fear that WHAT WILLTHE SOCIETY THINK ???? Whatever the reason might be, the main issue is that these cases are not reported. It is a high time to raise your voice against sexual harassment irrespective of the gender of the victim. Be it a woman or man, sexual harassment can be suffered by anyone, anywhere and anytime. We need to stop limiting sexual harassment of women only. Men are as vulnerable to this situation as women these days.

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PROPRIETY IN LAW AND POLITICS

As a junior student of Law who has just started her journey into the world of Jurisprudence, I have occasionally been excited, intrigued, puzzled and sometimes plain and simply been aghast at some of the stories emanating out of or related to the field of law. One such recent news which amazed me but made for interesting reading in the news papers was that of Delhi CM Mr. Arvind Kejriwal's proposal to pay the eminent legal eagle Mr. Ram Jethmalani a mind boggling sum of around Rs. 3.40 crore from the public exchequer as part of fees for defending him in private defamation case filed by Mr.Arun Jaitley, himself a noted lawyer and presently the Union Finance Minister.

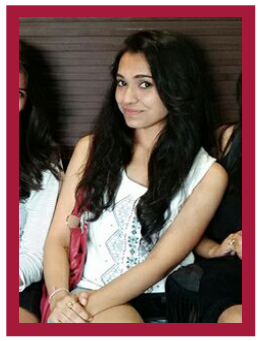
For me as a student of law this raised certain issues which more than the legality could be linked to propriety, morality and the essence of fairness in this entire episode. It's another question altogether that whether these words count for anything when it comes to the utterly chaotic world of politics and politicians. It's nobody's case as to what amount should the eminent and very talented lawyers like Mr. Ram Jethmalani be charging his clients in any case interestingly Mr.Jethmalani has further clarified that even this huge fees was a discounted amount and in normal course it could have been much higher. He went on to further say that he might also consider working for free in case Arvind Kejriwal is not able pay him his fees.

What makes this an issue is that this can be interpreted as a case where Mr. Ram Jethmalani is in such a position where he can afford to not charge any fee from his clients and Mr.Arvind Kejriwal is in a position where he is willing to shell out such a huge amount from government coffers in other words both of them are in pretty comfortable financial positions so they can afford to take such a stand. Now the question arises as to why should Mr. Ram Jethmalani be offering his valuable services free of cost to someone of the status of a CM of a state whereas there are lakhs of people in the country who are in a desperate need for free quality legal assistance but have to suffer heavily in the absence of the same. Would it not have been better for a highly successful, established and well off lawyer like Mr. Ram Jethmalani to have offered his and his teams services free of cost to people who need them more than to a person like Mr. Arvind Kejriwal.

Apart from this as it would have been far better for the CM of Delhi to have avoided considering paying such a huge amount from government funds for personal defamation case to the costliest lawyer in the country. As Indian Express wrote recently the same amount could have been used to pay pension money for 20,000 people (Rs 2,000 per month) who are above the age of 60 and 16,000 people (Rs 2,500) who belong to the SC/ST community. The same can be used to pay disability benefits for around 2,666 people. If one were to use the money to hire DTC buses for schools in Delhi then it would have resulted in 20,000 (Rs 2,000 per day) standard floor buses, around 13,333 (Rs 3000 per day) low floor non-ac buses and 5,000 (Rs

8,000 per day) low floor AC buses.

So without being judgmental and not even qualified to talk on the issue technically for a junior students of law like me this is more about the morality and propriety and looking up to people in public life as role models. I hope we can continue to have faith in the political leaders of our country as well as in high profile professionals and can look forward to be being guided by them in differentiating between what is wrong and what is right. In this case it looks that public perception would be the Prosecutor , the Defendant and the Judge as well.



STUTI SHARMA
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DOES FICTION REALLY INFLUENCE OUR LIFE?

It's a question that has been prevailing in the minds of many since a long, long time: is Fiction really good for us? We spend a major chunk of our life immersed in TV shows, novels, films and many other forms of fiction. Some see this in a positive light, arguing that taking in made-up stories cultivate our moral and mental development, while the others argue that fiction is ethically and mentally corrosive.

This controversy has been expanding at a fast rate—sometimes literally, in the form of burning books—ever since the time when Plato tried to banish fiction from his ideal republic. In 1961, the chairman of the FCC, Newton Minow famously stated that the television was not working in "the public interest" because its "formula satirizes totally unbelievable families, violence, mayhem, blood and thunder, sadism, western bad men, western good men, murder, private eyes, cartoons, more violence, and gangsters" led to a "vast wasteland." And his opinion about TV programming has also been retold, over the centuries, of theatre, novel, films, and comic books: they do not agree with the interest of the public.

As of now, we could only make out the actual psychological effects of fiction on the society and individuals. But the latest research in broad-based literary analysis and psychology is finally taking questions about morality out of the realm of speculation.

This research, in a way, proves the fact that fiction does mould us. The influence that a story has upon us can be determined by finding out whether how deeply we are cast under its spell. Indeed, fiction is by all accounts more powerful at changing beliefs than nonfiction, which is intended to persuade through argument and evidence. Various studies have shown that, while reading nonfiction, we read with our mental shields up. We are sceptical and critical. But when we get absorbed in a story, we voluntarily drop our intellectual guard. We are moved emotionally, and this appears to make us more simple to shape.

Maybe, the most impressive finding is exactly whether how fiction shapes us: basically, to improve things, but not for the worse. Fiction enables us to have a better understanding about other people; it promotes a deep morality that cuts across various political and religious creeds. In fact, fiction's gay endings appear to twist our sense of reality. They make our minds to believe in alien that the world is more than what it really is. But believing in this lie has many important effects for the society—and it may also help in explaining why all humans tell stories in the first place.

It's not hard to notice whether why many social critics have often been distressed by fiction. We do spend a major chunk of our time lost in stories, with the average Indian spending two and a half hours per day watching television alone.

Also, if the sheer time investment were insufficient by any chance, there's the content. Ever since fiction's earliest beginnings, the stories we tell have often been of a morally repulsive behaviour. From the abominable sexual violence of "The Girl with the Dragon Tattoo," to the description of deranged sadism in Shakespeare's Titus Andronicus, to Oedipus gouging his eyes out in disgust, to the many forms of horrors being portrayed on TV shows like "Breaking Bad" and "Crime Scene Investigation" - since a long time, the most popular stories have often been featured with the most unpleasant subject matter. Fiction's obsession with vice and filth has led critics of different stripes to condemn comic books, novels, plays, and TV for the corroding youth and corroding values.

Moreover, it's clear that these stories can lead to a transition in our views. As the psychologist Raymond Mar writes, "Researchers have repeatedly found that reader attitudes shift to become more congruent with the ideas expressed in a [fictional] narrative.". To state an example, studies reliably show that when we see a TV show that treats gay families non-judgmentally (for eg.:"Modern Family"), our own views on homosexuality are likely to move in the same direction. History, too, reveals fiction's exceptional ability to alter our values at the societal level, for better and worse. For example, Harriet Beecher Stowe's "Uncle Tom's Cabin" helped in flaring up the Civil War by makinga huge numbers of Americans believe the fact that even the blacks are people, and that enslaving them is a mortal sin. On the other hand, the 1915 film "The Birth of a Nation" inflamed racist sentiments.

So, all those who are concerned about the messages conveyed by fiction — whether they are progressive or conservative — do have a point. Fiction can be said to be dangerous because it has the power to modify whole societies and the principles of individuals.

Source: The Literary Site Blog

But fiction is doing something that all political factions should be able to rely upon. Beyond the scope of the local battles of the culture wars, virtually all storytelling, irrespective of the genre, increases the society's fund of empathy and inculcates an ethic of decency that is deeper than politics. Since a very long time, literary philosophers and critics have argued that, along with the great novelist George Eliot, that one of fiction's core jobs is to "enlarge man's sympathies." Recent lab research suggests that they are right. The psychologists Keith and Mar Oatley pondered upon the idea that entering fiction's artificial simulated social worlds improves our ability to connect with actual human beings. They later came to find out that die-hard fiction readers in a way performed much better than nonfiction readers on the tests of empathy, even after they believed in the possibility that people who already had a high level of empathy might naturally gravitate to fiction. According to Oatley, fiction helps in "making the world a better place by improving interpersonal understanding."

Source: An Illustration by Charlie Powell

Many subsequent studies have yielded similar results. For example, one study showed that children of age 4-6, who were exposed to a large number of children's films and books, had a much stronger ability to read the emotional and, mental states of other people. Similarly, a psychologist from Washington & Lee, namely Dan Johnson recently had people to read a short story that was specifically written to induce empathy in the reader. He not only wanted to see whether fiction expanded empathy, but also to see as to whether it would prompt real helping behaviour. Johnson found that the more absorbed subjects were in the story, the more empathy they felt, the more probable the subjects were to help when the experimenter "accidentally" dropped a modest bunch of pens — highly absorbed readers were twice as likely to assist. "In conclusion," Johnson writes, "it gives the idea that 'twisting up with a decent book' may accomplish more than give unwinding and diversion. Reading story fiction permits one to find out more about our social world and therefore encourages empathic development and pro-social conduct."

Similarly, novelists such as John Gardner and Leo Tolstoy have put forth the point that fiction is morally beneficial, and here,

[1] The psychology of Fiction: Present and Future

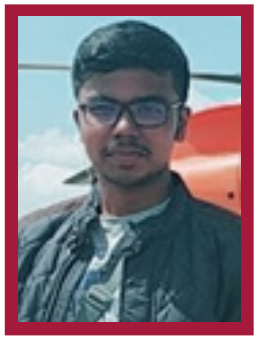
too, research is bearing them out. While fiction often dwells on depravity, simple selfishness, and lewdness, storytellers virtually always placed us in a position to judge the negative points, and we do so immediately. William Flesch, a famous literary scholar argues that, fiction all over the world is in a major way dominated by the well-known theme of poetic justice. Generally speaking, badness is punished and condemned while goodness is rewarded and endorsed. Stories — from the ancient fairy tales to the modern films — unite us all in the same powerful values and norms. Antiheroes, from Tony Soprano to Dead pool, captivate us, but bad guys are almost never really allowed to live happily ever after. And fiction generally teaches us in a way that it is profitable to be good.

Source: 20th Century Fox

Let's now take a look at a study of television viewers by the renowned psychologist Markus Appel from Austria[2]. Appel says that, people have to believe in justice, to ensure that the society progresses forward in a positive way. They have to believe in the notion that there are punishments for doing wrong and rewards for doing right. And, indeed, people generally do believe that life rewards the virtuous and punishes the vicious. But one section of people appears to believe these things in particular: those who consume a lot of fiction.

According to Appel's study, people who mainly watched comedy and drama on TV — as opposed to heavy viewers of documentaries and news programs — had substantially stronger "just-world" beliefs. Appel later states that fiction, (constantly enhancing our idea about the theme of poetic justice), may be partly liable for the sense that the world is, as a whole, a just place.

Despite the fact stated above, Appel puts it, "that this is patently not the case." As the news watchers know very well, bad things do happen to good people all the time, and most of the crimes go unpunished. In other words, fiction seems to teach us that we must view the world through rose-colored lenses. And the fact that we see the world that way seems to be an important part of determining whether what makes the human society to work. All of these questions about the various effects of fiction lead up to a big one: Why are humans storytelling creatures after all? Why are we — as a species — so addicted to narrations about the extensive fake struggles of pretend people? Evolution is indeed, a ruthlessly utilitarian process. How has the luxury of fiction — the apparent waste in creative energy and time — has not been eliminated by the evolutionary process?



One of the many possibilities is that fiction has some hidden benefits that outweigh its costs. For instance, let us consider the anthropologists who have long argued that stories have group-level benefits. Traditional tales, from sacred myths to hero epics, perform the essential work of reinforcing cultural values and defining group identity. Fiction is sometimes treated like a mere frill in human life, if not something else. But the emerging science of stories suggests that fiction is good for more than just kicks. By reducing social friction, fiction enhances empathy. At the same time, fiction exerts a kind of magnetic force, drawing us together around the vast sphere of common values.

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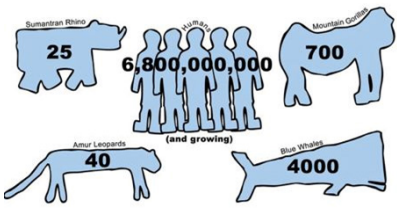
[2] Argument Strength and the Persuasiveness of Stories by Markus Appel

THE HUMAN VIRUS

The world's population seems to have spiraled out of control. We've enjoyed earth's resources for far too long, without giving back anything in return. We've continued to exploit, build, produce and enrich our species with new technology, new ideas and new methods.

But, the greatest problem is that every person has been so blinded by their desire to grow and individually survive and continue their "bloodline" that Ron Howard's 'Inferno' summarized the root cause of all of our problems very well when Zobrist said, "It took the

earth's population thousands of years-from the early dawn of man all the way to the early 1800s-to reach one billion people. Then astoundingly, it took only about a hundred years to double the population to two billion in the 1920s. After that, it took a mere fifty years for the population to double again to four billion in the 1970s. As you can imagine, we're well on track to reach eight billion very soon. Just today, the human race added another quarter-billion people to planet Earth. A quarter million, and this happens every day -rain or shine. Currently every year we are adding the equivalent of the entire country of Germany."



Ozone depletion, lack of water, and pollution are not diseases—they are the symptoms. The disease is overpopulation. And unless we face world population head-on, we are doing nothing more than sticking a Band-Aid on a fast-growing cancerous tumor.

If the human race doesn't act soon, just as a human body, when infected by a germ or virus, raises its temperature to kill the organism in it, the human race is acting like a virus due to which the Earth continues to raise its core temperature. This can lead to only two outcomes, either the host kills the virus, or the virus kills the host.

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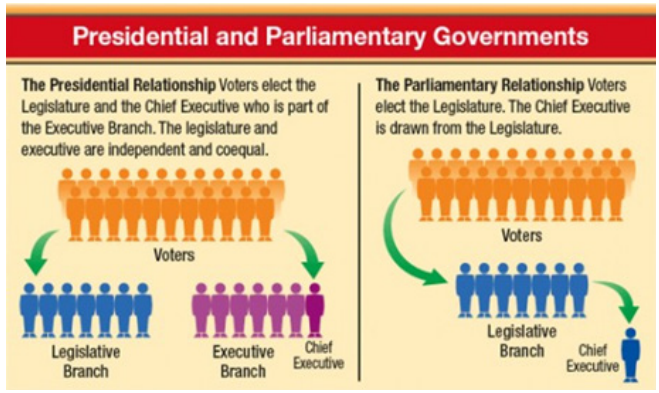
RESEARCH

PARLIAMENTARY DEMOCRACY IN INDIA – A REVIEW

Indian Constitution provides for parliamentary form of government. Indian constitution makers borrowed the constitutional features from several democratic countries. But Indian parliamentary model is predominantly based on the British system. In India, the Head of the Government is the Prime Minister, who holds the office only for Five years or so long as he commands the confidence of the Lok Sabha.



The Confidence of Lok Sabha is reflected in existence/continuance of majority support - whether it be of a single largest party or a coalition of parties. Coalition of parties can, and does, cause instability in governance.

In Presidential democracies, the head of the government is the President who is directly elected by the people and cannot be removed from the office except under circumstances of crime and misdemeanor established through an impeachment process. Hence, Presidential democracies provide stable governance. On the contrary, in parliament system, there is change of government through mid-term elections or political realignments. Changes in government undoubtedly bring about disruptions in implementation of policies, developmental programmes, and schemes.

Many a times the question that arises in the mind of the Indian public is whether India should/should not opt for Presidential form of government. Parliamentary form of government being a basic feature of the Indian Constitution, legal problems might arise when switched over to any other form. The Parliament is in a position to keep the Prime Minister and his Cabinet Ministers under constant vigil through its overseer mechanism and devices such as,

- Question Hour
- Adjournment Motions
- Calling Attention Notices
- Debates
- Confidence and No Confidence Motions
- Scrutiny of Budget and implementation
- Public accounts audit

It should be remembered that lack of mandate for the parliament to force a government out of office when circumstance would warrant may result in dictatorial tendencies on the part of the Head of the Government.

India can perhaps consider the feasibility of adopting the German model of constitutional/legal provisions for constructive votes of No Confidence. Under this model, the parliament may express its lack of confidence in the Head of government only by electing a successor by the vote of a majority of Members and request the President for the appointment of the successor.

Prime Minister is the head of the Government:

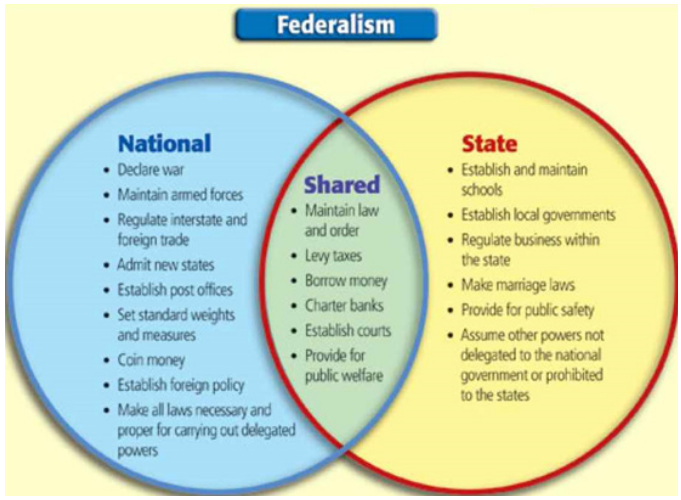
Under Article 75 of the Indian Constitution, the Prime Minister is appointed by the President and the other Ministers are also appointed by the President on the advice of the Prime Minister. The Council of Ministers including the Prime Minister is collectively responsible to the Lok Sabha.

Multi-Party System:

Indian Politics is defined largely by the equations between the national parties, namely the Bahujan Samajwadi Party (BSP) and Samajwadi Party (SP) a prominent player in Uttar Pradesh; BharatiyaJanata Party (BJP) which is currently ruling party and The Indian National Congress (known simply as the Congress Party), which is largest opposition party.

Federalism:

Federalism does not consist of a set of fixed principles, rather, federalism as a principle of government has evolved differently in different situations. American Federalism, one of the first major attempts to build a federal polity, is different from German or Indian federalism. But there are also a few key ideas and concepts associated with federalism.



Essentially, federalism is an institutional mechanism to accommodate two sets of polities- one at the regional level and the other at the national level. The people likewise, have two sets of identities and loyalties-they belong to the region as well as the nation. The details of this dual system of government are generally spelt out in a written constitution. To prevent conflicts between the center and the state, there is an independent judiciary to settle the disputes.

Under the Article 1 of the Indian Constitution, (1) India, that is Bharat, shall be a Union of States. (2) The States and the territories thereof shall be as specified in the First Schedule.

Federalism in the Indian Constitution:

- Even before Independence, most leaders of Indian national movement were aware that, to govern a large country like ours, it would be necessary to divide the powers between province and the Central government.
- There was also awareness that Indian society had regional diversity and linguistic diversity that needed recognition.
- The constitution clearly demarcates subjects, which are under the exclusive domain of the Union and those under the States.
- Indian Constitution has created a strong central government. India is a country of continental dimensions with immense diversities and social problems.

Conflicts in India's Federal System

- Centre-State Relations
- Demand for Autonomy
- Role of Governors and President's Ruel
- Demand for New States
- Interstate Conflicts
- Special Provisions
- Article 370
- Northern Eastern States
- Article 371

Muscle and Money Power in Elections:

The elections to Parliament and State Legislatures are very expensive and it is a widely accepted fact that huge election expenditure is the root cause for corruption in India. A candidate has to spend lakhs of rupees to get elected and even if he gets elected, the total salary he gets during his tenure as an MP/MLA will be meager compared to his election expenses. How can he bridge the gap between the income and expenses? - Publicly through donations and secretly through illegal means. The expenditure estimation for an election estimated as Rs.5/- per vote as election expenditure, for 600 million voters, and calculations of all the expenses in a general election estimated around Rs 2,000 crore. The state elections and local elections ensue. All said and done, the system has to generate around Rs. 5,000 crore in a five year cycle or Rs. 1,000 crore each year. To

generate such large sums of untaxed funds, crime is found to be the best alternative. Thats why India has criminals in politics. They have money and muscle, so they win.

The influence of muscle power in India politics has been a fact of life for a long time. As early as in 1977, the National Police Commission headed by Dharam Vira observed: "*The manner in which different political parties have functioned, particularly on the eve of periodic election, involves the free use of muscleman and 'Dadas' to influence the attitude and conduct of sizable sections of the electorate*". The Panchayat elections, like other elections in the recent past, have demonstrated once again that there can be no sanity in India as long as politics continues to be based on caste and the politicians are thriving today on the basis of muscle power provided by criminals. The common people who constitute the voters are in most cases too reluctant to take measures that would curtail the criminal activities. Once the political aspect joins the criminal elements the nexus becomes extremely dangerous. Many of politicians chose muscle power to gain vote bank in the country, and they apply the assumptions that, if we are unable to bring faith in the community then we can generate fear or threat to get the power in the form of election.

Representation:

The system of election that we follow in our country is the "*first past the post system*." That is, among various contesting candidates, whoever gets the highest number of validly polled votes is declared elected. This results in candidates who do not necessarily get the majority (more than 50%) of valid votes getting qualified for seats in the legislative bodies. This also results in political parties having seats in the legislative bodies disproportionate to the popular votes polled by them in electoral contests.

Rules of Order in the House:

The Rules of Procedure for the Conduct of Business of the Houses do contain elaborate provisions concerning orderliness in business transaction. These provisions are more often observed only in their breach.

- Members drown one another in their noisy demands, projecting issues outside the agenda;
- demand suspension of the Question Hour;
- do cross talking;
- don't comply with the instructions of the Chair;
- repeat arguments in debates, not having done home work on the subjects of debates;
- often force adjournment of the Houses from hour to hour, day to day;
- boycott Ministers;
- pass budgets hurriedly without serious debates, cause guillotining important demands for grants.

In the process what suffers is the performance of the parliament in holding the government to account. The people are seriously concerned with chaotic parliamentary proceedings. Of course, the Presiding Officers can discipline the Members. But they rarely exercise their disciplinary powers in the interests of patiently getting the business through. Ultimately, it is for the parliamentary parties to ensure the orderly conduct of their Members. Either the writ of these parties does not run among its Members or they passively allow the members to create chaos on partisan considerations. The parties should introspect on this matter.

Constructive Opposition:

The Opposition necessarily has to play the role vigilantly keeping the government on leash. But it has a very constructive role to play. Indeed, in the British parliamentary system, the senior leaders in the Opposition form "shadow cabinet" - to "shadow" each member of the government. It keeps government initiated laws and policies under scrutiny and offers alternative policies. Often, shadow cabinet members themselves become Ministers when the Opposition gets to form the government. Opposition unity and integrity is as important as unity and integrity of the ruling dispensation.

Law Making:

Law making is the primary function of legislative bodies. In all parliaments, there are established procedures for making laws. By and large, these procedures concern initiation, introduction, general discussion, Committee scrutiny, public consultation, amendments, and discussion in the plenary and voting leading to authentication by the President.

There are time honoured rules for legislation comparable to international standards. Of late, Civil Society Organizations have tended to become strident with regard to the manner in which they should be consulted in law making. Of course, these organizations can provide invaluable inputs based on their grass roots perception of people's aspirations. It is desirable that any public consultation including Civil Society organizations is done within the framework of parliamentary procedures.

In representational democracies, it is the prerogative of the parliament to make laws on behalf of the sovereign people. We cannot allow law making to be delegated to the Civil Society with the result that it becomes something in the nature of collective bargaining. The simple reason is that there is lot many Civil Society Organizations and complicated procedures shouldn't tie the system down. This apart, such organizations also may have their caprices and partisan orientations.

Integrity of Institutions:

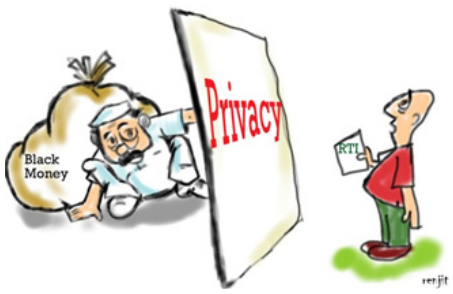
Ministers and civilian officers come and go. But institutions are there to stay. They are expected to provide important technical support in governance in their respective areas of competence. Indeed, they constitute the memory for, and continuance of smooth governance. The integrity of these institutions needs to be preserved and strengthened. An example of such institutions is the Comptroller and Auditor General (CAG). In all truly democratic countries, the supreme audit institution has constitutional status, autonomous and politically neutral. Indian CAG also has constitutional status. He is appointed by the President. Before entering upon office he swears, inter alia, to perform duties of his office "without fear or favour, affection, or ill will and uphold the Constitution and the laws". His duties and powers are as prescribed by law by the parliament. It is very important that the office of the CAG, being a watch dog institution, is meant to provide objective professional support to the parliament in its financial supervision of the government is not dragged into controversies.

Right to Information (RTI):

The RTI law established by the parliament is an important landmark in the evolution of Indian system of governance into a transparent and accountable one. While the law finely and deeply enunciates Fundamental Rights, there are bound to be lot more efforts seeking its further liberalization. This is because there are numerous items of information which are exempt from disclosure, apart from organizations altogether excluded from the ambit of the law. The exempted items are likely to be ingenuously interpreted by the officialdom so as to negate the intent of the law. The enactment of the Right to Information Act should be seen not as the end of the movement for access to information, but rather the beginning.

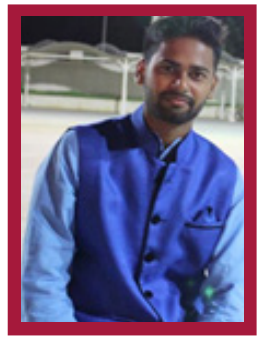
Public Outreach:

Outreach of the parliament as an institution to the people and of the Members of their constituents is very crucial. This facilitates the parliament being seen as a body effectively engaged in delivery of services to the people. It helps in the Members holding themselves accountable to their sovereign voters. Most parliaments of the world have pressed Information Communication Technology (ICT) into service to create awareness among the people about the Members, daily business of the Houses, reports and proceedings of the Houses and their Committees, legislative initiatives etc. Our parliament also has made a lot of progress in this regard. It is desirable that our Members share the experiences of other parliaments such as those of UK, USA, Germany, France and Japan in ICT applications.



Our Parliament is funding the Members in terms of Constituency Allowance, travelling allowances and facilities, staff support expenses, expenses for correspondence and telecommunication etc. - to help them reach out to their constituents. But in many areas voters do have grievances that their representatives do not maintain adequate visibility in the constituencies. This is perhaps the reason why many sitting parliamentarians do not get re-elected. Every parliament has a substantial number of new Members. This is a matter which needs to be monitored and addressed by the concerned political parties themselves.

CONCLUSION



India's tryst with democracy began with its efforts to overcome the colonial legacy marked by underdevelopment, poverty, illiteracy and social and economic inequalities. Democracy was construed as a flexible system wherein every citizen makes his/her contribution to the society. However, the past few decades since independence have clearly demonstrated that in India, democracy has failed to deliver its purpose, both theoretically and practically. In the present context of rapid degradation of democratic norms, criminalization of politics, corruption in the legal, executive and political sects of the government meant for facilitating and catering to people's needs and open violation of electoral reforms, alternative forms of democracy have become increasingly needed in India. The alternative form of democracy that could be made applicable in India is that of Parliamentary Democracy.

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UNORGANIZED SECTORS OF INDIA – AN ESSAY

Definition of the term, "Unorganized Sector"

So far as India is concerned, the National Commission for Enterprises in the Unorganised Sector in its report has defined the term as, ".... consisting of all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and with less than ten total workers".

The Indian Picture

So far we turn the ages of history, we find that unorganized sectors have occupied a massive portion of India's economy, irrespective of British Raj or Democratic Rule. As per the Economic Survey of 2007-08, 93% of Indians are either self employed or involved in Unorganized Sectors. But in general, "Unorganized Sector" is a very vague term with no definite meaning. So, the Government of India classified the Unorganized Sector based on the following criteria-

- Nature of Employment
- Service Category
- Specially Distressed Category
- Occupation

Background to the Study

In the above backdrop a study is conducted to examine the unorganized sector in India and its geographical, social and economic influence.

Objective of Study

"Unorganized Sector" as the name says is not a very frequent term that we come across in our day to day life. Yet, it provides employment to millions of people. By doing this project we were required to do extensive research on the topic. By researching, we have acknowledged ourselves about the Unorganized Sectors of our India. Now we know that the unorganized sectors have provided employment to 29.5million women since 2000. For a developing country like India, 29.5million is not a small number. In a country where a minimum of 10,000 people starve daily due to lack of resources, in such a country providing employment to such a huge number is a great deal of respect. The sectors may be scattered, but not useless. They may lack an

organization but not without unity. We have learnt these in the process of doing the project. A very famous industry in the unorganized sector is the, "Paan Industry". Betel leaves are considered to be the neglected green gold of India. This industry is so rich that not everyone can work in it. Only people who are of that caste or are friends with any member of that caste, only they can be a part of the Paan Industry.

History of Unorganized Sectors

In the mid-1950, a theoretical model of economic development was produced by W. Arthur Lewis which was based on the assumption that there was abundant number of unskilled labours in most of the developing countries and that this surplus labour could be engaged by proper utilization of the resources. In 1970s, based on studies it was found that there were abundant unorganized sectors which employed huge number of men and women especially in the Third World Countries. They occupied the bottom of the Urban Economy. These people used to work their sweat out to earn from these sectors which were not a part of the Organised Sector. The formal-informal dichotomy was regarded as new variations on dualism theories of the past. In the post-colonial era, this concept of dichotomy was applied to the dualism of traditional and modern. Here it was seen that the agrarian society of the village was still a pre-capitalist stage whereas the urban industries where hard-core capitalists. In recent times of the dualism doctrine, capitalism remains as the label of the urban areas, i.e., the formal sector. The modes of production in the lower economic terrains, which were labelled as pre-capitalists came to be known as the Informal or Unorganized Sector.

We need not assume that the employees in the Unorganized Sectors are unskilled, but we need to know the fact that the skill needed to work in those sectors are acquired outside the formal sphere of education.

Ever since the introduction of the concept, there has been many changes and alterations in the definition of the said sector. Main ground of differences has always been the socio-economic impact. There are views that show the swift drift of people from the rural agrarian life to the urban, industrial life. This shift has been seen mainly in the people of the Third World countries. If these migrants succeeded in establishing a foothold in the urban, formal sectors, then it would have been successful but due to lack of number of migrants. A more critical analysis of the researchers, who have observed the employment pattern of organized sectors have opined that inferior quality of the new migrated urbanites was not the only cause but along with it there were causes like lack of formal education and opportunities were other prevalent causes. Also in case of the employers, the failure to assign new, skilled labourers kept the price of labour always low.

The informal sector is not a separate and close circuit of work and labour. This is basically the interaction between the formal and informal sector which projected the dependence of the informal sector on the formal sector. In recent times we see that by virtue of neo-liberal economic policies, the formal sectors are also scaling down by widespread informalization like casualization and contractualization.

In India:

India has been a developing country since the last half century. Its economy harbours a humongous number of unorganized sectors. According to the Economic Survey of 2007-08, 93% of India's workforce include the self-employed and employed in unorganized sectors. The Ministry of Labour, Government of India has categorized the aforementioned sector under four heads based on Occupation, Mature of Employment, Specially Distressed Categories and Service Categories.

In terms of Occupation:

Small and marginal farmers, landless agricultural laborers, share croppers, fishermen, those engaged in animal husbandry, beedi rolling, labeling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, oil mills etc. come under this category.

In terms of Nature of Employment:

Attached agricultural laborers, bonded laborers, migrant workers, contract and casual laborers come under this.

In terms of Specially distressed categories:

Toddy tappers, Scavengers, Carriers of head loads, Drivers of animal driven vehicles, Loaders and unloaders come under this category.

In terms of Service categories:

Midwives, Domestic workers, Fishermen and women, Barbers, Vegetable and fruit vendors, Newspaper vendors etc. belong to this category.

In addition to these four categories, there exists a huge group of people who have not been included under these heads. To name, some of them are Cobblers, Handicrafts artisans, Handloom Weavers, Lady Tailors, Carpenters, Power Loom workers etc.

Statistical evidences:

Though the availability of statistical information on intensity and accuracy vary significantly, the extent of unorganized workers is significantly high among agricultural workers, building and other construction workers and among home based workers. According to the Economic Survey 2007-08, agricultural workers constitute the largest segment of workers in the unorganized sector (i.e. 52% of the total workers).

As per the National Sample Survey Organization (NSSO), 30 million workers in India are constantly on the move (migrant labor) and 25.94 million women workforce has been added in the labor market from the year 2000 onwards. All the more every day 13000 Indians turn 60 years and they are expected to live another average of 17years. Unfortunately only 10% of the Indians save for old age. The tragedy is that the existing social security legislations cover only 8% of the total work force of 459 million in India.

The latest report of the NSSO uploaded by the close of May 2011 about the casual workers in India between 2004-05 and 2009-10 compared to that of the period between 1999 – 2000 and 2004-05 very clearly shows that there is significant increase in the number of casual workers and decline in the number of regular workers.

This report shows a substantial shift between 1999-00 and 2009-10 in the structure of the labor force which can be broadly divided in to self-employed, regular, and casual workers. (Casual workers are employees who do not enjoy the same benefits and security as tenured employees. All daily wage employees and some categories of contract employees are casual laborers.)

All these NSSO reports are clear evidences to prove that the labor market of India has been undergoing tremendous transformations, including growth of informal sector activities, deterioration in the quality of employment (in terms of job security, terms and conditions at work), Weakening of worker organizations and collective bargaining institutions, marked decline in social security etc. To a greater extent, these transformation could be related to the ongoing globalization process and the resultant efforts on the part of employers to minimize the cost of production to the lowest levels. It is also evident that most of these outcomes are highly correlated and mutually reinforcing. A closer analysis suggests that the growing informalisation of labor market has been central to most of these transformations, which inter alia highlights the utility of understanding the growth of unorganized sector in India and its implications.

Predominance of informal employment has been one of the central features of the labour market scenario in India. While the sector contributes around half of the GDP of the county, its dominance in the employment front is such that more than 90% of the total workforce has been engaged in the informal economy. As per the latest estimation of a Sub-committee of the National Commission for Enterprises in the Unorganized Sector (NCEUS), the contribution of unorganized sector to GDP is about 50% (NCEUS 2008).

This national level pattern of informal workers occupying around 90% of the workforce is more or less similar in the case of most of the prominent states in the country. Among the unorganized sector workers, a considerable proportion (about 65%) is engaged in agricultural sector, which in turn indicates the prominence of rural segment in the informal economy.

The growth of formal employment in the country has always been less than that of total employment, indicating a faster growth of employment in the informal sector. Available data suggests that within the formal sector also the proportion of informal/unorganized workers are on the increase. For instance, by providing a comparison of the NSSO Employment Data for 55th and 61st Rounds (for 1999-2000 and 2004-05 respectively) the NCEUS (2007) explains that the country is currently in a state of "informalisation of the formal sector", where the entire increase in the employment in the organized sector over this period has been informal in nature.

Legal Advancements

In order to improve the general condition of the unorganized sectors, the government of India had set up the National Commission for Enterprises in the Unorganised Sector (NCEUS). Prof. Arjun Sengupta was the chairman of the organization. This Commission has drafted two bills since its establishment:

1. Unorganized Sector Worker's Social Security Bill,2005
2. Unorganized Sector Workers (condition and livelihood promotion) Bill, 2005.

Bill No. 1 was introduced in the RajyaSabha on September 10, 2007.

The major characteristics of the unorganized workers:

- The unorganized labour is overwhelming in terms of its number range and therefore they are omnipresent throughout India.
- As the Sector suffers from severe seasonality, the workers of this sector have no fixed source of income.
- There is no formal employer – employee relationship, as everyone is an employee there but not every employee is an employer.
- In rural areas, the unorganized labour force is highly stratified on caste and community considerations. However in urban areas it is not so much as there is more need of people.
- Workers of this sector are almost always financially indebted to people as their low income can't meet up to daily expenses.
- The workers of this sector are not very well educated or maybe not educated formally, as a result they are usually exploited by the other people who have little knowledge of what they do.
- Primitive production technologies and feudal production relations are rampant in the unorganized sector, and they do not permit or encourage the workmen to imbibe and assimilate higher technologies and better production relations.
- Inadequate and ineffective labour laws and standards relating to the unorganized sector.

Role of Geographical factors in the Unorganized Sector

The Unorganized Sector in India comprises of utilization of many amenities which are kind of unique to India. For instance, we have the Bidi rolling industry. It is mainly prevalent in places like Orissa and Bihar because Kendu leaves are found in abundance there. Orissa is the third largest producer of Kendu leaf in India. The uniqueness of kendu leaf in Orissa is because of its colour and textures. So we see that because of the favourable weather condition at Orissa Kendu leaves grow well there.

Paan Industry

This industry is purely based on the Betel leaf (piper betle). The betel leaf is cultivated mostly in South and Southeast Asia. It's a creeper and thus needs a strong plant around it for support in growth. Betel plant needs well drained fertile soil to grow. Cultivation of Betel needs proper shade and well distributed irrigation. Now, this betel leaf has certain utilities. The leaf is used along with areca nuts which is used to prepare "paan". This paan is consumed by people as stimulant and even antiseptic. There is a story behind the preparation of this paan. Not everyone can prepare it. So far my knowledge permits only people of a certain title can prepare it. It is like a family business. If another person who is not from the same family, wants carry the business then he/she has to be atleast from the same caste.

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JUDICIAL RESPONSE ON RIGHT TO BANDH IN INDIA – A COMMENT

Bandh, originally a Hindi word means, "Closed or Shut ". It is one way of protesting by political parties or organizations. In India it has become a norm for political parties and organizations to call for Bandh as and when they want to be heard on some issue.

Political parties consider this as their fundamental right to call public shutdown to exploit a political or a sensitive issue and to gain attention. It is a form of protest which is used by political parties in India. Bandhs are not limited to one party. Every party on some or the other occasions call for bandh to show their strengths. However, the same parties when they are in power do restrain themselves from such activities and term bandh as unconstitutional.

Bandhs have become part of our daily life which disrupts the normal lives of common man. All political organizations irrespective of the colour of the flag and slogans declare bandhs imminently in protest against various incidents and decisions of the authorities. The Kerala High Court in 1997 had delivered a judgment declaring forced bandh as illegal and unconstitutional and interferes with the exercise of the fundamental rights of the people. The Supreme Court also upheld the decision of the Kerala High Court and confirmed that bandh are illegal and violate the fundamental rights conferred on the citizens.

"Bandh" is said to be unconstitutional as they interfere with our fundamental rights. Political parties and organizations forcibly close shops and halt public transport. People observe these protests on account of fear for their life and property. Therefore, it cannot be said that the bandh's are supported by common people.

Bandh causes tremendous hardship for the average resident. It causes loss to private property and injury to the health of general people and creates economic losses and hinders development. Bandh has large impact on the economy as Government loses money which is earned on day-to-day transaction from various sectors. Due to effect on transportation general public goes through difficult times during bandh and sometimes even emergency travels are disturbed. Bandh causes loss to private property and injury to the health of general people. The main affected parties are the shopkeepers and road side vendors who leave on day-to-day earnings.

The corporate sector in India also suffers losses from closures or bandhs, either at the state level or at the national level. The State of Andhra Pradesh suffered revenue losses of over INR 8 billion due to closures that took place soon after the central government gave 13 approvals for the creation of a separate State of Telangana. During these bandh and closure calls, buses and other modes of public transport remained off the road. The Andhra Pradesh State Regional Transport Corporation (APSRTC) also suffered losses of 14 around INR 40 million.[3]

The All India bandh called by the opposition on July 08, 2010 to protest the fuel price hike brought large parts of the country to a standstill. As per the Confederation of Indian Industry (CII) the bandh has led to significant impact on business and trade in some parts of the country. According to CII, there was a loss of Rs 3,000 crore to the Indian economy due to the day long shutdown.

There has been many instances where the Courts have come forward and ruled bandhs as unconstitutional and interference in fundamental rights of a citizen.

THE CONSTITUTION OF INDIA ON BANDH:

The Constitution of India guarantees certain fundamental rights to the citizens. Every citizen[4] of India is entitled to be under the protection of these fundamental rights because of the only reason of being the citizens of India.

[3] http://www.newswala.com/HyderabadNews/Telangana-Bandh-evokes-mixed-response-40721.html
[4]Article 19- The Constitution of India

Among these Articles, Art. 19(1) (b) guarantees the freedom of assembly. It guarantees to all citizen of India the right of assembly which includes the right to hold meetings and to take out processions with certain limitations.

These limitations are:

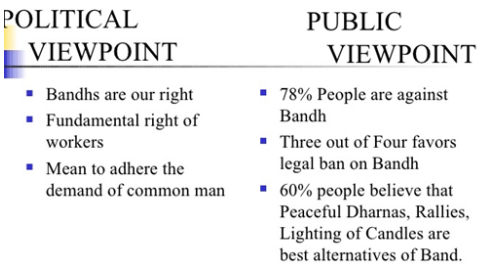
1. The assembly must be unarmed and
2. It must be peaceful.

According to clause (3) of Article 19, the state can impose reasonable restrictions in the interest of public order. Here the organizations infringe the fundamental rights of other citizens. *Article19, (1), (c) of the constitution declares that all citizen shall have the freedom to form associations or unions.*

The right to form association implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interest.

It is a fact that this right is also subjected to reasonable restrictions in the interest of the sovereignty and integrity of India, public order, decency and morality. The expression public order is synonymous with public peace, safety and tranquility. These conditions are violated by observing bandh's. Bandh causes tremendous hardship for the average resident, create economic losses and hinder development.

IS BANDH A FUNDAMENTAL RIGHT OR IS IT UNCONSTITUTIONAL AND ILLEGAL?



Bandhs have become part of our daily life. All political organizations irrespective of the color of the flag and slogans declare bandhs imminently in protest against various incidents and decisions of the authorities. No organization is an exception in this regard. Every political party serves the people and nation as far as they can. Even an organization having meager members that can be counted by fingers can declare bandh. People keep themselves indoors and the shops remain closed because of fear and political parties claim their call for bandhs successful whenever a bandh is declared.

These political parties claim that it is their right to protest in the form of bandhs. Their argument is that the Constitution guarantees the right to form associations and right to speech and expression.

Yes, it is a fact but the right is not an absolute one. It must be peaceful. It shall not be against the interests of the nation. It shall not infringe another person's freedom. But every time a bandh is observed it turns into violence and forces people to keep themselves away from work due to fear and loss of property and danger to their life.

While observing their fundamental rights, these organizations infringe the fundamental rights of other citizens. These bandhs hinder the growth of our Nation. It is estimated that 10,000 to 12,000 crores loss[5] is caused by a single bandh to our nation.

The organizations who declare bandhs claim that they are doing so for the sake of the people. The same Constitution that upholds the rights to freedom of assembly, Article 19(1), (b) and the freedom of association, Article 19(1), (c) also ensures the freedom of movement. *Article 19(1), (d) guarantees right to move freely throughout the territory of India.*

Article 19 (1), (g), right to freedom of trade and occupation is violated since bandhs forces the people to keep them away from their work and stay indoors. Article 21 that deals with the protection of life and personal liberty is also violated.

In Francis Coralie[6],the Supreme Court of India expanded the horizon of the definition to right to life. Justice Bhagavati held:

> *"We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing, and shelter over the head and the facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingle with fellow human beings".*

Article 21(A), Right to Education is violated while declaring and observing bandhs due to forceful observance of bandhs of educational institutions.

[5] The Economics Times Sep 20, 2012
[6] Francis Coralie v. Union Territory of Delhi (1981) 1 SCC 608

Therefore, it is evident that bandhs are unconstitutional and illegal.

JUDICIAL RESPONSE TO BANDH:

In **Bharathkumar**[7]the Kerala High Court banned bandhs. So the organizations preferred an appeal in the Supreme Court. The Supreme Court also upheld the decision of the High Court. As a result, bandh was renamed as the pet-name hartal in Kerala. Though the name has been changed the approach of political parties during bandh or hartal is the same and the sufferers of these closures are the common citizens.

This path-breaking verdict declaring forced bandhs as illegal was a major blow on the political parties and some organizations as Court observed that organizers of bandhs "trample upon the rights of the citizens protected by the Constitution". This verdict clearly lays down a rule that political parties and trade unions have a right to protest, but the citizens have an equal right to not support their action.

The court had said, first, calling for a bandh is illegal and unconstitutional and interferes with the exercise of the fundamental rights of the people. Secondly, a bandh deprives people of their income for the day and causes them wrongful loss. Bandhs cause a massive loss to individuals, to the society and to the state in the areas of education, trade and commerce and industrial production. There is no prescribed way to estimate the loss in terms of money. However, the organization and its followers, by enforcing the bandh, cause the country to suffer heavy losses and are, therefore, liable. They can be punished with imprisonment and fines.

The court refused to accept it as an exercise of the freedom of speech and expression by the concerned party calling for the bandh. When a bandh is called, people are expected not to travel, not to carry on their trade, not to attend to their work. A Threat is held out either expressly or impliedly that any attempt to go against the call for bandh may result in physical injury.

A call for Bandh is clearly different from a call for general strike or hartal. There is destruction of public property during bandh. The High Court has directed that a call for bandh by any association, organization or political party and enforcing of that call by it, is illegal and unconstitutional. The High Court has also directed the State and all its law enforcement agencies to do all that may be necessary to give effect to the court order.

The Supreme Court has accepted the decision of The Kerala High Court[8]. The Supreme Court refused to interfere with the High Court decision. The Court has accepted the distinction drawn by the High Court between a "bandh" and a "strike". A bandh interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing loss in many ways.

On 6th January, 2010 Guwahati High Court declared that "Bandh" is illegal and unconstitutional. It violates citizen's fundamental rights. Chief Justice Jasti Chelameswar and Justice Arun Chandra Upadhyay in the light of a 1997 Supreme Court order upholding a Kerala High Court's judgment declared bandhs are illegal.

Guwahati High Court gave the Judgment after hearing two separate public interest litigations (PILs) which were filed by two citizens in 2005, seeking declaration of bandhs as illegal and unconstitutional in Assam and Meghalaya[9]. The petitioners told that frequent bandhs affect the economy and education.

In 2004, the Bombay High Court fined the Shiv Sena and BJP 20 lakh for organising a bandh in Mumbai to protest bomb blasts[10].The court permits general strikes which protest against a specific establishment. But, they do not support total strike. The order was passed on a public interest litigation petition filed by prominent citizens, including the former Cabinet Secretary, B.G. Deshmukh, Alyque Padamsee, and AGNI (Action for Governance and Networking in India), a citizens' organisation.

<u>The relevant observations of the Full Bench read as under:</u>

A call for a bandh is obviously, distinct and different from the call for a general strike or the call for a hartal. The intention of the callers of the "bandh" is to ensure that no activity either public or private is carried on that day, is also clear from their

[7] Bharat Kumar K. Palicha v State Of Kerala, AIR 1997 Ker 291
[8]http://www.business-standard.com/article/specials/sc-upholds-kerala-hc-order-banning-bandhs
[9]Posted On February 15, 2013 by & filed under Legal Articles in www.legalindia.com
[10] The Hindu, July 24, 2004

further statements sometimes made that the newspapers, hospital and the milk supply are excluded from the bandh.

This clarification obviously implies that otherwise the intention is that those service are also to be affected. If the intention is to prevent the milk supply, prevent the distribution of the newspapers, prevent people going to the hospitals for treatment, prevent the people from traveling and to generally prevent them from attending to their work either in service of the State or in their own interest, that obviously means that it amounts to a negation of the rights of the citizens to enjoy their natural rights, their fundamental freedoms and the exercise of their fundamental rights.

It is no doubt true that while calling for a bandh it is not also announced that any citizen not participating in the bandh will be physically prevented or attacked. But experience has shown that when any attempt is made either to ply vehicles on the day of the 'bandh' or to attend to one's own work, or to open one's shop to carry on trade, it has resulted in the concerned person being threatened with consequences if he took out his vehicle, if he went for his work or if he kept his shop open. The leaders of the political parties who call for the bandh cannot escape by saying that they are not directly telling the citizens not to do these things under threat but if some of the participants in the bandh indulge in such activities, they cannot be held responsible. Obviously, they can with reasonable, intelligence foresee the consequences of their action in calling for the bandh. Nor can they pretend that the consequences that arise out of the calling, for a bandh, are too remote or does not have reasonable proximity to the call they have made.

Thus, on the materials made available and taking judicial notice of what generally happens in a bandh, which has resulted even in the working of the High Court being totally disrupted by counsel not being in a position to attend to the court we are inclined to understand the concept of a bandh as one where people are expected not, to attend to their work or to travel for any purposes nor to carry on their traders with a threat held out either express or implied that any attempt to go against the call for the bandh would result in danger to life and property.

Even if there is no express or implied threat of physical violence to those who are not in sympathy with the bandh, there is clearly a menacing psychological fear instilled into the citizen by a call for a bandh which precludes him from enjoying his fundamental freedoms or exercising his fundamental rights.

> *We are therefore not inclined to accept the contention of the political parties and the learned Advocate General that the calling for a bandh does not involve the holding out of any threat express or implied to the citizens not to carry on his activities or to practice his avocation on the day of the bandh.*
>
> *We are inclined to the view that the call for a bandh implies a threat to the citizens that any failure on his part to honour the call, would result in either injury to person or injury to property and involves preventing a citizen by instilling into him the psychological fear that if he denies the call for the bandh, he will be dealt with by those who are allegedly, supporters of the bandh.*

As a result, we dispose of this petition with the following declarations and directions:-

1. It is declared that the calling for and enforcing Mumbai bandh was unconstitutional and violative of the fundamental rights guaranteed under Articles 19 and 21 of the Constitution.
2. Deposit with the State Government the amount of compensation of 20 lakhs each to the special fund to be created under the name "The 30th July 2003 Bandh Loss Compensation Fund" and this amount be utilized for providing facilities, benefits and additional services to the citizens of Mumbai.
3. Enforcement of a 'bandh' or a 'hartal' would amount to an unconstitutional act, and any political party, organization, association, group or individual giving such call for bandh or hartal to force or intimidation or otherwise
4. The concerned political party, organization, association, group or individual giving 'bandh' call will be served with a notice under section 149 of the Criminal Procedure Code. In the notice, attention will be drawn to the judgments of the Supreme Court and this Court regarding illegality of 'bandh'. The notice will clearly state that such a political party, organization, association, group or individual will be liable for legal action and compensation for loss of life, injury or for loss of livelihood due to 'bandh'.
5. We direct the State, District Collectors and all other officers of the State to ensure:
    a) That no political party, organization, association, group or individual can, by organizing a 'bandh', or by force or intimidation, stop or interfere with road and rail traffic or the free movement of citizens in city of Mumbai or State.

b) To take all actions, including arrest, detention and prosecution against those who seek to enforce such 'bandh' or 'hartals' by organizing, leading or participating in rail and rasta rokos and assaults on trains, buses, other vehicles and private citizens.

6. The police shall take appropriate action against the person or persons involved in such 'bandh' under provisions of the Indian Penal Code, Criminal Procedure code and Bombay Police Act, and submit action taken report in such cases to the Sessions Judge of the concerned District.
7. The general public shall be informed by issuing press note through print media and also through electronic media informing them about the preparations made by the police to deal with 'bandh' and for making people secured
8. A visible police presence shall be maintained throughout the city prior to the 'bandh' in preference to other police duties.
9. A visible bandobast outside railway stations, bus depots, main roads, main junctions, hospitals, courts, schools and colleges will be maintained during 'bandh'.
10. Wireless mobile patrolling, beat Marshall Patrolling, fixed point bandobast shall be deployed to curb any on toward incident on 'bandh' day.
11. Necessary protection to market and business places shall be given.
12. There shall be video-recording so as to identify miscreants and to book them under law.
13. All police control rooms will be fully activated to follow up incident regarding 'bandh' to take proper, stern and timely action.
14. The police shall complete the investigations in the various offences recorded on the 'bandh' on 30th July 2003, and complete the investigations and file charge-sheets against the accused expeditiously.
15. The Chief Secretary of the Government Director-General of Police and all other officers to take all necessary steps to give effect to the above directions.[11]

In Ranchi Bar Association v. State Of Bihar[12], following the Apex court decision, the Patna High Court has ruled that no party has a right to organize a "Bandh" causing the people by force to stop them from exercising their lawful activities. The Government is duty bound to prevent unlawful activities like bandh which invades people's life, liberty and property. The Government is bound to pay compensation to those who suffer loss of life, liberty or property as a result of a bandh because of the failure of the government to discharge its public duty to protect them.

In the instant case, the High Court did award compensation against the State Government for loss of property and death of a person during the bandh for failure of the authorities to take appropriate action and provide adequate protection to the people's life, liberty and property. The Government failed to discharge its public duty to protect the people during the bandh.

Supreme Court's judgment in **T.K. Rangarajan**[13] declared the right to "strike is illegal", and "bandh" is unlawful.

OTHER CASES REFERRED ON BANDHS

As observed by the Supreme court in **S.N.D. Kiran Pasha vs. Govt. of A.P.**[14] when the right is guaranteed, it has to be understood in relation to its orbit and its infringement. Conferring right to life and liberty imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right, except in accordance with the procedure prescribed by law. In other words conferring the right on a citizen involves the compulsion on the rest of the society, including the State, not to infringe that right.

In **Dwarka Nath Vs. ITO**[15] Subba Rao J. explaining the extent and scope of Art.226 observed:

"*This article is couched in comprehensive pharaseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature" for the said expression does not equate the writs that can be issued in India with those in England but only draws an analogy from them.*

[10] Ibid
[11] AIR 1999 Pat 169
[13] T.K. Rangarajan vs. State of Tamil Nadu (2003)
[14] 990 (1) SCC 328
[15] AIR 1966 SC 81

That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government in a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

In **Unni Krishnan J.P. Vs. State of A.P.**[16] the court held that Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs, to any person on authority. It can be issued "for the enforcement of any of the Fundamental rights and for any other purpose." No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

In **U.P. State Co.op Land Development Bank Ltd Vs. Chandra Bhan Dubey**,[17] a two Judge Bench of the Supreme Court upon an in-depth analysis of its earlier judgments held that Article 226 while empowering the High Courts for issue of order or directions to any authority or person does not make any difference between public functionaries and private functionaries.

In **Bodhisatta Gautam vs. Subhra Chakraborty**[18], The Court observed that under Article 32 of the Constitution it is the jurisdiction to enforce the fundamental right guaranteed by the Constitution by issuing writs in the nature of habeas corpus, mandamus, prohibition, co-warranto and certiorari. The fundamental rights can be enforced even against private bodies and individuals. Even a right to approach the Supreme Court for enforcing of the fundamental rights under Article 32 itself is a fundamental right.

In **D.K. Basu vs. State of W.B**.[19] ,Dr. Anand J. (as His Lordship then was Observed that there is no wrong without a remedy and the law wills that in every case that a man is wronged or undamaged he must have a remedy. A mere declaration of invalidity of action or a finding of violation of constitutionally guaranteed fundamental rights does not by itself provide any meaningful remedy to a person whose fundamental rights have been infringed. The Court must proceed further and give compensatory relief not by way of damages as civil action but by way of compensation under the public law jurisprudence for violation of the fundamental rights of the citizens.

In **Rudul Sah vs. State of Bihar** [20], it was held that in a petition under Article 32 of the Constitution, the Court can grant compensation for the deprivation of a fundamental right. In ***R. Gandhi v. Union of India* (1989),** the Madras High Court, in ***M/s Inderpuri General Stores v. Union of India* (1992)**, the Jammu and Kashmir High Court and in ***Manjit Singh Sawhney v. Union of India* (2005)**, the Delhi High Court ordered respective state and union governments to pay compensation to the victims of the anti-Sikh riots. The state's liability was grounded on the inaction by state officials in protecting life and property.

CONCLUSION

Bandh restricts a person to move freely and disrupts the normal lives of common man. It violates the fundamental rights of person. It causes damages to the individuals and it causes violence and inhuman activities. It is also a fact that bandh has huge impact on economy and weakens the Indian Economy.

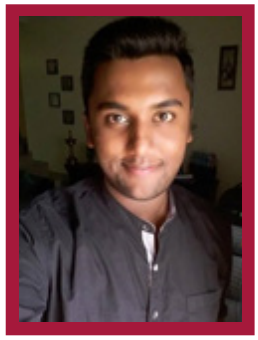
Despite various judgments of High Courts and the Honorable Supreme Court, there are frequent bandhs, harassing general public causing trouble, inconvenience, loss and injury to them and a situation is created by unscrupulous, anti-national and anti-people groups who force majority of the people not to move about and force them in illegal detention in their own house by threat, coercion and force. Examinations are being postponed on such days. Doctors who are going to the hospitals are being attacked. Transport services stop running their buses thus preventing the citizen to move from one place to another.

India is the largest democracy in the world. In a democratic setup, everyone has the right to articulate their views and vocalize their problems as long as it does not lead to infringement of law. Most often it is the common people who bear the brunt of these bandhs. We should remember that only sensible discussions and talks can bring us to a feasible solution and these talks

[16] AIR 1993 SC 2178 [17] 1999 (1) SCC 741 [18] 1996 (1) SCC 490 [19] 1997 (1) SCC 416 [20] 1983 (4) SCC 141

should serve the best interest of the common people.

Moreover forced imposition of a strike or bandh should not be made into an offence which would act as a deterrent to the organisers in the first place. In appropriate cases, the organizers of the bandh may even be directed to pay compensation. If a bandh involves force, intimidation or violence, action should be taken against the culprits by law enforcement agencies on the basis of statutes which are there and punished accordingly.



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SECTION 497 OF IPC – ADULTERY: IS IT DISCRIMINATORY?!

ABSTRACT

Adultery in India is a criminal offence which is committed by a third person against a husband in respect of his wife and of which a man can alone be held liable for the offence. The law of adultery is not applied on a woman. Our Indian society is more conserved and expects faithfulness & loyalty of an individual towards his or her spouse. A person who is committing an adulterous act is always aware of the fact that he or she is violating the basic norms of the institution of marriage & that of the society and credibility & trustworthiness is being targeted.

The main objective of this paper is to analyse the gender neutrality of the section 497 of the Indian Penal Code, 1860 which deals with adultery.

On the prima facia of such an issue why is it only the man who is subjected to such an act? Law being dynamic with the needs and well being of a society transforms itself. Thus on the outrage a women being at par with man in various other fields has to be treated equally in this ground too. Further, the law as it stands today not only violates the Indian Constitution that includes equal justice for every citizen of India but also due to change in the norms and behaviour of the society, adultery should be made a civil wrong rather than a criminal offence.

RESEARCH METHODOLOGY

The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles, journals and a no. of online sources. The in house debates and discussion have been rich with valuable pointers and gave direction to the research.

RESEARCH QUESTIONS

1. Why is it that a married woman is given a blank cheque under this Section 497 of IPC to indulge in sexual relations with as many men as she likes and yet is not held liable in anyway?
2. Why is it that a husband can take action against any man who indulges in sexual relations with his wife but if the

husband does the same thing with another woman the wife cannot do the same?

3. When England being the framer of such a law has decriminalized Adultery why is it still followed in India?

Adultery in India is a criminal offence as per the Section 497 of the Indian Penal Code, 1860 (IPC). Adultery generally means a consensual sexual relationship between a married person and a person of other sex, who is not the spouse of the married person. The offence is committed only by a man who has sexual intercourse with the wife of another man without his consent. Adultery is an offence which is committed by a third person against a husband in respect of his wife and of which a man can alone be held liable for the offence. Adultery is considered to be an invasion to the right of the husband over his married wife. The law of adultery is not applied on a woman and has been expressly provided that the woman cannot be held for abetment of the offence. The object of the law is to inflict punishment on those who interferes with the sacred relation of marriage, and the legislature as well considers it to be an offence one who interferes in the sacred matrimonial home. However, the framers of the Code did not include adultery as a crime; it was only after the recommendation of the Second Law Commission it was added to the Code. It is commonly accepted that it is the man who is the seducer and not the woman, and it is considered as an anti-social and illegal act by any peace loving and citizen of good morals, who would like any one to be indulged in such acts before their nose. The section 497 of the Indian Penal Code states that:

Adultery – Whoever has sexual intercourse with a person who is an whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or both. In such case the wife shall not be punished as abettor.

The provision for adultery in the Indian Penal Code (IPC), is not only old fashioned, but also leads to illogical outcomes. A plain reading of S. 497 of the Indian Penal Code reveals the following points for consideration to constitute the offence of adultery under this section-

- One must have a sexual inter-course with a wife of another man
- The person having sexual intercourse must have knowledge or has reason to believe that the woman is a wife of another man.
- Such sexual intercourse must be without the consent of or connivance of the husband
- Such sexual intercourse must not amount to rape

The section encompasses the incidences of consensual sex since it speak about the sexual intercourse between opposite sexes. Thus, it keeps away from its ambit the unnatural offences, and even if it happens in the cases enumerated above, this may fall u/s 377, and not amount to 'adultery'. Secondly, this section gives blind clean chit to the woman, thus only the man can be prosecuted. This implies that a woman cannot be guilty of the offense of adultery in India, as a woman having a sexual intercourse with the husband of another woman, is not covered by this section. The wife is not punishable for being an adulteress, or even as an abettor of the offense, despite having agreed to commit the offence of adultery.

If the above four points are taken into consideration, and if the incidences of 'sexual intercourse' are taken into account under the following four different scenes, the case of 'adultery' can be put as under –

Sr. No	Persons involved in sexual intercourse	Whether offence of adultery met out?	Who can sue?	Who can be sued?	Who cannot be sued?
1	MM+MW	Adultery	Husband of MW	MM	MW-immune
2	UM+MW	Adultery	Husband of Married woman	UM	MW- immune
3	MM+UW/DW	No adultery	Nobody	Section does not apply	
4	UM+UW/DW	No adultery	Nobody	Section does not apply	

MM = Married Man; MW = Married Woman; UM = Unmarried Man; UW = Unmarried woman; DW = Divorced

Woman

Thus, from above table, it is crystal clear that two ingredients u/s 497 of the Indian Penal Code, i.e. only aggrieved husband can sue, and aggrieved wife cannot sue creates lot of difficulties. Again the section provides remedial weapons only to husband and complete legal immunity to the wife. Further, section does apply to unmarried persons, or any adulterous act where married woman having living husband is not involved. This illogical absurdity can be further illustrated with the help of following incidences.

Supposing that in any society, there are unmarried man [UM], two Married Couples [MM1 & MW1; MM2 & MW2], and unmarried woman [UW]. Now consider following case -

Case No. 1: If the Unmarried Man [UM] has sexual intercourse with the Married woman [UW1]. In this case, the adultery happens and husband of the Married woman [MM1] can file complaint against unmarried Man [UM]. However Married Man [MM1] cannot file complaint against his wife [MW1] as she has immunity in the eye of law.

Case No. 2: If the Married Man [MM1] has sexual intercourse with the Married Women [MW2] [or the reverse case MW2 has sexual intercourse with MW1], the offence of adultery happens. In this case the husband of Married Women [MM2] can file complaint against Married Man [MM1], but he cannot file complaint against his wife. At the same time, the wife of adulterous Married Man [MW1] does not have remedy, despite her husband [MM1] is involved in the adulterous act. Thus, in between both the married pair, in either case of adultery, only adulterous husband can be prosecuted with complete immunity to wife, but the wife of adulterous husband does not have any remedy to prosecute her husband.

Case No. 3: If the Married Man [MM1 or MM2] has sexual intercourse with the Unmarried Women [UW] the adultery does not takes place as section only prescribe the adulterous act with married woman. In this case the wife of adulterous husband [MW1 or MW2 as the case may be] does not have any remedy, despite her husband is involve in sexual relation with the stranger.

Thus, Section 497 leads to certain absurdity on logical ground. As it only provide the key to take initiative of 'adultery' in the hand of husband, only he can decide whether to proceed or not, but his choices to take action against the person involve in adulterous act is also limited and he can only proceed against the outsider, not against his wife. On the other hand, the wife has been given complete immunity; therefore she cannot be prosecuted for the act of adultery.[21]

Thus, on logical preemies, section 497 does not pass the test. This may be due to the reason that section 497 has been drafted keeping altogether different object in the mind. Therefore, it is necessary to touch upon the philosophical backing of Section 497 and socio-political conditions in which this section had been drafted.

ADULTERY : HISTORICAL PERSPECTIVES IN INDIA

Barring few exceptions of tribal communities, the evolutionary development of family institution in India portrait patriarchal pattern, and thus, the permissible marital tie prescribe strict restriction on sexual behavior of married couple, especially of woman. The reflection of such normative pattern in the sexual activities reflected in many incidences. Formation of permissible sexual relationship need social sanction and only monogamy, polygamy, polyandry types of sexual intercourse had social recognition. However, in few societies' practices like "keep", "slave keeping", "Muta marriage" has also observed as a practice. Thus, one common, though not universal, feeling has been observed throughout the history about the adultery, that it is prohibited norms in one or the other form in every form of society.[22]

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[21] For more detail on shortcoming of S. 497 of IPC see, Kumar K (Adv.), Punam Rani, Offences against women : Socio-legal perspectives, Regency Publication, New Delhi, 1st Ed. 1996, Pp 224-226

[22] Exception to the legal definition of adultery has also been observed under Muslim personal law. The minor Muslim girl, if married before attending puberty, has option to deny the marriage and may have sexual relation with a person other than her husband by opting for 'option of puberty'. The sexual intercourse other than husband of such woman without consent does not amount to an adultery, as marriage of that woman itself is in question and as a principle, existence of marriage is basic requirement of adultery.

[23] The reason for declaring 'adultery' as an offence is due to the reason that First Law Commission had drafted the first penal statutes in India based on the existing law at Britain, but modified it on the line of socio political requirement prevailing in India at that time.

This is to be noted down that adultery shall be put on different aspects of criminal behaviour than other crime mentioned under the penal statutes. Adultery does not have the grave effect on the society, or rather it does not pose threat to the peaceful existence of society as in the other cases of crime such as murder, dacoit, theft, grievous hurt, public tranquillity, defamation, rape etc,. The similar is the thing about the punishment for adultery. It can be argued that the punishment to the person committing adultery is not and cannot be a remedy for a person aggrieved of adultery. The object of prosecution for adultery is more often to reach a settlement with the offender at the mercenary level and seldom to send the offender to jail. In fact this was the very reason why the offence of adultery did not figure in the very first draft. To this extent, the conditions are not appreciably different even today. The existence of Section 497 has no apparent affect on society. Acknowledging this most western countries have decriminalized adultery. It is not a crime in most countries of the European Union, including Austria, the Netherlands, Belgium, Finland, Sweden and even Britain from whom we have borrowed most of our laws. In the United States, in those states where adultery is still on the statute books, offenders are rarely prosecuted. However, it still remains part of discussion in this research paper that whether adultery shall be made punishable at all in 21st century or it shall be dealt in the like manner such as other western countries by decriminalizing it.

Historically in India, 'adultery' had been considered as an anti-social activity and prohibited by law. However, the concept and understanding about the adultery in ancient period and modern period is little bit different, and punishment also differs. The ancient code of Manu merely provided for varying range of punishments for offence of adultery ranging from simple repentance to the ghastly burning of the offender. From the Manu's thought it enough for a high cast man committing this offence with law caste woman to repent, it is reasonable to conclude that in Manu's views adultery is not per se an offence involving moral depravity. Hindu Matrimonial Laws do not make a single act of adultery as valid ground for granting divorce.[24] Thus according to Manu, the relationship of upper caste man with lower caste woman is not adultery, but adverse was the case of adultery.

1.1. Historical Perspective of Penal Provision on 'Adultery'

In India, the provision on 'adultery' under the penal statutes has gained controversy from its inception. The main architecture of Indian Penal Code, Lord Macaulay, was against the insertion of such section in the original draft and wanted to keep it out of the purview of penal statutes. According to him, such inclusion will unnecessary and unwarranted and shall be left to the society to take care for. Therefore the first proposed original draft of Indian Penal Code did not have any such provision. But it was included latter on.

The enacted first penal legislation in India contained the offence of adultery which was put under Chapter XX of IPC that deals with the Offences Relating to Marriage. It contained four sections [494-498]. Thus the section as it was stand in the penal statutes prescribed that if a man, married or unmarried has voluntary and consensual sexual intercourse with a married woman, without the connivance of her husband, he would be criminal held liable for the offence of adultery.

The plain reading of this section clearly manifested the original prejudices in the mind of the framer of this section. Thus from the inception of S. 497, it was so drafted to make man guilty, and complete shield to the wife, even she may be the active participant in the commission of an offence. The further analysis of this section unequivocally conveys that a man alone can commit adultery and the woman (adulteress) is not liable even as an abettor. Whatever may be justification, or social necessity, this section clearly from its inception put this presumption on legislative agenda that whether the woman is a victim of adultery or is herself an *adulteress*, she is completely free of being penalized for offence of 'adultery'.

The feminists also raise the objection on the S. 497 as it portrait prejudice of wife as property of her husband. According an argument has been raised that dubious as all the meanings of the word are, the one chosen in S. 497 of IPC entrenches male control over women. The inferences that can draw from this law are twofold – (1) that the man owns his wife sexually, and his consent is necessary to gain sexual access over her, (2) the offence of adultery is legally equivalent to that of theft, the goods being the wife's body. Women are therefore, denied agency, whether they themselves have committed adultery (as understood generally) or are married to men committing adultery.[25] However, both these arguments are not tenable as S. 497 is the part of group of four sections (494-498) which are related to marriage and does not fall in the category where theft and other offences fall.

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[24] Bharat Heavy Plates & Vessels Ltd. vs Sreeramachandra Murthy (1988) IILLJ 22 AP [para 11]
[25] Gangoli Geetanjali, Indian Feminisms : Law patriarchies and violence in India, Ashgate Publishing Company USA, 1st Ed.2007. pg. 61

1.2. "Adultery" in India – Origin and development

It is pertinent to note that the original draft of IPC prepared by first Law Commission was silent about the offence of 'adultery'. Lord Macaulay, who was unwilling to add the provision criminisling the adultery as an offence, observed, "There are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives."[26] The basic objective of keeping 'adultery' out of the penal statute was the social norms which has already provided the values and norms which take care of such instances. The circumstances he referred to included child marriage and polygamy. Macaulay, hence, advised that it would be enough to treat it as a civil injury. Thus, framers of the Code did not include adultery as a crime; it was only after the recommendation of the Second Law Commission it was added to the Code.[27]

Thus, it is on the record that the framers of the Code did not make adultery an offence punishable under the Code. But the Second Law Commission, after giving mature consideration to the subject, came to the conclusion that it was not advisable to exclude this offence from the Code.[28] The Second Law Commission thought otherwise and said it would not be proper to leave the offence out of the IPC and suggested that only the man be punished, again keeping in mind the condition of women in the country.

The argument given that why the wife would not be punished has been provided as follows:—

"Though we well know that the dearest interests of the human race are closely connected with the chastity of woman and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of England and France; they are married while still children; they are often neglected for other wives while still young. They share the attention of a husband with several rivals. to make laws for punishing the inconsistency of the wife, while the law admits the privilege of the husband to fill his 'zenana' with woman, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking by law an evil so deeply rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust the certain, operation of education and of time. But while it exists, while it continues to produce its never failing effects on the happiness and respectability of women, we are not inclined to throw into a scale, already too much depressed, the additional weight of penal law."[29]

Thus, in India, a wife is not punished as an adulteress or an abettor for the offence of adultery. It is only the man who has such unlawful sexual intercourse with married woman will be punished under S. 497, I.P.C. Moreover, the wife of the adulterer has no locus standi to file a complaint against her deviated husband. It is only the husband of the (adulteress) wife who can file a complaint and upon whose complaint the Court can take cognizance of the offence. This position of law regarding making complaint has been clearly provided under Cr. P.C. Section[30] 198(2), Cr. P.C. treats the husband of the (adulteress) wife an aggrieved party and not the wife of the adulterer husband.

The object of making 'adultery' as an offence and restricting it to 'Man' alone was to deter 'Man' from taking advantage of woman starved of the love and affection of her husband and deter Man from having sexual relations with the wife of other man. Since men had the social sanction to maintain such relations and women were starved of the love and affection of their husbands, women were treated as the victims and not the authors of the crime. When Section 497 was enacted there were no codified personal and matrimonial laws like today but they were unequal and inoperative.[31]

Apart from IPC, there is one other penal legislation in India that regulate 'Adultery' in India. Ranbir Penal Code, 1932 especially applicable to the State of Jammu and Kashmir is one such legislation. It provides under S. 497 for the punishment for the offence of adultery, it reads.

"Adultery: Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is

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[26] See, Comment on the draft of first Law Commission Report. Gaur K.D., Indian Penal Code. Eastern Law Publication, 2nd Ed. Pg. 388.
[27] Ratanlal & Dhirajlal, 2 Law of Crimes at 2710 (Bharat Law House 26th ed 2007) (C.K. Thakker and M.C. Thakker, eds).
[28] Ratan Lal and Dhiraj Lal's Indian Penal Code (Enlarged Edition) 29th Edition, 2002, page 2305
[29] Gaur (Dr.) K.D., A Text Book on the Indian Penal Code (2004, Ed.). pg 734
[30] See, S. 198(2) of Cr, P. C. 1973
[31] See Varad Deore, A Provision Redundant in Penal Law in Changed Legal and Social Context, available at http://www.legalserviceindia.com/article/l291-Adultery.html visited on 23.01.2011

guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such a case the wife shall be punishable as an abettor."

It is important to note that a bill in 1972 as the Indian Penal Code (Amendment) Bill, 1972 suggested that special privileges granted to woman under S. 497 of the Code be done away with. However, the amendment of the section could not be carried out and law remains as it was when enacted in 1860. It is pertinent to mention here the recommendation of the **Law Commission of India in its 42nd report** regarding the provision of adultery in I.P.C. The recommendation[32] was as follows:—

> "20.18. After much discussion and careful consideration, we are of the opinion that the exemption of the wife from punishment under S. 497 should be removed, that the maximum punishment of five years imprisonment prescribed in the section is unreal and not called for in any circumstances and should be reduced to two years, and that with these modifications, the offence of adultery should remain in the Penal Code. It is accordingly recommended that the section may be revised, as follows:

'497. Adultery. — If a man has sexual intercourse with a woman who is and whom he knows or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, the man and woman are guilty of the offence of adultery, and shall be punished with imprisonment of either description of a term which may extend to two years, or with fine, or with both.'[33]

Thus the proposal of Law Commission is to bring the section of the line of gender neutrality without discriminating the two different sexes and making them criminally liable in equal degree. However, the Law Commission had proposed the lesser degree of punishment.

1.3. Jurisprudential analysis of 'Adultery'

In order to understand the true nature of 'adultery' it is essential to understand the modality of legislative framework. There are certain clues which can be gathered to understand the true nature of offence. The first clue to understand the offence of 'adultery' under Indian Penal Code may be got by 'heading' of the chapter under which it has been placed. It has been placed under Chapter XX of the IPC describing 'Of offences relating to marriage'. Thus the four sections 494 to 498 (including 498A) are related with marriage. Thus, the close scrutiny of these provisions clearly revealed that the provisions are so drafted to preserve the sanctity of marriage institution. May it be bigamy, adultery, cruelty or criminal abduction of wife, all provisions are drafted keeping central theme in the mind focusing the marriage institution, it preservation, protection and promotion of harmony. Society abhors marital infidelity. The object of Section 497 of the IPC is to preserve the sanctity of marriage.[34] The following points will help to understand the different facets of provision relating to 'adultery' under the law.

1.4. Adultery as an offence – object of not punishing a woman

The object of the provision relating to 'adultery' under the principle penal legislation of India shows clear departure from the known principles of criminal law, and cannot be understood its basic object on general principles of criminal law. As well known presumption under criminal law, the law punishes to the person who, with guilty mind involve in the criminal act. However, S. 497 clearly provide immunity to the wife despite she portraits to be actively involved in 'adulterous' act. The provision relating to 'adultery' has been so drafted to provide protection to family as an institution, protection of woman from dominated class and prevent any damage to either spouse due to the 'adultery' which has already hampered the 'faith' amongst them. In V. Revathi case Apex Court had an occasion to express its view about the object of penal provision of 'adultery'.

First of all, it has to be understood that S. 497 on 'adultery' is shield to defend, not sward to tear off the marital relationship. It does not provide any of the spouses to use it as a sward to settle account against each other. Therefore, the law relating to 'adultery' under Indian Penal Code has been drafted and designed in such at way that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus the law permits neither the husband of the offending

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[32] Legal and Constitutional History of India, 2001 Reprint, page 379.
[33] Quoted from, Gaur (Dr.) K.D., A Text Book on the Indian Penal Code by K. D. Gour (2004, Ed.). pg 734
[34] See, Recommendation of V.S. Committee Chaired by Justice V.S. Mallimath; "The Report of the Committee on Criminal Justice Reforms"; 2002; Para 117. The committee has however, recommended for modification of S. 497 of IPC to bring it on the line of gender neutrality.
[35] The Indian Penal Code, 1860 is considered as principal penal legislation in India.
[36] See, for more detail, V. Revathi v. Union of India & others 1988 Cri. L. J. 921

wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and wife are disabled from striking each other with the weapon of criminal law.[37] The basic object of the S. 497 of IPC is to promote the interest of marriage institution. S. 497 of the IPC, 1860 does not enable either Husband or wife to send each other to jail.[38]

Another probable object of provision on 'adultery' in its present form u/s 497 has been designed to protect the interest of the children. Perhaps it is as well that the children (if any) are saved from the trauma of one of their parents being jailed at the instance of the other parent. Whether one does or does not subscribe to the wisdom or philosophy of these provisions is of little consequence. For, the Court is not the arbiter of the wisdom or the philosophy of the law. It is the arbiter merely of the constitutionality of the law.[39]

Yet another object underline the offence of 'Adultery' and not punishing woman but still existed in the code because at the time when the law was enacted, polygamy was deeply rooted in the society and woman shared the attention of their husbands with several other wives and extramarital relations. Woman was treated as victims of the offence of adultery as they were often starved of love and affection from their husbands and could easily give in to any person who offered it or even offered to offer it. The provision was therefore made to restrict Man from having sexual relations with the wives of other man and at the same time to restrict their extra marital relations to unmarried women alone.[40] However, this presumption though sounds popular and rational does not stand on the socio-political test. It is hardly difficult to believe that existence of polygamy and victimization of woman during the period of 1860 would have influenced the legislation to safeguard the woman by providing her immunity from legal sanction. If legislature would want to regulate the polygamy, who hardly did so, the drafting of S. 497 would definitely had different shape.

SUPREME COURT STANDINGS

The first important discussion regarding the constitutional validity of the section was held in the case of ***Yusuf Abdul Aziz v The State of Bombay and Husseinbhoy Laljee***.[41] In this case, Section 497 of the Indian Penal Code was challenged to be ultra vires the Article 14 and 15 of the Constitution of India. The Supreme Court held that Article 14 is general provision and should be read keeping in mind the other provisions which sets out exceptions to fundamental rights. Sex is a sound classification and Article 15 (3) provides for the exceptions to the women and children. The petitioners argued that this clause is made only for the beneficial of the women and not for giving license for committing or abetting crime. However, the Court held that they cannot see any restrictions as such; nor they agree that the section tantamount to a licence to commit the offence of which punishment has been prohibited.11 The Court finally held that Article 14 and 15 when "read together validate the impugned clause in section 497 of the Indian Penal Code".

In the case of ***Sowmithri Vishnu v Union of India***[42] the Supreme Court held that the Section 497 is not violative of the Article 14 or Article 15 of the Indian Constitution on the grounds that14:

(1) Section 497 confers upon the husband the right to prosecute the adulterer but, it does not confer any right upon the wife to prosecute the woman with whom her husband has committed adultery. The Supreme Court considered this to be a policy of law, and while defining the offence of adultery if the offence is restricted to men is not violative of any constitutional provision.

(2) Section 497 does not confer any right on the wife to prosecute the husband who has committed adultery with another woman. The Court said that the law is that the wife who is involved in an extra-marital sexual relationship is not a author of a crime but is a victim and the legislature considers it to be offence against the sanctity of a matrimonial home, and the offence is generally considered to be committed by a man. The procedure of law and the definition itself speaks for who have the right to prosecute whom.

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[37] V. Revathi v. Union of India & others 1988 Cri. L. J. 921 SC [AIR 1988 SC 835] (M. P. Thakkar and Murari Mohan Dutt JJ Divn Bench) [Para 3 pg. 922]
[38] See, for detail, V. Revathi v. Union of India & others 1988 Cri. L. J. 921 SC [AIR 1988 SC 835] (M. P. Thakkar and Murari Mohan Dutt JJ Divn Bench) [paras 5, 6]
[39] V. Revathi v. Union of India & others 1988 Cri. L. J. 921 SC [AIR 1988 SC 835] (M. P. Thakkar and Murari Mohan Dutt JJ Divn Bench) [paras 5, 6]
[40] See Varad Deore, A Provision Redundant in Penal Law in Changed Legal and Social Context, available at http://www.legalserviceindia.com/article/l291-Adultery.html
[41] AIR 1954 SC 321
[42] AIR 1985 SC 1618.

(3) Section 497 does not take in cases where the husband has sexual relations with an unmarried woman, with the result that husbands have, as it were, a free licence under the law to have extramarital relationship with unmarried women. The Court said that the law does not give freedom to men to have illicit relations with unmarried women, it only made a specific kind of extra-marital relation as an offence which it considered to be most seen and common. The husband can be booked under civil procedure by wife for separation. It is for the law makers to reform the penal law as per modern times and it doesn't offend Article 14 or 15 of the Constitution of India.[43]

In the case of ***V. Revathi v Union of India***[44] the constitutional validity of S. 198(1) read with S. 198(2) of Criminal Procedure Code, 1973 that it only allows the husband of the adulteress to prosecute the adulterer but does not permit the wife of the adulterer to do so. The court said that the law does not allow either of the spouses to prosecute each other under criminal law; a husband is not permitted because the wife is not treated an offender in the eye of law. The wife is not permitted as Section 198(1) read with Section 198(2) does not permit her to do so. Moreover there is "reverse discrimination" in favour of women and there is no discrimination against women so far as she is not allowed to prosecute her own husband.

CRITICISMS OF THE LAW AND SUPREME COURT CASES

Violates Article 14 of the Indian Constitution

The Section 497 of the Indian Penal Code which deals with adultery is gender biased mainly on the grounds that it does not allow the wife to prosecute the woman with whom her husband has adultered though it allows the husband to prosecute the man who has adultery with his wife.

The law has considered woman to be a victim not as author of the crime.[45] This very notion of victimhood lies on "the psychological belief of considering oneself helpless, lacking power to overcome the situation and in a need of some external agency to take them out of the situation." The State enhances the state of powerlessness and impotence which is central to the ideology of victimhood through this kind of legislation.

The contention of the Honourable Court is that the community punishes the "the 'outsider' who breaks into the matrimonial home and occasions the violation of sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses subject to the rider that the erring 'man' alone can be punished and not the erring woman. It does not arm the two spouses to hit each other with the weapon of criminal law."[46] However, the Court misses out the point that the wife has no relief in Criminal law though the same provision is given to the husband, and in a case where the woman is unmarried the woman cannot be prosecuted altogether. This can be seen as a violation of natural justice which is fundamental to our Constitution.[47] Article 14 read with 16(1) accords right to equality or an equal treatment consistent with the principles of natural justice.

Section 497 does not come under the purview of Article 15 (3)

The framers of the Constitution believed that in the middle of the twentieth century no one would discriminate on the ground of sex.[48] However, it is clearly seen that the legislature is clearly making discrimination on the grounds of sex on the pretext of giving "protective discrimination" to the women. The special treatment given to the women under cl. 3 of Article 15 should be restricted to such cases which must be related to some features or disability which are so peculiar that it differentiate women from men as a class.[49]

The equality clauses in the Indian Constitution were framed on the basis of the American Constitution, so to ignore the background is like not only violating the basic norms of comparative constitutional law but violating the basic principles of interpretation of the constitution.[50] The American Supreme Court has stated that where both the sexes are on equal footing

[43] AIR 1985 SC at 1621.
[44] AIR 1988 SC 835.
[45] Vishnu, AIR 1985 SC at 1621.
[46] AIR 1985 SC at 1618.
[47] Subhash C. Kashyap, Constitutional Law of India at 481 (Universal Law 2008).
[48] Constituent Assembly Debates. Vol. VII. at 650
[49] Durga Das Basu, Commentary on the Constitution of India at 1796 (Wadhwa 8th ed 2007); See also, Srinivasan v. Padmasini, AIR 1957 Mad 622
[50] State of U.P. v Deoman, AIR 1960 SC 1125, 1131; See also Basu, Commentary on the Constitution of India at 1796 (cited in note 27).

and discriminations to a particular sex as a class would be like denying the equal protection clause as enshrined in the constitution; - "the very kind of arbitrary legislative choice [is] forbidden by the Constitution."[51] Even any kind favour may it be positive or negative to the women for "administration convenience" would be repealed or struck down as discriminatory and unconstitutional.[52]

The underlying law at the present situation, considers only men as offender, as a class; the women are not physically or socially such situated that they are incapable of committing the offence of adultery. Further, both the sexes are on an equal footing in committing the offence of adultery, this kind of legislation are discriminatory and arbitrarily protecting the women. The Section 497 of the Indian Penal Code is nothing but violative of the equality clause under Indian Constitution.

CHANGING SOCIAL CONDITIONS

Polygamy in all religions and cultures generally except from Muslims, has stopped to exist and moreover become illegal to do such an act. now there is monogamy that is prevalent in the form of marriage. Today, not only a person who has two women can be prosecuted for bigamy, but his second marriage is void ab initio. Unlike before, when it was necessary to prove that the husband "living in adultery" to get a divorce, even a single case of sexual intercourse with a person other than the spouse allows other spouse to divorce. In today's world the lifestyle of masses changes drastically. What they earlier prefer to do, is what they are not at all interested today. The ethics and moral standard of people also changes with the time. So there is a need to widely interpret the statute as the law is for the people and not vice-versa.

At present, wives are not denied of their spouse's adoration and consideration and mates can scarcely keep up any polygamous or extramarital relations without inviting any legal consequences. Indeed the meaning of infidelity in common law is much more extensive in degree than in criminal law. The individual laws, which did not exist in the present configuration the time this law was passed, have gotten to be operational as well as given sort of a level playing field for both, the spouse and the wife. Commonly, these components have made the then question of Section 497 out dated.

History has proven time and again that the reasons which justified for the exemption of women for the offence of adultery in the most recent century are no more valid today, the results of revising the meaning of adultery to make women culpable would be horrific. Though we the people of India has undergone many changes but there are still may instances where the violence, atrocities against women can be seen in day to day life, still in many societies and culture the condition of women is unimaginable, thus the women are not being dealt with equality in every society. We live in a society where a long way from indictment, even a single charge women character is sufficient to procure devastation in her life. In this event that women are made culpable for adultery Section 497 would get to be asylum for all spouses and in-laws needing to dispose of their wives and daughter- in-laws at the expense the women's societal position. When a women's notoriety is demolished she will turn into a simple prey for ill-use by other men. The Legislature must comprehend and try to understand that what is not equal cannot be treated at par with others by mere changing the definition of law. Making a procurement which makes a women lose her notoriety in Indian culture is similar to slaughtering the spirit of the individual while keeping just the body alive. In any conditions such law should be promoted. In this way, changing the meaning of adultery to make women culpable under the name of gender parity will just give society a ground to malign women and build the divergence of status further crushing the very motivation behind the proposed revision.

SHOULD ADULTERY BE DE-CRIMINALISED?

In most part of the European Union, including England, Austria and Italy adultery is not considered to be a criminal offence anymore.[53] The European Union (EU) has condemned death penalty for adultery from time to time.[54] It had also criticised the Turkey's introduction of punishment for adultery; it is a clear indication of the stand taken by EU of considering adultery

[51] Reed v Reed, (1971) 404 US 76, 77.
[52] Frontiero v Richardson, (1973) 411 US 677, 690.
[53] See generally, Ruth A. Miller, The Limits Of Bodily Integrity: Abortion, Adultery, And Rape Legislation In Comparative Perspective at 122-23 (Ashgate 2007).
[54] See for example, European Parliament resolution of 24 May 2007 on human rights in Sudan, Official Journal 102 E, 24/04/2008 487 – 488 (European Parliament 2007), online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do? uri=CELEX:52007IP0218:EN:HTML (visited Mar 14, 2010); Written Question E-3216/00 by María Izquierdo Rojo (PSE) to the Council Maryam Arubi sentenced to death by stoning for adultery, Official Journal C 136 E , 08/05/2001 207 – 207 (European Parliament 2000), online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do? uri=CELEX:92000E3216:EN:NOT (visited Mar 14, 2010); Written Question E-0517/03 by Miet Smet (PPE-DE) to the Commission Women's rights in Nigeria, Official Journal C 051 E , 26/02/2004 0030 – 003 (European Parliament 2003), online at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:92003E0517:EN:NOT (visited Mar 14, 2010).

as a non-criminal offence. In United States of America the law of adultery varies from one State to another; however after the decision in *Lawrence v. Texas* by U.S. Supreme Court the validity of adultery law is under debate. Though, Islamic countries like Afghanistan, Nigeria, Pakistan, Yemen, Sudan, Saudi Arab, Iran have provisions for death penalty as the maximum punishment for adultery but the concept is deeply rooted in the traditional, religious view of Shariah.[55]

In a survey made by the 42d Law Report Commission in 1972 on the question for the repeal of the section 497, majority of the judges and lawyers wanted to retain the section and only a minority want it to be repealed. They also argued that India has not reached such a situation to make a radical change in the law. However, they have also revealed that there are only a few complaints related to criminal adultery, and only a few of them are sent for imprisonment as most of the accused in cases has been let free only with a fine.

The **United Nations Human Rights Commission** has expressly mentioned that "it is undisputed that adult consensual sexual activity in private is covered by the concept of privacy"[56]. Also the Committee taking into notice the criminalization of some behaviours such as those characterized as "debauchery" by some states asked that the states "should refrain from penalizing private sexual relations between consenting adults" and to follow the Article 17 and 26 of the International Covenant on Civil and Political Liberty. India being a party to this covenant should think about decriminalizing adultery. The Amnesty International has also openly criticized and opposed those laws which criminalise sex between two consenting adults in private place.

The National Women Commission, India wants that the rather than making provisions to amend the laws to treat the women as criminal in the case of adultery they want that the section to be repealed and treat the offence as a civil wrong rather than a criminal offence even the Supreme Court of India has impliedly said that the man and woman should not strike each other with the weapon of criminal law.[57] Even the 42d Law Commission Report suggested that the main objective of the law is not to put a person under imprisonment, the court generally comes in settlement with the offender in mercenary level.

The Supreme Court has already said that the philosophy behind this law is to that social good is promoted that the husband and the wife is allowed to "make up" or "break up" the matrimonial relation rather than prosecuting and dragging each other to the Criminal courts. They can live together in the spirit of "forgive and forget" or get separated from each other by approaching a civil court for divorce. Moreover, the law is made for the betterment of the children who can be saved from the trauma of seeing one of the parents being jailed.

Taking into consideration the development in other developed and progressive countries and the suggestion from the committees and other place it is apt time to de-criminalize adultery and make it a civil wrong.

CONCLUSION AND SUGGESTIONS

The article concludes that there has been a huge change in the Indian society; women are no longer considered to be the chattel of her husband. The law as it stands today violates the Indian Constitution that includes equal justice for every citizen of India and would not discriminate on the grounds of sex. The "special provision" clause under Article 15 (3) for women cannot be extended so as to create arbitrary discretion for such discrimination by the legislature, as in the case of adultery. The section 497 of the IPC which deals with adultery needs to be declared unconstitutional. Suggestions from the various Law Reform Committees also give a hint that essentially this section should be amended, or should be repealed altogether. The policy makers should immediately repeal the current law on adultery based on the suggestions from the various committees to give just and equal justice to the citizens of India taking into consideration the injustice rendered in the process. Further, in the present situation the marriage is considered to be a civil contract between two consenting adults; the civil law gives a much wider definition of adultery, and is sufficient and effective. Taking into consideration that number of western and developed countries has decriminalized adultery or has made it a civil wrong, there is a need to decriminalize adultery in India

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[55] Daniel Ottosson, Legal Survey On The Countries In The World Having Legal Prohibitions On Sexual Activities Between Consenting Adults In Private (2006), online at http://www.ilga.org/statehomophobia/LGBcriminallaws-Daniel_Ottoson.pdf (visited Sept 09, 2009); See also Hugo Hotte and Geneviève King Ruel, A Comparative and Legal Analysis of the Cambodian Law on Monogamy (2007), online at http://ieim.uqam.ca/IMG/pdf/etude-de-cas-hotte-king.pdf (visited Sept 09, 2009).

[56] Death by stoning/flogging, (Amnesty International 2006), online at http://www.amnesty.org/en/library/info/MDE25/006/2006 (visited Sept 09, 2009).

[57] See, NCW rejects proposal to punish women for adultery, The Hindu, (Dec 26, 2006), online at http://www.hindu.com/2006/12/26/stories/2006122603270900.htm (visited Sept 09, 2009); See also, V. Revathi v Union of India, AIR 1988 SC 835.

[58] AIR 1988 SC at 838.

as well. Looking into all these arguments, it is evident that adultery should not be a criminal offence. This change should be done either through declaring it unconstitutional by the Constitutional courts of the country or repealing the debated section through legislative amendments immediately.

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POSITION OF A CHILD IN THE WOMB WITH REFERENCE TO RIGHTS OF A POSTHUMOUS CHILD

Abstract

This research project mainly deals with the laws relating to the legal position of a child in the womb of a mother with respect to a partition or succession of a property of the deceased. The research project tries to identify various cases which involves the distribution of property of the deceased to a posthumous son and his rights on the said property. To understand the position and his legal rights on the property of the deceased, the research project has placed reliance on certain case laws. These case laws are: (i) Project Officer, Giddi A Colliery CCL v. Sanjay Prasad Chaurasiya and anr., (ii) Rama Bhat by L.Rs. and anr. v. Vijaya Kumar and ors., (iii) Priyesh Vasudevan v. Shameena, (iii) Loganayaki v. Pullathal, (iv) Hemraj and anr. v. Ramdhan and ors., (v) Ramazan and ors. v. Narbada and ors., and (vi) Malbika Dutta v. Chief Executive Officer. By studying these cases, the research project is attempting to bring other legal aspects relating to the position of a child in the womb into one paradigm.

The basic objective of this research project is to move beyond the scope of a child in the womb as used in Section 20 of the Hindu Succession Act 1957 and try to understand the legal position with respect to other legislations such as – Limitation Act, Registration of Births and Deaths Act, Indian Evidence Act, Income Tax Act, Transfer of Property Act etc. By doing so, the research project is trying to extract the legal provisions of the aforementioned legislations which would be pertaining to the position of the child in the womb. In furtherance to this, the research project also brings in different understandings of a child in the womb with respect to various legislations. Thereby, the research project also attempts to compare and evaluate definitions as provided in various legislations.

This research project tries to understand the origin and purpose of Section 20 of the Hindu Succession Act by referring to digests and commentaries.

Lastly, the research project would be keeping forth certain suggestions and recommendations as to scope and position of the child in the womb as used in Section 20 of the Hindu Succession Act.

Research Methodology

Scope and Objective:

The scope of this research extends to the topic of position of a child in the womb. The sub topic of this study is the legal rights of a posthumous child. This research tries to find the purpose of Section 20 of the Hindu Succession Act 1957 and also tries to study the laws which states the pertaining to the topic. This research work is not limited to Hindu Succession Act 1957. The object of this research is to understand the current position of the Section 20 of the Hindu Succession Act and to study its validity.

Research Methodology:

The Research Methodology adopted in this study is analytical and descriptive kind. The research places heavy reliance on the judgments by the High Court and the Apex Court of India, especially in the case of Loganayaki v. Pullathal. The research also places reliance on primary sources of law such as statutes and central laws. The scope of this research project is limited to a male child's rights who is in the womb. The research project does not deal with any laws of succession with respect to a female child in the womb. The author has also referred to various secondary sources like books, articles, digest and commentaries.

Research Questions:

1. Whether or not the Hindu Succession Act provides an **apt definition** of a posthumous child with regards to Section 20 of the Act?
2. Whether or not the child in the womb is barred with a **limitation** period to claim his rights?
3. **Lacunae** in the concept of the child born alive!

Hypothesis:

HYPOTHESIS I – SECTION 20 OF THE HINDU SUCCESSION ACT WOULD NOT BE APPLICABLE TO A STILL BORN CHILD

If a child is born to a mother and happens to be a still-born, then the rights which were to be claimed by such a child cannot be claimed. Neither can the mother claim these property rights on the son's behalf who was a still-born.

For a child in the womb to be eligible to claim property rights of the deceased, such a child must be alive at the time of the delivery.

HYPOTHESIS II – A CHILD IN THE WOMB IS BARRED BY THE LIMITATION PERIOD TO CLAIM HIS PROPERTY RIGHTS AFTER THE PERIOD CROSSES THE STIPULATED TIME IN LIMITATION ACT

A child who is born, cannot claim any rights of the property on his own. Therefore, such a claim can be maintainable by his L.Rs. i.e. in most of the cases his parents or guardians. However, the child can also claim these rights on his own after attaining the age of majority. The period after the age of majority is to be taken in consideration to determine whether or not, the person is barred by the limitation act.

HYPOTHESIS III – THE HINDU SUCCESSION ACT DOESN'T GIVE AN APPROPRIATE DEFINITION OF A POSTHUMOUS CHILD

The Act of 1957 does not give an exhaustive list of determinants to determine his legal position after he has taken a birth. This has been provided in the Registration of Births and Deaths Act 1969 which clearly defines on what grounds a child after the delivery can be deemed to be a 'live-child'.

Mode of Citation

A uniform system of citation is followed throughout in the contents.

Introduction

The succession as per Hindu Succession Law, the succession has been classified into testamentary and intestate successions. Intestate successions refer to the succession in which there is no existence of a testament or will of the pre-deceased. This project deals with the succession of an unborn child of the deceased. As per the Hindu Succession Law, a son or a daughter of the deceased is a part of the first class of succession who have a right to inherit the property of the deceased in a case of intestate succession.

However, the issue arises wherein such a child (daughter or a son) is not born yet but is very much alive in the womb of the mother. In such cases, whether the child is entitled to receive a share of the deceased has been clarified in Section 20 of the Hindu Succession Act. As per this provision, a child which is present in the womb of the mother is entitled to the share of the property as per the intestate succession.

As per Mulla's commentary on Hindu Law,[59] dealing with Section 20 reads thus:

"It is by fiction or indulgence of the law mat the rights of a child born in *justo matrimonio* are regarded by reference to the moment of conception and not of birth and the unborn child in the womb if born alive is treated as actually born for the purpose of conferring on him benefits of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. This view is not peculiar to the ancient Hindu Law but one which is adopted by all mature systems of jurisprudence. This section recognises that rule of beneficent indulgence and the child in utero although subsequently born is to be deemed to be born before the death of the intestate and inheritance is to be deemed to vest in the child with effect from the date of the death of the intestate."

In the book "Salmond on Jurisprudence"[60] the author observed as follows:-

[59] Mulla's on Hindu Law, Fifteenth Edition cited in Priyesh Vasudevan v. Shameena, P. and Ors.
[60] Salmond on Jurisprudence (7th Edition).

"A Child in its mother's womb is for many purposes regarded by a legal fiction as already born in accordance with the maxim. Nasciturus pro iam nato habetur in the words of Coke; The law in many cases hath consideration of him in respect of the apparent expectation of his birth."

Regarding the right of a son born to a father in as Mitakshara family and after partition had taken place between the father and his other sons different views are expressed. According to one view, the partition is to be opened up again and in order to give the after-born son the share which he would have had if he had been in existence at the time. Another view is that after-born son is to receive the share of the father alone. The principle "*En VentreSa Mere*" applies and a son who was in his mother's womb at the time of partition but was born subsequent to it is entitled to reopen the partition and to receive a share equal to that of his brother. For a son in the womb is in point of law m existence.

Definition: Apt or not?

In *Sabapathi v. Somasundaram,*[61] a reference has been made to *Blackstone's Commentary* which says:

"*An infant in ventre sa mere is supposed to be born for many purposes. It is capable of having a legacy or a surrender of a copy-hold estate made to it. It may have an estate assigned to it and it is enabled to have an estate limited to its use and to take afterwards by such limitation as if it were then actually born.*"

A child in the womb refers to an unborn child. Such a child may also be referred as "posthumous child." This project dwells around the issues related to the rights available to a posthumous child. As per the Hindu Succession Act, a child in the womb is entitled to the shares of the distribution of the property which was made prior his/her birth. However, in order to understand the rights of a child in the womb, it is important to know the definition of such an entity under the Indian statutes and the recognition given to this entity.

For the purpose of Section 20 of the Hindu Succession Act, the child must be born alive out of the mother's womb and should not be a still born.

As per Section 2(1)(e) of the Registration of Births and Deaths Act 1969, "foetal death" has been defined as – "absence of all evidence of life prior to the complete expulsion or extraction from its mother of a product of conception irrespective of the duration of pregnancy."

On the other hand, Section 2(1)(d) of the same Act defines "Live Birth" as – "The complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life, and each product of such birth is considered live-born." Therefore, the only material that is required to find out whether a child is born alive or not, is the time when the product of conception is thrown out; it should be seen whether it was a dead foetus or a foetus which is alive by breathing or showing any other signs or evidence of life. The best evidence possible on this aspect is the Medical Attendant at that point of time. When he was in the box, no suggestion was made to him that he was swearing falsely or was interested in the defendant. The doctor gave normal evidence and placed reliance upon public and domestic documents maintained by him and ultimately swore that in the course of his attendance, he extracted the child by forceps, and that the child was alive, though asphyxiated. The child, therefore, should be deemed to have been breathing or there were signs of life at the time of birth.[62]

The Act of 1969 has in a detailed manner shed light on the distinction between a live-born and foetal death and the basis of distinction has also been elaborated through the above cited case law. Unlike the Act of 1957, which barely distinguishes between a still born and a live born. As per Section 20 of the Act of 1957 states as follows - "A child who was in the womb at the lime of the death of an intestate and who is subsequently born alive shall have the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the death of the intestate."

In the case of *M.S. Subbukrishna and Ors. v. Smt. Parvathi and Anr.*[63] reported in a Division Bench of the Court with regard to the scope of Section 20 of the Hindu Succession Act 1956 has held as follows:

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[61] (1882) 2 M.L.J. 244 : I.L.R. Mad. 76.
[62] Loganayaki v. Pullathal, A. No. 645 of 1972.
[63] ILR 2007 KAR 3939

"From a reading of Section 20 of the Act and the law laid down in different decisions referred to above, in our considered view, the following principles will emerge:

i. A child in the womb is entitled to for a share in co-parcener property of an undivided Hindu joint family.

ii. The child is entitled for a share in the joint family property when born alive and not otherwise.

iii. On behalf of the child in the womb no partition suit is maintainable.

iv. In case of a partition of the joint family property by the father amongst his sons, even a son born after a partition arrangement can challenge the partition if the father has not retained separate share for himself exclusively.

v. In a partition if a share is allotted to the father, a son begotten or born after the partition is not entitled to have the partition reopened and to claim redistribution of the shares. But a child begotten after partition is entitled to succeed to the father's share and to his separate or self-acquired property to the exclusion of divided sons."

From the reading of the aforesaid provision, it is manifest that this section imports a fiction saying that the child in the womb shall be deemed to have acquired a right to inheritance to the intestate as if he or she had been born before the death of the intestate. The concept behind this is that at the time of death of the intestate the child is alive and acquires equal right along with other heirs. The right of succession cannot, however, be exercised unless the child is born alive. This section is statutorily recognizes the Mitakshara Hindu Law prior to the commencement of the Act.[64]

It is by fiction or indulgence of the law that the rights of a child born in *justo matrimonio* are regarded by reference to the moment of conception and not of birth and the unborn child in the womb, if born alive, is treated as actually born for the purpose of conferring on him benefit of inheritance. The child in embryo is treated as in esse for various purposes when it is for his benefit to be so treated. In the case of Bayava Sudapa Desai v. Prava Tewa,[65] Partkar J. considering a similar question and held that by Hindu Law, as a general principle, a person entitled to succeed the estate of the deceased includes the child in embryo and children subsequently adopted.

At last, for the purpose of aiding to the definition of posthumous child, the project has also placed reliance on the Salmond's view on this matter. Salmond in his Jurisprudence[66] states the following:

"*A person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person whether a human being or not and no being that is not so capable is a person even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance and this is the exclusive point of view from which personality receives legal recognition.... There is nothing in law to prevent a man from owning property before he is born. His ownership is necessarily contingent indeed, for he may never be born at all but it is nonetheless a real and present ownership. A man may settle property upon his wife and children to be born of her or he may die intestate and his unborn child will inherit his estate.... A child in its mothers' womb is for many purposes regarded by a legal fiction as already born in accordance with the maxim nasciturus pro iam nato habetur. In the words of Coke the law in many cases hath consideration of him in respect of the apparent expectation of his birth. Thus in the law of property there is a fiction that a child inventre sa mere is a person in being for the purposes of (1) the acquisition of property by the child itself; or (2) being a life chosen to form part of the period in the rule against perpetuities. The rights of an unborn son whether proprietary or personal are all contingent on his birth as a living human being. The legal personality attributed to him by way of anticipation falls away ab initio if he never takes his place among the living; Abortion and child destruction are crimes but such acts do not amount to murder or manslaughter unless the child is born alive before he dies; a posthumous child may inherit, but if he dies in the womb or is still-born his inheritance fails to take effect and no one can claim through him though it would be otherwise if he lived for an hour after his birth.*"

As per Salmond, though the dead possess no legal personality, it is otherwise with the unborn. There is nothing in law to prevent a man from owning property before he is born. His ownership is necessarily contingent, indeed, for he may never be born at all; but it is none the less a real and present ownership.[67] From the principle stated above it is apparent that the

[64] Project Officer, Giddi A Colliery CCL v. Respondent: Sanjay Prasad Chaurasiya and Anr, M.A. No. 259 of 2002.
[65] 1933 Bom 126.
[66] Salmond on Jurisprudence, 1957 Edition, Page nos. 350, 353 and 354.
[67] Salmond on Jurisprudence, 11th Edition, at pages 354 and 355.

existence of a child yet unborn is a fiction created for the benefit of the child that is born with a view to protect its rights to property. The rule which is intended for the protection of the unborn is recognized[68] in cases of succession. A right to property on succession legally takes place under the law immediately after the death of the owner, as property cannot be without an owner and succession cannot be postponed. But where an owner of property dies while his wife is enceinte, a son that is born subsequently would take the property as the heir of his father although he was not in actual existence on the date when succession opened.

From the above authorities cited, we can say that the unborn child at the time of the distribution of the property is vested with rights over the share in the property of the deceased.

Exceptions

Section 20 of the Hindu Succession Act bestows a right on the unborn child to receive a share of the property of the deceased in the case of intestate succession. However, this right suffers from certain exception.

There are well recognized exceptions to it, e.g.:

i. an unborn son could not be given in adoption to another and

ii. a person can adopt a son to himself although his wife is pregnant at that time this he would be entitled to do even if he was aware of the pregnancy of his wife at the time of the adoption

Law of Limitation

As mentioned above, a child which is present in the womb of a mother is considered as a separate and distinct entity for the purposes of a share in the distribution of property of the deceased. However, even though a posthumous child is entitled to a share of property of the deceased, this distribution of property must be challenged by the person or by his/her Legal Representatives within a limited period of time.

In the case of Project Officer, Giddi A. Colliery CCL v. Respondent: Sanjay Prasad Chaurasiya and Anr.,[69] the facts have been presented as follows:

"*Admittedly this claim case has been filed after 29 years of the death of the deceased Ram Ball Chaurasiya father of the applicant. But as the applicant was in the womb of his mother at the relevant time of death of his father and after the birth of the applicant his mother solemnized her marriage with second husband, the delay caused in tiling of the case appears a bonafide one. It has become in the evidence of the applicant that applicant was brought up by his maternal uncle and when he attended the age of majority, filed the instant case along with a condonation petition which was already been condoned by Dy. Labour Commissioner vide his order dated 20.4.1994.*"[70]

In this case, claimant attained majority in 1986 at the age of 18 years but for about 14 years no claim was lodged before the Commissioner after attaining majority. The Commissioner therefore, in absence of sufficient evidence has committed serious illegality in condoning the delay of 14 years in filing claim application. Therefore, the bench was of the view that claim application of the claimant/respondent was hopelessly barred by limitation.[71]

Similarly, in the case of *Priyesh Vasudevan v. Shameena, P. and Ors*.,[72] the time limit for preferring an application by a minor or a child in the womb from the scheme was referred to. It read as follows:

"*Time limit for preferring application*

19. The time limit for preferring applications under the scheme will be 2 years from the date of death of Govt. servants. In the case of minor, the period will be within 3 years after attaining majority."

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[68] T.S. Srinivasan v. CIT (1962)1 MLJ 163.
[69] Project Officer, Giddi A Colliery CCL v. Respondent: Sanjay Prasad Chaurasiya and Anr, M.A. No. 259 of 2002.
[70] M.A. No. 259 of 2002, paras 10 to 12 of the order of Commissioner.
[71] Project Officer, Giddi A Colliery CCL v. Respondent: Sanjay Prasad Chaurasiya and Anr, M.A. No. 259 of 2002, para 24.
[72] W.A. No. 860 of 2003.

And in the case of *Firm Huni Lal-Rali Ram v. Altaf-ul-Rahman*,[73] wherein it was held that although under certain system of law, such as Hindu Law, a child en ventre sa mere is by a legal fiction and for certain purposes considered to be born in the sense that he has a right of inheritance in his father's property, such a fiction does not govern the rule laid down by the law of limitation. It was further held that under the law of limitation, minority begins at the date of birth and not at the date of conception."

Also, as per the Limitation act provision, being a minor is considered as a disability[74] for the purpose of instituting a suit or filing an application. Once this disability ceases to exist i.e. the person becomes a major as per the Indian Majority Act. [75] However, there is also an explanation to the above stated provision of the Limitation Act which states – "*Explanation. - For the purposes of this section, 'minor' includes a child in the womb.*" Section 8 of the Limitation Act provides that upon the cessation of this disability, the maximum time period available to such a person is 3 years. From this, we can clearly see that the definition provided for a minor is inclusive of the child in the womb.

It is well settled that condonation on the ground only on ignorance of law of limitation can be interfered with by the High Court. It is equally well settled that if a question of fact is decided by considering material which is irrelevant or the decision is based on no evidence or on conjecture and surmises then clearly an issue of law arises. Normally, the finding of fact recorded by the Commissioner in the matter of condonation of delay is not interfered with but certainly when such condonation of delay is of a long period and no evidence is led to satisfy the delay then such order needs interference by this Court. Thus, *ratio decidendi* of this case was that if claim is barred by limitation, then question of payment of compensation does not arise.

Thus, in the law of property, there is a fiction that a child *en ventre sa mere* is a person in being for the purposes of

i. the acquisition of property by the child itself, or
ii. being a lid, chosen to form part of the period in the rule against perpetuities.[76]

The judgment Lord Chancellor Westbury in *Blasson v. Blasson*,[77] where it was said "that the fiction or indulgence of the law which treats the unborn child as actually born applies only for the purpose of enabling the unborn child to take a benefit which if born it would be entitled to, and that it is limited to cases where *de commodis ipsius partus quaeritur.*" Thus, as per the Hindu Succession Law, a child is vested with a legal right to inherit from the date of his/her very birth. On the contrary, in Limitation Law, minority commences from the date of the birth and not from the date on which such child has been conceived on.[78]

Lacunae

As it is seen that the Hindu Succession Act does not appropriately provides for a definition of a posthumous child and so the courts have relied to other sources such as – Blackstone's commentary, Jurisprudence by Salmond and a few other secondary sources to determine the scope of posthumous child. Courts have also relied on various other Indian legislations such as the Indian Majority Act, Limitation Act, Income Tax Act etc in order to understand this concept better. However, there lies a not-so-evident lacuna in this understanding of the posthumous child. From the above cited cases it is clear that a child is only entitled to a right if such a child is born alive. If the child is a stillborn, in such a case, the child will not be entitled to any share nor will his or her legal representatives. The definition of a live child has been given in the Registration of Births and Deaths Act.[79] As per this definition, a child is said to be alive if there is any sign of breathing or any other signs of life. However, it must be noted that breathing is sign of life which the child develops post-delivery. While the child is still present in the womb, such a child is still considered as alive regardless of the fact that whether or not this child was breathing in the womb or not. Thus, breathing as a sign of life is flawed parameter to determine whether the child was born alive.

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[73] A.I.R. 1939 Lah 290
[74] Section 6 of Limitation Act 1963.
[75] Section 3 and 4 of the Indian Majority Act 1875.
[76] M.A. No. 259 of 2002, Cited Salmond on Jurisprudence (7th Edition).
[77] (1964) 2 De.G.J. & S. 665 : 34 L.J. Ch. 18
[78] Firm Huni Lal-Rali Ram v. Altaf-ul-Rahman, A.I.R. 1939 Lah 290.
[79] Section 2 (1) (d) of the Registration of Births and Deaths Act 1969.

Conclusion

As it has been discussed and highlighted in this project that there exists several interpretations of the laws of succession, especially regarding the position of an unborn child. Since there is a lack of a proper definition of the posthumous child, every legislation involves a different jurisprudence behind. It becomes very difficult for the judiciary to interpret laws. In order to bring uniformity and more clarity, the need of the hour is to amend/enact the/a legislation which would be dealing with every aspect.

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2. *Loganayaki v. Pullathal*
3. *Priyesh Vasudevan v. Shameena*
4. *Project officer Giddi A*
5. *Rama Bhat v. Vijaya Kumar*
6. *Ramaram and ors v. Narbada and ors.*

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RULES FOR SUCCESSION TO THE PROPERTY OF A MALE INTESTATE UNDER THE HINDU SUCCESSION ACT, 1956

ABSTRACT

Succession[80] implies the act of succeeding or following, as of events, objects, places in a series. In the eyes of law however, it holds a different and particular meaning. It implies the transmission or passing of rights from one to another. In every system of law provision has to be made for a readjustment of things or goods on the death of the human beings who owned and enjoyed them. Succession, in the sense of the partition or redistribution of the property of a former owner is, in modern systems of law, subject to many rules. Such rules may be based on the will of a deceased person. However, there are cases in which a will cannot be expressed and eventuality, there need to be some broadly accepted rules upon which the property shall devolve upon those succeeding him. There can be no doubt, however, that these rules primarily are the characteristics of the social conditions in which that individual lived. They represent the view of society at large as to what ought to be the normal course of succession in the readjustment of property after the death of a citizen.

Thus in such cases, there must be rules where under the aggregate of things and claims relinquished by a deceased person may pass to relatives or other persons who stood near him in a way determined by law. There must also be, simultaneously, rules which determine such devolution, should several persons of the kind stand equally near in the eye of the law and the consequence would be a division of the inheritance. It is upon this basis that noted author Mulla states, "the law of inheritance comprises of rules which govern devolution of property, on the death of the person, upon other persons solely on account of their relationship with the former."[81] Speaking purely in legal terms, Black's Law Dictionary defines inheritance as "receipt of a property from an ancestor under the laws of intestacy" i.e. "by bequest or device."[82]. However over quest in not limited to such devolution.

[80] Latin: succession, from succedere, to follow after
[81] Mulla, Hindu Law (2), (Butterworths, New Delhi, 2001), 277.
[82] Bryan A. Garner (ed.), Black Law Dictionary, (West Group. St. Minn, 7th edition), 787.

The topic of the present study is a general one i.e. a study of the general principles of intestate succession in Hindu Law. Though the rules prior to the Hindu Succession Act, 1956 were varied and manifold, the law has been settled by the Act with modifications and amendments to suit the needs to the society and also reforming, to a limited extent though, the position of women in the Hindu society as to her rights to property.

SCOPE AND OBJECTIVE OF THE STUDY

The present report discusses and analyzes the rules of inheritance that the Hindu Succession Act, 1956 prescribes for matters of succession when an individual (a Hindu male or female) dies without prescribing for how his/her property shall devolve upon his/her death i.e. rules of intestate succession. To begin with, however it is important to note, that rules of succession cannot be studied in isolation. They have to be understood and studied in the context of the prevailing social conditions, the existing social structure, the hierarchal structure existing, the comparative status of females as compared to males, the reliance to religious customs and traditions that that particular society places and most importantly the reforms which the prevailing government intends to introduce in the wake of reforming or modifying the existing rules and principles.

RESEARCH METHODOLOGY

The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research.

RESEARCH QUESTIONS : What is/are the,

1. General principles of intestate succession in Hindu Law?
2. Comparative statuses of females as compared to males?
3. The reforms which should be introduced in the wake of modifying the existing rules and principles for the betterment?

INTRODUCTION

Succession[83] implies the act of succeeding or following, as of events, objects, places in a series. In the eyes of law however, it holds a different and particular meaning. It implies the transmission or passing of rights from one to another. In every system of law provision has to be made for a readjustment of things or goods on the death of the human beings who owned and enjoyed them. Succession, in the sense of the partition or redistribution of the property of a former owner is, in modern systems of law, subject to many rules. Such rules may be based on the will of a deceased person.

However, there are cases in which a will cannot be expressed and eventuality, there need to be some broadly accepted rules upon which the property shall devolve upon those succeeding him. There can be no doubt, however, that these rules primarily are the characteristics of the social conditions in which that individual lived. They represent the view of society at large as to what ought to be the normal course of succession in the readjustment of property after the death of a citizen. Thus in such cases, there must be rules, where under, the aggregate of things and claims relinquished by a deceased person may pass to relatives or other persons who stood near him in a way determined by law. There must also be, simultaneously, rules which determine such devolution, should several persons of the kind stand equally near in the eye of the law and the consequence would be a division of the inheritance. It is upon this basis that noted author Mulla states, "the law of inheritance comprises of rules which govern devolution of property, on the death of the person, upon other persons solely on account of their relationship with the former."[84] Speaking purely in legal terms, Black's Law Dictionary defines inheritance as "receipt of a property from an ancestor under the laws of intestacy" i.e. "by bequest or device."[85] However over quest in not limited to such devolution.

The present paper discusses and analyzes the rules of inheritance that the Hindu Succession Act, 1956 prescribes for matters of succession when an individual (a Hindu male or female) dies without prescribing for how his/her property shall devolve upon his/her death i.e. rules of intestate succession. To begin with, however it is important to note, that rules of succession

[83] Supra 1 [84] Supra 2 [85] Supra 3

cannot be studied in isolation. They have to be understood and studies in the context of the prevailing social conditions, the existing social structure, the hierarchal structure existing, the comparative status of females as compared to males, the reliance to religious customs and traditions that that particular society places and most importantly the reforms which the prevailing government intends to introduce in the wake of reforming or modifying the existing rules and principles.

The topic of the presents study is a general one i.e. a study of the general principles of intestate succession in Hindu Law. Though the rules prior to the Hindu Succession Act, 1956 were varied and manifold, the law has been settled by the Act with modifications and amendments to suit the needs to the society and also reforming, to a limited extent though, the position of women in the Hindu society as to her rights to property. The same has been elaborately discussed in the chapter titled the Hindu law of inheritance and the Hindu Succession Act, 1956.

However, as it is commonly said and believed, perfection can only be strived and sought for. It cannot be achieved. Similarly the principles of intestate succession, as laid under the Act cannot be said to be quintessential provisions as far as intestate succession is concerned. There are many lacunas and the Act which was once said to have improved the position of women in the existing Hindu society is, with the advancement of the society by full fifty years, criticized for being biased towards males and for discriminating between males and female heirs purely on gender grounds. The same has been analyzed in the chapter titled critical feature upon the Act.

With these contents being summarised in the chapter titled conclusion, the paper seeks to study the general principles and rules of male intestate succession in post modern Hindu law.[86]

SCHEME OF THE ACT

The presence of ancient Hindu law of can be traced back for long in history. The joint family system comes first in this familial historical order. This joint family system traces its origin to the ancient patriarchal system and even in its transition to the joint family system some of the features can still be traced. The earlier concept of joint family was somewhat analogous to that of a corporate body and the role of an individual was not considerable important, except that of the Karta. Social conditions, however, underwent considerable transformation and there grew up a body of rules of inheritance under the title Dayavibhaga which was explained by Vijnaneshwara as division of property, which becomes the property of another solely by reason of his relation to the owner.[87]

The main feature of the Act, as common to other legislations under the Hindu Code, is that it covers Buddhists, Jains and Sikhs and also other people who fall within the wide ambit of the term Hindu, as defined by various decisions from time to time and as finally settled in the landmark case of ***Shastri v. Mooldas***.[88] It is also to be noted that section 4 of the Act gives overriding effect to the provisions of the Act over any text, rule, custom or usage prevalent among the Hindus, as dealing with matters now covered under the provisions of the Act. The Act also supersedes any central or state legislation as so far as they are inconsistent with the Act.

The entire Hindu Succession Act, 1956 can be divided into three parts. While the first is general and contains definitions, scope and extent of applicability of the Act, the second part is incumbent upon inheritance that takes place when a Hindu (male or female) dies intestate i.e. without a will. The third part, though having only one section, is related to Testamentary succession wherein any Hindu can dispose of his property by a will in accordance with the provisions of Indian Succession Act, 1925. The second part i.e. the one dealing with intestate succession (for male intestate) is most illustrative and detailed. It even contains separate rules that apply for succession when a Hindu male dies.

To be specific, the scheme of the Act in the matter of succession to the property of a Hindu dying intestate (after coming into force of the Act) is to lay down a set of general rules for succession to the property of a male Hindu in sections 8-13, including the rules to ascertainment of the shares and portions of the various heirs. Section 17 provides for certain modifications and changes in the general scheme of succession to the property of male and female Hindus in relation to persons hitherto governed by the Malabar and Aliyasantana law. Sections 18-28 of the Act are headed 'General provisions relating to succession' and lay down rules which are supplementary to the provisions in sections 5-17.

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[86] As Dr. Warner Menski puts it, referring to the Hindu law after the enactment of the Hindu Code Bill in the series of legislation.
[87] Mulla, Hindu Law (2), (Butterworths, New Delhi, 2001), 277
[88] AIR 1966 SC 1119

Thus the legislatures have been successful in doing away with the complex procedures and rules that applied before the commencement of the Act as for the matter of inheritance of Hindus.

SUCCESSION OF MALE DYING INTESTATE

Sections 8 to 13 lay, generally, the order of succession when a Hindu Male dyes intestate. Section 8 lays the general rule of succession in case of males. This section propounds a new and definite scheme of succession and lays down certain rules of succession of property of a male Hindu who dies intestate after the commencement of the Act. The rules herein laid under the section are pivotal and have to be read along with the Schedule. They also have to be read with other sections in the chapter which contain supplementary and only merely explanatory provisions, which lay down the substantive rules involving legal principles.

Section 8[89] states that:

8. General rules of succession in the case of males. -

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

a) *Firstly, upon the heirs, being the relatives specified in class I of the Schedule;*
b) *Secondly, if there is no heir of class II then upon the heirs, being the relatives specified in class II of the Schedule;*
c) *Thirdly, if there is no heir of any of the two classes, then upon the agitates of the deceased; and*
d) *Lastly, if there is no agnate, then upon the cognates of the deceased.*[90]

Section 8 groups the heirs of a male intestate into four categories and lays down that his heritable property devolves firstly upon the heirs specified in Class I of the Schedule. They are son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son and widow of a predeceased son of a predeceased son. All these heirs inherit simultaneously. On failure of any such heir as specified in Class I, the property devolves upon the enumerated heirs specified in Class II, wherein an heir in the first entry is preferred over an heir in second category in the Class II and similarly, any heir in a higher entry shall be preferred over an heir in a lower category.

If there is no heir in either Class I or Class II, the property devolves upon the agnates of the deceased and even in absence, the property devolves upon the cognates of the intestate. Here, a person is said to be an agnate of another if the two are related by blood or adoption wholly through the males and cognate if the two are related by blood or adoption but not wholly through males i.e. there is intervention of a female ancestor somewhere in the line of descent or ascent.

Heirs in Class I :

- ✓ The adopted children (son or daughter) are also to be counted as heirs when succession is done.
- ✓ The children born of void or voidable marriage (by effect of section 16) are deemed to be legitimate children and are thus entitled to participate as sharers in the succession to the intestate.
- ✓ The widow inherits simultaneously with the other heirs and in case there are more than one widow, together they are entitled to one share which is to be divided equally amongst them.
- ✓ The widow is entitled to a share from the property of the intestate even is she remarries after his death.
- ✓ The widow of a predeceased son inherits with the other heirs. However her right (along with the children of the predeceased son) is dependent upon the share that the predeceased son would have been entitled to had he been alive. Also, she is excluded from the share if she has remarried before the death of the intestate.
- ✓ The daughter inherits simultaneously with the other heirs and gets the share as that of a son. She takes the property in

[89] Section 8 of THE HINDU SUCCESSION ACT, 1956
[90] PROF. G.C.V. SUBBA RAO, FAMILY LAW IN INDIA, (10th Ed., NARENDER GOGIA & COMPANY, 2016), 474

her individual capacity and not in the capacity of a woman's estate. Also, she is entitled to the property of the intestate even if she is married.[91]

- ✓ The mother inherits simultaneously with other heirs. She takes her share absolutely (because of section 14) and not with any limited interest. Also it has been held that unchastity of mother is no bar to her succeeding as heir to her son.[92] She is entitled to inherit even if she is divorced or is remarried. Here the term mother includes adoptive mother also.[93] However, if there is an adoptive mother, the natural mother has right to inherit the share of the intestate.[94] A mother is also entitled to inherit the property of her illegitimate son.[95]

Heirs in Class II :

- ✓ All heirs in Class II take cumulatively and not simultaneously i.e. they succeed only in the order of the Entries I to IX.[96] An heir in the higher entry excludes all heirs in the lower entries.
- ✓ The father in entry I includes an adoptive father. However, a father is not entitled to any interest in the property of his illegitimate son as opposed to the mother. Nevertheless, a father is entitled to inherit from his son born of a void or voidable marriage (under section 16). Also, a step father in not entitled to inherit from his step son.
- ✓ All heirs in one entry of Class II share the property simultaneously and equally and also to the exclusion of all heirs under subsequent entries.
- ✓ All brothers and sisters inherit simultaneously with the sister and other heirs in the Entry. Here the term brother include both full and half brother.[97] However when there is a full brother, he is always preferred to a half brother where, half brother means son of the same father but different mother. Uterine brother[98] is not entitled to share the intestate's property. However when the intestate and his brother are illegitimate sons of their mother, they are related to each other as brothers under this Entry.[99]

AGNATES

A person is said to be agnate of another if the two are related by blood or by adoption entirely or wholly through males.[100] It is important to note that agnates of the intestate do not include the widows of lineal descendents of the widows of those who may be related to the intestate as lineal male descendents because the definition of agnates does not extend to relatives by marriage but is confined to relatives by blood or adoption.[101] Here since these widows are not relatives by blood but relatives by marriage, they are not covered in agnates.

Also, there is no degree of relationship beyond which kinship is not recognised so that an agnate howsoever remotely related to the intestate is entitled to succeed as an heir. The relation by agnates also does not distinguish between male or female heirs. So long as the two are related on lineal male lines, they are covered under the definition of agnates. Also, there is no distinction between those related by half or full blood. However, those related by uterine blood are excluded.

COGNATES

A person is said to be a cognate of another if the two related by blood or adoption but not wholly through males.[102] In a cognate relationship, it does not matter as to whether there is intervention of one or more females. So long as one female exists in the line, it becomes a cognate relationship. Similar to that in agnates, persons related to the intestate by marriage are not included in the cognate relationship and thus widow or widowers of those related on cognate lines are not included in cognate relationship and the relationship is formed only if the two are related by blood or adoption.

Section 9 and 10 of the Act[103] states that:

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[97] Section 18 of THE HINDU SUCCESSION ACT, 1956.
[98] A brother from the same mother but different fathers.
[99] Mulla, Hindu Law (2), (Butterworths, New Delhi, 2001), 347.
[100] Section 3(1)(a) of THE HINDU SUCCESSION ACT, 1956.
[101] Mulla, Hindu Law (2), (Butterworths, New Delhi, 2001), 351.
[102] Section 3(1)(c) of THE HINDU SUCCESSION ACT, 1956.
[103] HINDU SUCCESSION ACT, 1956.

9. Orders of succession among heirs in the Schedule.-

Among the heirs specified in the Schedule, those in Class-I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.[104]

This section makes important rules which are supplementary to the primary and pivotal rules laid down in section 8 and the explicitly declare the order of succession among the class I and class II heirs and also class II heirs *interse.*

10. Distributions, of property among heirs in class I of the Schedule.-

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

- ✓ *Rule 1- The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.*
- ✓ *Rule 2- The surviving sons and daughters and the mother of the intestate shall each take one share.*
- ✓ *Rule 3- The heirs in the branch of each pre-deceased son or each predeceased daughter of the intestate shall take between them one share.*
- ✓ *Rule 4- The distribution of the share referred to in Rule 3-*

  (i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;

  (ii) among the heirs in the branch of pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

The object of section 10 is to deal with shares to which the heirs are entitled to where there are more than one to take simultaneously. The widow, the son, the daughter and the mother of the propositus take equal share. This does not mean that these four categories will get each 1/4th share. This section lays down rules as to how much every heir shall get to his or her share. The four rules are, thus, explanatory in nature as to how the shares shall be divided. The rules are,

(1) the widows, if there are more than one, shall all take together only one share and (read with section 19(b)) inherit that share equally as tenants-in-common and not as joint tenants.

(2) When there is more than one son, each son will get a share and similarly each daughter shall get a share and mother will also get a share. Thus we find that the general rule of inheritance under this rule is based upon the broad principle of equalization.

(3) If there are sons and daughters of the predeceased son or a predeceased daughter of the propositus, they shall be entitled to take together the share of their father or mother, as the case may be, and share them equally amongst them. The rule is that the family of the predeceased son shall be, together, entitled to one share that the predeceased son would have been entitled, has he been alive. The same applies in case of the family of a predeceased daughter. Thus it is clear that the heirs of the deceased in the branches of predeceased sons and predeceased daughters take not as *per capita* but as *per stripes*.

(4) Rule 4 is in the nature of a corollary to rule 3 which states that if there is a widow of a predeceased son of the propositus, she will take the share of the said predeceased son, equally among with the sons and daughters. The four rules in section 10 have to be read with the rules under section 19 of the Act which gives tow basis rules in case two or more heirs succeed together to the property of the intestate. They are,

(a) save as otherwise expressly provided in the Act, per capita and not per strip; and

(b) as tenants-in-common and not as joint tenants. This is subject to any express provision to the contrary.

11. Distribution of property among heirs in class II of the Schedule.

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.[105]

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[104] Supra 11

[105] Section 11 of THE HINDU SUCCESSION ACT, 1956

This section provides that when there are more than one heir in any one entry of Class II heirs of the Schedule, they shall share equally. For example, entry III contains for heirs viz, (i) the daughter's son's son, (ii) daughter's son's daughter, (iii) daughter's daughter's son, (iv) daughter's daughter's daughter. Thus according to this section, they all share equally. Here also it is important to note that the legislation does not lay down any rule of discrimination between any male or female heir. If two heirs are in the same entry, irrespective of their sex, they share equally. Thus the simple rule is enunciated that there is no precedence or priority among the different heirs specified in any one Entry. They all stand in *aequali jura* and take per capita subject to only one exception that full blood is preferred over half blood.

In the case of ***Arunachalathammal v. Ramachandran***,[106] it was contended that the different heirs mentioned in one entry (in this case Entry I of Class II) are subdivisions of that particular entry and they do not inherit simultaneously but here again there is a question of preference i.e. first the subdivision inherits and then in its absence, the later. The question arose because there were, in his case, one brother and five sisters of the intestate and no other heir and the brother contended that in a brother being in subcategory (3) of entry I, was to be preferred over sister who was in subcategory (4) of entry I and thus he was entitled to the full property. However the same was negated and it was held that all heirs in an entry inherit simultaneously and there is no preference to an heir in a higher subcategory within an entry to a heir in a lower subcategory in the same entry. Thus we find that the equality is between every individual heir of the intestate and not between the subdivision in any particular entry. In fact, the court went on to say that there were no subdivisions in any entry in Class II. They were just roman numerals representing the heirs in the entry.[107]

12. Order of succession among agnates and cognates.

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

- ✓ *Rule 1- Of two heirs, the one who has fewer or no degrees of ascent is preferred.*
- ✓ *Rule 2- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degree of descent.*
- ✓ *Rule 3- Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2, they take simultaneously.*

This section deals with the order of succession among agnates and cognates. It is clear from section 8 that agnates come within the scope of section 8(c) while cognates come within the scope of section 8(d). Also, by now, it is clear that the question of succession of cognates comes only when there are no agnates in the line where both the agnates and cognates come into the line of succession only if there are no Class I or Class II heirs.

Rule 1 lays down that out of two agnates or two cognates as the case may be, the one who has fewer or no degrees of ascent from the propositus shall be preferred. If the agnate is not having any degrees of ascent from the propositus, he shall be preferred. This rule of nearness is applicable in case of cognates also. Rule 2 lays down that where the number of degrees of ascent from the propositus is the same or none, the heir who has fewer or no degrees of descent shall be preferred.22 Rule 3 lays down the principle that in the case of a tie, i.e. where any of the two or more heirs cannot be said to be nearer to the propositus even after applying the rules 1 and 2, they shall take simultaneously. The same rules apply in case of the cognates. In accordance with the provisions of these three rules, the agnate and cognate relationship may be categorized as follows.

Agnates

(i) Agnates are descendents i.e. who are related to the intestate by no degree of ascent but wholly by degree of descent. For example, son's son's son's son and son's son's daughter and so on.

(ii) Agnates who are ascendants i.e. they are related to the intestate only by degrees of ascent and no degrees of descent. For example, father's father's father and father's father's mother and so on

(iii) Agnates who are collaterals i.e. they are related to the intestate by degrees both of ascent and descent. For example, father's brother's son and father's brother's daughter and so on.

Cognates

(i) Cognates are descendents i.e. they are related to the intestate by no degree of ascent. For example, son's daughter's son's son

[106] AIR 1963 Mad 255.
[107] Kumara Pillai v. Kunjulakshami Amma, [AIR 1972 Ker 66]; Krishna v. State of Haryana, [AIR 1994 SC 2563]

and daughter's son's son's son and so on.

(ii) Cognates who are ascendants i.e. they are related to the intestate only by degrees of ascent and not by descent. For example, father's mother's father and mother's father's father and so on.

(iii) Cognates who are collaterals i.e. they are related to the intestate by degrees both of ascent and descent. For example, father's sister's son and mother's brother's son and so on.

The above classification has been made for having an understanding as to how there shall be succession in case of agnates and cognates. In both the cases, relatives (both agnate and cognate) falling in a higher subcategory shall be preferred to relative in a lower subcategory i.e. descendents shall be preferred over ascendants who in turn shall be preferred over collaterals in the case of both agnates and cognates.

13. Computation of degrees

(1) For the purpose of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.

(2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.

(3) Every generation constitutes a degree either ascending or descending.[108]

This section laid down the rules for the computation of degrees of relationship between the intestate and the agnate or cognate heirs, as the case may be. This relationship is to be reckoned from the intestate to the heir in terms of degree with the intestate (propositus) as the starting point. There is no rule of discrimination or preference between males or female heirs and both male and female relatives by blood or adoption having legitimate kinship with the intestate wholly through males are included among his agnates and all such relatives, male or female, are his cognates where the relationship is not wholly through males but through one or more females.

The second rule states that the computation of degrees of ascent and of descent is to be made that it is inclusive of the intestate. The relationship must be reckoned from the propositus to the heir on terms of degrees with the propositus as the terminus a quo, i.e. the first degree.

It is important to note that the order of succession among agnates or cognates is not determined merely by the total of the number of degrees of ascent or descent. It is subject to and regulated by the rules of preference as laid down in section 12 of the Act.

CRITICAL ANALYSIS

The Act No. XXX of 1956 indeed, to some extent, represents women's interests in matrimonial property as clearly provided for under the Act under different places such as Class I heirs (which has eight female heirs in the total of twelve survivors in the Class I heirs) and though the changes in law relating to succession brought about by the Act may be called as of radical nature considering the traditional and pre codified Hindu Law nevertheless the enactment is still infected with various lacunas, discriminatory in nature, supporting the perpetuation of inequality on basis of sex, much against the mandate of constitution.

- ✓ The one major factor which has contributed in continuing the inequality between sons and daughters is the retention of the Mitakshara co-parcenary (section 6), an anachronism in present day. The act manifests a compromise, which definitely is an improvement, though insufficient, upon the past practices reached as a result of strong recommendation for abolition of co-parcenary and counter representations against such a move. The compromise, which provided an inroad to female heirs for share in ancestral property, was that if a male member of a co-parcenary dies then for the purpose of ensuing that his heirs get a share of the property, his share will be demarcated as if there had been a partition and his heirs called class I heirs, which include female members too will have the share divided amongst them simultaneously. It means that, if there is a co-parcenery of father and two sons, the share a father would have got on partition would be one third. This will be divided among the class I heirs, where both son and daughter, if any will get an equal share. This puts sons in an advantageous position because as in above example, the two sons in addition to their original interest as coparceners will get equal share of father's property with the mother, grandmother, sister

[108] Section 13 of the Act.

etc. Thus, retention of Mitakshara co-parcenary brings about inequality in the same class of heirs on the basis of sex. Besides, it has also meant continuation of two rights both of which affect the rights of female heirs detrimentally. The first is right of the coparcener to renounce his right in co-parcenary. The result of this is that on his death he will have no interest in the joint family which could be distributed among class I heirs. This deprives female heirs of any share, while son's share as coparcener is ensured. The second of such characteristics is the right to convert self acquired property to co-parcenary property. The effect of this is that the share of female heir is refused because in the self acquired property she would have had the right to inherit equally with the male members as class I heirs.

- ✓ Another provision of this Act, which contributed both to the lack of uniformity as well as continuation of discriminatory treatment of female heirs is the provision excluding the devolution of tenancy rights under the legislation of the states, from the scope of the Act. *Section 4(2)* lays down, "*Nothing contained in this Act law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for fixation of ceilings or for devolution of tenancy rights in respect of such holding*". This provision has led to elimination of beneficial effects of the Act under the land legislation in many states. Therefore, in some states with an example of Punjab, dominant conservative groups have been successful in excluding widows and daughters.

- ✓ Further Section 23 of the Act relating to right of inheritance to a dwelling house is overtly discriminatory. It is provides that where a Hindu dies intestate and his property includes a dwelling house wholly occupied by the members of the family, then the female heirs are not untitled to claim partition of it unless the male members choose to divide their shares in dwelling house. Female heirs are entitled only to the right of residence. Even this right to residence is restricted to unmarried and widowed daughters or those deserted by or separated from their husbands. A married daughter enjoys no such right. Indeed this section was just keeping in view predominantly agricultural societies where fragmentation of land into small portions could have been detrimental for general well being.

- ✓ The general exemption granted in favour of laws of the Scheduled Tribes that they are not bound by the provisions of the Act seeks to perpetuate inequality with respect to females in these tribes wherein the exploitation of the female class is highest and unchecked. The most unfortunate part of this story is that this exception has been upheld as valid by the Supreme Court in *Madhu Kishwar v. State of Bihar*.[109]

The 15th Law Commission, headed by Justice B P Jeevan Reddy, has suggested fundamental changes in the Hindu Succession Act 1956 to ensure that women get an equal share in ancestral property. One of the radical changes suggested as part of the Hindu Succession (Amendment) Bill 2000 was equal rights for daughters in co-parcenary property which meant that in a Hindu joint family, the daughter shall have the same property rights as a son and the property will be equally divided. However it is unfortunate to note that the Bill could not be passed.

Also important to note is the fact that unfettered power exists in any individual to determine (by way of testamentary succession) as to how his or her property shall devolve and such as primarily been exercised to the disadvantage of the female lot who have generally been excluded from succession by providing against them in the different devices of testamentary succession.

CONCLUSION

"Gender justice challenges the traditional rationality of law. The traditional rationality speaks of equality in the context of an assumed secondary role for women even concerning decision-making which affects their bodies and lives."[110]

The quote fits aptly in the context of our study. The aim of every society is to come above any biasness for any section, composition or segment. The tradition debate over the rights of females as respect to and in parity to the males assumes importance where the question of rights vis-à-vis the position in the family arises in the context of property assigned. When women have a position equal to (if not higher as Manu originally propounded), other male members, why the rights of acquisition, ownership, enjoyment and disposition of property are not available as such to these female members upon the death of the intestate or otherwise. This opens the scope for criticizing the policy of the state which, though the enactment (in this case the Hindu Succession Act, 1956) seeks to prescribe the law that governs the matters of succession and inheritance and thereby perpetuate the seemingly upright but *defacto* back ridden status of the female in the family.

[109] AIR 1996 SC 1864
[110] Justice S. Rajendra Babu, Gender Justice — Indian Perspective, [(2002) 5 SCC (Jour) 1]

If one were to spell the duty of a rational and ideal following state, the first role of such state would be to establish an environment of equal basic rights i.e. the foundation of gender equality, especially with respect to family law, gender-based discrimination, property rights and other matters wherein the scope for discrimination purely with respect to gender basis exists. Though one may argue that gender gaps stem also from the family's desire to confine women's work due to norms and traditions, as from employers' prejudice against hiring women, yet, state cannot evade its responsibility of creating a balanced paradigm for parity based existence of males and females in the society.

Thus, in the light of the above remarks and the critical observations made, it is proposed that there must be suitable reforms in the Hindu Succession Act to modify the principles and rules of intestate succession, as they presently stand, such that the gender based discrimination which exist in the present day Hindu society, on account of the provisions of the Act, be done away with and an egalitarian society, as upon the terms of the ideals envisaged in the Constitution, be established.

To put it differently, the transition from colonialism to constitutionalism, gender justice and governance should be the objective with which the reforms should be contemplated and introduced into the Act. Another reason for reform is progress of the society. All laws, even the eternal ones, are manmade and reflect the level of thinking and advancement of human knowledge and civilization at that moment of time. If we have to accept what lawgivers like Manu evolved in the period before the Gupta Empire or in medieval Arabia as sacrosanct, then we will forever be condemned to be governed by archaic, unequal and unjust laws. In the age of reason, the demand that people obey laws must be rooted in reason and not sentiment. Thus what ideals we contemplate in the present era must form the basis of the law which governs us notwithstanding the area with which it deals namely succession or otherwise.

Particularly in view of India's obligation under the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) wherein Article 15 of the Convention necessitate the state parties to ensure equality of men and women before the law and in civil matters and Article 16(1)(h) which obliges the state parties to take appropriate measures to ensure that spouses have the same rights of 'ownership, acquisition, management, administration, enjoyment and disposition of property,' the state should review the Hindu Succession Act to remove the gender bias and equalize the provisions as far as succession of females is concerned under the Act, to bring them at par with the males in the line of succession and thus aim for a progressive society, being unfettered by the dominating principles of the ancient religion.

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THE CONCEPT OF MALE HARASSMENT AND MEN'S RIGHTS IN A COUNTRY LIKE INDIA

Introduction

Elucidating sexual harassment is a multiplex job owing to the fact that there are differences in opinions, ideas, knowledge and the social environments of individuals and groups. An individual's interpretation of sexual harassment is framed by various kinds of societal factors like religion, education and past experiences with sexual harassment. It is also very awkward to investigate the malleability of how an individual expresses sexual harassment acts. Specific genres of sexual harassment, such as sexual harassment at workplace, rape at workplace, personal questions of sexual nature, vulgarities and other offensive language, any unwelcome sexual advance can be major elements in public definition of sexual harassment. The prime thing to be noted down is that in sexual harassment victim and perpetrator can be of any gender and the place of harassment can be any school, office, home, university, coaching centres or any other. Also, with the advent of the Internet, sexual harassment has increased by occurring online.

According to the research statistics of 2014, 25% of women and 13% of men between the ages of 18 to 24 have experienced sexual harassment while online. One cannot ignore the statistic of harassment with men. For sexual harassment against women, there are many legislations and statutes prevailing in India. But, we can't ignore the sexual harassment against men also. In India, under Article 14 of the Indian Constitution, there is a "right to equality". If legislation does not take into account the men and related issues too and continue to stress on the women related issues only, then this right is in violation of equality before law. So, there must be 'equal access to justice' in case of both men and women.

This paper would manage specifically with sexual harassment as well as female- on- male rape. The project would further be inspected the sexual harassment with men at different places. The analysis would then further discuss the case laws as well as the need of making sexual harassment and rape laws gender neutral.

While everyone talks about how wrongly feminism is portrayed across the world, and how the safety measures taken to safeguard the women of our country are just not adequate, some light needs to be shed on how the scenario is equally scary on the other end of the spectrum as well.

Sexual Harassment of men at different whereabouts

Sexual assault can happen to any soul, no matter what His/her age is, one's sexual orientation, or one's gender identity. One, usually discern and see harassment or rape cases related to females only and this is the reason that legislations are made only for the women victims. But, this doesn't mean that men are away from the evil of sexual harassment or rape. Today, one in ten cases of harassment is faced by males also. Men and boys who have been sexually harassed may have many of the identical feelings as other survivors of sexual assault, but they face many additional challenges because of 'social ridicule' and 'stereotypes' about men masculinity.

While the sexual harassment of females overall has consistently declined in the past few years as government has made some very efficacious legislations in India. But, sexual harassment of men is increasing at a very lofty rate.

In a study conducted by M.A.Straus in 1977, a professor at University of New Hampshire, a man is assaulted by his wife/ girlfriend every 14.6 seconds. Sexual harassment of men, even though shoved under a dirty carpet, is a serious problem. No denying the fact that the number of incidents might not be close as to the numbers of the fairer sex, but it is still common. Call it dark comedy, but the Indian legislation completely negates the fact that men can be victims too. In fact IPC section 354A, 354B, 354C, 354D, deal with sexual harassment, disrobing, stalking and voyeurism, and clearly state a man being the perpetrator, and the woman being the victim. Even sections 376 and 509 of IPC speak about rape of a woman, and outraging the modesty of a woman.The question of modesty, if at all, only exists in women. We are talking about a country with over 1.5 billion people. A country that's apparently on its way to becoming a developed country in the coming years. One must also know that this is a country where the only form of any recognized sexual wrongdoing towards a man is sodomy, under section 377 of the IPC. So basically a man needs to be sodomised for the government to take notice. It's called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013. The complete ignorance of men makes it much more of a problem in our society.

Now a day, the main area where males are facing this evil is at their workplaces. Mostly, the harassment at workplace is done by male colleagues or by female bosses. At workplaces, sometimes the female bosses asked the male colleagues to lift their shirts and show their muscles as well as shout at them and humiliate them in front of co-workers. This kind of executions pushes the male colleagues to become the victims of sexual assault and harassment. According to Roberta Chinsky Matuson[112], - "*Many people mistakenly believe that harassment is limited to females*,"

Also physical force, psychological force or many other emotional coercion tactics are being used by the perpetrators against the victims. At workplaces, males sometimes are mentally tortured for the sake of their job. If a male needs a job and he is not having any other substitute then he although unwilling to accept sexual advances, have to accept from females or male colleagues. But, this kind of brutal incidents not only physically ruins the body of the victim but also destroys his soul. Sexual harassment at workplaces also includes rape which can either be female-on- male rape or male-on- malerape.The rape of men by men has been documented as a weapon of terror in warfare. So, other than at offices or workplaces male rape is also very common in prisons, schools, coaching centres, also sometimes at home. But, due to the lack of any legislation or statute these rape cases remain unreported. According to Justice Krishna Iyer[113], - "A murderer kills the body but a rapist kills the soul."

The Women and Child Development minister, Krishna Tirath, recently announced that the government will conduct a study on "what kind of (sexual) harassment of males is prevalent at workplaces." This has prompted many to wonder - male sexual harassment - is that really a thing?

From Michael Douglas in Disclosure to Akshay Kumar in its Bollywood rip-off Aitraaz - there have been cases of men being victims to sexual harassment in the reel and real-life workplaces in the past. But why is the topic still not taken seriously? That's probably because though many agree that subjecting men to involuntary groping and touching is certainly not a laughable matter.Many are still used to seeing men as the harassers rather than the harassed. However, not only is male sexual harassment 'a thing' - it has been legally addressed in countries across the world, and has precedents in several workplaces.

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[111] Section 354: Assault or criminal force to woman with intent to outrage her modesty. —Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[112] a human resource expert, Florida, United states

[113] Rafiq v. State of U.P., AIR 559 SCC 1981

The definition of sexual harassment, as per the US Equal Employment Opportunity Commission (EEOC) is "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" at the workplace. This definition given by the EEOC is completely gender neutral; and it fits perfectly for any gender.

Cases of Sexual Harassment of Men both across the globe and in India

The first ever reported case of male sexual harassment was in the United States in 1995. The EEOC sued the female boss and the manager was paid $237,000 in damages. During 2009, 16% of all sexual harassment cases were filed by men in the US (and more than 2,200 men filed complaints in 2008). According to a 2006 government study in the United Kingdom, two out of five sexual harassment victims in the UK were male, with 8% percent of all sexual harassment complaints to the Equal Opportunities Commission (Britain's EEOC), coming from men.

Possibly the most high-profile sexual harassment case filed against a woman was that against Britney Spears. The pop-star was sued by her former bodyguard Fernando Flores for sexually harassing him. Flores claimed that she had made unwanted sexual advances to him, also exposing her privates in front of him on numerous occasions. Britney and Flores reached for an out of court settlement.

In another case, a Texas lawman was awarded $576,000 by a jury when they found that he was a victim of sexual harassment by his female boss. James Gist, 51, sued the county and claimed ex-Constable Pam Matranga repeatedly for sexually harassing him from May 2011 to October 2011 by asking him to touch her private parts. Matranga slammed the jury's decision, calling the award unfair. She said Gist wanted to get back at her for refusing to promote him, according to the Chronicle. Matranga later quit from her position.

However, in India, where the Sexual Harassment at Workplace Bill was passed only in 2012, the provisions were restricted to women and their modesty while the sufferers are both men and women. Judging from the findings of a recent Economic Times- Synovate survey, the men need to be incorporated in that bill as soon as possible. Out of the 527 people queried across seven cities - Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune - 19% said they have faced some kind of sexual harassment at office. In Bangalore, 51% of the respondents had been sexually harassed, while in Delhi and Hyderabad, 31% and 28% of those surveyed said they had been sexually harassed. Around 38% of the respondents across 7 cities in India said that in today's workplaces, "men are as vulnerable to sexual harassment as women."

The biggest reason why these cases were never reported was "social ridicule" and because they felt they wouldn't be believed due to India's social beliefs.

Common challenges and reactions

A victim of any sexual harassment faces many awful challenges and reactions in his/her life. Any form of harassment, whether rape or assault ruins the body as well soul of the victim. For men, sexually harassing a women, is an attempt to show her their boldness and masculinity. But, when we talk about reactions on male rapes or sexual harassment of males, then reactions are completely different. As in countries like India, no person can even think about a female showing her femininity over male due to the myth that males have always been ruling over the bodies of females and will always rule.

But, men or boys who are sexually abused although facing unique reactions but challenges are more or less identical as any other rape or sexual harassment survivor. Many men, who are sexually assaulted, feel alone, deserted and helpless, but researchers have found that 1 in 6 men have been through abusive sexual experiences before even reaching their adulthood. Now, I am going to put some light on few challenges faced by male survivors of sexual harassment :-

- Anxiety, depression, fearfulness, loneliness
- Post- traumatic stress disorder
- Sense of shame or blame over not being able to stop the assault
- Unable to sleep
- Feel like 'less of a man' or that you no longer have control on your own body

- Avoiding school, colleges, offices , coaching centres or any other place related to sexual assault or abuse
- Having a sense of a shortened future
- Fear of the worst happening
- Withdrawal from relationships or friendships and an increased sense of isolation
- Loss of self-confidence and trust
- Physical impacts like-damage to anus, pain syndromes, eating disorders, chronic diseases such as arthritis, diabetes etc., headaches.
- Loss of actual or future earning capacity
- Suicidal ideation is more common.

So, the challenges and after-impacts are almost the same as any other survivor of sexual harassment or rape. Any male can be raped/sexually assaulted no matter his size or physical strength. In a society, men often have the credence that they are expected to be strong, to be able to defend themselves and for this generalization many men often blame themselves for the abuse and turn the anger on themselves for not prohibiting what took place? Some men blame themselves if they didn't try and fight back. Nobody asks to be raped and the invective belongs on the head of the abuser. A victim of rape or sexual assault does what they have to do in order to survive and often fighting back would result in padding pain and injury being inflicted – sometimes the best choice to be made at that time to survive and keep alive is not to fight back.

Some men surface guilty because they may have practiced an erection and some may have ejaculated. This does not mean that you appreciated the experience but this is the body's natural receptivity to stimulation. Again – don't take this liability onto your own shoulders, the guilt belongs on the head of the abuser. Some men may interrogate their sexuality – does it mean they must be gay – NO – any men or boy can be raped whether heterosexual or gay or bisexual.

Because of innervations that a man should be strong and not show emotion, many men choose not to report the attack for revulsion of being seen as weak and sadly this also prevents many men from asking for aid. There is now more acknowledgment and sympathy that men too can be raped.

But, it is very important to understand that seeking for help and recognising that you need some hand is a sign of strength, not weakness. Unfortunately, in many parts of the country the services providing aid specifically for male victims are occasional and far between and more funding undoubtedly wishes to be put into this area so that male victims are not abandoned unsupported and alone.

Real men do cry – it is not a sign of inclination to show sensation – and crying to release emotion can be therapeutic or analeptic in itself. As a result of some men finding it more difficult to verbalise their senses and emotions they are often keeping inside them tremendous amount of huff and rage and this may be dealt with by alcohol, drugs, self- harming in some action or another.

Remember the condemnation is on the head of the person who abused you, you did not deserve to be raped or sexually assaulted, you cannot let on the abuser to mess up your life and you owe it to yourself to extort as much support and aid as achievable.

Protection of Men's from Sexual Harassment

Gender neutral laws have found acceptance in 77 countries including Denmark, Australia, Switzerland, the U.S., the U.K., etc., but the Indian Parliament has repeatedly refused to make the law against sexual harassment gender neutral in India. Currently the Indian law against sexual harassment protects only women. The question whether the Sexual Harassment Act of 2013 and the Criminal Law Amendment Act should be gender neutral or not had many activists up in arms. It was also reportedly a cause of conflict between the Ministry of Home Affairs and the Law Ministry which led to an inordinate delay in the introduction of the anti-rape law. However, the Sexual Harassment Act of 2013 that was finally passed by the Parliament takes it for granted that all potential victims are women. Here are the reasons that have been cited by ministries and parliamentarians:

i. **Act of violence and power dynamics:** The reason why the law is gender neutral is because sexual harassment is viewed as an act of violence in the context of deeply entrenched power inequalities between men and women that have existed for centuries in our society. It was strongly felt that making gender neutral laws would only increase the aforementioned inequalities. Most studies show that sexual harassment usually begins with a man and is aimed at a woman. It was widely believed that a gender neutral law would make a mockery of this reality.

ii. **Fear of counter-complaints:** Another challenge that was foreseen was that making the accused gender neutral would mean that complaints by women could be met with counter-complaints to get them to withdraw. As the odds are already heavily stacked against women, this would have made it even harder for them to secure justice.

iii. **Men, not boys:** Another argument that was made in favor of making the law gender neutral was that the law would serve as a powerful tool to protect young boys from abuse. However, there was no basis to the argument because all young boys and girls are fully protected by gender neutral laws in the Protection of Children from Sexual Offences (POCSO) Act 2012. Moreover, the socio-economic milieu in India is drastically different from the West because of the patriarchal nature of the society. As a result, men are often viewed as perpetual aggressors and women are considered to be weak and powerless.

iv. **Need for a gender neutral law related to sexual harassment:** Many people believe that the Act undermines the basic truth that sexual harassment is neither about sex nor gender. It is only about power, and there is no reason why a woman in power cannot be as abusive as a man. While it is true that more women are sexually harassed than men, this does not mean that men cannot be sexually harassed at all.

Cases of sexual harassment against men are not very prominently reported, so it is difficult to ascertain the ways in which men are victimized at work. Furthermore, a man may also find it extremely embarrassing or humiliating to report a case of sexual harassment in a nation like India, where a man is, after all, supposed to be a MAN. Men may not feel invested in the battle against sexual harassment. The downside of not having a gender neutral law is that many men do not feel invested enough in the new system to fight sexual harassment as they feel that the law is partial towards women and unjust in its refusal to protect men.

The civil society, men's and women's rights groups must engage in a constructive dialogue to make suitable amendments to the law to safeguard the interests of men. Such an amendment would go a long way in creating a society in which both men and women would be in a better position to understand each other's unique challenge. The very first question which demands to be put forth is who will protect men from sexual harassment? In India, the legislations talk about only sexual harassment and rape of women. There is no law, no statute to protect males from the bloodthirsty act of harassment and rape. Under Indian law, there is only one section 377 of Indian Penal Code which talks about 'sodomy'. Except this one section, all other laws and sections are meant only for females.

One can easily say that there is unequal access to justice. When everyone talks about India, we discern that much importance is given to rights of the people but why there is infringement of 'Right to equality'? Our Indian Judiciary, society and legislations all talks about equal rights and equal treatment of men and women. But, dolefully these sorts of loopholes and misfiring to make any laws for sexual harassment, sexual assault or rape shows uncut violation of 'Right to equality'.

Sexual harassment of men requires more attention than any other climbing crime or issue because male suicides at workplaces are 4 times more than the female suicides at workplaces. Gender neutral laws have found accepted in approximately 77 countries around the world including, the U.K., Denmark, Australia, the U.S. and many more. But, painfully the Indian Parliament has repeatedly refused to make laws against sexual harassment gender neutral in India. This problem of sexual harassment with males is more frequently taking place in prisons. According to G Pramod Kumar, The People's Union of Civil Liberties had this to say about Tihar way back in 1981: "When a young boy enters, the prisoners have been known to have bid a price for the boy. The price offered is in terms of 'bidis', soap or charas. Often prisoners have been divided into camps and the groups have fought each other on the issue of who shall have the new entrant".

So, without any requirement of further discussion or doubts, it is very dominant to make the sexual harassment as well as rape laws gender neutral in India so that, there shall be equal 'access to justice' in India. Also the people of our society needs to amend and adapt their minds and must chuck off the beliefs that men are strong and cannot be raped or that they can defend themselves in case something wrong will happen to them. Also, if one is believes that 'men cannot be raped' than you should also keep this in mind that 'women can rape'. Sexual harassment can occur to any person at any age and place. So, the word 'any person' here highlights the fact that women are always not that quiet, tranquil and soft. Sometimes they also take brutal steps and do harass men especially at workplaces because harassment by female bosses at offices is becoming very common these days.

Cases in the form of real life experiences shared by few males

There are many cases across the whole world where males have gone through sexual harassments, rapes and many other forms of sexual assaults or advancements. Some are highlighted below :-

1. A boy 'Harish Iyer[114]' was raped by a male relative at the age of 7 and was continuously facing it for 11 years long time till the age of 18.
2. Amardip Bhopari, is the daughter of U.K. based Punjabi singer Malkit singh. She was engaged in a sexual relationship with a young boy of 16 years who was her student in Birmingham. The student had dyslexia. The Birmingham Crown Court handed her to jail and sentenced 2 years of imprisonment.
3. Anonymous[115], a five year old boy raped by a 17 year old baby sitter.

Suggestions to make Sexual harassment laws gender neutral in India

With ample voices calling for protecting males from this brutal act, it is hard to ignore the want to do so; thereby arranging for an effective legislation to come up. As we admit that harassment may not always be a one-way street, it's important to remember that the bulk of traffic flows in a single direction which means that mostly people observes about harassment of females. There is a necessity to take the issue of sexual harassment of males to the government, to the society etc. so that people should also understand and hear the exclaim of a man too.

There is a demand of 'equal access to justice' for both males as well as females. For this, the government and legislation must have to make laws, which safeguard the males from various kinds of harassments, assaults or rapes etc. at different areas. The main sector, which needs to be taken care of, is sexual harassment at workplaces. Also, there is a need of educating and make students or children aware about such harassments. So that, if in case they suffer from any such act then, they shall be able to approach to any authority or any elder person rather than suffering from pressure and mental agony.

Conclusion

The men should be engulfed in the 'Sexual Harassment at Workplace Bill, 2012' as soon as possible. Also, some specific sections should be inserted under Indian Penal Code to protect harassments against males as; we are having only one section related to sodomy under Indian Penal Code. Also, the need of the hour is to change the mind-sets of the people of Indian society who believe that a man is not made to cry and only a woman cries. This is a completely wrong notion as all those who have hearts and souls, are also having dignity, emotions, self-confidence and respect too for themselves. Acts like harassment attacks the soul and it is immaterial whether the soul is of a male or of a female, harassment kills the soul and pushes a person into a state where he or she begin to reflect that they are not of any worth. In addition to this, it is also very important to note down that harassment with any human being is wrong as we are all humans first then males and females. For the sake of humanity, it is a very brutal act and both the male as well as female perpetrators must be punished equally under law. For this reason, the question whether harassment of females need more attention or of males is immaterial. So, my point of elevating this issue is only to give equal rights to the male victims as of female and to invocate the legislation to furnish 'equal access to justice in India'.

Nicole Kidman has rightly said that, - "*Imagine a bold plan for a world without discrimination, in which women and men are equal partners in shaping their societies and lives. Let's picture it!*"

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[114] Survivor of child sexual abuse and an equal right activist who was named as one of the most influential gay men in the world by The Guardian newspaper.
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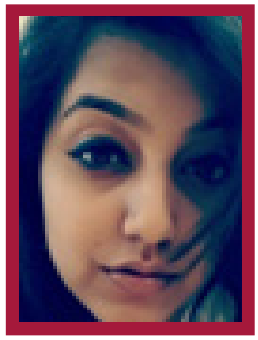

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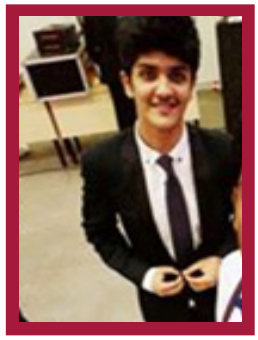

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A REPORT ON INDUSTRIAL STRIKES AND LOCKOUTS IN INDIA BETWEEN 1996-2016

INTRODUCTION

The most sensitive issue for workmen is the wage structure and increase in wages. As one can see the demand for wages and allowances occupies the top position in the number of disputes and the workmen are more concerned about their wages and allowances. The payment of bonus now governed by the Payment of Bonus Act has been an area of dispute between the workmen and the employers. The question of paying minimum bonus, calculation of number of working days, adjustment of customary bonus has been the areas of dispute and conflict which have caused strikes in a number of cases. The unwanted legal controls create a lot of conflict and labour unrest.

OBJECTIVES

The objective of the study is to analyse how and why does strike and lockouts happen. A comparison will be drawn for strikes and lockouts in the country of India and US. This project will further analyse upon what are the actions are taken while such things happen. This project will make an attempt to analyse 2 companies who went on strike and two companies who did lockouts. It will conclude by stating what the after effects of strikes and lockouts are.

RESEARCH METHODOLOGY

The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles on the internet. The lectures and classroom discussions were helpful for important points and gave direction to the Research.

STRIKES

According to Section 2(q) in Industrial Disputes Act 1947, a strike is "a cessation of work by a body of persons employed in an industry acting in combination; or a concerted refusal of any number of persons who are or have been employed to continue to work or to accept employment; or a refusal under a common understanding of any number of such persons to continue to work or to accept employment". In a strike, a group of workers agree to stop working to protest against something they think is unfair where they work. Labours withhold their services in order to pressurize their employment or government to meet their demands. Demands made by strikers can range from asking for higher wages or better benefits to seeking changes in the workplace environment. Strikes sometimes occur so that employers listen more carefully to the workers and address their problems. Strike can take different forms; it may involve employees refusing to attend work or standing outside the workplace to prevent others from work. It may also involve employees occupying the workplace, but refusing to work or leave the premises. This is known as a sit-down strike. Strikes might occur because of dissatisfaction with company policies, salary and incentives problem, wrongful discharge of workmen etc.

Causes of strikes:

- Dissatisfaction with company policy
- Salary and incentive problems
- Increment not up to the mark
- Wrongful discharge or dismissal of workmen
- Withdrawal of any concession or privilege
- Hours of work and rest intervals
- Leaves with wages and holidays
- Bonus, profit sharing, Provident fund and gratuity
- Retrenchment of workmen and closure of establishment
- Dispute connected with minimum wages

There are many types of strikes that employees can go upon. They are as follows:

- **Economic Strike**: Under this type of strike, labours stop their work to enforce their economic demands such as wages and bonus. In these kinds of strikes, workers ask for increase in wages, allowances like traveling allowance, house rent allowance, bonus and other facilities such as increase in privilege leave and casual leave.
- **Sympathetic Strike**: When workers of one unit or industry go on strike in sympathy with workers of another unit or industry who are already on strike, it is called a sympathetic strike. The members of other unions involve themselves in a strike to support their sympathy with the members of unions who are on strike in other undertakings.
- **General Strike**: It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. These strikes are usually intended to create political pressure on the ruling government, rather than on any one employer
- **Sit down Strike**: In this case, workers do not absent themselves from their place of work when they are on strike. They keep control over production facilities. But do not work. **Such a strike is also known as 'pen down' or 'tool down' strike**. Workers show up to their place of employment, but they refuse to work. They also refuse to leave, which makes it very difficult for employer to defy the union and take the workers' places
- **Slow Down Strike**: Employees remain on their jobs under this type of strike. They do not stop work, but restrict the rate of output in an organized manner. They adopt go-slow tactics to put pressure on the employers.
- **Hunger strike**: in this form of industrial protest, workmen resort to fasting near the workplace to demand the employer to redress their grievances.

- **Wildcat Strikes:** It is suddenly announced, without notice or in a shorter period and thereafter, issues of disputes are discussed. This is usually done without the authorization of the trade union officials. This is sometimes known as unofficial industrial action.

ALL STRIKES ARE NOT JUSTIFIED, NEITHER ALL STRIKERS ARE UNJUSTIFIED.

- If a strike was held by the workers in support of their reasonable, fair and bona-fide demands in a peaceful manner, then the strike will be justified. Strikes are justified when:
    1) When existing facilities and benefits in the organization are withdrawn.
    2) Unfair labour practice by the management
    3) No response from the management despite referring a demand and issuing a remainder.
- If a strike was held by using violence or acts of sabotage for any ulterior purpose, then the strike will be unjustified. Strikes are unjustified in following cases:
    1) Strikes launched for political reasons.
    2) Demands are excessive, not feasible and reasonable.

LOCKOUTS

According to Section 2(1) Industrial Disputes Act 1947, lock-out means the temporary closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him. A delineation of the nature of this weapon of industrial warfare requires description of: (i) the acts which constitute it; (ii) the party who uses it; (iii)P the party against whom it is directed; and (iv) the motive which prompts resort to it.

Prohibition of Lockouts

Section 22(2) of the act provides that no employer carrying on any public utility service shall lock out any of his workmen:

1) Without giving them notice of lockout as hereinafter provided, within six weeks before locking out; or
2) Within 14 days of giving notice; or
3) Before the expiry of the day of lockout specified in any such notice as aforesaid; or
4) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

It makes clear that the employer has to comply with the same conditions before he declares lockout in his industrial establishment which the workmen are required to comply with before they go on strike.

THE REASONS BEHIND THE LOCKOUTS

- Disputes or clashes in between workers and the management.
- Unrest disputes or clashes in between workers and workers.
- Illegal strikes, regular strikes or continuous strikes by workers may lead to lockout of factory or industry.
- External environmental disturbance due to unstable governments, may lead to lockouts of factories or industries.
- Continuous or accumulated financial losses of factory or industry, may lead to opt lockout by the management.
- Maybe lockout, if any company involves in any fraudulent or illegal activities.
- Failure in maintaining proper industrial relations, industrial peace and harmony.

Lockout of the factory is regarded as major issue which affects both management of the factory and their employees. Management

should always monitor employees behaviour and relationship between employees and relationship in between management and employees To avoid disputes which leads to lockouts.

STRIKE AGAINST GOVERNMENT PRIVATIZATION: AIRPORT PRIVATISATION: AIRPORTS AUTHORITY OF INDIA EMPLOYEES WENT ON STRIKE ON MARCH 11, 2015

The Indian government's ambitious plan to privatise the modernisation of the country's two biggest airports -- at Mumbai and Delhi -- has sparked off a major controversy, leading to strikes, protests, threats, complaints and accusations. Thousands of Airport Authority of India employees were on an 'indefinite' strike against the government's privatization plans, and a bidder who lost out has moved the court challenging the airport bids. The government awarded the modernization contract for the Delhi and Mumbai airports -- the country's two busiest airports -- to two private consortia. GMR-Fra port clinched the modernization bid for the Delhi airport, while GVK-South African Airports bagged the Mumbai airport. Airport employees said they will lose jobs if the government goes ahead with the privatization plan. There were nearly 22,000 employees with the Airport Authority India, working across all the airports in the country.

Employees at the Delhi and Mumbai airports fear that the private companies that are going to rebuild these airports will throw them out. They also said that the AAI -- which is a profit making public sector enterprise -- will lose money out of the modernization exercise.

A national strike in India has disrupted air, rail and banking services across the country. This was the first national strike to take place since the Congress party won power in 2004. Left-wing trade unions were protesting at the government's economic reforms and privatisation plans.

STRIKE AT HONDA IN GURGAON, SEPTEMBER 2013:-

The month-long strike at HMSI and the police attack on the workers caused a big stir in India. This is mainly due to the location of the strike: a modern factory of a multinational company in a developing region which up to that point was not seen as prone to industrial disputes. The conflict began in December 2004 after a manager allegedly hit a worker, who was said to be engaged in organising a union within the plant. Another four workers were sacked after they expressed their solidarity with their workmate. The official justification for the dismissals was undisciplined behaviour in the factory. The whole situation came to boiling point when the management sacked another 57 workers and nearly all the workers in the factory reacted by going on strike in June 2005. At the end of June 2005 the management replied by officially sacking 1,000 workers and locking out the strikers.

About the Results of the Strike

In total the company lost about 1.2 Billion Rupees due to the strike. The media presented the result of the strike as following: All dismissed workers are re-hired, under the condition that they sign a so-called good-conduct declaration promising to abstain from further demands and strikes. The workers are granted a wage increase for the year, although we couldnt find any info on the exact amount. There is contradictory information on the question of whether the days of the strike will be paid or not. Some sources say that all strike days in May and June will be paid, others say that they won't. The AITUC demands the release of all workers still in custody and union recognition in the company.

The strike and the police attacks got huge public attention and caused diplomatic tension between India and Japan. The Japanese ambassador told the media that the strike would endanger future investment by Japanese companies.

LOCKOUT DECLARED BY TOYOTA MOTORS AT ITS BIDADI FACILITY, NEAR BANGALORE

TOYOTA KIRLOSKAR MOTOR (TKM), the Indian Arm of Japanese auto giant, had declared a lockout which was effective from March 16-24' 2014 at its manufacturing unit in Bidadi, near Bengaluru. Toyota has two manufacturing facilities in Bidadi that have a combined annual production capacity of 3.10 lakh units. Toyota Motor Corporation has 89% equity stake in TKM with the remaining 11% held by the Kirloskar group.

The company manager demanded workers of the company to sign an undertaking of 'good conduct'. Workers refused to enter the factory and they also refused to sign an undertaking. In the interview of The Hindu, Prasanna Kumar C., President, Toyota Motors Employee Union, told The Hindu that the demand that workers give an undertaking of good conduct was "in bad faith in bad taste." He also said the continued suspension of 17 workers was "a severe impediment to a meaningful agreement." He said workers, who were supposed to enter the factory at 6 AM for the first shift, refused to do so because they were asked to sign the undertaking. The company announced the lockout after negotiations over the annual wage, which was pending for over a year, remained unresolved. While the company was willing to offer a minimum hike of Rs. 3,050 per month per worker, the union was demanding at least Rs. 4,000 per worker, the same quantum that they received a year ago.

Company stated that "under the instigation of the union, certain sections of the employees have resorted to deliberate stoppages of the production line, abuse and threatening of supervisors thereby continuously disrupting business for the past 25 days" and they were left with no other option but to declare a lockout of the premises to ensure the safety of its workers and management personnel.

LOCKOUT AT MARUTI SUZUKI AT MANESER PLANT (HARYANA), IN 2012

On 18 July 2012, Maruti's Manesar plant was hit by violence as workers at one of its auto factories attacked supervisors, engineers and other management personnel and burnt and killed a senior HR executive, injured 100 managers, including two Japanese expatriates. The mob also injured nine policemen. The company's General Manager of Human Resources had both arms and legs broken by his attackers, unable to leave the building that was set ablaze, and he was charred to death. The incident is the worst-ever for Suzuki since the company began operations in India in 1983 and one of the most heinous of industrial crimes in the history of India. From April 2012, the Manesar plant workers' union demanded a fivefold increase in salary, a monthly conveyance allowance of 10,000, a laundry allowance of 3,000, a corporate gift with every new car launch, and a house for every worker who wants one or cheaper home loans for those who want to build their own house. In addition to this compensation and normal weekend/holidays, the union demanded the current four paid weeks of vacation be increased to 7 weeks, plus each worker to have 40 days of sick leave and casual leave amounting to 75 days. There were some reports claiming that the wage dispute, as per a union spokesperson, may be caste-related. According to the Maruti Suzuki Workers Union, a supervisor had abused and made deriding comments on a low-caste worker. These claims have been denied by Maruti Udyog management and the police. The supervisor alleged to have made those comments was found to belong to a tribal heritage and outside the Hindu caste system; further, the numerous workers involved in violence were not affiliated with that caste either. Maruti said that the dispute was not over wage discussions, but after the workers' union demanded the reinstatement of a worker who had been suspended for physical violence on a supervisor. The workers claim harsh working conditions and extensive hiring of low-paid contract workers who are paid about US $130 a month, which works out to half the minimum wage paid to permanent employees. Maruti Udyog employees currently earn allowances in addition to their base wage. Company executives denied harsh conditions and claim they hired entry-level workers on contracts and made them permanent as they gained experience. It was also claimed that bouncers were employed by the company off and on. India Today, the weekly magazine claimed that their interview of witnesses present at the plant confirms the dispute was over the suspended worker as mentioned earlier. The management insisted that they must wait for completion of inquiry which was underway before they can take any action on the employee suspended for manhandling his supervisor. Thereafter, the workers broke up into groups, went on to set the shop floor as well as all offices on fire. They hunted down management officials and proceeded on with methodically injuring officials at the factory site with iron rods and heavy tools. The local police, in its First Information Report (FIR), claimed on 21 July that Manesar violence may be the result of a carefully planned violence by a section of workers and union leaders. The report claimed the worker's action has been recorded on close circuit cameras installed within the company premises. The workers took several managers and high ranked management officials as

hostages. The responsible Special Investigative Team (SIT) official claimed, "Some union leaders may be aware of the facts, so they burnt down the main servers and more than 700 computers." The recorded CCTV footage has been used to determine the sequence of events and people involved. As per the FIR, police have arrested 90 people and are searching for 62 more. Maruti Suzuki management, in its official statement on the unrest, announced that all work at the Manesar plant has been suspended indefinitely. A Suzuki spokesman said Manesar violence won't affect the auto maker's business plans in India. The shutdown of Manesar plant is leading to a loss of about Rs 75 crore per day. On July 21, 2012, citing safety concerns, the company announced a lock-out under The Industrial Disputes Act, 1947 pending results of an inquiry which the company has requested by the Haryana government to determine the causes of these heinous incidents. Under the provisions of The Industrial Disputes Act on wages, the report claimed, employees are expected to be paid for the duration of the lockout. On July 26, 2012, Maruti Udyog announced that employees would not be paid for the period of lock-out in accordance with labour laws of India. The company further announced that it will stop using contract workers by March 2013. The report claimed the salary difference between contract workers and permanent workers has been much smaller than initial media reports - the contract worker at Maruti received about 11,500 per month, while a permanent worker received about 12,500 a month at start, which increased in three years to 21,000-22,000 per month. Shinzo Nakanishi, Managing Director and Chief Executive of Maruti Suzuki India, said this kind of violence has never happened in Suzuki Motor Corp's entire global operations spread across Hungary, Indonesia, Spain, Pakistan, Thailand, Malaysia, China and the Philippines. Mr. Nakanishi went to each victim apologising for the miseries inflicted on them by fellow workers, and in press interview requested the central and Haryana state governments to help stop such ghastly violence by legislating decisive rules to restore corporate confidence amid emergence of this new 'militant workforce' in Indian factories. He announced, "we are going to de-recognise Maruti Suzuki Workers' Union and dismiss all workers named in connection with the incident. We will not compromise at all in such instances of barbaric, unprovoked violence." He also announced Maruti plans to continue manufacturing in Manesar, that Gujarat was an expansion opportunity and not an alternative to Manesar. Labour disputes are endemic in the auto industry of India and have affected other manufacturers. India has strict labour laws, but their application is routinely avoided by hiring low-wage contract workers. Manesar violence adds to India's recent incidents of labour disputes turning to violence. Analysts claim recent incidents like Manesar violence suggest a need for urgent reform of archaic Indian labour laws, the rigid rules on hiring and layoffs, which harm the formal sector and discourage investment in India. Government mandated procedures for labour dispute resolution are currently very slow, with tens of thousands of cases pending for years. The government of India is being asked to recognise that incidents such as Manesar violence indicate a structural sickness which must be solved universally. The company dismissed roughly 500 workers accused of causing the violence and re-opened the plant on August 21, saying it would produce 150 vehicles on the first day, that is, less than 10% of its capacity. Analysts said that the shutdown was costing the company 1 billion rupees ($18 million) a day and costing the company in terms of market share and market cap. A week earlier, company officials had announced that Maruti would scrap the practice of hiring contract workers and that the workers currently on temporary contracts would be made permanent.

CONCLUSION

The provisions for strikes and lockouts have been specifically laid down so that there is no monopoly at workplace and neither of the parties is met to injustice. It is upon both the parties to understand the mutual relations and both the parties should work in accordance with law and strikes and lockouts should be the remedy of last resort instead of being the first. Priority should be given to resolve the dispute without taking recourse to such actions.

In the case of Maruti's strike at Manesar the entire episode presents a strong case for HR executives to increase their involvement at the floor level with the workers in addition pursuing their professional education and career development. As part of the initial training for the junior manager while joining service, it is important to make it a part of study the nature of an average worker, their social structure, the previous history of union activities, the study of resolutions and decisions taken and the comparison of the facilities given to the worker vis a vis the workers of the competitors. The present peace at Maruti Udyog, Manesar is a brokered peace between the Haryana Govt. and the Maruti management. This certainly is not going to be a permanent solution. As mentioned earlier, an average Haryanvi worker is a hard fighter and it is pointless for the management to encourage, develop and nurture an anti labour stance among their executives. Communication of intention at all levels plays an important role in reducing trust deficit. Rather than the unions coming to know about their company's expansion plans through rumours, newspaper or the Television, it is in the interest of the company that the management takes the union into confidence about their establishing new facilities in Gujarat or elsewhere. This will go a long way in building confidence among the workers about the honesty and forthrightness of the management.

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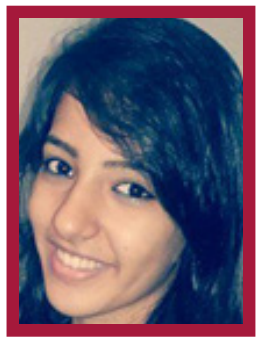

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INDIA'S TRADE DIRECTION – AN ANALYTICAL STUDY WITH RESPECT TO WTO & WORLD BANK

INTRODUCTION

Trade implies the exchange of goods and services either within the same nation or between two or more nations. This denotes that no nation is independent and self-reliant enough to meet all the demands of its citizens. While talking about India, it has been continuing an effective trade relationship in the domain of International Trade with various Countries like US, UK, China, Thailand etc. since the British regime. Standing on the Indian Soil in the 21st Century, it is well-evident that India's advancement in domestic as well as International Trade has been tending towards the emergence of a super power. However, this paper attempts to analyze the composition and direction of Modern-day Indian Trade with reference to its relationship with the Regulatory Bodies like WTO and World Bank etc.

INDIA AND WTO – THE GOVERNING RELATIONSHIP

1st January, 1995 – the date shall remain as remarkable forever in the history of National and International Trade Relations. Being an International Regulatory Body in terms of implementation of trade related rules and guidelines between various nations; the World Trade Organization, in its simplest form, WTO was given birth on 1st January, 1995 by the Treaty of Marrakech (1194) and after the completion of negotiations made in Uruguay Multilateral Trade Round. However, while acting as a supervisor in the regime of International Trade, it becomes the true successor of the GATT (General Agreement on Trade and Tariffs)covering the trade of goods in International level and uses the instrumentalities like other trade treaties and agreements, negotiations and a flock of rules which shall have to be signed and ratified by its member nations in order to achieve the goals of its existence. The vision of the WTO, by no stretch of imagination, is to spread the free flowof

International Trade at utmost level of development, mitigate the disputes through negotiations and provide the aid to the national and international level manufacturers and suppliers in import and exports.[116]

1. **INDIA'S JOINING IN WTO**

Since the advent of the World Trade Organization on 1st day of January 1995, India has snatched the status of the paramount member country along with other 134 nations including 75 democracies. Subsequently, India is also a member in GATT (General Agreement on Tariffs and Trade) since the year 1948.[117]

World Trade Organization not only benefits the member nations by providing a structure so as to reduce the organizational chaos and systematically formalize the model of trade negotiations; but also encourages a nation to develop its economy both internally and externally as well. Hence the purpose of India's joining in the WTO was to hone their strategic capability such as, threshold and core competencies in a highly competitive global market and also to be benefitted with various advanced strategic positioning from the perspective of technologic, economic, legal, social and political factors. Being a member country of the WTO, India visioned its aims to strengthen its internal stability and boost prosperity on account of the improved foreign relations under the rule-based governance of the World Trade Organization.

2. **BENEFITS ACCRUING BY INDIA – THE POSITIVE IMPACT OF WTO**[118]

Twenty-one years have already been passed since India had enrolled its name as a member of the World Trade Organization in 1995. The purpose which India envisioned to accomplish shall now be subjected to an assessment so as to measure their impact on the economy. From the relationship with WTO, the following benefits have been accrued and enlisted as the positive[119] effects on Indian Economy –

A. **INCREASING NATIONAL INCOME IN EXPORTS AND IMPORTS** –

The statistics estimates that the impact of WTO on Indian Economy has an increasing graph while taking exports and imports rates into consideration. The period 1994-95 witnessed almost $26 billion exports rate whereas the same has increased till $51 billion during the period 2002-2003. On the other hand, the imports of commodities and services to India has been increased almost 0.21% within the period 1995-96. The drastic increase in the earnings accrued from the exports can further be efficiently understood in assessing the growth rate in exporting the Services and commodities. The stipulation of restriction on the general tariffs and non-tariffs of the goods have been reduced which resulted in the increase of Indian Goods Exports at almost 4% within the period of 2008-09 and 1995-96. Further, in a developing country like India, due to GATS and WTO, the exports on services have increased its range from 5 to 102 billion within the similar period. Thus, increase in the rate of exports, imports and growth on goods and services increases the national income of India in realm.[120]

B. **EXPORTS IN THE SERVICES OF AGGRICULTURE &TEXTILES–**

As the restrictions in form of tariffs has been reduced from the raw materials and the exclusion caused in case of export and domestic subsidies through negotiations, the cost of production of the Agricultural goods has been raised in the global trade domain. The labour force movement to other developed nations is determined due to the lack of advancement in administrative transparency, recognition of specialization and high discrimination in ensuring social securities. Hence, the Agriculture being a labour-intensive industry has increased its demands and production cost in India due to which the determining and constraint factors were reduced after negotiations.

Shifting to the Textile Industry, the quotas as imposed by the WTO Multi-Fiber Arrangements are eliminated and the said Arrangements have been terminated in 2005. Hence, currently the Textile Industry has a sigh of relief and converted to a Multilateral Trade domain due to which the exports rate in Textile Markets has enormously increased.

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[116] VijayaKatti and SubirSen, "Foreign Trade Review", Published by P.K. Gupta, New Delhi, Vol. XXXIV, No. 3 & 4, Oct., 1999-March 2000.
[117] http://www.indiantradeportal.in/
[118] Supriya Guru, 'The Gains India has achieved by Joining WTO', accessible at http://www.yourarticlelibrary.com/economics/the-gains-india-has-achieved-by-joining-wto/38227/
[119] Vasudeva, P K (2005) World Trade Organization: Implications for Indian Economy, Pearson Education
[120] S.K. Misra and V.K.Puri, "Indian Economy", Himalaya Publishing House, Mumbai, 2002, pp. 643-644.

C. **THE FDI IN INDIAN MARKET –**

FDI or the Foreign Direct Investment is generally governed by the TRIMs Agreement which in turn regulates the investments in the field of trade. TRIMs agreement implemented a flock of regulations that impose restrictions on the operation of domestics firms in an easy manner and prioritize the working of foreign firms globally. Hence, this activity amounted to an increase in Foreign Investment in Domestic Markets and encouraged both the domestic and foreign firms to work harmoniously. The estimation of FDI Graph shows that in India, the net amount of FDI was almost 35 Billion USD within the period of 2008-2009.

Further, the eradication of restrictions on Foreign Firms operation introduces an additional income on the foreign exchange due to the increasing number of BPO industries coming from US & UK. Also, comparing to US and UK, the rate in losing of employment is low in the BPO Industries of India, which generates further investments to the Indian Market.

3. **CONFLICTS IN INDIA-WTO RELATIONSHIP – THE NEGATIVE IMPACTS**[121]

- The negotiation method as adopted recently during Doha Declaration (2002) is mainly focused on the Trade related on Intellectual Properties (TRIPs), environmental concerns and sustainable development issues on trade. Some of the negotiations as resulted in Doha Declaration were not in favour of the developing countries like India. Being a developing nation, India aimed to remove the instabilities lying in several WTO negotiations and agreements. Also, the success on abolition of quotas from the textile industry could not reach the satisfactory level at all. Subsequently, in order to address the environment related trade issues efficiently, the said Declaration delegated the power to some negotiations in order to elaborate and clarify the multilateral trade agreements from environmental perspective. To this point, the dispute lies as the so authorized negotiations ended up mandating the developing nations to impose restrictions on the exported goods on account of stringent protection to environment.
- Failure to eradicate the non-trade restrictions (transparency in administrative regime, competition, customs for clearance facilitation etc.) on the labour force and the environment and the tariff peaks and non-tariff restrictions on the non-agricultural goods and services.
- TRIPs[122] govern the trade relating to Intellectual Property Rights in International Level. Hence, being a WTO member, India is required to fulfill the compliances of TRIPs.[123] While looking into the provisions of the Indian Patents Act 1970, it is evident that there are product as well as process patents under the Act where unlike the product patents, the process patents will be granted to the respective drugs and chemicals. Hence, the products can be sold by the pharmaceutical companies at a very low price. In contrast to the scenario, The TRIPs agreement grants product patents which gives rise to the product prices and results in the unavailability of the concerned product for the welfare of poor and downtrodden people.
- TRIMs or the Agreement on Trade Related Investment Measures contains of no rules in order to govern the Foreign Investors' trade, which in turn causes favouritism to the Foreign Firms and capricious dominance on domestic resources.

INDIA'S RELATIONSHIP WITH IMF:

IMF or the International Monetary Fund is basically an International Body situated at Washington DC and came into existence on March 1, 1947 which provides monetary assistance to its member nations with an aim to reduce unemployment and poverty, overall develop the economic growth of a nation, prevent the financial crisis of an economy, regulate the exchange rates in trade, meet the demands by supplying scarce currencies and prosper in terms of sustainable development.

DATE OF JOINING[124] **–** India joined the International Monetary Fund on 27th December, 1945.

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[121] http://www.preservearticles.com/2011103116279/essay-on-india-and-wto-issues.html
[122] Gervais, Daniel (2008) The TRIPS Agreement: Drafting History and Analysis, Sweet & Maxwell
[123] TRIPS [trade-related aspects of intellectual property rights] Retrieved From the World Trade Organization Website accessible at http://www.wto.org/english/tratop_e/trips_e/trips_e.htm#issues
[124] Accessible at https://www.imf.org/external/country/ind/rr/glance.htm

PURPOSE OF JOINING – In order to prosper in terms of economic stability, eradicate the unemployment and poverty, be benefitted with monetary assistance, increasing the rate of sustainable development and overall growth of economy.

BENEFITS OF JOINING[125] –

1. IMF indirectly contributes in the International Trade by providing monetary assistance and India is thus benefitted so as to be a member of the WTO who in turn regulates the International Trade.
2. It is also worthy to mention that India was suffering from grave deficits in balance of payment which was resolved due to the financial stability provided by the IMF's membership. For instance, since the year 1971, India enlisted as one of the high level borrowers from the IMF and ended up borrowing Rs. 817.50 crores within the same period. Also, in the year 1981, IMF gave a huge loan of 5000 crores so as to stabilize the Foreign Exchange Rates Crisis.
3. In order to be a member of the World Bank, a nation requires to fulfill the condition of getting membership in the International Monetary Fund. Hence, today the India's membership in the World Bank, IFC (International Finance Corp.) and IDA (International Development Association) exist because of the IMF's membership.
4. Being a member of the IMF, India is also benefitted with the facilities as mentioned below –

   a) PRGF (Poverty Reduction and Growth Facility), b) SRF (Supplemental Reserve Facility) and c) CCL (Contingent Credit Line)

   The PRGF was earlier known as ESAF i.e. Enhanced Structural Adjustment Facility which was established in the year 1999 with a mission to fund the developing and least developed countries for poverty eradication.

   The SRF came into existence in the year 1997 during the financial instability caused in East Asian Countries. This facility helps to overcome financial crisis and aid the concerned member nations for resolving the Balance of payments deficits.

   The CCL or Contingent Credit Line deals with aiding those member nations who anticipates an economic instability due to capital outflow.

CONFLICT BETWEEN INDIA AND IMF[126]

Despite providing a huge assistance for the economic development of India, the country still faces long-term barriers as the scenario and society changes. The IMF concerns as the RBI or the Reserve Bank of India acts in several roles which further overlaps the goals with one another. Generally, RBI appoints the Officers to act as the Directors in the Management of the Public Banking Sectors. On the other hand, they functions the roles of supreme supervisor over those banks. Hence, acting in multiple roles ultimately clashes between the two types of duties and encourages shifting from the fixed goals.

INDIA'S RELATIONSHIP WITH THE WORLD BANK

Like International Monetary Fund, the World Bank is also an International Body which provides the financial assistance in the form of loans to those constituencies which face high financial imbalances, balance of payment deficits and below poverty level rate. The difference between the International Monetary Fund and the World Bank is that the former basically exists to regulate the exchange rates and provide the aid to overcome the near financial crisis whereas the later aims to eradicate the poverty and bring a long-term growth and development in the economies. However, both the bodies were set up in the year 1945 by the Bretton Woods Agreement.[127]

DATE OF JOINING –India enrolled itself as a member on December 27, 1945 – the same day when it joined the IMF.

PURPOSE OF JOINING – In order to gain a long-term development, prosper in terms of economic stability, eradicate the unemployment and poverty, be benefitted with monetary assistance, increasing the rate of sustainable development and overall growth of economy.

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[125] Subho Mukherjee, 'Role of International Monetary Fund (IMF) in India', accessible at http://www.economicsdiscussion.net/international-monetary-fund/role-of-international-monetary-fund-imf-in-india/10817

[126] Multiple roles of RBI create conflict: IMF, The Hindu, Mumbai, updated on JANUARY 16, 2013 22:46 IST

[127] Accessible at http://www.investopedia.com/ask/answers/043015/what-difference-between-international-monetary-fund-and-world-bank.asp

BENEFITS FROM WORLD BANK'S MEMBERSHIP [128]-

1. Achieving Financial Development – Through Loans, sufficient training and providing expert suggestions to Indians Administration.
2. A Project of M.P. State Govt. worth Rs. 50 Crores – Assistance was given by the World Bank. The project was related to the land reclamation of the River Chambal.
3. Assisted in launching a family planning project for enforcement of a family scheme in Uttar Pradesh.
4. Third Year Plan of India was provided the aid of 5472 Million USD by the World Bank.
5. The 13 years' dispute regarding River Indus as between India and Pakistan was resolved in 1960 with the assistance of the World Bank and resulted into the Indus-Water Treaty.
6. Also, during the period of 1971-72, Punjab witnessed the assistance of 39 Million USD to numerous agriculture-based projects so as to boost the agriculture industries.

CONCLUSION

The analytical study that has been attempted in this paper with reference to the relationship of India with WTO and World Bank-IMF; exhibits several crucial factors which encourages and advances India so as to maintain its trade relations and strategic capability in the International Highly Competitive Environment. But due to a flock of pressing disputes as arising out of those relationships and memberships, India still remains as a developing country rather than a super power. It further creates a ray of hope that India will undoubtedly be succeeded in mitigating those conflicts in near future as it did previously.

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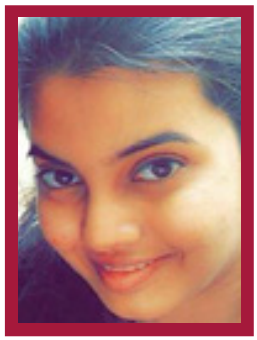

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KARTA AND HIS ENTITLEMENT TO REMUNERATION FOR THE SERVICES RENDERED BY HIM IN THE INDIAN JOINT FAMILY – A SOCIO LEGAL STUDY

ABSTRACT

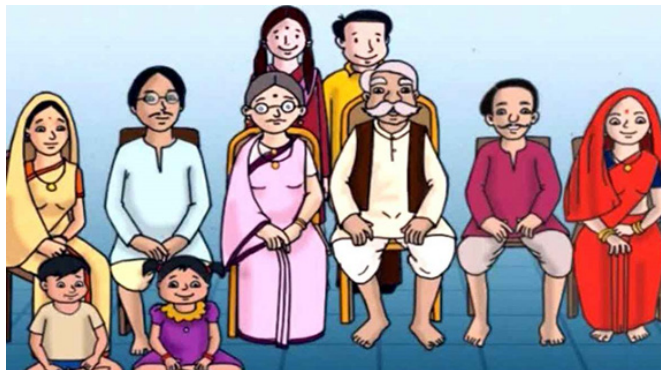
The Hindu joint family, it has been and still is the fundamental aspect of the life of Hindus. This project focuses on the position of a Karta in a joint family and incorporates socio-legal aspects. Also it attempts to analyze whether he has a right or not to get remunerations in return of the services rendered by him in a joint family as it is very well known that he obtains no award for his services though he discharges numerous responsibilities towards the family and its members. Further if he has the right for the same then what is the extent of such right? The research of the project further gives a picture of the socio legal aspect of the position of Karta today. It also gives an insight in the question of whether the remuneration fee or commission that the Karta receives by being employed outside will be his separate property or part of the joint family.

[128] Accessible at http://accountlearning.com/india-and-world-bank-benefits-india-gained-from-world-bank/

This paper seeks to highlight the landmark cases which are the steps of development in the area of laws regarding Hindu joint family and Hindu undivided family over these years. It concludes with certain recommendations regarding the same.

INTRODUCTION

The Mitakshara joint family has been an integral part and the most characteristic way of Hindu life. In Hindu law, there is a presumption that every family is a joint family. A Hindu joint family consists of a common ancestor and all lineal male descendents together with the wife/wives (or widow) and all the unmarried daughters of both the common ancestor as well as lineal made descendents. To begin a Hindu joint family, a common ancestor is an essential but the same is not true for its continuance. A Hindu joint family is not a corporation and therefore does not have any legal entity; rather it is one unit which is represented by the Karta. All the members of the family are a part of this joint family either by birth or marriage, the only way to include an outsider as a member in the joint family is by the method of adoption.



The manager of the joint family is called the Karta. This term was defined in the case of Suraj Bunsi Koer v. Sheo Persad.[129] He is not an agent or trustee of the family but as being the head f the family he is the custodian or guardian of the property of the family along with the family's interest. The position of the Karta which is acquired by birth or seniority, subject to his capacity to act, is terminable only either by resignation or relinquishment.

SCOPE AND OBJECTIVE OF THE STUDY

The object of this study is to analyze the role and legal position of Karta and the extent of the right to remuneration that he should have for the services he renders in the joint family. A study of the provisions of the Hindu Succession Act, 1956 is conducted to find out the ambit of Karta's powers and liabilities to understand the legal position of the Karta in order to learn about his rights. Major landmark cases are studied to understand judicial view on this subject better.

RESEARCH METHODOLOGY

The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research.

RESEARCH QUESTIONS

1. Whether a female member is qualified to be a Karta of Hindu joint family or not?
2. Whether entrusting the Karta with such vast powers makes him a person of unlimited power or not?
3. Whether the salary, remuneration fee or commission that the Karta receives by being employed outside will be his separate property or part of the joint family funds?
4. Whether the Karta has a right to get remunerations in return of the services rendered by him in a joint family or not?

HYPOTHESIS

From being mere traditions and customs to enacted acts and statute; succession laws have evolved in the field of family laws and the journey has been prolific. The topic of research here revolves around the Karta of the joint family. In the entire Hindu joint family, the Karta or manager (the English word manager is wholly inadequate in understanding his unique position) occupies a very important position. Karta is the eldest male member of the family and the Hindu patriarch. His position is so unique that there is no institution or any other system of the world, which can be compared with it. His position is sui generis i.e. of his own kind or peculiar to himself. After all the strenuous services he does for the entire family, still no provision as

[129] (1880) 5 Cal 148

such is there in law where he is benefitted out of these services performed. It is time when efforts are made to recognize Karta's legal position in relation to social realm and he is awarded for his services keeping in mind the judicial point of view.

PEOPLE QUALIFIED TO BE A KARTA

SENIOR MOST MALE MEMBER: The first Karta of a hindu joint family is the common ancestor who formed it, the father. But on his death, ordinarily, it passes to the senior most male member of the family who can be an uncle or eldest brother etc. he is entitled to Kartaship by virtue of the fact that he is the senior most male member and does not owe it to the consent or agreement of the coparceners. However, in cases of insanity or any other disqualifications, the next senior male member generally takes over the Kartaship. Once this is done the former will cease to be a Karta.

JUNIOR MALE MEMBER: By way of understanding or agreement among all the coparceners, even a junior male member of the family can attain the Kartaship which was laid down in the case of Narendrakumar v. Commissioner of Income Tax[130]. Though the coparceners are free to withdraw their consent at any point of time. In the case of Narendrakumar J Modi v. CIT[131]; Baplal Purushottamdas Modi was the head of the HUF. Joint family possesses many immovable properties and carried business of various types such as money lending, etc. He executed a general power of attorney in favor of his 3rd son, Gulabchand on Oct 5, 1948. On Oct 22, 1954 Baplal relinquished his share. On Oct 24, 1954 the existing members of the family executed a memo of partition. However, the order accepting partition was not passed, the contention of the appellant was that Gulabchand couldn't be a Karta because he is a junior member and other members of the family did not accept him as a Karta. It was held by the court that Gulabchand was given the power to manage by Baplal because Gulabchand's elder brother was an aged man of 70 years. And also the father of appellant died in 1957. So, under such circumstances, Gulabchand appears to have acted as the Karta with the consent of all the other members and hence the appeal was dismissed.

MORE THAN ONE KARTA: Two persons can look after the affairs of the family; this authority is based not on any Hindu laws but on the members of the family who confer the authority on them. The most important qualification required to become a Karta is that the person should be a coparcener in the family. There cannot be two Kartas of a Hindu joint family but Karta or members of the joint family can by express or implied consent confer authority for the protection interests of such joint family business.

FEMALE MEMBERS AS KARTA

The qualification of a female member of a Hindu joint family to be its Karta has been in debate since a long time. The Courts in India have given diverse views: -

C.P. Berai v. Laxmi Narayan[132]
It was held that a widow could be a Karta in the absence of adult male members in the family. It was said that the true test is not who transferred/incurred the liability, but whether the transaction was justified by necessity.

Sushila Devi Rampura v. Income tax Officer[133]
It was held that where the male members are minors, their natural guardian is their mother. The mother can represent the Hindu Undivided Family for the purpose of assessment and recovery of income tax.

Gangoji v. H.K. Channappa[134]
The court was of the view that the mother as natural guardian of her minor sons can manage the joint family property and there appointment of a guardian by court does neither seem fit in this case nor would it be justified.

Radha Ammal v. Commissioner of Income Tax[135]
It was held that since a widow is not admittedly a coparcener, she has no legal qualification to become a manger of a Hindu Joint Family.

Commissioner of Income Tax v. Seth Govind Ram[136]

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[130] AIR 1976 1953
[131] 1976 S.C. 1953
[132] AIR 1949 Nag 128
[133] AIR 1959 Cal
[134] AIR 1983 Kant 222
[135] AIR 1950 Mad 588
[136] AIR 1966 S.C. 2

After reviving the authorities it was held that the mother or any other female could not be the Karta of the Joint Family. According to the Hindu sages, only a coparcener can be a Karta and since females cannot be coparceners, they cannot be the Karta of a Joint Hindu Family.

According to Dharmashastras, in absence of male members female members can act as Karta, or in case where male members if present are minors, she can act as Karta. Debts incurred even by female members under such circumstances will be binding upon the family and must be paid out of the joint family funds whether at the time of partition or earlier. Often the question is raised as to whether her acts are for the benefit of the family. Dharmashastra answers it by saying that she might act as manager by doing acts of positive benefit and not merely conservative/negative acts.

Prior to 1956, Hindus were governed by property laws, which had no coherence and varied from region to region and in some cases within the same region, from caste to caste. The Mitakshara School of succession, which was prevalent in most of North India, believed in the exclusive domain of male heirs. The co-parcenary is at present confined to male members of the joint family. In contrast, the Dayabhaga system did not recognize inheritance rights by birth and both sons and daughters did not have rights to the property during their father's lifetime. At the other extreme was the Marumakkattayam law, prevalent in Kerala, which traced the lineage of succession through the female line. According to Hindu Minority and Guardianship Act, 1956 woman can take only a conservative action. It is certain that guardian acting under the act cannot undertake every class of proceeding that would be open to a manager and hence the act does not purport to confer upon the guardian the power of manager. The cause of women's right to inherit property was raised and championed by our former Prime Minister Jawaharlal Nehru and the Hindu Succession Act was enacted and came into force on June 17, 1956. Many changes were brought about that gave women greater rights but they were still denied the important co-parcenary rights. Subsequently, a few States enacted their own laws for division of ancestral property. For instance, Kerala Joint Family System (Abolition) Act, 1975, the heirs (male and female) do not acquire property by birth but only hold it as tenants as if a partition has taken place. Andhra Pradesh (1986), Tamil Nadu (1989), Karnataka (1994) and Maharashtra (1994) also enacted laws, where daughters were granted 'coparcener' rights or a claim on ancestral property by birth as the sons. Further, the issue of discrimination against women was put forth in the Law Commission. In 2000, the 174th report of the 15th Law Commission suggested amendments to correct this situation and this report now forms the basis of the present Act. The amendment made in 2005 gives women equal rights in the inheritance of ancestral wealth, something reserved only for male heirs earlier. It indeed, is a significant step in bringing the Hindu Law of inheritance in accord with the constitutional principle of equality. Now, as per the amendment, Section 6 of the Hindu Succession Act, 1956 gives equal rights to daughters in the Hindu Mitakshara co-parcenary property as the sons have.

Though the 2005 amendment gives equal rights to daughters in the coparcenery, The objection to this issue of females managing a joint family as visualized is that daughters may live away from the joint family after their marriage but it is well appreciated that women are fully capable of managing a business, taking up public life as well as manage large families as mothers. Another doubt being considered is that as managers of their fathers' joint family they could be susceptible to the influence of their husbands or husbands' families. The important question of whether female members can be allowed to become managers or Karta of the joint family remains unanswered by the judiciary which has given a case wise opinion and judgment according to the circumstances. But however, the question is answered according to our ancient texts and can be followed in accordance with our personal laws.

POSITION OF KARTA IN A HINDU JOINT FAMILY

Being the head of the family, the Karta has a duty to see that all the reasonable wants of all the members of the gamily are satisfied, if he fails to do so, the members could enforce it by legal action. The Karta represents his family in all matters including religious, social and legal matters. He acts on behalf of the family and his acts are binding on all the members of the family. To support this, it was laid down by the Supreme Court in the case of Radhakrishna v. Kuluram[137] that the Karta can enter into any transaction on behalf of the family and that will be ordinarily binding on the family members.

LEGAL POSITION

The Karta can file suits or take other legal proceedings as in the benefit and protection of interests of the family and its property and business as laid down in the case of Sheoshanker v. Jaddokunwar[138]. It is not necessary that all members of the family

[137] AIR 1967 SC 574
[138] AIR 1967 SC 574

should join in the suit though the Karta can represent the family in a proceeding adequately even if he has not been named as such. In the cases where any adverse order is passed against the Karta requiring him to deliver the possession of property to another person even if other members of the family are not parties to such cases still they are bound by it. Further, the Karta is free to refer any dispute to arbitration or compromise or any settlement of such dispute. This rule applies to both the dispute of family members within the family or disputes between family members and outsiders. Also if the Karta legally enters into a compromise or settlement to safeguard the interests of the members of the family then that binds the other members along with the minor.

POSITION REGARDING THE BUISNESS

The Karta has all the rights to carry out the ancestral business with or without taking help from other members of the family. He can buy, sell and manufacture, enter into contracts etc, if such act is required to carry on the business. He can further mortgage or sell any family property for a reasonable cause and can enter into partnerships with others.

POSITION REGARDING PROPERTY

When we talk about immovable property the Karta has the power to manage the same by recovering rents, paying expenses by way of taxes, maintenance etc. Further, he can also file a suit of recovery of the property that belongs to the joint family on behalf of its members as stated in the case of Gangadhar Rao v. Ganga Rao[139]. In case of partition, the father of a joint family has the power to divide family property at any point during his lifetime though he has to give equal shares to his sons, in the cases of alienation; the Karta has the power to alienate the co-parcenery property by sale or mortgage for legal necessity or benefit of the estate or otherwise and it will bind all the coparceners. If any junior member is allowed to deal with the family property, his decisions will be binding on all the family members like he was a real Karta. When cases of movable property are dealt with, the position is that the father has the power of making reasonable gifts of ancestral movable property without the consent of his sons. A gift of affection may also be made to a wife, a daughter and a son.

POSITION REGARDING ACCOUNTS

This aspect of Karta's position was focused in the case of Laxminarayanan v. Dinker[140]. The court observed in this case that the Karta is liable only to account on partition that he received not for what the family would have received if the family money was put to a more beneficiary deal given there is no presence of proof of misappropriation, fraudulent or improper conversion by him.

POSITION REGARDING THE INCOME

Karta has control over the income and expenditure and has a right to keep the surplus in his custody if any. He is responsible to manage the expenses for all the basic needs of the members of the family like education, marriages etc along with this he has to manage the expenses for the religious ceremonies of the family as well. Though he has control over the entire income of the family yet he is not under any obligation to save as long as he is making a good use of the money in the interest of the family which is different in the case of a trustee or an agent. Regardless of this, he is liable to other members of the family when he misuses the income and spends it in any way which is not in the interest of the family and has to make good to them for this amount of misappropriated money.[141]

Now the question here is, **whether entrusting the Karta with such vast powers makes him a person of unlimited power or not?** Because as we can see all the crucial powers regarding the person and property of all the members of the Hindu joint family is in the hands of the Karta. However large powers a Karta might have, he cannot be a despot. He has blood ties with other members of the family. After all he is a person of limited powers. He has liabilities towards members. Any coparcener can at any time ask for partition. He obtains no reward for his services and he discharges many onerous responsibilities towards the family and its members. There are always certain checks on his powers. For example, if he improperly excludes any member from maintenance or does not properly maintain them, he can be sued for maintenance as well as for arrears of maintenance. Also, after the severance of status has taken place, the Karta is bound to render accounts of all expenditure and income in the same manner as a trustee or agent is bound to render accounts.

RIGHTS AND LIABILITIES OF KARTA- STUDY OF LANDMARK PRONOUNCEMENTS

[139] AIR 1968 AP 291
[140] (1943) 3 Nag 390
[141] Abhaychandra v. Pyari Mohan, (1870) 5 Beng LR 347
[142] 2009 (111) Bom LR 393

The best way to understand the rights and liabilities of the Karta in a socio-legal way is to study the recent judicial pronouncements.

Shankarlal Ladha v. Vasanth Deshmukh and Ors.[142]

It was held that the purchaser of the Hindu joint property has a duty towards other members of the family to discharge burden of proof to prove existence of legal necessity. Also in the same case, it was held that the marriage of a male coparcener can be considered as a legal necessity but just giving the reason of expenses for making improvements in agricultural land cannot be taken as a legal necessity.

Dev Kishan v. Ram Kishan[143]

In this case, alienation of property was carried out for the purpose of child marriage. The court passed the judgment that any property alienated for an unlawful purpose cannot be termed as legal necessity.

Chanumuri Subhaveni and Ors v. Sappa Srinivasa Rao ans Ors.[144]

Here the court held that in cases or situations when there is no urgent and pressing need for the payment of due debt then in such cases, if alienation is still made at low consideration will not be considered as a legal necessity.

Rangaswamy v. A.P. Transco and Ors.[145]

This case was regarding the liability of Karta in relation to the debts. It was held that the Karta will only be individually liable for nay debts that he incurred after the partition of the property.

Jagdish Parshad v. Laxmi Narayan and Ors.[146]

The court laid down that it is not possible for the legal necessity to remain static and it is for the Karta to decide whether there is a legal necessity or not or the existence of an act of good management regarding the property.

SALARY AND REMUNERATIONS- CASE ANALYSIS

When we talk about the salary and remunerations of the Karta in a Hindu joint family, we know for a fact that he does not receive any other special salary or reward for the services he renders for all the members of the family. But what happens when or if the joint family has invested its properties in an enterprise or industry etc and due to this reason, the Karta on behalf of the family or otherwise, is employed by this concerned enterprise or industry, **will any salary, remuneration fee or commission that the Karta receives by being employed outside be his separate property or part of the joint family funds?** In such situations what plays an important role to determine the answer for this question is the involvement of the elements of skill and labour. The judiciary has given various opinions in regard to this matter which helps this study by answering the concerned questions.

Murughuppa v. The Commr. of Income Tax[147]

Here, in this case, one of the coparceners was the managing agent of a certain mill and the question was raised on the commission that he earned. The court said that the commission earned by him would be prima facie his individual property unless it can be proved that he acquired the right by utilizing any portion of the joint family property.

Palaniappa v. Commr. of Income Tax[148]

The same stand was taken by the court as in the above case that if no part of the family funds had been utilized to enable the Karta to earn the remunerations of the position he is holding (in the present case, a managing director) but the family funds have been invested to obtain dividends and other advantages of being shareholders. Then in cases like these, the salary, commission and other fees of the Karta as managing director or in respect to any position he holds, belonged to him personally.

Piyare Lal v. Income Tax Commr.[149]

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[143] AIR 2002 Raj 370
[144] 2004 (4) ALD 745
[145] 2002 (4) ALT 108
[146] 2003 (135) PLR 481
[147] AIR 1952 Mad 828
[148] AIR 1968 SC 678
[149] AIR 1968 SC 678

In this case the Karta was the manager of the business concern and the joint family had given security of its property for the honesty of the Karta. Supreme Court laid down that the earnings of the Karta as manager were a result of his personal skill and labour instead of the family's investment. Therefore the family was earning interest on the fund given as security for Karta's honesty.

Dhanwantry v. Commr. Of Income Tax[150]

In this case the Supreme Court had a different view from the above mentioned case laws. In this case, coparceners had invested joint family property in a partnership and had agreed to share the profits and understand them as personal salary of each coparcener. It was contented by the petitioner that the manager in fact earned his salary on account of his personal skill and labour and hence had a right on it as his personal property. But the court in its judgment said that salary that the coparceners earned as partners constituted as joint family property.

So we can conclude that the answer to the question whether Karta's earnings by reason of his own skill and labour are his personal property or belongs to the entire joint family depends on the circumstances and no one stand is fixed in a rigid sense. If such salary, remuneration or commission is earned by the Karta on substantial and consequential investments of the joint family funds in the business etc then such earnings will be joint family property not considering the personal skills and labour put in by the Karta. But if no joint funds are pooled in or very nominal joint funds are invested, then in such cases, the earnings along with the dividends, interest, profits etc will constitute as Karta's personal property.

As a fact, the Karta obtains no award for his services though he discharges numerous responsibilities towards the family and its members. Being the head of the family, it is his duty to look after the interest of all the family members and conduct business in such a way that it is for the benefit of all and not just for him individually. But is it not **his right to get remunerations in return of the services rendered by him in a joint family or not?** There is no clear provision in law which gives the Karta this right to remuneration for the services he renders in a joint family but as we see that the judiciary has always given a wider interpretation of laws. There is no doubt that the mental and physical capacity generated by skill and labour of an individual are assets of that individual and there seems no reason why they cannot be contributed as a consideration for earning profits for business in partnership. They are certainly not the property of the joint family but a separate property of the individual concerned. We no longer live in a world or an age where every member of the joint family considered it his duty to place his personal skill and labour at the services of the family with no quid pro quo except the right to share ultimately on a partition in its general prosperity. Similarly the Karta of the family may has a lot of skill n technical field and is free to employ himself somewhere outside the family and then the earnings will be his absolute individual property and therefore he may not agree to utilize them in the family business unless the family is agreeable to remunerate him in the form of a salary or profits of shares. So for instance, in the case of **Chandrakant Manilal Shah Vs Commr. of Income Tax**[151], a family was running a textile business and the Karta becomes the textile manager, the Supreme court said that there is nothing wrong in the family remunerating him by a salary or share of profits or his expert services over and above his general share in the family properties.

CONCLUSION AND RECOMMENDATIONS

The concept of Karta in the Hindu joint family is not just a position of power but also serves a very practical purpose. A Hindu joint family is an extremely complex entity and it is imperative that in order that all the functions and duties are carried out conveniently, there be a centralizing force, which is really provided by the Karta. Centralization is a good key of management and this is provided by the Karta. No matter if it is a legal issue or otherwise, the Karta represents the entire family and therefore saves the trouble of multiple claims of actions.

The reasoning, which was earlier given by the courts including the apex court of the country that woman, cannot become a Karta because a Karta has to necessarily be a coparcener. But now, with the amendment of 2005, Section 6 of the Hindu Succession Act, 1956 gives equal rights to daughters in the Hindu Mitakshara coparcenary property as the sons have. Even now the Hindu Succession Act, 1956 does not accept a woman as Karta in normal circumstances. She can be a Karta only in two certain special circumstances: - in the absence of male members and in case there are minor male members in the family, which is prescribed by the ancient Hindu law, the dharmashatras. It should be understood that amendments are only the first step. The law can only be a path breaker; it cannot ensure that justice is done. For that there

[150] AIR 1968 SC 683
[151] 1992 AIR 66

must be a positive change in social mores. Women have to become aware that the law does not discriminate against them in property matters and that they cannot be shortchanged any more. In many cases, justice is denied simply because of lack of awareness. Here, hopefully, the right to Information Act would facilitate greater access for women to know about their rights. In fact, they should be empowered and enabled to demand their rights, wherever they are sought to be denied.

The government should take steps to uplift the position of woman in other personal laws also. It must be understood that equality for women is not just a matter of equity for the so-called weaker sex, but a measure of the modernity of Indian society and the pragmatic nature of our civilization.

Further analyzing the position of Karta, it can be said that he has less liabilities and more powers. Though at the same time it cannot be said that he holds the position of a despot. Along with numerous powers, a lot of checks have also been imposed on the Karta to prevent any misuse of power. This ensures that the Karta works for the benefit of the joint Hindu family. Law has provided enough remedies to the members of the joint family to protect their interest in case of any despotic behavior by the Karta. When it comes to determination of the position of Karta it can be said that he holds a unique position. In totality it can be said that all family members are duty bound to accept what Karta says until/unless it is detrimental to them. Also hopefully a law will soon come into force with an actual provision guarantying him the right to remuneration for the services he provides to the family.

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SHWETANKI TYAGI
BA.LLB 2rd Year

SCI – FI STORY SERIES

A JOURNEY THROUGH DREAMS (IN THE YEAR 2117)!!@@**

Prologue

This series of article is based on the theory of lucid dreaming and a sci-fi story of a young boy 'Aarav Madhavan' who lives in Virginia with his Mom and Dad and his physically dis-abled grandfather. This is a story that takes place about 100 years from now when Aarav is just 18 years old and the world is on the verge of extinction because of the depletion of resources, paced up global warming and excessive pollution.

Scientist anticipated this fate of the earth a century back in 2017 and since then, were working on a time portal to bend time and save humanity. Aarav's Grandfather Raghav Madhavan was a young and the most famous Historian in the world and also a research scientist with the NASA team which was developing the portal. Raghav was also a lucid dreamer in his personal life, i.e. He remembers all his dreams as if he lived through them. In his dreams he sees many events from the past of the earth which at the present time are considered as unsolved mysteries. With the help of these dreams he solves those mysteries and realizes that the answers which the world wants by opening a portal are already present on Earth. He finds out a way to save the planet without creating a time loop as this was a much safer course of action. But till the time he solves all these mysteries he is too old and disabled to convey those ideas to somebody, also the world in the present day is not mature enough to understand his theories. He requests his son, who too now works with NASA for the same project, to secretly save his brain from dying.

Now, in 2117 when the world is about to end, Raghav, wants to convey his ideas and theories to Aarav so that he may propagate those ideas and humanity could be saved. But due to his condition, the only thing functions is Raghav's brain. So, since he is a lucid dreamer, he shares his theories and ideas (which are basically mysterious theories like the Bermuda triangle, pyramid and other such things) with his grandson by sharing his dream with him, or, basically by appearing in Aarav's dream.

In each episode, Raghav shares one dream with Aarav, and when the dream ends, the theory is left for the readers to interpret. By sharing all these theories through dreams, Aarav now unravels all the mysteries hidden on earth and with the help of thEse theories, he saves the world.

How? That's what the story is all about! Jump to the story! LO! PRESTO!!.

Some of the spoilers to the theories are, Nazca lines, arctic lights, North Korean secret treaty etc.

A JOURNEY THROUGH DREAMS

21st of December, 2017, another experiment to travel back and forth in time failed. The scientists sitting at NASA thinks that traveling to future is the only way to save humanity from extinction. But I, as a historian have a different outlook for the same. Maybe because, not being able to invent the problem is still a smaller problem than being stuck in the problem. What if, in an attempt to discover a portal to travel through, humanity actually gets stuck in a time loop? What if, thewhole of mankind is stuck in this world, living the same moments for an infinite period!

My lack of contribution to that portal thing makes those scientists think that Raghav is scared to progress, or is too attached to the history of this planet that he cannot think of breaking it apart and wants to be stuck in this. But, I am not scared. I just feel that the answers they are searching for are neither in future, nor in the past. What if the answers are in front of you? We just need to decipher them. What if there is no need of such a big risk as a time loop. I usually get these feelings, but I know no one is patient enough to understand it. I even try to disengage myself with these thoughts. But the moment I sleep, I wake up into my world, where answers to all the mysteries are hidden. Mankind needs to progress more to decipher these Ideas. The fact that I cannot move my body while I dream about these incidents from our past, prevents me to leave a message for mankind which would be essential for them, when the catastrophe arrives.

A century later…

16th of March, 2117, another usual day, father is en route to the NASA facility where they are still trying to discover a portal to go to the future and find a way to save the humanity from extinction. Grandpa Raghav's era has ended as a historian and now he is present with us just as a mute spectator of humanity failing to survive. The only thing I fail to understand is that if his body is paralyzed, his vocal cords numb, then why my father wants to keep his brain alive. Why is grandpa lying in that strange machine with tubes all over his body, and his face slightly visible from the glass?

"Mom, why do you cry every day? I was out for just an hour, to see my planet, don't I have that right! Father is out since the fumes vanished, I argued". More tears rolled down her eyes as she rushed to hug my dad when he came back from his daily duty.

Since the pacing up of global Warming, this is the daily lifestyle of the human populace. My mother keeps on thinking, taking account of the pollution and the continuously rising temperature, will the world survive till the next generation? But to distract myself from this, I was just lying on my bed gazing over the family photos where I as a child am sitting on the lap of my mother and father and grandpa are standing at back gazing at me happily. I wondered for how long these memories will survive if something happens. I was freaked out when I saw a person similar to Grandpa Raghav. He asked me to pay attention to "Suspicious Minds". Regardless of his advice, I was still wondering how he is talking to me, why he is talking to me, what is suspicious mind, and moreover who is he? Is he really my Grandpa?

He told me to reset my initial conditions each day because, he said, parameters propagate out of control all the time. He told me my dog understood this already and could easily explain this to me if only I understood them. I didn't really know what he meant by that, aren't people more intelligent than dogs? I think he was saying my dogs reset their clocks every day, but humans don't. I did question my dog about this, but he didn't seem to know anything and behaves as he always does. It's funny though, and I never gave much attention to it before, but when there are stories of UFOs, the Bermuda triangle, the dinosaurs, the Nazca lines and such things on TV, I catch my dog paying attention. When I look at him, he turns away suddenly, even suspiciously. So many times I have questioned him intensely, and just as I think they are going to speak – I wake up!..... It's my Mom. She wants me on the dining table. I proceed, still wondering if I just met my grandpa. After breakfast, I rushed to the basement, just to see grandpa lying, like a fixture. But something tells me that I just saw him talking to me an hour ago.

Nothing stopped me from researching what actually "Suspicious Minds" means. Was it a dream, or a reality? Does my grandpa want to say something? I kept 'googling' about the concepts as my dog sat by; he too was reading!

(To be continued….)

SAHIL JAIN
BBA LLB 1st Year

ARAVIND RAJ
BBA LLB 1st Year

POETRY

Lord Moron

He sits upon a high chair
Ordering people about
With a large ego hidden under his hair
This lord is a moron no doubt

Without a care in the world
For anyone other than him
Ignorance around him so tightly twirled
Sensibility is an expensive whim

Accompanied with a quick temper
That stays with him day and night
If you irritate him you mustn't so much as whimper
Or you will have a fright

Even his beloved are not spared
From his temper's generosity
Without caring how he'd fare
Some have left with admirable velocity

Now to keep those who remain
He relinquishes his high throne
In hope that he'll never be so vain,
To lose those who love his life, more than their own

Apologise is what he does now
To those he has hurt
And promises to show only love
And to never again be curt

ABHISHEK ARUL
BA LLB 2nd Year

YET SHE IS BEING KILLED

She is the creator next to God
She is the one to beget,
To beget this world,with Gods desire
Making it a thing of beauty
Yet she is being killed,
Being killed with no reason.

She is the one who gives birth
She is the one who suffers nine pain
She is the one who suckles us, gives intimation of maturity
With ease, without complaining
Yet she is being killed,
Being killed with no reason.

She is the one who teaches us to live life
She is the one makes life better
She is the one without whom
Life is not possible.
Yet she is being killed
Being killed with no reason.

Had she been given a chance
A chance to prove herself,
Either being P.T. Usha or Saina Nehwal or M.C. Marycom
Had she been given a chance to become,
Sushma Swaraj or Pratibha Patil or Kiran Bedi
She would bring laurels for this nation
Help keep the name and fame of Mother Earth!
So WHY? WHY? WHY? Kill her?
Nurture her, Nourish her and Educate her!!

SAKSHI SONAL
B.A. LL.B 1st Year

IF ONE MUST DIE

If one must die one day
Then why not with some pain,
For pain is simply a feeling
That should be felt with grace.

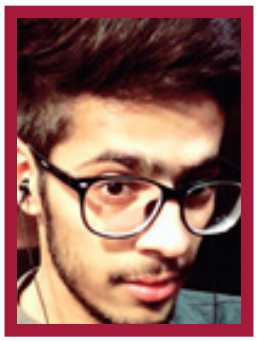
The one who died doing nothing
Has wasted his own life,
One might get second chance
But not his own life.

A series of emotions flow out
When a person has died,
For this is just the 'fake'
No carings be in light.

The one who lives in fear
Must try to struggle with might,
The day has come today
To fly like a bird with sight.

Many took birth and many have died,
For no one has noticed their presence beside.
But only the one who has given for a wide,
Would be able to achieve something in life

And this is not the 'fake'
But true emotions bursting alive,
If one must die one day
Then he should die with thrive.



CHIRANSHU ARORA
BA, LLB 1st Year

SATI - A WOMAN'S PLEA

[A young woman who has lost her husband recently is being dragged by all her family members and is being forced to sacrifice her life by jumping into the fire (Sati). Following is a monologue of the woman, who aggrieved by this agony, pleads to the crowd to spare her life, as she still has a lot more reasons to live for.]

"WHAT WRONG HAVE I DONE?
TO DESERVE SUCH SHUN.
FROM THIS SOCIETY,
WHICH ONCE GAVE ME RELIABILITY.
ALL MY FRIENDS AND MY RELATIVES,
WHO NOW ONLY GIVE ME UNSPARING INVECTIVES.
ALL THOSE WHOM I LOVED DEARLY,
HAVE NOW BECOME THE ONES TO WHOM I HAVE TO PLEA!

PLEASE SPARE MY LIFE,
EVEN IF I AM A DEAD MAN'S WIFE.
CAUSE NOW THAT HE'S GONE,
I'M ALREADY FORLORN.
DON'T THINK OF ME AS A BURDEN,
RATHER ACCEPT ME AND HELP ME HEARTEN.
GIVE ME ONE CHANCE TO LEAD MY WAY AHEAD,
AND I SHALL BE THANKFUL TO YOU LIFELONG INSTEAD.

ALL I ASK FOR IS A PLACE IN YOUR HEARTS,
JUST THE WAY, AS IT WAS.
WHAT HAPPENED TO MY HUSBAND WAS A TERRIBLE PAST,
LET'S LEAVE IT BEHIND AND MOVE AHEAD FAST.
IN THIS JOURNEY OF SORROW AND GRIEF,
LET US BE THERE FOR EACH OTHER AND HAVE BELIEF.
MAY WE PROMISE EACH OTHERTHAT FROM THIS DAY,
TOGETHER WE SHALL SOLVE EACH OTHERS' PROBLEMS ALWAYS.

I BEG OF YOU TO NOT THROW ME AWAY!
INTO THIS RAGING CYCLONE OF CASTAWAY.
CAUSE EVEN AFTER WITNESSING MY PARTNER'S PYRE,
I AM AN INDIVIDUAL WHO HAS HER OWN DESIRES.
LET ME SURVIVE AND BE WHAT I CAN BE,
INSTEAD OF PUSHING ME INTO THESE FLAMES OF CRUELTY.
LET ME SURVIVE AS IT IS MY BIRTHRIGHT,
DURING THIS DARKNESS IN MY LIFE, SHOW ME SOME LIGHT."

AISHWARYA PANCHAPAKESAN
BBA.LLB 1st Year

EMPATHY

LIFE AT AN NGO – A STUDENT INTERN'S OBSERVATION

NGOs are a testament that there are people out there who are ready to serve the needy. NGOs deal with education, healthcare, social work, women empowerment, etc.

The main thing about NGOs that sets them apart from other organizations is that they do not work for profit. While we all know the obvious pros and cons of operating without profit, while I was working in my NGO I noticed a few things which can be found only in NGOs.

While most people feel that when people work voluntarily or for a meagre pay without any pay rise incentives or anything they tend to get complacent and not work up to their full potential but what I feel is that it brings a sense of togetherness and camaraderie among the employees that are completely unique to NGOs.

A typical instance is during their lunch break. The amount of noise and fun they have is amazing. It doesn't even make you feel you are in an office environment. Once they had invited us interns to join us for lunch. That day they were having a pot luck lunch, where-in everyone puts their food in a common pool and everyone gets a taste of everything. Since we had already eaten our lunch and we were not that comfortable with the employees yet so we decided to give it a skip but when we heard all the noise and enjoyment when they were eating we actually regretted turning them down. Also the casual manner in which the bosses, interns and volunteers interact is encouraging. Like the other day one of the interns coolly came into the boss' cabin and started gossiping with the boss on topics like why the boss hadn't got married yet and finally all of us in the cabin started chatting about it.

It is during instances like these you feel that in this highly competitive world by simply knocking out a profit motive out of the equation of an organisation you get a sense of calm and enjoyment at your workplace.

ARJUN MENON
BBA, LLB 1st Year

THE WOMAN - A JOURNEY OF RESTORATION

Beautiful are those who rise after they fall, Amazing are those who know when they have to put a foot to all the cruel remarks that society throws at them, but STRONG are those who return with a BANG!!!

--PRIMROSE

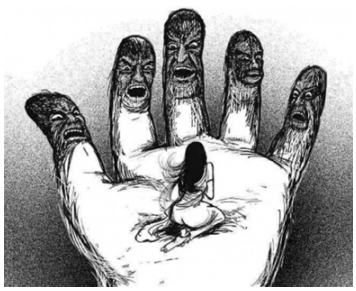
One of the most celebrated Authors of the modern era, Primrose's New Book is on the way. Keep your fingers crossed and you might be lucky enough to get a signed copy.. Now , now , now, Don't we all want to know, who our beloved Writer is, don't we all want to know **'The Woman'** as christened by the Critics is? Yes, we do. Miss Primrose, we are dying to know you. Do unravel your mystery soon and soothe our hungry hearts.

- Ananya Das, Reporter, The Gazette

The Woman read through the write-up and drank in each and every word. She was known to the World as Primrose or rather ‹The Woman›. She used to go through every write-up about her, watch every show that said a few words about her, No, she wasn't overtly obsessed with herself. She had an ulterior motive. A smirk played at her lips, as the same society that had once shunned her sang her praises. This was that woman who had once had a beautiful family, a loving fiancé and a wonderful job.

Just one fateful night, oh, that horrid fateful night, changed it all. She was raped. YES, SHE WAS RAPED. Those Bastards had touched her in the most horrid, morbid way possible, scarred her, and assaulted her. Just that one fateful night and everything had turned to dust. ' *Oh can this gruesome reality not be undone or repaired*?" she often questioned herself. For days she hated herself, scrubbed her skin till blood oozed from the scratches, locked herself , refusing to eat or go out.

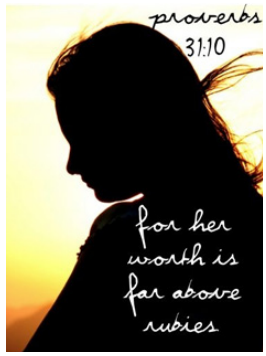
Amidst this agony, where was her family? Where was her fiancé?



They had broken all ties with her. On top of that, she lost her job, the company refused to have an employee who was impure. The society labeled her as -" UNCOUTH", "IMPURE", "RAPED".

No amount of Candle Marches could bring her justice, that was when she realized -" *When it isn't my fault, I refuse to bear the brunt of it*." That was her turning point. That was her rising point. She started writing- poured her heart and soul into them. Her stories were emotional, motivational and had inspired millions. Everyone can have their fairytale end, she believed. And this belief of hers was inculcated in each and every story of hers. Her novels began in the same old way with-"Once upon a time.." and ended with-" and they lived happily ever after."

The society that had once shunned her, now bowed down. She was worshipped. And that was all because she believed in herself. She was strong.



"The woman" is '**Me'**. The woman who believed that things would turn out fine one day. All she needed was to hold on. Today, as I feel the warm hand slipping into mine, in contrast to the cold wind, I realize that I made a right choice. Yes, I am proud of myself. I am proud because I stood up - 'Alone'. But, with my head held high, I have found love again - Love that bears storms, Love that is my Strength.

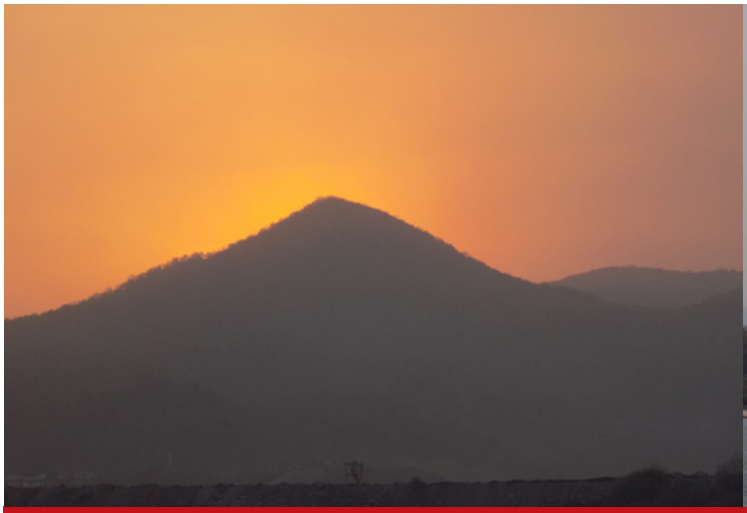
Today, I've decided that the world needs to know who Primrose is. Today they shall know the story behind The Woman. Today, the society shall know better than to shun a woman without any fault of hers.
Finally, TODAY, She is Free.

She is the fire, do not underestimate her. She is the Wind, She'll never stop. She is Wild; she'll devour anything that snatches her habitat. She is the Beauty, you shall be ensnared. She is Gentle; you'll never nurse your own scraped knee. She is the woman; she is what she wants to be. The holy Bible said, "**For her worth is far above rubies**" in Proverbs 31:10

ANWESHA BHATTACHARYYA
BA, LLB 1st Year

PHOTOGRAPHY

And God said… "Let there be light….."
AISHWARYA PANCHAPAKESAN, BBA.LLB I YEAR



See the mountains kiss high heaven…..
SNEHA VEMULAPALLY, BBA, LLB I YEAR

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