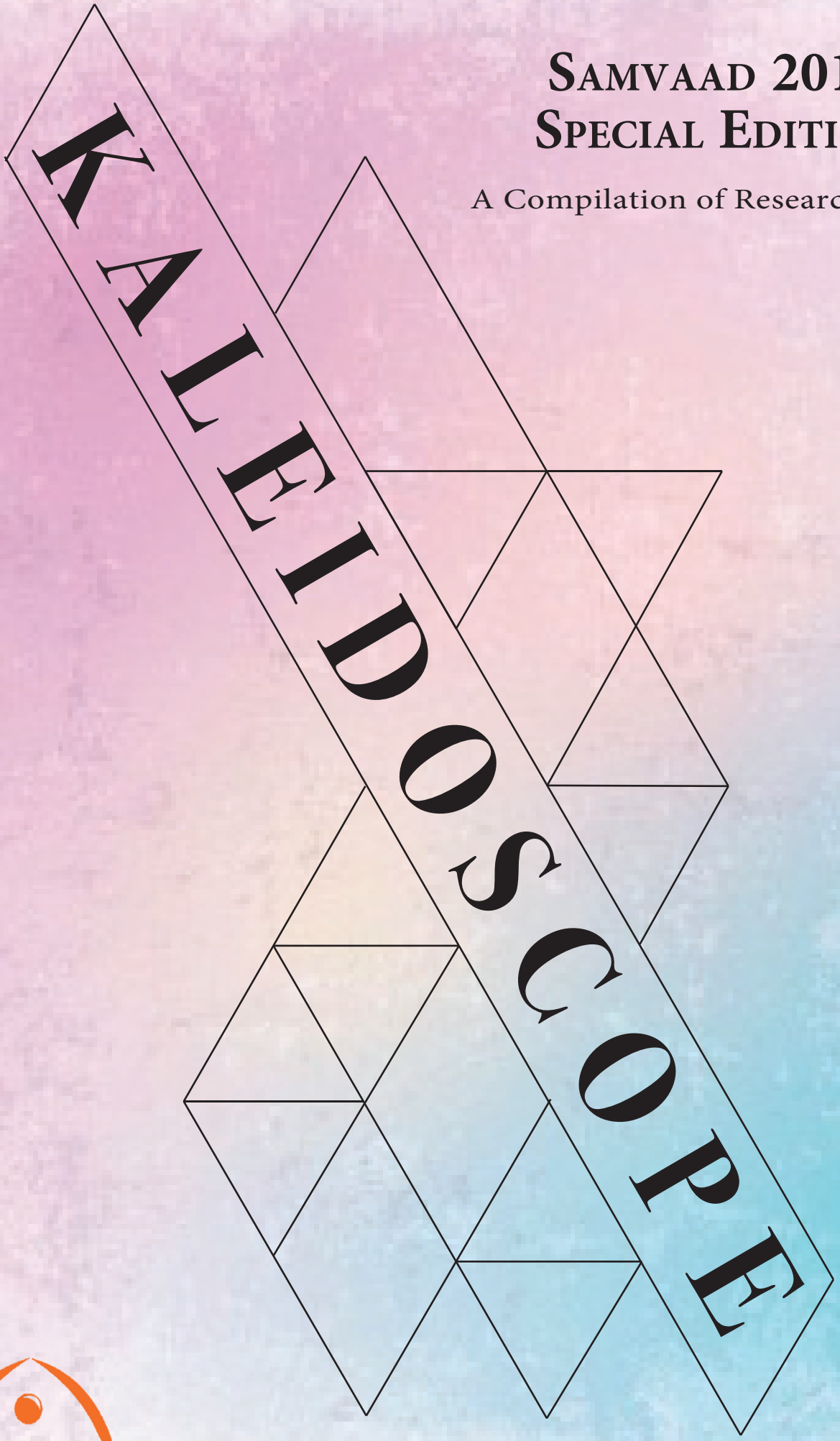
KALEIDOSCOPE

SAMVAAD 2017
SPECIAL EDITION

A Compilation of Research Papers



ALEXIS

Table Of Contents

ARTICLES

About Alexis Foundation

Alexis Foundation is India's leading and most diversified youth-led think tank which conducts research and provides consultancy in areas such as economics, international affairs, law, management, psychology, public policy, strategy, and technology.

Legal Status: Registered as a Public Charitable Trust under Indian Trusts Act, 1882.

Participant: United Nations Global Compact and United Nations Civil Society Network.

FOCUS AREAS

Economics, International Affairs, Law, Management, Psychology, Public Policy, Strategy, and Technology

WORK AREAS

Advocacy – We are champions of equality, good governance, inclusive development, justice, liberty and peace.

Awareness – We spread awareness on various social issues among the people – online through social media and offline by making presentations in schools, colleges and workplaces.

Consultancy – We engage with corporates, international organizations, non-profit organizations and government agencies to provide specialized consultancy in issues pertaining to our focus areas.

Events – We organize conferences, debates, lectures and seminars on issues pertaining to our focus areas.

Research – We conduct primary research and review of available publications on issue pertaining to our focus areas.

Preface

This book is a compilation of the selected research papers presented by delegates during the Samvaad 2017, a 3-day National Youth Conference organized by the Model Governance Foundation at Ramanujan College (University of Delhi), Kalkaji, New Delhi from 30th June - 2nd July, 2017. It was their hard work and willingness to bring a change in society, which motivated us to compile those papers in this handbook.

We would like to invite comments, suggestions and guidance from various experts and readers about this handbook, for improvements in future. The comments/suggestions can be mailed to us at info@alexis.org.in

- Editors

Editorial Board

Acknowledgement

We are extremely fortunate to work with kind and helpful people who support us, appreciate our efforts and give us guidance. We would like to thank all those who have made this work possible and acknowledge the support and encouragement extended to us by the Model Governance Foundation, Adhrit Foundation, Agrasar Foundation, Alexis Society, Advitya Ventures, Bharat Sansthan, India Leadership Institute and Samvaad team.

We gratefully acknowledge the generous support of Dr. S.P. Aggrawal (Principal, Ramanujan College, Delhi University) in organizing Samvaad, 2017. We are thankful to Mr. Aditya Singh (Chairman, Alexis Group), Mr. Umesh Kumar (Chairman, Model Governance Foundation), Mr. Mradul Yadav (Strategic Advisor, Alexis Group), Mr. Anilesh Tewari (Operations Advisor, Alexis Group), Mr. Jatin Garg (Financial Advisor, Alexis Group), Mr. Vibhanshu Srivastava (Legal Advisor, Alexis Group) and Mr. Abhijeet Kumar (Development Advisor, Alexis Group) for their invaluable support.

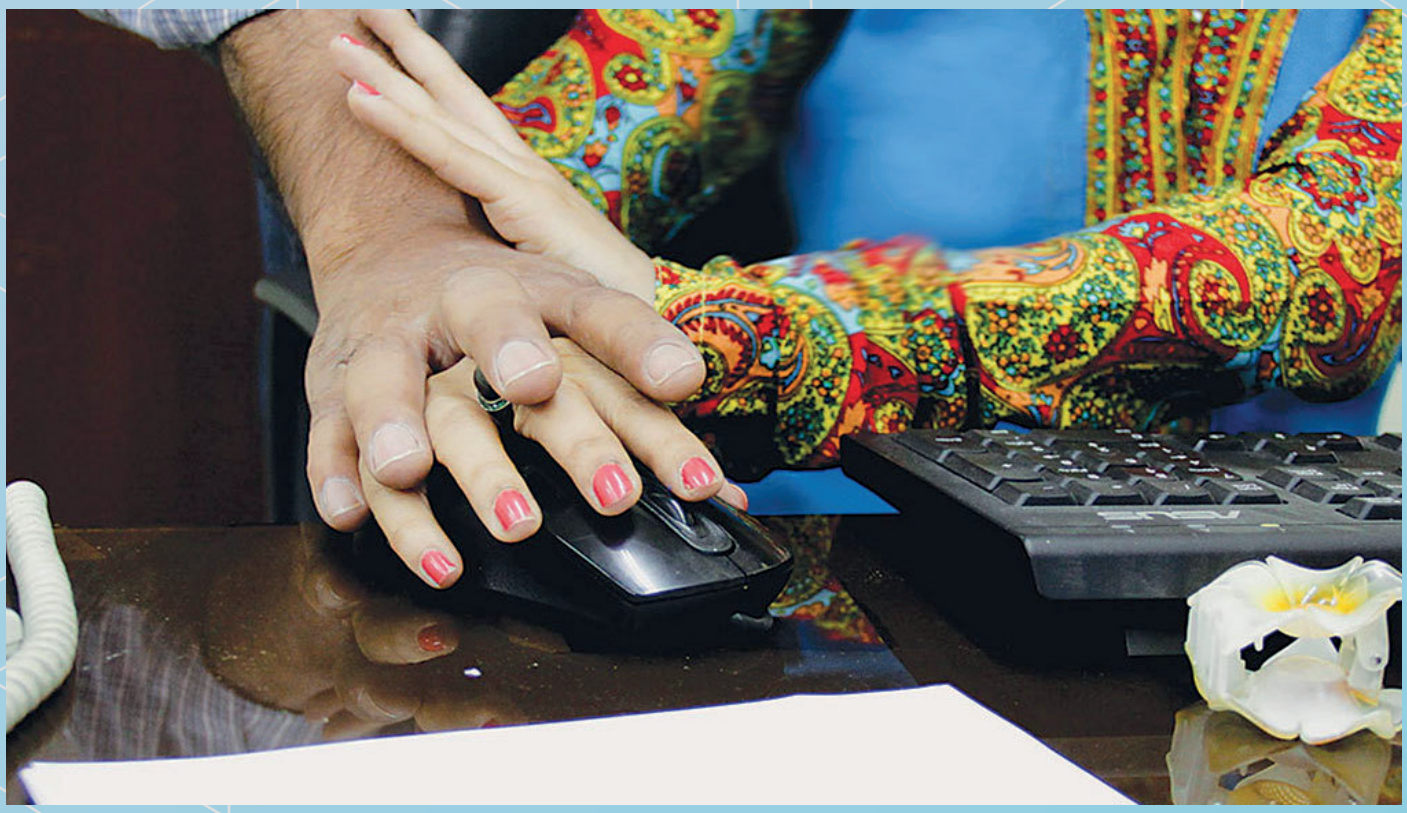
We also thank Mr. Pratik Gauri, Mr. Ashutosh Kashyap, Mr. Rahul Rautela, Ms. Ananya Khandelwal, Ms. Samanvi Narang, Mr. Shubhendu Alakwadi and entire Editorial Team who has helped us throughout this journey. We would take this opportunity to extend our prayers to the Almighty, our teachers and our parents without whose blessings and guidance any venture is a futile exercise.

Lastly, we would like to acknowledge the support of all those whom we could not mention personally in the book but we remember that every bit of support was essential to take this small step.

- Editors

Sexual Harassment In Academic Organisations of Delhi

By Dr. Hina Kousar



INTRODUCTION

Violence strikes women in epidemic proportions worldwide. It exists in every social and economic class, every religion, race and ethnicity. From domestic violence to rape as a weapon of war, all kind of violence against women is a gross violation of their human rights. Sexually harassing behaviors cause devastating physical and psychological damages to women all around the world. These behaviors violate women's dignity and create a health and safety hazard.

Women entered the workforce prompted by necessity and due to change of their role from dependence to economic independence, adding not only to family prosperity but to the national income. In US the cumulative effect of the feminist movement of 1970's and pro women legislations encouraged career opportunities for women to attain economic independence. In the light of these successes, many women believe that they may claim victory and enjoy the fruits of their long struggle. However, a reality that existed beneath this "success" was that sexual exploitation of varying kind existed for many women at some point or other irrespective of their job status. Women in the workforce have to fight against the inequities and discrimination of the male dominated structure of the work place based on male norms.

The discussion of sexual harassment was non-existent even in US until the 1970′s, when Congress amended Title VII of the 1964 Civil Rights Act to include a prohibition on sex discrimination in employment. The term "sexual harassment" was put to use in 1977, when enormous women entered work places to meet their economic demands, and came across sexual subjugation and prejudices. MacKinnon (1979) was among the first to argue that sexual harassment should qualify as a form of sex discrimination by linking the phenomenon to gender inequality and patriarchy. She also emphasized that the current infrastructure, with its hierarchies, is a breeding ground for sexual harassment. MacKinnon's thesis also states, that harassment results from women's oppression, disproportionate distribution of power, subordinate position to men, this has thus received empirical support (Berdahl, 2007; Cleveland and Kerst, 1993; Gutek, 1985; Welsh, 1999; Wilson and Thompson, 2001).

It is understood that faculty has both power and prestige. They evaluate the student by assignment of grades, writing of recommendations, direction of tutorials and power to fire. All these powers combine with gender credibility and in this case the academic authority of largely male intellectual establishments to act as a sexually coercive instrument against female students. Taking this into consideration educational institutes developed policies, procedures, extensive training program and material that seeked to identify, as well as prevent sexual harassment and promoted conference as well as symposia addressing this problem. With the coming years, the incidence of sexual harassment on colleges and university campuses has increased, which acts as a discriminatory barrier for women seeking education.

Image Courtesy: Hussain Afzal

DEFINITION

MacKinnon′s definition is the most influential and non regulatory: "Sexual harassment . . . refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is the use of power derived from one social sphere to drive benefits or impose deprivations in another. . . . When one is sexual, the other material, the cumulative sanction is particularly potent." (MacKinnon 1979,). A conceptually similar definition is offered by Benson (1982): "Sexual harassment is broader than sexual coercion . . . (and) can only be understood as the confluence of authority relations and sexual interest in a society stratified by gender. As given by Till (1980) and Farley (1978):

"Sexual harassment is . . . unsolicited nonreciprocal male behavior that asserts a woman's sex role over her function as worker."

The first legal guideline related to sexual harassment across the globe was developed in 1980 by Equal Employment Opportunity Commission (EEOC), the agency responsible for assuring that all the employees have equal opportunities in the work place in USA. These guidelines were consistent with definition of sexual harassment under Title VII of Civil Right Act 1964 of USA. The current definition of Sexual harassment is as follows:

"Harassment is a form of; it could be unwelcome advances request for sexual favor, or other physical and expressive behavior of a sexual nature."

1. Submission to such conduct is made either explicitly a term or condition of an individual.
2. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decision effecting the individuals.
3. Such conduct has the purpose or effect of substantially with an individual academic or professional performance or of creating and intimidating, hostile or offensive employment or educational environment.

Harassment takes number of forms:

1. **Visual:** leaning, making sexually explicit gestures, displaying sexually explicit objects, pictures, posters.
2. **Verbal:** derogatory comments, epithets, jokes, unwelcome advances, demand for favor comments.
3. **Physical:** unwanted touching, pinching, hugging, brushing against, kissing, fondling, assault.

Women perceive wide range of behavior and conduct as sexual harassment than do men as classification of harassing conduct vary with culture. Sexual harassment is very ambiguous, difficult to understand as it comprises a range of behaviors which is difficult for the recipient to describe to themselves, and to others. The above definition lacks an elaborate account of sexual harassment which has been covered by the US Supreme Court, who had classified two types of sexual harassment in 1986:

A. Quid pro quo

This translates from Latin to English as "this for that." The basic idea is that of an exchange. (I do something for you, and you, in turn, do something for me.) The term quid pro quo is a condition in which sexual compliance is exchanged, or proposed to be exchanged, for an employment opportunity or as a bribe. Quid pro quo sexual harassment occurs when a supervisor demands sexual conduct from an employee as a condition for employment benefits or advancement, or a condition for avoiding adverse employment action. Adverse employment action may include poor performance reviews and preclusion from advancement or salary increases. The second arises when sexual harassment exists as a persistent condition during work. MacKinnon's definition of "sexual harassment as a condition of work" was later termed "hostile environment" sexual harassment.

B. Hostile work environment:

Mackinnon (1979) in sexual harassment of working women stated hostile environment sexual harassment as unwelcome sexual conduct which affects a term, condition, or privilege of employment and may occur in a number of ways, including, but not limited to, ″rape, pressure for sexual favors, sexual touching, suggestive looks or gestures, sexual joking or teasing and the display of unwanted sexual materials.″ Examples of harassing behavior that can create a hostile or abusive work environment are the display of pornographic pictures or cartoons, touching and grabbing, sexual remarks or jokes and the physical interference with movement.

OVERVIEW OF THE PROBLEM

Sexual harassment in academics may damage University reputation and tarnish the credibility of the faculty who seek sexual relation with whom they teach, advice or supervise. Street, Gradus, Stafford and Kelly (2007) reveal that approximately 50 percent of women experience sexual harassment during their lives and nearly 30 to 50 percent experience some form of harassment during their under graduate education.

Earlier studies on sexual harassment were descriptive, mainly to examine the frequency of occurrence, the characteristics of perpetrators and victims, and the effect on victims (Langley, 1999). The perceptions of sexual harassment were also examined (Nielsen, 1996; Fitzgerald & Ormerod, 1988; Terpstra & Baker, 1986). These surveys attempted to document the scope and incidence of sexual harassment by focusing on women in the work place. They found that from 50 percent to 92 percent of the respondents had experienced some form of sexual harassment (Sandler & Associates, 1986).

Within the last decade, a considerable amount of research on sexual harassment in higher education has been pursued at individual institutions. Since 1980 at least a dozen campus surveys have been conducted (Adams, Kottke & Padgitt, 1983; Allen & Okawa, 1987; Benson & Thompson, 1982; Fitzgerald, Shullman, Bailey, Richards, Swecker, Gold, Ormerod, and Weitzman, 1988; Johnson et al, 1982; Maihoff & Forrest, 1983; Metha & Nigg, 1983; Oshinsky, 1981; and Wilson & Kross, 1983). The results of these surveys are somewhat difficult to compare because the definitions of sexual harassment, sampling procedures, populations studied, and research methodologies often vary. Holistically,

however, these studies clearly indicate that sexual harassment is a serious and widespread problem for students, faculty and staff in colleges and universities today. The major findings of the above researches show that 9 to 37 percent of the student sampled experienc one or more form of sexual harassment. A wealth of studies on sexual harassment in higher education analyzed the perceptions of undergraduate students, graduates and faculty across culture, ethnicity and race. These studies considered the gender differences on how sexual harassment is perceived and found that women are most likely than men to view an act as harassment (Dietz-Uhler & Murrell, 1992; Marks & Nelson, 1993; Popovich, Gehlauf, Jolton, Somers & Goldinho, 1992). Sexual Harassment on Campus (Dziech & Weiner, 1984) brought the hidden reality of sexual harassment in academia when the research reported that 30 percent of undergraduate women revealed that they had experienced sexual harassment from at least one of their instructors during four years of college. (Paludi, 1990) Paludi drew further attention to the problem of sexual harassment in academic settings as she explored the dynamics of power in relationships between students and professors.

Sexual harassment has been a challenge in all levels of education and across all academic fields in India. Women constitute about 40 per cent of all students in higher education in India; harassment has posed a tremendous challenge to Indian women. After the gang rape of a student on December 16, 2012 in the city of Delhi, there has been a new phase of public awareness about the nature and extent of sexual violence in the country and the targeting of students more specifically. Literature reports that sexual harassment has impacted women's self-esteem as well as their academic, social, and psychological wellbeing. In India, Janaki (2002) in her work "*Countering Myth About Sexual Harassment*" examined work display in equitable gender statuesque in society, and unequal power relation causing subjugations of women and violation. Alkazi and Jain (2004) focused on sexual harassment from the depth with its historical accounts and critically reviewed legal provisions in India. A study in the health sector by Ramanathan et al. (2005) titled, "*Sexual Harassment at Workplace: Lesson from Web Based Survey*". Goel, Koul and Sultana (2006) studied six organizations located in Chandigarh for the study of sexual harassment at work place. About 80 percent of the women were not aware of the composition, function and need of setting up of these cells. However 50 percent of women employees complained of sexual harassment. On the issue of sexual harassment and abuse of adolescent school girls in South India by Leach and Sitaram (2007) reports on a small exploratory study of adolescent girls' experiences of sexual harassment. Data from open-ended interviews and a participatory workshop in two schools revealed that girls were vulnerable to sexual harassment both within the school grounds (mostly by male pupils) and while travelling to and

from school (by older boys and adult men), especially on public transport. A 2007 research report by Akshara,

a Mumbai-based NGO, found out the prevalence and impact of sexual harassment in 44 city colleges, and that almost 61 percent of the 533 women

students interviewed had been sexually harassed in college, either by their peers or by staff. It's not just women who are being victimized. More than half of the

327 male students interviewed said they had been sexually harassed during their college years. study by Oxfam India (29 Nov 2012, The Hindu) Social and Rural Research Institute, a wing of IMRB International, has been done in Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmadabad, Lucknow and Durgapur, among working women from the organized and unorganized sectors. Reuters survey (2009), India recorded highest incidence of sexual harassment. Similarly Center for Transforming India survey (2010) revealed that nearly 88 percent of women witnessed some form of workplace sexual harassment.

The Ernst and Young survey (2015) conducted through an online questionnaire hosted on EY's website in India. It received 129 responses from the survey, the consultancy said. The nature of complaints: 47 percent were for physical contact and advances, 13 percent over demand or request for sexual favors, 37 percent over sexually colored remarks, and four percent over display of pornographic content. According to National Crime Record Bureau, the number of sexual harassment cases reported in year 2000 was 11,024. The year 2006, stating 9,966 cases of sexual harassment with the crime rate of 0.9 percent as compared the total crime rate of 6.38 percent crime against women. The highest were reported in the year 2008 which were 12,214 but by 2010, the number of such cases decreased by 9.5 percent. The numbers of sexual harassment cases reported in 2011 were 8670. In the year 2012, the crime related to insult to the modesty of women (sec 509 of IPC) were 9,173 in figures and the crime related to assault on women with intent to outrage her modesty (sec 354 IPC) were 45,351 (National Crime Record Bureau, 2012). The Women and Child Development Minister said in a written reply in the

Indian parliament that, 57 cases of sexual harassment were reported at office premises and 469 cases were registered at other places related to work during 2014. Data has to be considered as tip of ice berg as in the case of crime against women all women do not report sexual harassment and reported cases are not recorded accordingly. The severity of crime is depicted by the above data, as sexual harassment is deploring anywhere it exists. Taking the instance of a female Personal Assistant to the principal of a Delhi College who went to the police after losing trust in the Internal Complaint Committee and the apex body, since her complaint was against the principal. Two years later, she still awaits justice. The police, who had filed a charge sheet, have since been passive. The acting principal has now moved on to another college and is giving interviews for the post of principal in other colleges. And the new principal continues the series of sexual harassment that his predecessor had started – denying the complainant her due seat, isolating her at the workplace, and punishing her for having refused to play along with her boss' sexual demands.

There are a number of newspaper reports on sexual harassment of women in educational institutions' premises in recent years. Medha Kotwal's petition on sexual harassment of a PhD student by her guide at M S University Vadodara complains against a senior professor at Lucknow University (Times of India,

2003). In October 20, 2004, students had beaten up an anatomy professor from Mumbai, for alleged sexual misconduct (The Indian Express, Mumbai Newsline, (21-10-2004). In early 2014, a female assistant professor at a college affiliated to Sardar Patel University (SPU) and who is working as a research student at Department of Psychology had registered complaint against sexual harassment.

According to University grant commission 104 cases been reported from higher education institutions, out of which twenty-five cases were reported from the prestigious Jawaharlal Nehru University in 2013-14. This information was submitted by Human Resource Development Minister, who, in a written reply to a member's question in the Lok Sabha, said that as per the UGC, 295 cases of sexual harassment have been reported in India during 2014-15 in various institutions of higher learning. According to a PTI report, during the period from April 1, 2014 to March 31, 2015, there were 15 cases of sexual harassment reported in Banaras Hindu University (BHU), Varanasi, and 10 cases in Sam Higginbottom Institute of Agriculture Technology and Sciences, Allahabad. Nine cases were reported from King George's Medical University, Lucknow. There were eight such cases reported in the University of Mumbai and Viswa Bharati, Shanti Niketan, Birbhum.

Sexual harassment has posed a tremendous challenge to Indian women both in the workplace and educational setting, and this problem has affected their effectiveness in their various academic fields. Literature reports that sexual harassment has impacted women's self-esteem as well as their academic, social, and psychological wellbeing.

PRESENT STUDY

This is an exploratory research on Sexual harassment, which studies three Universities of Delhi – 'X', 'Y', 'Z'. The data determines the various types of unwanted sexual behaviors experienced by four groups of women on campus: undergraduate women; post graduate women; research scholars; women faculty members all in the age group of 18 to 65 years. In consultation with Women Studies Centre of each university, selection of departments was based on the complaints of sexual harassment cases in various departments. The sample is purposively selected because the researcher needed to reach the targeted sample. Sampling was on recommendation of Women Studies Centre and is applicable to all the three universities. Semi-structured interviews were used as the research mechanism, which was conducted with a fairly open framework based on themes to be explored. The study has been directly taken from 400 subjects in campus by a semi-structural interview consisting of open-ended questions. There were three interview tools prepared for the different sample sets. All the interviews were tape recorded with MP3 device.

The present research is a full examination of sexual harassment in higher education as well as the ethical issues the researcher had to maintain were: confidentiality and anonymity and negotiating access to the respondents while dealing with participant's traumatic experiences. The researcher needed to deal with confidentiality without hurting any of the study participants, for the purposes of generating meaningful relevant data that allows the respondents to develop and express their own private stories and experiences while bringing these accounts into public domain.

CASE STUDIES

Case study 1.

Sarah (name changed) is a research scholar who in year 2012 joined Chemistry department of prestigious College of Delhi for PhD. Between June and October 2013 her academic life became a nightmare. Her PhD supervisor Dr K. Kumar began molesting her in the laboratory. He would come up and touch her behind, her thighs, or grab her by her waist, touch her inappropriately and insist on hugging her. When she objected he would apologies and promise never to repeat the offence. He would punish her for objecting by withholding guidance and saying that her experiments are wrong. He would tell her, ″I will give you a PhD degree and publish your paper but what will I get in return?′ He would tell her about other sexual harassment cases in the university, warning her that women who complained were blamed for the harassment and unable to complete their PhD or get job recommendations. Intermittently, he would punish her for the lack of a response by denying her access to the college internet system, and to equipment in the laboratory that she needed for the research. One day finding her alone in laboratory he sexually assaulted her. She escaped his grip, ran from the lab and took a rickshaw to go home. She did not get back to the laboratory for the next couple of weeks. He continued to stalk her: He got the phone number of one of her acquaintances and continuously called her from unknown numbers. Sarah's parents along with two other persons confronted Dr. K. Kumar in the college itself. He admitted to having molested Sarah, swore it would never happen again, and begged for mercy. Sarah parents, fearing for her PhD, accepted the apology and hoped for the best. Again he started retaliating by criticizing research work as punishment for having complained. A year after she first spoke about the sexual harassment, Sarah made an official complaint to the head of department of Chemistry in University and asked for a change of supervisor. Dr. K Kumar, in turn, punished her by stopping her monthly stipend. The principal of College began pressuring her to withdraw her complaint. Sarah, failing to secure a change of supervisor from the university, approached her college. But principal asked Sarah to write, in her complaint to the college, that the case ″not be treated as a case of sexual harassment″ and that she trusted the principal to act. She complied, but added a rider: ″for the time being″. On January 9, he again called her to meet him, and told him that Kumar had a ″weakness″, and that her PhD was his responsibility. He later arranged for Sarah to meet Kumar in his presence, and told Sarah– in the presence of her harasser – that he had consulted lawyers who had advised him that if the matter went to internal complaint committee, Sarah would get media attention, but would have to forfeit her PhD. He gave her half an hour to make up her mind to withdraw her complaint. When she protested, he made her write that she needed time to rethink.

Again, principal tried to pressurize Sarah that she was facing an ″academic problem″, not sexual harassment, and that she should withdraw her complaint from the university. She refused to do so, following which he got irritated with her and told her to ″first withdraw the complaint from Internal Complaint Committee(ICC), which could not deal

with the problem, adding that she was free to do a PhD from somewhere else if she was dissatisfied. The Internal complaint committee of College, consisting of appointees of the principal thanks to University's interpretation of the new Sexual Harassment Prevention law, flouted norms all around. They did not take the basic step of imposing a restraint order on the accused. Meanwhile Dr. K. Kumar's father contacted Sarah father to ask him to withdraw the complaint. Sarah informed the ICC, but they ignored this breach of confidentiality and safety.

The college complaint committee spent time focusing on the words of principal that had made Sarah add to her complaint: That she did not want the case to be treated as one of sexual harassment ″for the time being″. In spite of her telling the ICC that she had written those words under duress, the ICC suggested that she could withdraw her complaint for the time being, and take the principal's assurances seriously, and could always complain later if she felt like it. The ICC showed her a booklet with the Sexual Harassment at Workplace (Prevention) Act 2013, drawing her attention to the clause regarding the penalty for a false complaint. The feminists' apprehension, that the ″false complaint″ clause in the new law will be used to scare away complainants, is borne out by these facts. Sarah has neither been given transcripts of her own replies to the cross questioning, nor any transcript of Dr. Kumar's response and his list of witnesses. One of her witnesses an NGO activist who was among the five people in front of whom Dr. Kumar apologized on October 26, 2013.

Eventually, Sarah lost faith in the ICC and filed a police case what has followed is even more shameful. Principal has written public articles and given media interviews suggesting that the case is false and that Sarah is a pawn in the game of some conspiracy against him. It is important to note that Dr K. Kumar is a bursar and influential person, who signs salary slips of employees. The fact that he remains a bursar means that he is able to manipulate witnesses and make employees speak in his favors, bad-mouthing the complainant and her supporters. The university has not yet assigned a new supervisor to Sarah, whose PhD is therefore in jeopardy.

Case study 2.

Anita is a 19 year old national athlete, who got admission in sports category in prestigious University X. She lives alone in a rental house in close proximity to the university campus. She being a national athlete takes sports very seriously as her career and most of the time she is busy playing in the stadium but she noticed horrifying instances of harassment in different forms over a years. "There was an incident where male coaches asked trainee girls to strip so that they could do a 'fat' check," said Anita. "I've heard directly from a student of an incident when coaches themselves gave massages to female students, Even if there is no sexual harassment involved, Anita observed girls in sports are easy targets for exploitation of other kinds, especially if they are from low-income backgrounds. "Girls at training camps are sometimes treated like guinea pigs or even bonded laborers," said Anita. "I have seen young girls being made to wash their coach's clothes and serve him food." Such behavior is not acceptable for her sports federations should run like institutions, not sweatshops. Anita dislikes such kind of behavior as she didn't find the intention of her coach appropriate.

Anita was extremely angry and vented out her feelings to her friends "those people don't know someone has seriously been through that. It is a feeling that is almost indescribable because it may lead to leave sport. She thinks that one can make her forget those moments when she underwent harassment. It is like a permanent scar. Once it's there, it will be there as insult for the rest of her life". Although her experience in sports was never bad but it is difficult to narrate what personally happened to her in this big city. She was constantly sexual harassed both in person by her coach and male athlete, and also on face book but nothing could be done. She underwent profound embarrassment, reprisals and a fear -- all too often borne out by the experience she had in the university. She thinks that her career and reputation will suffer if she discloses the matter to anyone but she took courage and told it to her parents. Her parents couldn't do much could not take any concrete step. Anita consumed poison at Hyderabad's Stadium for not being able to cope with constant altercations with her coach. An inquiry was ordered, but hostel authorities denied the charge saying the medal-winning pugilist was suffering from low self-esteem.

Case study 3.

He was the director of a MNC who had delivered a speech in an on campus recruitment workshop. I'm a soon to be management graduate who's looking for a job in marketing. And he had a position available that was right up my alley. As it turned out, the job was right—but the situation was all wrong. He, a businessman more than 30 years older than me, was ″attracted″ to more than just the luster of my intellect, and skill set. After his presentation was over, I approached him to ask a few questions about his organization. We decided to grab a table to sit down and continue the conversation. I sat down, and then he took the chair right next to me—on the same side of the four-seater table. I found it a bit strange, but I continued on with our conversation, which soon turned to the position he was trying to fill. His next move was to put his arm around me. I leaned forward to separate the physical touch and continued with what I was saying. I was uncomfortable, but I wanted to learn more, so I went along with the conversation, pushing his uncomfortable gestures out of my mind. But it didn't end there. As he was giving me his business card, he flipped it over and wrote his home address. Then, he invited me over on the weekend, an offer that disoriented me so much I couldn't even utter a word. A few minutes later, as we were leaving, I went to shake his hand and he ignored me and kissed me on my hand.

I was hurt and annoyed, and I was frustrated by the fact that my attempts to forge a professional connection were treated this way. Why did he think this was acceptable? Why did he push the boundaries so far and use the guise of a job offering in order to slip inappropriate actions and words into our meeting? I also felt ashamed and even wondered if what happened was in some way my fault. But rationally, I knew it wasn't—and I wanted to do something about i.e. started by asking several women professor in university who I look up to what they would do if they were in my situation. I didn't use his name or organization—I simply wanted to know how they thought I should handle it. Most of them said something along the lines of, "Well, don't

ever apply for a job from that company again," and, "Get used to this type of inappropriate behavior, because this is going to happen to you many times." Only one of the women I talked to said that I should mention or acknowledge it to him. I was stunned.

But despite this advice, I knew I had to act. If I didn't at least acknowledge his specific actions, then he may go on with what he is doing, not even realizing (although he probably does) the inappropriateness of his behavior. If I didn't say something, then who would? So I did. I drafted him an email and I continued to seek feedback from respectable women. However this time, I started off by telling them about what happened, and then I described my plan of action. And now, I got a very different reaction than before. Every single female professor, I told about the details of my planned response were against it. It made me wonder if really, we are not afraid to fight; we just don't know which weapons to use. We have trouble identifying the tactic for confrontation or the best way to engage in dialogue.

Obviously, each situation is unique and needs a unique response. And sometimes, letting an incident go may, in fact, be the best option. But in my situation, I knew I needed to address with this man what I had experienced.

I wrote:

"Sorry for the delayed response. I was kept busy this week wrapping up a big project as well as several school midterms. It was a pleasure meeting you this week. Thanks for presentation at my college as well as the extra time that you gave me following the event. I am humbled by your offer to create and execute a winning marketing strategy for your organization. However after much consideration, I have decided that this opportunity, while enticing, is not the match for me. At this time, I am going to continue pursuing my passion for business within the technology and consumer products realms. Also, because I do have much respect for you and wish you the best of luck in the future, I feel obliged to mention this to you. As a young woman, I was uncomfortable with several of the things that you said and did (such as kissing me on the hand, putting your arm around me, and giving me your home address and offering to meet on the weekend). While I am sure that you meant these gestures in a grandfatherly manner, just a heads up those actions could be interpreted differently".

As I was drafting and contemplating sending this, he called me and told me that he had been thinking about me, that he was interested in hiring me, and that he would keep calling me until I responded. And with that, I hit send. And he responded a glossed over response in which he "thanked" me for not misinterpreting his actions, complimented my business skills, and invited me to attend the conference he is hosting in the future. I hoped that my email would get through to him, but his response appears to indicate that is not the case. But I do hope I at least planted the seed for him to think twice and subsequently to change his future actions.

And no matter what, I'm still glad that I spoke up. I think the reason that many women told me not to say anything was so that I would be protected and kept safe. But the truth is that no one should have to put up with harassment or discrimination of any sort, in any environment. Being "safe" should be defined not as staying silent; but instead, as speaking up and addressing situations.

Case study 4.

When I began to experience sexual harassment as a graduate student, I felt I was being hazed. As one of few female students in a male-dominated field, I assumed my professor wanted to see how tough I was. I must say, I rose to the challenge. I laughed off his and other male students' sexualized banter and came back with insults of my own in an attempt to fit in. I was a young, enthusiastic researcher and I wanted to be accepted. I interacted with my professor and male colleagues informally, not realizing how badly it could backfire. As time passed I became a target, rather than a participant in the joking. In moments of discomfort, I kept my feelings to myself. At our research site in a tribal area, my professor and the male students often made lewd comments about the local women. One day early in my training, my professor took us on a tour of a rural town. We came across a friendly young pregnant woman and her husband. My professor chatted with the couple in their language then turned to me. In English, he commented approvingly upon the woman's breasts. Her husband realized what he was saying and ordered his wife to cover up. The young woman quickly drew her shawl across her chest, eyes cast to the ground. My professor seemed unconcerned about the humiliation he caused them. I was put off by his lack of respect, but I said nothing. The incident has nagged at me for years.

My professor often joked that only pretty women should be allowed to work for him, which led me to wonder if my intellect and skills had ever mattered. He asked very personal questions about my romantic life, often in the presence of the male students. His inappropriate behavior was a model for them, making it not only acceptable, but the norm. My body and my sexuality were openly discussed by my professor and the male students. Comments ensued about my figure and there was speculation about my sexual history. There were jokes about selling me as a prostitute on the local market. Pornographic photos appeared daily in my private workspace. What started out as seemingly harmless joking spiraled out of control? I felt marginalized and under attack, and my work performance suffered as a result. Often, I was left with a pile of work at night while my professor and his male students went out to bars. By the time the harassment got out of control, it was too late for me to back out. I had spent too many years immersed in the research to walk away and start over. So I modified my own behavior, hoping things might change. I dressed as modestly as possible to avoid drawing attention to my body, but the sexual comments continued. I tried dating one of the male students, thinking that if I had a boyfriend I would be protected. But the romance fizzled, leaving me more vulnerable to humiliation than before. I also tried working twice as hard as everyone else, but my professor never noticed.

I finally confronted my professor, out of desperation rather than courage. It didn't go very well. He told me that I was oversensitive and that I kept talking like that he'd fire me. And for many reasons, mainly shattered self-esteem, I stayed. The most blatant sexual jokes and comments stopped. My professor curbed his comments out of fear of the consequences. But our relationship

deteriorated so much after that conversation that he eventually threatened me to stop my scholarship.

In the early days of my research I knew nothing of academic life. I didn't realize that many research projects are run like pyramid schemes, with rigid status hierarchies, ruthless competition, the exploitation of students and objectification of women. I realized too late the extent of the strings attached to the funding my professor had promised. My education was compromised for no reason other than my femaleness.

When a professor makes the commitment to mentor a student, the student's professional future is in their hands. This should never be taken lightly, and in the case of male professors and female students, it is crucial to maintain ethical boundaries. Women students at field research sites are particularly disempowered, being far from family and other support networks. This is the kind of setting in which the power imbalance between student and professor can be exploited. Today, i notice some of the stories are similar to mine. We start with a young, enthusiastic, intelligent woman. A male professor takes an intellectual interest in her, takes her under his wing, and gives her a job and training. When the inappropriate comments start, she feels uncomfortable, but says nothing. She feels indebted to the professor, and he has promised to guide her to a successful career. She becomes deeply engaged in and committed to the research, but the professor continues to pester and demean her. She feels increasingly insecure, and she must decide whether to confront her harasser or leave the research she loves. She has to pay a price, simply for being a woman.

I know everyone will ask "Why I left research in-between?" Potential new professors will want to know why I quit, and it will be difficult to answer. Others in her field will think that I am unreliable scholar for switching horse's midstream. My research supervisor may refuse to give me a recommendation, limiting my options. I know my life and my choices will become subject to public scrutiny. Some would say that she was "asking for it." Finally, I know that there is a lot to be lost from standing up to an abusive professor. Hence I quit.

RECOMMENDATIONS AND SUGGESTIONS

Dealing with prevention, and in offering protection and support for victims, it is important to identify intervention not only at the company or organizational levels, but also at the state level and at individual level. Applying social work practices, Macro level social work in interventions provided on a large scale that affect the entire communities and systems of care. Mezzo social work happens on an intermediate scale, involving neighborhoods, institutions or other smaller groups. Micro social work is the most common practice, and happens directly with an individual client or family.

In addition, every individual has a part to play in helping to create a no-tolerance environment for sexual harassment at the workplace. The government can lead the way by implementing policies and programs that define the problem and enforce clear guidelines on preventative and remedial measures. Given below are some steps that would help create a no-tolerance climate for sexual harassment at education institutions and encourage them to be socially responsible, and to maintain a safe and conducive work environment for their employees and students.

Indian Educational Institutions should review their grievance process and should implement latest bill on sexual harassment of women at workplace bill 2013 (prevention, prohibition and redressal).

In Indian Universities, the Ordinances were won by university staff and students after the Vishakha judgement had evolved a working model of a functional Internal Complaint Committees and a university-level apex body with elected representation from staff, teachers, students and workers. Even so, in many colleges, those committees did not function well, and were controlled by principals who themselves were involved in sexual harassment. Following the new law, the Ordinance in the form of policy had to be scrapped to make systemic changes to our university's reporting structure and policies.

The Academic organizations should clearly define those behaviors which constitute sexual harassment and develop no tolerance culture towards Sexual Harassment.

There should be organization of seminars and workshops at different centers in the Colleges and Universities for the creation of general awareness and for the orientation of both male and female students for their participation in the activities of the women development center. There should be open forums, with face to face interaction with students, faculty and staff, and also met with senior administrators including Vice Chancellors and Principals. This provided valuable first hand inputs into the problems being faced by sexual harassment committees.

There should be audit or climate survey to determine the prevalence rate of sexual harassment in their institutions.

This will encourage universities to be socially responsible, and to maintain a safe and conducive environment in campus. And further establish policies policies that firmly prohibit sexual harassment, institute clear mechanisms to address complaints.

Sexual harassment policies should be reviewed from time to time. And contractual employees as well as research scholars should be addressed separately in policy.

The goal of Sexual Harassment policy is to end the problem faced by the student/employee through an internal system of relief that is easy to access, and thereby to provide an effective remedy to the aggrieved complainant as quickly as possible. The larger perspective guiding sexual harassment policy is to be educational, preventive, corrective and, when punitive, to carry out processes following a complaint with sensitivity, rig our and justice. The broad principles and guidelines to be followed have been laid out in the report and are as follows: Confidentiality (both with regard to the details of the complaint and the identity of the complainant the absence of which is the biggest impediment to coming forward), providing a context of non-coercion as well as interim relief, fair

enquiry in terms of procedures and the composition of the complaints committee, including recognizing that existing rules will require updating from time to time to be in consonance with the law of the land, and an approach that is oriented towards redressal and being educational in nature.

Institutions should have their consensual sexual relation policies as well as campus wide stalking policies.

The leading professional organizations have urged colleges and universities to consider discouraging romantic relationships between professors and students, supervisor and employee, senior faculty and junior faculty, mentor and trainee, adviser and advisee, teaching assistant and student, coach and athlete, and the individuals who supervise the day-to-day student living environment and student residents. In India there is no provision of consensual sexual policies in any university.

Institutions must provide clear and safe means of reporting harassment and must widely disseminate this information about reporting procedures to campus community.

The present study depicts that victims of sexual harassment do not have faith in the institutional grievance mechanism so the majority does not report harassment. The small number of victims who report sexual harassment suggests that a silent reaction to the harassment is typical; unfortunately, this silence helps to maintain the existence of harassment.

University should adopt collaborative relationships between different campus offices and off campus community partners that respond to sexual violence.

The policy should be both proactive and responsive to the needs of college students. However, campus authorities should also work with local authorities and should inform victims of the full range of options. Such assistance may involve housing and academic intervention, escort services, and personal identity protection. All strategies should address the victim's confidentiality needs.

Universities should ensure the safety and security of the women on campus by various means.

There should be more police vans deployed to patrol educational institutions. Along the lines of women's helplines, college helplines should also be provided and its number should be prominently displayed. Educational institutions must ensure proper lighting in an around their premises, as darkness is conducive to crime. The height of hedges must be reduced in campuses for proper visibility. An internal security committee should be constituted by all educational institutions, headed by the head of the institution, police officer and student representatives who must be invited for meetings to review the security arrangements. Entry of the strangers into educational institutions must be restricted. Entry should be through identity cards. Construction workers should not be allowed to stay on the premises of the Institute overnight. Educational institutions could engage retired police officers on their security Committees / boards.

Developing victim support services such as a medico-legal cell with Women studies and development center of each University and associated NGOs.

There should be psychologist, legal advisor, medical professional and social worker as a part of counseling center on campus. Women Studies Development Centre campus should be better equipped and provided with proper infrastructure to deal with sexual harassment and rape.

Gender sensitization training should be mandatory for all male members of the campus community and department of social work should be involved where ever possible.

Gender sensitization is not a matter for students alone but is required in all colleges and universities, and for all sections of the community - students, faculty in all disciplines, support staff and administration. This section of the report also provides outlines of a series of workshops on gender, masculinity, issues pertaining to sexual harassment and knowledge about the law and rights. These workshops could be tailored according to the groups being sensitized. HEIs are encouraged to draw upon existing experts in the field to use these formats to sensitize all members of their campuses. Mandatory sexual harassment training is to focus primarily on the rampant unacceptable behavior that happens all the time, and to make it unambiguously clear that if faculty engages in this behavior they will be terminated.

Women should be made aware of a reaction to Sexual harassment that will be considered appropriate.

The research finding in the present study indicate that victim of sexual harassment do not report sexual harassment nor do they know that what steps they are subjected to take when they are target of sexually victimization in hostile environment or in quid pro quo situation. The victim is highly confused regarding her reaction after sexual harassment.

The victim should be taught to document the incident of harassment.

The present study show that a person undergoing sexual harassment mostly ignore the harasser, deny it or avoid it.

Victim actually doesn't know what to do and how to collect evidence against the harasser before filling complaint of sexual harassment.

Utilize social media in effective ways.

Social media is a complex and ever-evolving topic, thus the subcommittee encourages the newly forming Online Speech and Social Media Committee to look specifically at inappropriate student-generated online material about sexual violence.

University should provide confidentiality to the victim and harasser.

It is up to the University to provide confidentiality to the victim and accused. In handling the issue of sexual harassment, the would-be offenders may sometimes be highly respected members of staff.

Victim should be protected from all kind of retaliation after filing a complaint.

Students face a number of risks in reporting harassment–for example, retribution, loss of educational opportunities, and identification as a "trouble maker." Procedures that are insensitive to the risks a student takes in bringing forth a complaint may fail to protect the student's interests.

Verbal complaints should also be considered for inquiry by the complaint committee.

From the present study we came to know that the three Universities of Delhi do not consider informal complaint although informal complaints are more numerically. The sexual harassment complaints are differentiated as formal and informal Complaints. The complaints are considered informal if they are not committed to writing.

Services for victim need to be flexible, varied and provided by well-trained people to address the variability in what survivors want and need.

Most colleges and universities seek to provide services or advocacy for victims of sexual harassment. These services may be provided on campus or off campus via a memorandum of understanding with a local rape crisis center or victim advocacy program. These services are invaluable to survivors of sexual assault; they can help ensure future physical safety, as well as mitigate the mental and emotional harm caused by sexual harassment. The victims find it helpful to talk to a counselor. University should hire counselors who have the sensitivity needed to support sexual harassment victims. They will provide follow-up care counseling to victims of sexual assault.

CONCLUSION

Unfortunately, despite the severity of sexual harassment women are afraid to come forward about this abuse. Silence is something that keeps victims of sexual harassment from escaping guilt and shame and has given some people 'permission' to do the things that they know are inappropriate. The larger problem is within the structures of academia: a culture of silence.

Taking action, on the other hand, is the only way to create the change we wish to see in the world. It can be scary, it can be uncomfortable, and it might not always work. So many women have suffered greatly along that road to justice. Some women are transformed by the vindication of a legal victory but some find the process totally debilitating and demoralizing. Women who go public still get punished. It's a sad reality, Women are ashamed to tell what happened in private and they also worry about making an accusation because what they fear is likely to come true. Not even single women who had an outcome that was not worse for her than silence. Many were drummed out of the university by peer pressure. Many faced bureaucratic stonewalling. Some women said they lost their academic status as golden girls overnight; grants dried up, letters of recommendation were no longer forthcoming. None of them met with a coherent process that was not weighted against them. Usually, the key decision-makers in the college or university joined forces to, in effect, collude with the faculty member accused, to protect not him necessarily but the reputation of the university, and to keep information from surfacing in a way that could protect other women. The goal seemed to be not to provide a balanced forum, but damage control.

Many women, who make compromises, also get in a state of spiritual discomfort. It's like keeping bad secrets which hurt their soul. Some practical effect on their life; which they have obviously survived. This is the argument often made by harasser who persuades younger academician to compromise by convincing that it not big deal, you're fine. These women recognize later in life that their career was fine; soul was not fine. And they had an obligation to protect others from which they had run away.

In this direction we need to implement recommendations to improve our campus culture, including repudiating and reducing the influence of damaging myths, will require sustained leadership and commitment at every level of the university, most visibly, the administration, but also students and faculty. Success in this endeavor relies on a significantly improved understanding, on the part of staff, faculty and students, policies and procedures. These policies implement laws intended to protect individuals from harassment and violence, articulate remedies and support, and hold wrongdoers accountable; they are tools that need to be widely understood, adopted and used if they are to be effective in fulfilling their purpose.

REFERENCES

Adam, J., Kottke, J., and Padgitt, J. (1983). Sexual harassment of university students. Journal of College Student Personnel, 24, 484-490.

Alkazi, F., Farrell, M., & Jain, P. (2004). Gender on the agenda: A training manual. Society for Participatory Research in Asia (PRIA). New Delhi: India.

Allen & Okawa,(1987). A Counseling Center looks at sexual harassment. Journal of the National Association for Women Deans, Administrators and Counselors, 51(1), 9-16.

Benson, D. J., & Thompson. G. E. (1982). Sexual harassment on a university campus: The confluence of anchorite relations, sexual interest and gender stratification. Social Problems, 29, 236-251.

Berdahl, Jennifer L. (2007). Harassment Based on Sex: Protecting social status in the context of gender hierarchy, Academy of Management Review, 32:641-58.

Benavides-Espinoza, Claudia, and George Cunningham. (2010). "Bystanders Reactions to Sexual Harassment." Sex Roles 63:201-213.
Bursik, Krisanne and Julia Gefter. (2011). "Still Stable After All These Years: Perceptions of Sexual Harassment in Academic Contexts." The Journal of Social Psychology 151(3):331- 349.

Cleveland, J. N., and M. E. Kerst. (1993). Sexual harassment and perceptions of power: An under-articulated relationship. Journal of Vocational Behavior, 42 (1): 49-67

Coker, A. L., Cook-Craig, P. G., Williams, C. M., Fisher, B. S., Clear, E. R., Garcia, L. S., & Hegge, L. M. (2011). Evaluation of Green Dot: An active bystander intervention to reduce sexual violence on college campuses. Violence Against Women, 17(6), 777 –796.

Dziech, B., & Weiner, L.(1984). The Lecherous Professor. Boston: Beacon Press.

Dietz-Uhler, B.L. and Murrell, A.J. (1992). College students′ perceptions of sexual harassment: Are gender differences decreasing? Journal of College Student Development, 33(6), 540-546.

Farley, L. (1978). Sexual Shakedown: The sexual harassment of women on the Job. New York: McGraw-Hill.

Fitzgerald, L. F., & Shullman, S. L. (1993). Sexual Harassment: A research analysis and agenda for the 1990s. Journal of Vocational Education, 42, 5-27.

Fleck-Henderson, A. (2012) Beyond Title IX: Guidelines for Preventing and Responding to Gender based Violence in Higher Education. San Francisco, Ca., Futures Without Violence.

Goel A, Koul M, Sultana A. (2006). Violence against Women. Sage publication.

Gutek, B. (1985). Sex and the workplace. Impact of sexual behaviour and harassment on women, men and organization. San Francisco: Jossey-Bass.

Kapoor, V. and Dhingra, K. (2013). Sexual Harassment against Women in India. OID A International Journal of Sustainable Development, 06(10) pp. 85-92.

MacKinnon, C. (1979). Sexual harassment of working women. New Haven, CT: Yale University Press.
Janaki V. (2002). Countering myth about sexual harassment. Social Welfare.

Langley (1999). Factors Influencing Sexual Harassment in the Malaysian Workplace. Asian Academy of Management Journal, 12 (2), 15–31.

Paludi, M. A. (1990). Ivory power: Sexual harassment on campus. Albany: State University of New York Press.

Paludi, Michele A., and Ashley Kravitz.(2011) "Sexual Harassment of Adolescent Girls by Peers, Teachers, Employers, and Internet Predators." (n.d.): n. pag. Rpt. in The Psychology of Amrein 56 Teen Violence and Victimization: Volume 1: From Bullying to Cyberstalking to Assault and Sexual Violation. Ed. Michele A. Paludi. Santa Barbara: Praeger, 155-89. Print.

Sandler, B. R., & Shoop, R. J. (1997). Sexual harassment on campus: A guide for administrators, faculty and students. Needham Heights, MA: Allyn & Bacon
Street, Gradus, Stafford and Kelly (2007). Gender Differences in Experiences of Sexual Harassment. Journal of Consulting and Clinical Psychology, 75.

Smith, Joanne Ninive., Deven Mandy. Van, and Meghan Huppuch(2011). Hey, Shorty!: a Guide to Combating Sexual Harassment and Violence in Public Schools and on the Streets. New York: Feminist.

Terpstra & Baker (1986). The influence of individual characteristics and severity of harassing behavior on reactions to sexual harassment, Basic and Applied Social Psychology, 7, 17-34.

Till (1980). Sexual Harassment: A report on the sexual harassment of students. Washington, DC: U.S. Department of Education, National Advisory Council on Women′s Educational Programs.

Welsh, S. (1999). Gender and Sexual Harassment. Annual Review of Sociology, (25), 169-190.

Will You Let Me Fly Or Will You Chop My Wings? Taking Transgender Rights Seriously: Making Authentic Lives Possible

By Amrita M. Jacob

INTRODUCTION

"She scissor the curls away, and - toms, grow easily sentimental over their haircuts, but I remember this sensation very vividly - it was not like she was cutting hair, it was as if I had a pair of wings beneath my shoulder-blades, that the flesh had all grown over, and she was slicing free..."

- Sarah Waters, Tipping the Velvet

After a day of window-shopping at one of the biggest malls in the city, nature's call overtook me. Unlike the usual quietude of the mall washrooms, I was surprised to see a young lady being hustled out of the ladies' washroom by a group of women. I inquired with the on- lookers who had gathered what the matter was all about and was horrified to know that she was being denied the right to use washroom just because she was a trans woman. This incident was an eye-opener to the discrimination and inequality faced by Transgender in everyday life. To understand more about the life of a transgender, I decided to imagine myself in the shoes of the transwoman.

I was born as a handsome baby boy and enjoyed the company of other boys from my class till teenage. But, then suddenly, I wake up and start having a liking to my baby sister's makeup kit and attempt to dress myself as a girl. Gradually, I started to cross-dress and go out, much to my parents' horror. Hanging out with my guy friends made me uncomfortable, however, I enjoyed every minute I spent with my girlfriends. My friends started mocking me for my 'insane behavior'. My school authorities send notices to my parents about my 'queer behavior' and 'cross dressing' to school. Further, they warned of dire consequences if I don't stop 'wearing ladies' makeup' to school. My parents advised, counselled, shouted and even caned me to stop my 'absurdity'; but nothing seemed to work. The more my parents tried, the more resistant I became. Eventually, losing all hope, at the advice of my school principal, my parents took me to a teen counselor.

The counselor pronounced her verdict – I am a transgender. Though born a male, I am a woman at heart. It was a bolt from the blue. I grew hysterical- A transgender is a person looked down by the society – he has no rights and social security – how will my future life will be? The same question arose in my parents' mind.

The counselor explained what being a transgender was all about. Transgender is a person whose gender identity is different is assigned to them in their birth certificate. Gender identity, is an internal, personal sense of being a man or a woman – contrary to the common perception that it is the external manifestation which determines one's gender identity. An attempt to change a person's gender identity is no more successful than trying to change a person's sexual orientation – it doesn't work. This prompts most Transgenders to undergo medical procedures to bring their bodies into alignment with their gender identity. The medical procedures range from hormone therapies to body realignment surgeries.

Having a brief idea about the definition of transgender is, I venture out into the society with the counselor's words ringing in my ears, "We are spiritual beings having a human experience.

"We don't choose the experience, but

Image Courtesy: PTI

do choose how we react to the experience we have. Choose to be positive, choose to be helpful, choose to be happy." - Paula Coffer

From the counselor's office, I went home. My parents were in trauma. The thought that their firstborn is a 'hijra' appalled them. They were one of the middle-class people who looked down upon transwoman as prostitutes and often cracked jokes at their expense. Now the sudden realization that their 'son' is a transgender was way beyond their imagination. However, they showered me with the love and care, if not more than earlier.

One's family is the best support system a person can get in this world, especially so in the case of a transgender A family in its truest meaning refers to tight-knit group where no one is left behind or forgotten, unlike a society which tends to ignore the 'misfits'. Thus, familial recognition is the primary step towards making authentic the life of a transgender. The confidence that one's family is there to support you and your unique gender identity no matter how much the world around taunts unexplainable. It empowers a transgender to fight against all odds.

Though showered with love at home, the bloodthirsty world outside home scared me. And, my fears came true – societal ostracization was inevitable.

The news of my gender identity spread throughout the neighborhood. Family friends and neighbors thronged to sympathize with my parents. Some suggested that I go to a good counselor; others suggested divine interventions as remedies. The children in my neighborhood were barred from playing with me, lest they be subjected to 'bad influence. I was soon considered an x in my neighborhood and friends' circle.

The situation at school was no better. My former friends mocked me, my teachers treated me with disdain. No one was ready to be friends with me. I was alone. A group of senior boys attempted to attack me physically. Lewd comments were passed behind my back. Use of washrooms has been a challenge due to the absence of gender-neutral washrooms at school.

Augmenting the situation was the attitude of the school staff. It ranges from indifference to or misunderstanding to outright discrimination and hostility. They often treat gender nonconforming youth like me as if they are a problem, or they enforce discriminatory policies against them. The primary reason teens like us are targeted is because we don't wear clothes that conform to gender stereotypes.

Various studies have revealed that victimization suffered during teens can have serious repercussions during adult life. It is not rare that transgender teens slip into depression, and in some extreme cases have even committed suicide[1].

The Dignity Report[2] published by New York Civil Liberties Union has revealed that due to pervasive discrimination and harassment in school, almost all transgender students featured in that particular report have been asked to leave school or have taken matters into their own hands by avoiding classes and disengaging from the school community. The report has brought to light some ghastly incidents faced by transgender students in school. In one case, a transgender student was subjected to severe bullying in school that her father decided to get her homeschooled fearing physical or sexual assault on her. In another shocking case, a 5- year old transgender student was attacked by her seniors at the school. One focus group of transgender youth in New York City reported: "Attending school was reported to be "the most traumatic aspect of growing up[3]." It is appalling that only one-third of transgender students who reported victimization to school staff members feel that their situation was taken care of adequately and effectively[4]. Moreover, due to the widespread lack of family acceptance, many transgender youth does not have the benefit of having a parent advocate on their behalf against bullying or discrimination in school. Family acceptance has a protective effect against many threats to the wellbeing of transgender youth in the face of extensive institutional discrimination. But many transgender and gender nonconforming youth receive no such protection[5].

Article 26 of The Universal Declaration of Human Rights states:

"Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

Article 21A and the Right of Children to Free and Compulsory Education Act reinforce the same in India. RTE aims of inclusive education. In this regard, the decision of Delhi Lt General Najeeb Jung to include 'transgender

[1] Cameron Langrell, "Wisconsin Trans Teen Bullied for Femininity Dies by Suicide," The Advocate, 7 May 2015. Available at http://www.advocate.com/politics/transgender/2015/05/07/wisconsin-trans-teen-bullied- femininity-dies-suicide (last visited May 25, 2015).

[2] Discrimination Against Transgender and Gender Nonconforming Students in New York State, New York Civil Liberties Union (NYCLU).

[3] Arnold H. Grossman and Danny R. D'Augelli, "Transgender Youth: Invisible and Vulnerable," Journal of Homosexuality 51 (2006) 111, 122

[4] Joseph G. Kosciw, Emily A. Greytak, Neal A. Palmer and Madelyn J. Boesen, The 2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools, Gay, Lesbian & Straight Education Network, Oct. 2014: 21-24 (hereinafter "GLSEN 2013 School Climate Survey"). Available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf (last visited May 25, 2015).

[5] Jaime M. Grant et al., Injustice at Every Turn: A Report of the National Transgender Discrimination Survey, National Center for Transgender Equality and National Gay and Lesbian Task Force, Feb. 2011: 33 (hereinafter "National Transgender Discrimination

under the economically weaker section (EWS) and disadvantaged children for admission to schools in Delhi[6]. Further, Delhi University and Jamia Millia Islamia University have taken a path breaking step to include a third gender category in its application form in a step to provide opportunities in higher education for transgenders[7].

It's encouraging to see that the government is finally acknowledging the rights of transgender children, however, a lot still needs to be done to change attitudes towards transgender children because most transgender children drop out of school on account of the bullying they face.

It is imperative that all schools treat all students equally and imbibe the sense of equality among all and not propagate gender stereotypes. Efforts must be taken to engender that it is one's work and what one is as an individual that determines a person, and not one's gender identity. Another step that school authorities can take is to ensure that there is a strong anti- harassment and bullying policy that includes gender identity or expression that students know about it and staff enforce it. Also, a written policy against discrimination based on gender expression has to be adopted; any violation of the same should be penalized. Students must be encouraged to stand up for a transgender student who is being bullied. Also, anti-transgender jokes and demeaning jokes about masculinity and femininity must be strictly prohibited within school campuses.

In the path-breaking judgement of the National Legal Services Authority v. Union of India & Ors. The Supreme Court has affirmed the constitutional rights and freedoms of transgender persons, including those who identify as third gender and those who identify in a gender opposite to their biological sex, i.e., persons, assigned female sex at birth, identifying as male and vice-versa. By recognizing diverse gender identities, the Court has broken the binary gender construct of 'man' and 'woman' that has pervaded Indian law.

Life as a transgender adult was hell – so I was warned. But, I was determined to prove them wrong. Adulthood was supposed to empower you to endure the insults you weren't able to as a teenager.

- Getting a job was tough. In any job interview I appeared, I was qualified for the job academically, yet, I was disqualified. And, my disqualification – I was a TRANSWOMAN!
- Getting an accommodation was tougher. No one was willing to rent out a place for a 'hijra'.
- Getting unscathed sans lewd comments or 'bad touches' from a crowd was the toughest.

Furthermore, accessing medical healthcare facilities proved to be another challenge. Medicos were skeptical to treat me because of my 'non-conforming' gender identity. Same was the case in the courtroom. Lawyers were incredulous to file my petition for violation of 'right to equality'. The judges were hesitant to file my petition.

The thought of aging scares me. Life during my youth is a challenge in itself, old age will prove to be a greater one. Sadly, transgender have been found to suffer from a higher frequency of poor health behaviors as compared to the rest of 'established genders'. A survey in San Francisco found that 28% of elderly transgender persons were HIV positive; also, this elderly transgender population had three times the average need for alcohol or substance abuse programs[8]. To complicate further, most transgender persons unfortunately not only have no clear idea of what some common health risks are as they age, neither do their physicians. The effects of using transsexual hormone regimes for decades or well into their old age are relatively unknown. However, based on other hormone replacement studies one can expect elevated risks of cancer, cardiovascular disease, stroke (Witten 2006) – but little data supports a worsening of health from hormone therapy among elderly transgender persons.

Its irony that our country and its political leaders avers 'Right to expression' expeditiously, but fails to acknowledge 'Right to equality' for transgender which is also a Fundamental Right enshrined in the same Part III of our Constitution. In the path-breaking judgement of National Legal Services Authority v Union of India, the Supreme Court has affirmed the constitutional rights and freedoms of transgender persons, including those who identify as third gender and those who identify in a gender opposite to their biological sex, i.e., persons, assigned female sex at birth, identifying as male and vice-versa. By recognizing diverse gender identities, the Court has broken the binary gender construct of 'man' and 'woman' that has pervaded Indian law. The Apex Court has affirmed that the absence of law recognizing 'hijras' as third gender cannot be considered as a ground to discriminate them in availing opportunities in education and employment and so the third gender has got a formal recognition for the first time. They will be classified as OBCs and thus will be given educational and employment reservation as OBCs. In addition, the Court has also mandated that states and the Centre devise social welfare schemes in the 'third gender community' and run a public awareness campaign to erase the social stigma. In addition, special toilets must be constructed and special departments to look into their special medical issues. Further, the SC also added that if a person surgically changes his/her sex, then he or she is entitled to her changed sex and cannot be discriminated. The Court has also issued directives to prevent the misuse of Section 377 of

[6] Shikha Sharma, 'Reserved seats for transgender children in schools', October 14, 2014 Available at: http://indianexpress.com/article/cities/delhi/reserved-seats-for-transgender-children-in-schools/, last visited 10 December 2016

[7] 'DU, Jamia include third gender category in application forms', 01 May 2015 Available at: http://www.thehindu.com/news/national/other-states/du-jamia-include-third-gender-category-in- application-forms/article7160426.ece, last visited December 10, 2016.

[8] Fredriksen-Goldsen, Karen I et al. "Physical and Mental Health of Transgender Older Adults: An At-Risk and Underserved Population" The Gerontologist (20131) doi:10.1093/geront/gnt021.

IPC is being misused by police and other authorities against them. The Supreme Court through this decision has taken the welcome step of stating that transgender are indeed an integral part of the society we live in; however, their socioeconomic conditions are far from satisfactory, so the government is bound to take adequate steps to integrate the 'third genders' into the mainstream society.

In this regard, the Union Parliament is considering before the Transgender Persons (Protection of Rights) Bill, 2016 – an unprecedented move to make this marginalized group on par with the others. The bill defines a transgender as 'one who is partly female or male; or a combination of female and male; or neither female nor male. In addition, the person's gender must not match the gender assigned at birth, and includes trans-men, trans-women, persons with intersex variations and gender-queers'. To benefit the rights granted under this Bill, a certificate of identity as transgender should be obtained from the District Magistrate on the recommendation of a screening committee comprising of a medical officer, a psychologist or psychiatrist, a district welfare officer, a government officer and a transgender person. Further, it prohibits discrimination against a transgender in areas such as education, employment and healthcare, In addition to directing the central and state governments to provide welfare schemes in these areas. Also, offenses like forcing a transgender to beg, denying access to a public place, physical and sexual abuse, etc. would attract up to two years' of imprisonment.

So far so good, I thought to myself, as I stepped out my fantasy. Life as a transgender was indeed difficult. It is indeed heartening to see our government taking a slew of measures to ensure their well-being. But, is that enough?

Discrimination has a lot of layers that make it tough for minority transgender to get a leg up. The government can enact any policy or pronounce rights, but that it is not sufficient. We, the citizens, are the real makers or breakers of their world. It is our attitude and behavior that affects them the most and which either affirms or violates their rights. Thus, it is for us, normal citizens, to stop the discrimination in the day-to-day world.

The first step in respecting their gender identity is to use the 'name' and 'pronoun' they prefer. Further, we should, unhesitatingly, provide emotional support for the transgender and gender non-conforming people we know, especially when they are struggling because of rejection from family members and friends, or struggling because of discrimination out in the world. Though beguiling, anti-gender jokes must be strictly discouraged. Also, setting up of separate washrooms for transgender requires specific mention so that they do face harassment like in the anecdote stated above.

We must set aside our prejudices and come together for a new beginning wherein this helpless group can grow wings to fly, instead of chopping them off. We can collectively ensure that all – 'established' gender or not are kept together with the common identity of being a human to achieve inclusive progress. Thus, by working together we achieve dual success – making the life of a transgender truly authentic in addition to achieving equality in the true sense of the word.

Pradhan Mantri Jan Dhan Yojna

By Ashutosh Mishra

ABSTRACT

The paper aims to critically examine one of the ambitious schemes for the comprehensive financial inclusion launched by the prime minister of India on 28th August 2014. The issue of financial inclusion has been always the country's top most agenda to empower people from the vulnerable socioeconomic background. There are certain situations which prevents people to access formal financial systems. Still, there are many people who have no options but to go to the local money lenders to lend or borrow their precious money who charge exorbitant interest rate of the poor people. As a result, there arises a problem of social discrimination. The only solution to fight this problem is to promote financial inclusion which aims to access financial services in time and adequate credit at an affordable cost. This scheme has been launched to provide universal access to the banking facility starting with basic bank accounts with overdraft of Rs 5000 after six months and the launch of RuPay Debit card with inbuilt accident insurance cover of Rs 1 lack and also the launch of RuPay kisan card. In this paper an attempt has been made to study the progress of this scheme. The study has also revealed that the mere the opening of bank account may not fulfil the success of this scheme. The study of this paper is based on the secondary sources collected from different published article.

Keywords: Financial Inclusion, Banking, Scheme, Account, Cards, Population, Awareness.

INTRODUCTION

The issue of financial inclusion has always been very close to the country's agenda. It has existed long back, but in different versions. Also, the role is more than just having credit facilities which was earlier the case. Now, it has gone beyond the credit, the financial inclusion means more than that. It includes a lot more activities ranging from using it for various government schemes, savings so on and so forth. However, most schemes come with a lot of benefits which are not suitable for the poor. Also, in terms of banking facilities a large number of banks go unused because of lack of capital as well as knowledge about availing these facilities. Financial inclusion has been proposed for the people who don't have access as well as lack of knowledge regarding the use. The objective was to reduce risks for poor and provide them security regarding saving and other such facilities. In order to do that PMJDY was launched on 28th August 2014, across the nation simultaneously. It's a much hyped and one of the most popular program for financial inclusion. However, this financial inclusion program was also initiated during the UPA (United Progressive Alliance) regime in their tenure which did not get much success. The main objective was to provide all households with the banking facilities so that nobody would remain excluded from the financial system in the country. However, it comes with some more benefits like providing zero balance accounts with insurance cover of 1 lakh along with an overdraft facility of Rs 5000 available for account holders.

PMJDY celebrates success on its website but thousands of people still remain outside the banking system. The scheme comes with its bundled saving accounts, overdraft facility, life insurance and personal accident insurance were exactly people wanted and had wished for[1]. The excuses given are different and vary from places to places. The excuses start like program has ended or the bank holder lives outside the area of the bank branch so on and so forth. Some excuses are as baseless as saying that it was not applicable to this particular bank since the logo on the circular was not theirs.

As a matter of fact, almost several states have claimed 100 percent coverage of households but still there are a lot of

[1] http://www.thehindu.com/opinion/op-ed/pradhan-mantri-jan-dhan-yojana-a-bank-account-for-mary/article7547033.ece accessed on 29th Dec 2016.

Image Courtesy: narendramodi.in

people who have been facing difficulties in operating these accounts. The dormancy of accounts is yet another issue regarding this. However, there are a lot of assumptions have been made regarding this. Also, different people have different reasons for not using this account. We would try to analyze at least some of those to get a clear picture of working and not working on the accounts. The data issued by the finance ministry show that about 4 million bank accounts have been issued till the end of September 2014.

LITERATURE REVIEW

According to census 2011, out of 24.67 crore household in the country only 14.28 crore (58.7 %) had access to banking services. The other data from the World Bank suggests that only 35 % of people had an account in a formal institution, only 8% had borrowed from a formal financial institution in the last 1 year only 12% saved at a financial institution in the past year and only 8% had a debit card or had used the account to receive wages.

There are two elements of the financial inclusion a) good financial decision making (the demand side of the equation) and b) and access to suitable product and services (the supply side). Financial literacy and capability are the predominant characteristics of a good financial decision. Mukherjee (2012) has examined the role and efficacy of the commercial banks doing business in the state of Jharkhand and their responsibility towards promoting financial inclusion.

Ramji (2009) studied the drive for financial inclusion in the Gulbarga region of Karnataka has noted that if there is coupling government programs with financial inclusion may greatly increase access to bank accounts and shows potential to increase usage as well. . Garg and Agarwal (2014) have studied the various approaches adopted by the Government of India to achieve financial inclusion and suggested the use of Information Communication Technology as well as development of innovative products for financial inclusion. Hans (2009) has studied the various microfinance initiatives in India he has found that MFIs have immense potential not only as a system of peer-to peer (p2p) lending but also as an avenue of social bonding. Cole, Sampson and Zia 2009 have studied the financial literacy in India and Indonesia; they have observed that financial literacy is an important predictor of financial behaviour in the developing world. They have demonstrated that demand for bank accounts is highly sensitive to small financial incentives.

COMPARISON BETWEEN PMJDY AND OTHER SCHEMES

1. The PMJDY and Swabhimaan scheme

Swabhimaan scheme was launched in the year Feb 2011 to ensure banking facilities in the areas where the population is more than 2000 in number by March 2012. A table below has compared this scheme with the PMJDY scheme.

	PMJDY Scheme	Swabhimaan Scheme
Simplified Documentation	Yes	-
Minimum balance required	Yes	-
Accident/life/micro insurance coverage	Yes	Yes
Transfer of government subsidies	Yes	Yes
Using the services of business correspondents	Yes	Yes
Provide banking with use of technology	Yes	Yes
Easy remittance	Yes	Yes
ATM Facility	Yes	No

It seems that the two schemes are not different from each other as the features are almost the same. The PMJDY scheme has an additional feature like the overdraft facility and a life insurance cover for the first time account holders under this scheme. The Swabhimaan scheme was launched during the time of UPA government, which focussed on villages, unlike the PMJDY which focuses on household covering both the rural and urban.

2. PMJDY and No-Frills account

On Nov 2005 RBI(Reserve Bank of India) advised all the banks to provide basic banking facility to those who does not have any bank account, either with Nil or very low balance under the name of No-frills account. The basic saving bank account was considered a normal banking services considered to all under this scheme. Under this scheme ATM's or debit cards were also provided to the account holders. This scheme was not too not different from the current PMJDY scheme with the exception of some features.

3. The PMJDY and SHG bank lineage programme

This scheme was launched to make the poor aware by tapping the potential concept of the SHG (Self Help Group) to provide the basic banking services especially to the women. SHG's are made to encourage voluntary saving in a group of 10 to 20 people and the scheme aims to open individual bank account for depositing their surplus incomes. This scheme also provides cheap refinance at 6.5% to support financial institutions for lending to SHG's. RRB's (Regional Rural Banks) and NGO's has also been given special assistance to come up with Self Help Promoting Institutions. This scheme has helped in reducing poverty by increasing income, reduced dependency on informal money lenders and other non-institutional sources. Therefore, we can say that a large objective was linked before the launching of this scheme like the current PMJDY scheme which has similar objective and goals for a large number of people. In a large we can say this scheme as a financial inclusion scheme which impacted a large number of poor populations. This scheme can be used for the effective implementation of

PMJDY scheme.

4. The PMJDY and the Kisan credit scheme

An innovative credit delivery mechanism was launched to meet the production credit requirement of farmers in a hassle-free and the timely manner under the Kisan Credit Card (KCC) scheme. This scheme supports farmers to provide the credit requirement for the cultivation of crops, post-harvest expense, gives marketing loan, capital to protect their farm's assets and other allied agricultural activities like dairy animals and pisciculture etc. This scheme also covers some benefits related to personal accident insurance in case of any disability or death up to the amount of 50 thousand. The scheme is valid for up to 5 years and no processing fees are charged to a limit of Rs. 3 lakhs and there is a single documentation for the disbursement of loans. The loans are disbursed through various channels like the debit card, Kisan card and by the use of ICT (Information and communication technology) tools.

The PMJDY scheme has targeted to give all the benefits to the KCC holders and has the features almost similar to the KCC scheme.

ANALYSIS OF PMJDY

This scheme focuses too much on numbers and speed without adequate attention on the implementation. This scheme has the threat of fake accounts as under this scheme to avail the benefits of insurance coverage, there is the requirement of identity proofs which needs to be checked and this has made the work of the implementing agency cumbersome. And this is getting done after the opening of accounts which may change the data if the fake account gets cancelled. So, it is difficult to rely on the data which shows the coverage and the number of accounts opened till date. This in turn will violate the objective of the scheme which is universality of bank accounts, and not just the speed and the numbers in the opening of branches.

It is also believed that without the financial awareness in the masses: like regarding the theft and the usage of electronic cards, there increases the possibility of crimes and violation of banking rules which also limits the discretion for bankers.

SUGGESTIONS AND POLICY RECOMMENDATIONS

There are targets given to the bankers to open the number of accounts which should be relaxed and this policy should be implemented in a phase wise manner. For the effective functioning of bank mitrs (people who assist in the process of opening of accounts) they must be given adequate training and skill development programs. It could have been easy to take help from the SHG's or microfinance institutions for the effective implementation of this scheme like in setting up of new ATM's and initiatives of some corporate houses like ITC's e-choupal, e-sugar, DCM's Hariyali Kisan bazaar and HUL's project Shakti could have been very successful. Also, the involvement of private sector banks which could have been useful in increasing financial literacy and avoid duplication of data. Rural people in India are very closely about the work done at the post offices as compared to the banks. Therefore, I believe PO's could have been a better link to reach out the general mass in awareness and in the opening up of the bank accounts.

CONCLUSION

The aim of this policy is financial inclusion, but unrealistic targets and hasty numbers are making this scheme to lose its purpose. It is not possible to reach the targets within a few months and financial inclusion is a slow process, it requires a dedicated effort to spread financial literacy. The idea of financial literacy is directly proportional to the financial products means as the financial literacy will increase the sale of financial products will increase simultaneously. It is difficult to arrive at a single and clear solution for any problem like financial inclusion in a vast diverse country like India. Banking is habit and habit formation requires time and appropriate awareness towards it will only change the mindset of people, which will focus on achieving the policy intent rather than just the target numbers.

CITATIONS

(Awasthi, April-June, 2015)

(Mukherjee, 2012)

(Ramji, 2009)

(Garg)

(Hans, April 2009)

(Dangi, 2013)

(Shylendra, 2002)

WEBSITE REFERENCES

http://www.crisil.com/about-crisil/crisil-inclusix.html

http://www.pmjdy.gov.in

http://timesofindia.indiatimes.com/business/indiabusiness/Avoid-hasty-rollout-of-Jan-Dhan-Yojana-Raghuram Rajan/articleshow/42582725.cms

http://www.business-standard.com/article/opinion/sumita-kale-don-t-undermine-the-strides-made-by-jan-dhan-116050301402_1.html

https://tejas.iimb.ac.in/articles/JAN%20DHAN%20YOJNA%20ANALYSIS%20OF%20THE%20ONE-YEAR%20JOURNEY-Tejas-Oct15.pdf

http://www.thehinducentre.com/publications/policy-report/article7945190.ece

Nigerian Case Study: Relationship Between CSR, Government And Civil Society Organizations

By Umang Gupta

ABSTRACT

With the help of the Nigerian case study, we analyzed the role played by the government of a nation, businesses and society in relation to Corporate Social Responsibility (CSR) practices. The Nigerian case has been studied in the light of the same relationship which exists among the three sectors. It was seen that because of the institutionalized democracy in Nigeria, it was possible to make the concept of CSR receptive (only philanthropy). The government of Nigeria, however, still did not recognize the significance of CSR and the multinationals continue to degrade the environment and get away with it. Recommendation to the government is to observe the ethics of businesses and should ensure that the civil societies keep a check upon the business sectors as its watchdog.

Keywords: Business, Civil Society Organizations, Government, Nigeria, Corporate Social Responsibility.

INTRODUCTION

The effect of Corporate Social Responsibility as a concept has increased over the time. Now-a-days numerous companies are engaging themselves in various activities which exceed their legal requirements. Such voluntary activities such as management of externalities and other contributions to the society form part of the CSR procedure.

In this paper I will discuss the relationship among government, business sector and civil society organizations with respect to the Corporate Social Responsibility. We will discuss this in light of the South African country, Nigeria. The paper will start with the meaning of the terms CSR and Civil Society Organizations (CSOs) and discuss the benefits of CSR to the corporate houses, which are embracing it increasingly. Then the basic literature behind the relationship among the three sectors is discussed with the help of the case study of Nigeria, and then ultimately binding the paper with a conclusion.

MEANING

Before further going deep into the topic, it would be relevant to first discuss the concept of corporate social responsibility and meaning of the term Civil Society Organizations. Corporate Social Responsibility (C.S.R) is like a corporate self-regulation, which is incorporated in a business model. Corporate refers to an entity in law which is recognized as a citizen in law, unlike a human being who takes birth, grows and earns living in a society and discharges his/ her social responsibilities against his/ her family and society at large. A corporation, as a citizen, owes its well being to the well being of its stakeholders, i.e. people associated with the corporation around which it operates, such as- promoters, employees, client, suppliers and government. C.S.R lays its foundation on the concept of trusteeship, where business houses are trusted to look upon the resources they withdraw from the society and in return pay the society back in many ways for its development. Hence, as per to this concept of social responsibility owed by big business houses, which extract resources in abundance for profit maximization of their stakeholders from the society should pay due consideration to the developmental needs of its surrounding community and society and act responsibly.

Civil Society Organization refers to a broad group of organizations which have one central principle in common, i.e. they all are autonomous and independent of the state. It is inclusive of Non-governmental organizations, charities, trusts, foundations and and advocacy groups. All of these are particular type of organizations, which are established, in a civil society.

BENEFITS TO BUSINESSES FOR ENGAGING IN CSR

The concept of CSR since it has increased dates back to 1990s. Different

Image Courtesy: trinitycarefoundation.org

companies have different reasons for embracing themselves in CSR. However, there can be vast amounts of arguments, justifications, drivers and motivations explaining the engagement of companies in CSR. One of them could be Economic reasons which connect us to the basic principle of profit maximization. Another reason behind company's CSR commitment is to attract talented and skilled employees. Also, attractive CSR approaches can make talented personnel work for lower wages at a company. Further CSR helps winning additional customers in the market and satisfy them. It has been a well- established principle that despite the polarizing nature of big corporations, businesses are now contributing significantly in a positive sense, uplifting the social, economic and environmental conditions; one such example is that of Africa which we will discuss as our case study.

RELATIONSHIP BETWEEN GOVERNMENT, BUSINESS AND CIVIL SOCIETY INSTITUTIONS

The relationship between government and business can be explained through one term, Public Good. To accurately understand the relation between the two, one needs to examine the three main theories of political economy- free market economy, socialism and mixed economy.

Under the free market economy, the decisions regarding investment, production and distribution of goods and services are made by the forces of demand and supply. And the prices of good and services are also determined under open market operations. There is almost no existence of a formal relationship between business and government. And the interaction of business with the society is merely restricted to market place i.e. businesses depend upon the 'choice' of the consumer over the goods and services of their competitor's.

Socialism is an economic system where goods are sold at predetermined prices regardless of the demand or the cost of production of the item. Under this system, the idea as to what is good for an individual or privately owned businesses is good for the society is rejected. Hence, government on behalf of the people takes control of the businesses and decides what should be produced at what prices remedying the selfish motives of privately owned businesses.

Lastly, the Mixed economy system involves a degree of private economic freedom mixed with the degree of government regulating the markets. Under this system, even though the free market forces determine the prices, but the government still intervenes in the free play of the market system through fiscal and monetary policies and keeps a check upon the business operations.

Therefore, today's business and government share a relationship of mixed economy. This very mixed relation between the two, buttresses the relationship between business and society. There are certain social influences on the business because of the cultural and political forces in the society and similarly, business also has an influence over the political and cultural life of any society.

The integrations between the three i.e. business, government and civil society cannot be discussed in isolation of the concept of CSR. The major focus of CSR is upon the framework of sustainable development in a society. The Concept of sustainable development, after recent developments, can be viewed as Stakeholders and Sustainable Development.

The main task of the businesses now is to maintain a balance between its self interest and the interests of the stakeholders. Shareholders, employees, suppliers, customers, government and communities form a part of the stakeholders. On the other hand, sustainable development is defined as "the development that meet the needs of the present generation without compromising the ability of future generations to meet their own needs." Research shows that sustainable development has been made up of three fundamental pillars; generation of economic wealth, environmental improvement and social responsibility. Hence, the third dimension of sustainable development refers to Corporate Social Responsibility.

As we have seen how business influences society and vice- versa, business also influences actions of the government. As lobbying groups, businesses have started presenting their ideas at the center, state and local levels of government more actively. For instance, in Nigeria, it is objective of the Chambers of Commerce to promote, support or oppose the legislatives and represents the opinion of the business community and opinions on the matters like trade, industry, commerce and agriculture. It is responsibility of the lobbying group to ensure that the legislative is aware of their views on the subject.

The increase in the CSR oriented policies of the government over the last decade, government has joined the other stakeholders as one of the drivers of CSR. It was majorly a result of the globalization and economic changes in the 20th Century. Government policies and programs which are CSR oriented can be examined through government-business- civil society relationship. CSR in government- business- civil relationship is known as the 'relational CSR'. Shared participation of business, government and civil society exist under such policies or programs.

CASE STUDY OF NIGERIA

As we now understand the concept of 'relational CSR', we will see how these three share participation while working towards CSR oriented policies. Before going further into the relationship of government, business and civil societies concerning CSR, let's discuss the economy of Nigeria. The economic system of Nigeria is similar to that of China, Malaysia and India. It is a mixed economic system. There are a number of important sectors like Telecommunication and Electricity, which are partially controlled by the government. However, the policies of the government promote commercialization and privatization of certain government owned sectors. The foreign policy of the government promotes democratization, seeks respect for human rights, and has targeted sustainable development and poverty alleviation as their future goals.

GOVERNMENT AND BUSINESS SECTOR

As any other developing country, Nigeria also promotes Foreign Direct Investments within the economy in order to achieve economic growth and development. Earlier as Nigeria was

under military rule, the inflow of FDIs was very low because of the international sanctions imposed upon the country. In the late 1950s and mid 1970s, a lot of investors were attracted to Nigeria because of the discovery of huge oil deposits in the country. By the late 1980s, the economy was relying on its resources so much that the budget of the country was based on the estimation of the revenue from the exports of crude oil.

Even though the FDIs increased in the Nigerian state from 1991 to 2003 and continued to rise till 2004, the economic growth of the country did not see much rise as compared to Malaysia despite large deposits of material and natural, human resources. This is because of the unstable political environment of the country caused by long periods of military rule. Under military rule, the country witnessed monopoly of the firms, disrespect to the human rights and the rule of law. Moreover, the decline in the economy was palpable resulting from the unstable policies, large scale corruption and exploitation of public funds. Also, Nigeria witnessed high environmental degradation and pollution under military rule. Its marine life and fertility of the soil was destroyed because of the seldom oil spills and gas flaring in the Nigeria Delta region.

After the establishment of democracy in the country in May 1999, social and political environment became more receptive to CSR practices which ultimately led to sustainable development. With democracy accompanied an empowered constitution which led to the restoration of fundamental human rights and rule of law.

The current trend of CSR practices in Nigeria falls within the scope of philanthropic giving. This is because of the fact that the public sector support for CSR is weak. The government in Nigeria is still does not understand the need and impact of CSR on sustainable development. Hence, the multinational firms established in Nigeria continue to thrive on ethnic disputes and get away with their abuse of environment such as gas flaring and oil spillages.

GOVERNMENT AND THE CIVIL SOCIETY SECTOR

The voluntary- formed Advocacy Groups act as the unofficial watch dogs of various CSR practices ranging from consumer issues, environmental issues, human rights and governance etc. and also organizational whistleblowers, which raise objection or criticism against any policy of the corporation if it is deemed to be inappropriate by the group. These are mostly established in developed countries of North America and Western Europe and form a part of the civil society organizations. These organizations form a significant part between the business and the broader society.

Nigeria has a similar set up as the developed countries as regards the civil society organization, which claim to protect the interests of the citizens with respect to the varying values of CSR practices. However, not many societies are well funded or focused as found in the developed world. This is because the government of Nigeria is yet to realize the essential role of such civil societies in the relationship between business and the society at large.

THE MEDIA: CIVIL SOCIETY AND BUSINESS SECTOR

The business sector and the civil society organization are interdependent and are in relation to each other through- Media. Media is essential not only in its own rights, but also to keep a check upon the activities performed by various advocacy groups. Nigeria have print and electronic media, some of which are government owned and others privately held. Before the institutionalization of democracy in Nigeria, all such media groups ran according to the government made regulations. The regulations were so hard that the print or broadcast media were subject to the approval of government or else sanctions were imposed on such media houses. One of the examples of such sanctions when media houses act independently is AIT Television which was subjected to a ban/ suspension for fourteen hours after reporting the site of the Belleview airline flight which met a crash in Lisa village, in Ogun state in 2005. It was because of the civil society's reaction that the ban over AIT Television was suspended. Even at present, it cannot be completely classified, as 'free press' as the dissemination of information is not free and easy.

BUSINESS AND OTHER STAKEHOLDERS

Corporations and other stakeholders like employees, shareholders, community, consumers form a relationship, which can be described as still evolving. As in Nigeria, the shareholders are still counting the losses that they faced in the capital market, which was the result of the recent global recession.

CONCLUSION

The relationship between the business organization, government of a country, civil society organizations is very symbiotic. It means that the all the sectors exist for one and none can exist without the other and this has developed throughout the existence of a human being. After scrutinizing this relationship, we can state that the purpose of the business sector is not merely profit maximization but also to satisfy its stakeholders and sustain development through various practices of CSR. Also, now the government does not just lay regulate business, but has also become one of the players in the market; as the business sector influences government regulations through pressure groups.

As the relationship shows that the three sectors are so integrated that if one sector faces change, the other two respond in some way. Businesses rely largely on the society to provide them with inputs of various resources so that they can produce goods and services. Also, they require the society to consume all such goods and services manufactured. Meanwhile, the society receives various goods and services to fulfill its need. On the other hand, the government provides an enabling ground for the working of the business sector and also protect the society by regulating it. It is funded by the taxes collected from such businesses and and derive legitimacy from the society at large.

In general, the concepts of stakeholders and sustainable development still need to be rooted deeply within Nigerian. Studies show that ethical and moral considerations are at low, because of the presence of corruption and falsification in the nation.

REFERENCES

Kuye, O.L.; Ogundele, O.J.K.; Alaneme, G.C. "Strategic Roles of Business, Government and Society: The Nigerian Situation" International Journal of Business and Social Science 12th ser. 4.2013 (2013): 233-43.

Osterman, Charlotte. "Why companies engage in CSR." Lund University School of Economics and Management. Jan. 2014.

M. Hutter, Bridget; O'Mahony, Joan. "The Role of Civil Society Organisations in Regulating Business." London School of Economics and Political Science. ESRC Centre for Analysis of Risk and Regulation. Sept. 2004.

Is There A Need For A Uniform Civil Code In India?

By Mamatha S. Anilkumar

INTRODUCTION

The former Chief Justice of India, Justice Chandrachud, once said "A common civil code will help the cause of national integration by removing disparate loyalties to law which have conflicting ideologies."

The question whether India needs a Uniform Civil Code is one such topic which has been discussed even before the inception of the Constitution, right from the Constiuent Assembly debates. And it is one such issue which has been so debatable that beyond debates and discussions, it has never been considered with due care by any of the governments that ruled India. The fact remains that what appears to be a controversial topic is not so because of how the concept is understood, but more because the concept is misunderstood. B.Pocker Sahib Bahadur asked – "I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard". Also Rajkumari Amrit Kaur had argued: "One of the factors that have kept India back from advancing to nationhood has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life."

Article 44 of the Constitution of India prescribes an important directive principle of state policy, namely, that the State shall endeavour to secure for its citizens, a uniform civil code throughout the territory of India. However the loophole under Art. 37 says that directive principles are not enforceable by any court, although they are fundamental in the governance of the country, renders the former powerless and without any effect. The Courts have at all time tried to read the Fundamental Rights and the Directive Principles of State Policy in such a way that a perfect balance is made. It is important to understand that this is a culmination of overweighing Fundamental Rights over the Directive Principles followed by an era in which the reverse was done.

PERSONAL LAW AND UNIFORM CODE

There is no such single personal law which is exhaustive and just in itself. If we take the example of any religion, this statement would be understood. For example, in the religion of Islam, there are many laws which the people of the community themselves depict as barbaric for example, the Triple Talaq, the rules of inheritance. Similiraly, in the Hindu religion, the question as to untouchability, caste politics and inheritance issues also wavered the religion for a long time. Nevertehless, every religion has held itself to be the supreme and a culture of tolerance towards other religions was not something that India boasted off.

One of the most common and major argument put forward from the time of Constituent Assembly debates by the leaders from the different religions was that "each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices". However, in the modern days, there is a concept called Vote Bank Politics which the political structure of the country greatly adheres to. This is a system wherein the political parties try to mobilise the people based on their caste or religion and try to arouse sentiments of religion and caste to gather more votes and built the party substance within the place. Even though the apparent aim of the poltical parties are just to gather enough support and votes to sustain them for the coming elections, this system is what is to be commonly accepted to be the primary reason why Uniform Civil Code is a law which is still only in the womb and not taken birth yet. But setting aside some of the minor negative aspects present, focus has to be made with reference to the umpteen number of positive change that can be

Image Courtesy: REUTERS/Anindito Mukherjee

brought about by the implementation of a uniform civil code.

One of misconceptions with regard to Uniform Civil Code is that it simply revolves arund Triple Talaq or Muslims alone. The fear of the community that it is the culture and the values that they hold unique to themselves that is being destroyed by the implementaion of the Uniform Civil Code, the aspect of implementation of the Uniform Civil Code needs to be looked into from the view point of uniformity and not idenitity. This means that the Uniform Covil Code does not work towards making the religions same and identical but only touches on the general aspects of the various religions. There are many features that every religion believed to be at the root of its religion but had to give away because of the social progress that the age went into. For example, the system of untouchability which the Hindu religion considered to be at the core had to be abolished because of the work of many social reformers and the tides of progress. Even though it is the Islamic practices that are being discussed, Uniform Civil Code is also about the people of all religions in the country including Hindus, Christians, Muslims, Parsis,Sikhs and others.

THE WELCOME NOD OF THE JUDICIARY

The question of implementation as well as the making of a Uniform Civil Code has been dealt with by the Courts from time to time and in many instances as well. The issue was discussed in length by the Courts during the various cases wherein the concept of equality was argued as personal laws differed on important points. The Courts had produced many rulings that held that just because two people belong to different religions does not call for a substantial change in the outcome of their matters like Judicial Separation, inheritance and the like. Even the Apex Court has taken the consistent view that the implementation of a Uniform Civil Code is imperative for both, the protection of the oppressed and the promotion of national integrity and unity. It is based on the concept that there is no need for nexus between religion and personal law in a civilized society.

Time and again, the judiciary has given a clear call for the implementation of a Uniform Civil Code in India. In 1985, the Supreme Court reminded the Parliament strongly to frame a Uniform Civil Code while deciding on the Shah Bano's case which paved way for innumerable debates post the judgement for the judiciary's intervention into the Muslim personal law. However this has caused a meldown in the national politics and the effect was rather dynamic. The government, led by Rajiv Gandhi, passed the Muslim Women's (Protection of Rights in Divorce) Act, 1986, which effectively nullified the decision of the Supreme Court in Shah Bano's case. This legisltaion which nullified the Shah Bano Judgment was also put to a great amount of debate as the question was concerning the passive atttitude of the Judiciary. There was an apparent debate within the community as a group of liberals and women supporters shook greatly against the legilstaion whereas the theologians for whose favour, the Rajiv Gandhi Government had made the law grotesquely supported the legislation.
The second case when the Supreme Court once again gave a strong reminder to the government in the matter was Sarla Mudgal v. Union of India .The Bench, headed by Justice Kuldip Singh in its unsually long judgement reitereted on the importance of a Uniform Civil Code, and was even crticised the governments till then for non – implementation of a Uniform Civil Code stating that "Successive governments have, till date, been wholly remiss in their duty of implementing the constitutional mandate under Article 44." The court directed the then Prime Minister, PV. Narasimha Rao, to take a fresh look at Art. 44, holding that from the time the Constitution got enacted , a number of governments have come and gone but have failed to make any effort towards this constitutional mandate.

Again, in 2003, the apex court declared S. 118 of the Indian Succession Act to be unconstitutional as it imposed an unreasonable restriction only on Christians in the matter of religious or charitable bequests ,when Christian priest from Kerala, Father John Vallamatton,approached the Cousrt . Chief Justice Khare opined that , "It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a uniform civil code in the country." Every time, the Courts face outward discrimination merely on the basis of religion, it had always resorted to the debate about the Uniform Civil Code.

There is a very interesting judgment that the Apex Court had rendered in the case of Maharishi Avadhesh v. Union of India, wherein a writ petition was filed calling for a direction to mandate the Government to introduce a Uniform Civil Code in the country. It was dismissed on the ground that this was a matter for the legislature and not the judiciary. Thus, the Courts had not found itself to use the arch of judicial activism to model a Uniform Civil Code like many other laws that it had done. It had always left the humungous task to the Parliament and the law makers to make a legislation that caters to the question of Uniform Civil Code very well. Similarly, in Pannalal Bansilal v. State of AP, it was held that although a Uniform Civil Code is highly desirable, it ought not to be enacted in one go, as that would be counter-productive to the unity and integrity of the nation. Here again, the Court had expressed that never would a Code succeed if it was introduced in a single moment. Thus, the Court was also of the opinion that when debates are absolutely essential, it should be made in an infromed and a decisive manner.

It is for one more aspect that this view taken by the Supreme Court turns interesting. On one hand, it has, time and again, recommended early legislation for a Uniform Civil Code. At the same time, on the other hand, it has struck down every single attempt to do so through Public Interest Litigation. Thus, this calls for a clear analysis on how the Uniform Civil Code has to be implemeted, the Judiciary itself calling this into question. Sandwiched between the Supreme Court's mixed response and the legislature's unethusiastice approach and the other religious and political reasons, the dream of Uniform Civil Code has sadly been always in debates and discussions alone. In the current scenario, the discussion for a Uniform Civil Code once again gained momentum when the Law Commission of India sought the views of the people on the implementation of Uniform Civil Code. The approach of the Union Government seems to be on a different note. The Union Parliamentary Affairs Minister, M Venkaiah Naidu, had recently favoured a debate on ″Common Civil Code″ and had said the government would move

forward only after a broad consensus and nothing will be thrust upon anyone. This can be welcomed as far as the circumstances that are being expressed as conducive to the tolerance of the various communities prevail. The Government's move need not be taken as one which always generates suspicion in the image of the Prime Minister but also one which can be seen as a culmination of the mature political power play and the realization of a great need to be resolved.

"What is best in every religion, in every society should be taken out. I am of the firm view, marriage, divorce, inheritance and right to property these things should be common. Other things, of course, what is the way of worship, what is the way of other practices should be left to individuals. There is nothing against any religion in common civil code," he said, adding that he favours the term "common" civil code over "uniform" since "Uniform conveys a different meaning."

CONCLUSION

The need for a Uniform Civil Code is something that needs to be implemented in a country like India is not debatable. One reason why this question has to thought over and over again is because of the seemless illogic that is prevalent because of the absecne of such a law. When there exists a unified criminal law and a common law like that for contracts or CPC and other statutes in force, there exists absolutely no sound logic as to the necessity for different laws regarding marriage, divorce, adoption etc. for different religious. This is huge paradox, provided that India and its Constitution claims itself to be of secular nature, perhaps the secularism that no other country has ever boasted about.

However, amidst all these speculations and chaos, the state of Goa stands out as a great example for the rest of India as there exists a set of enacted family laws uniformly applicable to all the communities in Goa. The law based on the Portugese Civil Code of 1867 governs special matters like marriage, divorce, succession, guardianship etc., and also brings in gender equality within its purview. Uniform Civil Code brings with itself many positive attributes more boost to womens' rights in the country, a higher level of national integrity, reducing vote bank politics and minimalise the caste-creed differences that is still prevelant, aleast in a small scale and most importantly, make India secular in every sense. However one should not also overlook the undeniable truth that social transformation through law from a diverse civil code to a uniform code is bound to take time and cannot be expected to happen in a day. But it is need of the hour that a Uniform Civil Code be implemented in India in order to make it a more progressive and developed nation in every aspect.

It is unfortunate that the demand for a Uniform Civil Code has been framed in the context of communal politics. Too many well-meaning people see it as majoritarianism under the garb of social reform. They should understand why even the courts have often said in their judgements that the government should move towards a uniform civil code. The move towards a common civil code cannot be a hasty one. There is the obvious political challenge on assuaging the fears of the Muslim community. The government will have to work hard to build trust, but more importantly, make common cause with social reformers rather than religious conservatives, as has been the wont of previous governments.
One strategic option is to follow the path taken after the fiery debates over the reform of Hindu civil law in the 1950s. Rather than an omnibus approach, the Modi government could bring separate aspects such as marriage, adoption, succession and maintenance into a uniform civil code in stages. The underlying principle should be that constitutional law will override religious law in a secular republic. Many practices governed by religious tradition are at odds with the fundamental rights guaranteed in the Indian Constitution. Even those who argued in the Constituent Assembly for continuing with different civil codes were not arguing on matters of principle, but of political expediency. They hoped that India would move to a common civil code within a decade or so.

Ship Arrest In India: Conflicting Jurisdictions Calling For A Uniform Law

By Muna Basheer

INTRODUCTION

Ship Arrest is the procedure whereby the security of the ship is utilized for the purpose of reimbursement of the claims against the ship owner. Essentially, a ship while travelling outside its jurisdiction entertain liabilities. By subjecting themselves to a foreign jurisdiction, a ship owner virtually enters into a contract with the foreign country in which the ship which has entered has to follow the laws of that country. Thus, in the event of a collision leading to damages, or in the context of a maritime claim like non payment of freight or bunkering charges, the ship owner subjects himself to a foreign law according to which he will have to pay off the claims. In India, the Courts are vested with the power to arrest the ships by virtue of the Admiralty Act of 1861 applied by the Admiralty Act of 1890 and adopted by the Colonial Admiralty Courts Act of 1891. However, this is the process so far the arrest of a foreign ship is concerned. There is no question as to the importance of the arrest of a foreign ship as it is the best way to ensure security since the vessel may only be in the port for a limited time. However, when it comes to a domestic ship, the High Courts in India are still confused as to whether it has the jurisdiction or not. The Apex Court in M.V. Elizabeth v. Harwan Investment and Trading Pvt. Ltd.[1] Hanoekar House Swatontapeth ruled that even though India had not ratified nor accepted many of the Conventions applicable to maritime law, yet they are a part of the Common Law and yet is to be recognised as the customary law of India. Thus, the Arrest Convention becomes a part of the Indian legal regime. Therefore, the grounds under which the vessel can be arrested as provided in the International Convention become part of the customary law of the country. This view is not adhered to by the High Courts in the country. It has been often held that Courts do not have jurisdiction to arrest the ship as a simple civil court remedy will be a good bar. As the Apex Court has yet to provide a uniform ruling and the Parliament's attempts have not seen any end result, the conflicting judgments rendered by the High Courts have the ability to bring the maritime regime in India to a backtrack.

ARREST OF THE SHIP

At the foremost, it is upon the order of a Court as designated according to the relevant legal framework of the jurisdiction to decide whether a ship is to be arrested. A ship may be arrested (i) to acquire jurisdiction; or (ii) to obtain security for satisfaction of the claim when decreed; or (iii) in execution of a decree[3]. In the first two cases, the main contention of the defendant would be that the arrest was wrongful or it is not according to the procedure contemplated in the statutes. The Court therefore has a discretion to ask for a security from the plaintiff in case the arrest is wrongful and so the burden of proof lies upon the applicant. United States and Japan are two of the countries which follow the method of asking the plaintiff to pay the necessary damages in case of wrongful arrest.

The International Convention on the Arrest of Ships 1999 is the primary legislation that caters to the arrest of ships. The claims for the arrest of ship includes any damage caused by the ship in case of collision or by any other activity, loss to the life and any personal injury caused with the operation of any ship, loss or damage caused to the goods which are carried by the ships, salvage or its operation, bottomry, towage, pilotage, construction, repair or equipment of any ship charges and their dues etc. When the ship is arrested, it comes under the

1. A.I.R. 1993 S.C. 1014

[2] International Convention Relating to the Arrest of Seagoing Ships, Brussels, 1952 and International Convention Relating to the Arrest of Seagoing Ships, Geneva, 1999.

[3] Ship Arrest in India and Admiralty Laws of India, Shrikant Pareshnath Hathi and Binita Hathi, Ninth Edition, 2016, Chapter 32

Image Courtesy: Political Mirror

authority of the Marshall or any other designated official who is considered to be the person in charge of the attachment of the ship. The attachment of the ship is only provisional and the ship will be under the custody until the amount is paid. The warranty that is put on the ship may even go the extent of making the ship work or pay money in lieu of bail or to sell the ship after obtaining a condemnation order. It is to be understood the practical difficulties in making a person liable on account of the losses that his ship had made is the primary reason why in the form of attachment over the ship is to be sought for. At this point, the main factor being that an action *in personam* is not the tool but an action *in rem* is to be taken against the ship. In many countries like the civil law countries where action *in rem* is unheard of, the only remedy seems to be action *in personam* against the ship owner[4]. An action...though originally commenced *in rem*, becomes a personal action against a defendant upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability'[5].

INDIAN HIGH COURTS' JURISDICTION TO ARREST A SHIP

The main theme of this paper is the arrest of a domestic ship, that is a ship which carries an Indian flag in its mast. The question of arrest of an Indian ship for security has been contested in the High Courts in India on various grounds. It is pertinent to note that the statutory framework for the jurisdiction of arrest of High Court is vested through the Admiralty Act of 1861 applied by the Admiralty Act of 1890 and adopted by the Colonial Admiralty Courts Act of 1891. Essentially, it was the High Courts of Calcutta, Bombay and Madras which had the admiralty jurisdiction as per the statutes. These Acts still continue to be in force because of Article 372 which provides for the existence of pre-Constitutional laws so far as it is not inconsistent with the Constitution. The two Acts of 1890 and 1891 did not confer any separate or distinct jurisdiction but by passage of these acts equated the Indian High Courts to the position of English High Courts for the exercise of admiralty powers within their jurisdiction. The Supreme Court had clearly mentioned in a landmark judgment that admiralty jurisdiction is a part of the totality of jurisdiction vested in the High Court as the superior Court of record and is not a distinct and separate jurisdiction as was once the position in England before the unification of codes. The two Acts of 1890 and 1891 did not confer any separate or distinct jurisdiction but by passage of these acts equated the Indian High Courts to the position of English High Courts for the exercise of admiralty powers within their jurisdiction.

The Indian Parliament has not adopted the International Convention on Arrest of Ships, 1999. Although these conventions have not been adopted by legislation, the principles incorporated in the conventions are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships. Application of 1999 Convention in the process of interpretive changes, however, would be subject to domestic law which may be enacted by Parliament and it should be applied only for enforcement of a contract involving public law character. Thus, application of International Convention on Arrest of Ships, 1999 cannot be denied only on the ground that the said Convention has not been converted into legislation by Indian Parliament[8].

CONFLICTING DECISIONS OF INDIAN HIGH COURTS

Crown Maritime Co v Barge Salina II and Ors[9] is a judgment that was rendered by the Bombay High Court through a single bench which provided forth a controversial ruling regarding admiralty jurisdiction of the High Court. The Indian flag carrying ship had failed to pay the demurrage as a result of which the plaintiff had received an ex parte arrest order. The contention of the defendant[10] was that the claim itself wass not cognizable in the Admiralty and Vice Admiralty Jurisdiction of this Court, inasmuch as, it was the pure and simple breach of contract which is capable of being decided by this Court in its Ordinary Original Civil Jurisdiction. Further, the defendant also pointed to the Section 6 of the Admiralty Courts Act of 1940 to state that the provision pre-supposes that the jurisdiction to arrest is only restricted to foreign flag vessel in case the claim raised/demand made is for Towage. Also, the defendant urged that the Brussels Convention which had been relied upon by the Plaintiff to decide the jurisdiction is not the right law to be followed as the country was not a signatory to the Convention. The Plaintiff alleged that the Admiralty Act of 1840 was not catered to by the Courts and also that no country has ever urged that its Courts would have no jurisdiction to arrest the ship if the flag thereof is of that Country. The defendant relied upon 1861 Act and more particularly Section 5 of Admiralty Courts Act, 1861. He submitted that it was an Act extending jurisdiction and practice of Admiralty. The High Court of Admiralty would have jurisdiction to try any claim of necessary supplied to any ship elsewhere than the Port to which the ship belongs, unless it was shown to the satisfaction of the Court that at the time of institution of the cause any owner or part owner of the ship was domiciled in England or Wales. The learned Single Judge extensively analyzed the judgment in MV Elizabeth v and stated that "Merely because the observations have been made in the context of the power of arrest of a foreign vessel does not mean that this Court would lose its jurisdiction, merely because the vessel is flying Indian Flag." The Court also stated that:

"What is obvious cannot be stated

[4] ibid

[5] Roscoe's Admiralty Practice, 5th ed. p.29

[6] Ship Arrest in India and Admiralty Laws of India, Shrikant Pareshnath Hathi and Binita Hathi, Ninth Edition, 2016, Chapter 32.

[7] ibid

[8] M.V Nordlake v Union of India

[9] Notice of Motion No. 3513 of 2007 in Admiralty Suit No. 36 of 2007

[10] Defendant in the original suit. The present suit was a motion for staying the original suit.

and need not be stated. It would be absurd to suggest that this Court cannot proceed against a vessel of its own nationality and in its own territorial waters, even if ownership of the same is of parties within its jurisdiction. If that was the intention of Legislature, the same would have been expressed clearly and unambiguously."

The main result of the Bombay High Court Judgment was that it settled the position of law regarding the jurisdiction of the High Courts in respect of arrest of a domestic vessel. Thus, in the absence of an express law to be made by the Legislature regarding the same, it would be the natural conclusion of law that the High Court would have jurisdiction concerning such issues. This position of law was contested by the Calcutta High Court in the year 2013 through a Single Judge Bench decision of Porto Maina Maritime SA vs Owners & Parties Intersted In The Vessel M.V Gati Majestic[11]. The suit had arisen after a collision in which the plaintiff was served a notice to pay an amount of Rs.36,66,000/-. The plaintiffs in this case had heavily relied upon the Bombay High Court Judgment to state that the Calcutta High Court has jurisdiction to address the present issue. The defendants contended that the Apex Court decision that was relied upon for the Bombay High Court to arrive at the conclusion that the High Courts have jurisdiction to arrest a domestic vessel was misconceived as the issue in that suit was regarding a foreign vessel. The Calcutta High Court disagreed with the view of Bombay High Court and held that the Court had not taken notice of paragraph 83 of the M.V Elizabeth judgment which stated:

"categorically clear that it is only the presence of a "foreign ship" in Indian waters, which determines the attraction of Admiralty jurisdiction of the High Court. It can, therefore, be held that the observations made by the Supreme Court in M.V.Elisabeth - as referred to by the Bombay High Court in Crown Maritime Co. (I) Ltd.'s case (supra) - cannot be an authority for the proposition that a High Court, in its Admiralty jurisdiction, has the power to entertain, try and determine an action against an Indian flag flying vessel."

The Kerala High Court had also made a decision[12] in the year 2014 that the High Courts do not have admiralty jurisdiction to entertain the petition for arrest of the vessel 'M.V Kavarathi'. The Court held that the vessel 'M.V. KAVARATHI' was owned by the President of India and represented by the administrator of the Union Territory of Lakshadweep. Further, the ground raised by the plaintiff in this question regarding the arrest of the ship is not a valid claim and further there is no enabling provision for the arrest of an Indian ship by an Indian Court[13].

THE NEED FOR A UNIFORM LAW

The issue of arrest of a domestic vessel has been in controversy in the recent past. The large number of litigants expressing concerns over the fact that even though the issue of transnational boundaries aren't a compelling reason to attach a ship, arrest still remains a viable reason to realize the value of the unclaimed amount. The main argument against attachment of a ship is the fact that there are ordinary civil court remedies to avail of as the ship owner is likely to be an Indian. However, the fact remains that the most conclusive remedy is to attach a ship and thereby realize the amount since, attachment for even a day is likely to create a debt large enough to compel the ship owner to pay the money. Otherwise, the civil suits may drag forever and it would only benefit the guilty.

The Courts have reiterated from time to time that since there is no law that expressly gives the High Courts the power to attach the domestic vessel, it would be according to the catena of legal decisions at the time that the matter would be adhered to. Thus, till the Calcutta High Court had ruled otherwise, it was the Bombay High Court decision that mattered and was followed. Moreover, all the legislations that govern the maritime industry such as the Admiralty Act of 1861 and 1890 were drafted to suit the needs of a sea power that is the British Government. Even after India became independent, the legislations were not touched upon. Thus, it is high time that the Government come up with a legislation that addresses the issue of maritime arrest of a domestic vessel. As sale through sea is increasing and merchant ships are gaining momentous wealth and commercial viability, it is only in the interests of all that the Parliament come up with a law ensuring that the High Courts have the power and jurisdiction to arrest a domestic vessel.

CONCLUSION

The main theme of the paper is the issue of arrest of domestic vessel. Arrest of a domestic vessel entails within itself the attachment of a vessel for the realization of the unclaimed amount. As the High Courts come up with contesting claims, even the Parliament has not found its true stance in coming up with a law to address the issue.

[11] A.S. No. 1 of 2012

[12] MANU/KE/1550/2014

[13] ibid

Women: Religion And Empowerment

By Priyadarshini Singh

ABTRACT

It is through several provisions that the Indian Constitution upholds the spirit of secularism. This paper tries to analyze and address relation between right to religion and gender inequality prevalent in Indian society. Article 25 is one of the pillars of fundamental rights guaranteed by the Constitution. The status of women in society is very diverse worldwide. Among many important traits associated with the differentiation of gender inequality is religion, which itself must be regarded as a fluid concept with interpretations and practices 'embedded' and thus varying with respect to cultural and historical relations. Admitting the complexity of the issues, some religious norms and traditions can contribute to the formation of gender inequalities and to sub-ordinate the role of women in society. Before the 42nd Constitutional Amendment Bill added the word "secular" in the Constitution of India, the word "secular" appeared only in "Article 25". India is a secular country and there is no state religion. India also does not patronize any religion. The 42nd Constitutional Amendment Act made the above thought "explicit" in the Constitution. In the history of religions, the voice of women is rarely heard, due to the patriarchal dispositions of societies in which these religions emerged, and which eventually stifled some of the changes in the status of women triggered by these new religions. The underlined idea on which this paper focuses are: 1) How significant is the influence of religions on gender inequality and the social status of women? and 2) To what extent do religions determine the status of women? Women's identities are closely linked to the social structures, customs and rituals. The best way to learn about the socio-economic position of women can be through the exposure to various customs in practice.

WOMEN AND EMPOWERMENT

The paper seeks to discuss empowerment of women in Indian society with special reference to ban imposed on Women to access sanctum sanctorum. The paper moves forward examining relation of religion and Women vis-a-vis society. It talks about certain instances where women were prohibited from carrying out religious practices and role of judiciary in empowering women.

"Equality is one of the magnificent cornerstones of Indian democracy. We have, however, yet to turn that corner."[1]

A woman is an integral part of a society as much as man is. She wasn't in exigency to overpower her counterpart by means of charm and weakness but by reason, power and intellect. A woman holds vulnerable designation because of her docile circumstance. In the Indian society, women are considered to be the weaker section of the society. Among many important traits associated with the differentiation of gender inequality religion is one, which itself must be regarded as a fluid concept with interpretations and practices 'embedded' and thus varying with respect to cultural and historical relations. Admitting the complexity of the issues, some religious norms and traditions are contributing to gender inequalities and sub-ordinate the role of women in the society. Acknowledging the disadvantaged position that women were in, and asserting the need for special provisions and preferential treatment does not suffice the process of empowerment. The Indian Constitution does not define religion so it must be understood in a normative sense. A religion could be defined as *a set of practices to regulate oneself in his internal and external conducts* in obedience to his belief in supreme power. Thus, the religious practices are *a set of rules or principles for the attainment of belief in supreme power.*

[1] GOVERNMENT OF ANDHRA PRADESH V. P.B. VIJAYAKUMAR & ANR.DATE OF JUDGMENT12/05/1995; 1995 AIR 1648 ;Thommen, J. has observed (a minority judgment).

Image Courtesy: BLUSH.ME

The religious practices are what a religion teaches[2]. In an American case[3] , it was observed "that the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will. It is often confounded with `cultus′ of form or worship of a particular sect, but is distinguishable from the latter."

It all started when man started making rules for others too, when man-made rules clashed with the rules made by nature; when men started dictating as to what law should be with regard to Women's position in society, this fiasco of empowerment took birth. The question of empowerment pops up from the basic fact of inequality and differences prevalent in the society. These differences and inequalities need to be addressed to empower the victim. These inequalities may arise in different forms. The dialectic process talk about differences, inequalities and identities and how they are part and parcel of empowerment process. It says that empowerment is needed in three situations: when the difference is correlated with inequality; when identity is correlated with equality; and when the difference is correlated with equality. This three-tier process answers the question of empowerment by what means. When it comes to women empowerment the second stratification comes in i.e. when identity is correlated with equality.

Empowerment means emancipation of Women from the vicious grips of social, economic, political, caste and gender-based discrimination[4]. It means granting women the freedom to make life choices. Women empowerment does not mean 'deifying women' rather it means replacing patriarchy with parity. Empowering women does not mean getting preference over men but equality in substantive form; addressing their needs and aspiration equal as men.

The perspective of empowerment are many in number; one which author wants to highlight is that identify the causes of disadvantages and wants to address them satisfactorily. Indian judiciary on various instances has given judgment in promotion of women's position in society but those judgment had inherent essence of legitimizing this process of discrimination[5] as the idea of judiciary for those judgment was based on the concept that "Women are the weaker sex of society; can be easily exploited." This approach of judiciary does not help in women empowerment but it appears to be a token given as to acknowledge their existence. A distinct identity must be given but formal equality principle should not be sole basis rather, there should be a substantive process in place to guarantee equality, emphasizing solely on disadvantages.

During the debates in the Constituent Assembly[6], B.R. Ambedkar – supported, among others, by Rajkumari Amrit Kaur, who expressed specific concerns about the plight of women under religious law – endorsed giving wide, interventionist powers to the state on the ground of the deep and pervasive role that religion played in the lives of Indians, stating "The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death," he observed further, "I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious." Ambedkar realized the dominance of religion in society in apt way. The state intervention marred the religion in its being and deteriorate position of women in society. Over the years, the Supreme Court has itself restricted the scope of the religious protection clause to "essential practices of a religion". While holding that the state cannot use the reform clause to "reform a religion out of existence", it has nonetheless held that aspects beyond essential practices have no protection from state intervention.

Clause (3) of Article 15 provides that nothing in this Article shall prevent the State from making any special provision for Women and children. In other words, while Article 15(1) would prevent a State from making any discriminatory law (inter alia) on the ground of sex alone, the State, by virtue of Article 15(3), is permitted, despite Article 15(1), to make special provisions for Women, thus clearly carving out a permissible departure from the rigours of Article 15(1) Article 15(3) permits special provisions for Women. The insertion of clause (3) of Article 15 in relation to Women is recognition of the fact that for centuries, women of this country have been socially and economically handicapped[7]. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. To effectuate constructive equality between men and women, it is in order to eliminate this socio-economic backwardness of Women and to empower them[8]. The Article 15(3) is placed in Article 15 with the object to strengthen and improve the status of women. The argument that Article 15(3) is an exception to Article15 (1) should not be appreciated and Article 15(3) should be treated as the sole facet of Article 15, it should be considered as a mean in itself. Looking at article 15 (3) as an exception to Article 15 (1) takes away all the meaning which gives it the identity to be an empowering provision. Stating it as an exception lowers its value as a welfare or corrective step taken by the state. This interpretation does not do well to the provision, instead seeing it, as an independent provision would give it the true meaning and expedite the process of empowerment in Indian society.

[2] Ratilal Panachand Gandhi and others v. State of Bombay and other [AIR 1954 SC 388].

[3] Vide Davis v. Beason, (1888) 133 US 333 at p. 342 (G) (AMERICAN CASE)

[4] 'Role of Women' , Women Empowerment In India and 'Social Justice', https://www.iaspaper.net/women-empowerment-in-india/.

[5] Cases like Air India Etc. Etc v. Nergesh Meerza & Ors. 1981 AIR 1829, 1982 SCR (1) 438; where judiciary legitimized the process of discrimination.

[6] Chaudhari & Chaturvedi's, Law of Fundamental Rights, $th Ed., Delhi Law House Publication.

[7] Govt. of A.P. v. P.B. Vijaykumar (AIR 1995 SC 1648).

[8] D.D. Basu, "Commentryon constirution of India",8th Edition,2007.

In the name of empowerment, biological differences were paramount to decide position in society. The whole empowerment of women was never ideological empowerment but was initiated to give token appreciation to women for being women. Empowering women soon turned into power game instead of an ideology. It was all about providing legislative or welfare provisions in the statute which had this essence of women empowerment in them. Empowerment is all about ideology, empowering a person ideologically makes a huge contribution in this process of empowerment taken together.

The society should have an altruistic outlook towards women, not mere recipients of welfare measures but should be given a say in the process of growth and development. This compensatory approach needs to be recognized by the society to address the gender difference and is required where corrective approach is pivotal. Empowerment in philosophical sense, is the freedom to be yourself with those who know you through and through, where you no longer required to play a fake societal role and can emerge with flaws and impurities. In the histories of religions, the voice of women is rarely heard, due to the patriarchal dispositions of societies in which these religions emerged, and eventually stifled the status of women in the society. Some of such instances in secular India are:

1. Haji Ali Mosque, Mumbai [9]

In 2012, the trust that runs the Sufi shrine imposed a ban saying that it is a sin to allow Women to enter and to let them touch the tombstone of a male saint. The following reasons were stated by the trust in their appeal:

(i) women wearing blouses with wide necks bend on the Mazaar, thus showing their breasts;
(ii) for the safety and security of women; and
(iii) that earlier they were not aware of the provisions of Shariat and had made a mistake and therefore had taken steps to rectify the same. Bombay High Court struck down this ban.

2. The Sabarimala Temple, Kerala[10]

The Sabarimala temple has a ban which bars all women in the age group of 10 to 50 from entering the shrine. In November, the Sabarimala temple chief-Prayar Gopalakrishnan stated that he would allow women to enter the shrine only after a machine was invented to detect if they were ″pure″ - meaning that they weren′t menstruating. A time will come when people will ask if all Women should be disallowed from entering the temple throughout the year. Later on, authorities said that as this temple is of a bhramchari (bachelor) Lord Aiyyapa thus women cannot be allowed inside his temple.

3. Shani Shingnapur Temple, Maharastra[11]

Temple authorities gave statements as to why women are not allowed inside temple:
- women aren′t allowed in because Shani doesn′t really like women.
- to protect women, since Shani emits radiation which can harm them and cause deformity to foetus, if a pregnant woman enters the temple. Moreover, Hindu religious leader Shankaracharya Swami Swaroopanand Saraswaticomments on Women entry restriction:

"They should stop all the drum beating about what they have done. Worshipping Shani will bring ill luck to them and give rise to crimes against them like rape. In April, 2016, Maharashtra High Court struck down a 400-year-old ban on the entry of Women into Shani Shingnapur temple on the ground that Women cannot be discriminated on basis of their gender."

4. Shwetambar Jain Samaj's Rishabhdev Temple, Ujjain[12]

On 28th August, 2016 the trust restrained girls aged eight years and above from entering the temple in jeans, skirts and other western outfits. The decision was taken considering that western outfits lower the prestige of the Jain temple. But the authorities tried to make up to the ban by saying that there is no ban on anyone visiting the temple in proper dress.

5. Trimbakeshwar Temple, Maharastra [13]

The ancient temple, which has one of the 12 'jyotirlingas', drawing devotees from far and wide. The authorities came up with a condition with regard to dress code to be followed as to secure entrance to the temple: only allow women inside the gabhara (inner sanctum) for an hour every day provided that they wear only 'wet cotton or silk clothes'. The time slotted for worship is between 6 and 7 in the morning. Bombay High Court ruled that women have a fundamental right to enter temples, and said those trying to prevent them would be handed a six-month jail term.

6. Kamakhya temple, Assam[14]

The temple is one of the 51 shakti peeths in India. The temple also has an annual

[9] Haji Ali Dargah: Mumbai mosque to lift ban on Women, http://www.aljazeera.com/news/2016/10/haji-ali-dargah-mumbai-mosque-lift-ban-Women-161024082701457.html

[10] Why should Women compel Sabarimala deity to grant them darshan, asks SC, April 18, 2016 http://www.thehindu.com/news/national/sabarimala-entry-ban-gender-equality-is-a-constitutional-message-says-sc/article8490310.ece

[11] Shani Shingnapur temple lifts ban on Women's entry, April 8, 2016,http://www.thehindu.com/news/national/other-states/shani-shingnapur-temple-lifts-ban-on-Womens-entry/article8451406.ece.

[12] Sumitra Agrahari | HENB | Ujjain | Sept 4, 2016,Jain Temple in Ujjain restricted girls in Jeans from entering inside. Leather goods not allowed. https://hinduexistence.org/2016/09/04/jain-temple-in-ujjain-restricted-girls-in-jeans-from-entering-inside-leather-goods-not-allowed/.

[13] Trimbakeshwar temple lifts ban on Women entry with rider, Fri, Apr 15 2016, http://www.livemint.com/Politics/DvklVYu9kD5dBIs22LpOBK/Trimbakeshwar-temple-lifts-ban-on-Women-entry-with-rider.html.

fertility festival called Ambuwasi Puja in which the goddess is said to be going through her yearly menstrual cycle. This rituals/customs exposes the hypocrisy of Indian society with regard to Women status, as menstruating women are not allowed to go inside the temple.

7. Hazrat Nizamuddin Auilya, Delhi[15]

One of Delhi's holiest Sufi shrine, is that Women are not allowed inside the chamber where the 14th century saint lived, died and was buried. They may pray outside the door to the tomb, or cling to its walls, or sit in the courtyard but they cannot enter into the tomb. As the reason given is that according to Islamic law, women are not allowed near graves (says Altamash Nizami, a dargah caretaker).

8. Hindu Temples of Tamil Nadu[16]

On November 11, 2015, Justice S. Vaidyanathan had imposed a dress code stating that the menace of "improper clothing" by temple-goers needs to be curbed, a dress code was "inevitable". It was contended that it was done, as it would "enhance the spiritual ambiance among the devotees". The division bench of Bench of Justices V. Ramasubramanian and K. Ravichandrabaabu struck down this direction stating that judges can't impose our values on society.

9. Lord Kartikeya Temple (Pehowa, Haryana and in Pushkar, Rajasthan)[17]

This temple celebrates the celibate (Brahmachari) form of Lord Kartikeya hence Women are barred from entering the temple. It is believed that any women visiting it will be cursed even if they are seeking blessings. Women are strictly forbidden in the Pushkar temple since it is believed that Kartikeya becomes really aggressive if a woman enters the temple.

10. Mawali Mata Mandir (Dhamtari, Chhattisgarh)[18]

The temple authorities came up with an interesting reason which banned women entry. One of the chief priest saw a deity emerging from earth in his dreams and ordered to ban women entry.

11. Mangal Chandi Temple, (Bokaro, Jharkhand)[19]

The 200-year-old temple restricts entry of women as it is said that women would displease the god and will bring invitation to misfortune. Hence, only men devotees can offer puja. According to the Head Priest, women are barred from entering the temple, but can offer puja from a distance of about 50 meters outside the temple.

12. Sree Padmanabhaswamy Temple (Malayinkeezhu, Kerala)[20]

In the Sree Krishna temple situated in Malayinkeezhu village of Thiruvananthapuram, women are denied entry into the core structure (called the nalambalam) of the temple. The tradition is from centuries ago and was instituted because two Pushpanjali Swamiyars of Sree Padmanabhaswamy Temple, who were celibates, had to spend six months at the Malayinkeezhu temple. It is believed that the ban was enforced during the reign of the erstwhile Travancore ruler Sree Moolam Thirunal.

13. Patbausi Satra (Barpeta, Assam)[21]

15th century saint Srimanta Sankardeva established this monastery in Assam, which disbarred Women into the sanctum sanctorum until 2010 before the then Assam Governor JB Patnaik entered the Vaishnavite temple's inner sanctorum with 20 women, performed rituals and offered prayers. Even though the Governor persuaded the spiritual head of the Satra (Sattradhikar) to shun the century-old tradition, the ban has been re-imposed.

14. Jain Temple (Ranakpur, Rajasthan)[22]

One of the five major Jain pilgrimage sites, this 15th century structure in Rajasthan prohibits the entry of menstruating women. Among many things Women essentially need to do, while entering the temple or inside it, is to ensure that their legs are well covered below their knees.

By the above-mentioned instances it can be deduced that in India the major problem is misrepresentation and manipulation of religion, which has distorted the religion messaging. People have molded their religion as per their whims and fantasies and imposed on others with a pseudo-authority they pose. Indian society is the one of the society where women are subjected to religion through cultural lenses. Religion is not considered in its individualistic aspect of practices, but Women are forced to practice what society (mainly dominated by men) belonging to their religion thinks thinks to be appropriate. The author wants to emphasis that empowerment of women is always related to representation made by women on different social

[14] Isha Jalan,This Temple Worships The Bleeding Goddess, But Doesn't Allow Women On Their Periods. Ironic Much? https://www.scoopwhoop.com/inothernews/menstruating-goddess-kamakhya-devi/#.y0hd7nmky.
City Faith – Ladies are allowed inside Hazrat Nizamuddin Dargah, http://blogs.hindustantimes.com/the-delhi-walla/?p=553.

[15] HC sets aside order on dress code in temples,CHENNAI, April 5, 2016. The Hindu.

[16] Not just Shani & Sabarimala temples, these shrines also bar Women, 11-Jan-2016 http://www.mid-day.com/articles/not-just-shani--sabarimala-temples-these-shrines-also-bar-Women/16852167.

[17] Sumitra Agrahari | HENB | Ujjain | Sept 4, 2016,Jain Temple in Ujjain restricted girls in Jeans from entering inside. Leather goods not allowed. https://hinduexistence.org/2016/09/04/jain-temple-in-ujjain-restricted-girls-in-jeans-from-entering-inside-leather-goods-not-allowed/.

[18] Ibid

[19] Ibid

[20] Ibid

[21] Ibid

[22] Ibid

platforms, they have to adopt the "be at the table concept", they will have to come forward and stop delegating their decision-making authority to male counterparts; they will have to defend themselves and stop giving up their positions just because society wants it that ways. Apart from social acceptance of the equal position of women certain policies in likeliness of women have to be structured properly, not by men but women themselves. There has to be a process of mass introspection when it comes to the question of the role of women in faith.

Kirsten K. Davis, commented on the judicial approach relating to sex-based discrimination in India is pertinent:

".....the potential for a strict review of sex-based classifications in India has been diminished because the Indian analysis appears to operate on the assumption that women have particular "sensitivities," "peculiarities," and "handicaps" that readily establish an additional ground for sex-based discrimination, thereby requiring the court to make a "reasonableness" analysis of the discriminatory law."[23] *Every judicial response in such cases is the jugglery or acrobat between tradition, faith and equality, empowerment synthesizing justice between their polarities. The altars of the God must be made free from gender bias. Only then the constitutional mandate under Articles 15 will become a reality."*

Kirsten K. Davis, commented on the judicial approach relating to sex-based discrimination in India is pertinent:

"A major discipline this pilgrimage involves is forty-one days of continence, physically and mentally. During this period many pilgrims even maintain minimum contacts with their homes and stay in special prayer halls along with other pilgrims..... Firstly, the women of the age group having the menstrual cycle will not be able to engage themselves in intense spiritual discipline for a long period prescribed for the Sabarimala pilgrimage. Secondly, their presence in large numbers during the pilgrimage may naturally defeat the effort of the pilgrims to control their sexual urge which is the most important part of the austerities of this pilgrimage. Sabarimala pilgrimage gives the common man a rare occasion for self-discipline and an opportunity to gain inner strength and harmony....."[24]

All the empowerment measures existing today are dictates of men's mind, which forms the very essence of above-quoted reasoning. Author tries to suggest that for once let women be given the authority to decide what will be their empowerment. Let women address these questions of empowerment instead of men sitting and deciding for women. True empowerment would be by providing autonomy of decisions. Women should not only be given the share in the resources but should have control over resources that would be true empowerment.

Ideology plays an important role in process of empowerment. Control over the ideologies dictating these decisions for women, made by women itself would be true empowerment. Uplifting women is considered as underline idea of empowerment. This upliftment is offered based on the biological differences between men and women. Such practices of empowerment forgets to acknowledge the qualitative aspect. This whole setup of men dominated ideology addressing the interest of women and empowering them appears to be an oxymoron in itself. Men-done empowerment focuses only on individual empowerment but what is required is that addressing society at large and empowering the whole society instead of focusing on an individual. Empowerment would be when women will decide for women; they will control the ideology, thought, perception which will dictate that what empowers them and what does not. The decision-making power should be conferred on women when we talk about empowerment of Women. It is high time now that executive, legislature and judiciary should acknowledge their authority and give them back their due which was taken away from them. The empowerment which author wants is helping women develop the sense of self-worth, ability to generate choices and recognize and influence others.

It is about participation in decision-making in all spheres, finding equitable solutions in family and society, desisting from stereotyping of gender roles. It aims at the elimination of multifold discrimination, to protect every individual as a right-bearing autonomous being[25]. Courts have also asserted that the Special treatment of women may also be justifiable on account of the peculiar social position of women in India[26]. The special treatment that is permissible under 15(3) must be relatable to some feature or disability, which is peculiar to women so as to differentiate them from men as a class and give them the requisite respect.

[23] Kirsten K. Davis, "Equal Protection for Women in India and Canada: An Examination and Comparison of Sex EqualityProvisions in the Indian and Canadian Constitutions", (cited as: 13 Ariz. J. Int'l & Comp. Law 31, Spring 1996).

[24] Srikanth and Manoj C. V., Sabarimala: Its Timeless Message, Integral Books, 1st Edition, 1998.

[25] For extensive discussion See, IshwaraBhat P, Law and Social Transformation in India, Eastern Book House, 2009.

[26] Yusuf v. State of Bombay(1954 SCR 930).

The Analytical Discussion On Problems Of Inter Country Adoption

By Dr. Rajesh Bahuguna And Ms. Navtika Singh

BACKGROUND

Adoption is a process which complete the purposelessness of the two lives i.e. child and family for instance on one side if a child has no one to look after him then adoption is a way which offers him a family, security of food and most importantly family and on the other side the parents who do not have any child then they can fulfil their dream to be a mother and father. Adoption can be categorised into two forms: intra country adoption[1] and inter country adoption[2]. Inter country adoption is one extra option of adoption for the adoptive agencies. Hence, it can be seen as a solution. However, the coin has other side i.e. negative too. Let's analyze problems related to inter country adoption.

Different Relevant issues involved in the inter country adoption are:

(i) Issue of Trafficking of children.
(ii) Lacunas in the adoption process
(iii) Problem of maintenance.
(iv) Problem of follow up.
(v) Issue of Punishment

ISSUE OF TRAFFICKING OF CHILDREN

The most important problem which is related with this issue is child trafficking. The children's were adopted on the name of inter country adoption by the foreign adoptive parents, with the different names and identity, and those children are being misused, trafficked to the other countries or can be used in their own country as they can be used for the different purposes like, prostitution because mostly child's who are being adopted are the female child, house mates, child labors and so on. This is the most dangerous thing which is attached with this inter country adoption because of the two important unsolved questions, the first is what will happen if a child is not been adopted by the foreign parents who were appointed as the guardian by the Guardian Judge of the country of the child. Here the foreign parents have two years time to adopt that child, but this time could be further extended for the term of six months by the court, and if after that the child is not being adopted what will happen with that child is yet to be answered. Will he return back to the country after two and half years from the love and care of the parents? Will he be under the care of the foreign agency that sponsored that adoption? The second question is about the follow up. A study report should be prepared by the foreign adoptive parents, along with the photographs of the child. It should be send to the Guardian Court who appointed that foreigner as the guardian for the period of three years, out of which the in first two years it should be quarterly and in the final year it should be half yearly. This would have to be done in paper only, in this era of computer anything could be done and this is the only about the paper formalities. These two important questions have easily and swiftly not been resolved by any authority of the India, because all the thesis formalities have to be re-looked in this era of hi-tech, because of the gross misuse of everything.

However to resolve the issue of trafficking it could be suggested that: firstly, the follow up procedure should be followed till the age of majority of the child[3] so that the child will attain majority and will have less chances of misuse and secondly the foreign adoptive parents should strictly comply with the procedure from guardianship to parent-ship, so that they

[1] Intra country adoption means an adoption process between the child and parents where they belong to same country or they have same citizenship.

[2] Inter country adoption or international adoption is a type of adoption in which an individual or couple becomes the legal and permanent parents of a child that is a national of a different country, available at: http://definitions.uslegal.com/i/intercountry-adoption/

Image Courtesy: Dreamstime.com

will become parents and will not be able to further exploit the child for their own benefit. Through the strict adherence of the above mentioned procedure even the problem of trafficking could be curbed in the cases of inter county adoption.

LACUNAS IN THE ADOPTION PROCESS

In the adoption procedure the parents get a child which complete their empty life and family. When the foreign adoptive parents send an application for adoption, the social and welfare agency working in the field of adoption prepare a child study report[4], that agency sends the report to the parents and the foreign adoptive parents relied upon that child study report decides to adopt the child, but what if that report is based upon the fabricated facts, what if the report doesn't provide the actual picture of the child, what if the report is having some misleading factors related with child. These are some of the issues which are to be looked out by the parents of the child. The other problem which is faced by the parents is that when a biological parent agrees to give his/her child into adoption but the court intervenes in the matter and makes some serious note. This is being faced by the adoptive parents in several cases. However, the Supreme Court even overlooked the guidelines given in the case of L. K. Pandey[5], where the Apex Court said that a biological parent is the perfect person who can do and think about the paramount welfare of the child.

Another problem which could be faced by the foreign adoptive parents is the monetary problem, as Supreme Court observed about their should be a monetary help to the child's social and welfare agency, the agency could ask from the parents about the finances or expenses spend upon the child, if the foreign adoptive parents is unaware about the fixation of the monetary expanses (this we will see in the next part). Another problem could be regarding the follow up report which has to send to the country from where the child is adopted.

The last issue[6] which could be noted is the presence of the foreign adoptive parents in the Indian court. While discussing this question the Apex court held in the case , and directed that the presence of the foreign adoptive parents is not necessary. Furthermore, the Court analyzed that 'when dealing with an application for the nomination of foreign adoptive parents as guardian need not insist on the foreign adoptive parents or even one of parent coming down to domestic country for the purpose of admiring the child. It is been focused that the Guardianship Courts sometimes put emphasis on the foreign adoptive parents coming to domestic adoptive country for the purpose of seeing the adoptive child whether child is an orphan or physically handicapped child. Nevertheless even in such cases it is not required to involve the foreign adoptive parents to come to domestic adoptive country, because a complete dossier of the adoptive child consisting of photographs, child study report, detailed medical report, and other relevant essentials is always advanced to the sponsoring child welfare agency in the foreign adoptive country and after careful deliberation of this dossier and detailed discussion with sponsoring child welfare agency that the foreign adoptive parents choose to accept the adoptive child to be engaged in adoption and continue further in the matter through the supporting child welfare agency, of course, if the foreign adoptive parent himself is keen to come, he may come to India otherwise it is not necessary.

However, the problems which are experienced by foreign adoptive parents are important and while taking note of them the solutions of them could be, firstly the domestic adoptive agency should be responsible for child report, if any wrong information is provided by them[7], secondly while choosing a parent for adoption should not be as per the choice of biological parents, as adoption is for the betterment of the child, hence the benefit of child should be paramount and lastly, when the question comes for the presence of the foreign adoptive parents, the parents have to come if they are able to come without any serious reason because the presence of the parents give a strong sense of commitment towards the adoption.

PROBLEM OF MAINTENANCE

Another problem which is related to the inter country adoption is the maintenance and its related issues. It is a big question which have to be settle that when a social and child welfare agency work for the betterment of the child, is entitled for any maintenance or not?

This question has two aspects, on the first hand the child welfare agency is asking a huge sum of money in the name of the medical expenses with care of the child but on the other hand the agency would not get anything in regard to care of a child. On these two aspects Supreme Court in the case observed[8] that "the social and child welfare agency which is looking after the child selected

[3] Follow up of progress of adopted child:
(1) The authorised foreign adoption agency or the Central Authority or Indian diplomatic mission or concerned Government department, as the case may be, shall report the progress of the adopted child in the format provided in online in the Child Adoption Resource Information and Guidance System along with photographs of the child on a quarterly basis during the first three year and on six monthly basis till the majority of child, from the date of arrival of the adopted child in the receiving country, by Ministry of Women and Child Development, Guidelines Governing Adoption of Children, 2015, New Delhi, the 17th July, 2015, available at: http://cara.nic.in/writereaddata/UploadedFile/NTESCL_635760082361561985_english%20guidelines.pdf

[4] "Child Study Report" means the report which contains details about the child, including his date of birth and social background. By Ministry of Women and Child Development, Guidelines Governing Adoption of Children, 2015, New Delhi, the 17th July, 2015, available at:
http://cara.nic.in/writereaddata/UploadedFile/NTESCL_635760082361561985_english%20guidelines.pdf

[5] L. K. Pandey v. Union of India, AIR 1984 SC 469

[6] ibid

[7] *Supra* 5

[8] Dr. Paras Diwan, Law of Adoption minority Guardianship and Custody 118 (Wadhwa & Company, Allahabad, 2nd edn., 1993).

by a prospective adoptive parent, may legitimately receive from such adoptive parents maintenance expenses at the rate not exceeding Rs. 60/- per day (this outer limit being subjected to revision by the Ministry of Social Welfare, Government of India from time to time) from the date of selection of the child by him until the child leaves for going to its new home as also the medical expenses including hospitalization charges, if any, actually incurred by such social and child welfare agency for the child.

But the claim for payment of such maintenance charges and other medical expenses shall be submitted to the prospective adoptive parent through the recognized social and child welfare agency which has processed the application for guardianship and payment in respect of that claim shall not be received directly by the social and child welfare agency making the claim but shall be paid only through the recognized social and child welfare agency.

1. Outer limit of Maintenance

In the case of Laxmi Kant Pandey v. Union of India[9], Bhagwati J. clarified that the amount of Rs. 60/- per day for maintenance is on the higher side, it is the outside limit of expenses. To provide an another safeguard for preventing social agencies having care of the child from demanding excessive amounts in the guise of maintenance and medical expenses. The court further issued direction and said that "when the Guardianship Court gives an order of appointing a foreign adoptive parent as guardian, the Court has to decide the amount or money of maintenance expenses for social and child welfare agency and only that amount should be recovered by the agency from the foreign adoptive parents by the way of maintenance expanses with this the agencies further more can also recover any surgical and medical expenses incurred on the adoptive child by the social and child welfare agency, and for this, they have to produce the bills and vouchers for these expenses.

2. Maintenance for the recognized agencies

The recognized social and child welfare agency who is working for the procedure of inter- country adoption, would also entitled for the maintenance expenses. The recognized agency which is processing the application of adoption must also be endorsed to recover the maintenance charges from the foreign adoptive parents who are to be appointed as the guardian of the child, the costs incurred in preparing and filing the application and prosecuting it in court. It will include:

(i) Legal expenses.
(ii) Administrative expenses.
(iii) Child Study Report expenses.
(iv) Medical and I.Q. expenses.
(v) Passport and Visa expenses.
(vi) Conveyance expenses.

And all these expenses will be fixed by the court and this will not exceed Rs. 6000/- or as may be fit by the court. While thinking about the solution of this problem it could be gathered that the maintenance charges fixed by the Court are not up to the level of satisfaction. Furthermore when granting maintenance to the domestic agency, the court would have to take a practical view in this matter, bearing in to consideration that many of the child welfare agencies running shelter homes for children is having bad financial sources of their own and they have to majorly depend on voluntary donations. So it becomes very relevant to have some reasonable maintenance expenses with the medical and surgical expenses, and these expenses should be allowed to be paid by the foreign parents while taking the child in adoption, otherwise it will become difficult for the welfare agencies to survive and to carry on the charitable work which is serving the humanity. Hence, while granting the amount of maintenance the Court has to see whether it is reasonable enough to meet the expenses incurred by the child agency or not.

PROBLEM OF FOLLOW UP

Another problem which can be taken into contemplation is the problem of follow up procedure. While taking into adoption the foreign adoptive parents are appointed as guardian by the Guardianship Court where they have to re-adopt the child as per their domestic law in their own country. This process is guardianship to parent ship and this process should be done within two years of guardianship. In between that there is a process i.e. follow up procedure which is very relevant and pertinent where the development of the child could be seen and monitor by the domestic country. In this process the child could be monitored for three years in which for the first one year a quarterly report and for the next two year half yearly report consciously has to be prepared by foreign adoptive agency and has to send to CARA[10]. This report provides the educational, medical and psychological status of the child and also provide any adjustment problem if faced by child or parents.

Although, the process of follow up is very significant and it has some of the implacable problems like when parents did not comply with the procedure of parent-ship, where foreign adoptive agency prepares a fake report of follow up, where the child could be misused after follow up procedure and where child/ parents faced any problem of adjustment and sent back by the parents to domestic country. However, the solution of these problems could be: firstly the foreign adoptive parents should be made accountable to re-adopt the child as per their own laws within two years, if not they should be made responsible and liable for the same; secondly the follow up procedure should be till the majority of the child[11] rather than of three years: thirdly there should be cross check on the follow up report prepared by foreign adoptive agency by the CARA through embassy and if there are problems in the report than the foreign adoptive agency should be accountable; lastly if there is any adjustment problem than it should be first resolved by adoptive parents in their

[9] L. K. Pandey v. Union of India, AIR 1984 SC 469

[10] CARA is a central adoption resource agency which is "to set up by the Government of India with regional branches at a few centers which are active in inter- country adoptions. Such Central Adoption Resource Agency can act as clearing house of information in regard to children available for inter- country adoption and all applications by foreigners for taking Indian Children in adoption can then be accelerated by the child welfare agency in the foreign country to such CARA and the latter can in its turn forward them to one or the other of the recognized social and child welfare agencies in the country.

[11] *Supra* 3

own country rather than sending the child to the domestic country, if not resolved than this matter could be taken care by CARA. However, the foreign adoptive parents have to care the child as the child is their own.

PROBLEM OF PUNISHMENT

Punishment gives a sense of accountability 'to be right', but what if there is impossibility of punishment like giving punishment is next to impossible as the person is sitting in another country/ or beyond the four wall of once own country. This is another problem of inter country adoption because in this the parents belongs to another country and enjoying one of its kind of immunity. While putting weight on this problem it could be emphasis of the deliberation of both the countries which are subject matter of adoption. Here countries has to be extra sensitive while dealing with this matter and special provision has to be make on this subject. The aspect of punishment is in dilemma when the child put for guardianship and the adoptive parent/s become guardian, then the child ceases its citizenship and yet not become the citizen of his/her adoptive parents country, than which law will apply to him/her is the first important question/ problem, secondly if he adoptive parents is send back the child than according to which law they will have punishment, thirdly; if some mistreatment done by foreign adoptive parents, which law will give them punishment. However, the solution of these questions could be divided into two phases before parent-ship or after guardianship the domestic country law should apply and after parent-ship the foreign adoptive countries law should apply, than at one point of time, one law will apply to foreign adoptive parents and they could be punished as per the legal provisions of either of the country.

WORDS FROM HEART

Inter country adoption is a way to get a family beyond the boundaries of a country. It provides a way to find parents beyond the wall of a nation if cannot find within the four wall of the country. At last it could be emphasized that the positive and negative things should have to be settled through a proper mechanism for the betterment of the child because the child is the future of the world if he/she will get the proper childhood then only he/she can be used as the former of the future otherwise they will be used as the self of a drawer which is not always used but open for the time being otherwise useless, always shut by others. There are some of the suggestions which could be considered as they are important and this should have to be looked on a serious note, if these will be taken care off, then problem of inter country adoption can be solved, because precaution which is always better than cure, for the happy and healthy life which could be enjoyed by both child and his/her newly adoptive family. In today's time no one cares for others, so this is the high time to legislate proper law which could protect the needy one.

Lastly, the researcher want to say 'we are the child of god and have to look other with the eyes of love and respect, we all are equal, we all are one, no big and small, then why we are not giving respect to the children's who are the same child of the same god as we are, don't forget the time when we were kids, when all others were kids, it is a phase of life and each and every one get that phase, love them, care them and respect them, they are innocent soul, they will give you love and pure love from the bottom of their heart and nothing else, they deserve love and care and affection from every one of us, so love them without reservation.

The world is moving upward,
The air is going in the right direction,
The water is still chilled,
And then why not the men of
integrity take care of others

-Anonymous

[9] L. K. Pandey v. Union of India, AIR 1984 SC 469

[10] CARA is a central adoption resource agency which is "to set up by the Government of India with regional branches at a few centers which are active in inter- country adoptions. Such Central Adoption Resource Agency can act as clearing house of information in regard to children available for inter- country adoption and all applications by foreigners for taking Indian Children in adoption can then be accelerated by the child welfare agency in the foreign country to such CARA and the latter can in its turn forward them to one or the other of the recognized social and child welfare agencies in the country.

[11] *Supra* 3

Gender Equality

By Sakshi Sabharwal

ABSTRACT

We live in a society in which people of all sexes live. Nature has created a beautiful world. God has made this world for us to enjoy. He has created all types of creatures so that the life sustaining system goes on, without any hindrance.

The author in this paper has focused on the changing scenario of the society. This paper is an attempt to trace the evolution and trace how previously women were treated as goddesses and now they are treated as an object. This paper tries to show the difference how women in earlier times were treated as goddesses and how now their value has declined. It focuses on different types of crimes against women. It focuses on the goddess image of women in ancient society when there was no need for laws for protection of women and how this position has changed in the present technological era where so many new laws have been made to protect women. This paper addresses the question that whether the present laws have been implemented in a proper manner and it also throws light on the jurisprudence of punishment.

Women are better than men at juggling more than one task. Their approach to multiple problems is more methodical and logical. Their perception and meticulous planning are a source of fascination to the men folks. Their vision has been a boon to society. The role of women in the reconstruction of India is beyond imagination.

Thanks to the law and social workers of our society, that justice has prevailed yet there are cases, where justice has not prevailed.Female foeticide and infanticide is punishable offence.Child marriage has also been made punishable.

There has been focus now days on the slogan "Beti Bachao, beti padhao".

The concept of gender neutrality has now changed. If we look carefully, this concept now is just a concept; its essence has withered away. India is the country where females are mistreated and their dignity is compromised by committing heinous crimes.

India adopted the CEDAW Convention and in its pursuance it enacted the Domestic Violence Act. The paper focuses on how the enactment was passed to protect the women and how it is misused. It is only in few cases, that justice prevails.

The author also focuses on the aspect how the Domestic Violence Act which was passed to protect the women is now being used by them, to harass their husband and their family and to gather economic benefits.

The concept of gender equality is not only for women but it also applies to men. In today's world it is not only women who are abused but even men are also abused.

The idea of giving equal rights and opportunities to transgenders has also been there. They also have a Right to life under Article 21 of the Constitution of India, which means dignity in the workplace and Equal treatment under Article 14 of the Constitution of India

To achieve the dream of Gender equality we all need to work together.

"The power of one is the power of many the power of change."

INTRODUCTION

The concept of Gender equality is common now days. In a society where people of all kinds live, it is important to know about this concept. It is based on the idea that discrimination in any form should be discouraged. It is against the norms of a civilized society.

A writer has beautifully quoted:

"Educate a man and you educate an individual".
"Educate a woman and you educate a family".

When we talk of equality in status, we understand that it implies the Social and legal position of an individual. Women in ancient India were held in high esteem.

Image Courtesy: World Bank/ Stephan Bachenheimer

The position of a woman in the Vedas and the Upanishad was that of a mother. In the Manusmriti, woman was considered precious, being protected first by her father, then by her brother and husband and finally by, her son. In the medieval period, the practices of purdah system, dowry and Sati came into being. It is thought that the right place for woman is in the household.

Women in today's world have become famous for multi tasking. It has become common for working women to fit in doctor's appointment, coordinate play dates and plan birthday parties during working hours without compromising at all on her work. At home too she focuses on dinner, home work and upcoming assessments with one eye on pending emails and office calls. Studies have not only proved that women are better than men at juggling more than one task. Their approach to multiple problems is more methodical and logical. Their perception and meticulous planning are a source of fascination to the men folks. Their vision has been a boon to society. The role of women in the reconstruction of India is beyond imagination.

STATUS IN ANCIENT TIMES

India is a country where women were worshipped as incarnation of Goddesses. The irony of the fate of Indian women is that of their status, which should have been, an identity to reckon with, has become a topic of debate.

As time passed, the status of women has become an issue to be discussed on several platforms. There has been mushroom growth in the last few decades of organizations struggling to get for women their dues. These organizations have worked a lot. They have made great progress in this direction .It has helped in the improvement of the status of women in the home, society, office and country.

Women in ancient India were held in high esteem. In the Vedas and the Upanishad, position of women was that of a mother. In the Manusmriti, woman was considered precious. She was protected by her father, her brother, husband and son. The status of woman has lowered with passage of time. The society is dominated by muscle and money power. Since men fought the wars and ran the enterprises, they consider themselves superior to woman[1].

In the early Vedic age, the girls were given all the facilities, even of education. The marriage of widow was permitted. But in the later Vedic period, daughters were regarded as a source of misery. The status of woman was deteriorated with practice of polygamy. In the medieval period, the practices of purdah system, dowry and Sati came into being. It was thought that the right place for woman is in the household. Her main duty was to cook and do all other menial jobs. Thus women have been deprived of their rightful place in society and exploitation has been going on for centuries.

STATUS IN PRESENT TIMES

The inhumane practice of Sati, where the wife burn herself alive was fought against by Raja Ram Mohan Roy and thus this evil practice came to an end. After the development of Science and Technology, female foeticide and infanticide is being practiced on a large scale. As a result there are 927 females to 1000 males. Dowry has become a common practice now days. The birth of a girl child is, therefore, considered inauspious.

The list common crimes in the present time include Rape, sexual harassment, molestation, eve-teasing, forced prostitution etc. The crimes against women are increasing at an alarming rate. Sexual harassment at work place is also a common affair.

According to a study, released in 1997 by the Sasha Violence Intervention Centre based on a survey done with 350 school girls in New Delhi, "63% of the girls had experienced child sexual abuse at the hands of family members. Nearly one-third of the girls said the perpetrator had been a father, grandfather or male friend of the family"[2].

The most common and the heinous crime is the crime of rape. It is increasing every day. To satisfy his lust, the man ruins the dignity and self-respect of women. He even does not think for one moment that the woman is his mother, his wife or his sister or his daughter. If one does such crime with any of these relations related with him how he would feel.

RAPE: THE MOST HENIOUS CRIME

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."

Rape is the most violent crime .It is committed against women. According to Section 375 [3] of the Indian Penal Code, Rape means an unlawful intercourse done by a man with a woman without her valid consent.

We witnessed rape been committed on a 23 year old Para-medical student in a moving bus on the streets of Delhi. This incident shook not just our country but people all over the world. After this a lot of amendments have been brought.

The incident filled every Indian with wrath. Thousands of people poured into the streets to demand justice for the young lady.

CAUSES

The foremost cause of increasing rape cases is due to the lack of public safety. Today women are not safe in their homes, how can they be safe outside.

- Globalization and Westernization have caused significant changes in our society. The Indian Culture has changed. Late night parties and discos have become the order of the day.

- Absence of female police officers is another reason as females feel insecure telling about the tragedy to a male police officer.

- The stigma which gets attached with the victim is another major issue. Most of the cases don't get reported.

- The victim is put under pressure to not tell it as it would bring shame to the family.

[1] LH.V Sreenivas Murthy , The History of India for Law Students,Vol I,11th edition.

[2] Report by Sakshi Violence Intervention Centre.

[3] Indian Penal Code, 1860.

REMEDIES

The need of today is to curb this violent crime.

The spate of pornographic materials must be strictly banned.

Death penalty should be imposed.

A woman's squad be formed in every district.

Fast track courts are to be established.

NIRBHAYA CASE: A CASE WHICH SHOOK THE WHOLE SOCIETY

The author feels that the path for truth and justice is difficult. But it is not difficult to achieve.The gang rape of the 23 year old shook everyone. It took place while she was travelling with her boyfriend in a bus. The accused boated his boyfriend, boated her also and then six of them raped her. They had caused a lot of injuries to her also. After that they threw her on the road.No one in our busy Delhi listened to her cries. Everyone was busy in their own world.This brought a lot of changes in our legal system especially in rape laws.

New laws and implementation:

The Preamble of the Constitution of India tself ensures justice, liberty and equality and that there would be no discrimination on any ground.

Article 15 of the Constitution[4] ensures prohibition of discrimination on grounds of sex.

In India sec 375 of the Indian Penal Code gives the provisions for punishment of rape[5]. It got amended with the Tiara case in 1980s. After the Nirbhaya case it again got amended in 2013 and fast track courts have been set up. Also the Juvenile Justice Act has got amended. But why is law taking so much time to punish the offenders? Also one of the offenders who turned juvenile is now left free to roam in the city. Why are there so many lapses?

Recently on 24 October, 2016 an auto wale killed a woman by stabbing her 30 times.

Nature of punishment:

Recently it was reported in newspaper that one of the offender who did this heinous crime in Telangana, after serving his term of punishment of 10 years; on his release again committed this heinous crime with a small girl and killed her.

The author feels that if this is the behaviour of offenders, then Indian Judicial System should refrain from relying on the reformative theory.Instead punitive theory should be followed.

Also recently only mother and 13 year girl got raped mercilessly in NOIDA. Some steps need to be taken to improve the society.

It is rightly said "One time offender, is always an offender."

Sita and Draupadi are the two interesting examples. We have many powerful political leaders like Sarojini Naidu, Vijaylakshmi Pandit, Mahadevi Verma, Professors, even Vice Chancellors and female Governors and judges of High Courts and even Supreme Court. Late Mrs. Indira Gandhi was the first woman Prime Minister of India.Now the Delhi High Court has also given women the status of Karta in joint Hindu family.

But is our country safe for women? How can they prosper? Strict laws and their enforcement needs to be done. Otherwise gloominess and darkness will prevail in our society.

Recently one of the courts said that a rape convict will be treated as an adult and not as a juvenile. This might be the change.

Another lightning for women is the latest Apex Court decision that women can be the karta of joint Hindu family.

Someone has beautifully quoted:

"Women are foundation of our Society. Every foundation has to be laid".

"When women thrive, all of Society benefits and succeeding generations are given a better start in life".

Enacting of Domestic Violence Act:

Seeing the deteoriating conditions of women in our society, the lawmakers after the CEDAW Conference enacted the Domestic Violence Act, 2005 on the same basis.

The Act provides that if any married women is abused by the husband or her in laws then the women must approach the nearest police station where there is a cell, which will tell the women of her rights. If she wants to pursue it further, they will help her further and assist her in filing the complaint.

The Act was enacted to protect the women against the atrocities. There has been lot of cases where woman was killed due to insufficient dowry .To prevent these crimes, the Act was enacted to punish the offenders and deter those who may commit it in future.

Though initially the Act was a boon but in the present scenario it is just namesake. The laws are not implemented properly. People need to be taught about the wrong they are committing and apply the law properly.

It is a mere piece of enactment is just a writing without its implementation.

Atrocities faced by men:

It is not just women who are being abused by men; even men are also being abused by women.

With the coming of Domestic Violence Act, women are misusing the Act against the men. This is not correct. If a law has been enacted to protect a person, it should not be misused.

The men are waiting for the day when International Men's Day will also be celebrated.

CONCLUSION

Swami Vivekanand has rightly remarked, "It is impossible to think about the welfare of the world unless the condition of women is improved".

Many major programmers like support to training cum employment program for

[4] M.P Jain ,Indian Constitutional Law, 5th edn.,1998.

[5] Indian Penal Code ,1860.

women eg. Mahila Kosh etc. have come in to place.

Today modern woman are self sufficient. She can be called as Super Woman. She is ambitious. She is taking inspiration from powerful women like first Indian woman PM Late Mrs.Indira Gandhi, first woman IPS officer Kiran Bedi and many more.

The need of the hour is more radical women movements aimed at equality. Also the mindset of the people needs to be changed. The males should understand that the woman,who is going out to work is like their mother, sister, wife or daughter. Can they tolerate such kind of heinous things be done with their mothers, sisters, daughters or wives? So they should change their mindset and start respecting women.

An old saying goes: "Jahan nariyon ki izzat hoti hain, wahan devta baste hain."

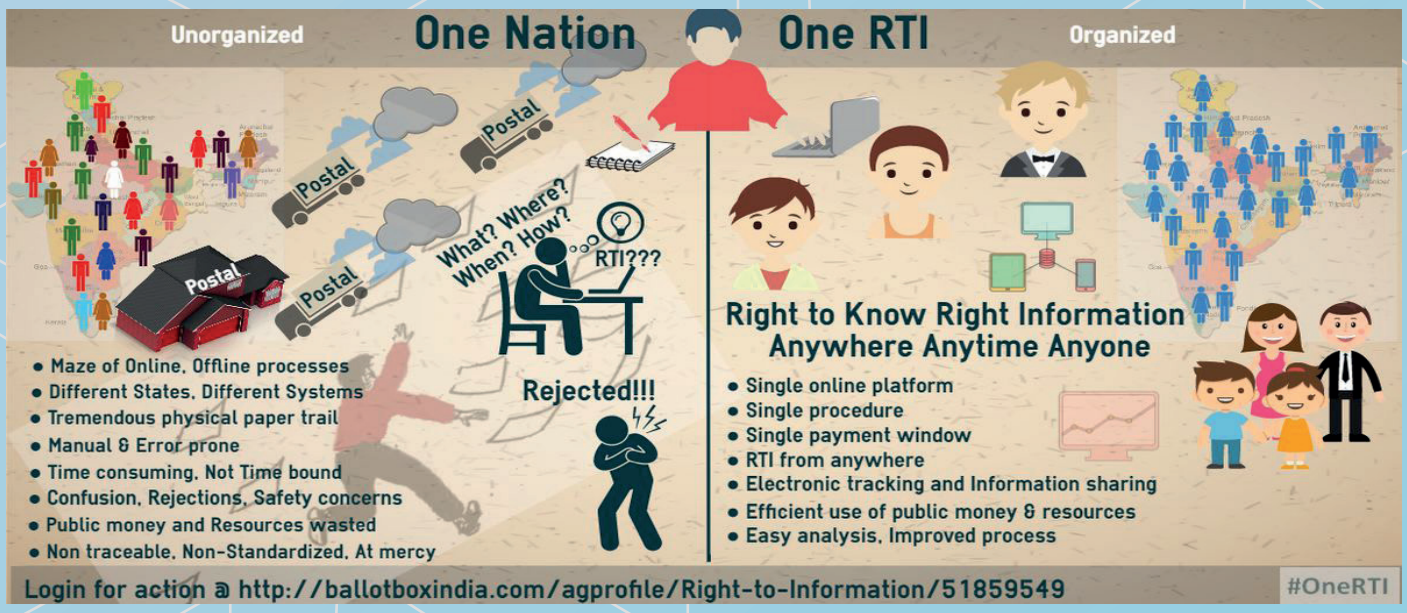
This is not the India, which Nehru and Gandhi and other freedom fighters dreamt of and built.

All need to come together and work for this change.

"The power of one is the power of many, the power of change."

RTI is Cherished, Don't Misuse It

By Shefali Agarwal[1]



ABSTRACT

This paper is an attempt to understand the laws governing right to information in our country. What we know is that right to information acts as an effective tool and the use of this tool can in no way be disputed. However, with growing years and enforcement of this tool, now cases of frivolous applications are rising. Cases involving misuse of this set of laws are been filed and people are using this tool to harass the authorities. This paper attempts to understand these frivolous proceedings and also how the law incorporates and views upon these matters.

The reason why we need the right to information is due to the fact that every citizen should have the right to every information he/she wants from the authorities. But it was not possible prior to 2002.. Information was not available freely and smoothly because there was no as such law like RTI Act 2005. Prior to this law there was less accountability of the authorities. No one even knew what government and its officials like bureaucrats, executives and legislatures are doing. It was only political, bureaucratic nexus type. Corruption, malfunctioning of administration, untimely service delivery mechanism was rampant in the system. There was hardly any law governing information that was demanded by the public. However with the emergence of the Right To Information Act 2005, another issue crept up which was that despite this law having many use it also led to filing of frivolous complaints. The complaints that were filed were just for harassing the authorities and therefore the loophole in the law emerged. This paper is an attempt to understand the loopholes in the Right to Information Act, which are leading to wide misuse of the same.

CHAPTER I - INTRODUCTION

The Right to Information act bestows upon the public with the power to access government records. Under the Act, the power is utilized by the citizens by which they request the authority of state or instrumentality of state to ask for information, which needs to be replied expeditiously, or within thirty days. This is an important right because it provides accountability and is an inherent principle of democracy. The Right to Information Act extends to the whole of India except the State of Jammu and Kashmir. The Act covers various bodies such as bodies formed under the Constitution of India. The Act also covers such bodies, which are notified under the Government Notification such as NGOs. It also covers private bodies which are owned, controlled or financed and that too substantially by the Government. The bodies, which do not come under this, are indirectly covered. That is, if a government department can access information from any private body under any other Act, the citizen under the RTI Act through that government department can access the same[2].

In Chapter II, we have analyzed the evolution of the Right to Information Act. In Chapter III, we have analyzed the use of the Right to Information. In Chapter IV, we have analyzed the misuse of the Right to Information Act.

CHAPTER II –EVOLUTION OF THE RIGHT TO INFORMATION ACT

The idea and the need for the right to information act goes back to the year

[1] Shefali Agarwal, Author is 4th Year B.B.A. L.L.B. student of University School of Law and Legal Studies, GGSPIU. The author has used Harvard Bluebook 19th edition citation format..

[2] Frequently Asked Questions (FAQ), Courtesy: Right To Information,http://cet-gov.ac.in/Docs/RTI/RTI_FAQ.htm, visited on 20th November, 2016.

Image Courtesy: Simple Wikipedia

1970s when in the year 1973, the court in the case of Bennett Coleman and Co v. the Union of India[3] held that 'freedom of speech and expression includes within its compass the right of all citizens to read and be informed.' In Manubhai D. Shah v. Life Insurance Corporation[4] it was held that: 'the basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know'. However, there was still no clear legislation on this aspect and therefore the need arose as people had to knock on the doors of the courts every time. However, the question would occur of getting involved in a complex legal process and therefore what we required was an easy, quick, efficient mechanism, which could take care of the individual's grievance quickly. Thus emerged the need for Right to Information Act and this clearly has received great emphasis and acknowledgement. The movement for the RTI received encouragement from the poor people, which was led by a people's organization, Mazdoor Kisan Shakti Sangathan. They demanded a law which could guarantee Right to Information to every citizen, which received support from social activists, professionals, lawyers and media. The Government of India, based on the recommendations of the Chief Secretaries' conference on ″Responsiveness in Government,″ appointed the Shourie Committee to suggest a draft RTI Bill. The draft, called the Freedom of Information Bill 2000 was passed into law in January 2003[5]. But the law was not notified and finally repealed. In the mean time several State Governments had already passed their own versions of RTI Acts. For example, in 1997 the RTI was passed in two states Tamil Nadu and Goa. Soon other states followed. By 2005, nine states had passed RTI but when the Union Legislature passed the Right to Information Act 2005, the State level acts became obsolete. The RTI Act 2005 applies to the whole of India except Jammu and Kashmir as Jammu and Kashmir has its own Act.

Under Article 19(1)(a)[6] of the Constitution of India, the right to know, receive and impart information has been recognized. This has been recognized within the ambit of freedom of speech and expression[7]. Finally the act titled Right to Information Act, 2005 was brought into force and mechanism was given for achieving its objectives. In India, Section 8(1)(j) of the Right to Information Act[8] deals with privacy and states that if the information is personal causing unwarranted invasion of privacy and serves no public interest, then the information cannot be disclosed unless the Central Public Information Officer (CPIO) or State Public Information Officer (SPIO) or the appellate authority is of the opinion that the disclosure of information serves a larger public interest[9].

Section 8(1)(j) says that disclosure may be refused if the request pertains to ″personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual.″ Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, then the prevention of the disclosure is lifted and after duly notifying the third party, which is the party whose details have been sought, and after taking into consideration what he has to say, the authority can disclose it. What we notice is that the nature of restriction on the right of privacy varies. When it comes down to private individuals, greater protection needs to be given or afforded. However, even though in public individuals, protection needs to be afforded, it can be of lower degree. It varies according to case to case. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them[10]. However, the same can be disclosed if the applicant can show sufficient public interest in disclosure[11].

"Public interest" means an act which is beneficial to the general public and an action which benefits the socitey. However, this defintion can vary from case to case. And therefore it is difficult to define this term correctly. In each case, all facts and circumstances would have to be examined in order to determine whether the information fulfills public interest or public purpose[12].

When Ratan Tata went to Supreme Court

[3] AIR 1973 SC 106

[4] AIR 1981 Guj 15

[5] Smita Srivastava, "The Right to Information:Implementation and Impact", Afro Asian Journal of Social Sciences Volume 1, No.1 Quarter IV 2010 ISSN 2229 –5313, http://www.onlineresearchjournals.com/aajoss/art/49.pdf

[6] Art. 19. Protection of certain rights regarding freedom of speech etc (1) All citizens shall have the right (a) to freedom of speech and expression.

[7] S.P. Gupta v. Union of India, 1981 Supp SCC 87.

[8] Information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

[9] Right to Information Act, 2005, Sec. 8(1)(j).

[10] Shri Alok Singhai v. High Court Of Delhi, Appeal No. CIC/WB/A/2009/0000153

[11] Vijay Prakash v. Union of India, 2009 (82) AIC 583 (Del)

[12] Babu Ram Verma v. State of Uttar Pradesh, (1971) IILLJ 235 All

against the publication of the conversations that took place between Neera Radia and him, he contended that the government tapped their conversations. He contended that even if the Act was carried out for investigation purpose, it should have only been carried out for that purpose. It should not have been published. He submitted to the Court, he had a right to privacy which should be protected. Taking into consideration the freedom of information laws which formulates the basis of disclosure, exemptions are strictly construed, what we can understand is that public right is way more important and unless the disclosure is telling details which are of personal nature and publicising details which are intimate, the disclosure should be allowed. These tapes nowhere discussed the personal life of Tata. These conversations would be available to every citizen under the RTI Act because the only objection that one could raise would be on the ground of 8(j) of RTI Act which says-information which relates to personal information, the disclosure of which has no relationship to any public activity on interest. It also says "or which would cause unwarranted invasion of the privacy of the individual unless the public authority is satisfied, unless the information officer is satisfied that the larger public interest justifies the disclosure of such an information."[13]

Our previous Prime Minister Mr. Manmohan Singh also expressed concern on the frivolous filing of the applications. He said "there is a fine balance required to be maintained between right to information and the right to privacy". He also spoke about that frivolous and vexatious (RTI) queries cannot serve public good and that there are concerns over invasion of personal privacy. It was also highlighted that this important legislation should not be only about criticizing, ridiculing, and running down public authorities. Public Authorities should not view it as an irritant but something that is good for all of us collectively. RTI should be more about promoting transparency and accountability, spreading information and awareness and empowering the citizen[14].

There are more than 95 countries in the world, which have RTI laws. India was also placed second after Serbia in a list of 95 countries, including US and UK, after scoring high on the legal framework of the Right to Information (RTI) in the year 2013. India and Slovenia shared the second spot in the list prepared by Centre for Law and Democracy, an international human rights organization based in Halifax, Canada. The rankings were based on various parameters of the Act including right of access, scope, requesting procedure, exceptions and refusals, appeals, sanctions and protections and promotional results. While Serbia had scored 135, India along with Slovenia had bagged 130 points each[15].

CHAPTER III - USE OF THE RIGHT TO INFORMATION

What we need are more resources, which can be readily used for implementing the objectives of the Right to Information Act. We should not think about scrapping of the Act but using the resources available effectively in order to achieve the aims of the Act. These resources would be spent well. This has been realized by many countries abroad such as U.S. are already spending huge resources to make the authorities more accountable. Also the reason why such amount will be spent well will be because it will help in reducing corruption and malpractices.

Also, Right To Information is very important and essential for democracy. It is our fundamental right. It makes the authorities accountable. It provides us with all information about the working of the authorities and hence makes the government more transparent. When there is need of accountability, then it instills in them a fear and they work harder to achieve goals of the public welfare.

CHAPTER IV - MISUSE OF THE RTI ACT

"RTI is cherished, don't misuse it." The statement as pronounced by the Honorable Delhi High Court is a statement[16], which all the rest of us need to introspect. The Right To Information Act has been used to fight corruption and has exposed deep-rooted graft in India. For example, the RTI applications filed by activists Yogacharya Anandji and Simpreet Singh in 2008 exposed the infamous Adarsh Housing society scam, which eventually led to the resignation of the then Maharashtra Chief Minister Ashok Chavan. That RTI application revealed that flats in the Adarsh Housing Society, a 31-storey building, which was originally meant to provide residence for war widows and veterans, were used to house politicians, bureaucrats and their relatives. In the 2G scam, in which the then Telecom Minister A Raja undercharged mobile phone companies for frequency allocation licenses and caused a loss of Rs 1.76 lakh crore to the Indian government, an RTI application by Subhash Chandra Agrawal revealed that Raja had a ″15-minute-long″ meeting with then solicitor-general Goolam E Vahanvati in December 2007 after which a ″brief note was prepared and handed over to the Minister". The Right To Information Act was also used to expose corruption after the Commonwealth Games scam, in which the corrupt deals by politician Suresh Kalmadi embarrassed the nation. The report said that an RTI application filed by non-profit Housing and Land Rights Network showed that the then Delhi government had diverted Rs 744 crore from social welfare projects for Dalits to the Commonwealth Games from 2005-06 to 2010-11.

In 2007, the RTI request filed by Krishak Mukti Sangram Samiti, an NGO, revealed irregularities in the distribution of food meant for people living below the poverty

[13] Vipul Kharbanda,"White Paper on RTI and Privacy", http://cis-india.org/internet-governance/blog/white-paper-on-rti-and-privacy-v-1.2,visited on 15th November 2016

[14] Janaki Fernandes, "Frivolous, vexatious queries can't serve public good: PM on RTI",http://www.ndtv.com/india-news/frivolous-vexatious-queries-cant-serve-public-good-pm-on-rti-501557, visited on 9th December 2016

[15] Anindo Dey,"India second among 95 countries in RTI ratings", http://timesofindia.indiatimes.com/india/India-second-among-95-countries-in-RTI-ratings/articleshow/24000390.cms, visited on 22nd December 2016

[16] The New Indian Express, "RTI is Cherished, Don't Misuse It: Delhi HC", http://www.newindianexpress.com/nation/RTI-is-Cherished-Dont-Misuse-It-Delhi-HC/2014/03/01/article2084971.ece, visited on 23rd December 2016

line by the public distribution system in Assam. In 2008, an RTI application by a Punjab-based NGO revealed that heads of the local branches of the Indian Red Cross Society had used money intended for the victims of the Kargil war and natural disasters to buy cars, air-conditioners and pay for hotel bills.
A PTI report published in July 2016 said that an RTI query showed that only 12 members of the Maharashtra Cabinet have declared their assets and liabilities details as per Central governments code of conduct for ministers. Another one filed by social activist Anil Galgali showed that as many as 118 complaints of sexual harassment were filed at the Municipal Corporation of Greater Mumbai (MCGM) between 2013 and July this year.

An RTI query filed by Child Rights and You (CRY) revealed that twenty-two children go missing in the national capital everyday with most of them being boys aged upto 12 years.

A 2014 study conducted by the Commonwealth Human Rights Initiative (CHRI) revealed that over 1.75 crore RTI applications have been filed from 2005 to July 2014[17].

Right to Information, as we all know is an effective tool, which is used to get access to any information, which the individual demands from the public authority. However, talking about the deficiency and in the process of highlighting the inconsistency, what we need to understand is that there is no provision to keep tab on the misuse of RTI. Having said that, this application in many instances has proved nothing but a new method used in coercion to often harass and blackmail public officials. Individuals with ulterior motives use this method to get information, which is private to individuals. This infringes the right of the information of the individual in whose respect the information is been sought. With instances of asking information of female inmates' phone numbers in a government hostel to instances where people have demanded private information of Headmasters of government schools, RTI unfortunately in many instances has failed to live up to the expectations for which it was formulated. If the individuals are denied the information, then given the increase in usage of social media, these information seekers turn themselves into activists and highlight the entire exercise as a conspiracy and thus against public interest. Now when questions as to the need of amendment of this entire issue arises, what the public has to say is that this will lead to denial of public access and therefore come what may, but the same shall not be amended. Addressing the question as to why we really need amendment in this entire public entrusted tool, what we have come to repeatedly witness is that we have this tool for public information. Now, when this tool is been used for private information then it leads to affecting the efficiency of the administration as duly noted by Justice Manmohan. RTI is a tool that has to be used by the public for important reasons. One should not use them for their own private benefits as it leads to the public administration getting bogged down with requests, which lead to delay in other important tasks as they make the RTI applications their priority. But then again we all have the Madras High Court judgment to introspect in this aspect for leading us correctly as it said that RTI querist should state the reasons as to why they want a particular information[18]. The RTI application nowhere needs that the reasons as to why a request is being made should be stated. When reasons shall be asked, in a way, it will lead to prioritizing of applications, as those applications, which need to be replied at priority shall be accorded inter-se priority in replying. Further, when talking in respect to misuse, what we see is that RTI is silent on the misuse of RTI. However, it does have provisions where individuals can approach competent authorities on their queries not being answered and they can impose penalty upon the authorities concerned. Thus, what we really need are stringent laws, which encompass for imposition of penalties for false and malafide issues raised by the querist, which can hinder the misuse of the RTI and bring this effective tool to the very same pedestal for which it was bestowed to the general public.

CONCLUSION

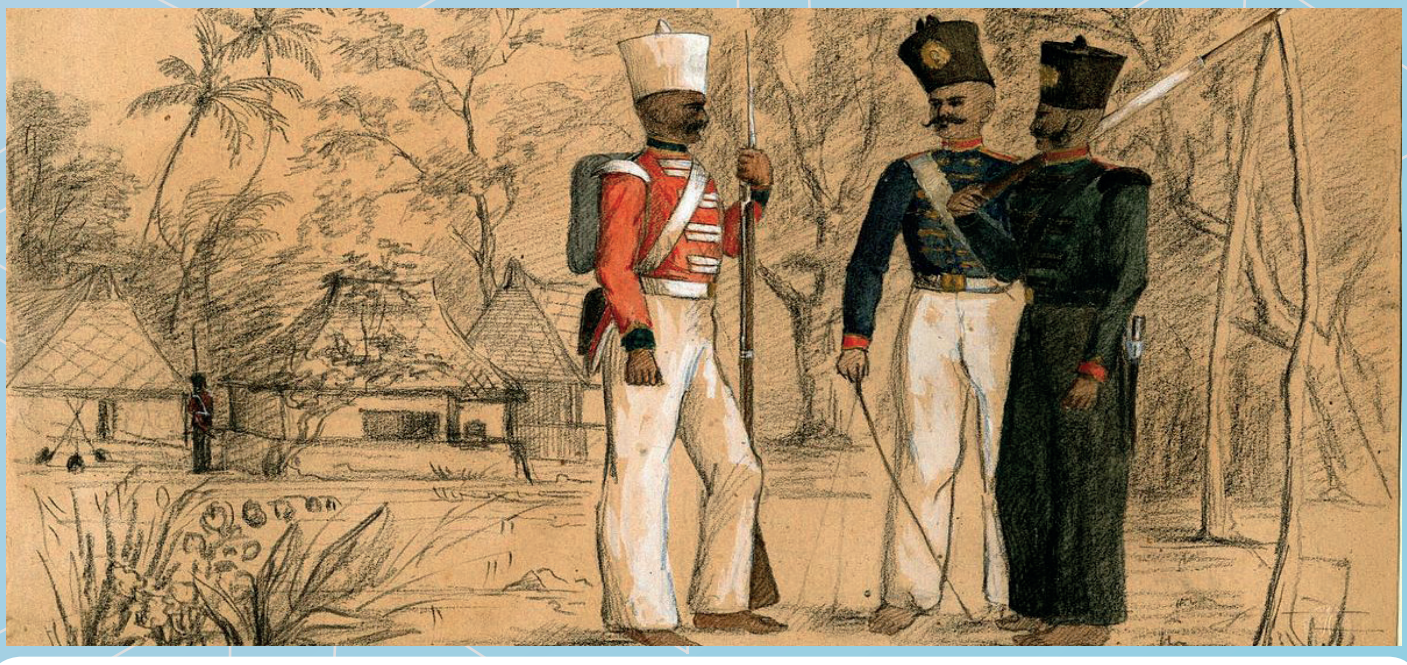
To conclude, what we need to understand is that right to information is a tool, a very powerful tool that has been given to us for our own benefit. It's our own choice whether we use this tool effectively or use it as a mean to harass innocent authorities. If we choose the latter, then we just digress from our own commitment to a just society. In order to stop the misuse of the Right to Information, it is important that awareness should be created. Also, the method and the procedure should become more streamlined and easier. Methods such as e-mails, phone calls and fax should also be introduced in the method of filing of the RTIs so that the important issues at hand are addressed. Also, there should be a committee which should decide whether the application needs to be answered or not and if it is not to be answered, then the same shall be communicated to the querist with the appropriate reasons. However, if the issue raised results into wasting of time, then penalty should be imposed so as to hinder the misuse of RTI.

[17] First post, "Right to information: What 11 years of the RTI Act of 2005 have done for India", http://www.firstpost.com/india/right-to-information-what-11-years-of-the-rti-act-of-2005-have-done-for-india-3047286.html, visited on 26th December 2016

[18] The Hindu, "Give reasons for seeking information under RTI: Madras HC", http://www.thehindu.com/news/national/give-reasons-for-seeking-information-under-rti-madras-high-court/article6431643.ece

How Did The East India Company Intervene In The 'Private' Sphere Of Sub- Continental Societies With Respect To The Nayar's In Malabar

By Shreya Joshi[1]



ABSTRACT

The year of 1792 saw in Malabar the defeat of the ruler Tipu Sultan and the transfer of Malabar in the colonial hands. This transfer led to the beginning of the process of legal codification, which altered Malabar's status with respect to the rest of the sub continent[2]. The legal codification, led to the deterioration of women's rights, especially in the matrilineal community of the Nayars. When the colonial state codified custom in Malabar, they chose to undermine the custom of one elite group in favour of the custom of another elite group, which was a custom they were themselves more familiar with. This assignment traces the intervention of East India Company in the private spheres, which resulted in the transformation of the system of a joint family, in the power relations between the men and the women, the rights of inheritance and property and the authority and kinship within a family[3].

The intervention of the East India Company in the 'private' sphere also started with justification for such intervention, as to how it affected property and revenue collection. In what is termed as the age of knowledge creation, there was obvious codification, which in Malabar was carried on intensively to codify custom. This paper shall trace the early attempts of the colonial rulers to enter the private sphere with the specific example of the Nayar community in Malabar. Initially this paper shall showcase what the Nayar community was like before British intervention. It shall then focus on how there was a conflict between the custom of Nayar and Nambudiri Brahmins and the East India Company granted the Nambudiri Brahmins' custom supremacy, and thus codified laws based on their customs, and how this codification affected the Nayar community of Malabar.

THE PRE-BRITISH NAYARS

Until early 19th Century, amongst the Nayars, the decent and succession was based on matrilineal principles. Marumakkathayam law governed this Matrilineal system of the Nayars[4]. Relations among the Nayars were based on shared property rights and pollution, which was the defilement of all members of a family when a member of it died. The kinship would extend to all those who shared the ties of pollution[5].

The Nayars lived in taravads, which was what the matrilineal clan was referred to as. A taravad consisted of a woman and her children, daughter and granddaughters children, brothers, descendants in the female line, of sisters and relations of dead female ancestors[6]. A taravad had three distinguished features, which were matrilineal dissent, exogamy and the status of a taravad as an indissoluble unit[7].

[1] Shreya Joshi is a third year B.A. LL.B. Student of Jindal Global Law School, O.P. Jindal Global University

[2] Arunima G, 'A Vindication of the Rights of Women: Families and Legal Change in Nineteenth- Century Malabar' [1998] Oxford University Press 114-139

[3] Arunima G, 'Multiple Meanings: Changing Conceptions of Matrilineal Kinship in Nineteenth and Twentieth Century Malabar' [2008] Indiana University Press, Bloomington and Indianapolis 404.

[4] Nair J, 'Nationalist Patriarchy and the Regulation of Sexuality' [1996] Kali for Women 150-177

[5] See Arunima, supra note 1

[6] See Nair, supra note 3

[7] Id.

Image Courtesy: Brown University Library: Digital Collections - TRAVANCORE NAIR BRIGADE

Nayar matrilocality was said to empower females. Nayar females were allowed limited sexual choices. In marriages, seldom would the wives leave the shelter of their mothers, and the husbands would also continue to live in their mother's households and allowed to visit at their wives convenience. A Nayar female would live with her close relatives as an empowered female[8].

Till the early decades of 19th CE, most of the new households of the royal and Nayar castes were established by women in Malabar. They had access to separate revenue and property and there was unilineal succession of properties which were demarked for them. Generation was used for division rather than gender[9].

In the late 18th CE the eldest male was given the title of karnavappad, which became institutionalized within the family. The karnavan (the man with the title of the karnavappad) became the manager and the guardian of the family. Janaki Nair mentions that recent scholars argued that even the title of the karnavan was a British intervention which was embodied in a Sadr court decision in 1814[10]. Since women managed the Nayar taravads, and men were being called the karnavan, there were several disputes regarding matters of seniority and attendant authority. It was a matter of serious intent for the courts to devise some sort of policy regarding how to treat the Nayar taravad[11].

PERSONAL LAWS, COLONIAL INTERVENTION AND CODIFICATION OF CUSTOMS

"Personal Laws referred to a range of religion based family laws governing marriage, separation, inheritance, maintenance and adoption which vitally affected the status of all Indian women, even as they were wholly instituted and implemented by men"[12]. Personal law led to the effect of controlling, defining, and limiting rights of women both inside and outside the family. What was referred to as personal laws at the time of independence was in many cases just State Enactments. Personal law ended up sanctioning discrimination against women and had an effect of naturalizing hierarchical relationships and inequalities not only within families but even beyond it [13].

Initially, the British only intervened in areas that were revenue generating for them. This involved activities taking place in the public space with relation to property or civil disputes. Religious matters and family matters were not intervened with. The reformation of family and personal law happened through the latter half of the 19th and early 20th century[14]. One of the earliest instances of the Colonial intervention in personal space could be seen in Malabar. The ground for such interference was how family and property were linked to civil disputes[15]. In 1810, a person could sell off their entire share in a taravad to pay off a debt. The taravad itself could be portioned into smaller branches. This, according to a court of Nambudiri Brahmins was a contravention of the 'immemorial usages of the religion' where the property was vested with the eldest male[16]. This court further decided that matrilineal law did not permit a division of family property (which was a decision the Sadr court ratified in 1814.) At this time, the lower court did not follow the precedence set by the Sadr court[17].

The period of personal law reform saw Hindus and Muslims being more Hinduised and Islamised respectively, which brought them closer to law according to textual authorities[18]. Customs were no more given the importance that they once had and were often not included in the written laws. The East India Company looked at interference in religion as a way of giving back to the people their religion after making it purer[19].

In the mid-19th century, codification of law began in Malabar. While customary practices all over India were being codified, in Malabar it led to legal changes in the matrilineal taravad, and led to standardization of the emergent judicial disclosure. According to the earliest census in Kerala, there was one Nambudiri Brahmin alive for every 80 Nayar Brahmins. While the Nayars did hold a high status in Kerala's society, the Nambudiri's were considered to be of a 'supremely high caste'[20].

In the initial four or five decades of colonial rule, there was no consensus regarding how the Nayar taravad should be treated. The higher courts tried to curtail the division of family property,

[8] Alexander WM, 'Female Sexuality Denied, Fatal Daughter Syndrome, and High Fertility Maintained' Vol. 12 (Fall 1998) Michigan Sociological Review 117-131

[9] See Arunima, supra note 1

[10] See Nair, supra note 3

[11] See Arunima, supra note 1

[12] Nair J, 'Personal Laws and Women' [1996] Kali for Women 181-213

[13] See Nair, supra note 8

[14] Id.

[15] See Arunima, supra note 1.

[16] Id.

[17] Id.

[18] See Nair, supra note 8

[19] Groves M, 'Law, Religion and Public Order in Colonial India: Contextualizing the 1887 Allahabad High Court Case on "Sacred" Cows' [2010] Routledge 87-121

[20] See Alexander, supra note 6

which according to them was a way of upholding 'Matrilineal law on the basis of Nambudiri Brahmin opinion'[21]. Since there was an absence of clear legal principles, there was a difference in the state's treatment of the taravad itself.

In 1850, Judges and Jurists found the customary practices of upper caste Nambudiri Brahmins as superior and thus were treated as the prescriptive legal standard. The customary practices of the matrilineal Nayars were considered different and had to be redefined in relation to the patrilineal norms of the Nambudiri's[22].

As the codes were 'Brahminized', the law in Malabar became patrilineal, which according to the judges was a restoration of the ancient customs[23]. Ironically, there was a complete disregard of customary practices involving dissimilarities in inheritance, property rights and the organization of sexual relations. The elder males of the family were positioned as the legitimate guardian[24].

In February 1852, Thomas Lumisden Strange, who was appointed Special Commissioner to enquire into the cause of 'Mappilla' outrages stated that the Hindu taravads possessed inalienable rights over property and that the investiture of greater rights with the head of the family over practically all property matters meant the creation of power differences within the land owning taravad itself[25].

John Mayne in Treatise on Hindu Law (1870) stated that it was easier to codify the law than to implement the codified law. Textbooks that were created through interaction of native elite with British administrators were used to clarify law in relation to private property or household matters. There were difficulties in the uniform dissemination of law as local courts remained closer to local evidences and customs. There was a clash between theory and practice when it came to implementing codified or customary laws in Malabar.

EFFECTS OF CODIFICATION

1. Effect of Codification on the Taravad

There was a concomitant reinterpretation of the taravad itself, which as a notional identity had to be standardized. Each branch of the taravad began being treated as distinct and separate. This separation was further intensified because of disputes over age, rights in family property and shares in profit. The taravad now became a corporate, co-residential, property owning group[26]. The matrilineal taravad's customs became codified as they were recognized as being unnatural. In 1993, The Malabar Matriliny Act was passed which led to a partition of property amongst the taravad. Even though the taravads broke up, the Nayars of Malabar are still not a patrilineal or patrilocal family[27].

2. Effect of Codification on Inheritance and Property Rights

The relationship between land and the taravad was redefined by the colonial judiciaries. There was a legitimization of inequalities. The shares in a property that a younger woman might have been able to receive were discredited[28]. Property in itself was redefined as a patrimonial right and an emphasis was laid on residence. There was a difference in inheritance rights which were vested in the direct descendants of the women concerned. The property that was assigned to a male Nayar to support his family was considered family property. Even though there was a family contract, custom demanded that a younger woman's property was part of the family property and that no claims for state shares could be entertained[29].

The High Court in Malabar claimed that property could not be legally set aside for the benefit of females generally so as to free it from the debts of the taravad and that no custom establishing such exception was asserted or proved. In this period, taravad or individual family members continued to amass landed property both as part of family property and self-acquisitions[30].

The karnavan, even for self-acquired properties was entitled to use family funds, while all the other members of the taravad had to use their own sources of wealth. This made it extremely difficult for women to even acquire property anymore since they scarcely ever received education[31].

3. Effect of Codification on Power Relations Between Men and Women

Codification of laws in Malabar led to a change in power relations between men and women such that there was complete discrediting of the shares that younger women might have had in property. The property that they acquired or purchased themselves, as well as the property that they received as gifts were declared as family property in 1863 by the Madras High Court[32]. Claims for separate shares in property by women were not entertained. The High Court claimed in Malabar that property could not be set

[21] See Arunima, supra note 2

[22] See Arunima, supra note 1

[23] Id.

[24] Id.

[25] Id.

[26] See Arunima, supra note 1

[27] See Nair, supra note 3

[28] See Arunima, supra note 1

[29] Id.

[30] Id.

[31] Id.

[32] Id.

aside for the benefit of females generally so as to free it from the debts of the taravad.

The karnavan could use family funds in order to make self-acquisitions, while others would have to use separate sources of wealth. Self-acquisitions in fact were downgraded, family property was sanctified and the position of the karnavan was elevated[33]. There was a gendered difference, since women scarcely received education and were largely unemployed, which made it difficult for them to acquire their own property. Before they could buy property using family funds, but post colonial interference in private spheres in Malabar, the family funds were solely for the head of the family (The karnavan) to invest in. The changes in matrilineal law of the mid-19th C undertaken by colonial judges and jurists were attempting to preclude the possibility of women retaining distinct rights, and even their very ability to engage in litigation[34].

In pre-colonial period, women could move off with few retainers or with their siblings to create new branches of the taravad. Post intervention, there was a situation where women relation to private property or household matters. There were difficulties in the uniform dissemination of law as local courts remained closer to local evidences and customs. There was a clash between theory and practice when it came to implementing codified or customary laws in Malabar.

could move away only after their marriage. In the 19th century neolocal families of North Malabar, both men and women contributed towards the upkeep of the family. The 19th C matrilineal families retained independent rights to taravad property and had special relations with their natal household, which would sustain them through their life[35]. Widowhood did not have the same connotations that were held in patrilineal Hindu communities. In the later half of the 19th C, the relationship that a woman had with her taravad was undermined, and a neological conjugal unit came in its place where the idea of shared property between a man and his wife became a crucial component of what was a 'morally desirable union'[36].

4. Effect of Codification on Headship: The Karnavans and Karnavatis

The Karnavan held the solitary position of guardianship. The eldest male member of the taravad was given a unitary position of authority. Only he had the authority to manage social as well as material relationships within the taravad[37]. Before the British courts, there was no customary matrilineal norm that gave legitimacy to the activities of the eldest male within a taravad. Through various cases, precedents were set that considered headship to be a gendered right and the natural prerogative of men. There was a conjunction of law of equity, Roman law and Brahmanical Principles in 1870. The Victorian notions of family in the England acted as an ideological basis on which the matrilineal customs were revisited[38]. By mid-1850, the court had in uncompromising terms declared the karnavan's authority to deal with property transactions in singular capacity. The doctrine of Malabar family, according to William Holloway, who was a civil judge, was that the family members were all supposed to reside in the family house and be supported by the head of the family[39].

The word Karnavan is derived from the word karnavar which means roots[40]. The creation of the position of the Karnavan as a natural and all powerful figure of authority affected both the men and women. While it was said that the Karnavan's position as head of the family came to him by birth, there was an attempt to break with the practice of guardianship[41]. While the Karnavan was said to be the sole guardian and others were said to be kin, historians often dispute whether the title of the Karnavan existed before British interference or was included after a decision in the Sadr court in 1814.42 In 1872, the courts granted the karnavan authority to act as guardian of two children of the taravad on grounds of natural right. While the District court granted father guardianship, the High Court gave guardianship to the karnavan on grounds of preserving laws of Malabar[43].

The authority of female heads or karnavatis required extra judicial legitimation. It was very important that the courts recognized a women's right to represent the household in matters of property and had rights to headship. In 1850, there was a consensus amongst jurists and High Court judges that there were to be no women karnavatis. William Holloway had expressed that a woman had no inherent claim to succession as head of household[44].

5. Effect of Codification on Younger Members

Prior to mid 19th CE, younger people had as much legitimacy as older people, and there was no system or arbitration granting greater legitimacy to older people. After mid 1850's the decisions that would favor the young would be

[33] See Arunima, supra note 1

[34] Id.

[35] Id.

[36] Id.

[37] Id.

[38] See Arunima, supra note 1

[39] See Nair, supra note 3

[40] See Arunima, supra note 1

[41] Id.

[42] See Nair, supra note 3

[43] See Arunima, supra note 1.

[44] Id.

overturned on appeal. In the period between 1870's and 1880's, gendered differences emerged between the rights, which younger taravad members had, and the extent ideal for the rights and their conduct[45]

Anandarvar was a gender neutral plural term designated to the younger members of the taravad. The Courts created further confusion by using the term 'nephews' in cases were both nephews and nieces were mentioned. Even though plural was used, it was interpreted as a gendered term which referred to only nephews[46]. In this period, substantive law held that the men in Malabar families had a right to succeed by headship and the rest of the members had a right to be supported by the family household. In terms of property, individuality was only accessible to men. In a society where women expressed their sexuality more openly in comparison to other society's, say, the Rajputs[47], the karnavan started controlling the sexuality of the younger women and lay down codes in terms of sexual morality[48].

CONCLUSION

The colonial legal discourse led to a change in the private sphere, by influencing the reshaping of authority, power and rights within the household on the grounds of both gender and generation[49]. The ideas and changes that the British courts introduced became a part of everyday living. The codification of matrilineal law affected the rights of property, inheritance, residence and the authority of women. By late 19th C there was a pressing demand for monogamous marriages, conjugal co-residence and nuclear families with shared property rights in Malabar[50].

Nayar women still retain property rights in their natal homes. Even though the matrilineal system underwent several changes, a woman did not lose all of her rights[51]. The British intervention did lead to disintegration in the Nayar taravad, but till today, the Nayars of Malabar remain to be a matrilineal in custom[52].

BIBLIOGRAPHY

Arunima G, 'A Vindication of the Rights of Women: Families and Legal Change in Nineteenth- Century Malabar' [1998] Oxford University Press 114-139

Nair J, 'Nationalist Patriarchy and the Regulation of Sexuality' [1996] Kali for Women 150-177

Nair J, 'Personal Laws and Women' [1996] Kali for Women 181-213

Arunima G, 'Multiple Meanings: Changing Conceptions of Matrilineal Kinship in Nineteenth and Twentieth Century Malabar' [2008] Indiana University Press, Bloomington and Indianapolis 404

Alexander WM, 'Female Sexuality Denied, Fatal Daughter Syndrome, and High Fertility Maintained' Vol. 12 (Fall 1998) Michigan Sociological Review 117-131

[45] See Arunima, supra note 1

[46] Id.

[47] See Alexander, supra note 6.

[48] See Arunima, supra note 1.

[49] Id.

[50] Id.

[51] Id.

[52] See Nair, supra note 3

The Imposition Of Article 356 In Uttarakhand: How This Article Needs To Be Re-looked At

By Shreya Joshi[1]

ABSTRACT

In the course of this paper, the author is concerned with the imposition of Article 356 of the Constitution of India in Uttarakhand, which they believe is a controversial issue in contemporary politics. After discussing the situation that took place in Uttarakhand in brief, this paper will focus on the Constitutional Provisions and the precedent laid down in the case of S.R. Bommai, which is a similar case, as regards to the conducting of a floor test and issuing a President's proclamation on the belief that there may be Horse-trading. The Constitutional Assembly Debates mention how they wanted this provision to be used in exceptional cases. However, it has been used more than a hundred times, and twice within this year itself. This calls for a glaring need for this provision to be looked at in a way that it's usage becomes much less frequent. While this is fairly obvious, it doesn't seem to be with the number of times it has been used before. Hence, there need to be stricter guidelines allowing for the usage of the same.

In Uttarakhand, the role of the Centre was questioned when a presidential proclamation was issued. While the floor test ordered by the Supreme Court helped the dismissed government regain power, the Centre was criticized for "arrogance and hurry in its use of Article 356."[2] The President issued a proclamation in Uttarakhand a day before the floor test had to take place."

When such a proclamation was issued in Uttarakhand without conducting a floor test, a major provision that tried to safeguard the imposition of the same was not applied. This was a concern since such a provision dissolves the State Government. In the duration of this paper, this issue of Uttarakhand will be discussed, which will be followed by an analysis of the Articles under which the same is allowed, along with an important precedent, whose fact situations run on very similar lines. Lastly, the paper will focus on how Article 356 needs to be used more strictly and its application needs to be curbed to exceptional cases in the interest of democracy."

THE ISSUE IN UTTARAKHAND: A BRIEF BACKGROUND

The Congress Government led by Chief Minister Harish Rawat was dismissed by the president and the assembly was suspended on the recommendation of the Union Cabinet in Uttarakhand"[3].

After the passing of the Appropriation Bill, 26 BJP MLAs and the 9 rebel MLAs from Congress wanted to seek a division of the vote. The validity of a bill was to be decided by the speaker. The group of 35 MLAs went to the Raj Bhawan to submit a memorandum that the Government was reduced to a minority and should thus be dismissed.Mr. Harish Rawat contended that he had written to the governor, informing him that a vote of confidence will be sought on 28th of March. The members of the BJP met the President to request the dismissal of the Government. The speaker Mr. Govind Kunjwal disqualified the nine rebel Congress MLAs on the 26th of March and they filed Writ petitions seeking postponement of this disqualification, however failing to obtain stay orders."

[1] Shreya Joshi is a third year B.A. LL.B. Student of Jindal Global Law School, O.P. Jindal Global University

[2] Mehta PB, 'Congress After Uttarakhand: The Lesson Should Not Be to Exult in a Moral High Ground, but to Realise That the Party Is Still Tottering' The Indian Express (12 May 2016) http://indianexpress.com/article/opinion/columns/harish-rawat-congress-floor-test-uttarakhand-bjp-article-356-2795778/.

[3] Harish Chandra Singh Yadav v. Union of India, Writ Petition (M/S) No. 795 of 2016.

Image Courtesy: Illustration by C R Sasikumar

Subsequent to this, a video was released on the 26th which was said to be a part of a sting operation, showing Chief Minister Harish Rawat horse trading. The veracity of the video was disputed. The next day, president's proclamation was issued under Article 356 of the Constitution of India (here after referred to as Article 356, The Constitution of India referred to as The Constitution)."

The respondents however stated that there was deliberate concealment of material facts and a strong justification for invoking Article 356. The speaker was said to act illegally and the constitutional mechanism was said to break on the 18th of March and the continuance of such a government was unprecedented[4].

The Petitioner submitted that Article 356 was an emergency provision which had to be exercised rarely and was subject to judicial review as held in the precedent laid down by S.R. Bommai v. Union of India[5] (which is discussed in due course of this paper). He further submitted that floor test was necessary to answer whether the person commanded a majority or not, and that the case also challenges the powers of a Speaker as given to him under the 10th Schedule."

The respondent contended that there was a difference in scope of power of judicial review in administrative and constitutional law. He also contended that executive action and legislation couldn't be examined and interfered with on the basis of said doctrine.

After looking at various precedents, the court came to hold that as far as Article 356(1) was concerned, the issue was subject to judicial review to the extent of examining whether the conditions for issuance of proclamation were satisfied or not. The power under the article was an emergency power and not an absolute power. Justice Dhyani called for a floor test, which he believed could retrospectively validate the proclamation, or help check whether it was mala fide and void ab inito[6].

THE PROVISIONS IN THE CONSTITUITION FOR ISSUING PRESIDENT'S PROCLAMATION

Articles 352 to 360 under Part XVIII of the Constitution lay down the Emergency Provisions. Article 356 provides for the proclamation of President's rule in case there is failure of the constitutional machinery in the State. With regards to the Constitutional Assembly Debates[7] concerning the present Art. 356, Dr. B.R. Ambedkar stated that the president should issue a warning, and if that fails, order an election to allow the people to settle the matter amongst them, and lastly resort to this Article.

Under Art. 356, a President has to receive a report from the governor or otherwise that the constitutional machinery in the state has failed, which means that the state is not functioning according to the provisions of the Constitution. In the case of State of *Rajasthan v. Union of India*[8] it was seen that Art. 356 when compared with Art. 352 did not refer to the term 'emergency', but was rather understood as one.

The failure of the constitutional machinery must be so deep that such a proclamation becomes necessary to preserve the parliamentary form of government from internal subversion, or from political parties and groups creating deadlocks or there being an indecisive electoral verdict making the carrying on of a government impossible[9].

THE S.R. BOMNAI v. UNION OF INDIA CASE

In the case of S.R. Bommai v. Union of India[10] an almost similar situation had taken place. In this case, the governor of Karnataka had reported to the President that the existing ruling party could not rule properly after he received 19 letters from council ministers who withdrew their support. He stated that majority support was withdrawn and hence S.R. Bommai did not have a majority anymore, thus recommending the President to exercise his powers. The next day itself, some of the ministers wrote to the Governor saying their signatures on the letters were obtained by fraud. The Chief Minister also met the Governor to summon the assembly session. He also offered for a floor test to be conducted. However, on the same day, the Governor had sent a message to the President that the Chief Minister did not have majority support any longer and that President Proclamation be issued. After approval from Parliament under Article 356(3), proclamation was issued. A writ petition challenging the validity of the proclamation was filed.

Other cases where there were President proclamations issued in the aftermath of the Ayodhya Babri Masjid incident were heard along with Karnataka's Chief Minister S.R. Bommai's case. The majority in the case discussed that under Art. 356, the President had to be satisfied that the conditions for the exercise of power were fulfilled. Further, it was discussed that States are not subordinate to the center and that even in the constitutional debates[11]. B.R. Ambedkar had hoped that Art. 356 would be used in exceptional circumstances. Justice Sawant and Kuldeep Singh believed that the satisfaction of the President should be on objective facts. There was an agreement that there should be material facts on the basis of which the President is said to have reached satisfaction. The bench had also unanimously agreed that this power of the president should be subject to judicial review and that the Constitution provides for

[4] Union of India v. Harish Chandra Singh Rawat, SLP (Civil) (unnumbered) of 2016, Avaliable at, http://barandbench.com/wp-content/uploads/2016/04/Final-SLP-Uttarakhand-President-Rule-1.pdf.

[5] AIR 1994 SC 1918.

[6] Harish Chandra Singh Yadav v. Union of India, Writ Petition (M/S) No. 795 of 2016.

[7] Constitutional Assembly Debate Vol. 9.

[8] AIR 1977 SC 1361.

[9] Seervai HM, Constitutional Law of India, vol 3 (4th edn, 2006).

[10] AIR 1994 SC 1918.

[11] C.A.D. Vol. 9.

a Federal structure. The imposition of President's rule in Karnataka was held to be unconstitutional by the Courts and had fresh elections not taken place the courts would have invalidated the said proclamation.

Heavy reliance was placed on Justice Sarkaria Commission Report[12] that recommended "Article 356 should be used very sparingly, in extreme cases, as a measure of last resort, when all available alternatives failed to prevent or rectify a breakdown of Constitutional Machinery in the state." The report was also relied on for the purpose of determining the conditions the President was subjected to when acting under Art. 356. It is understood that there should be a failure of the constitutional machinery, however these were further divided in the report into political crisis, internal subversion, physical breakdown and non-compliance with the constitutional directions of the Union Government. The report further clarified that maladministration, not looking at the possibility of installing an alternative government, removal of a government which has not been defeated in a floor test, or when there is internal disturbance, exercise of power without prior warning, stringent financial exigencies, or corruption allegations against a ministry or where power is exercised for a purpose which is different from the purpose for which the power was conferred[13].

This landmark decision was the first time that a presidential proclamation was struck down by a Supreme Court and imposition of President Proclamation in Karnataka was held to be unconstitutional giving supremacy to the Federal structure of the Constitution."

SCOPE FOR CREATIVE ANALYSIS IN CONTRIBUTION

Art. 356 was borrowed from the Government of India Act, 1935 with the view that its usage would be limited to the rarest of rare cases. However, this same Article has been used over a hundred times till now[14]. The usage of this Article seems to increase when there are governments belonging to different political ideologies in the Center and the State. The S.R. Bommai judgment was considered to lay down that Art. 356 would be used as a last resort, however with the recent situations in Arunachal Pradesh and the situation of Uttarakhand which was discussed above, show that it is still not limited to the most rare cases. However, in the case of Bommai, due to the passage of time, the previous government could not be restored. In the case of Rameshwar Prasad v. Union of India[15] fresh elections were notified. In the situation that played out in Uttarakhand, the Supreme Court on 5th May, 2016 called for a floor test, in which Mr. Harish Rawat won a majority by receiving 33 out of 61 votes. The Supreme Court then allowed him to take charge as Chief Minister again.

In this entire process, there was a loophole regarding conducting a floor test. Had such a vote been taken in the first place, the Chief Minister would be able to prove his majority. The provisions of Art. 356, along with precedents and the Sarkaria Commission guidelines that have been discussed above, lay down the importance of the same. Art. 356 also says that a warning should be issued by the President before the proclamation is issued.

A procedural irregularity in the assembly proceedings with regards to the passing of the Appropriation Bill cannot be grounds for a President's rule. According to former Secretary General of the Lok Sabha, Shri P.D.T. Acharya, it is equally incorrect to assume that a house is in minority when grants regarding the bill were passed by the same house[16], He further believes that until a floor test is held, the presumption that the house does not have majority support is unconstitutional.

While it was contended that the assembly was dismissed because of allegations of horse trading, and hence a floor test was not taken, two things need to be kept in mind. Firstly, a floor test is essential in determining whether the State government has majority support or not. Secondly, on going back to the Constitutional debates, it can clearly be seen that the makers of the Constitution did not intend for the usage of Art. 356 to be this frequent.

As one knows Art. 356 allows for a President to issue a proclamation in case a constitutional machinery fails. However, such a proclamation should be proclaimed only when the proper law has been followed. The need for a floor test should become stricter. Further, Art.356 mentions that a President can issue a proclamation on being 'satisfied' that the state cannot be carried on according to the provisions of the Constitution. With respect to the idea of checks and balances, the method of reaching such 'satisfaction' needs to be subjected to judicial review to ensure that there is no abuse of power."

CONCLUSION

From the situation that played out in Uttarakhand as well as Arunachal Pradesh, it is clear that the judgments emphasize on the principles of a responsible government and the necessity for the functionaries of the Constitution to work together. Relying on the Constitutional Assembly Debates[17] where this provision was discussed, it needs to be kept in mind that it needs to be used in exceptional cases only. The imposition of this Article twice in 2016 shows that the same standard is not being applied in practice."

[12] Report on the Commission on Centre- State Relations, Part 1(1988) 165-80.

[13] Singh MP, V.N. Shukla's Constitution of India (12th edn, Eastern Book Company 2013)

[14] Sorabjee S, 'Constitutional Morality Violated in Gujarat' The Indian Express (Pune, 21 September 1996).

[15] AIR 2006 SC 980.

[16] Acharya PDT, 'Why the Modi Government's Decision to Impose President's Rule in Uttarakhand Is Unconstitutional' The Wire (8 April 2016), Available at, http://thewire.in/28341/the-imposition-of-article-356-in-uttarakhand-in-unconstitutional-on-many-grounds/.

[17] C.A.D. Vol. 9.

Active Role Of Judicial Activism In The Justifying Women Empowerment In India: An Analysis

By Yash Tiwari

ABSTRACT

"Judicial activism is a necessary adjunct of the function since the protection of public interest happens to be its main concern."

-A.M Ahmadi

From the very beginning the term Judicial Activism has become a subject of controversy in India. Attempts have been made to curb the power of the court as well as access to them. In the past, several indirect methods were used to discipline the judiciary, such as supersession of judges or transfers of inconvenient judges. It has often been said that the courts usurped the functions allotted to the other organs of Government over the other organs of government. On the other hand, the defenders of Judicial Activism are saying that the courts have performed their legitimate function. Judicial Activism may be defined as the pro-active role played by the judiciary in ensuring that the rights and liberties of the people are protected. It may be understood as the role of the court in stepping out from its normal interpretative role. When the court moves beyond its normal role of mere adjudicator of disputes and becomes a player in the system of the system of the country laying down principles and guidelines that the Executive must carry out, that role of the court may be said to be judicial activism. Perception of judicial activism is bound to be subjective depending upon the social philosophy and conception of judicial function held by a person.

INTRODUCTION

Judicial activism is a weapon in the hands of judiciary to provide justice to the people and it can be used by the judiciary in favour of social interest or for common good.

Role of Judiciary: In our country, the Judiciary is known as the independent wing of government. This Independent Judiciary has two roles:

1) the traditional role i.e. to interpret the laws, and another is
2) Judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice.

These roles are as follows:-

1. The Traditional Role of Judiciary:

Basically the traditional role of the judiciary is interpretation of statutory and constitutional provisions for providing justice. The judiciary (also known as the judicial system or judicature) is the system of courts that interprets and applies the law in the name of the state. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of government is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the ″supreme court″ or ″constitutional court″), together with lower courts. In a democracy, the role of judiciary is crucial. Judiciary is a faithful keeper of the constitutional assurances. An independent and impartial judiciary can make the legal system vibrant. Our Indian judiciary can be regarded as a creative judiciary. Credibility of judicial ultimately depends on the manner of doing administration of justice. Justice K. Subba Rao explains the function of the judiciary as thus:

i) It is a balancing wheel of the federation;
ii) It keeps equilibrium between fundamental rights and social justice; It forms all forms of authorities within the bounds;
iii) It controls the Administrative Tribunals.

Justice – Social, economic and political is clearly laid down in the preamble as the guiding principle of the constitution.

Image Courtesy: planetbubble.files.wordpress.com

Social justice is the main concept on which our constitution is built. Part III and IV of Indian constitution are significant in the direction of Social Justice and economic development of the citizens. Judiciary can promote social justice through its judgments. When any question comes before the court related to the protection of women, the by the proper interpretation of the concern laws or statutes judiciary is able to express the meaning of provisions of the legislation and the intention of legislature and by this way judiciary can give justice and protection to the women. Under Indian constitution women also have some special rights and equal rights in that case also judiciary by interpretation of the constitution can make clear about the constitutional rights of women.

Another important role of judiciary is to make precedent for the public interest or for welfare of the society. Where there is no specific law or where there is law but judiciary expanding the dimension of such law and giving a new and different decision than pervious decision of the court. Sometimes precedents are also known a Judge Made Laws. Under article 141 of the constitution provided that "The law declared by the Supreme Court shall be binding on all courts within the territory of India". Article 141 incorporate, what is known in English law, the doctrine of stare decisis. Article 141 gives a constitutional status to the theory of precedents according to which the judicial decisions are considered to have binding force for the future.

2. Role of Judicial Activism:

Law is powerless and requires a strong agency to maintain its existence. The level of implementation and the capability of the executor determine the fate of law. During the recent past, the term 'Judicial Activism' has assumed immense significance. It may be defined as dynamic process of judicial outlook in a changing society. The judicial Activism mainly stems from the failure of the other two wings of the state. When the democratic institutions are extinct or moribund court activism is the only hope of justice for the citizens. Where the government fails to govern, the civil services is neither civil nor service, the police is more an oppressor than a guardian of law, parliament is a costly debating society, the judiciary only remains the last hope for the people. Thus, judicial activism is all about providing a good governance and ensuring the safety, security and welfare of the society. The decision of Golakhnath vs. State of Punjab, Keshavananda Bharti vs. State of Kerala, Minerva Mills vs. Union of India the hue and colour of Judicial Activism changed with the supreme court's judgement in S.P. Gupta's case wherein it was pronounced that any person could file a public interest litigation for another affected person who was deprived or underprivileged and could not approach the court for the redressal of grievances. The acknowledged that the legal process carried with itself certain disadvantages for the poor deprived and underprivileged. Hence, P.N. Bhagwati, J., and Krishna Iyer J. initiated a stream of judicial activism.

In the traditional concept of judiciary, the judge is depicted by an image, where the eyes of the judge are covered by dark cloth with hands holding the balance. This obviously means that the judges are supposed to have a very open mind on every issue without having any personal opinions at all. Rightly or wrongly, Indian judiciary has now come to play a very vital role in influencing the various aspects of the administration and governance of the country. At one time, it was thought that the role of judiciary is only to interpret the laws and regulations and provide judgments exclusively from the legal point of view. This perspective regarding the judiciary has undergone sea change in recent times and this change is known as Judicial Activism.

JUDICIAL ACTIVISM IN THIS AREA

The realist school of jurisprudence exploded the myth that the judges merely declared the pre- existing law or interpreted it and asserted that the judges made law. It stated that the law was what the courts said it was. This is known as legal skepticism and was really a reaction to Austin's definition of law as a command of political sovereign. According to analytical jurisprudence a court merely found the law or merely interpreted the law. Indian Supreme Court not only makes law, as understood in the sense of the realist jurisprudence, but actually has started legislating exactly in the way in which a legislature legislate. Judicial law making means in realist sense is what the court does when it expands the meanings of the words 'personal liberty' or 'due process of law' or 'freedom of speech and expression'.

Judges are applying the discretionary power to provide better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in enforcing and strengthening the constitutional goals towards protection/ rights of the women of the land. The courts in India have tried to interpret laws in consonance with the international treaties and conventions. Some of the major cases are enumerated below:

i) Immense contribution to strike the balance between discrimination caused to the working women and availing them of justice against such discrimination:

In Air India vs. Nargesh Meerza the Air India and Indian Airlines Regulation were challenged as violative of Article 14. Regulation 46 provided that an Air Hostess was to retire from service upon attaining the age of 35 years or on marriage if it took place within four years of her joining service or on first pregnancy, whichever occurred earlier. Regulation 47 empowered the Managing Director, at a time beyond the age of retirement, upto the age of 45 years, if an Air Hostess was found medically fit. The Supreme Court struck down the Regulation providing for retirement of the Air Hostess on her first pregnancy, as unconstitutional, void and violative of Article 14. The Court explained that the Regulation did not prohibit marriage after four years of joining service and if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. After utilizing her service for four years, to terminate her service if she became pregnant, court said, amounted to compelling the poor Air Hostess, not to have any children. It thus amounted to interfere with and divert the ordinary course of human nature. It was held not only a callous and cruel act but an open insult to Indian Womanhood. Court also that said it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked despotism and was, therefore, clearly violative of Article 14.

ii) Vishakha vs. State of Rajasthan, Vishakha:

A non-governmental organization working for gender equality, had filed a writ petition seeking the upholding of the fundamental rights of working women under Article 21 of the constitution. The immediate reason for the petition was the gang rape of a saathin (a social worker involved in women's development programs) of Rajasthan in 1992.The assault was an act of revenge as the saathin had intervened to prevent a child marriage. Supreme Court provided a landmark judgment on the area of sexual harassment against women. As in this particular aspect there is no law or enactment by the legislature that is why here the judiciary applied its activist power and provides the some guide lines. Some of the guidelines are as follows:

1. Duty of Employer or other responsible persons in work places and other institution to women employees to prevent the commission of acts of sexual harassment.

2. Court also defined sexual harassment. Sexual harassment includes: such unwelcome sexually determined behaviour as:

a) Physical contact and advances;
b) a demand or request for sexual favour;
c) Sexually coloured remarks;
d) Showing pornography;
e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

3. Court also provided guidelines to all employer public or private for taking preventive steps.

4. What type of criminal proceeding is required for this offence that is also suggested by the court.

5. disciplinary action should be taken against the offender.

6. Complaint Mechanism is also suggest by court.

7. Complaint committee is required.

8. There is a need of worker's initiative.

9. There is need of awareness among female employees about their rights.

10. The Court provided the guideline in case of third party harassment.

11. Central/ state Government are requested to enact the specific law in this regard.

12 These guidelines will not prejudice any rights available under the protection of Human Rights Act,1993.

After providing the guidelines court said "Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the rights to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field".

iii) Apparel Export Promotion Council vs. A.K. Chopra:

The accused –respondent tried to molest a women employee (Secretary to chairman of a Delhi based Apparel Export Promotion Council) Miss X. (name withheld), a clerk cum typist on 12th August, 1988 at Taj Hotel, Delhi. The respondent persuaded Miss 'X' to accompany him while taking dictation from the chairman, so that her typing was not found fault with. While Miss 'X' was waiting in the room, the respondent taking advantage of the isolated place tried to sit too close to her and touch her despite her objections; and tried to molest her physically in the lift while coming to the basement, but she saved herself by pressing emergency button, which made the door lift open. In appeal Of the case supreme court held that "In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of case and not swayed away by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression 'molestation' or 'physical assault'..... The sexual harassment of a female employee at the place of work is incompatible with the dignity and honour of a female and need to be eliminated and that there can be no compromise with such violation".

iv) In Railway Board vs. Chandrima Das:

It was a case of gang-rape of a Bangladeshi national by the employees of the Indian Railway in a room at Yatriniwas at Howrah station. These employees managed the 'Yatriniwas' the government contended that it could not be held liable under the law of torts as the offence was not committed during the course of official duty. However, Hon'ble court didn't accept this argument and stated that the employees of union of Indian, who are deputed to run the railways and to manage the establishment, including the Railways station and Yatrinivas are essential components of the government machinery which carries on the commercial activity. If any such employee commits an act of tort, the Union Government of which they are the employees can, subject to other legal requirement being satisfied be held vicariously liable in damages to the person wronged by the those employees. The victim was awarded by Supreme Court with a compensation of R.s 10 lakhs for being gang raped in Yatriniwas of railway. Since the right is available to non-citizens also, the reach of the right is very wide.

v) Mohd. Ahmed Khan vs. Shah Bano Begum:

The judgment of this case created uproar in Muslim Community. A five Judges Bench of the Supreme Court declared that a Muslim husband having sufficient means must provide maintenance to his divorced wife who is unable to maintain herself. Such a wife is entitled to the maintenance even if she refuses to live with Muslim husband because he has contracted another marriage within the limits of four wives allowed to him by Quran. The Bench declared that a Muslim divorced woman who cannot maintain herself is entitled to get maintenance from her former husband till the time she gets remarried. They rejected the plea that maintenance is payable for the iddat period only. Pointing to the ayats of the Quran, the Judges declared that the Quran imposes an obligation to provide maintenance to the divorced wife. The judges also rejected the contention that deferred Mahr (dower) is a payment on the divorce of a wife and hence such payment under the personal law excludes the payment of any maintenance by the

They observed that according to Quran, the dower is a consideration and mark of respect for the Muslim woman instead of being a consideration for divorce. The learned judges stated that the religion professed by spouse has no place in the scheme of Section 125 Cr. P.C. which is measure of social justice to prevent vagrancy and destitution. The court held that if there is any conflict between personal law and Section 125 Cr.P.C. then it is clear form the language of the Section that it over-rules the personal law. This judgment created a storm and priests of Islam started agitation.

vi) Bodhisattwa Gautam vs. Subhra Chakraborty:

The complainant Subhra Chakraborty was a student of the Baptist College, Kohima and the accused Sri Bodhisattwa was a lecture in that college. According to the FIR field by the complainant, he cohabited with her, giving her a false assurance of marriage but also fraudulently went through a certain marriage ceremony with knowledge and thereby dishonestly made the complainant before the God he worshipped by putting her vermilion on her forehead and accepted her as his wife but later refused to recognise her as his life partner. The said ceremony made the complainant to believe that she was lawfully married wife of the accused. In this landmark case the Supreme Court ordered the accused to pay Rs. 1000 per month as an interim compensation to the victim of rape during the pendency of the criminal case. Referring to the pitiable condition of women in society, Mr. Justice Saghir Ahmad observed that ''unfortunately, a woman in our country, belongs to class or group of society who are in disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the constitution ''enjoy equal status''. ''Women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life.''

vii) In Deelip Singh vs. State of Bihar:

Court held that consent given a women believing the man's promise to marry her would fall within the expression 'without her consent' vide clause (ii) to section 375, I.P.C, only if it is established that from the very inception the man never really intended to marry her and the promise was a mere hoax. When prosecutrix had taken a conscious decision to participate in the sexual act only on being impressed by the accused's promise to marry her and the accused's promise was not false from its inception with the intention to seduce her to sexual act, clause (ii) to section 375 I.P.C. is not attracted and established. In such a situation the accused would be liable for breach of promise to marry for which he will be liable for damages under civil law. False promise to marry will not ipso facto make a person liable for rape if the prosecutrix is above 16 years of age and impliedly consented to the act.

vii) Madhukar Narayan Mardikar vs. State of Maharashtra:

The High Court observed that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.

OBSERVATION

Thus, it is observed that not only the legislature but judiciary also plays a very vital and important role in case of women empowerment. Judiciary empowers the women by its both traditional and by its activist role. The traditional role of judiciary is to provide justice through interpretation of laws. Some times through the wide interpretation of provision of various legislations and also the provision of Constitution, the Judiciary is able to empower women. Another role of judiciary is the activist role which is popularly known as "Judicial Activism''. Where there is no specific law for a specific offence in that case judiciary applies its activist power. As our society is dynamic, the need of the society is also dynamic. Because of the rigidity of law or because of the long and time taking procedure of enactments of laws by legislature, it is unable to keep pace with the fast changing society. There is always a gap between the advancement of the society and the legal system prevailing in it. This is sometimes causes hardship and injustice to the people. Now women empowerment is a burning issue of our country. And this concept is in progress. So, there are so many areas of women empowerment where there is no law for the protection of women, in that case judiciary is the last hope. Because only judiciary can give justice by applying its activist power e.g. we have already discussed vishakha case where the question regarding the sexual harassment of women in working places was raised and on this area there is no law at that time judiciary by judicial activism declared some guidelines for the protection of women from sexual harassment of women in working place. This guideline was provided by Supreme Court in the year of 1997 and the Bill titled as Protection of Women against Sexual Harassment at Workplace was produced before parliament in 2010 but Bill is still pending. That means the need of the society is realized by the parliament after 13 years. In case of compensation jurisprudence also judiciary is realized need to compensate the victim but in criminal law there is no such specific law regarding the compensation jurisprudence. So, it is clear that through judicial activism judiciary is also able to provide progress in the area of women empowerment.

****

#http://en.wikipedia.org/wiki/Judicial_activism (Retrieved on July 2011)

S. P. Sathe : Judicial Activism in India; Oxford University Press; P.25

#Mr. Justice A.M Ahmadi (Rtd): ''Dimensions of Judicial Activism'', JT 2003 Journal, P-1-2.

#"http://en.wikipedia.org/wiki/Judiciary (Retrieved on 20 th July, 2011)

#Prof. Narender Kumar : Constitutional Law of India ; Allahabad Law Agency; 5th ed 2006; P.590

Prof. U.P.D. Kesari : Lectures On Administrative Law ; Central Law Publications; 17 th ed 2008; P.485

AIR 1967 SC 1643

AIR 1973 SC 1461

AIR 1980 SC 1789

AIR 1982 SC 149

S.P. Sathe : Judicial Activism in India; oxford University press ; P. 249

AIR 1981 SC 1829

AIR 1997 SC 3011

Ibid

Ibid at 3017

AIR 1999 SC 625

Ibid

(2000) 2 SCC 465

(1985) Cri. L.J. 875 S.C.

(1996)1 SCC 490

Ibid

Dr. J.N. Pandey; Constitutional Law of India; Central Law Agency; 41 ed 2004; P.259

(2005) 1 SCC 88

AIR 1991 SC 207

AIR 1997 SC 3011

Rape, Politics And Governance of the Country

By Shradha Sharma

ABSTRACT

Recently a post got viral on the internet stating the rape punishments and the procedure for sentencing the accused. In each country the punishment was brutal and time taken for sentencing the accused was not more than 1 yr in every country.

But in India it was opposite, the sentence was less than all the countries and the time taken was so much that the victim or the accused could have had a normal death in the time being the sentence was served or the case could have just closed due to the lack of financial assistance to the victim's family so that they can approach the concerned authority or due to the political background of the criminal or the jack they have been using since their birth as their birthright.

Even after many years of getting independence, we are curbed in the practices such as corruption and many other things due to which somewhere or the other the governance of the country is highly getting affected in the field of female safety. The acts which have been considered as illegal are freely done by the male dominants and they are still moving around the world freely without any fear of being punished by the government due to the considerations they are carrying with them in name of position and the jack the higher class of the society is having and how they are misusing the same.

The paper aims at highlighting some of the main issues which are creating a repeated hurdle in providing proper justice and proper respect and the class which each and every female of the country must be having been a citizen of the country.

In the next part, the paper focus on the ways and the tactics by which the governance of the country can improve in the field of the women empowerment or you can say in providing proper rights with a way which makes every female aware of the right they have been provided by the government and make them so strong so that they can take steps for themselves and speak up for their rights.

CHAPTER I. INTRODUCTION TO THE CHAPTER

In this chapter, we are going to talk about the basics and the origin of the rape culture and the problems which have arisen due to this rape culture in the world's largest democracy, where a female is raped every 20 minutes.1 the chapter has been covered in 6 sections: subject introduction, background, research problem, effects on females and research aim. The theory part discusses intersectionality in a theoretical approach followed by the method and material, which will be used to analyze and attain the information to answer the research question.

1.1. Subject introduction

Rape culture, a word which has been in discussion for more than a decade now in the largest democracy of the world. India has been a largest democracy with many great leaders like Mahatma Gandhi and many others who have been working for the development of the female population in every field, may it be law, economics, science or fashion.

But somewhere the female population of the country is still not safe due to the monsters that have existed in the society, and due to these reasons; the heavenly country has proved to be the hell for the females in the country.

What is rape culture?

Rape culture is a term that was coined by feminists in the United States in the 1970's. It was designed to show the ways in which society blamed victims of sexual assault and normalized male sexual violence.

Image Courtesy: The Citizen

Emilie Buchwald, author of transforming a rape culture, describes that when society normalizes sexualized violence, it accepts and create rape culture. In her book she defines rape culture as,

"A complete set of a belief that encourages male sexual aggression and support violence against women. It is a society where violence is seen as sexy and sexuality as violence. In a rape culture, women perceive a continuum of threatened violence that ranges from sexual remarks to sexually touching to rape itself. A rape culture condones physical and emotional terrorism against women as the norm.... in a rape culture both men and women assume that sexual violence is a fact of life, inevitable... However...much of what we accept as inevitable is in the fact the expression of values and attitudes that can change."

Rape culture includes jokes, TV, music, advertising, legal jargons, laws, words, and imagery, that make violence against women and sexual coercion seem so normal that people believe that rape is inevitable. Rather than viewing the culture of rape as a problem to change, people in a rape as a problem to change, people in a rape culture think about the persistence of rape as,

"Just the way things are....."

1.2. Background for the subject

Women in our country have always been considered as the secondary citizens who always have not been given the rights as equal to the men. The women have always been suppressed in the country by the male dominating society and the rights which have been provided with many rights by the lawmakers, but unfortunately only some of them have been being exercised by the laymen properly.

Still females speaking up for their rights are regarded as a taboo in our country. Still, if a girl has been sexually harassed the parents advise her to stay at home instead of speaking up for her rights and get the accused behind the bars and teach them a good lesson. The government of the country is still quite on this matter, and the rights of the females in the country are still in danger.

Until the marriage the females are considered as the properties of the father and brother and once they get married, they are sold to the husband like a property, on which the owner is having full right and the owner can do anything with the property they own.

As early as the 19th century, American women were criticized if they ″stray out of a [dependent] position...fought off an attacker... [or] behaved in too self reliant a manner...″ in which case ″the term rape no longer applied...″.Similar to myths and double standards applied to women today, description of rape in the 1800s depicted women who needed to behave or else face the inevitable consequences.

In the 1930s rape was considered a sex crime that was always committed by men and always done to women. From 1935-1965, a shift from labeling rapists as criminals to believing them to be mentally ill ″sexual psychopaths″ began making its way into popular opinion. Men caught for committing rape were no longer sentenced to prison, but admitted to mental health hospitals where they would be given medication for their illness. Because only ″insane″ men were the ones committing acts of rape, no one considered the everyday person to be capable of such violence.

1.3. Problems actually faced

The main problem comes with the lengthy procedure which is followed by the judiciary in providing the justice to the victims in the country. Rapes have become the culture in our country these days. Every other day we are up with news of rapes which are taking place across the country. They serve as the headlines in the newspapers and the news channels for some time and then they just disappear like nothing happened at all.

Some of the main problems which are faced by the victims of the rapes and sexual assault in the country are:

- Lack of a proper judicial system, which means lack of the authorities where a person can approach and the lack of proper authorities who can hear the grievances which the victim has come with for the help. The negligence which has been done by the authorities in listening to the problems of the victims is also one of the main problems, which creates a delay in the justice which should have been provided to the victim.

- Time taking procedure in the delivery of the justice. tell the person is served with justice, it's already too late and the accused have already fled away with all the proofs of the crime he has committed and sometimes with the help of the contacts they even shut the case forever and the justice remains undelivered.

- Lack of financial and legal assistance to the victim and their families. Many of the victims of sexual assault remain in the dark ages without any legal or financial aid due to the heavy cost which a person will have to bear if he/she goes to the higher authorities for the Redressal of the grievances they are having. They are not considered eligible to approach the higher authorities till the time they are having the proper finance to give bribes to the authorities who are supposed to help the one without taking in consideration any personal benefits.

- Lack of action taken against the eminent person, is also one of the main reasons due to which the criminals are roaming around freely and the victims of the sexual assault are forced to stay inside the houses, confined within the four walls with the fear of being assaulted again by the same person of the known's of that particular person and sometimes for the fear of death and the reputation of the family.

- Reputation problem of the families, we all have been grown up listening to a common sentence from our elders and our parents , *"log kya kahenge, society kya bolegi, hmare reputation ka kya hoga society mai"* which means what will the society think of us if the molestation/ sexual assault case which has been done to the victim, comes in the eyes of the society. Due to the fear of the society the families are ready to sacrifice the happiness of their own children.

(These are some of the basic problems, which are prevailing in the current society due to which the proper justice is

is not being provided to the females who have been exposed to the sexual assault and harassment incidents)

1.4. Effect on females of the country

According to Ann Burnett, the concept of rape culture explains how society perceives and behaves towards rape victims and rape perpetrators.[31][74] For example, a number of rape myths that are held are ″no means yes″, women can resist rape if they really wanted to, women who are raped are therefore ″asking to be raped″ and many women falsely report rape to protect their own reputations or because they are angry at the ″perpetrator″ and want to create a type of backlash.[74] A theory for why rape myths are so common in society is because they were perpetuated by norms already present in society. Researchers claim that communication and language is created by the dominant patriarchy. In positions of power, men control how women are portrayed in the media, women′s censorship of body and voice, etc. which forces women to submit to the gender stereotypes formed by the dominant culture. The dominance of the male language in society creates the concept of a ″slutty woman″ and forces women to begin to monitor their behavior in fear of how they will be perceived within the rape culture.

1.5. Research aim

The main aim of writing this paper has been to make the people aware about the problems which have been faced by the females in the country and the harassment and the problems they are exposed to in the 21st era. In 21th century the males and females and competing each other in every field of life may it be personal life and may it be professional in any field of work they are working in. It may be financed, entrepreneurship, leadership or maybe its fashion.

Females are ahead of the males in every field of life, they why this injustice has been done by the females when they are exposed to be in the forced relationship even if they don't want to be in the fake relationships, told to compromise with the person who has raped her. When a person raped her while she was alone, what will be the situation if that girl is told to live with her for her whole life?

CHAPTER II. INTRODUCTION TO THE CHAPTER

The first part of the chapter is regarding the definition of rape and the sexual harassment activities which are taking place in our country in last few decades, followed by the human rights violation caused by rape and other activities, because in order to put the laws effectively into practice it is important to understand the violations caused by the crime. In the third part, the reason why sexual violence happens and how it affects the victims will be discussed.

2.1. Definition of rape and other harassment activities

The term rape is primarily perceived only as a sexual behavior since it overlooks the violence that accompanies the action. As sexual violence is a wider concept that also incorporates rape, and many other activities which are included in the definition of rape.

The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (General Assembly Resolution 48/104). The definition of rape differs according to factors such as time and place; however rape is recognized as a crime that typically is committed by a man forcing another person to have sexual intercourse against their will, intercourse by force. Even though it is not only men who commits rape, rape is not always the outcome of an intense or obsessive desire for sexual gratification but mostly men employs sexual violence or rape as a method to exercise their control over the women to maintain the positions of power. The men motivated by the combination of power and anger especially in a patriarchal society prove their masculinity by exerting sexual violence over women.

2.2. Human Rights Violated by Sexual Violence

Gender discrimination is a global issue and violence against women is not only a crime but also a violation of women′s human rights; rape or sexual violence for instance is not only an affront to the chastity of womankind but also a profound violation of her bodily integrity, security, and freedom from discrimination.
Human beings are not the same and they differ in many ways however the human rights norms aim to provide a common understanding to individuals that they have equal rights. Human rights are rights that exist as an essential element which is equally entitled without any discrimination to all human beings. According to Article 2 of the UDHR, 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as, race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.
2.3 Causes and Consequences of Rape
Rape has an enduring effect on the lives of the victims. However in most cases it is not just the victim that experiences the calamitous consequences of sexual violence. In a patriarchal society like in India where the women have very low status the people closely connected to the victim, especially the family members are also affected as a result of the negative social reactions (Karmen 2010: 269).

Gang rape is a common type of sexual violence in India and the victims raped by multiple assailants (gang rape) is inflicted with more serious distress than the victims raped by a single assailant. The victims of gang rape mostly avoid disclosing the issue to authorities fearing retaliation from the criminals and societal stigmatization (Karmen 2010: 269). In India gang rapes mostly occurs when the women is visible in a sphere which is dominated by the men especially certain places men considers as their territory (such as a bar). The women if gets raped in this situation, even if a women has the right to enter the territory will be blamed by the society for being responsible for the crime in some way, partly or fully (Peters and Wolper 1995: 16). The women is blamed for provoking sexual violence because the male sexuality is considered to be masculinity which means power or aggression and the opportunity for sex would be never refused by men when presented (Anderson and Doherty 2008: 06). The victim blaming or stigmatizing the victim by the society mostly motivates the victim towards suicide. According to Williams (1984), *'the society and*

'the society and community also becomes offenders' by displaying unsupportive behavior (Williams ctd. in Anderson and Doherty 2008: 10).

Rape is mostly accompanied by extreme violence or torture and the perpetrators are not in all cases frustrated by the sexual inactivity or lust, but rape can also be caused by displaced aggression. Displaced aggression is when someone is enraged by a person or situation the individual then discharges that anger towards another unconnected person or situation. In most cases people have a tendency not to direct aggression towards the source of frustration, in this situation the aggression might be then redirected towards another available person suitable to be victimized. However, this is mainly due to the reason that when compared to the original source where the anger is produced the chances of retaliation will be less likely from the victim of displaced aggression. Displacement can occur in long chains and is visible in societies commonly among minorities (Coon 2006: 463). On one hand, in India with the increased opportunity for women in education and employment, the modern women are entering a well-fortified position to which the traditional male reacts with violence (The Hindu, Dec 19, 2012). On the other hand, the growing concentration of wealth due to the 17 Changing scenario of the country's socio-economic system and the government's obsession to growth creates disparity between the rich and the rest. The people from the lower sections of society, mainly slum dwellers left with poverty unemployment or underpaid rapes women on account of revenge or envy.

CHAPTER III
CASE ANALYSIS: 3 IMPORTANT CASES

This chapter consists of four sections. In the first section, the three cases of sexual violence in India will be presented. In the subsequent section, the three intersectional identities, gender, class and caste will be described. Under the third sections, the history of gender discrimination and the status of women in India will be described. In order to perceive the position of women in present social structure it is essential to know the history because some standards and values the affects the contemporary women are rooted in the past. The fourth section discusses the state obligation.

3.1 Introduction to the Cases

In this we will have a eye upon three different cases of rape committed by and against adults in India. The cases used in this study are

- 2004 Thangjam Manorama Devi Case
- 2011 Soni Sori Case and
- 2012 Jyoti Singh Case (Nirbhaya rape case)

We are focusing on adults because the rape of children compared to that of adults differs significantly, especially with societal views and legal procedures a child cannot give consent that works as a defense to rape conviction under any legislation (Megan Smith 2008:10-11). The sexual violence mentioned in all the three cases involves more than two assailants. The rape committed by a group of men, which is also termed as gang rape is the 18 common kind and it is at times employed as a method of punishment or social control even though the intentions of each individual rapist may differ. The victims of gang rape are often pressured to drop charges or reluctant to report the case as they fear multiple reprisals.

The reason to select the specific three cases for this study is because the cases are connected to the research question. The cases are similar and the victims in the cases share the same identities of intersectionality. Both, the structural and societal system is connected to the cases and also in some ways influences the outcome of the cases.

CASE I: 2004, THANGJAM MANORAMA DEVI CASE

In June 2004, Manipur, which is the northeastern state of India with the majority of its population belonging to the ethnic tribal group, witnessed the abuse of the Armed Forces Special Powers Act. Thirty two year old, Thangjam Manorama Devi was brutally tortured, raped and executed by personnel of the paramilitary force of 17 Assam Rifles (Human Rights Watch Report, September 15, 2008).

Devi's house was raided by the soldiers around midnight on suspicion of her association with the People's Liberation Army which is an insurgency outfit. According to the victim's family, no explanation was provided by the armed military personnel as they rushed in and searched the house. Devi was dragged out from her bed and her family members were mishandled when they tried to obstruct, even her elderly mother was threatened under the gunpoint (Human Rights Watch Report, September 15, 2008).

The soldiers demanded her family wait outside while they interrogated her. Devi's family claimed that she was brutally tortured during the interrogation by the soldiers as they could hear her cry in pain. The military personnel approached and informed the victim's family that was forced to wait at the courtyard for long hours from midnight that she will be taken into custody. An 'arrest memo', which is an official acknowledgement of detention that is put in place to prevent 'disappearances' was signed by the soldier's after they briefed the family members. The terrified family was also forced by the soldier's to sign on some papers that they had no understanding about. However, according to reports it was a 'no claim certificate' that Devi's elderly mother and brothers were asked to sign which said, 'that the family had no claims against members of the Assam Rifles who had searched the house and made the arrest 19 and that the troops haven't misbehaved with women and not damaged any property' (Human Rights Watch Report, September 15, 2008).

According to the Human Rights Watch report, Devi's bullet ridden body with no proper clothing was found later outside a nearby village. The bullet wounds including on her genitalia raised suspicion that bullets had been used as an attempt to hide evidence of rape. Even though, a case has been registered and the state government was forced to respond by authorizing Justice Upendra to conduct the government inquiry the report is yet to be made public as it remains sealed and no arrests have been made to date. However, Justice Upendra had blamed the security forces and Devi's family Counsel claimed that "neither the Prime Minister nor the Home Minister, nor the Defence Minister has made the report public and told the women of Manipur, what are the findings of the commission that was appointed by the government itself" (Asian Human Rights Commission Report, 29 July 2004). Even though, the protests in the state

through which the people displayed their anger over the brutal killing succeeded in pressurizing the authorities to some extent. On the other hand, the case still lacks a positive legitimate action to provide justice to the victim without being effected by the power position of the perpetrator.

CASE II: 2011, SONI SORI CASE

Soni Sori, a 35 year old Adivasi (an ethnic and tribal group claimed to be the aboriginal population of India) from a village in Chhattisgarh has been accused of assisting the banned Communist Party of India (Maoist/Naxals) without any substantial proof and currently is facing trial. (The Indian Express, 30 Apr 2013)

According to Amnesty International, Sori an activist and school teacher was imprisoned and allegedly tortured for speaking out against the Maoists/Naxals as well as state forces for human rights violations in the armed insurgency in India. Amnesty International termed her as a prisoner of conscience in 2012 (Amnesty International, Report March 7, 2012). Kumar, Himanshu a member of the Chhattisgarh chapter of the People′s Union for Civil Liberties (PUCL), commented that ″Chhattisgarh, has an unwritten set of rules about how an Adivasi or a lower caste should behave. You don′t organize, you don′t agitate, you don′t protest against human rights violations, you don′t protest against the state, and you certainly don′t protest against industrial houses that are in Bastar to usher in the industrial revolution,.” The strong 20 statement indicates the influence of the caste system in the society and proves that position provides power to dominate in certain Indian communities (CNN IBN, Jan 04, 2013). Sori was subjected to the most degrading treatment while in custody at the orders of then-district police superintendent Ankit Garg, the district police superintendent who initiated many operations against the Maoists/Naxals in the central Indian state. According to Sori in her letters submitted to the Supreme Court of India, the investigating officer Garg, abused her verbally and directed his police personnel to torture her. In name of interrogation she was stripped naked and tortured with electric shocks in the presence of the officer, Garg. The mother of three was tortured without any limits and raped while in custody (The Indian Express, 30 Apr 2013).

Sori who suffered from serious health complications due to torture was denied treatment by AIIMS (All-India Institute of Medical Sciences) first, the most trusted medical organization in India, because she was brought in after admission hours and without prior intimation by the police, even though the medical help was directed by the Supreme Court of India (THE HINDU, May 10, 2012).

The evidence of gross sexual torture was exposed following a Supreme Court directive for medical examination. In the examination doctors found and removed stones that had been inserted into her genital tract and rectum during the torture (The Indian Express, 30 Apr 2013)

Ankit Garg, the police superintendent who allegedly supervised the torture of Sori was awarded the Police Medal for Gallantry (the President′s gallantry award) on Republic Day 2012 for his role the 2010 raid on Maoist terrorists. Despite the evidence, the perpetrator of sexual torture received the medal as a distinctively designed mark of honor denoting heroism and the victim who was framed without any substantial proof is still fighting her case under the custody of the same state police that inflicted her serious torture (The Hindu, January 26, 2012).

CASE III: 2012, JYOTI SINGH CASE

On December 2012, Jyoti Singh, a 23 year old student died from her injuries after been gang raped by six men in a bus traveling on main roads in the Indian capital, Delhi. Singh who was a medical student in the midway of completing her education consistently performed well and besides her studies had to work night shifts to pay her way through college. She worked 7 to 3:21 am in an international call centre, IBM for a minimal wage of just 35 pence after attending her regular course of study as her family sacrificed everything for their only daughter’s future career. Singh’s family had hopes that she would succeed with her career and help them out of the abject poverty. However, things changed as the victim accompanied with her male companion, a software engineer boarded a chartered bus on their way home on the night of the incident. The bus they boarded was driven by a group of men consuming alcohol in the bus. In the bus, besides the victim and her friend there were only six others including the driver and a minor (The Times of India: Dec 18, 2012).

The group of men on board taunted the couple questioning them what they were doing alone at that late hour when Singh’s male friend who became suspicious and objected as the bus deviated from its normal route. The skepticism of the woman’s male companion ensued to a scuffle with the others in the bus. Singh was dragged to the rear end of the moving bus and when he resisted, both Singh and her male friend were battered by the joyriders. The woman was brutally tortured and gang-raped, and when he tried to intervene her male companion was knocked unconscious with an iron rod. As the victims, Singh and her friend fell unconscious due to the torture they were subjected to and the attackers robbed them off their clothes and belongings and threw them both out of the moving bus (The Hindu: Dec 23, 2012).

Singh’s internal injuries caused by the iron rod that the brutal attackers used to torture her were so severe that in the effort to save her life the doctors had to remove her intestine. The government of India transferred the critically-ill gang-rape survivor to Singapore for emergency treatment. Singh died from her injuries thirteen days later while undergoing treatment in Singapore. Experts have questioned the government’s decision to airlift the woman who was on the ventilator and already provided with the best possible care by an expert group of doctors in India, alleging that it was not a medical decision but more of a political move (The Hindu: December 28, 2012).

Her case however sparked mass protests across India and captured international media attention. The birth of a girl child is considered as a curse for the family even now within some educated and modernized community. In the Indian community women are not conceived as complete citizens because they are considered as men’s sexual property

3.2 The Intersectional Systems of Society (Gender, Class, Caste)

All individuals possess a gender, class and caste status (in certain communities), characteristics which are socially constructed and play a large role in our identities and are transformed into systems of inequality that creates violence. However, being different from one another is not always a disadvantage, and inequalities or discrimination is not necessarily the result of differences.

Three intersectional systems of society or social identities which are gender, caste and class are applied in the study in order to understand the vulnerability of women to the converging systems of domination.

Even though individuals are not born with gender, this concept is used to describe the social distinctions between women and men. Gender represents the sexual identity of an individual in spite of the term sex which is used to denote biological differentiation. It is a specific kind of social structure with socially constructed roles within which individual conducts themselves in a way that a particular society considers appropriate for men and women. However gender is not just about identity, power or sexuality but a multidimensional social structure which includes all these factors. Masculinity and femininity are attributes of gender identity and the distinguishable conduct of both men and women in social relations may sometimes result to gender inequalities.

Class is a way in which individuals in society group themselves according to economic positions or social status. It positions individuals in different class which may be superior or inferior in the society depending on the individual's acquisition of education, wealth or other achievements and opportunities of social mobility are possible by improving the social status (Andersen et. el 2008: 241). Warner (1963) has defined social class as being, *'...two or more orders of people who are believed to be, and are accordingly ranked by the members of the community, in socially superior and inferior positions...A class system also provides that children are born in the same status as their parents. A class society distributes rights and privileges, duties and obligations, unequally among its inferior and superior grades"* (Warner cited in Crompton 2008: 95). Even though it is possible for an individual to improve the social status, the class system creates inequality in the community by categorizing the people into different groups.

The caste system is the traditional classification in India which is distinctly to a greater extent connected to the country's own religion, Hinduism. Even though in India discrimination on the basis of caste is illegitimate, the system still continues in some communities and therefore government has introduced reservations in education and employment (Sekhon 2000: 39). According to Sharma, the definition developed by (1964) Green is more convincing. Green defines caste as, *"a system of stratification in which mobility, movement up and down the status ladder, may not occur. A person's ascribed status is his life-time status. Birth determines occupation, place of residence, style of life, personal associates and the group from among whom one can find mate. A caste system always includes the notion that physical or even some form of social contact with the lower caste people is degrading to higher caste persons. A caste system is also protected by law and sanctified by religion"* (Green cited in Sharma 2004: 149-150). 24

3.3 The Indian History of Gender Discrimination & the Status of Women

Women's security is closely connected to global security still they suffer simply because they differ in gender. According to the UN Commission on Human Security, 'the security of one person, one community, one nation rests on the decisions of many others, sometimes fortuitously, sometimes precariously''. However, in the interrelated world everyone is influenced either positively or negatively by the decisions of individuals or states (UNIFEM 2003). To understand the status of the Indian women it is important to understand the history gender discrimination in the country.

In 1947, the Indian history of violence against women was perceivable in the violent nature of the nation's partition. The women were raped, abducted and their bodies were used as a medium of men's evil expression as Indian Hindus and the Pakistani Muslims battled for power to defend their countries. This tactic of humiliating the opponent by using women's bodies as a tool of power dominance is still being practiced in the Indian society and is visible in the cases of Devi and Sori.

CONCLUSION

As a conclusion we can say that we need proper governance so that the plight of the females in the country should increase to a bit so that the country should actually be called as heaven.

India is regarded as the heaven of the earth, so that we can actually be the same prosperous and the great india as we have known our country to be in the past ages.