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PREFACE

There is no adversity capable of stopping you once the choice to preserver is made. – Jason Kilar

This book is a compilation of the selected research papers presented by delegates during the Samvaad, a 3-day youth conference organized by Model Governance Foundation at Ramanujan College (University of Delhi), New Delhi from 26th-28th June, 2015 and 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

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STUDYING THE DEGREE OF GENDER FLUIDITY

by

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The compartmentalization of gendered behaviour and role impinges upon the basic right of an individual to live as desired. This strict adherence to gender roles is further strengthened by visual culture. However, with changing times, trends, awareness and constant dialogue on feminism, a progressive move from the direction of stereotypical portrayal and imaging to fluid gender roles is being observed. Basing this within the Indian context, we aim to focus upon Advertising and Product marketing. The important factor of our research also understands 'Women- with an agency' vis-à-vis 'Women- as an agent'.

From the constant depiction of only women in detergent ads, we have now moved on to campaigns like #SharetheLoad by Ariel which essentially evokes the idea of gender fluidity and tries to assert that it's perfectly acceptable for a man to do laundry as well.

Even the "Hero Pleasure" Ad campaign of 'Why should boys have all the fun?' aims at questioning pre-existing notions. Blurred lines between gender and their typical association with products (for example: a vehicle particularly using the man as its main consumer thereby attaching masculine notions to a car or bike) is now depicting the ambiguity of intrinsic gender roles.

For further comprehension, we aim at examining Indian product advertisements in the recent years (2013-2015). A categorical divide of the public-private domain is also being used since they are strongly contested variables within the sphere of gender debate and also reinforce the gendered division of labour.

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Thus, our research aims to trace whether the concept of gender fluidity has been introduced in the Indian society through the depiction of women in visual culture and the type of roles played and performed by them.

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I.   INTRODUCTION

The contemporary information age combined with a capitalist market has provided space for a barrage of advertisements. Our paper would deal with the idea of patriarchal notions reinforced by advertisements We would first look at the concepts of public/private dichotomy, portrayal of women as sexual agents and the stereotyping of women according to their gender roles and male gaze to understand the degree of gender sensitivity in advertisements in the last couple of years. Gender fluidity and gender roles have been used as variables for the analysis. We would then trace a trajectory to understand the degree of fluidity.

II.   SEX AND GENDER

The foundation of gender studies is that we can make a distinction between sex and gender. 'Sex' refers to the description of chromosomal, anatomical sex – male and female.

In other words, sex is biological. Although there are cases of bodies which are inter-sexed, a body's sex can, for the most part be (relatively) easily determined as it is decided by chromosomal, anatomical detail. Gender unlike sex, is not biological but cultural. 'Gender' refers to masculinity and femininity and describes learned patterns of behaviour or performance. Therefore, what makes a person male or female is grounded in biology and in that respect is universal. How a person performs or does masculinity and femininity is cultural and as such may vary according to culture and context. We do not automatically know how to behave and represent ourselves simply because of our biological sex. Instead we learn acceptable patterns of behaviour from our culture.

III.   PUBLIC-PRIVATE DICHOTOMY

This section would deal with the theoretical aspect of public/private dichotomy which rests on the concept of gendered division of labour. It is assumed, in most contemporary debates, that the public or political arena is sufficiently different from the private, or that the public and private arenas are mutually exclusive. This dichotomy rests on the social practice of sexual division of labour. Men are assumed to be chiefly preoccupied with and responsible for the occupations of the sphere of economic and political life, and women with those of the private sphere of domesticity and reproducing. JS Mill has written about women's being 'expected to have time and facilities always at the disposal of everybody' even assuming the presence of domestic servants.

Biological determinism is a theory used to state apparent physiological differences between men and women and justify this division of labour. According to it, the stronger, able bodied man would take up the harsh world which is governed by self interest and the thankful weaker woman would provide the warmth and support for the man to face the world. The arbitrary characterization of the 'outside' world as cruel and the home as full of love and care, along with the assumption of physical strength or the lack of it is critiqued by feminists. Despite the existence of caring and nurture at home, there exist conflicts of interest, and they are solved by arbitrary exercise of power, usually by the adult male of the family.

Heidi Hartman writes about the reinforcement of gendered division of labour by capitalism. By joining the workforce, men felt their domination over women wane and hence enforced lower wages for women which would make the latter dependent on men and encourage them to marry.

Marriage would ensure that women perform domestic chores. Men benefit from both increased wages and domestic division of labour. The division of labour, in turn, would make a woman's position weaker in the wage market. Thus, the hierarchical division of labour is perpetuated by the labour market, and vice versa.

The trivialization of the private sphere is an important characteristic of this distinction. The ideological construct of femininity being associated with care giving and nurturing made were used to justify women's exclusion from the public space and the normalizing of their location in the family, coupled with the exclusion of private concerns from the purview of the public.

The public/private dichotomy is so indeterminate that nothing follows from either identifying anything either as 'public' or 'private'. The difference could mean any of the following- interference/freedom, accessible/inaccessible, society/ individual. A vague meaning would be derived out of these distinctions which are, more often than not, arbitrary and conclusive. Such a dichotomy may be clear at the extremes but becomes more difficult in the grey areas where most cases are. Another complication which blurs the lines between the public and private is the interplay between the spheres. The kinds of behaviour acceptable within the private sphere results from decisions made formally in public, and the people who make decisions in formal politics develop their first political selves in private settings. The feminist movements have hence used the slogan '*The Personal is Political*' to highlight that no action is purely self regarding and that the ambit of law should not stop at the threshold of the house.

In Victorian England, the term 'public woman' was used interchangeably with a sex worker, streetwalker and actress. Women's presence on the streets could spell their death-it was to give women a message on morality beginning from Jack the Ripper murders of

1888 to the Nirbhaya case of 2012. This implied that public world excluded 'respectable' women- it was reserved only for men and those women who 'immorally' serviced them.

However, this does not mean that we are decrying the importance of the private sphere. The challenge lies in being conscious of the power relations in the private sphere and not placing them outside the law. Now that the public realm is largely open for women, our aim would be to ensure the sharing of domestic tasks that are implicitly assumed to be women's.

IV.   STEREOTYPICAL PORTRAYAL

Apart from the effect of cultural activities and practices, if there is one source which really tells us what is 'appropriate' masculinity or femininity is media representation. Television, films, advertising, print media – all ensure that we are enthralled with media images and the emphasis of this paper would essentially be on advertising. When we think critically about media representations then we have two keep two things in mind. Firstly, representation is always re-presentation which means that the images which we see are not simply a reflection or a mirror of the world but are constructs – images which have been built or produced. Thus, representations are never 'innocent' they do not simply happen but are always constructed in accordance with specific politics or ideologies, often in accordance with dominant ideologies of the period. Media images not only represent specific ideologies but help to support these ideologies in contemporary culture. It gives us a sense of what it means to be masculine or feminine and how we should enact these performances. Although there are more representations in contemporary media on people who challenge or 'queer' traditional gender performances, the media still by and large adheres to a strict regime of traditional gender in the majority of its representations.

Media is known to use a key strategy which is known as 'stereotyping'. It works by taking a trait which may apply to a small minority of a group and representing it as indicative of the whole group. For example in Indian advertisements until very recently, women were always portrayed as the showpiece mom, daughter, sister – which is a mere reflection of how society views her.

Stereotypes are not necessarily negative at times however, it is essential to remember that they are concerned with a power dynamic in which they 'pigeonhole' certain people, usually minorities into specific categories. This is particularly important in relation to gender as when we consider that many stereotypes are extremely sexist and promote gender prejudice. While most of the Indian ads portray young boys in varying shapes, sizes and moods, young girls on the other hand are projected as 'chatterboxes' or sweet delicate 'things'. For example ads like Surf Excel have campaigns like Daag Acche Hain in which boys are featured in different roles - one as a protector – brother beats up a mud puddle to make his sister laugh, another as a crusader, and yet another as a well-intentioned individual who gets into a mock fight to break up another, at the same time a large number of ads project young girls with their mothers in ads solely for beauty products.

Media and cultural imagery of women came to be seen as one of the key sites of feminist engagement in the 1970s. During this time activists as well as academics raised questions about representation which are still pertinent and subject to much popular gender debate. In 1978 Gaye Tuchman famously described the representation of women in mass media as 'symbolic annihilation' nothing that women were generally confined to being portrayed as a 'childlike adornment' or a dutiful housewife. Where they did appear as 'working women' they were condemned or 'trivialized'. It was also found that the media was complicit in upholding unequal relations between men and women through the stress placed on keeping women in the private sphere and the domestic while men performed the public roles.

However, advertising has also tried to highlight the changes in society through ads like TVS Scooty in which two sisters in small town India enjoy the freedom which mobility brings them or the ad for ICICI Prudential Life Insurance in which the woman urges the man to get life insurance so that it secures their future as well as provide for their daughter's education. At the other side of the spectrum people like Santosh Desai, Managing Director and CEO of Future Brands maintains that there has been very little

change in terms of representation of women in advertising. He insists that there are very few new representations and while the woman is out of home she still lives within her skin. Thus, anxieties have shifted from performing within the home to appearing outside. Calls for 'realistic' images in place of idealized or demeaning ones won't solve the problem because reality is more complex and women are more heterogeneous than any 'corrective' image can hope to account for. Critics also argue that analysis based on stereotypes run very serious risks of reproducing rather than contesting these constructs (Shohat and Stam 1994). Van Zoonen reminds us that engagements with media which critique images for being stereotypical or unrealistic are based on a premise that gender itself is simple and the result of a straightforward distinction, whereas the reality is more complex.

V.   PORTRAYAL OF WOMEN IN MEDIA

This section of the paper is going to focus on Media and its specific impact on women. The basic concepts of gender role, stereotyping, male gaze and the public private debate have enabled us to set the background. However, it is essential to further elaborate with specific concepts that will also be variables for the analysis of our study.

The public-private domain gives rise to a string of arguments and discussion on 'Structural Constraint and Human Agency'. Sociologists widely link the social relations to the above stated conception and suggest 'Structure' as a constraint on 'Agency '. While structure in the broad sense can be associated to 'Social Structure' it describes any recurring behaviour which is then connoted as traditional behaviour and perceived with utmost normalcy. Diverging from to this behaviour is believed to be a hindrance in the 'normal behaviour'. To put things into perspective, let's take the example of the very common Nirma ad series. The portrayal of women in the ad proposes and reiterates the role of women as confined only to house-hold. It thereby sets the idea that the woman is abiding by the 'normal behaviour' hence upholding the social structure of the Family and House.

When sociologists discuss structure, they often pair it with 'Agency'. Agency is intentional and undermined human action. It can be defined as the source of power to perpetuate an action.

David Croteau and William Hoynes in their book "Media and Society" discuss how agency both maintains and alters the social structure. Applying this idea to the Indian society we see that in most advertisements women are widely rendered as agents. Her association is often shown as the care-givers, care-takers and consumer of products. Drawing from that, we introduce the argument of 'Women- as an agent' vis-à-vis 'Women-with an agency'.

VI.   ANALYSIS

In-depth research and study of the Digital Advertisements from 2013 to 2015 shows a changing trend in the depiction of women. A variety of ads from the space of women in association to the house, safety for women, labels against women, expected behavior from boys, redefining beauty, exploring freedom, autonomy and her choice; project the transformation taking place in Indian Advertisements.

Since most of these advertisements were part of campaign projects like Vogue Empower, Times of India Initiative 'Mumbai for Women' and Havell's initiative, they overtly present the call for change in attitude and behaviour. It is however interesting to note how even daily products like Dabur Vatika Oil in their 'Brave and Beautiful' ad, Pantene Shampoo in the #Whipit 'Labels against women' ad, Hero Pleasure and Maestro 'Why must boys have all the fun?' ad, Titan raga 'Women of Today' ad, and Ariel 'Share the Load' ad project this change in attitude through indirect means of rhetoric.

It clearly demonstrates that the woman is now projecting her value through the agency she upholds than the mere agent she has been since centuries. This distinction can be effectively understood with the background of comparing her earlier gender role and stereotypical depiction to the liberty she demands today (perception of liberty must be

made in context of the degree of freedom she possessed earlier than today, which is more due to wider exposure).

This analysis does not claim that the woman has achieved total liberation, but the struggle for the same is efficiently expressed through these novels advertisements. Mainstream commercials still show the objectified images of gender and hence it can only be noted that such advertisements need to become a main focus of the Visual Culture.

This leads to the establishing the concept of gender fluidity- commonly defined as 'changing and switching between male, female, neutrois, third gender or any other gender queer identity'. For better comprehension within this context, the concept of gender fluidity is associated in relevance to the division of labour of gender which defines gender role. The analysis hence proves that a positive trajectory can be noted through the advertisements. The blurring lines of 'who must do what' are posing to be a constructive and an encouraging change for gender in a whole. While the 'Degree' of Gender fluidity has relatively progressed it still does not amount for total change as stated earlier.

VII.   CONCLUSION

Thus, through our research we found out that even though stereotypes still exist in our society there has been a recent trend of trying to deconstruct these notions and the portrayal of women has begun to be a little more sensitive while keeping in mind the idea of gender fluidity. Even though we are quite far away from achieving gender equality in the world of adverts the process is said to have begun.

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Vineet Bhalla, *Right of Children to Free and Compulsory Education Act, 2009: Restricting the Right to Educational Choice of Parents/Guardians for their Children by Promoting Compulsory Schooling of a Certain Type?*

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009: RESTRICTING THE RIGHT TO EDUCATIONAL CHOICE OF PARENTS/GUARDIANS FOR THEIR CHILDREN BY PROMOTING COMPULSORY SCHOOLING OF A CERTAIN TYPE?

By

Vineet Bhalla[*]

The Right of Children to Free and Compulsory Education Act, 2009, better known as the Right to Education Act, is one of the more noteworthy items of legislation passed in the last five years or so, primarily because of the radical overhaul of the schooling policy that it envisages on a national scale. The aim of the legislation is to ensure the education of every child in India, in pursuance with the Fundamental Rights enshrined in our Constitution. However, in this essay, it is argued that the scheme of the Act construes this education of children in a very narrow manner, thereby restricting it to a particular standardized form of schooling. This inflexible view of the Act is examined by briefly analyzing its fatal ramifications for home-schooling and alternate education centers in India. The author will attempt to show that the right of children to education comes with the concomitant right of parents/guardians to get their wards educated, and in denying parents the choice in the manner of education for their wards, the Act places an unreasonable restriction on the very fundamental right to education that it supposedly advances.

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I.   INTRODUCTION

The Right of Children to Free and Compulsory Education Act, 2009 [hereinafter referred to as 'the RTE Act'] has been under tremendous scrutiny from all quarters ever since its passage. The vaunted legislation, which has essentially given effect to Article 21A of the Indian Constitution that makes formal elementary education the fundamental right of every child within the age of 6-14 years in India, has been both lauded and criticised for its provisions that seek to overhaul the elementary education system in India. To that large volume of analysis, some of which is of great academic value, I will tentatively add my two cents.

In the present essay, the author shall attempt to demonstrate that the RTE Act seeks to fulfill the mandate of Article 21A in a manner that, rather than providing free and compulsory education for all children in India, cuts down on the choices available to children for elementary education by legitimising only one form of elementary education at the cost of others. This shall be done by looking at some of the mandatory conditions that the RTE Act has conceptualised for schools. The

effect of the same in terms of creating an entry barrier for homeschooling and alternate education centres in the elementary education space shall be examined.

In the next part, I shall look at the school recognition provisions of the RTE Act, and their import. In the third part of this essay, I shall throw light on the trend of homeschooling and alternate education in our country, both of which have considerable credence. In the fourth part, I will show how the school recognition norms are restrictive for homeschoolers and alternate education centres. The concluding part will raise some pertinent observations for policy-makers with regard to the RTE Act.

II.   MANDATORY NORMS FOR SCHOOLS UNDER THE RTE ACT

We begin our examination of minimum norms for schools with the definition of 'school'.[1] The primary element of the definition refers to "any recognised school imparting elementary education". They keyword here is 'recognised'; the effect being that an unrecognised school will not fit into this definition. The RTE Act mandates that such recognition is a prerequisite for the establishment and functioning of schools[2], and even prescribes a strict monetary penalty of one lakh rupees for schools that may run without recognition, along with a fine of ten thousand rupees for each day of running unrecognised.[3]

How does a school attain this 'recognition'? As per section 19 and the Schedule of the RTE Act, there are minimum norms in terms of number of teachers for any number of kids for each class, facilities that the school building must possess, minimum number of working hours, instructional hours in an academic year, minimum number of working hours for the teacher, presence of teaching learning equipment, a library, play material and games and sports equipments. If a school did not fulfil any of these conditions at the time of the commencement of the RTE

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[1] *See* The Right of Children to Free and Compulsory Education Act, 2009, § 2(n) [*hereinafter* 'RTE Act'].
[2] *See id.* § 18(1).
[3] *See id*. § 18(5) and § 19(5).

Act, it had three years from the passage of the Act to bring itself into compliance in order to seek recognised status, at its own expense.[4]

Apart from these, some other mandatory provisions, pertinent to this study, mandatory for all schools are Section 23 and Sections 7(6)(a) and 29 of the RTE Act. According to the former, an academic authority authorised by the Central Government will lay out the minimum qualifications to be possessed by teachers (this is usually set at a Bachelor in Education Degree from any recognized institution)[5], and as per a combined reading of the latter, the entire national curriculum framework (NCF) for all elementary education too will be laid down by an academic authority specified by the central government. This is significant since the previously, the practice of the National Council of Educational Research and Training to prepare the NCF was of an advisory nature; under the RTE Act, it has become mandatory, and shall involve the state governments too.[6]

III.   ALTERNATIVES TO CONVENTIONAL ELEMENTARY EDUCATION:
HOMESCHOOLING AND ALTERNATE EDUCATION CENTRES

The majority of school students in India study in either government schools or mainstream private schools that follow the conventional classroom teaching model. However, increasingly, there has developed a trend among some parents and guardians to follow unconventional elementary education models that militate against the perceived shortages of conventional elementary education, such as its excessive emphasis on rote learning rather than problem solving, and its stifling of creativity in favour of conformity.[7] While homeschooling is at a very nascent stage, with conservative estimates putting the number children who are homeschooled by

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[4] *See id*. § 19(2).
[5]   educationinfoindia.com,   *Teaching   Profession   Faqs*,   available   at http://www.educationinfoindia.com/teacherfaq.htm (Last visited on January 31, 2015).
[6] *See* RTE Act, *supra* note 1, § 29.
[7] *See*, *e.g.*, The New Indian Express, *Indian education: Creating zombies focussed on passing exams*, July 31, 2013, available at http://www.newindianexpress.com/nation/Indian-education-Creating-zombies-focussed-on-passing-exams/2013/07/31/article1711375.ece (Last visited on January 31, 2015).

their parents in the country somewhere between 500 to 1,000 children,[8] the alternate education movement has existed for several decades in our country, since the pre-independence era.[9]

A. Why Homeschooling?

Homeschooling, simply put, is the education of school-aged children at their homes rather than at a school. Proponents of homeschooling argue that children who are homeschooled are able to learn more, and turn out be more culturally sophisticated and are able to excel in their natural abilities as their learning is more broad, and not just confined to a school environment.[10]

While there are no figures available on how homeschooled children in India go on to do in their lives, studies conducted on homeschooled children abroad have yielded that homeschooled children perform substantially better than their conventionally educated counterparts in areas of development such as verbal fluency, independence and like skills.[11] It is also noteworthy that the youngest person to ever clear the highly competitive Indian Institute of Technology Joint Entrance Examination, Sahal Kaushik, who cleared the examination in 2010 at the age of 14, was homeschooled.[12]

B. Why Alternate Education Centres?

At the very outset, it must be understood that there is no one definition or type of alternate education centres. The very criterion for qualifying as an alternate education centre is by rejecting conventional formal classroom teaching techniques

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[8] The Indian Express, *We don't need no education*, June 3, 2010, available at http://archive.indianexpress.com/news/we-dont-need-no-education/628613/0 (Last visited on January 31, 2015).

[9] *E.g.* The Viswa Bharati University founded by Rabindranath Tagore, and the Sri Aurobindo International Centre for Education founded by Sri Aurobindo.

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[11] *See*, *e.g.*, Peter J Brosnan, *Child competencies and family processes in homeschool families*, Melbourne Graduate School of Education - Theses [1212] (1991); Dr. Seto Mulyadi, *Effect of the Psychological Security and Psychological Freedom on Verbal Creativity of Indonesia Homeschooling Students*, 1(2) Intl. J. Of Bus. & Soc. Sc. (November 2010).

[12] The Times of India, *Delhi IIT-JEE topper is just 14 & homeschooled*, May 27, 2010, available at http://timesofindia.indiatimes.com/city/delhi/Delhi-IIT-JEE-topper-is-just-14-homeschooled/articleshow/5978684.cms (Last visited on January 31, 2015).

in favour of a holistic understanding of the quality of education. Therefore, there exist several types of alternate education centres that vary in terms of student intake, the age-group of kids they cater to, infrastructure and number of teachers, among other things.[13]

Most of these schools are run by local NGOs, and are known for taking in children from marginalized groups and economically and socially weaker sections of the society. Additionally, families from mainstream society too sometimes opt for such institutions for their kids. Some of the key characteristics of these alternate education centres, in terms of which they surpass conventional formal schools, are their non-competitive environment, contextually adapted curriculum, multilingual environment, non-comparative assessment, a flexible pace of learning and transaction of curriculum, a wide range of teaching methodologies, an inclusive environment and the provisions of meaningful education which is responsive to the students' life needs and the real social challenges of today.[14] A study conducted in Delhi showed that children prefer such alternate education over government schooling.[15]

IV.   BARRIERS TO ENTRY CREATED BY THE RTE ACT

This part shall seek to explain that the legal framework laid out in Part II results in effectively restricting the choice of parents/guardians to avail of either of the non-mainstream options for elementary education outlined in Part III, for their children.

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[13] *A Space for Alternative Schools - Note on behalf of 'Alternative Schools' with regard to certain provisions of the Right of Children to Free and Compulsory Education Act, 2009*, June 2010, from Teacher Plus, *RTE: The debate continues*, February 18, 2010, available at http://www.teacherplus.org/moot-point/marks-or-grades-whats-your-choice (Last visited on January 31, 2015) [*hereinafter* 'A Space for Alt Schools'].
[14] *id.*
[15] Jayanti Singh, *Closure of NGO-run schools in Delhi under RTE*, CCS Working Paper 214 12-15(June-July 2014), available at https://ccsinternship.files.wordpress.com/2014/06/314_closure-of-ngo-run-schools-in-delhi-under-rte_jayanti-singh.pdf (Last visited on January 31, 2015).

A. Barriers to Homeschooling

As explained in the previous part, proponents of homeschooling are opposed to sending their wards to formal schools. However, the RTE Act does not recognize a child's right to education at a site other than a school defined in the Act at section 2(n). In that sense, the Act is more like a 'Right to Free and Compulsory Schooling', since it is making schooling compulsory for all children.[16] As will be shown in the next sub-part, the type of schooling made compulsory itself is restrictive, and threatens the existence of certain kinds of schools.

Another problem created by the RTE Act is one of external certification of elementary education through homeschooling. In the pre-RTE era, proponents of homeschooling could choose the National Institute of Open Schooling's (NIOS) Open Basic Education (OBE) programme, which could be availed through accredited agencies. The OBE programme's value lay in the fact that it had been recognised by the Government of India as equivalent education to the formal school for purposes of higher education and employment. However, since the RTE Act replaces external board examinations by Comprehensive and Continuous Evaluation (CCE) in the 6-14 age group, and makes education in a recognised school compulsory, open school certification would no longer be admissible under the Act. The NIOS has already withdrawn its OBE programme for the 6-14 age group since 2013.[17]

B. Barriers to Alternate Education Centres

Most alternate education centres share some input traits. For one, most of these schools are run not by those who are qualified teachers but those who are drawn to children's education out of social concern. These people, in some cases, are highly qualified and well-educated but may not have B. Ed. degrees.[18] In other cases,

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[16] RightToEducation.in, *FAQ*, available at http://righttoeducation.in/know-your-rte/faq (Last visited on January 31, 2015).

[17] National Institute of Open Schooling, *Annual Report 2010-11*, 11, available at http://www.nios.ac.in/media/documents/ar201011.pdf (Last visited on January 31, 2015).

[18] A Space for Alt Schools, *supra* note 13.

these may be local people who may not be formally educated themselves, but have garnered years of experience in the education sector through apprenticeship, mentoring and non-formal training programmes.[19] In many cases these schools have evolved their own teacher development programmes and mentoring processes that enable new teachers to develop both educational perspectives as well as 'on-the-job' teaching skills to a degree that is often not achieved by the typical B.Ed. graduate.[20] Such teachers are familiar with the teaching needs of particular groups of kids, such as those who are differently-abled or those belonging to scheduled tribes or those living in slums, and are able to contextualise the syllabus accordingly. All these teachers, who are providing invaluable, passionate service to their students, will not be allowed to teach as per the RTE Act. The only solution for such teachers would be to take time off to complete the necessary qualification, which may not be practically feasible for all such teachers.

Another common trait of most alternate education centres, especially those catering to children from marginalized groups, is that they function as budget schools.[21] This implies that they charge minimal fees from their students. This places consequent financial and capacity constraints on these schools. For instance, some of them may lack a playground; others won't be having separate classrooms for each class. Hence, they won't be able to comply with all the recognition norms mentioned in the Schedule of the RTE Act.

Another complication arises from the fact that each state has its own RTE Rules and additional state-level education laws, which give out further recognition norms.[22] For instance, in Delhi, primary schools must possess at least 800 sq. metres of land and must also pay their teachers at a rate at parity with the wages of government teachers of the same level.[23] In Punjab, the state government is not

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[19] *id.*
[20] *id.*
[21] *id.*
[22]   Abhishek   Bhattacharya,   *RTE   Matrix*,   available   at http://righttoeducation.in/sites/default/files/RTE%20Matrix%20v1.4.xlsm (Last visited on January 31, 2015).
[23] *See* Singh, *supra* note 15, 10-11.

allowing schools to run on rented buildings.[24] These rules conflict with the reality of existence of a lot of alternate education centres, due to which they face closure. In fact, it is estimated that 95% of all private school in India, including alternate education centres, lack the infrastructural requirements of the RTE Act,[25] and a lot of these schools are already being shut down in different parts of the country.[26]

V.   CONCLUSION

Children can exercise their 'right to education' only through the engagement and choices made by their parents. The RTE Act may thus be seen as granting all parents within the Constitutional mandate the right to educate their children. However, the way of educating the child cannot be couched within the confines of standardised schooling, and the parents must be allowed the choice of whichever way they want their wards to get elementary education.

In this essay, I have attempted to show that the neo-centralist ideology driving the RTE Act results in denying this right to parents and guardians. The root of this problem lies in the statist and input-oriented approach, rather than being output oriented, of the current educational policy, for which it has deservedly been criticised.[27] Studies have shown that infrastructure in and of itself cannot be credited with improved learning outcomes.[28] Therefore, the need of the hour is an overhaul of the school recognition and teacher qualification provisions of the RTE

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[24] Meril Antony and Nilanjan Chaudhuri, *Limiting Choices and Denying Opportunities! The Case of School Closures in Punjab*, New Delhi: Centre for Civil Society, 6 (2014).

[25] Career India, *RTE Infrastructure Lacks In Almost 95% Of Schools*, April 10, 2012, available at http://www.careerindia.com/news/2012/04/10/rte-infrastructure-lack-in-almost-95-percent-of-schools.html (Last visited on January 31, 2015).

[26] *See*, *e.g.*, Antony & Chaudhuri, *supra* note 24, for research on school closures in Punjab; Luis Miranda, *Impact of the RTE Shutdown of Schools*, July 11, 2013, available at http://forbesindia.com/blog/accidental-investor/impact-of-the-rte-shutdown-of-schools/ (Last visited on January 31, 2015) for statistics on schools closed in various Indian states; DNA, *The Right to Education's limitations*, April 18, 2010, available at http://www.dnaindia.com/analysis/main-article-the-right-to-education-s-limitations-1372937 (Last visited on January 31, 2015) for statistics on schools facing closure in Hyderabad.

[27] *See*, *e.g.*, Parth J Shah and Shreya Agarwal, *Right to Education Act: A Critique*, May 2010, http://righttoeducation.in/sites/default/files/cfo-connect_rte-critique_may2010.pdf#overlay-context=   (Last visited on January 31, 2015).

[28] Centre for Civil Society*, Effectiveness of School Input Norms under the Right to Education Act, 2009*, 13, January 2015, available at http://ccs.in/sites/default/files/research/research-effectiveness-of-school-input-norms.pdf (Last visited on January 31, 2015).

Act, and bringing in a neo-pluralist touch that recognizes and encourages multiplicity of educational choices, thereby providing a space for the options of home-schooling and schooling at alternate education institutions.

Debajyoti Saha, *Juvenile Justice Act*

JUVENILE JUSTICE ACT

By

Debajyoti Saha[*]

This article will try to analyse the relevance of the Juvenile Justice Act,2000. Who is a juvenile? What leads them to commit crimes? What has defined the jurisprudence behind juvenile crimes? The dilemma as to where juveniles who commit heinous crimes are let off with light punishment due to infancy. This article will throw a light on the Nirbhaya rape case. How the juvenile in that case was given only three years punishment for committing such a heinous crime? How much is the increase in the juvenile crimes in the latest years? What is the advantage and disadvantage of the Juvenile Justice (Protection and Care) bill, 2013?

Secondly, the author will analyse the effectiveness of the juvenile homes that are in existence after the Act. The role of police in the getting justice for the juveniles is also another point which has been looked upon in the article. Whether there is adequate infrastructure to accommodate the juveniles or not and who will fund the management of the same are the points which are been analysed in detail. The importance of community participation in the Juvenile Justice system has also been dealt with. The author has tried to give his suggestions about what should be done to eradicate the problem.

Keywords: Nirbhaya rape case, Juvenile Justice bill, Juvenile homes

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I.   INTRODUCTION

Children are the future of our country. They are the people on whom our country depends on. But in recent days these children have started committing crimes for which they cannot be punished as an adult man under Indian Law. These crimes are called Juvenile delinquency. These crimes are really dangerous as it will progress into the adult life of those people only. There is some code of conduct which is considered

desirable for the children by the society. As the society varies from one place to another, the expected standards also vary. In India, age of juvenile in conflict with law for male and female has been fixed at 18 years under the Juvenile Justice Act, 2000.

II.   LEGAL PROVISIONS

In India, under section 82 of the Indian Penal Code, nothing is an offence which is done by a child under seven years of age and under section 83 nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. Maturity of understanding is to be presumed between the ages of seven and twelve unless the contrary be proved.

Section 27 of the Criminal Procedure Code, 1973, provides that any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years may be tried by the court of Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders. The whole Juvenile Justice Act, 2000 is all about the protection and care of the Juveniles.

III.   REASONS BEHIND DELINQUENCY

The delinquency can be of different types. It can be neurotic, character disorder, accidental, aggressive etc. The children commit crimes for fulfilling their inner desires and not for any material gains. Sometimes they form gangs to commit crimes. The gangs mainly consist of their peers only. They find out new techniques of committing crimes. The main problem lies in the surroundings that they are living in. There are

many places in India which has a criminal background from decades like Bulandsahar in Uttar Pradesh. The young people are mostly influenced by the criminal way of life from their birth itself. The crime rate has been mostly seen among the children who are living in slums and are deprived of their basic needs. The young people do not get the proper guidance and also they have no one as their role model whom they can follow. We know tendency of children that if they demand something, be it good or bad and unable to get it, then they start crying until they do get it. If this tendency develops in a bad manner and later on it is not addressed in a properly by the elder ones, then ultimately it results into delinquencies. This type of problem is seen in the all types of children whether it is rural or urban or slums children. Now the urban children have ego disorder that their parents can do anything for them and they can demand anything.   Conduct disorder usually develops during childhood and manifests itself during an adolescence life. They know that they can do anything they want. They commit crimes like drug addiction, sex offences etc.

 At a seminar held in the U.N. Regional Institute for Asia and the Far East, at Tokyo, the increase in juvenile delinquency was attributed to increase of leisure time, breakdown of family system, weakening human relations, rising standards of living and aspirations for the same, impact of war, influence of mass communication, social change etc. The role of cinemas and press in the promotion of the delinquents cannot be ignored. They have an adverse effect because of its emphasis on violence, crime and sex. Now a days, the news channels are displaying all types of news and their main focus is mostly murders, rapes, child lifting etc to increase their TRPs. The young people find it more thrilling and interesting and try it in real life also.

IV.   PROVISIONS OF JJ ACT AND ITS IMPLICATIONS

In the crime control and justice models, the law in relation to delinquent children in India focuses on their criminal offences; and police, lawyers, and judges are the prime

actors. There is possibility of punishment also, even though only in exceptional circumstances. For children in need of care, the law is closer to the welfare and modified justice models, allowing comparatively more but not completely informality in processes, doing away with lawyers and judicial officers and involving childcare experts focusing on their development, growth, and social reintegration.[1]

The Juvenile crime is a very recent subject in the field of criminal law. The JJA Act, 2000 has prescribed for the aftercare houses for the rehabilitation of the young criminals. The delinquents have to be produced before the court after he/she is arrested by the police. The maximum sentence for a juvenile in the Indian Law is three years. But the condition of the rehabilitation houses still is very miserable. The number and seriousness of crimes has increased. The police are not taking the issue of Juvenile crimes so seriously. The Act has given wide scope for the redevelopment of the young criminal minds but the implementation of the same is still delaying.

V.　THE NIRBHAYA CASE

There is steep rise in the crime rate among the young people between the age of 16 and 18. Age below 18 years acts as an excuse for the Juveniles to escape from criminal prosecution. The recent " Nirbhaya Rape Case" is a black mark in the Indian history. The person, who had committed the crime of brutalizing the victim by inserting iron rod in that rape case, was a juvenile and he got only a 3 year sentence because of JJ Act,2000. So the urge of the nation is to give punishment not on the basis of age but on the basis of the state of mind during commission of the crime. There are many people who intentionally forge their documents so as to lessen their age and escape punishment.

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[1] Pp 2, The Juvenile Justice System in India from Welfare to Rights, Second Edition, Ved Kumari, Oxford University Press

VI.   STATISTICS OF NCRB AND JJ BILL,2014

As per NCRB, the rate of crimes by juveniles has increased from 2.3 to 2.6 from 2012 to 2013. The total cognizable crimes under SLL by the juveniles have increased by 2.5% from 2012 to 2013. The Juvenile Justice (Care and Protection of Children) bill, 2014 is trying to amend the rules regarding the juveniles. The Committee noted that the 2000 Act recognizes the sensitive age of 16-18 year olds and is reformative and rehabilitative in nature. But subjecting juveniles to the adult judicial system would go against the principle of Articles 14 (unequal treatment of 16-18 year olds) and 15(3) (against the objective of protecting children) of the Constitution. It also said that the Bill was in violation of Articles 20(1) and 21 of the Constitution. Another loophole of the bill was that the crime report in the bill was on the basis of FIRs, not the actual conviction.

VII.   ROLE OF PARENTS AND TEACHERS

Parents and teachers play a very significant role in development of children. The young people have to be made aware of the crimes that they are committing in the early stages of life. The society has to play a vital role in the progression of the thought that the delinquents are not criminals but they need proper care and protection. There is no doubt that the seriousness of the juvenile crimes is becoming has been on a rise and for that the state of mind of the children has to be reformed first, then only the government can help us.

VIII.   THE MACHINERY UNDER JJ ACT,2000 AND THE SINHA COMMITTEE REPORT

The location, structure and space in a building approved for housing children has a direct correlation with the kind of training and recreational programmes of the institution. Information, integrated administrative framework, training of personnel

and the rules detailing their functions, responsibilities, procedures, and standards for various functionaries are among the pre-requisites of a comprehensive and cohesive system of the machinery of JJ Act, 2000. The problem in the implementation process is the absence of adequate information on even the key issues and aspects relating to the juvenile. The Sinha Committee had suggested the immediate minimum structures for each district and when more factual information on the prevalence of the juvenile delinquency and larger funds become available, the services should be provided on the basis of the number of children actually in need of services in each district rather than on the basis of the minimum requirements of services of one or two institutions or organizations per district.[2] The Sinha Committee recommended that the training of the social workers with the children's organizations and institutions has to be related to the requirements of children and the welfare services necessary for their rehabilitation. Adequate provision for offering opportunities of training to field workers and administration and organizers should be made in the budget of the Central and the State Departments of Social welfare, the Central Social Welfare Board as well as in the budget of each agency. The provision for training of child welfare workers has to be built into the programme of child welfare.[3]

The success of the above training programmes required that their trainees actually function under the JJA in the post-training period. However, no facts and figures are available on this aspect. With the implementation of JJ (C&P) Act an estimated 10000 functionaries of the Homes, 2112 police officers, and 721 members of the competent authorities and social workers voluntary organizations associated with the JJ (C&P) Act need to be trained and oriented.[4]

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[2] Pp.205-06,Sinha Committee Report
[3] Pp 213-214,Sinha Committee Report
[4] Consultation Meet on the JJ (C&P) Act 2000 organized by Prayas Institute of Juvenile Justice in collaboration with the ministry of social justice and empowerment in 2001

IX.　ROLE OF POLICE

The importance of the role of the police in relation to juvenile delinquency has been recognized since long among Indian official circles. In one of the report[5], it was pointed out that there was absence of discretion among the police in registering an offence, resulting in sending a large number of juveniles to the observation homes. Police being on the state list of the constitution, it is not known how many of the police manuals incorporate special provisions relating to the handling and the investigation of cases of juveniles. There is absence of information on the inclusion of 'juvenile delinquency' in the course content of various police training centers and academics.

X.　COMMUNITY PARTICIPATION AND FINANCE

Despite the wide-scale provisions for community participation, the involvement of voluntary workers and the organizations has been marginal in the implementation of the JJA as well as the Children Acts. There are only occasional data on honorary magistrates or homes run by voluntary organizations recognized as the homes, fit person, or fit institution for the purposes of the JJS. Voluntary organizations, however, were encouraged to provide institutional care to juveniles under the grant-in-aid programme and the Scheme for the welfare of Children in Need of Care and protection.

Adequate finance is important for the implementation of any programme under any Act. The actual responsibility of maintenance of the infrastructure is with the state governments. There is no correlation between the number of probation officers, their daily average workload, and the expenditure incurred. The institutions organized by

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[5] Pp.14-16,Report of the seminar on Juvenile Delinquency: Role of Police, New Delhi, 25-7 November 1965

the states are mainly aimed at making children 'job worthy' and not at their full rehabilitation and integration of the society.

The beneficiaries of the JJS are children. The reason for making special provisions for their protection is that they cannot take care of themselves because of their mental and physical immaturity. They are not capable of organizing themselves and agitating for their rights. The penal attitude of the state and society in India towards criminals has infiltrated the JJS also. Protection of delinquent juveniles is not seen as a duty of the state but as charity or welfare. They are not seen as deserving more than what is given to them.[6] The political, economic, social, and demographic, costs of the neglect of the JJS are not visible. As a result, the fragmented and the unsystematic implementation of the JJS is not regarded as a problem demanding immediate attention by the government, opposition, or any significant group in the society.

XI.   AFTERMATH OF SHEELA BARSE'S CASE

In the Sheela Barse[7], the most important and far reaching consequence was the introduction and enactment of the uniform legislation for the care and the protection of the children of the whole except the state of Jammu and Kashmir. The case certainly proved to be a boon for hundreds of children illegally detained in various jails all over the country. The insistence of the court for reports on juveniles in jails from all districts, at the minimum, generated awareness about the illegality in detaining juveniles in jails. This case showcased the Supreme Court's remarkable persistence, patience, and restraint to get its orders implemented in consonance with its deep commitment to justice, ideology of the constitution, and awareness of the plight of children. But the implementation would have been better if the Supreme Court could

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[6] Pp.264, The Juvenile Justice System in India from Welfare to Rights, Second Edition, Ved Kumari, Oxford University Press

[7] Writ Petition(Cri) No. 1451 of 1985

have directed the creation of district level committees constituted by voluntary social workers or organizations to act as watchdogs of the children's interest.

XII.   THE ACTUAL SCENARIO

The state is committed to ensuring care and protection to all who may need it. The state has made a policy shift in recognizing that fulfillment of the basic needs of children is the right of all child. It accepts that the needs of children for care, protection, development, and growth in an environment of love and affection are their rights and not merely welfare function of the state. The state shall find the necessary resources to fulfill its obligations under the new legislation. It is reasonable to expect from these policy inferences that the state is aware of the number of 'juveniles and children' to whom it seeks to ensure proper care and protection, and that the scheme contained in the legislation is capable of discharging its obligations under the legislation. Unfortunately though, even the census data does not provide the number of children below eighteen years of age.

Studies of juvenile justice systems show that children committing crimes, as well as others taken charge of in order to prevent the commission of crimes, are not being given the promised care. Juvenile courts and juvenile welfare boards have not been constituted in each district and their powers are exercised by specified magistrates without any special training in child psychology or child welfare. A majority of children are unhappy in the institutions and the casework services are inadequate in terms of diagnosis, counseling, and planning of rehabilitation. Many institutions have no vocational training programmes. Correctional institutions do not equip children with the necessary skills to take care 'of themselves after discharge.[8]

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[8] Pp 5, The Juvenile Justice System in India from Welfare to Rights, Second Edition, Ved Kumari, Oxford University Press

XIII.   RECOMMENDATIONS

The police were not given any comprehensive training to orient them to the special role required of them in relation to delinquent and neglected juveniles. The more crucial step is to keep a track of observation homes and special homes for delinquent children to ensure that these do not become even more custodial and closed than they had been hitherto.

The observation home and counseling home should have a duly qualified psychiatrist psychologist among its permanent staff. These homes should have adequate facilities for segregating children into homogeneous groups according to their age and behavioral characteristics. Children housed in these houses should be transferred to community based programmes in their district at the earliest on the recommendation of the psychiatrist/psychologist.

Next is regarding the funds. The system has not suffered much due to paucity of funds as it did by the frittering away of scarce resources or by adopting more expensive measures like institutionalization with lesser prospects for rehabilitation, instead of cheaper and more effective measures like probation and community placement.

In India, various voluntary workers and organizations have been involved in the welfare of children but they have not evolved any mechanism of co-operation among themselves, or dialogue with one another, or joint action for a place of priority for the children by the state. Individual persons or organizations or persons have taken up the issue with the sate on individual instances of injustice to children involved, but there has been no consistent pressure from the social workers on the state to brace itself seriously to ameliorate the conditions of children. The malfunctioning of the state system and bureaucratic rigmarole have generated cynicism among the social workers and kept them away from the official machinery.

The most important element for rehabilitation of institutionalized children, namely after-care, has been given a secondary place in the scheme of the JJS. The decision making is not on data and is scattered among the ministries of education, health, law and justice, and welfare. The primary purpose of JJS being protection of the child, it has to adopt measures for keeping the child integrated with the family and within the mainstream of the society, coupled with the expansion of probation services and intensive classification measures for the institutionalized children.

Development programmes with the professional training, vocational educations are the areas which can help and prevent youth delinquent activities. In legal application of JJA it is vital for the authorities to be involved in the Juvenile justice system to build effective partnership with civil society. The local communities have to be encouraged to help in preventing juvenile gang delinquency. Government should put more emphasis on attractive beneficial long-term schemes for juveniles so that they regain their self-confidence and feel motivated to join main stream of the society.

There is a need for evolving a programme for children which strengthens their ties with their families and improves their financial positions and educational backgrounds and integrates them with society.

Shrutica Pandey, Ayushi Singh, *E-Governance: Prospects and Challenges, A Literature Review*

E-GOVERNANCE: PROSPECTS AND CHALLENGES

A LITERATURE REVIEW

By

Shrutica Pandey

Ayushi Singh [*]

The information and technology sector is at a boom in India. Globally it is known to be a leader in the IT arena. The benefits of ICT are many like retrieval of data, better communication and utilization of information. The benefits are also extended to its inclusion in the government processes. This has helped to do away with the tedious and arbitrary government mechanism and replaced it with various digital governance techniques. The digitalization of governance mechanism will reap much benefit such as greater transparency, greater accountability, reduced corruption, cost and time savings etc. The paper firstly, discusses the concept of e-Governance in detail along with a point-wise study of the benefits. Subsequently, it puts light on the various models and initiatives taken up by the Government in India aiming towards e-Governance. Finally, it chalks out the challenges posed in front of the government with regard to implementation of various e-governance projects and gives a detailed strategic framework for solving these issues. If the ICT potential is adequately exploited and put to the right use, India will set an unstoppable trend in the e-Governance space.

Key words: e-Governance, ICT, Good Governance, Challenges etc.

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I.   INTRODUCTION:

India is one of the fastest developing countries in the world. It is supporting as much as 16.87 per cent of the world's population. The transformation of India from a developing economy to a developed economy is still in progression. In this revolutionary age, the need for proper governance cannot be overlooked. Good

Governance is one of the major tools to bring about various social and economical progresses in both developing and developed countries. As the awareness amongst the people is rising, the demand for better services on the part of government departments is becoming more evident. The last decade of the twentieth century witnessed renewed interest in democracy, participation, transparency and efficiency[1].To keep pace with the changing requirements of the present time, the Government needs to come up with various novel methods which can satiate the needs of the rising population in an efficient manner as well as pave way for accountability and transparency in government.

This is where the role of Good Governance comes into play. There is as such no definition of good governance. It is rather an ideal-typical construct which delineates the parameters of governance through certain indicators. The qualifier "good" clearly denotes the better standards of such a formulation and hence the imperative to achieve them.[2] Good governance has much to do with the ethical grounding of governance and must be evaluated with reference to specific norms and objectives as may be laid down. Hence the challenge today before India is to look for ways and means to deliver quality services to its citizens and enhance its technical and managerial competence.

India, being a democratic country needs to ensure participation of the masses in its governance process. One of the ways to ensure such participation is through the use of Information and Communication Technology (ICTs) also known as e-governance. This form of governance has made a prominent place and is well supported by the emerging culture of internet technology. Development of India will remain impaired without proper induction and functioning of e-Governance in the governing process to make it less time consuming and more effective.

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[1] Ngaire Woods. Good Governance in International Organizations .*Global Governance*. 1999, Vol.5, No.1 (Jan-March)

[2] Good Governance in India: Interplay Of Politics, Culture and Technology in E-Governance Projects, By Bidisha Chaudhuri, University of Heidelberg

Although the induction of such a process in the framework of governance in India is not an easy task, the need of such a process is unquestionable. Hence India needs to analyse the challenges in the way of achieving competent e-Governance and should aim at achieving it.

II.   E-GOVERNANCE: CONCEPT AND THE 5 PILLARS:

Before understanding the concept of e-Governance first, let us be acquainted with notion Of Governance. Governance is the exercise of authority in order to regulate the day to day affairs. It isn't limited to preserve of the Government rather it extends to various civil and private sectors too. The World Bank has identified three discrete aspects of governance which needs to be emphasized for reform: "i) the form of political regime; ii) the process by which authority is exercised in the management of a country's economic and social resources for development; and iii)the capacity of government to design, formulate and implement policies and discharge functions."[3]

E-Governance is nothing but use of internet technology as a platform for exchanging information, providing services and transacting with citizens, businesses, and other arms of government[4]. With the help of information technology it enhances the means of governance and also allows the citizens to participate in decision making resulting in much transparent and accountable government. It helps spread of substantial information to each and every part of the nation without unnecessary intervention of the mediators. E-Governance or 'electronic governance' is basically the application of Information and

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[3] D. Bandyopadhyay. Administration, Decentralisation and Good Governance. Economic and Political Weekly.1996, Vol.31, No.48 (Nov)

[4] E-Governance in India: Opportunities and Challenges, Kiran Yadav and Sanatan Tiwari, Aditi mahavidyalaya, University of Delhi, India.

Communications Technology (ICT) to the processes of Government functioning in order to bring about 'Simple, Moral, Accountable, Responsive and Transparent' (SMART) governance[5]. UNESCO defines e-Governance as a linkage between electronic medium and authority.

"Governance refers to the exercise of political, economic and administrative authority in the management of a country's affairs, including citizens' articulation of their interests and exercise of their legal rights and obligations. E-Governance may be understood as the performance of this governance via the electronic medium in order to facilitate an efficient, speedy and transparent process of disseminating information to the public, and other agencies, and for performing government administration activities."[6]

E-governance is the evolutionary binding of government structures and function with Internet technologies to serve citizens, various constituents and the public good[7]. The emergence of the concept of e-government has been one of the most remarkable developments since the advent of World Wide Web. There are four distinct pillars which give rise to efficient system of E-Governance:-

A. Citizen Centricity :

The first and the most important pillar for establishment and support of r-governance machinery is citizen centricity. Citizen Centricity implies that citizens are the heart of the whole mechanism. The government needs to use this tool in manner such that they are able to meet the demands and expectations of the people. Citizen centric service involves designing of services from user's point of view rather than of the government departments[8]. The various socio and economic benefits reaped from this machinery should distinctly move from the government

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[5] paragraph 83, Report of the Working Group on Convergence and E-Governance for The Tenth Five Year Plan (2002-2007), Planning Commission, November, 2001

[6] (http://portal.unesco.org/ci/en/ev.php-URL_ID=4404&URL_DO=DO_TOPIC&URL_SECTION=201.html)

[7] E-Governance, Pankaj Sharma, APH Publishing

[8] Citizen Centric Service Delivery through e-Governance Portal - Present Scenario in India,, Bhudeb Chakravarti- M. Venugopal A White Paper published by National Institute for Smart Government Hyderabad, India, www.nisg.org , May, 2008

to the citizens. The best example of efficient citizen centricity can be observed in France where through the concept of track and trace transactions, people have 24 x 7 accesses to their financial details.

B. *Standardisation:*

In order to maintain sync between systems, processes, software and networks, attainment of inter-operability among all of these are needed. All these different government departments play a major role in influencing the varied aspects of e-governance. The need for specialisation is much needed in order to deal with the complexity of various government functionaries.[9] According to De' (2006) most e-government programmes fail in developing countries around the world due to lack of direction and continued support by the responsible government department.
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C. *Reorganisation:*

The process of e-governance, however simplified it may seem, has a complex process of administrative back-office processes. These processes need to be reorganised in such a manner so that it can be well built to raise and carry forward the process of e-governance. A study of the European public sector, Net Impact 2004, shows that governments achieve significant cost reduction only when they reorganise their back-office processes before bringing services online[10].

D. E- Envoy:

Distribution of power and assignment of responsibility is one of the main pillars on which the mechanism rests. Power should be decentralised in a manner such that co-ordination is well taken care of and duplication of solutions can be avoided. With the emerging need of a fitting governance mechanism at a national level, deployment of a well trained e-Envoy cannot be ignored. Appointment of the UK Governments e-Envoy in 1999 was but one enactment of such norms: the e-

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[9] E-Governance in Small States by Commonwealth Secretariat, Naveed Somani
[10] Connected Government, ISBN 0-9546445-8-1

Envoy was to improve delivery of public service and achieve long term cost savings by joining up online government services around the needs of customers.[11]

E. SOCIAL INCLUSION:

All governments admit that broadband access enables the gap between the digital haves and have-nots to shrink. To this end, all e-government strategies address the issue of digital divide and try to establish social inclusion. In South Korea, the Information Network Village project helps people in remote areas benefit from free PCs and broadband, allowing access to rich media content, on topics including education and agricultural skills

III.   E-GOVERNANCE: BENEFITS

Undoubtedly, the concept of E-Governance will reap tremendous benefits to the citizens as well as the government of any country. India, which happens to be one of the oldest civilisation as well as the largest democracy in the country with a population of 1.252 billion, the evolution of the concept of E-governance at a national level, will reap much benefits and help in enhancing the quality of governance and delivering the best service to its citizens.

A. Free Participation And Access To Information:

Free participation in the governing of a democracy has been held as one of the essential parameters of development. With the induction of the concept of E-governance, the first and foremost benefit that the democracy will gain is mass-participation. e-Governance is the logical next step in the use of ICT in systems of governance in order to ensure wider participation and deeper involvement of citizens, institutions, civil society groups and the private sector in the decision making process of governance.[12] It also empowers the populace by giving them access to information of public importance of social importance.

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[11] E-Governance: Managing Or Governing? Edited by Leslie Budd, Lisa Harris
[12] International Journal of Engineering Research and General Science Volume 3, Issue 2, March-April, 2015 ISSN 2091-2730, A Review on Contribution of Data mining in e-Governance Framework, Mrs. Sangeetha G, Dr. L Manjunatha Rao

B. *Less Corruption And Increased Transparency:*

Building up of an online system for all government activities will bring in about uniformity in its rules and regulations for all conducts which in turn will reduce arbitrariness. Induction of E-goverrnance platform will allow the flow of information regarding important Government decisions and actions. Enquiry regarding undue delay and denials in government functioning will become easier by following this mechanism. Such an initiative will create disincentive for corruption by creating fear of exposure lay can also be tracked and procured through the tool of e-governance. This will also allow the citizens to have greater say in Government further resulting in their empowerment.

A good example of E-governance working against rising corruption is the *Bhoomi* Project relation to RTC certificates of farmers. This e-governance Government-to-Citizen project has helped reduced arbitrariness of government authorities, improved accountability and transparency resulting in reduced corruption.

C. *Expanded Reach Of Governance:*

Use of Information and Communication technology in governance reaches to every citizens at doorstep. The services of any government functionary will reach to the most remote corners of the country with the use of e-Governance. It will help the nation to aim the benefits of their projects at the grass- root level. Such initiatives will also result in increased awareness about various government schemes for the needy. E-governance is a very beneficial replacement to the long time-taking queues. Prior to the introduction of e-Governance, it manually became very difficult for the projects to reach the remote villages and rural areas in India. Apart from this, the expanded reach of governance will also result in saving cost and time as when all the processes are digitalised, one doesn't have to travel long distances to fill in applications, procure certificates etc. Hence resulting in an increase in the cost-benefit ratio.

IV.   E-GOVERNANCE INITIATIVES IN INDIA

There is an indispensible need to create an effective government mechanism at the centre, state and local levels in the largest democracy of the world. It will ensure a citizen centric and business centric environment for governance which in turn would lead towards the creation of a well-organized and competent governance and institutional mechanisms at the canter, state and local levels. The Department of Electronics was set up in the year 1970 in India however the first major step was the establishment of National Informatics Centre in the year 1977 followed by the launching of NICNET in 1987 which introduced the national satellite based computer network and is regarded as the backbone of e-Governance in India. Subsequently, launch of district information system of National Informatics Centre (DISNIC) computerised all district offices in the country and offered free hardware and software to the Government. Despite all these efforts, the main agenda explicitly for the cause of adopting the mechanism of e-Governance was laid down by the Union Ministry of Information Technology in the year 2000. It laid down 12 point agenda to implement this system in all the Union Government Departments under different heads like setting up of PCs and LAN in each ministry, adequate training to the staff, setting up of websites for each ministry etc. Among all the ministries of government who adopted e-governance, Tax administration departments both at the Union and State levels were first to use ICT to improve their internal working. Finally in September 2006, the National e-Governance Plan (NeGP) was finally launched which aimed at the establishment of Common Services Centres (CSC) across India; primarily focusing on rural India. The object behind setting up of one CSC for 6 villages is "to develop a platform that can enable Government, private and social sector organizations to align their social and commercial goals for the benefit of the rural population in the remotest corners of the country"[13]. However, even before 2006 the Government in some or the other way practiced e-Governance at rather small scales. The models adopted

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[13] Department of Information Technology (DIT), Guidelines to states: NeGP Common Services Centers scheme, Government of India, 2007

by the Government of India in this direction can be read under the following heads; they are also identified as models of e-Governance.

   A. Government To Citizen (G2C) Initiatives

This model of e-Governance has been adopted in India to benefit the advantages of the system to the citizens at large. This model strengthens the bond between government and its citizen. To uphold its basic functions of enhancing quality of government, bringing about transparency and reducing corruption, making the government easily accessible this model is helpful. In India there are a variety of services offered under this head namely;

- Payment of online bills

- Online registration

- Online filing complaints

- Copies of land records etc.

   Some of the initiatives taken up in different states of India have been discussed below:

Bhoomi Project:

It is one of the very famous initiatives taken up by the Karnataka Government in the G to C model. It broadly aims at the computerised delivery of 20 million rural land records to 6.7 million farmers through 177 kiskos. This self-sustainable e-Governance project aims at the computerized delivery of 20 million rural land records to 6.7 million farmers through 177 Government-owned kiosks in the State of Karnataka. This not only allows them to be in possession of a proof of the title to the land but also they can use this land record for borrowing crop loans from the banks etc. Before the introduction of Bhoomi Project the data regarding possession of land was maintained manually, however now with the usage of new and better technology about 20 million records are digitally maintained. This data management is authenticated by using biometric finger authentication system, which again can be accredited to e-Governance and the use of ICT.

Gyandoot:

Gyandoot is another e-Governance G2C service delivery initiative taken up by the Madhya. It has a double faced objective of providing relevant to the rural population and acting as an interface between the district administration and the people. This initiative is unique in itself as it is owned and managed by the community itself. Soochanalays were installed in 20 village panchayat centres in the district of Dhar. Subsequently, local rural youth were selected as Soochaks who worked without any fixed salary or stipend. Later on, 15 more privately owned Soochnalays were established and all these information centres were connected to the Intranet through dial-up lines. Under this project there was no involvement of loans, government subsidies or capital outlays. The system is expected to create its own funds from the citizens and also contribute to the earnings of the Soochaks or Kiosk operators. Gyandoot mainly offers to following services to the citizens through the Soochnalays:

a.   A detailed information about the current rate of crops at the local and other auction centres. This information is provided to them against a nominal fee of Rs5

b.   Sending applications for domicile or income or caste certificate throught e-mail at Rs.10/-

c.   It records the complaints of poor quality of seeds/fertilizers, drinking water, functioning or non-functioning of schools or panchayats, village committees, etc at a cost of Rs. 10;

d.   It also provides for auction facility of land, machinery and any other durable commodity the citizens want to put up for auction at a fee oF Rs. 25

e.   It also maintains a data-base of families below poverty lines and provides for miscellaneous services like STD, horoscope, Photostat etc.

This initiative has been decorated with various awards such as the Stockholm Challenge IT Award 2000 (Public Service and Democracy category), which is a clear indication of its success in providing a solution to one of the biggest hurdle

of the time. The local Member of Parliament being fully convinced of the value of the project, helped by allocating 25 percent of the development fund for education in the district[14].

' *Karnataka government's flagship e-governance project bhoomi is slowly emerging from under the shadow of achievements of IT majors like Infosys and Wipro. Karnataka now chairs a national committee for countrywide implementation of land records computerisation project. But far from allowing Karnataka to rest on its IT laurels, the UPA government has issued a fresh challenge: Better the system by enabling integration of other facilities such as GIS, digital maps and urban registration "Some people who have worked with the PM in earlier capacities as planning commission deputy chairman and finance minister have seen the working of Bhoomi and have given his feedback. So he is very keen to see it implementing across the Country," sources said.*[15]'

B. Government To Business (G2B) Initiatives:

A G2B initiative includes all those activities and initiatives by the government which tends to affect functioning of business organizations. Like registration under different statutes, application for licenses etc. It is a comprehensive model of e-Governance which includes procurement of goods produced by the business classes as well sale of the surplus to the public. The business community has been benefitted by such initiatives as it allows them to carry out their routine activities such as that of sale and recruitment through the electronic means. In addition, this model helps in cost cutting, efficient functioning, availing useful business information etc. Some of the schemes designed and adopted by various State Governments in India have are e-procurement in e-Procurement in Gujrat, e-Procurement in Rajasthan, Admission to Professional Colleges – Common Entrance Test (CET) etc.

C. Government To Government (G2G)

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[14] Monga, A. (2008). E-government in India: Opportunities and challenges, JOAAG, Vol. 3. No. 2
[15] The Times Of India, August 30, 2004

These initiatives aim at strengthening the internal government processes. Various G2B and G2C initiatives discussed earlier also mainly depend on efficient G2G services. This is also known as e-Administration. The use of ICT enhances the flow of information and services within the different government functionaries. Broadly the various G2G services can be categorized into two distinct parts- first is the horizontal or internal facing, where different departments and authorities of a single government are well-connected and second is the vertical or external facing which joins up various national, local and provincial Governments at different levels.

V.   CHALLENGES TO E-GOVERNANCE IN INDIA:

India is still a developing country where poverty and lack of infrastructure poses to be a great drawback in introducing and implementing any developmental activity. There are large numbers of potential barriers in the implementation of e-Governance. Some obstacles in the path of implementation are security and privacy concerns, lack of financial and human resources, unequal access to the computer technology by the citizen, high initial cost for setting up the e government solutions and resistance to change[16]. The challenges faced by India in reaping maximum benefit out of the mechanism of e-Governance can be discussed under the following heads:

A. *Environmental And Social Challenges:*

India is a country with wide linguistic, cultural and religious diversity. The linguistic diversity spread over the states of India poses to be a great problem for the implementation of any e-Governance programme. Most of the applications under e-Governance are English based and people in the rural India find it very complicated to use. Recently, an officer from the IT ministry remarked while trying to overcome the language barrier.

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[16] Fahnbulleh, N. (2005). The future of electronic government. Futurics, 29(1/2), 7-12.

"The language softwares should enable data transfer from one language to another with 100% accuracy — in the absence of that there may be misrepresentation or scrambling of data,"

Hence the government has to devise software which translates it in the local language so that it can give maximum benefit to the citizens. However, in the process of translation it was observed that the software is not behaving properly after translation. Hence this is a huge challenge in front of the government which should be immediately looked after.

Secondly, for any e-Governance programme in to be effective will have to hit the grass-root level which means, it will have to start with the rural population. However, the major issue which most of the initiatives have been facing is low literacy level among the citizens. People who are illiterate find it difficult to understand and use the g-Governance services. In addition to this, even that part of the population who are educated lack computer literacy or IT literacy. Hence, the challenge before the government is to literate the educated as well as the uneducated with regard to Information Technology. Also the rural people are observed to be very reluctant to come along with any change. According to a brief study conducted with the literate and illiterate consisting different age group revealed that either they are not interested or they feel that it is irrelevant to them[17]. Hence illiteracy or rather IT illiteracy coupled with the reluctant behaviour of the rural population is a great challenge which the government should aim at overcoming. The success of e-government depends upon the public desire to adopt this innovation[18]

Thirdly, as e-Governance is one of the most recent practices which have been introduced in India, most of the people are not aware of the beneficial services it offers. Hence the burden lies on the shoulder of the government to make people aware and spread more and more information through wide reaching means.

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[17] Significance of Digital Literacy in E-Governance, The SIJ Transactions on Industrial, Financial & Business Management (IFBM), Vol. 1, No. 4, September-October 2013, Dr. Anil Rajput & K. Mani Kandhan Nair.

[18] L. Carter and F. Bélanger. The Utilization of E-Government Services: Citizen Trust, Innovation and Acceptance Factors. Information Systems Journal 15(1), pp. 5-25, 2005.

However, this is a major threat which can pull back the rising success of e-Governance. E-government adoption can only take place, when people have a high level of trust both in government as well as in the Internet citizen‟s lack of awareness regarding benefits of e-government have contributed to the declining rate of e-government adoption[19]. Even after full awareness on their part, they take time to shift from departmental methods to electronic methods.

B. *Economic Challenges:*

A major roadblock in the implementation of any e-Governance initiative is the involved social challenges. Some of them are discussed below.

Firstly, the cost involved in the set up, maintenance and operation of a electronic application to facilitate governmental services is huge. According to Ebrahim and Irani (2005: 606), the main source of finance in public sector organizations come from the central government, "making it hard to control, and sometimes comes and goes in cycles of 'east and famine' that make it difficult to plan sustainable IT initiative such as e-government" (Heeks, 1999)[20]. Unfortunately, like the citizens the government officials also do not seem very interested in the mechanism of e-Governance. Therefore, the hug cost involved brings down the cost-benefit ratio. On the part of the citizens as well, in a country like India where nearly 68.8% people live on barely 2$ a day, they find it difficult to avail these services regardless of their nominal charges. Low per capita income is not allowing the people to avail these services on-line as getting an internet connection and its maintenance involves huge cost.

Secondly, the development and integration of ICT within India's ministry of local government remains uneven, with the lack of resources to dedicate to programs.

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[19] W. Pilling and H. Boeltzig. Moving towards E-government -effective Strategies for Increasing Access and Use of the Internet among Non-Internet Users in US and UK.. Proceedings of 8th annual International Digital Government Research Conference, May 20-23, Philadelphia, USA, 2007.

[20] Challenges to the Successful Implementation of e-Government Initiatives in Sub-Saharan Africa: A Literature Review Quinta Nven-akeng Nkohkwo and M. Sirajul Islam, Örebro University, School of Business (Informatics), Sweden

India lacks adequate financial resources so as to implement and maintain the e-Government projects properly. A challenge to e-government implementation is limited financial resources to build sustainable ICT infrastructures. The need remains to mobilize resources to acquire the necessary infrastructure in order to support implementation and sustenance of the local as well as national e-government projects. Funds are needed to expand capacity, support essential infrastructure and human resource training. Also human resources who are required to carry out the proper functioning of these programmes (like Soochaks in Gyandoot) are in dearth in rural India.

VI. A STRATEGIC FRAMEWORK: THE WAY OUT.

According to the author, the solution to all the above listed problems lies in the development and implementation of an ideal e-Governance model. The model should be addressing all the problems which the nation has faced in operation and maintenance of e-Government projects. The author proposes a detailed strategy to deal with the most important challenges posed before it:

A. *Awareness Among Leaders And Political Acceptability:*

Firstly, the government as well as civil leaders and officials need to be convinced about the benefits of e-Governance initiatives. After doing this, the nation can use them as the tools to educate and aware more people about it. It should be made clear to these officials that projects under the concept of this head will in no way stand against their self interest rather, it would help in its fulfilment. In other words, attracting political acceptability is very important in order to run a successful e-Governance project.

B. *Popularising E-Governance:*

"E-governance initiatives are launched in a symbolic way, but within a few months they die out. The Department has not made the service conspicuous enough. Nobody knows about it[21].

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[21] M.K.Subramanian, Secretary of the Automobile Association of South India (AASI)

As discussed earlier the literacy percentage in India is one of the biggest pull back for the success of e-Governance. Government needs to open up training centres wehre the people can be made e-literate. Apart from this, the government should also organise awareness drives and campaigns to make the idea of e-Governance reach remote corners of the country, alarming. People should be made aware about the benefits this tool is offering and also motivated to go online. This can be done through educating the people about the advantages of e-governance over physical governance[22].

C. *To Build Institutional Capacity And Legal Infrastructure:*

In addition to the requirements of efficient technical infrastructure, there is also a dire need felt to build the institutional capacity for proper functioning of the e-Governance projects. It will include everything ranging from training of employees to employment of hi-technology. To achieve this goal the Government will have to keep pace with the fast emerging and continuing technological changes. The IT laws need to be flexible to adjust with the rapidly changing technology. Currently India has only the IT Act, 2000 which is mainly E-Commerce legislation[23]. India should either modify the existing laws in order to include electronic technology or make an entire new legislation to cover all the aspects of e-Governance.

D. *Standarization:*

Standardisation is an important aspect to enhance the quality and performance of e-Governance projects. The Government of India is currently working on standards management and has various drafts prepared for the same[24]. The process of standardization should include setting up of technical, quality, institutional standards. The goal of standardisation is to design e-government projects so that they are well coordinated, uniform and so easy to implement and utilise[25]. The

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[22] International Journal of Innovative Research in Science, Engineering and Technology (An ISO 3297: 2007 Certified Organization) Vol. 3, Issue 8, August 2014, Strategies for E-Governance in India, V.B.Ganapathy, Dr V.Kiran Kumar
[23] http://indiaegovernance.blogspot.in/ Last visited on 22-06-2015
[24] Supra fn 21
[25] E-Governance in Small States, Commonwealth Secretariat, Naveed Somani

Government in order to achieve the goal of standardisation should include such an element in the e-Governance projects which standard-based. The interoperability standards should be clearly defined and it should be made sure that e-governance applications stick to these standards.

VII.   CONCLUSION

Information and communication technologies have a valuable potential to help Indian central and state governments deliver good governance to their constituents[26]. However, it needs to be ascertained that the potential is rightly tapped. The paper has in detail studied the roadblocks in attaining an ideal form of e-Governance in India. In order to lead the world in e-Governance space, the Government needs to adapt certain rectifying measures to bring about a positive change in the mechanism of e-Governance in India. Globally India has been known to be a leader in the IT arena but the government itself has had a very fragmented approach, a kind of view where every department did its projects separately[27]. This approach needs to be done away with as it is proving to be a roadblock in the objective of reaping optimum benefits. The conceptual problems addressed and their solutions as discussed in the paper should be though upon and further validated in real-life situations.

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[26] Towards an ideal e-Governance scenario in India, TCS Consultancy Services
[27] http://governancetoday.co.in/managing-the-e-governance-drive/ Last visited on 22-06-15

Isha Kabra, *Voting Rights of Mentally Disabled in India*

VOTING RIGHTS OF MENTALLY DISABLED IN INDIA

By

Isha Kabra[*]

India is a democracy and voting rights are of primary importance to make this democracy a successful one. But the voting rights are not given to each and every citizen of India as Article 326 of the Constitution of India bars certain people from voting. One of such exclusionary categories is the people with mental, intellectual and psycho-social disabilities. The reasoning on which this restriction is based is that only rational people should be allowed to vote and that mentally disabled are susceptible to manipulation. Prima facie, it might appear that these arguments justify the restriction. But if it is deeply analysed, we will see that both of these contentions are highly flawed and problematic because not every kind of mental disability makes a person incapable to understand and choose a candidate. Also, not all the people suffering from mental disability are institutionalised. Studies have also shown that there is not much difference in the voting patterns of people with mental disabilities and supposedly 'normal' people. In the other parts of the world, we can see case-laws emerging which have held such restrictions violating the principle of equal protection and being struck down as unconstitutional. Support can also be found in the United Nations Convention on the Rights of Persons with Disabilities which has been ratified by India. The new legislation that is being sought to be brought for disabled in India, the Rights of Persons with Disabilities Bill, 2014, very surprisingly and unfortunately, does not deal with this issue which is major setback the mentally disabled people. This paper advocates for their voting rights to be considered and deeply analyses the existing laws along with international jurisprudence on the issue.

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I.   INTRODUCTION

India has proved to be a leading example of a democratically run nation for the whole world. Democracy lends credibility to the governing authority because it is a mechanism by which it is the citizens of the nation decide who governs them. This implies that an important condition for a democracy to be successful is voter participation. If very few people vote or, if people are excluded from being allowed to vote, the democratic process in that nation will remain only superficial and hollow. Over the years, efforts are made to ensure that people are not discriminated in any which way due to their gender, race, class, caste or any other such category. But one category that remains quite unaddressed is those of the mentally disabled. In India, it has been recognised that the physically disabled face various impediments in the process of voting but not much has been done for the mentally disabled. They are excluded statutorily from voting despite international jurisprudence developing for granting them voting rights. This paper seeks to address this grave issue and tries to justify voting rights for the mentally disabled.

II.   CURRENT POSITION OF DISABILITY LEGISLATIONS

The first landmark legislation in India for protecting the rights of the disabled came in the year 1995. It was called the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act, 1995. The purpose of enacting this legislation was to give effect to the Proclamation of the Full Participation and Equality of the People with Disabilities and in the Asian and Pacific Region. According to this Act, disability threshold was fixed at forty percent and seven categories were identified. In the recent times, due to activism and awareness generating about the issue of disabled, the conceptual understanding of disability has changed radically and there is an effort to reflect the same in the approach towards the disabled. At the global level, a major shift was seen in the rights of the disabled in the year 2006 with the United Nations Convention on the Rights of the Persons with Disabilities (UNCRPD). It established various principles to be followed by the states who were parties for the empowerment of the disabled. This landmark Convention was signed as well as ratified by India on 1st October, 2007. On 3rd May, 2008, the Convention came into force. Having ratified the Convention, we have an international obligation placed upon us to comply with the principles enshrined in this Convention.[1] CRPD very extensively recognises the human rights of disabled people and also the fact that disability is 'an evolving concept'.[2]

The latest legislation that is being debated widely in the country is the Rights of Persons with Disabilities Bill, 2014. The origin of this bill can be traced back to 2010 when an expert committee submitted a report on 30th June, 2011, under the Chairmanship of Dr. Sudha Kaul, Vice- Chairperson, Indian Institute of Cerebral Palsy, Kolkata. The report suggested a draft bill related to the rights of the disabled people.[3] If this bill is passed, it will replace the existing Rights of Persons with Disabilities Act, 1995. There have been widespread protests against this bill by disability rights organisations due the inherent problems in this bill. This paper will

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[1] The Rights of Persons with Disabilities Bill, 2014, Fifteenth Report, STANDING COMMITTEE ON SOCIAL JUSTICE AND EMPOWERMENT (2014-15), *Ministry of Social Justice and Empowerment*, pg 10, SC
[2] *Supra n.* 1, *at* 11
[3] *Supra n.* 1, *at* 15

look specifically at the voting rights of the mentally disabled in the light of the new bill (2014 Bill0, examine the rationale behind the status quo and suggest changes, if required.

III.   DISCRIMINATION IN VOTING RIGHTS

Neither the PWD Act of 1995 nor the PWD bill of 2014 addresses the issue of voting rights of the persons with mental disabilities. Article 326 of the Constitution of India enlists the various qualifications and disqualifications for being a voter for the General elections and the assembly elections. An exhaustive list of disqualifications is provided under Article 326 on the basis of which a person can be barred from voting in elections. One of disqualifications under this Article includes 'unsoundness of mind'. But nowhere in this Article or in the Constitution, has the term 'unsoundness of mind' been defined. In addition to this Article, a specific framework has been provided under the Representation of People's Act 1951 within which elections have to be conducted in India. Section 2(1)(e) of the same Act says that a person who has been disqualified under Section 16 of the Act cannot vote in elections. Similar to Article 326 of the Constitution, Section 16 disqualifies a person of unsound mind and found so by a competent court from voting.

There is a need to analyse these exclusionary categories keeping it up with the change in conceptual understanding of mental disabilities. The term 'unsoundness of mind' remains vague and undefined. It is devoid of any objective criteria to help the court in determining who falls within this disqualifying category and who does not. This leads to the term being construed very broadly and in an over-inclusive manner. As a result, persons having any kind of intellectual, developmental or psycho-social disabilities are brought under this category and are deprived of voting rights. People with intellectual and psycho-social disabilities remain excluded from enjoying the right to vote or disenfranchised even if their disability is in no way interfering with their ability to

understand the position of the various candidates and choose in whose favour the have to cast the vote. Whether or not such people get to vote is mostly decided by the family members or the staff which is in charge of the mental care institutions or the nursing home. When a person is too mentally ill, many stereotypes and a lingering stigma is attached to them which becomes a barrier in their being able to enjoy the right to vote. It has to conceptually understood and kept in mind while framing policies that not all kinds of intellectual and mental disability will deprive the person of the capacity to participate in the electoral process. They may still possess their cognitive ability and make an informed decision about whom should they vote for. Unfortunately, such disability based legislations have failed to receive much critical attention in India and still exist largely unquestioned.[4] Denying a person right to vote based on unjustified and unreasonable exclusions amounts to denial of full citizenship to a person.[5]

IV.   EXAMINING THE RATIONALE BEHIND THIS DISCRIMINATION

It has to be first understood that voting is not just a mechanical exercise whose purpose is only to bring in the country the rule by majority. It has a dual nature which means that it grants the citizens an independent and personal right to express an opinion as well as it gives an opportunity to the citizens to participate as a part of the community, which though is diverse yet it is united, in support of democratic rule in the country.[6] The reasoning behind excluding the mentally disabled from voting is that only the rational voters should be allowed to vote. But it is far from clear what interests are being served from privileging rationality. Even internationally, where compelling interest is a requirement before creating such exclusionary categories, the

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[4] Enabling Elections, *Centre for Law and Policy Research and Centre for Internet Society,* pg 6, http://cis-india.org/accessibility/blog/enabling-elections.pd (last accessed 10th June, 2015)

[5] *Supra n.* 4, *at* 7

[6] Modernizing S State Voting Laws That Disenfranchise The Mentally Disabled With The Aid Of Past Suffrage Movements, 54 St. Louis U. L.J. 943 2009-2010

courts have not been able to prove the compelling interest.[7] In many countries, rational capacity has not been made a pre-requisite to be allowed to vote which again casts a serious doubt on this disqualification and the purpose it seeks to serve. Mostly, two arguments are given for justifying the quest for rationality- promoting effective government and preventing manipulation. With respect to promoting effective government, it is often argued that rational voters will make better choices than those who are mentally disabled (it being a sweeping disqualification) and hence, it results in selection of better officials to form the government. This argument presumes that better officials is equal to good government. There is no doubt that the interest of promoting effective government is legitimate. But it is important enough either in principle or in fact to prove the compelling interest behind the disqualification. If the state has to prove its concern for the relationship between individual votes and the effectiveness of government, then other components which influence the voting decision such as availability of meaningful campaign information and its access to voters should be taken care of. Rational capacity alone does not ensure the selection of better officials for good government. Availability of adequate information is important to base the decision on. Capability of making informed decision has not been made a qualification for voting. No other matter facilitating informed decision is taken much care of except disqualifying the mentally disabled.[8]

Even the empirical assumption that the supposedly irrational voters will choose 'worse' decision makers is questionable in itself. Many citizens, though qualified to vote, choose irrationally and might base their decisions on factors other than reasoned analysis and proper investigation. Whether or not a person is rational but still votes irrationally due to various reasons, the impact on the government even if the mentally disabled are disqualified will remain the same. Studies have been conducted on this

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[7] *Supra n.* 1, *at* 10
[8] *Supra n.* 1, *at* 11-12

issue and it was observed that the voting patterns of mental patients is similar to those of 'normal' voters and even if they are allowed to vote, there won't be a very significant difference in the election outcomes. This proves that the argument of effective government for disqualifying the mentally disabled falls flat.[9]

The second argument that we had identified earlier for disqualifying the mental patients is to prevent manipulation of voters. But this argument is based on the stereotypical view of the mental patients. According to this stereotypical view, the patient is thought of as one confined in institutions and susceptible to manipulation by the staff or anyone else. Yet presence in an institution is not considered as a criterion for disqualification. A blanket disenfranchisement is in place which does not consider any other factor. Further, instead of disqualifying, there are variety of other measures that can be put in place in order to prevent manipulation of voters. The terms used for mental disability are over-inclusive and provide sweeping disqualifications which are in no way related to the interest they seek to serve and also ignore other ways that might be better.[10]

The entire jurisprudence that has developed around disenfranchising has a very instrumentalist approach. It conceptualises voting primarily as a tool to exercise political power. It sees that voting is important only because of the political ends that it seeks to serve.[11] This defeats the definition of voting that we had earlier seen. Voting is not a mere step in the election process, it is a way of empowering every citizen and giving each and every citizen a say in the way country is run. It gives a citizen the power to make a difference in the way a country is governed. There is a need to move beyond this instrumentalist understanding of the right to vote and

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[9] *Supra n.* 1, *at* 12
[10] *Supra n.* 1, *at* 13
[11] Expressive Voting, *Adam Walker*, 68 N.Y.U. L. Rev. 341 1993

understand it as a medium of expression of citizenship of a person which favours giving voting rights to the mentally disabled.

The case laws in India on the voting rights of mentally disabled are unfortunately not very developed. But the support for the contention in this paper can be drawn from the cases in other parts of the world which challenge the state provisions which bar the mentally disabled from voting in elections. I would mention a few cases over here to lend further credibility to my argument. In the case of *Doe v Rowe*[12], the constitutionality of disenfranchising people under guardianship for reasons of mental illness was questioned on the basis of equal protection clause. The Court held that such disenfranchising is unconstitutional and observed that many people with traditional psychiatric disorders who were covered under the restriction were capable enough to understand the nature and process of voting. It was also observed that many people who are permitted to vote might not be able to understand the nature and process of voting. Hence, it violated the equal protection clause and was held unconstitutional by the court.[13]

Another landmark case that has come up with a progressive ruling in this issue and can provide us insight to understand the situation better is the case of *Alajos Kiss v Hungary*[14] which is a landmark decision by the European Court of Human Rights. The applicant in this case was a patent of maniac depression and was placed under partial guardianship and hence, was absolute banned from voting. The contention of the government that only those citizens should be allowed to participate in public matters who can assess the consequences of the decisions they make and are capable of making conscious and judicious decisions. But the court did not accept the ban from voting by applying the proportionality test. The Court held that the ban was

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[12] 156 F. Supp. 2d 35 (D. Maine 2001)

[13] Right to Vote, *Disability Justice*, http://disabilityjustice.org/right-to-vote/ (last accessed 11th June, 2015)

[14] Application no. 38832/06, European Court of Human Rights

disproportionate. The Court questioned the classification of the mentally disabled and said that in cases where rights are curtailed, serious scrutiny has to take place.[15]

From all these cases and the arguments that have been advanced above, it becomes very clear that restricting the mentally disabled from voting is problematic on the grounds that it is over-inclusive, it doesn't do much to protect the interests for which it was formulated and it is also against the spirit of democracy where the right to vote should not be infringed upon. Though in India the exclusion continues and there is not much from the judiciary that can be cited in the support of allowed the mentally and intellectually disabled to vote, but we can cannot shut our eyes from the jurisprudence that has been developing in the rest of the world where such provisions are being challenged on a regular basis and are being held unconstitutional. Even the United Nations Convention on the Rights of Persons with Disabilities, to which India is a part, promotes granting of voting rights to the mentally disabled. This issue rests grossly unconsidered by the Rights of Persons with Disabilities Bill, 2014 and this in a way ignores the advocacy that has been done for the rights of the disabled people since the first legislation came up in 1995.

V.   CONCLUSION

We have already observed that the rationales that are given behind putting blanket bars on people with any kind of mental, intellectual or psycho-social disabilities from exercising the right vote are not proportionate or justifiable enough to enforce such a drastic provision. Not all who are barred from voting under this provision are incapable of understanding the situation and deciding whom they should vote for. Similarly, not everyone who is allowed to vote is capable to make such a decision. Moreover, voting is not just a political exercise to decide which candidate gets the

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[15] ECHR BLOG, http://echrblog.blogspot.in/2010/05/judgment-on-voting-rights-for-mentally.html (last accessed 11th June, 2015)

seat. It is a power given to a citizen to participate in the governance of the country and have a say in the decision making process. This implies that before infringing onto the right to vote in a democracy, sufficient justifications have to be given which is not the case with denial of right to vote to mentally disabled. The new bill does not address this issue. Hence, this paper contends that this issue should be considered and the new bill should include provisions which protect the voting rights of the mentally disabled and treat them like an equal citizen rather than treating them like a lesser being.