



RGNUL Social Sciences Review

A Half Yearly Peer Reviewed Journal of Rajiv Gandhi National University of Law, Punjab

Volume IV	Number I	January-June 2023
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EDITORIAL NOTE

In the mosaic of human understanding, the field of social sciences stands as a beacon, illuminating the intricacies of our shared existence. As we present this January-June 2023 issue of RGNUL Social Sciences Review, we pause to reflect on the profound importance of the social sciences in shaping our worldview, fostering empathy, and guiding the collective journey towards a more enlightened and compassionate society. As stewards of academic excellence, we remain dedicated to maintaining the highest standards of scholarly rigour. Each submission underwent a meticulous peer-review process, with our esteemed reviewers providing constructive feedback to enhance the quality and relevance of the work presented.

The articles within this issue are not mere academic exercises; they represent a collective effort to unravel the complexities of human behaviour, societal structures, and the intricate interplay of forces that shape our lives. They are vibrant threads, woven with care and dedication by researchers who are not just scholars but storytellers of the human condition. Through their work, we encounter tales of resilience, moments of profound connection, and the echoes of shared struggles that bind us all. The editorial team has prioritised articles that demonstrate methodological rigor, emphasising sound research design, data collection, and analysis. We believe that maintaining high standards in methodology is integral to advancing the credibility and impact of research in social sciences.

In this backdrop, this edition of RSSR discusses the following interdisciplinary topics of importance: i) Post-Election ethno-political violence in Kenya and methods for peace and reconciliation; ii) Use of Information & Communication Technology for access to justice through virtual courts; iii) Use of seaweeds as an alternate fuel and fertiliser and policies of the Indian Government; iv) Differential and potential impacts of cyberspace interventions in human life; v) A comparative analysis of penalty guidelines for cartel cases in EU, US, UK and India; vi) Prevailing perceptions of the society towards “Padhi-likhi” (educated) women; vii) Challenges and need for reforms in election laws in India; viii) Existing and emerging labour laws in India and the state of female work participation; ix) Challenging the issue of child labour and its justifications in third world countries; x) Linkage between intra-personal communication and mental wellbeing of people; and xi) Role of legal language in growth and development of legal system in India.

The diverse array of research topics presented in this collection reflects a broad spectrum of societal challenges and opportunities, ranging from political violence to technological advancements, environmental sustainability, legal frameworks, and social perceptions. The insights gained from these studies have the potential to inform policy decisions, shape academic discourse, and contribute to positive societal transformations. The diverse perspectives presented in these topics collectively enrich our understanding of complex issues and pave the way for further exploration and collaboration in the respective fields. This compilation collectively contributes to a rich tapestry of knowledge that not only informs academic discourse but also holds the potential to shape policies and practices, fostering positive societal change.

To our dedicated authors and diligent reviewers, your contributions are the lifeblood of this journal, and we extend our heartfelt appreciation for your commitment to advancing the frontiers of knowledge in the service of humanity. As we navigate the challenges and opportunities that lie ahead, RGNUL Social Sciences Review remains steadfast in its mission to disseminate impactful research that informs, inspires, and contributes to the advancement of social sciences. We invite our readers to engage with the content of this issue, to question assumptions, and to contribute to the ongoing dialogue that defines the vibrant field of social sciences.

Thank you for your continued support and enthusiasm for RGNUL Social Sciences Review.



Ms. Jasmine Kaur

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**ASSESSING THE READINESS OF VICTIMS OF 2007-08 POST-ELECTION
VIOLENCE IN MATHARE AND KIBRA FOR PEACE AND
RECONCILIATION**

Dr. Justus K. Musya*

Abstract

During national electoral cycles in Kenya, ethno-political conflicts have tended to escalate and intensify in several hotspots in Kenya, including the informal settlements of Mathare and Kibra. Following the disputed presidential elections in 2007, widespread ethno-political conflict broke out in Mathare and Kibra. This episode of violence, the most intense and widespread in the area's history, grievously affected the lives and property of residents. Even today, the conflict situation is characterised by sporadic violence, which intensify especially following contested presidential elections, such as in 2013 and 2017. The simmering ethno-political conflict has given rise to the phenomenon of exclusive ethnic zones, a living arrangement that has worsened ethnic suspicions and bred insecurity, a trend that has frustrated efforts of non-governmental actors to initiate plans to transform the ethno-conflict in Mathare and Kibra. Existing studies had not explored how victims of ethno-political violence perceived people they blame for hurting them or the circumstances in which they might support conflict transformation. In this connection, the Constructivist Self-Development Theory was employed as a theoretical underpinning of the study. A mixed research design was used. Focus group discussions was used to capture the experiences of victims of the 2007 post-election violence. Factor analysis was used to develop the readiness to forgive and reconcile scale. The conflict situation in Mathare and Kibra might be transformed through forgiveness and reconciliation, which help both victims and perpetrators deal with trauma. Better known are the conditions in which victims of the post 2007 election might support conflict transformation.

Keywords: post-election violence, ethnic groups, relationship with God, forgiveness and reconciliation

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1. Background

During national electoral cycles in Kenya, latent ethno-political conflicts have tended to escalate in several hotspots, including the informal settlements of Mathare and Kibra. Immediately following the declaration of the disputed presidential election in 2007, ethno-political conflict intensified in Mathare and Kibra. This episode of violence, the worst of its kind in the area, grievously affected the lives and property of residents in the area. Mathare and Kibra all but imploded. Even today, subterranean manifestations of ethno-political conflict are evident. First, albeit at a low-level, the simmering ethno-political conflict in Mathare and Kibra keep escalating intermittently, with youth quick to retaliate against real or perceived attacks against members of their communities, from communities they treat as their political rivals¹. Second, Mathare and Kibra have witnessed the rise of exclusive ethnic zones, a living arrangement that has worsened ethnic suspicions and frustrated efforts of non-governmental actors to initiate plans to transform the ethno-conflict in Mathare and Kibra².

The primary aim of this article was to find out how the conflict situation in Mathare and Kibra might be transformed. This analytical task meant gauging the readiness of victims of ethno-political violence to forgive and reconcile with perceived perpetrators of the violence. This article provides insights that can energize the stunted efforts to transform the conflict in Mathare and Kibera.

In terms of structure, the first section reviews briefly the episodes of ethno-political violence in Mathare and Kibra. Subsequently, the problem statement, research questions, and research methodology are explicated. The second section delineates the procedures to validate the readiness to forgive and reconcile scale, with key analytical steps taken in exploratory and confirmatory factor analyses reported. The third and final section discusses the findings, makes a conclusion, and propounds recommendations.

2. Introduction

Over the past twenty years, several significant cases of ethno-political conflicts have occurred in Mathare and Kibra. In 2001, ethno-political conflict broke out in Kibera when tenants, who were mainly Luo and Luhya, boycotted rent payment,

¹ Dennis, Nyongesa Wamalwa, et al. "Interventions Implemented By State and Civil Society in Post Conflict Reconstruction in Kibera and Mathare, Nairobi Kenya after 2007/8 PEV." *Journal of Humanities and Social Science*. vol. 20, no. 9, 2015, pp. 71–78.

² *Ibid.*

in a protest action against exorbitant rates. In response, property owners, who were mostly from the Kikuyu community, responded by hiring youth to evict rent defaulters. This action resulted in days of conflict. Likewise, during the allocation of houses in Mathare in 2004, in a slum upgrading project, conflict re-escalated, with members of the Luo community claiming the development initiative was biased in favour of members of the Kikuyu community. And soon after the declaration of the national constitutional referendum in 2005, ethno-political conflict escalated once again³. The hotly contested referendum was a political tussle between ruling elites on the scope of devolution of political and economic power. Violence broke out because political elite used inflammatory language in mobilising ethnic supporters to vote for or against the proposed constitution. Just before the 2007 presidential election, property owners issued Luo and Luhya tenants with eviction notices, apprehensive that a win for the opposition leader would tone up the determination of tenants from these communities to boycott paying rents. In no mean way, this anticipatory step by the property owners escalated ethnic animosities associated with the 2007 post-election violence⁴.

During the post-election violence of 2007-2008, the conflict in Mathare and Kibra was marked by ferocious attacks—rapes, acts of sodomy, indiscriminate maiming, destruction of property, and gruesome killings⁵. The violence involved extreme forms of brutality and highly symbolic forms of degradation, including rape and forced circumcisions of men who came from a community that does not traditionally practise this rite of passage⁶. The post-election violence of 2007 severely traumatized residents in Mathare and Kibra. Following the disputed presidential election in 2017-18, both Mathare and Kibera again witnessed intensive ethno-political violence: many lives were lost, and residents lost property⁷. In both Mathare and Kibra, repeated outbreaks of violence have led to the phenomenon of ethnic enclaves, areas, which are villages exclusively populated by specific ethnic communities⁸. This phenomenon, in itself, illustrates a latent conflict situation, and it suggests the conflict situation in Mathare and

³ Auerbach, Yehudith. "The Reconciliation Pyramid—A Narrative-Based Framework for Analyzing Identity Conflicts." *Political Psychology*. vol. 30, no. 2, 2009, pp. 291–318.

⁴ Cehajic, Sabina, et al. "Forgive and Forget? Antecedents and Consequences of Intergroup Forgiveness in Bosnia and Herzegovina." *Political Psychology*. vol. 29, no. 3, 2008, pp. 351–367.

⁵ *Ibid.*

⁶ Anderson, David, and Emma Lochery. "Violence and exodus in Kenya's Rift Valley, 2008: predictable and preventable?" *Journal of Eastern African Studies*. vol. 2, no. 2, 2008, pp. 328–343.

⁷ Human Rights Watch (Organization) and Amnesty International. 'Kill Those Criminals': Security Forces Violations in Kenya's August 2017 Elections, 2017.

⁸ Okombol, Okoth and Olang' Sana. "Balaa Mitaani", 2010.

Kibra is in dire need of transformation⁹. The repeated outbreaks of violence have reinforced negative attitudes that foster conflict, such as stereotyping, labelling, or tagging¹⁰. Notable consequences of the recurrent ethno-political conflicts in Mathare and Kibra are ethnic polarization and fragmentation¹¹.

Since the ethno-political conflicts in Mathare and Kibra have left huge costs personally and psychologically it is right to examine how victims can overcome the attendant trauma. Forgiveness and reconciliation have increasingly been viewed as vital to helping traumatised people overcome trauma¹². Forgiveness and reconciliation can support victims of violence in Mathare and Kibra deal with their traumatic conditions. In this connection, the *Constructivist Self-development Theory*, which articulates how people can use religious beliefs to make sense of and get over traumatic conditions, is a fitting analytical grid for understanding how forgiveness and reconciliation might be used to transform conflicts¹³. In the context of this article, then, the constructivist self-development theory largely focuses on the notion of “frame of reference”. As such, the theory only implies the ability of victims to exercise their capacities and competencies to act in ways that enable forgiveness and reconciliation. Nonetheless, forgiveness can make victims of ethnic or political violence more likely to engage in positive actions that led to healing of traumatic conditions. Once forgiveness has been realised, the ground would be set for further actions to promote genuine and lasting reconciliation¹⁴. Forgiveness and reconciliation can help transform conflicts, by diminishing the impetus for revenge and by encouraging perpetrators to engage in reconciliation¹⁵.

⁹ Wamalwa, Matanga, and Onkware. “Interventions Implemented By State and Civil Society in Post Conflict Reconstruction in Kibera and Mathare, Nairobi Kenya after 2007/8 PEV”.

¹⁰ Kenya Human Rights Commission and others. *Violating the Vote; A Report of the 2007 General Elections*, vols (Kenya Human Rights Commission, 2008).

¹¹ Stammel, Nadine, et al. “Construction of a Questionnaire for Readiness to Reconcile in Victims of Human Rights Violations.” *European Journal of Psychotraumatology*, vol. 3, no. 1, 2012, pp. 15785.

¹² *Ibid.*

¹³ I. Lisa, McCann, et al. “Constructivist Self-Development Theory: A Theoretical Framework for Assessing and Treating Traumatized College Students.” *Journal of American College Health*, vol. 40, no. 4, 1992, pp. 189–196.

¹⁴ Bayer, Christophe Pierre, et al. “Association of Trauma and PTSD Symptoms With Openness to Reconciliation and Feelings of Revenge Among Former Ugandan and Congolese Child Soldiers.” *JAMA*, vol. 298, no. 5, 2007 p. 555.

¹⁵ Auerbach. “The Reconciliation Pyramid-A Narrative-Based Framework for Analyzing Identity Conflicts.”

3. Statement of the Problem

Frequent outbreaks of violence in Mathare and Kibra could aggravate ethnic relations to a point that achieving conflict transformation might prove elusive. Following the disputed 2017 presidential elections, ethno-political conflict once again broke out in Mathare and Kibera. As it is, such low-level attacks and counter-attacks do occur in Mathare and Kibra, and these acts of violence only serve to worsen an already poisoned conflict situation¹⁶. Further reescalation of the conflict would poison the conflict situation, leaving it unyielding to conflict transformation¹⁷. To avert these outcomes, it was urgent to investigate how the traumatic experiences of victims of violence in Mathare and Kibra might be transformed.

Knowledge of the conflict situation in Mathare and Kibra addresses the factors of conflict in the informal settlements in the context of history, politics, and horizontal inequalities¹⁸. The causal mechanism of the conflict in the study area has been fairly articulated, with the role of horizontal inequalities on collective grievances, which political elite use in political actions, which involve or result in violence¹⁹. Although the National Integration Commission Report²⁰ has analysed how to improve inter-ethnic relations and depoliticize ethnicity, its work needs to be augmented by perspectives on the capacity of people living in the study area to participate in conflict transformation. Nyongesa, Matanga, & Onkware²¹ examined situational factors undermining conflict transformation in Mathare and Kibra. This study has shed some light on the consequences of electoral violence in the study area, especially the consequences of conflict behaviour. Existing studies lack insights on how ethnic groups, which have suffered, either directly or indirectly, from the conflict, perceive ethnic groups who they blame for hurting them, and the circumstances in which ethnic groups might be willing to support conflict transformation in Mathare and Kibra.

¹⁶ Wamalwa, Matanga, and Onkware. "Interventions Implemented By State and Civil Society in Post Conflict Reconstruction in Kibera and Mathare, Nairobi Kenya after 2007/8 PEV".

¹⁷ Bellamy, Alex J. "The institutionalisation of peacebuilding: What role for the UN Peacebuilding Commission?" in *Palgrave Advances in Peacebuilding: Critical Developments and Approaches*. Springer, 2010.

¹⁸ Anderson and Lochery. "Violence and Exodus in Kenya's Rift Valley, 2008: Predictable and Preventable?"

¹⁹ Musya, Justus K. "Ethnicity & Political Violence A Kenyan Perspective with Reference to Mathare and Kibra Informal Settlements." The Kairos Book Publishers, 2023.

²⁰ "The Reconciliation Pyramid-A Narrative-Based Framework for Analyzing Identity Conflicts".

²¹ "Interventions Implemented By State and Civil Society in Post Conflict Reconstruction in Kibera and Mathare, Nairobi Kenya after 2007/8 PEV".

Ignorance in these domains of knowledge frustrates efforts to conceptualize how programs aimed at transforming the conflict situation might be formulated and implemented. It is against this backdrop that a need arose to understand better the readiness of people affected by the post 2007-2008 electoral violence for peacebuilding, through forgiveness and reconciliation.

4. Research Questions

Efforts to transform any conflict needs to be grounded on a good understanding of the conditions in which disputants would engage in transformation²². In this connection, this article analysed the value of forgiveness and reconciliation in enabling residents affected by the conflict situation in Mathare and Kibra both, directly and indirectly, engage in conflict transformation.

The following specific research questions were pursued: 1) what were the scope and forms of violence during the post-2007-2008 election violence, 2) how did the post-election violence impact the attitudes and behaviour of rival ethnic groups living in Mathare and Kibra? and 3) how can forgiveness and reconciliation prepare victims of ethno-political conflict to support conflict transformation?

5. Research Methodology

A mixed research design was employed in the study. The quantitative methodology involved the use of exploratory and confirmatory analytical procedures. Descriptive analysis was used to depict the distribution of scores for different ethnic groups about readiness to forgive and reconcile. Confirmatory factor analysis was done to identify the latent variables for the construct readiness to forgive and reconcile.

The researcher collected the data himself and with also the assistance of trained research assistants. Data collection and analysis took place between April and August 2022. Data was collected through a 21-item questionnaire. Responses were based on a five-point Likert scale was used to rate responses: 5=Strongly Agree, 4=Agreed, 3=Neutral, 2=Disagree, and 1=Strongly Disagree. The inventory on readiness to forgive and reconcile was developed by Staub, Pearlman, Gubin, & Hagengimana²³ and applied in Rwanda to measure the impact of the violence on warring groups and to assess the capability of these groups to reconcile. This scale is useful then, not just because it can measure the consequences of political violence,

²² Diane, Hendrick. "Complexity Theory and Conflict Transformation" Retrieved March, 12, 2009. 4.

²³ "Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing: An Intervention and Its Experimental Evaluation in Rwanda." *Journal of Social and Clinical Psychology*, vol. 24, no. 3, 2005, pp. 297-334.

but also because it can assess the readiness of victims and communities to participate in peacebuilding. The researcher slightly modified the adopted Readiness to Forgive scale developed by²⁴, which had 21 items. This modification merely entailed rephrasing of questions to make them legible to respondents.²⁵

Regarding sampling procedures, 149,658 households were targeted-86,929 in Mathare and 62,729 in Kibra. The sample was drawn from six villages in Mathare and seven in Kibra. Respondents were people who voted in the 2007 national elections and who were heads of households.

Table 1: Proportional Distribution of Households (HHs) in the Study Area

Sr. No.	Villages	Number of Households	Ratio of Households of Village to total	Sample of HHs targeted	Villages	Number of Households	Ratio of Households of Village to total	Sample of HHs targeted
1.	Kibra	3,237	5%	19	Mathare	31, 426	36%	138
2.	Lindi	11,551	18%	69	Mabatini	9,809	11%	42
3	Makina	25,242	13%	50	Mathare 4B	6,617	8%	31
4.	Siranga	6,164	10%	38	Mlango Kubwa	15,000	17%	65
5.	LainiSaba	9,927	16%	61	Mathare 4A	5,627	6%	23
6.	Gatwikiria	15,597	25%	96	Mathare North	18,450	22%	84
7.	Kianda	8,237	13%	50				
	Total	62, 729	100	383²⁶	Total	86,929	100	383

Source: Researcher, 2022

A proportional stratified random sample was used, and (n=766) respondents were identified, divided equally between Kibra (n=383) and Mathare (n=383). Systematic

²⁴ *Ibid.*

²⁵ For instance, item 8 “There were complex reasons for the violence in Rwanda” was reworded to be “There were complex reasons for the violence in Mathare and Kibra”.

²⁶ An online software sample size was used to calculate the sample size <http://www.raosoft.com/samplesize.html>. Margin of was 5% and confidence level was 95%. The applicable formula was= $N \times x / ((N-1)E^2 + x)$

sampling was used to sequence data collection in each of the villages in the study area.

In the context of assessing the readiness of victims of the 2007-2008 post-election violence in Mathare and Kibra for peace and reconciliation, the Constructivist Self-Development Theory was relevant in understanding how these individuals have constructed their identities and worldviews in the aftermath of the violence. It helped explore questions such as: how the experiences of violence and conflict shaped the self-identity and beliefs of the victims in Mathare and Kibra, “what role has social interactions and support networks played in the self -development and coping strategies for the victims”, how do the victims perceive and construct their views on peace and reconciliation in the context of their past experiences; and are there any collective or shared constructions of peace and reconciliation within these communities that have emerged as a result of their experiences.

Following the Constructivist Self-Development Theory, the sample was clustered about two major ethnic groups: the “in-group” and the “out-group”²⁷. At the root of the causal mechanism of ethno-political conflict is a political system that favours the “in-group” and discriminates against the “out-group”, which are ethnic groups deemed to be disloyal or unsupportive of the political elite who are in power. Given the discriminatory application of state resources, the “out-group” would perceive themselves to be marginalised -deprived of what they feel is their fair access to state power in political, economic, and developmental terms. Since ethnicity is seminal to Kenyan politics, the usual arbiter of elections, ethnic groups that mainly voted for the incumbent president in the 2007 presidential election can be deemed to be “the “in-group” and the ethnic groups that mainly voted for the opposition party or opposition leader can be treated as the “out-group”. The ethnic groups in the study area were clustered about three major ethnic groupings: (1) the “in-group”, (2) the “out-group”, and (3) “other-group”. The “in-group” belonged to the Kikuyu community and was the largest group (n=296; 38.69%). This group largely voted for the incumbent president in the 2007 presidential election, and it would be deemed to be the “in-group”. The “out-group” (n=269; 35.11%) comprised the Luo and Luhya communities. Members of these two communities overwhelmingly voted for the opposition candidate in the 2007 election. The other group were people from ethnic groups living in the area who were not from the Kikuyu, Luhya, or Luo communities. These groups often do not directly participate in ethnic conflicts in the study area;

²⁷ Rod, R. Blagojevich. *Rod R. Blagojevich, Governor*, 2004.

but sometimes, they support either the “in-group” or the “out-group” (n=202; 27.4%).

Focus group discussions targeted 96 victims of the 2007-2008 post-election violence. The respondents included people who lost property, suffered violence, or lost a relative or a loved one. The respondents were distributed equally in the study area: forty-eight each for Mathare and Kibra. Each group discussion comprised of six groups involving eight respondents or eight groups involving six respondents. The respondents were selected from areas that suffered most during the 2007-2008 post-election violence. During the 2007 post-election violence, Mathare 4A, *Kijiji cha Chewa*, Mathare Area 1, and Ghetto were worst affected. In Kibra, the Olympic area, Makini, and Laini-Saba suffered the most from the post-election violence²⁸. The respondents were selected with the help of community leaders and elders. The discussions gauged the readiness of the respondents to reconcile with the people or persons they believed harmed or aggrieved them during and after the post-election violence.

6. Brief Review of Procedures for Scale Development and Validation

Exploratory factor analysis was applied using principal axis factor analysis. The Kaiser-Meyer-Olkin measure of sampling adequacy was acceptable ($=.755$), which was greater than the minimum acceptable threshold of 0.5. In relation to Bartlett’s test of sphericity, a significant result was observed, ($\chi^2 = 171$, $n=767$) = 5940.32, $p<0.01$. Parallel analysis of the 19 items suggested a five-factor solution, and the following goodness of fit indices was obtained: $\chi^2=215.52$, ($df,48$), $p=0.00$); RMSEA (0.0059-0.077) and TLI (0.9). In exploratory factor analysis, the latent factors “conditions for forgiveness” and “relationship with God” stood out as the dominant factors in the model, with the former accounting for 43% of total variance and the latter for 23% of all variance. The results were as follows: $\chi^2_{initial} = 118$ $p=.00$, $df=29$, $Cmin/df_{initial} = 11.8$, $CFI=.91$, $NFI_{initial} = 0.89$, $RMSEA_{initial} = 0.119$; $pclose_{initial} = 0.0$, $SRMR_{initial} = 0.07$. Several weaknesses were identified and corrected, including cases of large standardized residual covariances.

The two model solutions produced the following final goodness of fit indices were as follows: $\chi^2_{modified} = 4.88$, $df=3$, $p=.181$, $Cmin/df_{modified} = 1.6$, $CFI=.99$, $NFI_{modified} = .997$, $RMSEA_{modified} = 0.029$, $CI_{90}=.000, .073$, $pclose_{modified} = 0.738$, $SRMR_{modified} = 0.07$. The sample was clustered about three of its constituent groups, “in-group”, “out-group”,

²⁸ Justice Truth, Reconciliation Commission, and Others. “*Commissions of Inquiry-CIPEV Report (Waki Report)*.” 2008.

and other group. Scalar invariance was established, based on Δ in CFI: unconstrained 0.914²⁹, metric 0.916³⁰ (Δ CFI=0.002) scalar 0.918 (Δ CFI=0.002).³¹ The scale satisfied validity and reliability criteria³², and it met strictest invariance tests.³³ The composite reliability CR and average variance extracted AVE were higher than the required minimum thresholds: conditions for forgiveness (AVE=0.9>0.5; CR=0.89>0.7) and relationship with God (AVE=0.73>0.5; CR=0.81>0.7). The emerging two-factor model involved 1) *conditions for forgiveness* and 2) *relationship with God* was validated. Accordingly, the solution could be used in comparative analysis, involving “in-groups” and “out-groups” in Mathare and Kibra. This is illustrated in table 2 below:

Table 2: Factor and Variable Importance in Relation to Forgiveness and Reconciliation Scale

Hypotheses		Global	In-group	Out-group	Other group	Supported /Rejected
Conditions for Forgiveness	I can forgive members of the other group who acknowledges the harm their ethnic group did to my ethnic group	.97	.97	.95	.95	Supported
	I could begin to forgive members of the other groups they requested forgiveness of my group	.84	.81	.84	.85	Supported
Relationship with God	You have a relationship with God	.87	.90	.85	.85	Supported
	You feel close to God	.82	.83	.79	.83	Supported
	God would like you to forgive the other group	.52	.48	.56	.52	Supported

Source: Researcher, 2022

²⁹ AIC=203.8

³⁰ AIC=194.2

³¹ AIC= 185.4

³² Appendix 1

³³ Appendix 2

The latent factors *Conditions for forgiveness* and *relationship with God* were identified as the basis of thinking about readiness to forgive and reconcile. The item “I can forgive members of the other group who acknowledges the harm did to my ethnic group” was the strongest indicator of the latent factor. This stance represents a conditional offer to make peace with perceived perpetrator of violence. This factor captures the willingness to create conditions for genuine reconciliation to take place³⁴.

Relationship with God would be an important enabler of healing interpersonal relationships, more so in contexts in which religious beliefs are critical to shaping world views³⁵. It should be given to the conditions in which victims would be willing to forgive perpetrators, with the victim’s relationship with God enabling restoring of fractured relationships. Relationship with God can change ruptured relationships, such that relationships once defined by animosity can transform into cordial and respectful ones³⁶.

Whereas relationship with God would energize victims of ethno-political conflict to forgive perpetrators of violence, it is conditions for forgiveness that is of moment in shifting the conflict situation in Mathare and Kibra towards transformation. Conditions for forgiveness seems to require perpetrators to accept responsibility for the harm done to victims and engage in peace building activities, which would ostensibly include some acts of restitution³⁷. The section below depicts the distribution of the religious beliefs of respondents.

Table 3: Distribution of the Religion of Respondents in Mathare and Kibra

	Frequency	Percent	
Valid	Christian	368	48.0
	Muslim	106	13.8
	Hindu	8	1.0
	TAR*	84	11.0
	None	20	2.6
	Other	180	23.5
	Total	766	100.0

Source: Researcher, 2022

³⁴ Cehajic, Brown, and Castano. *Forgive and Forget?*

³⁵ Staub et al. *Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing*.

³⁶ Daniel, Howard-Snyder and the Society of Christian Philosophers. “Was Jesus Mad, Bad, or God? . . . Or Merely Mistaken?”. *Faith and Philosophy*, vol. 21, no. 4, 2004, pp. 456–479.

³⁷ Staub et al. *Healing, Reconciliation, Forgiving and the Prevention of Violence after Genocide or Mass Killing*.

*TAR: Traditional African religion

All but (2.5%) of the respondents (n=20) claimed not to have any religious commitment of any kind. Most respondents, by far, claimed to be Christians (n=368; 48%). People who claimed to be Muslims formed the second-largest bloc of respondents, with 106 respondents identifying themselves as such, which was about (14%) of all respondents (13.8%). People who described themselves as religious, but who were not Christians, Muslims, Hindu, or adherents of traditional African religion, were the third largest category (n=180; 23.5%). This category was followed by respondents who claimed to be adherents of traditional African religious beliefs (n=84) or just (12%) of the total number of respondents. People who self-identified as not religious were twenty in number or about a minority (2.6%) of the proportion of respondents. Only (1%) of respondents identified themselves as Hindu (n=8; 1%). Since most victims had religious beliefs, the use of forgiveness and relationship with God in healing relationships in Mathare and Kibra seems plausible ³⁸.

Religion can play a substantial in social reconstruction. Studies done in Nigeria and Cambodia show that religious beliefs can enable peacebuilding. There is merit in exploring and even positing the positive role religion can play in creating social harmony and cohesion by changing the attitudes of people and societies ³⁹. The mechanism of these positive influences could include the use of theological notions and constructs, such as forgiveness, restitution, and reconciliation, to support peacekeeping overtures. In countries facing conflict, lasting peace would occur when people, including victims of violence, feel they need to do their part to create and sustain positive social relations. Tarimo ⁴⁰ has made this point forcefully by noting:

*When dealing with conflicts, it becomes necessary to move beyond formal channels of diplomacy in order to uncover as well as deal with the deeper sources of conflict, rebuild relationships and make the necessary adjustments where possible. In this context, reconciliation born of spiritual conviction can play a critical role in inspiring the parties in conflict to break the cycle of revenge that typically characterizes such disputes*⁴¹.

For religion to support peacebuilding, several antecedents would need to be true, including victims of violence being committed to shared meanings and

³⁸ *Ibid.*

³⁹ Jeffrey, Haynes. "Conflict, Conflict Resolution and Peace-Building: The Role of Religion in Mozambique, Nigeria and Cambodia." *Commonwealth & Comparative Politics*, vol. 47, no. 1, 2009, pp. 52–75.

⁴⁰ "Politization of Ethnic Identities: The Case of Contemporary Africa." *Journal of Asian and African Studies*, vol. 45, no. 3, 2010, pp. 297–308.

⁴¹ *Ibid.*, p. 393.

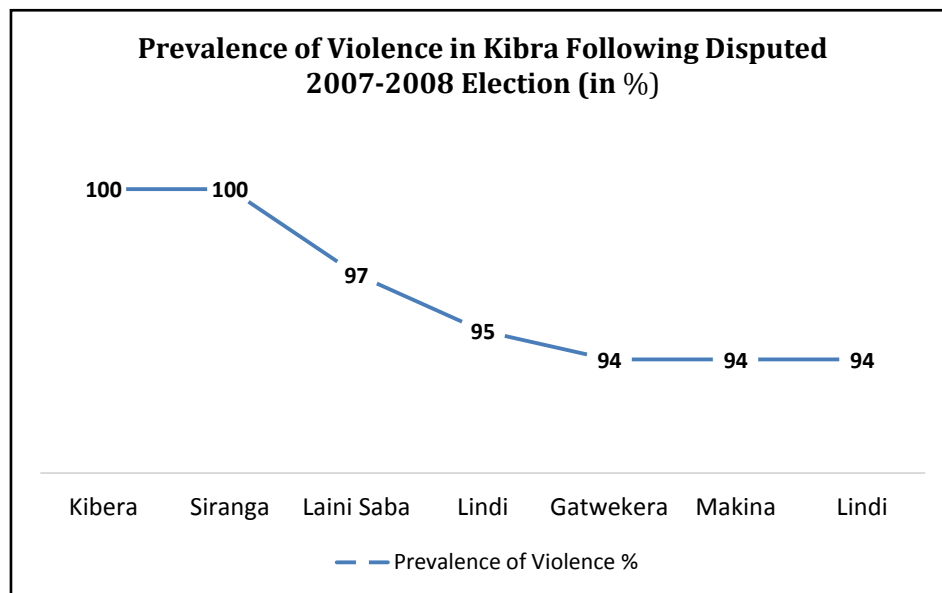
understandings on social justice and moral norms. For this reason, understanding and profiling the religious commitment of respondents is an important step in this direction. The evidence obtained in the analysis of observations of the readiness to forgive scale will help in assessing how likely the respondents, especially victims of the violence, are likely to absorb the logic of these religious principles.

Victims of the 2007-2008 post-election violence attached two conditions to forgiving people who they believe were responsible for hurting either them or members of their families. They would be willing to forgive perceived perpetrators if the latter accepted responsibility for their actions and/or requested for forgiveness.

7. Scope and Forms of Violence

Most respondents (91.9%) experienced violence of one sort or another first-hand. Only 60 respondents (7.8%) had no such experience. Experience of violence was both direct and indirect, and it included witnessing acts of violence. Below is a depiction of the prevalence of violence in Kibra following the 2007-2008 post-election violence.

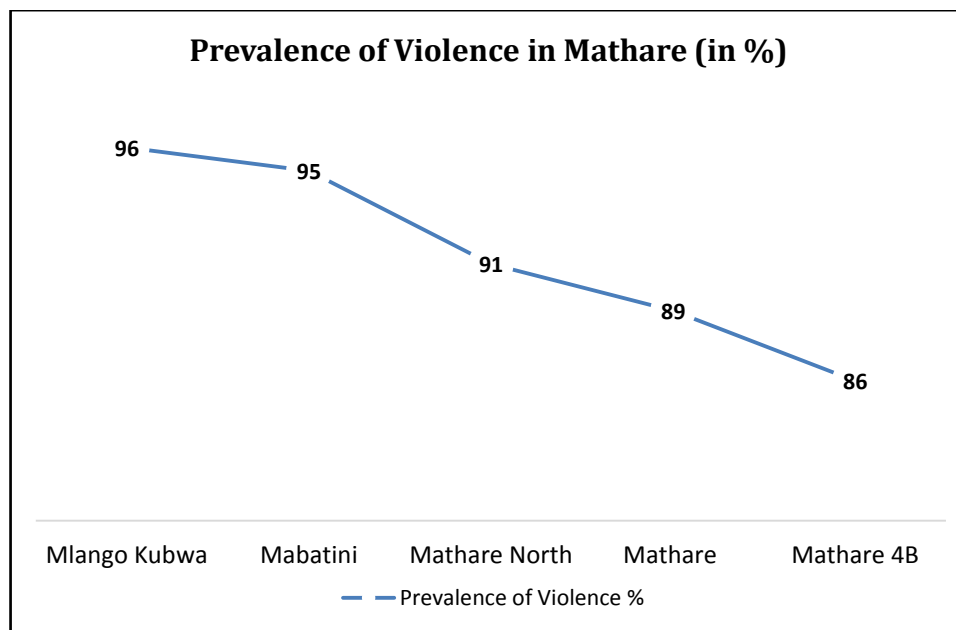
Figure 1: Bar Chart of Violence by Village at Kibra during Post-Election Violence 2007-2008



Source: Researcher, 2022

Worst affected were Kibra and Siranga villages, with prevalence of violence of about 100%. And the least affected were Gatwikira, Lindi, and Makina, with a prevalence rate of violence of about (94%). Together, the scope of violence was widespread and extensive.

Figure 2: Bar Chart of Scope of Violence by Village at Mathare during Post-Election Violence 2007-2008



Source: Researcher 2022

The worst affected areas were Mlango Kubwa (96%) and Mabatini (95%), and the least affected one was Mathare 4B (86%). The findings suggest the violence was more severe in Kibra than in Mathare. The average score (scope of violence) in Mathare was (91.4%) and (96.28%) in Kibra. This finding is in line with the CIPEV Report, which asserted that the violence was the worst in an urban area in the history of Kenya. The slum area all but imploded⁴².

The acts of violence could be thematically classified as follows: sexual and gender-based violence, maiming and killings, limited freedom of movement and internal

⁴² Justice Truth, Commission, and others. "Commissions of Inquiry-CIPEV Report (Waki Report)".

displacement of populations, discrimination in services provided, and destruction of property and livelihoods.

7.1 Sexual or Gender-Based Violence

The cases of sexual violence involved the gang rape of women and miscarriages. It is generally recognized that sex is an instrument of violence and is often applied to humiliate its victims.

My girls (daughters) were raped. Raping was a lot in our Kibera area (Mathare 4A).
I was raped repeatedly by gangs of people—violent people (Mathare 4A, Mathare).
I was removed out of my house (by armed people). My wife was pregnant and as a result, she miscarried. My wife cried uncontrollably (Respondent, Kibera Chief's Camp).
They did badly to our husbands, because they circumcised us... (Respondent, Mathare 4B).

The forced circumcision appears designed to either punish or to make unworthy people mature and responsible. Going through the forced ritual of circumcision, affirmed the cultural tagging hitherto made about the inferiority of the Luo community.

7.2 Witnessing the Maiming and Killing of Loved Ones and/or Friends

I saw people being slashed/killed (Respondent, Lindi, Kibra).
My neighbour was killed by being beaten and slashed (with) *pangas* and thrown to *mtaro* (ditch) (Respondent, Mathare 4A, Mathare)"

Someone was cut (using *panga*) and fell outside her door. She decided to leave her house and go to the chief's camp (Respondent, Gatwikira, Kibra).

7.3 Limited Movement of People in Village and Internal Displacement of Persons

Following the violence, many people repaired to their rural homes, and others fled to places they perceived to be safe – such as the chief's camp⁴³ and or churches.

I was forced to shift from where I lived because of the situations and I also feared for my life" (Respondent, Mathare B, Mathare).
I had to flee to my upcountry *coz* I feared for my life (Respondent, Siranga, Kibra).
I decided to go upcountry so (as to) protect myself from the post-election violence (Respondent, Siranga, Kibra).

⁴³ Chiefs work for the national government in Kenya and local administrators.

Difficulties in movement also had the effect of making it hard for people accessing medical services.

“I could not get medication. I was sick and really suffered (Respondent, Mathare 4A, Mathare)”

Land were lost - many people lost their properties during this time and ended up being IDPs (Respondent, Mlango Kubwa, Mathare).

7.4 *Discrimination in Provision of Emergency Relief Services*

The evidence shows that the respondents suffered ethnic based discrimination in the following ways. Relief food appeared to have been distributed based on a person's ethnicity, implying that people in the provincial administration took sides in the conflict - favouring some ethnic communities at the expense of others. There is also evidence that evictions were affected based on ethnic considerations. The situation seemed to have been compounded by shop owners selling goods only to people of ethnic communities. These practices seem to worsen the conflict situation and animosities. Here are examples of these experiences:

People being discriminated, that is, chased out from houses...selling of food to people of a certain tribe” (Respondents, Siranga, Kibra).

Hatred ...caused by one community not renting houses to other communities” (Respondent, Makina, Kibra).

The post-2007 violence also entailed huge losses in terms of incomes, livelihoods, and property. The loss of income was an indirect effect of the violence and often saw people afraid to report to work for fear of being attacked or killed, and others afraid to open their businesses to trade for the same reasons. But the destruction of property was also done as “revenge” against other communities that were perceived to hate others or to have become financially better off than others. The destruction of the property was a crude means of redistributing resources.

My friends were affected. I had to hide my friends. I saw houses being torched” (Respondent, Lindi, Kibra).

Not (able to access) working areas as coming outside of the house was a problem” (Respondent, Laini Saba, Kibra).

Shops were burnt and I incurred a very heavy loss” (Respondent Mathare 4B, Mathare).

I lost my property. My houses were occupied by others by force (Respondent, Mathare 4A, Mathare).

8. Consequences of the Conflict

The respondents described how the experiences of violence made them feel about perpetrators of the violence, including the ethnic group from which these people belonged.

I am very bitter with the Luos. I do not trust them at all. They really messed me up. I hate them. They messed us. (Respondent, Mathare North, Mathare).

I felt bitter towards the other community because of what they had done, such as killing and raping of women (Respondent, Siranga, Kibera).

I have lost trust towards other communities. I no longer trust them (Respondent, Siranga, Kibera).

I have a lot of fear and no longer trust other tribes.

It developed hatred among people living together because they started living like enemies...also you find that there were many divorces and people feared for their lives... Respondent 13, Mathare, Mathare).

Our communities looking at each other as if they are not worthy...the intermarriage between communities were affected because me personally I was forced to tell my wife who was a Kikuyu to go back to her own home because of ethnic violence... (Respondent 6, Makina, Kibra).

8.1 *Reinforcing of Hostilities and Exclusive Living Zones*

The examples given above show that the conflict situation was noted for hatred, bitterness, and resentment. On the matter of how the post-election violence damaged ethnic relations, there is reason to be concerned. Not enough effort in reconciliation and peacebuilding seems to have occurred. The violence appears to have strengthened the phenomenon of exclusive ethnic living zones and limited freedom of movement "... each tribe has its own village ... there are villages for Kikuyus, Luos, Luhyas, Kalenjins, and Kambas...in these villages ... a Luo cannot go to Kikuyu village...and vice versa..." (Respondent 11, Kibra, Laini Saba). The idea of exclusive ethnic zones stymies efforts to launch transformation in Mathare and Kibra

8.2 *Intergenerational Dimension of Conflict*

The conflict seems to have passed on even to children, which is worrying given the potential for the conflict to transmit through generations. The following remarks were typical of the problem. Parents warning their children against the other tribes and teaching them. "I do not want to see you with a Luo or Kikuyu and if you go

⁴⁴ Wamalwa, Matanga, and Onkware. "Interventions Implemented By State and Civil Society in Post Conflict Reconstruction in Kibera and Mathare, Nairobi Kenya after 2007/8 PEV".

ahead and don't name your children after my name"⁴⁵ (Respondent, 4, Makina, Kibra). Some victims said they had no ill feelings towards perpetrators as such, treating the post-election violence as a moment of madness for all communities. One respondent noted that she 'embraces all tribes because they are the children of God'.

9. Conditions in which Respondents would Engage in Forgiveness and Reconciliation

In confirmatory factor analysis, which was done to validate the readiness to forgiveness scale, the conditions in which the respondents would be willing to engage in forgiveness and reconciliation were identified. Ranked these factors were, *"I could forgive members of other groups who acknowledge the harm their group did"* (0.97), *"I would begin to forgive members if their ethnic group requested forgiveness from my group"* (0.84). These indicators suggest the respondents can make peace, but their attitudes to doing so hinged on a sense of justice being done. The majority view in focus group discussions was that justice needed to be done. As one respondent noted, "So far, justice is pending because nobody is held accountable for what happened." (Respondent, Makina, Kibera). Another obstacle to peacebuilding is that many parents, from both the "in-group" and "out-group", were discouraging their children from interacting with children from some ethnic communities. This attitude suggests that closure or justice has not been attained in the study area. Although the respondents envisioned a better future, this was clouded by existing negative attitudes towards their rival ethnic groups. The respondents' attitude to conditional peace-making, based on justice and restitution, suggests their potential to work towards peaceful coexistence⁴⁶.

Three dominant ways of dealing with the conflict situation emerged. First, some respondents demanded the prosecution of perpetrators arguing that such a move would deter future perpetrators. "They should be brought to justice so that they may pay for what they did to avoid the repeat of the same." (Respondent, Kibera, Kibera). Those who wanted forgiveness to be applied were also keen to avoid a recurrence of violent conflict and felt forgiveness would be the best way to achieve this: "I think they should be forgiven because of they were to pay (compensations) they do not have anything to pay with *kosa is kosa, kosa ni kurudia ndiyo kosa* (Respondent, Mathare 4B, Mathare). Some respondents felt that justice needed to involve

⁴⁵ In traditional African culture, the naming of children after a parent was viewed as a way of affirming intergenerational continuity. Parents would ordinarily be proud to have grandchildren named after them.

⁴⁶ Maoz, Ifat. "Social-cognitive mechanisms in reconciliation." *From Conflict Resolution to Reconciliation*, 2004, pp. 25–237.

restitution. Respondents said they would be willing to forgive perpetrators if such actions were accompanied by compensation or restitution.

For true forgiveness to take place, first of all those who were affected to be compensated, for example, IDPs; those who lost their property to be compensated (Respondent, Lindi, Kibera).

One thing that seems to bother the “in-group” is the loss of property to some members of the “out-group”, who took over the houses by force during the post-election violence. Compensation did not seem to be forthcoming, five years after the post-election violence. The following remark speaks to the victim’s frustrations on this matter. *“Taking of people’s properties and not willing to return them” (Respondent 34, Mabatini, Mathare North).*

The government not compensating those affected ...discrimination ... his hinders reconciliation because many people lose jobs because of their tribalism” (Respondent 8, CL, Laini-Saba, Kibra).

The only way is to compensate those who lost their properties and find a way of consoling those who lost their loved ones” (Respondent 3, Siranga, Kibra).

Compensation would be monetary in form. It would help victims recover lost property but also cover symbolically for lost lives. Nonetheless, the victims felt forgiveness, whether conditional or unconditional, was the dominant perspective on how to end the conflict in Mathare and Kibra. Many of the respondents drew their justification on the need to forgive, as a way out of the conflict, by invoking their religious beliefs. Yet, they had a view on the type of forgiveness that would be effectual in making for peaceful relations, one that was public and involved restitution. The foregoing suggests that religious actors could help broker reconciliation and peace-making.

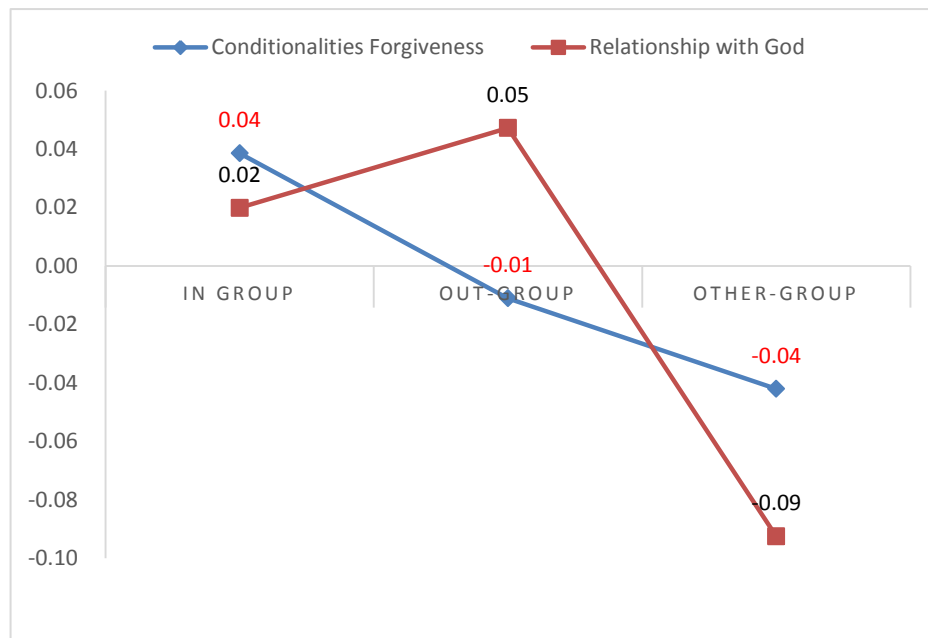
10. Readiness of Respondents and Victims to Engage in Reconciliation

During focus group discussions, the respondents seemed to appreciate the challenges of transforming the conflict. The respondents were bothered by the way ethnic groups defined rival ethnic groups. The appreciated the danger to peacebuilding like cultural labelling and messaging, which many people in their ethnic groups believed to be true or did nothing to challenge their use. The Kikuyu describe Luos as “illiterate and mannerless people” and are not circumcised people⁴⁷, so they cannot

⁴⁷ Circumcision is a right of passage for many Bantu communities in Kenya, and it is treated as a ritual that confers manhood on those who undergo it.

be given leadership”. The Kamba people are dirty, people who they and cannot get in intermarriage with” (Respondent 33, Mathare 4A, Mathare). The respondents seem to realize that fostering such negative attitudes would damage noble ideas, such as equality or even social justice. Whilst the Kikuyus take the Luos as dirty and stupid, while the Luos take the Kikuyus as thieves (Respondent, 41, CL, Mabatini, Mathare), then these attitudes are more likely to beef up the undesirable (conflict-ridden and prone) status quo than end it. Indeed, if some groups are deemed to fall short of the mark in one way or another (as Respondent 33 noted,) how can steps, such as greater levels of intermarriage (which can support peaceful coexistence) successfully apply? The challenge to resolving the conflict in Mathare and Kibera is in setting in motion discourses or platforms in which cultural labelling, and other unhelpful conflict attitudes, can be tackled.

Figure 3: Depiction of Mean Scores for Conditions for Forgiveness and Relationship with God Clustered about Villages in Mathare and Kibra



Source: Researcher, 2022

The “in-group” had the highest mean scores on conditions for forgiveness ($M=0.039$, $SD=.93$, $N=296$), which meant this group was the most likely one to attach conditions to members of other groups for forgiveness and reconciliation.

The “in-group” were least likely to insist that perpetrators of the 2007-2008 violence in Mathare and Kibra accept responsibility for damaging the property and harming the lives of the “in-group.” Coupled with the low scores of the in-group “on a relationship with God, it means this group too faced challenges in dealing with traumatic conditions, let alone reaching out to perceived perpetrators either by forgiving or reconciling with them.

A simple regression model was conducted to estimate the effect of a relationship with God on conditions for forgiveness. Having a relationship with God can both explain and predict the likelihood of a victim of violence having positive thoughts about forgiving presumed perpetrators ($r^2 = 0.25$ $F(1, 764) = 266.85$ $p < 0.01$).

Table 4: Relationship between Relationship with God and Conditions for Forgiveness and Reconciliation

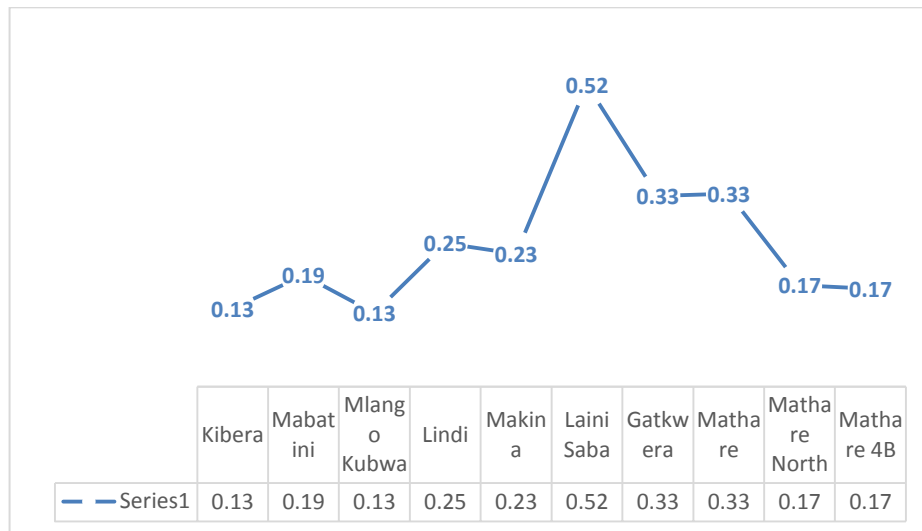
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
In-group 1	.550 ^a	.303	.300	.776
Out-group 1	.471 ^a	.222	.219	.863
Other group 1	.504 ^a	.254	.250	.898

Source: Researcher, 2022

a. Predictors: (Constant), Relationship with God

Relationship with God has the strongest effect on conditions for forgiveness among the “in-group”. This affirms the point made earlier that the “in-group” would be more willing to make peace with the “out-group” if the latter accepted responsibility for the violence experienced. When the data were clustered about the village, larger effect sizes were observed.

Figure 4: Depiction of Regression Coefficient Results (R^2) Results of the Relationship between Relationship with God and Forgiveness and Reconciliation per Village



Source: Researcher, 2022

Efforts to use the religious beliefs of victims of violence in Mathare and Kibra would likely be more effective in Laini Saba, Gatwekera, and Mathare and less effective in Mlango Kubwa, Kibera, and Mabatini. Evidence in Figure 4 can help analyst launch peace building initiatives by making them aware of areas where forgiveness and reconciliation were most likely to work and areas where they would struggle working. Efforts to build peace could be initiated in places like Laini Saba, Gatwekera, and Mathare before places like Mathare Kibera or Mlango Kubwa.

11. Conclusion

The post-election violence was extensive in form and affected residents of both Mathare and Kibra, directly or indirectly. This episode of violence left the residents with intensely negative attitudes towards rival ethnic groups. Through factor analysis, the conditions in which the respondents would be willing to participate in peacebuilding have been identified. Most victims would be willing to forgive perpetrators if the latter was willing to accept responsibility for causing harm to the latter. If they felt justice would be done, victims would engage in conflict transformation. Also, victims would be willing to forgive perpetrators if the latter

requested victims for forgiveness. These conditions raise the prospects for genuine reconciliation to take place.

Importantly, too, the findings make the case for restitution to be used to enable reconciliation. The findings have shed light on villages in Mathare and Kibra where forgiveness and reconciliation are most to work, and where they would struggle working.

12. Recommendations

- i. Effecting forgiveness and reconciliation in Mathare and Kibra would benefit from the participation of trusted religious leaders to shepherd healing and reconciliation and leaders of ethnic groups “assuming “accountability for violent actions of perpetrators.
- ii. There is a need for a forum to encourage dialogue on the factors that sustain conflict attitudes, which is evidenced by the cultural labelling of ethnic groups. Such a forum would help communities understand why other groups perceive them as they do and what can be done to change these attitudes.
- iii. There is a need for communities to feel that justice has been done. To this end, restitution could be immensely helpful.
- iv. Launch peace initiatives in Mathare and Kibera based on the emerging evidence that such initiatives are likely to work easier in some villages and harder in others.

Annexure A.1: Reliability and Validity for Readiness to Forgive and Reconcile Scale

	Conditions Forgiveness	Relationship with God	
Composite Reliability	0.89>0.7	0.79>0.7	ESTABLISHED
Convergent Validity (AVE)	0.82>0.5	0.58>0.5	ESTABLISHED
Discriminant Validity	MSV (0.19<AVE,0.82) ASV 0.23<0.82	MSV (0.19<0.58) ASV 0.23<0.58	ESTABLISHED
Divergent Validity	AVE ² =0.67>ICR=0.5	AVE ² =0.33<ICR=0.5	PARTIALLY ESTABLISHED

Source: Researcher, 2022

Annexure A.2: Fit Indices for Measurement Invariance Test for Readiness to Forgive and Reconcile Scale based on Ethnic group: “In-group”, “Out-group”, and other group

Model	χ^2	Df	χ^2_{diff}	Δdf	RMSEA (90% CI)	$\Delta RMSEA$	CFI	ΔCFI	AIC
Unconstrained	11.08	9	-	-	.017(0.000-0.046)	-	.99	-	113.08
Measurement weight	13.27	15	2.19	6	.000 (0.00-0.31)	0.11	1	0.01	103.27
Measurement Intercepts	22.71	25	9.44	7	.000 (0.00-0.26)	0.0	1	0	92.71
Structural covariances	28.65	31	5.94	6	.000 (0.00-0.24)	0.0	1	0	86.85
Measurement Residual	38.73	43	10.08	9	.000(0.00-0.21)	0.0	1	0	72.73

Source: Researcher, 2022

The scale met the strictest invariance threshold. It could thus be used to make meaningful comparisons among ethnic groups.

Annexure A.3: Relationship between Relationship with God and Conditions for Forgiveness

Village	Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Sig
Kibera	1	.385 ^a	.148	.134	1.05318430	.000
Mabatini	1	.452 ^a	.204	.191	.84127007	.000
Mlango Kubwa	1	.386 ^a	.149	.126	.74476374	.000
Lindi	1	.507 ^a	.257	.246	.82012634	.000
Makina	1	.493 ^a	.243	.228	.95416860	.000
Laini Saba	1	.728 ^a	.530	.518	.77489001	.000
Gatkvera	1	.582 ^a	.339	.327	.85420481	.000
Mathare	1	.577 ^a	.334	.331	.78098316	.000
Mathare North	1	.432 ^a	.186	.174	.76983767	.000
Mathare 4B	1	.423 ^a	.179	.168	.81948539	.000

Source: Researcher, 2022

a. Predictors: (Constant), Relationship with God

VIRTUAL COURTS AND ACCESS TO JUSTICE IN INDIA: AN ANALYSIS

Dr. Gurmanpreet Kaur*

Abstract

Indian judicial system has been overburdened ever since the inception of courts. Measures have been undertaken over time to bring down the pendency, arrears and delay of cases. Various Alternative Dispute Resolution Mechanisms like Arbitration, Conciliation, Mediation, Lok Adalat have been set up to bring down the number of cases but this not been able to fulfil the purpose with which they were set up. According to Kiren Rijiju, Law Minister, the total pending cases in district and subordinate courts as on December 31, 2022 was over 4.32 crore whereas 69,000 cases are pending in the Supreme Court, while there is a backlog of more than 59 lakh cases in 25 High Courts.¹ Currently, Information, Communication and Technology (ICT) has become a part and parcel of our lives. In the words of Hon'ble (Mr.) Justice D.Y. Chandrachud, Chief Justice of India, technology was not meant only for the pandemic but "is here to stay for future and forever".² Due to the presence of technology, access to justice is more convenient as it no longer attached with physical courts rather it is more of service for the convenience and ease of the parties. Virtual Courts and Online Dispute Resolution Mechanisms are emerging areas to deal with cases in online mode and to ensure access to justice to all the sections of the society.

The judicial system in India is under a great stress. On the one hand, we are faced with heightened expectations of the public which is becoming more and more vocal in its demand for justice and on the other hand, the judges are inundated with increased litigation and the ever-lurking spectre of arrears. There are constant endeavours to reduce the pendency, backlog and arrears of cases. There are certain lacunas and gaps which need to be filled and a different approach is required to take these Virtual courts to new heights.

Keywords: online dispute resolution, arrears, backlog, pendency

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¹ Available at <https://www.ndtv.com/india-news/nearly-5-crore-pending-cases-in-courts-over-69-000-in-supreme-court-3768720> last accessed on 20th August 2023

² Available at <https://indianexpress.com/article/india/cji-chandrachud-technology-high-courts-8443340/> last accessed on 23rd August 2023

1. Introduction

Indian judicial system has been overburdened ever since the inception of courts, time and again measures have been taken to bring down the pendency, arrears and delay of cases. Various Alternative Dispute Resolution Mechanisms like Arbitration, Conciliation, Mediation, Lok Adalat have been set up to bring down the number of cases but this not been able to fulfil the purpose which they were set up. Law Minister Kiren Rijiju said as on December 31, 2022, the total pending cases in district and subordinate courts was over 4.32 crore whereas 69,000 cases are pending in the Supreme Court, while there is a backlog of more than 59 lakh cases in 25 High Courts.³ In today's time Information, Communication and Technology (ICT) has become a part and parcel of our lives, to think of a life without ICT is now only a dream. ICT was integrated into our lives more deeply with the spread of Covid-19 when the world came under the grip of deadly corona virus and we switched over to the virtual world. In 2023, after three years of the pandemic still we are not shying away from applying the technology for access to justice. In the words of Hon'ble Chief Justice of India, Hon'ble (Mr.) Justice D.Y. Chandrachud, technology was not meant only for the pandemic but "is here to stay for future and forever".⁴ Due to the presence of technology, access to justice is more convenient as it no longer attached with physical courts rather it is more of service for the convenience and ease of the parties. Indian judiciary is custodian of our constitutional rights and protector of individual fundamental rights. To provide fair, impartial and timely justice the judiciary has to adopt the technological changes. Virtual Courts and Online Dispute Resolution Mechanisms are emerging areas to deal with cases in online mode and to ensure access to justice to all the sections of the society.

During the pandemic, the Court process shifted to online mode and it was a great challenge for the judiciary not only in India but worldwide. In India, a committee of seven Supreme Court judges⁵ led by Justice N.V. Ramana decided to continue with the Online Courts and not to revert back to physical

³ Available at <https://www.ndtv.com/india-news/nearly-5-crore-pending-cases-in-courts-over-69000-in-supreme-court-3768720> last accessed on 20th August 2023

⁴ Available at <https://indianexpress.com/article/india/cji-chandrachud-technology-high-courts-8443340/> last accessed on 23rd August 2023

⁵ The other Members of the Committee are Justices Arun Mishra, R.F. Nariman, U.U. Lalit, A.M. Khanwilkar, D.Y. Chandrachud and L. Nageswara Rao.

courts to eliminate the risk of covid for litigants and lawyers.⁶

Delhi District Courts established first e-courts in India in 2019, that dealt with the matters related to traffic challan online. In April 2020, during pandemic different High Courts passed the orders for conduct of hearings through video conferencing, live streaming of the daily listed matters, etc. There was a constant endeavour to use ICT in the day to day functioning of the courts to provide access to justice even during the pandemic.

2. Categories of Courts in India

Till 2020, Online Courts and Virtual Courts had no relevance, with the advent of the pandemic, these courts had a huge relevance in the Indian judicial system. These courts are now important part and parcel of the justice delivery system along with traditional courts in India. Time and again Chief Justice of India, Hon'ble (Mr.) Justice Y.V Chandrachud has referred to the use of ICT in the day to day functioning of the Courts. Based on the differences in the functioning of the Courts, we can categorise the Courts under the following heads:

- i. Conventional Courts (Physical Courts)- To function effectively these Courts require physical presence of the parties, advocates, judges and even the witnesses are examined in the physical mode in the Court room. They exercise territorial, pecuniary and subject matter jurisdiction.
- ii. Online Courts- This type of arrangement emerged at the time of pandemic when all the Courts and proceedings were shifted online. The parties are present for hearing, arguments, evidence, witness statements along with the advocates. The statements and arguments are submitted to the judicial officers. The judges are present in the Court room physically. After the pandemic, when things started getting normalised, the proceedings shifted back to the Conventional Courts. However, certain Tribunals like Company Law Appellate Tribunal, Intellectual Property Appellate Board are still functioning as permanent Online Courts where parties don't appear for physical hearing. The Supreme Court of India had issued guidelines in order to direct the courts at subordinate levels to frame mechanism for using online

⁶ Available at <<https://www.thehindu.com/news/national/sc-to-continue-virtual-court-system/article31828053.ece>> Last accessed on 31st July 2023

videoconferencing methods till the normalisation of the situation.⁷ However, when things have turned to normalcy only urgent matters are taken up in online Courts.

- iii. Virtual Courts- In the Virtual Courts right from the filing of the application to the delivery of judgement is done virtually. Even fine imposed is deposited online through the E-portal. However only limited number of cases are taken up in Virtual Courts such Traffic Challans and cases under Section 206 of the Criminal Procedure Code. The copy of the orders and judgements are available immediately after the decision and can be downloaded electronically. If the party wish to contest the case, they may refuse to proceed with the proceedings and the party is referred to the Conventional Court. Time and date of the case is given to the parties to appear for the hearing.

The introduction of different set of Courts have been an effective process in providing speedy justice to all the litigants even during the pandemic. Since 1990 there has been an endeavour by National Informatics Centre for the computerisation of the Courts and it continuously strives to bring speedy access to justice to one and all. After year 2020, the number of internet users has increased manifold, the proposal to have Virtual courts will be a realistic idea since institutionalise and integrate the technology in the court process is the need of the hour.⁸

3. Virtual Courts in India- Idea Behind its Setup

Virtual Courts are a concept initiated by the E- Committee, Supreme Court of India for integrating ICT in the judiciary. The main idea behind Virtual Courts is to eliminate the presence of parties or lawyers in the Court. There would be actual adjudication in the virtual court where services would be provided 24x7.

The purpose for setting up Virtual Courts is to utilize the potential of resources of the court to their maximum extent by providing the parties an avenue for the settling petty issues namely-Offences under Motor

⁷ Available at <<https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/>> (Last accessed on 31st July 2023) wherein the author expressed her views in a panel discussion on the subject organised by Vidhi.

⁸ Available at <<https://vidhilegalpolicy.in/2020/05/01/virtual-courts-in-india-a-strategy-paper/>> (Last accessed on 29th July 2023) wherein the author (Karnika Seth) expressed her views in a panel discussion on the subject organised by Vidhi.

Vehicle Act (Traffic Challan Cases) and Petty Offences where summons can be issued under Section 206 of Criminal Procedure Code. The initiative behind the concept of Virtual Courts is to reduce the footfall in the courts by eliminating the physical presence/attendance in the Court by the parties, advocates and judges. It would save thousands of judicial hours which can be invested in other cases where virtual disposal is not possible due to the nature of the case. At present, the Virtual Courts are managed by Virtual Judges whose jurisdiction is extended to the entire state and works 24x7. Parties can sit at the comfort of the homes and access the Virtual Courts.

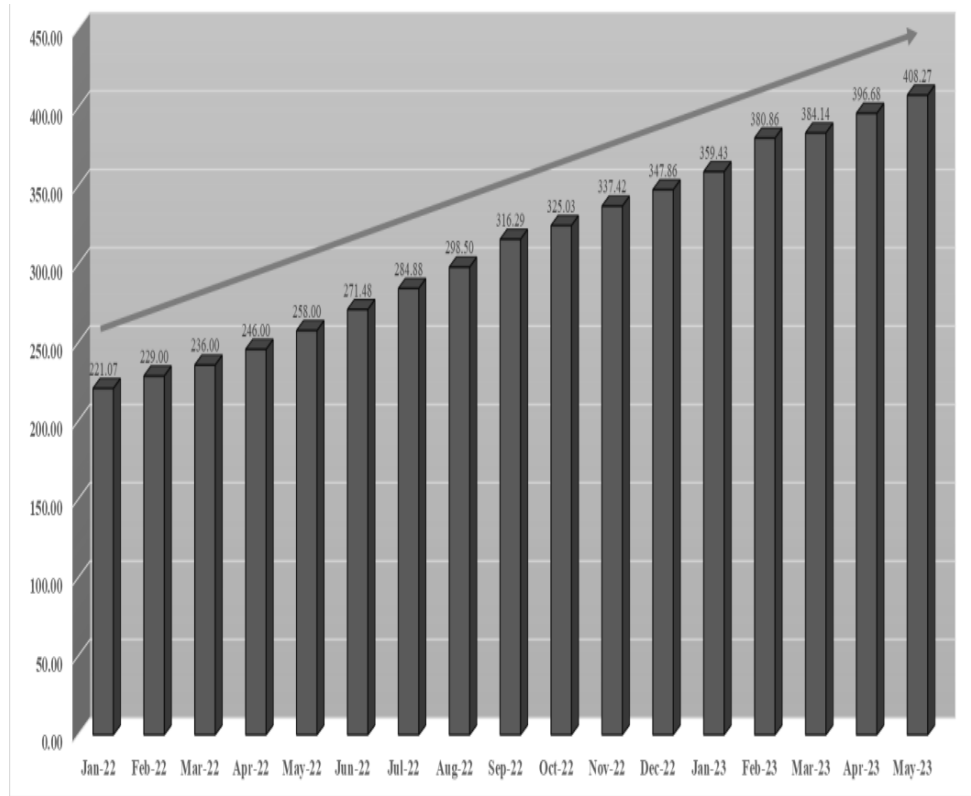
As on 31st May 2023, there are 22 Virtual Courts in India extending in 18 states/UTs that is Delhi, Haryana, Tamil Nadu, Karnataka, Kerala, Maharashtra, Assam, Chhattisgarh, Jammu and Kashmir, Uttar Pradesh, Odisha, Meghalaya, Himachal Pradesh, Madhya Pradesh, Rajasthan, Tripura, Gujarat and West Bengal.

The facilities available for the litigants include e-Filing and paying the Court Fees or fines through online portals. Litigants can also view the status of the case, download judgements, orders and decrees through the online channels created for service delivery by the Courts by sitting at home. Till 31st May 2023, over 3.11 crore have been handled by 22 Virtual Courts and in more than 37 lakh cases online fine of more than Rs. 408.28 crores have been realised.⁹ Thus Virtual Courts are cost effective, convenient, efficient, allows custom made process for dispute resolution and limits the unconscious human bias due to limited human interactions.¹⁰

⁹ Available at <https://doj.gov.in/virtual-courts/#:~:text=A%20novel%20concept%20of%20virtual,or%20advocate%20in%20the%20court>. Last Accessed on 4th September 2023

¹⁰ Designing the Future of Dispute Resolution: The ODR Policy Plan for India, NITI Ayog Expert Committee on ODR, p.iii

Figure 1: Fine Realized in Virtual Courts (in INR Cr.)



Source: <https://doj.gov.in/virtual-courts/#> Department of Justice- E-Courts

4. Benefits of Virtual Courts

The introduction of ICT into dispute resolution process provides immense advantage to the Virtual courts over physical courts. This has advanced and strengthened the everyday operation of the Indian judiciary and it has given hope to the millions of justice seekers. Virtual courts have filled the gap of ineffectiveness and delay by providing timely disposal of cases and disputes. Justice Sharad Bobde, the former Chief Justice of India, in his address at the launch of Supreme Court Vidhik Anuvaad Software (SUVAS) on the National Constitution Day in 2019, stated, “While technology has enabled us to go paperless in many courts and go digital, if not all the way then substantially, in many courts, we now have the benefit of modern artificial intelligence tools that will assist in improving the efficiency of our justice system through

sophisticated and contextual automation of existing repetitive non-judicial tasks and functions to reduce pendency, expedite judicial adjudication and create more time for Judges to resolve complex cases.”¹¹

Virtual Courts are a boon for every section of the society be it a victim, lawyer or a judge. These are cost effective, viable and cheaper options in place of physical courts. Some of the key benefits of Virtual Courts are as follows:

- i. Cost effective-The economic burden on the parties prove to be a punishment and hinders the access to justice. Virtual courts are cost effective as by its very nature the litigants, lawyers and witnesses don't have to travel to far off places for the hearing. Virtual courts for traffic challans and petty offences under Section 202, CrPC provide solution then and there only; if party accepts the fine levied, immediately payment is made on the e-portal and case is decided and case is closed.
- ii. Transparent-It presents more clear and transparent perspective for the parties as they are able to understand and analyse the process due to being structuralised and properly managed with the help of ICT.
- iii. Convenient and Speedy redressal-The parties can have the decision of the case by sitting in the comfort of their homes and decision is quick. If the case is referred to the Court, an average time for the decision of the cases taken up in Virtual Courts today three to six months. There are numerous reasons for the delay; there may be administrative delays or delays due to shortage of judges, etc. in Virtual Courts as there is no requirement of a judge and it limits the human bias as well.

Virtual courts undoubtedly provide easy access to justice, they are cost friendly and sustainable but there are lots of difficulties in adopting these Virtual courts easily as we need a broad and holistic approach for inception of these courts.

5. Challenges Faced for the Effective Adoption of Virtual Courts

The Standing Committee on Personnel, Public Grievances, Law and Justice Chaired by Mr. Bhupender Yadav submitted its report on the functioning of Virtual Courts on September 11, 2020.¹² The Committee emphasised that there is a need to integrate virtual courts into the country's legal ecosystem.

¹¹ Available at https://www.scconline.com/blog/post/2022/01/24/virtual-courts-in-india/#_ftn2, Adoption of Virtual Courts in India, Karnika Seth Last accessed on 2nd September 2023

¹² PRS Legislative Research ("PRS"), Standing Committee Report Summary, Functioning of Virtual Courts in India. Available at https://prsindia.org/files/policy/policy_committee_reports/Report_Summary_SC_Virtual%20Courts.pdf Last accessed on 30th August 2023

However, there are many challenges for immediate implementation of the Virtual Courts in India; with 25 High Courts and more than 650 District Courts in India, it seems to be a costly affair on the government exchequer with immediate effect. Some of the disadvantages/shortcomings/problems faced in the successful implementation of the Virtual Courts is as follows:

- i. Digital Divide-One of the pre-conditions for successful implementation of Virtual Courts is to have a robust technology infrastructure such as set-up of strong internet connectivity, high bandwidth internet connection, access to computers or smart phones.¹³ However, most of the population in India lives in villages, digitalisation seems to be too far from possible. Digital literacy is one of the biggest challenges keeping in mind the different variation due to gender, age, geography and class in the population, it is very difficult to provide technology to each and every individual. To be successful individuals must have certain technical skills and knowledge to have access to justice in virtual courts as the process for filing the cases online/electronically has many technicalities.
- ii. Unfamiliar process-There is lack of awareness amongst the masses about online process; litigants are not accustomed with new processes and services; there is lack of reliance on new techniques due to unfamiliarity with the process. The people are sceptic about the cost involved, delays associated enforceability of the orders.
- iii. Privacy issues-Integration of technology and reduced human interactions give rise new challenges such as data theft, virus attacks, impersonation, tampering of evidence, online documents can be misused, etc.

It is pertinent to mention here that the obstacles do come whenever we try to adopt new things or technology however we can improve upon the shortcomings by adopting the technology and make amendments to improve them as and when we encounter any challenges.

6. Virtual Courts in other Countries

Countries like USA, UK and China have been using the concept of online courts even prior to pandemic broke out. UK started this concept in 2009 where

¹³ Goodman, Joseph W 'The Pros and Cons of Online Dispute Resolution: An Assessment of Cyber-Mediation Websites.' *Duke Law & Technology Review*, 2003. Last accessed on 9th September 2023

this system deals with both civil and criminal cases. Judicial officers believe that this has improved the judicial system, it is cost effective and movement of prisoners to the courts has been cut down. In China. The concept of Virtual Courts was brought for the first time in 2017 in the city of Hangzhou and it has been continuing ever since. City named Hangzhou, is a major hub for Chinese technology companies, there Robot Justice is provided by using Artificial Intelligence (AI) where judges are non-human. These robotic courts deals cases involving civil issues in digital matters. These majorly include internet trade issues, copyright cases and disputes over online product sales.

Outbreak of pandemic had forced the courts to shift to online operations in matter of weeks in early 2020. The courts shifted online from traditional physical setup. There was a rapid deployment of new technology that transformed the working of civil and criminal cases. The adoption of digital tools brought significant real-world implications.¹⁴ It made the legal system easier to navigate when people were confined to homes but were still in need of justice. The Covid-19 pandemic accelerated the use of remote-hearings in the courts. Remote hearing, online hearing or video hearings helped to provide access to justice and kept the justice system working through the pandemic crisis in the human history. During this time, the technology improved, judges became familiar with the new process, even litigants became familiar with the process and their confidence grew even though reluctantly at times. It is unlikely that these online hearings will disappear after the pandemic rather an endeavour is made many countries to retain this process and make it a permanent feature along with the physical courts.

In recent years, e-justice brought initiatives for e-filing of cases, hear witnesses in criminal trials and civil trials, the accused in criminal trials via video-conference technology, while judges, lawyers, parties, were present in the courtroom physically. However, after the pandemic the entire proceedings were shifted online. In 2020, when pandemic introduced us to the concept of online courts, many countries such as USA, UK, Canada, Singapore, China were already following this process in one form or the other.

¹⁴ Available at <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/12/how-courts-embraced-technology-met-the-pandemic-challenge-and-revolutionized-their-operations> Last accessed on 9th September 2023

- i. USA-In USA, lower courts and Supreme Court have issued a number of administrative orders regarding administration of justice. The courts conducted proceedings by telephone and video conferencing during pandemic.¹⁵
- ii. United Kingdom-In UK, judiciary had been using remote hearing methods such as videoconferencing for disposal of cases.¹⁶ The hearings were made public by allowing the media persons remote access so as to uphold the principle of providing justice in open courts.¹⁷
- iii. China-During pandemic, Supreme Court of China directed the lower courts to conduct the proceedings through online portals for easy dispensation of justice and bringing the justice at door step. The courts were given liberty to make full use of the online platforms for conducting the court processes such as e-filing, delivering judgements, ensure equal treatment to both the parties where they get an equal opportunity of being heard by applying the principles of justice, equity and good conscience, provision of counsels through online portals, adequate legal services and protection. Mobile Micro Courts were promoted in the social media apps so as to help in Internet trials.¹⁸ Litigants were allowed to send the documents and material by posts or through internet instead of appearing physically in the court.
- iv. Canada-In the Canadian province of Ontario, the Supreme Court extended the video and telephonic conferencing from taking only urgent matters to all the matters through online mode. The Supreme Court allowed the e-filings using electronic signatures.¹⁹ Public and media can have access to the proceedings by e-mailing their requests for acquiring the copy of the proceedings to court staff.

¹⁵ Available at <https://www.nortonrosefulbright.com/en-nl/knowledge/publications/bbfeb594/covid-19-and-the-global-approach-to-further-court-proceedings-hearings> Last accessed on 9th August 2023

¹⁶ Available at <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak> Last accessed on 29th July 2023

¹⁷ Available at <https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/> Last accessed on 19th August 2023

¹⁸ Available at <https://www.scconline.com/blog/post/2022/01/24/virtual-courts-in-india/> Last accessed on 3rd September 2023

¹⁹ Notice for Matters to be Heard in the Ontario Superior Court of Justice During the COVID-19 Emergency. Available at <https://www.scconline.com/blog/post/2022/01/24/virtual-courts-in-india/> Last accessed on 19th August 2023

- v. Singapore- The Supreme Court in Singapore too had directed the use of zoom application to conduct audio and videoconferencing for hearing the matters in the court. The legislature even introduced Covid 19 (Temporary Measures) Act 2020 allowing the courts to use remote technology for conduct of proceedings so as to minimize the physical attendance in the courts²⁰.
- vi. Netherlands-During pandemic all the disputes were heard via teleconference and all appeals and demands were electronically heard in the courts. Many European countries like Albania, Croatia, Germany, France, Ukraine, Lithuania etc opted for virtual courts.

However, online hearings did not start all of a sudden with the onset of pandemic, there were virtual courts in many countries. With the pandemic, courts and legislator immediately shifted to online or virtual mode without any physical presence of judges, parties, advocates, court staff.²¹ In its implementation, the judiciary played an active role to provide online platforms, guidelines on how to conduct the proceedings online and at the same time ensure access to justice, transparency, privacy and security to the parties and advocates etc.

7. Conclusion and Suggestions

The introduction and inclusion of virtual courts is indeed a great step by the Indian judiciary to provide access to justice at door step and it has given hope to the litigants that their time and resources will not go in vain. The judicial system in India is under a great stress. On the one hand we are faced with heightened expectations of the public which is becoming more and more vocal in its demand for justice and on the other the judges are inundated with increased litigation and the ever-lurking spectre of arrears. There are constant endeavours to reduce the pendency, backlog and arrears of cases. There are certain lacunas and gaps which need to be filled and a different approach is required to take these Virtual courts to new heights.

Time and again, various recommendations and reports have been submitted to Government of India, finding various alternative techniques and methods to keep a check on the rise of pending cases; still the problem is at large. Till

²⁰ Available at <https://sso.agc.gov.sg/Act/COVID19TMA2020> Last accessed on 9th September 2023

²¹ Sanders, Anne. "Video-Hearings in Europe Before, During and After the COVID-19 Pandemic." *International Journal for Court Administration*, vol. 12 no. 2, 2021, p. 3.

2020, Online Courts and Virtual Courts had no relevance, with the advent of the pandemic, these courts had a huge relevance in the Indian judicial system. These courts are now important part and parcel of the justice delivery system along with traditional courts in India. During Covid, the cases shifted to Online mode where judges, parties and witnesses were present online. After Covid there has been an endeavour to shift to Virtual Courts where cases are resolved without the presence of judges in virtual mode.

Presently, shifting to Virtual Courts in India has many challenges including the privacy issues and digital divide. The future of dispute resolution lies in the use of Information Communication and Technology and providing digital infrastructure, digital literacy and removal of divide in the digital technology. The Virtual Courts have a bright future as they provide efficient and effective dispute resolution yet its integration and assimilation in the mainstream ecosystem holds several challenges. For gaining the trust and confidence of the masses several factors are responsible such as availability of reliable and secure technology, willingness of parties to adopt to a new way of Courts, digital infrastructure, cooperation from lawyers and various stakeholders involved in the process of justice delivery system through Virtual Courts. Integration of contemporary technology tool such Artificial Intelligence (AI) in justice dispensing²² system would reduce the burden of courts by reducing the pendency, arrears and backlog of cases. The AI offers services towards improving the legal health and awareness in the society. The judiciary and legislature in India should adopt this new approach for dispute resolution but should be cautious at the same time as there are risks involved with integration of technology at all times.

At this stage, education and evaluation is the best strategy to be adopted. There is a need to educate the masses about this new technology and evaluate the present Virtual courts so to refer more and more cases to these courts in the near future. Education is to be imparted for cyber security, data privacy, educating about speedy mechanism, cost effective features of these courts.

The initiative behind the concept of Virtual Courts is to reduce the footfall in the courts by eliminating the physical presence/attendance in the Court by the parties, advocates and judges. It would save thousands of judicial hours which

²² Smith, Roger. 'Rechtwijzer: Why online supported dispute resolution is hard to implement' (*Law, Technology and Access to Justice*, 20 June 2017) <<https://law-tech-a2j.org/odr/rechtwijzer-why-online-supported-dispute-resolution-is-hard-to-implement/>> accessed 31 August 2023

can be invested in other cases where virtual disposal is not possible due to the nature of the case. There is a continuous search for finding solutions to the problem from its root cause. One of the probable solution lies in the fact that the number of cases to be referred to Virtual courts be expanded to Cheque bounce cases by individuals where matters can be settled under Section 138, Negotiable Instruments Act, 1881 to tackle the growing problem of pendency. For the Virtual courts to be successful and strengthening the pillars of judiciary and legislature there is a need for enhanced effectiveness and efficiency along with specialised skills, knowledge, infrastructure and apprentices. There is a need for collective efforts of judiciary, legislature and executive to make this new initiative of Virtual Courts successful for the times to come.

SEAWEEDS: THE BLUE REVOLUTION

Dr. Sudha Jha Pathak*

Abstract

Seaweeds exist as the miracle plants of the sea and are extremely valuable. Entrepreneurs are acknowledging seaweeds as a potential “miracle crop” with multifarious prospects. Seaweeds provide for the commercial needs of food, biofuels, feed, chemicals, pharmaceuticals, cosmetic products, and bio-fertilizers. This article assesses the present status of Indian seaweeds, their use, advances in farming technologies of seaweeds, and the prospects of utilizing seaweed for the production of biofuels. The Indian Government is hoping to realize the untapped potential of seaweeds which could constitute the “Blue Revolution.” India has the potential of becoming a major player in the international seaweed market which is projected to reach \$26 billion in 2025. With the increasing popularity of organic farming, seaweed is being regarded as the “fertilizer of the future.” A major benefit of seaweed farming is that it reduces the adverse effects of climate change by sequestering carbon dioxide. The ocean holds the future as a largely unexploited reserve for a new source of bioenergy which is renewable. Scientists are now looking at seaweed to explore novel renewable energy harvesting methods.

Keywords: seaweed, diversity, Blue Revolution, climate change, biofuel, sustainable development

1. Introduction

Seaweeds are the miracle plants of the sea and are extremely valuable. Seaweeds are innumerable species of microscopic algae grown in aquatic and narrow coastal areas and on seashores. In the ocean seaweeds are widely found from the tidal level to areas of substantial depth, either floating freely or attached to a substance. Seaweeds form a crucial sustainable reserve in the marine background and have been an integral feature of society since ancient times. Chinese literature reported on the utilization of seaweeds about 2,500 years ago (Tseng, 2004).

Seaweeds are categorized into four main groups corresponding to their pigments which retain the specific light of wavelengths which accord them their distinctive colours such as red, green, blue, and brown. Seaweeds can be categorized into three

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varieties – the Chlorophyta (green algae), the Rhodophyta (red algae), and the Phaeophyta (brown algae). It is estimated that there are about 4000 red microalgae species, 1500 brown microalgae species, and 900 green microalgae species in the marine environment (Mohammed, 2015). Red seaweeds considered to be the best are mostly located in subtropical and tropical areas, whereas brown seaweeds are commonly found in temperate areas. There are about 221 varieties of seaweed that are commercially used. Out of them, nearly 145 types are utilized for food manufacturing, and about 110 varieties are utilized for making phycocolloid (Mohammed, 2015).

They are regarded to be the miracle flora of the sea, as well as renewable sources of food, energy, medicines, and compounds with manifold nutritional, agricultural, manufacturing, biochemical, and cosmetic use. They also form the foundation of marine food chains. With abundant sunlight, seaweeds can grow very fast in about 45 months. Hence wet farming is being extended to large areas of the ocean to grow seaweeds.

India occupies a crucial position among the 12 major biodiversity countries in the world. A substantial proportion of its population is dependent on the rich, coastal marine resources. The rocky coasts, coral reefs, estuaries, and lagoons, alongside the coastline of India, offer the best environment for the development of seaweeds. Unlike in developed countries, in India, seaweeds are collected manually from their natural habitat. The harvesting of seaweeds is an important source of livelihood for the people residing on the coastlines. The collection of seaweeds is mostly concentrated in the south-eastern coast of India from Rameswaram to Kanyakumari (Subba Rao & Mantri, 2006) as well as Gujarat coasts, Lakshadweep, Andaman and Nicobar Islands. Prolific beds of seaweeds are found in the Gulf of Mannar, Gulf of Kutch, Hanshadweep and Bay Islands. India has about 434 types of red seaweed, 194 types of brown seaweed, and 216 types of green seaweed mostly found in the deep-water regions and inter-tidal areas.

In India, the Central Salt Marine Chemical Research Institute and Central Marine Fisheries Research Institute have established seaweed culture methods for specific economically viable seaweed varieties. Due to their efforts, many NGOs, Self Help Groups, as well as Village Youth Groups have contributed to promoting the cultivation of seaweeds as an alternative means of living for the poor, marginalized people on the coasts. Seaweed cultivation has very good prospects worldwide as there exists a great demand for these resources in the international market. Moreover, it can be developed further as a successful cooperative sector or cottage

industry as there is the availability of ample resources and manpower in the country (Mohammed, 2015).

2. Uses

Seaweeds have been used for a long time as conventional and folk medicine in several Asian and Caribbean countries. ‘Pen TsaeKan Mu’ documented 2000 years ago in Chinese literature gave recognition to seaweeds stating that seaweeds were used in conventional and folk medicines (Tseng & Chang, 1984). Since 300 BCE Japan and China have been making use of seaweeds for healing various medical problems including parasitic infections (Moo-Puc et al. 2008). They have also been used in the medical field as creams, gels, and bandage solutions, especially in gynaecology (Evans, 1996).

Seaweeds are said to be the ‘Medical Diet and Nutrition of the 21st Century’ since they are utilized for the treatment of cancer, goitre, cardio-vascular surgeries, manufacture of laxatives. Popularly referred to as “sea vegetables” seaweeds abound in vitamins and minerals. Seaweed is one of the chief suppliers of bioactive compounds, as well as anti-HIV drugs. They are also a rich source of Vitamins A, B1, B12, C, D, E, riboflavin, and folic acid as well as amino acids which are essential for good health and life (NCDC Desk, 2022). Entrepreneurs are acknowledging seaweeds as a potential “miracle crop” with multifarious prospects (Holtz, 2015). The chief industrial uses of seaweeds are as a vital ingredient of carrageenan, agar, and agarose which are utilized in laboratories, pharmaceuticals, cosmetics, manufacture of paper, paint, and processed foods. According to experts, carrageenan is utilized as a thickener and stabilizer in dairy products as well as a texturizer in processed meats and is utilized in about 350-500 consumer products (Holtz, 2015) including toothpaste, shampoo, pharmaceuticals, and pet products to name a few.

Seaweeds are an intrinsic feature of coastal ecosystems and support the lives of various aquatic-based enterprises. The economic importance of seaweeds has an impact on the ecological progress of regions along the coast. They are expected to be the key source of biofertilizers which would facilitate the organic agricultural revolution in the country (Holtz, 2015). After human consumption, the next major commercial use of seaweeds is for the production of phycocolloids (alginate, agar, carrageenan) which are utilized in various industries and its production worldwide, has a projected worth of more than one billion US\$. The domestic home market of agar and alginate are dependent on natural seaweed beds which are substantiated by imports. The current

technological achievement realized in the production of seaweed has provided a boost for the commercial utilization of seaweed reserves in India. Due to the increased demand for seaweed worldwide, the manufacture of red seaweed has multiplied recently. There was a rising global demand for carrageenan which is derived from red seaweed wherein the demand was more than the supply derived from the ocean.

Various industries associated with the processing of seaweeds hold a tremendous potential for specializing in microbiology, and food processing. According to researchers, based on a successful experiment on cotton seeds, the seaweed extract facilitates quicker growth of seeds. With the increasing popularity of organic farming, seaweed is being regarded as the “fertilizer of the future” (Holtz, 2015). According to estimates, 8.6 million metric tonnes of algal biomass per year are used in the form of food and fodder for human beings and cattle, as manures in agriculture, drugs in the pharmaceutical sector as well as phycocolloids and nutritory products (FAO, 2002).

Propelled by the growing demand for processed food all over the world there has been a manifold increase in the production of seaweed. In the culinary sphere, the Western world is using nutrient-rich seaweeds such as nori, wakame, dulse, and kombu in the culinary sphere which have long been a staple part of Asian diets (Holtz, 2015), especially in Japan, China, Korea, Vietnam, Indonesia, and Taiwan (FAO, 2002). Another extract, alginate, is utilized in reorganized food items like chicken nuggets which help in retaining the shape of meat. After it is injected into the meat the seaweed extract helps retain its freshness and moistness.

3. India and Seaweeds: The Way Ahead

The farming of seaweed has progressed as a lucrative enterprise in several humid countries having clean, intertidal environments, and protected beaches free from pollution. In India contrary to other forms of aquaculture, the farming of seaweed requires the least investment of money and technology. It simultaneously provides employment opportunities to the marginalized communities living in the coastal areas that have limited access to means of livelihood.

India has the potential to become a major player in the global seaweed market which is projected to reach \$26 billion in 2025. Presently, Indonesia and China own 80 per cent of the world market (The Hindu Business Line, 2021). The collection of natural seaweed has emerged as a means of livelihood for the

fisherfolks living along the coasts in the states of Tamil Nadu and Gujarat where the natural seaweed resources have been found.

Though presently there are no laws as such dealing with seaweeds, the Government of India has undertaken several initiatives and measures regarding the same:

In India, the Department of Fisheries, the National Fisheries Development Board (NFDB), Council of Scientific and Industrial Research-Central Salt and Marine Chemicals Research Institute (CSIR-CSMCRI), Central Marine Fisheries Research Institute (ICAR-CMFRI), National Institute of Ocean Technology (NIOT) as well as the State Fisheries Department are actively promoting the development of seaweeds (NCDC Desk, 2022). Earlier fishermen collected seaweed employing natural harvesting. In 2000 the Council of Scientific and Industrial Research-Central Salt and Marine Chemicals Research Institute (CSIR-CSMCRI) began the cultivation of seaweeds on a trial basis using the bamboo raft method (Rose, 2021).

The Government is hoping to realize the untapped potential of seaweeds which could constitute the “Blue Revolution” (Rose). According to Mr Rajiv Ranjan, Fisheries Secretary, Department of Fisheries, Government of India, “Seaweed farming has minimum requirements of capital and technology. India aims to increase the production of seaweed in the country to 11.5 lakh tonnes from the present production of 2,500 tonnes in the forthcoming five years. He stated that this could be achieved by utilizing merely 1 per cent of its 8,000 km coastline” (The Hindu Business Line, 2021). Currently, out of the total production of seaweed in India, a major portion is utilized for the growth of plants, which reduces the fertilizer requirement by almost 13%, according to Mr Ranjan. Currently, Indian companies are obtaining these materials derived from seaweeds from other countries (The Hindu Business Line, 2021).

Moreover, the Government has invested about 640 crores to provide a boost to seaweed production and upgradation of technology. Under the auspices of the Pradhan Mantri Matsya Sampada Yojana, seaweed production is estimated to reach about 10 crore tonnes by 2025 (Rose, 2021). Under this scheme, efforts are being made to expand the area under seaweed farming, provide a boost to research and development, ensure the supply of good quality seed, advance in marketing, increase investment of capital in the seaweed processing units, and proper employment of the current labour resources.

Research in medicine has shown some great potential. ICAR-CMFRI, Kochi has utilized seaweeds as the chief component in many health-related nutrient-rich products such as anti-obesity medicines to anti-diabetic and anti-arthritis tablets. A noteworthy development is that at AquAgri, a seaweed handling unit, privately owned in Manamadurai town of Tamil Nadu, research is being done to create a biofilm from the extract of seaweed which could be utilized as a dissolvable cast for dressing injuries.

Around Rameswaram seaweed played a crucial role in empowering women. Jayakumar, the Principal Scientist, at ICAR-CMFRI, Mandapam, states that since the farming of seaweeds requires less labour and technology, around 600 women in the area are pursuing it (Rose, 2021). The challenge is tapping into the unrealized potential which constitutes the 'Blue Revolution' which the Government is looking forward to, however, the major challenge remains increasing the production levels.

4. Seaweeds and Biofuel

Presently fossil fuel is a leading source of energy contributing to about 80% of the world's requirements while transport takes up about 58% (Escobar et al., 2009). There is a fast depletion of oil and fossil fuel reserves, simultaneously they are also the major contributors to the release of harmful gases into the atmosphere. The gases have several adverse effects on the world including the retreating of glaciers, biodiversity loss, change of climate, and rising sea levels.

The global requirement for energy is growing due to several factors including the exhaustion of fossil fuels, an increase in world population as well as industrialization. Due to the impact of global warming, and the increase in demand and price of oil fuels, the search and progress for alternative energy assume top importance in the sphere of research and development. Macroalgal biomass is regarded as an 'untapped resource as it is a potential source of biofuel.

Currently, there is a growing demand for renewable sources of energy all over the world. Biofuels can be derived from corn starch and sugarcane but result in land and resources being taken away from food crops. This issue is not faced by feedstocks like switchgrass and wood, but they are hindered by a particle lignin which makes it tough to abstract sugars that can be made into ethanol (Stokstad, 2012). Seaweed has an advantage over these substances as it has no lignin and does not require the use of land, fertilizer or fresh water. Several countries are undertaking programs for generating biofuels from seaweeds. However, experts

are also sceptical that seaweeds can contribute substantially to petroleum production. "This technology will be competitive only in locations where very large amounts of seaweed are readily available, such as coastal areas," according to Michael Henson, who is a chemical engineer at the University of Massachusetts, Amherst (Stokstad, 2012).

Algal biomass poses an inventive alternative to the formidable task of producing viable bioenergy resources. Their quick growth using photosynthesis helps in providing for the recycling of carbon dioxide. The algal oils have several uses such as nutraceuticals, and feedstock for industrial chemicals etc. However, the primary aim of research, development and commercial use is biofuel production to move away from fuels obtained from fossils. There exists tremendous potential for seaweeds as a source of biomass for oil-derived bioproducts such as biodiesel (Gosch et al., 2012).

Among the major available energy resources in the world, biomass is stated to occupy the fourth position (Acma & Yaman, 2010). Currently, in India, the availability of biomass annually is projected to be around 500 million metric tons, and its capacity to produce energy is assessed to be approximately 18,000 MW(MNRE). There are several advantages of biofuels in contrast to petroleum fuels such as -being easy to extract from biomass, more environment-friendly and sustainable. The importance of biofuels in the world market will grow rapidly in the coming decade due to their environmental benefits. Marine resources and seaweeds are good sources to produce biofuels.

The reports and publications regularly warn regarding the exhaustion of traditional sources of energy and suggest renewable seaweeds as an apt substitute to meet the energy demand (Demirbas, 2008). Seaweeds are presently being utilized as a useful biomass source to produce sustainable energy with less content of lignin. The minimal level of lignin is an optimistic sign that biomass could be utilised for the making of biofuel with apparent advantages. The current research focuses on the efficient use of algal biomass to produce biofuels such as ethanol and butanol. The benefits of seaweeds for biofuel research are- the requirement of land for cultivation is much less, and there are no prerequisites for fresh water, fertilizers and pesticides for their growth. It is estimated that it is possible to harvest approximately 50 tons of biomass per acre of land in "Seaweed Forests". There is no need for deforestation and clearance of land for its cultivation. However, natural catastrophes like droughts, floods and fires can cause severe devastation to seaweed cultivation (Demirbas, 2008). Though there

has been rapid progress in research and development advocating the multifarious uses of seaweed and its extracts, the farmers face several problems such as poor infrastructure, poor biosecurity, disease infestation and other issues (NCDC, 2022).

The process of production and chemical conversion into biofuels is a costly one, hence the profitable supply of biofuel in large-scale production has not been productive so far (Gaurava et al., 2017). An economically viable and cost-effective manufacturing process is necessary to commercialize biofuels based on biomass.

5. Government of India's Initiatives Regarding Biofuels

The government has stressed the reduction of dependence on imports for the use of fossil fuels. The growing concern regarding environmental pollution has propelled the search for alternative fuels which are environment friendly and economically viable as compared to fossil fuels. This holds an important role for biofuels in the Indian energy sphere. Seaweeds hold a promising future in this regard. The government supports the measures to utilize these resources to curtail our reliance on the import of crude oil, save foreign exchange, and provide better income for farmers while simultaneously addressing environmental concerns due to the use of fossil fuels, burning of biomass as well as check the challenges of waste management/agri-residues management in consonance with Swachh Bharat Abhiyan and promote "Make in India" campaign. All this will promote the idea of *Atmanirbhar Bharat* and give an impetus to the vision of India becoming 'energy independent' by 2047 (Ministry of Petroleum and Natural Gas, Government of India).

The latest developments relating to biofuels pertain to the approval by the Cabinet of the amendments made to the National Policy on Biofuels-2018. The 'National Policy on Biofuels-2018' was informed by the Ministry of Petroleum and Natural Gas, Govt. of India replacing the National Policy on Biofuels, broadcast by the Ministry of New & Renewable Energy, in 2009. The decisions taken in the meetings of the National Biofuel Coordination Committee (NBCC) include increasing the production of biofuel, various approvals of the Standing Committee about the decision to enhance the introduction of Ethanol Blended Petrol with up to twenty per cent ethanol throughout the country from 01.04.2023 (Ministry of Petroleum and Natural Gas, Government of India).

India's Ministry of New and Renewable Energy (MNRE), New Delhi makes the policies on biofuel as well as regulates the use of bioresources for fuel production. Efforts for research and development are required to effectively implement biofuel policy to achieve economical production of biofuels. In future, the new venture in India would be the large-scale use of bioresources to produce biofuel.

6. Seaweeds and Sustainable Development

The environment is the core issue in the concept of sustainable development. The Brundtland Report had the objective of looking into environmental concerns in the framework of economic growth. The sustainable maintenance of the environment was an MDG propelled by the growth of environmental degradation, biodiversity loss, as well as climate change (Labadi, 2022). Sustainable development includes various concepts including the managing of the ecological system for posterity and the continuity of human life.

Global warming is a pertinent environmental issue that threatens sustainable development produced by deforestation as well as the unwarranted release of carbon dioxide into the atmosphere. Global warming results in several adverse effects including the melting of glaciers and icecaps which would cause a rise in sea levels, loss of land, saltwater intrusion as well as devastation of coastal towns, ports, and croplands all over the world (Brown et al., 1990). Thus, global warming produced by the extreme radiation of carbon dioxide would lead to a serious menace to the sustainable existence of human habitation for the present as well as forthcoming generations.

The process of deforestation increases the emission of carbon, causes erosion of soil, and desertification of land, which in turn results in global warming. Moreover, a voluminous quantity of toxic chemicals is released into the atmosphere which is harmful to humans as well as sustainable existence. Another difficult issue that threatens development is the depletion of the ozone layer of the earth due to the release of chlorine and bromine. Moreover, future development is also threatened by the depletion of non-renewable natural resources.

Power resources are an indispensable requirement for the progress and growth of countries. Oil and gas production has attained its saturation point worldwide and alternate sources are being explored. Nuclear and fossil are getting depleted rapidly and are to be found in specific locations whereas renewable resources are more uniformly distributed in the world. The sustainability of the present energy needs of

the world is a challenge due to economic, equity and environmental issues. There is a need to develop alternative sources such as biofuels to safeguard the land, populations as well and biodiversity to bring about sustainable development. Initiatives must be taken by Government bodies, NGOs, and private organizations to bring about the production and commercial usage of biofuels.

Brazil and the Netherlands have taken up measures for sustainable progress by producing biofuels derived from crops. The Government in the US funds provides funds to hasten the research and development of biofuels. China occupies third place following Brazil and the US in the world's energy production. There have also been proposals to replace some amount of fuel with bioethanol (Hassan and Kalam, 2013) in India.

Currently, the emergence of biofuels as an important source of viable fuel would lead to improving air quality as well as limiting the emission of greenhouse gases. The need of the hour is carbon neutral and renewable biofuels which would lead to environmental sustainability. Biofuels are being regarded as an important and sustainable energy source in future as an alternative to fossil fuels, which could decrease the emissions from vehicles, enhance the stock of sustainable energy and provide farmers with a means of income as bioresources which can be sustained (Ghosh, 2016).

7. U.N. Sustainable Development Goals and the Future

The U.N. Sustainable Development Goal 13 highlights the importance and need of taking prompt measures to mitigate climate change and its impact. It is closely linked to all other 16 goals of the 2030 sustainable development goals. Sustainable Development Goal 14 stresses the need to conserve and sustainably utilize the oceans, seas and marine resources for sustainable development. In this regard, seaweeds hold a promising future in the direction of the achievement of U.N. Sustainable Development Goals. The ocean holds the future as a largely unexploited reserve for a new source of bioenergy which is renewable. Scientists are now looking at seaweed to explore novel renewable energy harvesting methods.

Environmental change has tremendous impacts ranging from geopolitics to economic growth as well as migration. Climate change poses a serious threat to global food supply, nutrition, livelihoods, and ecosystem safety, hence it is necessary for us to strive and identify these issues by evolving adequate adaptive mechanisms. It is also pertinent to take corrective measures at the regional, national and international levels.

Biofuel derived from seaweed holds a promising alternative to energy and ecological impediments. In developing countries like India, the adoption and implementation of alternative means of fuel is a matter of key issue to meeting demands for oil in the future. Seaweeds can be utilized for this purpose as they are very varied on Indian coasts. Seaweeds have to be cultivated on a large scale for the production of biofuels, and the extraction processes need to be developed to meet the country's economic needs.

The multifarious ecological qualities and benefits of seaweed have motivated scientists all over the world to explore novel means of realising its prospects (Holtz, 2015). Seaweeds can be utilized as a stimulant on harvests as well as biofuel. Seaweed farming is ecologically sustainable besides being easier and cheaper to maintain than fishing. Contrary to large-scale shrimp production, seaweed farming leaves the shorelines and coasts intact. Climate change and over-fishing are destructive to marine biodiversity. It is expected that seaweed cultivation would be adept at alleviating the adverse consequences of change in climate using absorbing carbon dioxide and reducing the acidity of oceans. Seaweed cultivation would also help improve coastline ecosystems by absorbing harmful chemicals such as nitrogen from sewage and cultivated waste. The cultivation of seaweeds would also help in providing a means of livelihood directly or indirectly to the poor marginalized communities living in coastal areas.

Seaweed farming is increasingly playing a crucial role in maintaining sustainable development. It also has tremendous potential as it provides commercial requirements of food, biofuels, feed, chemicals, pharmaceuticals, cosmetic products, bio-fertilizers etc. The extracts from seaweeds are good bio-stimulants which are effective in instances of biotic stress and also help to enhance crop production.

Using seaweeds for the production of biofuels could have a promising future. Growing seaweed is faster, and more space-efficient and there is no need for either freshwater or the addition of fertilisers to it. Moreover, the oceans and seas which predominate the world could be utilised for seaweed cultivation. Seaweed, if harvested could be transformed into diverse modes of energy such as ethanol and biogas using various chemical processes. However, the task of making bioenergy from seaweed a feasible option on a large scale remains an uphill task for which several obstacles have to be overcome.

Scientists and researchers worldwide are researching renewable energy sources like solar, wind, and tidal. The ocean is now being viewed as a mostly unexploited

resource for an alternative source of renewable bioenergy which can be renewed. Scientists are now looking at seaweed to explore novel renewable energy harvesting methods. The US Department of Energy has invested \$1.5 million in projects for establishing large-scale seaweed farms for making biofuel.

8. Conclusion

Biofuel is regarded to be a better alternative for the transport sector to meet all the energy requirements. Several Governments all over the world are advocating the usage of biofuels. In India, the search for alternate means of fuel is a major issue to meet oil demands in the future.

There is tremendous potential for biofuels globally, however, the usage of biofuels as an alternative to fossil fuels is still undergoing research and development in technology to reduce the cost of production and emanation of greenhouse gases. Therefore, it is expected that green biofuel production will play a crucial role in providing strength to the global economy, modifying global warming, and improving the environment. The prospect of low carbon emissions motivates the option of seaweed bioenergy worth exploring. The use of seaweeds for manufacturing biofuels could in turn lead human beings towards a more sustainable lifestyle. There is a need to live sustainably in harmony with nature by bringing about transformative changes and seaweeds as a source of renewable energy could be a positive step ahead in that direction.

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**CYBERSPACE, POST HUMANS AND TRANSHUMANISM:
EXPLORING POTENTIAL IMPACTS ON HUMAN SURVIVAL AND
SUSTAINABILITY**

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Abstract

The terms ‘post human’ and ‘cyberspace’ are not naïve; rather they have been a dominant part of academic and administrative discourses for many decades. Human society today largely depends on the cyber systems and so is the case of the process of development. In the initial years, when cyber operations and mechanisms were invented, these identified and recognized purposes were very ocular; it can be said that the cyber vision was undefined. Subsequently, with Social Change taking place in multiple aspects of life, the concept and the context of cyber world also reflect changes and alterations, leading to functional as well as dysfunctional implications on the social life and the related aspects. The present paper aims to explore, analyse, and explain the differential and potential impacts of cyberspace interventions in human life; along with exploring the implications of the advancing popularity of transhumanism on human survival, especially the social institutions like family, kinship, marriage and religion also. The cyber world uses various means and agencies, invented with technological advancements to control multiple aspects of human life; for instance economic and political structures; interaction patterns; global cultural patterns and the like. The adaptability to these changes subsequently leads to numerous changes in human life and survival, which the present research work aims to understand and elaborate. The study is inclusive of analysis of prominent theoretical orientations also. The work is emphatic on the need of developing cyber morality which might transform into a normative force to mentor the discourses and practices on cybercrime; cyber waste management; institutions on robotics and cyber engineering; and the data protection; until the focus is duly fixed on these aspects of institutionalization of the cyber space, the agenda of ‘sustainability’ is a challenge.

Keywords: anthropocentrism, post humans, transhumanism, human survival, cyberspace and cybernetics, supervised and unsupervised algorithms, artificial intelligence

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1. Introduction

The whole discourse in the very beginning orients the explorers to the contest between the ‘human’ and the ‘non-human’ component of existence. Famous sociological branches of ethnomethodology and phenomenology have emphatically initiated the discourse by differentiating between human beings and material, which is the non-human aspect of life in the context of this paper. These two branches of interaction perspective of Sociology explain that consciousness, ‘imagination’, ‘ideas’ and the skill to give ‘meaning’ to an interaction context are distinct characteristics of human mind. These two perspectives state that human being have their own typical way of giving meaning to people and things around them; and they own their own typical motives that underlie their behaviour (Hewit and Chinoy, 1975). Human beings, independent of any command, act and respond on the basis of their subjective interpretation and their experiences of their own social world. Subsequently, human mind planned for automation of human society through technological means; which are ‘ethno-methodologically’ the reflections of human consciousness and his ability to give meaning. Robots and softwares are the examples to understand reflections of human thought process and human’s creativity. The cyber means and agencies have been created with set of commands given by individuals/ engineers or robotics experts, for the purpose of controlling some crucial functions in human societies or institutions. The ‘command based creations’ featured with a very wide scope for rampant amendments have developed as almost ‘habits’ of human societies. Technological assistance is sought for in almost all aspects of human survival; depicting an era of technological revolution; and even technological determinism.

Almost all forms of institutions have been influenced by technology and other communicative technologies invented therein. Change in technology results into changes in the social as well as cultural environment in which human beings live, hence calling for considerable efforts for adaptability and adjustability. These shifts in the paradigms of life take place through alterations in the needs and expectations; societal value patterns; and concrete as well as abstract realities. Life expectancy has even been increased with technological advancements in communication, health and medicine. There is nothing in human life which is not influenced with technological advancements; but the effects are to be assessed, explored and explained. Different explanations to these consequences of technology or the cyber world operations and systems, can be explored through different schools/ perspectives of thought. Intervention of the cyber space in human-life space has functional as well as dysfunctional consequences.

‘Cybernetics’ has emerged as a revolutionary branch in academics studying the comparative analysis of automatic control systems and communication; as Norbet Wiener (1948), the first one to define Cybernetics, states in his book. Various systems of communication, feedback and control influencing and guiding human and machine interaction are studied and analysed (Mindell, 2000). Cybernetics as a branch of analysis was welcomed in many countries as it laid foundation for all futuristic discourses on impact and influences of cyberspace and technology. Presently also, there are innumerable comparative studies regarding the manual and technological means of communication and the impact of automation. Post humanism and Transhumanism have also emerged as catchy branches of literature and social sciences; which may be observed or expressed as the consequence of many needs of the hour. On the whole cyber space rules human survival today and all the aspects of human life are affected by cyber world based operations.

2. Anthropocentrism, Post Humanism and Transhumanism

Social change is very powerful; having potential to alter social structures; human choices and ideologies. Innumerable changes have been observed in human ideologies and practices with alterations taking place in the educational structures and curriculum being taught; social processes like modernization, westernization, globalization and the like; migration; revolutions in terms of liberty, privacy and equality; and the like. People’s focus today, is not just life, but the quality of life and the ease of life. Society in fact has transformed to post human thought process from being typically human in nature; reflections can be seen in the relationship between anthropocentrism and post humanism, with the basic paradigm being contrasting rather contesting. Recent decades have experienced rise of post human conditions and post human focused ideology, from being human focused society. Anthropocentrism solely aimed at making and recognizing human beings as central to all the life systems. Another thrust of anthropocentric philosophy has been human welfare, which can be brought about only by value systems and morality structures typical to human beings. Subsequently, post human conditions became popularized and propagated for, targeting the social inequalities and injustices resulting from the rule of human beings being central to all social systems. Concepts of justice, equality and equity also evolved with social change and the paradigm of ‘needs’ and ‘choices’ also altered therein. In addition, there was an increase in the size of the population and complexity of social structure too. The fast increasing works and needs prompted the creation of post humans, who could take tasks more efficiently, leading to cyber revolution for specific intended and

recognized purposes. Technological innovations and the related advancements have been expressed as one of the modes of living life ‘conveniently’. This focus on ‘convenience’ of survival leads to the development of philosophy favouring and supporting creation of post humans, ‘robots’ in technological terms. Paucity of time has been observed as an issue of survival due to increasing complexity of work and the modern division of labour further expanding. This situation has been dealt with, by making technology intervene in various domains of professional and personal life. Cyber innovations have resulted into many alterations in individual lives including the delegation of power to the post-humans. Referring to anthropocene is referring to the difference between ‘mind’ and ‘matter’ ; and ‘culture’ and ‘nature’ (Vetlesen, 2019).

When it comes to post humanism, the questions and discourse on ethics and justice also surface. Is post humanism ‘Justice oriented’ Do post humans possess calibre to equate existence of human or human mind and its processes? One of the most contemporary debates is the debate of giving ‘human like’ rights to robots; along with exploring its possible impacts on human rights and developmental sustainability. The idea is to idealize life stored in the post humans but, the crisis which emerges is of ‘identity’. Being ‘post human’ is beyond being a human; can be an imagination, creation or an idea about a character; which is nothing new to human society. Post humans have precisely existed in role model philosophy and literature also. Performance arts, architectural styles and cultural impediments have reflected post humans in their own peculiar manner. Post humanist ideology treats animals and plants at par to human species; and considers cyborgs, human-animal hybrids and techno-dystopias as post human identities. Society has adhered to acceptance of post human creations and post humanism as an ideology for development and growth, but there is an identity crisis between the human and the non-human species. In some instances, the rhetoric can be seen as anthropocentric development and in other cases, it can be called an ecological conflict. Posthumanism has been seen as an ‘umbrella concept’ by Ferrando (2019), which is inclusive of the concepts of anthropocene, artificial intelligence and deconstruction of the humans. A crucial study undertaken by Dongshin (2010) introduced the concept of ‘Cyborgothic’ to understand the usually imagined ‘post human’. He says that the ‘fear of the unknown’ often dominates people while understanding the difference between humans and post humans. Society has accommodated technology in many ways; but there is need to explore the ethical corrections to the anthropocentric trajectory such accommodation has taken.

A robot named Sophia has been given the Right to Citizenship by the Kingdom of Saudi Arabia; a right which only living human beings were granted in the narratives of law and history. Giving one particular right to a machine opens up discourse on giving other rights to robots or machines too, which shall be a very common agenda in the field of robotics in the near future. The concern is how prepared we are for this big social change! The concern is the ethical acceptance of robots like human beings in the same society! This whole scenario is about the entirety of re-conceiving ‘human existence’ because it involves the aspects like intellect; thought process; capacity to handle autonomy; eligibility criteria for availing social and legal rights as a member of society and the like. To be a citizen is to have rights until death; which is a considerable doubt in case of robots like Sophia; ‘will they die’ is the question and if not, what is the context of rights for a post human which is never supposed to die. Even while they are ‘working’ or ‘living’ can these robot be given other rights as those which are given to human beings; like right to marry, right to move freely in the country, right to earn, right to express, right to procreate and the like. There are no answers to these doubts yet. Human society is passing through an era of technological determinism; being dependent on technology has to be differentiated from being determined by technology, both need a different socio-cultural and legal systems and patterns.

Transhumanism has recently surfaced as a global ideology in relation to development. It is an ideological, philosophical and scientific movement advocating for emerging technologies and their far reaching advantages. According to the transhumanist philosophy, there ought to be a cultural assimilation of technological enhancement (Ross, 2019). It further supports the notion that communication and division of labour can be more efficaciously organized with technological, that is ‘non-human’ means. Transhumanism claims that creating post humans is a need because of their capabilities, which transcend the biological and human capacity to deal with the whole context and framework of work and task (Bostrom, 2013). Post humans can take on larger quantum of work as compared to human beings and can undertake communication with a much large number of persons, groups, institutions and organizations than what human beings can do. Cognitively, transhumanism sends appositional framework to Artificial Intelligence and its role in academia and profession. But the issue is that a lot of social impact assessment needs to be done in this domain of human life and existence before reaching or popularizing a one sided conclusion.

3. Artificial Intelligence: Understanding the Impact on Social and Educational Institutions

‘All that which is showcased is not compulsorily worth selling; surely having some content which is worth buying or utilization’. This is how ‘Artificial Intelligence (AI)’ can be logically introduced. The discourse on AI encompasses academics, education, research, health, culture, and all possible domains of human life today. AI has strongly influenced social and other institutions also, by directly interfering and effecting the interaction patterns and processes taking place in these units of society. In case of the social institution of family, a lot has changed with the impact of means of artificial intelligence; the whole process of socialization has been effected in multiple ways; along with the values patterns, normative and behavioural aspects also. Routine lives have been deeply influenced by the AI tools like Chat bots; digital assistants like Siri and Alexa and the like; social media and network; e-payments; algorithms related to Long Short Term Memory Networks, Gradient Boosting and Machine Learning and the like. All the inputs sent by users to the AI tools are recorded and saved in the algorithms and software like Alexa and Siri. These tools are direct interventions in the privacy of the household and individuals; since they record the conversations in the room until the settings are worked upon technically. Not all users are learned in context of technicality of these tools and usually they confuse them for matter of convenience like in case of Siri or rejuvenation only in case of Alexa. ‘Online Game playing’ is another challenge posed by the cyber world, wherein the real life gets intertwined with the virtual life to such an extent that thought process is affected to impossible levels. Cases have been reported where people, especially teen agers and youth have ended their lives under influence of challenges been sent by online gaming and betting based games. For availing game money for moving on higher levels, the users (usually teen agers) have been reported committing theft and fraudulently using the parents’ money and bank accounts. There are innumerable articles and stories on internet which share stories about children from other countries and India as well, where parents’ bank accounts have been misappropriated the money has been fraudulently used for online gaming. Social media records the choices of the users and spam messages are result thereon. The information flowing to the users is not filtered and monitored, especially in case of teenaged users and youth. The unmonitored nature of the flow of information further alters the existing notions of morality, subsequently criminality. The cultural practices in youth specially, are so rapidly changing that the older generations cannot track the speed leading to a very visible cultural lag and generation gap. There are confusions regarding subjective

versus objective interpretation of concepts like liberty, freedom and privacy, ‘modernization’ as well; and these confusions are resulting into a rise in instances of social conflicts within the social institutions like family and marriage. The social institution of family is largely being affected with the use of AI tools, which directly or indirectly influence, affect and at times intervene in the traditionally accepted patterns of socialization. Social change is inevitable and indispensable too for raising standard of living and for general good of people; but the changes, which occur abruptly or without estimating the social impact, can be devastating in terms of social order and social engineering.

Cyber space is well enabled to intervene in personal space in kinship patterns. Artificial Intelligence today interferes dominantly birth related choices and needs in terms of pre-natal health predictors; mode of birth; AI approach for promoting maternal health and neonatal health to check maternal morbidity (Khan, 2022); predicting risk of miscarriages and pre-mature delivery; and the like. Intelligent models have been developed by AI which imitate human intellect and assist the medical sciences in the realm of birth technologies and methods. The sociological concerns are connected with class factor. The digital divide is created with these techniques since these are not usually provided ‘free of cost’ to the poor class would be others and natal families, depriving them of being the beneficiaries. This phenomenon directly hits the Sustainable Development Goal 3- ‘Good Health and Well Being’, which aims at ensuring healthy lives and promoting well-being on equitable basis. When the AI tools being used for general good are not capable of being used equally by all, the results are dysfunctional for institutions and nations also, hence there is a need to understand how to undertake a rational use and application of AI tools.

The algorithms working behind the AI tools are designed to perform a set of actions, which affect and influence the survival hood habits of the users; this can be termed as ‘social manipulation’. The impact is usually gradual; hence the users do not relate to the changes occurring thereon or do not relate the changes with AI as such. The biggest fact is that when one interacts with AI, one interacts with the algorithms; which are the mathematical models which assist machines to learn from data (Schiller, 2023). It is important to know that there are two types of algorithms; (i) supervised algorithms, which learn from labelled data (predefined target values); and (i) unsupervised algorithms, which learn from unlabelled data (no defined target values). There is a sheer dearth of understanding of these algorithms by majority of the users of the tools of artificial intelligence; which is a concrete threat to society

and various sections of society. For instance, the algorithms of reinforcement in online game playing, specifically the Artificial Neural Networks (ANN) which are inspired by brain and are used for speech recognition and treatability of images and sounds. These algorithms are designed on the basis of fixed set of instructions and leave almost zero scope of any interaction between the machine and the users. The online game addiction is one result of these algorithms which work with target of strengthening the usage; which in many cases has resulted into addiction in the game players. This kind of digital dependence and addiction is noticed in youth and teens, and also in children below the age of ten years. The kinds of games like Fee Fire, PubG and the like, socialize them in many ways and hence instill various behavioural mechanisms like violence, use of ammunition and the like in their personality. AI tools assist the players for interacting with the technical experts in the field of interest; further making the users spend more time and emotions on gaming and the related platform. On one side where AI has assisted in creating occupational diversity like ‘youtubers’, ‘bloggers’, ‘critics’ and the like who, in many cases are earning much more than the those who are placed on high class jobs and positions; on the other hand the impact of AI on youth in socio-cultural and moral context needs a rigorous assessment.

About the impact of artificial intelligence on educational institutions, there is a wide range of notions to be explored. AI means of knowledge claim to be an efficacious substitute of teaching methods used by the ‘human teachers’; because of the ample nature of the information they hold and the speed in which they transfer the information to the learners. Certainly, the AI means of learning and teaching initially aimed at enhancing teaching technologies and to establish personal connectivity between the learners and the teachers in large group’s orientations in higher education system (Chan and Tsi, 2023). Further, its futuristic agenda opens a debate on replacing teachers in the higher education system. Human teachers showcase a social and emotional competence, which is a condition for a holistic learning. In case of the tools of AI literacy, the learning takes place but it is not as impactful as in case of a ‘human to human process and pedagogy’. There is a surfacing possibility that the robots might in considerable number replace human teachers. Quoting Sir Anthony Seldon, Houser (2017) says that he predicted that robots would replace teachers by the year 2027. Another Generative AI software ‘ChatGPT’ has also made it convenient for users to avail human like responses to multiple themes and wide range of topics; and has significantly increased capabilities of AI technologies in the field of higher education. The AI generative like ‘Khanmigo’ has even filled in the gap of the interactive need in

teaching and learning; where the AI tool interacts and asks questions to the users and give them a realization of real class in the virtual class. But, there are some issues in excessive use of AI means in education or in replacing human teachers with AI applications and tools. A classroom is the best place as well as a space to develop critical thinking and to discuss the themes out of the frameworks of the books. These skills are much needed for enhancing the 'employability', which is significantly under scanner in internationalized education scenario. Using AI tools while teaching in higher education institutions is a contemporary call of the time, but the selection and application are to be made while wisely understanding the aspects like digital divide and skills of the learners so that there is no further pauperization in terms of technology based learning.

AI is very powerful in terms of impact, but its potential to replace 'teachers' is questionable. Teacher student relationship working on the basis of direct communication between both is not merely important for fruitful learning but for empathetic reasons also. Youth in tender age, need a guide to interpret and accordingly interact in order to mentor his or her learning process. AI tools for sure provide information, rather an ample of it, but this information needs to be filtered. Every information is reproduced in academics and behavioural terms in the learners; either resulting into gains or losses. This whole phenomenon needs to be supervised by a teacher with mind and cognition, not by an application or software fed and set ready with some set of tools. AI tools can be assistive for a teacher while he is reaching out the students in a classroom or from a far off place (real or virtual classrooms); but these tools do not own the potential to replace human teachers for many social, cultural, psychological, and other reasons. Another crucial concern is 'patience' in youth. There is already a steep rise in hate crimes, sex crimes, road rage incidents and the like which shows that the members of society are losing patience which is a crucial condition of a peaceful mind. Excessive and uncontrolled use of AI tools make information and things available immediately and there is even no need to sit in classroom for hours to understand or discuss a topic. If this is made a custom in educational institutions, it shall have long-term impacts and adversities. The youth might go even weaker on traits like academic seating, using and applying mind to understand topics, asking questions being encouraged by the person trying his best to transfer knowledge. This shall even worsen the level of patience in youth, which shall predictably have dysfunctional impact on his professional capacity building and his worth as a contributor to social and other institutions.

4. Conclusion

Post humanism and Transhumanism are the philosophical offshoots favouring perfect automation of human society. These theoretical orientations firmly believe that the use of cyber means and instruments can lead to added convenience in life and can make various works done more efficaciously. But, not only one side of the coin can be considered; the analytical frontiers need to cover both functional as well as dysfunctional aspects of the cyberspace. Cybercrimes have risen in positive connotation with the pace of increasing use of the AI tools. There are uncountable victims of bank transaction related frauds; computer vandalism; copyright infringement; cyber harassment; cybersquatting; cyber stalking; cyber terrorism; pornography; sex crimes; eavesdropping attacks and the like (Harding, 2022). AI tools are assistive in managing and manipulating organized crimes also. There are innumerable confusions over sexuality, behavioural norms, privacy and the like due to the unfiltered nature of the influx of the information reaching the users of the cyberspace. Downsizing in the companies and other economic forums result into increase in unemployment in society, leading to rise in penury and deprivation. Lack of safety and security of the digital data is another issue, which has led to various complications in social and economic structures of the society. In the era, where the ‘Right to be Forgotten’ is being advocated for, there only, managing the available information on the cyberspace is a precondition for overall harmony and peace in society and human life. More so, the digital divide being created by the AI tools and the ‘ability versus inability’ of the individuals to use those tools is also alarming in the context of socio-economic equality. However, the advantages of the cyber world and AI tools cannot be ignored and deserve mention. AI and other cyber operative tool and instruments have enhanced productivity in the world of goods as well as services; improved health care systems and institutions by adding on quality based diagnostic techniques and research in medicine and pharmacology; and also increased access to education without regional or geographical boundaries. On the basis of all the discourse presented above, still robots cannot be put at par to human beings because of the human beings’ exclusive ability of using their consciousness, changing responses according to the situations; adaptive skills to natural and social environment and above all the empathy, which is the foremost need of human life.

What post humanism and transhumanism visualize about the agenda of cyberspace and cyber operations, is not unjustified, but it seems utopian until and unless cyber security strategies are developed rationally on national as well as global levels. The cyber policing component needs to be made stronger, which can further guide the prospects of morality and ethics for using the AI means. Heavy financial investments

are being made on development of robotics and atomization of various institutions and systems, but these needs to be assessed 'pre-hand' if these are sustainable expenses leading to sustainable development. If individuals operating in the cyber space are not safe, if their data and personal information is not safe and can be misused, then this may 'only' be called technological advancement, not development. Merely giving right of citizenship to robots as done in case of Southi Arabia's robot Sophia in 2017 is not enough to prove the potential of robots of AI tools at par to human workers or human minds. A lot has to be changed in different books of laws and also in social value systems and patterns if Posthumanism and Transhumanism are to be turned into a universal practice. However, understanding of different forms of human societies is the utmost need in the context of making the cybernetics a successful branch of knowledge, without which the doubt on optimum utility and absolute benefit from the cyberspace shall always remain intact.

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PENALTY GUIDELINES IN CARTEL CASES: A COMPARATIVE STUDY OF EU, US, UK AND INDIA

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Abstract

In order to avoid practice of formation of hard-core cartels it becomes essential that certain penalty is imposed in order to create deterrence. Different countries have adopted different guidelines A comparative study of the penalty guidelines of the EU, the US and the UK is essential in order to understand the Indian position where no guidelines have been adopted. In the Indian context, court is exercising its discretion under Section 27(b) of the Competition Act, 2002 as it mentions “as it may deem fit.” Thus, it is essential *firstly*, to understand the current status of punishment for cartels in India. *Secondly*, comparison of other countries penalty guidelines will help analyze whether is it required for India to adopt penalty guidelines similar to those adopted by other developed countries? Also, unlike EU, whether criminalizing cartels is a plausible solution for India.

Keywords: cartels, EU, penalty guidelines

1. Introduction

According to the OECD, hard-core cartels have been labelled as “*the most egregious violations of competition law*” which “*injure consumers in many countries by raising prices and restricting supplies, thus making goods and services completely unavailable to some purchasers and unnecessarily expensive for others.*”¹ Thus, imposition of penalty on undertakings and individuals become essential in order to create deterrence. Therefore, different countries have adopted guidelines on the methods of setting fines. In EU, 2006 guidelines have been adopted, which refined and developed the already existing guidelines passed in the year 1998 (imposing fines on undertakings that infringe Art. 81 or 82 of the EC).² Similar to the guidelines of EU, other countries like US and UK have their own

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¹ Joshua, J. M. “Leniency in U.S. and EU Cartel Cases.” *Antitrust*, vol. 14, 2000.

² Guidelines on the method of setting fines imposed pursuant to Article 23(2) (a) of Regulation No 1/2003 (2006 guidelines) OJ C210/02 (2006)

guidelines. The paper compares the guidelines, determination of fines and the different aggravating and mitigating factors adopted in different jurisdiction in order to critically analyze what is most appropriate for India. However, the issue which arises is whether these theoretical guidelines serve the purpose of creating deterrent effect or adoption of these uniform guidelines ensure predictability in formation of agreements which involve cartels. Also, whether the adoption of mitigating and aggravating factors in the guidelines give discretionary power to the anti-trust authorities in determination of fine and the scope of such discretion. India has not adopted any such penalty guidelines, the Indian position is to be analyzed on the context whether CCI is exercising its discretion under Sec. 27 (b) of the Competition Act 2002, to impose penalties “as it may deem fit”? Here, the Indian context is essential *firstly*, to understand the current status of punishment for cartels in India. *Secondly*, comparison of other countries penalty guidelines will help analyze whether is it required for India to adopt penalty guidelines similar to those adopted by other developed countries? Also, unlike EU, whether criminalizing cartels is a plausible solution for India. In the Excel Corp case, it was clarified by the Supreme Court that India’s Competition Act has been enacted to create deterrence in the mind of wrongdoers and provide them with appropriate punishments. Cartel sanctions are primarily intended to create deterrent, while other jurisdictions’ authorities may have different goals in mind, such as punishment, restitution, or the recovery of illicit gains.³ In order to understand the same, a comparison with jurisdictions that have well established penalty guidelines becomes essential based on which India would ensure the best plausible laws that could be incorporated.

2. Rationale Behind the Comparative Analysis

Hard-core cartels are recognized in India to a large extent however, the penalty guidelines in determining the wrong committed is not very elaborate. Proper effective and transparent guidelines are required to be incorporated in India to create deterrence as well as clarity to the CCI and the offenders as to how penalty would be imposed on them once they are caught committing offences involving cartel cases. In order to substantiate the same, a comparison of the laws of the EU, the US and the UK has been done. These three countries have a very strong laws on penalty guidelines and leniency program. India being at a very nascent stage need proper laws to be implemented and to ensure its effective implementation other

³ Bhattharjea, Aditya and Oindrila De. “India’s Cartel Penalty Practices, Optimal Restitution and Deterrence.” *IEG Working Paper*, 2021.

countries law would serve as a guiding force for India. Also, the laws in the EU, the US and UK with regard to hard-core cartels have been made with very different approach that these countries have. Understanding the diversity in the various laws before adopting the India's law would ensure a proper law to be enforced in India.

3. Penalty Guidelines in EU, US and UK

3.1 Legislative Overview

3.1.1 EU Guidelines on Cartel Cases

Cartel prohibition has been enshrined in "Article 101 of Treaty on the Functioning of the EU (TFEU)". It prohibits: "*all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market.*"⁴ Guidelines for determining the fines that should be imposed on companies that violate Article 81 or Article 82 of the European Community treaty were also adopted by the European Commission. These 2006 guidelines were an improvement over 1998 guidelines on the following points: -

- i. Firstly, there are no classifications of violations (small, serious, or very serious infringements) in the 2006 Guidelines, in contrast to the 1998 Guidelines. A ruling in one case stated that by definition, all cartels had to be categorized as "very serious."⁵
- ii. Secondly, times shorter than six months will be counted as half years, while times longer than six months but less than a year will be counted as a full year, in contrast to the Commission's practice under the 1998 Guidelines.⁶
- iii. Thirdly, the "entry fee" is one of the "novelties" of the 2006 guidelines. Under this, a distinction has been made with regard to entry fee in cases of cartels and in cases of other infringements.⁷

⁴ Treaty on the Functioning of the European Union, Art. 101.

⁵ Brasserie Nationale SA A.O. v Commission, ECR para. 178 (2005).

⁶ Hubert de BROCA, Directorate-General for Competition. "The Commission revises its Guidelines for setting fines in Anti-trust cases." *Competition Policy Newsletter*, 2006.

⁷ *Ibid.* pp. 4.

The 2006 guidelines set up a two-step method that needs to be adopted for setting up fines. The Commission will *firstly*, define the basic amount of the fine⁸, based on the gravity and duration of the infringement. *Secondly*, wherever applicable, it will then take account of possible adjustment factors.⁹ These adjustment factors may include aggravating and mitigating factors, other factors adopted in cases of special increase for deterrence etc.¹⁰ Also, reduction to be made under the programme of leniency¹² and/or settlement procedure¹³ will be applied.

3.1.2 The US Guidelines on Cartel Cases

Sec. 1 and 2 of the Sherman Act, 1890 lay the foundation of anti-trust prohibition. Department of Justice (DOJ) has the authority for cartel investigations and prosecute companies and individuals for competition infringement.¹⁴ Corporations that participate in cartels are liable both for the criminal fines and civil actions for damages, and culpable individuals are subject to criminal prosecution and imprisonment.¹⁵ The corporate fines for the cartel offences are governed by US Sentencing Guidelines (USSG).¹⁶ They were revised by the Antitrust Penalty Enhancement and Reform Act, 2004 (ACPERA), which increased the maximum penalty for corporations and penalties for individuals.¹⁷ These guidelines provide advisory sentencing ranges which the court must consider while imposing sentence.¹⁸

Sentencing Guideline 2R1.1 (d) (1) specifies that the Base Fine to be utilized as a proxy for loss is "20 percent of the affected volume of commerce" as a particular

⁸ 2006 guidelines, *Supra* note 2, para. 10, 12-26.

⁹ Cassels, John & Joseph Ward, "EU Cartel Decisions Made under the 2006 Fining Guidelines," *Competition L.J.* 8 (2009) 255.

¹⁰ 2006 guidelines, *Supra* note 2, para 11, 27 with 28 and 29 respectively.

¹¹ *Ibid*, para. 32, 33.

¹² *Ibid*, para 34 in with Leniency notice.

¹³ Commission Regulation (EC) No. 622/2008 amending Regulation (EC) No 773/2004, as regards the conduct of settlement procedures in cartel cases (2008 regulation) OJ L171/3 (2008).

¹⁴ OFT, "An assessment of discretionary penalties regimes", (OFT 2009 Report) OFT1132, (2009) pp 8-9.

¹⁵ OECD, "Session I: Cartels: Estimation of Harm in Public Enforcement Actions", 23 DAF/COMP/LACF (2017).

¹⁶ USSG, s 2R1.1.

¹⁷ 118 Stat 661.

¹⁸ 2008 Regulation, *Supra* note 13, p 3.

instruction for firms involved in cartel activities.”¹⁹ Judges may deviate from the rules where it is in the best interests of justice, but these guidelines also particularly take into account other variables that may influence the right sentencing.²⁰

3.1.3 *The UK Law on Cartel Cases*

Competition Act, 1998²¹ read with Sec. 188 of the Enterprise Act, 2002²² set up the competition regime and lays down statutory foundation for anti-trust prohibition. In addition, Council Regulation 1/2003 allows UK to enforce antitrust prohibition under Arts. 81 and 82 of the EC treaty.²³ While Sec. 2 of the Competition Act talks about cartel prohibition, Sec. 188 of the Enterprise Act, 2002, establishes the “cartel offence” and also, talks about individual being guilty of a criminal offence. The guidelines mentioning the methodology for setting financial penalties were given by OFT, which has recently been revised in 2012. Also, section 36 of the Competition Act, 1998 mentions a six-step approach that is to be adopted to calculate the financial penalty.²⁴

Following the implementation of Enterprise and Regulatory Reform Act, 2013²⁵, the functions of the Competition Commission and OFT were transferred to the Competition and Markets Authority (CMA).²⁶ While determining penalty, “Section 44 of the 2013 Act” amended Section 36 of the Competition Act, 1998 by adding

¹⁹ OFT 2009 Report, *Supra* note 14, p 311.

²⁰ 2008 Regulation, *Supra* note 13, p 3.

²¹ Competition Act, 1998 (CA, 1998), Ch 41.

²² Enterprise Act, 2002 (EA, 2002), Ch 40.

²³ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (2003 Guidelines) OJ L1/1 (2003).

²⁴ “Step 1: calculation of the starting point having regard to the seriousness of the infringement and the relevant turnover of the undertaking.

Step 2: adjustment for duration

Step 3: adjustment for aggravating or mitigating factors

Step 4: adjustment for specific deterrence and proportionality

Step 5: adjustment if the maximum penalty of 10 per cent of the worldwide turnover of the undertaking

Step 6: adjustment for leniency and/or settlement discounts.”

²⁵ Ch 24 (2013).

²⁶ Lianos, Ioannis, Frederic Jenny, Florian Wagner-von Papp, Evgenia Motchenkova, Eric David. “An Optimal and Just Financial Penalties System for Infringements of Competition Law: a Comparative Analysis.” *CLES Research Paper Series* 3 (2014).

sub-section (7A) which talks about penalties.²⁷ The twin objectives of the CMA's policy was mainly adopted to keep a balance between deterrence and proportionality.

4. Comparative Analysis of EU, US and UK

4.1 On the Basis of Sanctions Granted

The 1998 Recommendation calls on OECD Members to provide for “....*effective sanctions, of a kind and at a level adequate to deter firms and individuals from participating in such cartels.*”²⁸ Thus, the main purpose for which sanctions are granted is to create a deterrent effect. It can be imposed either as a corporate liability or as an individual liability. Imposing sanctions on individuals can further enhance the deterrence level, as individuals will be at risk for their conduct. However, the type of sanctions may vary in different countries. While in the EU, participation in a cartel is punished mainly through fines. In the US and the UK, cartel is punished with criminal sanctions i.e. imprisonment, apart from fines.

In the EU, fines are considered to be an important instrument to prevent anti-trust violations. It imposes high fines as it:

- i. Creates a deterrent effect by imposing such amount of fine which may outweigh the expected costs and benefits that may arise from such violations. Also, further enhancement of fines by using aggravating circumstances or leniency policies may raise the cost of setting up and running cartels.
- ii. Creates a moral effect by informing law-abiding people messages and ensuring the reinforcement of their commitment on the moral grounds for the purpose of anti-trust prohibitions.

However, in the countries like the US and UK, to enhance deterrence, sanctions may be imposed in the form of criminal liabilities, unlike the EU. The two relevant theories that have been cited for determining the mindset of a criminal include: retribution theory and deterrence theory. The realization that the danger of personal sanctions may have greater impact than the threat of corporate sanctions is what motivates criminals. Thus, it is an additional enforcement tool in the cases of hard-

²⁷ CA 1998, *Supra* note 21, s 36 (7A).

²⁸ OECD. “Recommendation of the OECD Council Concerning Effective Action against Hard Core Cartels.” C (98)35/FINAL (1998).

core cartels. Also, in the case of individuals, monetary sanctions have a lower deterrent effect than that criminal sanctions as these sanctions create a moral stigma against individuals.²⁹

4.1.1 The EU Law on Sanctions

The imposition of penalties in EU does not only punish past behaviour, but also create deterrence, thereby, preventing corporations to enter into anti-competitive acts in future. Also, in order to create sufficient deterrent effect, penalties imposed may be heavily increased, if necessary. The same has been mentioned under the Paragraph 4 of the EC Guidelines, 2006:

“should have a sufficiently deterrent effect, not only in order to sanction the undertakings concerned (specific deterrence) but also in order to deter other undertakings from engaging in, or continuing, behaviour that is contrary to [competition law] (general deterrence).”³⁰

The EU Competition law regime focusses solely on infringements committed by undertakings and not by individuals thus, sanctions that can be awarded in EU may be administrative and civil law actions. The EU framework therefore, doesn't provide for individual criminal sanctions at EU level. Regulation 1 under Article 23(5) expressly states that fines imposed on undertakings for violation of TFEU shall not be of a criminal law nature.³¹

4.1.2 The UK Law on Sanctions

The UK although being a member state of EU imposes criminal sanctions for cartel activity under the Enterprise Act, 2002.³² Section 188 of the Act talks about individual liability imposed in cases of cartel arrangements made like fixation of price, limitation in the supply or production, bid rigging and share markets. Cartel offences are also dealt under Competition Act, 1998 and Cartel Offence Prosecution Guidance which talks about application for leniency.

In order to determine whether cartels are liable for criminal sanctions, in *Norris V. United States* the House of Lords held that ‘...unless there were aggravating

²⁹ *Ibid*, pp.8.

³⁰ 2006 Penalty Guidelines, *Supra* note 2, para 4.

³¹ 2003 Guidelines, *Supra* note 23.

³² Jones, Keith and Farin Harrison. “Criminal Sanctions: An overview of the EU and national case law, e-competitions.” *National Competition Laws Bulletin*.

*features such as fraud, misrepresentation, violence, intimidation or inducement of a breach of contract, [cartel] agreements were not actionable or indictable.*³³

Non- monetary sanctions in UK can be imposed in two ways: competition disqualification orders and imprisonment.³⁴ However, in cases of infringement both under TEFU and UK prohibition undertaking shall not be punished twice for the same anti-competitive effect.³⁵

4.1.3 The US Law on Sanctions

Under the US law, imposition of sentence is governed by 18 U.S.C. § 3553,³⁶ which mentions the need for imposition of a sentence and includes the need to “reflect the seriousness of the offense.....” and to “afford adequate deterrence....”³⁷. Before the introduction of the US “Corporate Leniency Program”, the detection of cartels was done through search warrants, secret audio or video tapes, and FBI interrogations combined.³⁸ However, the introduction of Leniency Program has enhanced the detection of cartels by encouraging cartel members to report illegal activities to the government, thereby, increasing deterrence.³⁹ For cartel conduct liability can be imposed both on the corporations as well as individuals who will be held liable for criminal prosecution. In setting the fine for individuals, the court should consider the following:

- i. The participation of the defendant in the offence and its extent,
- ii. the role of the defendant, and
- iii. the benefit that the defendant personally derives from the offence and the degree of profit from the offense.⁴⁰

Sanctions that can be imposed on individuals have been mentioned under Chapter 2, 3 and 5 of the USSG. For an individual, the guideline fine range up to \$1

³³ *Ibid.*

³⁴ OFT 2009 Report, *Supra* note 14, pp. 97.

³⁵ CMA’s guidance as to the appropriate amount of a penalty, CMA73, (2018) 5.

³⁶ U.S. Title 18 Crimes and Criminal Procedure, *Imposition of a Sentence*, s 3553.

³⁷ *Ibid.*

³⁸ Hammond, Scott D. “Detecting and Deterring Cartel Activity through an Effective Leniency Program, International Workshop on Cartels.” *Brighton, England*, 2000.

³⁹ Fletcher, Daniel J. “The Lure of Leniency: Maximizing Cartel Deterrence in Light of *La Roche v. Empagran* and the Antitrust Criminal Penalty Enhancement and Reform Act of 2004.” *Transnat’l L. & Contemp. Probs.*, vol. 15, 2005. p. 346.

⁴⁰ USSG, *supra* note 16, comment (n. 2).

million.⁴¹ The use of imprisonment is extensive with jail sentences of up to ten years. Thus, in US the most effective deterrent for hard-core cartel activity is sentence of prison, and also criminal sanctions against individuals.

4.2 On the Basis of Deterrence and Predictability

According to the OECD report, the existence of structured methods of fining that are visible in public guidelines issued to ensure how prediction can be done and providing a treatment which is uniform for comparing the violations that have occurred.⁴² Therefore, the introduction of explicit, comprehensive criteria for the administration of penalties may improve the predictability of fines—perhaps not in terms of how fines are determined, but rather in terms of the immunity offered to applicants for leniency under the program's effective implementation.⁴³ Predictability can act as a tool for deterrence by bringing into notice the existing cartels. However, two arguments can be raised where existence of penalty might reduce deterrence. If the expected fines are not high enough (for the purpose of deterrence), undertakings who have been law-abiding may also gain interest in committing infringements. Theoretically, there appears arguments which are more against rather than in favour of the predictability of fines. However, both the US and EU laws in practice should make their decisions regarding the imposition of fine more transparent and that which could be predicted.⁴⁴

4.2.1 Determination of Fine

In the determination of fine, base fine is set up with reference to the relevant turnover of the undertaking.

- i. The EU guidelines clearly mention that the amount of fine which has been finalized it shall not be more than 10 percent of the total turnover of the undertaking.⁴⁵ Similarly, the UK guidelines follow the same base fine as the EU.
- ii. However, the US permits the starting point to be higher, and the base fine imposed for certain offenses under the Competition Act may be set up at 20 percent of the organizations' turnover for determining of the

⁴¹ *Ibid*, para. (c).

⁴² OECD, "Pecuniary Penalties for Competition Law Infringements in Australia," (2018).

⁴³ OFT 2009 Report, *Supra* note 14, pp. 22.

⁴⁴ *Ibid*, pp 22.

⁴⁵ 2006 guidelines, *Supra* note 2, para 32.

infringement. The fine range in the US is within the range of 20-40 percent, if no adjustments are made.⁴⁶

- iii. The US differs from the EU and the UK, as the administrative agency doesn't set the pecuniary penalty rather the same is determined by non-specialized courts that are entrusted with the adjudication of the anti-trust cases.

4.2.2 *Adjustment of Base Fine*

The guidelines mention list of aggravating and mitigating circumstances with one major objective of adding deterrence. The aggravating and mitigating factors, as well as the imposition of penalty, may vary in different jurisdictions. Also, there are certain circumstances mentioned in the guidelines but the same need not be exhaustive.

The aggravating factors which lead the authorities to enhance the fine are to be determined on the following factors: recidivism, leading role in the infringement, refusal to cooperate in investigation, acts which are in continuation of infringement the same should be provided with coercive measures, infringement continues even after the investigation has begun, senior management being involved involvement in wrongful acts, size of the firm, infringements committed intentionally rather than negligently etc. Similarly, mitigating factors are also adopted by different jurisdictions in order to reduce the base fine imposed. These factors include cooperation with the investigation, infringement to be terminated as the investigation commences, infringement authorized by the legislature, effective compliance program, having a very minor and small role in infringement, self-reporting, etc. These factors are adopted to reduce the penalty imposed on corporations in the cases of cartels.

One of the circumstances "cooperation in the investigation" is considered to be a ground which can be applied by all the three countries. In US, individual's penalty may be reduced in a situation where the individual has "minor role in the infringement." These mitigating factors increase the probability of detection of any cartel arrangements that exists.

⁴⁶ OFT 2009 Report, *Supra* note 14, pp. 39.

4.3 Leniency Policy

Strong cartel sanctions provide an incentive for the cartel participants i.e. either the undertaking or an individual, to detach from the cartel activities and also offer co-operation to the investigators in exchange for leniency in punishment. As a result, nations create official "leniency programs" whereby a company that cooperates with a cartel inquiry first is either spared punishment or given a lighter penalty.⁴⁷ While determining the eligibility for leniency the following conditions could be considered such as:

- i. No coercion has been exercised over the applicant by the company to join the cartel or be a part of it.
- ii. No evidence has been tampered by the applicant.
- iii. No involvement in the cartel formation before reporting the Commission.
- iv. Full cooperation on a continuous basis to complete the entire procedure in a time bound manner and as expeditiously as possible.

4.3.1 The EU Law on Leniency Programme

In the definition mentioned by a EU legislator, a "leniency programme" is "*a programme [...] on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives [...] immunity from, or a reduction in, fines for its involvement in the cartel.*"⁴⁸

EU adopted its first leniency notice in 1996.⁴⁹ However, this leniency notice was replaced in 2002.⁵⁰ Finally, in 2006 the EC again amended its "Leniency Notice"

⁴⁷ OECD Policy Brief. "Hard Core Cartels- Harm and Effective Sanctions." (May 2002).

⁴⁸ Article 2(15) of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union, OJ L349/1 (2014).

⁴⁹ Commission Notice on the non-imposition or reduction of fines in cartel cases, OJ C207/4 (1996).

⁵⁰ Commission Notice on immunity from fines and reduction of fines in cartel cases, OJ C45/3 (2002).

mainly to clarify the threshold for immunity and also to clarify the duty of cooperation available to the applicants.⁵¹ The 2006 notice provides EC with full immunity imposed on the undertaking; firstly, the submission of information and the evidence of the undertaking first in number will ensure that the commission carries out an inspection targeting a particular person in connection with the cartel.⁵² *Secondly*, if the undertaking is first to submit information and evidence enabling it to find an infringement of Art. 101 TEFU.⁵³ EC would be eligible for a reduction, which will be 30 to 50% of the fine in the case of an undertaking that is first in number; for the undertakings which are second in number up to 20 to 30%, and for subsequent undertakings, it can be up to 20%.⁵⁴

4.3.2 *The UK Law on Leniency Programme*

Owing to Regulation 1/2003,⁵⁵ UK being EU member state enforced its own leniency programme. The framework principles for the leniency policy are set out in “Application for leniency and no-action in cartel cases,”⁵⁶ which may take the form of total immunity or a significant reduction of fines. CMA provides the following:

- i. Type A immunity provides automatic full immunity to the first member of the cartel who is coming with relevant information, before CMA starts an investigation.
- ii. Type B immunity mainly gives discretion to CMA, to provide with full immunity to the first undertaking coming forward after an investigation has been begun but before written notice of proposed infringement decision is given.
- iii. Type C leniency is applicable and available for those undertakings that are not the first to apply. Still, they generally provide for evidence of a cartel activity before any statement of objection is issued. Here, a reduction may be granted up to 50% of the fines imposed, but CMA may exercise discretion and grant a 100% reduction in financial penalties.

⁵¹ Commission Notice on immunity from fines and reduction of fines in cartel cases, OJ C298/17 (2006).

⁵² *Ibid*, points 8(a) and 10.

⁵³ *Ibid*, point 8(b).

⁵⁴ *Ibid*, point 26.

⁵⁵ 2003 guidelines, *supra* note 23.

⁵⁶ OFT, *Applications for leniency and no-action in cartel cases*, OFT1495 (2013).

- iv. Additional reduction in financial penalties or “Leniency Plus”⁵⁷ is recognized in the UK, unlike EU.

4.3.3 *The US Law on Leniency Programme*

In US, the Leniency Program⁵⁸ allows corporations and individuals, involved in antitrust crimes, to self-report and avoid criminal convictions, by confessing its participation in the illegal activities and also cooperating with the Division. Thus, unlike EU, US provides complete immunity from criminal conviction and from fines for the conduct which is anti-competitive.

Two types of leniency are available to the corporations either before or after a Division investigation has begun that are Type A and Type B leniency.

- i. Type A Leniency is available, before the Division has received any information about the activity being reported from any source,
- ii. However, Type B Leniency is available even after the Division has received information about the activity.⁵⁹

Leniency Policy for Individuals is also recognized under US law. Additional reduction also referred to as leniency plus or “amnesty plus” is also recognized where corporations in one conspiracy report cartel conduct arising in another conspiracy. This has no recognition in the EU leniency policy.

5. **India’s Position on Penalty Guidelines**

Section 2(c) of the Competition Act, 2002⁶⁰ defines cartel.⁶¹ Cartel behaviours in India has been regulated by section 3(3) of the Act. One of the prominent feature of this provision is the “shall presume rule.”⁶² According to this rule, the first and foremost requirement is to prove that an agreement exists, and once the same has

⁵⁷ *Supra* note 38, pp 23.

⁵⁸ DOJ, Corporate Leniency Policy, 1993 and Individual Leniency Policy, (1994).

⁵⁹ Lynch, Niall and Ashley Bauer, Latham & Watkins LLP. “Cartel leniency in the United States: Overview.” 2019.

⁶⁰ Competition Act, 2002 (CA, 2002) (Act 12 of 2003).

⁶¹ “Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services”.

⁶² Majumdar, P.K. Basu, “Penalising Anti-Competitive Agreements and Abuse of Dominance.” *NUJS Law Review*, vol. 7, no. 3-4, 2014, .

been established, there will be a presumption that the particular agreement has an appreciable adverse effect on competition, and the burden of proof in such a scenario would be then shifted on the defendant.⁶³ With regard to imposition of penalty, competition law doesn't lay down provision on how the CCI should determine the amount of penalty/fine to be imposed. However, the Act under Section 27(b), merely prescribes the ceiling. Also, the proviso to the Section 27(b) empowers the CCI to impose a higher penalty.⁶⁴ Thus, CCI has enough discretionary powers in determining the quantum of penalty/ fine that is to be imposed within the prescribed limit. This raises a question, whether certain guidelines similar to EU guidelines be adopted for use by competition authorities in India?

Due to non-clarity and unpredictability in the imposition of fine by the CCI, there is a need to clarify the computation of the amount of penalty. Such penalty must give consideration to the duration and gravity of the cartel and also to various aggravating and mitigating factors. As in the case of *M/s. Excel Crop Care Limited v. Competition Commission of India & Ors.*,⁶⁵ COMPAT accepted the ruling of CCI in merits but modified the CCI's order on imposition of penalty on the ground that there should be "proportionality" in the award of penalty. This proportionality is to be determined keeping into consideration the factual circumstances of the case and also the general reputation and other mitigating factors.⁶⁶ Similarly, the COMPAT in *Aluminium Phosphide Cartel Case*⁶⁷, observed that while imposing higher penalty, CCI should give valid reasons and take into account all the relevant factors.

Keeping into consideration the various cases, no pattern or formula emerges for determining the penalty rather it is the discretion of the competition authorities to determine it "as it may deem fit", as a consequence of which an incoherency

⁶³ Dhall, Vinod. *Competition Law: Concepts and Practices Relevant For India*, Oxford University Press, 2007. Print.

⁶⁴ Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten percent of its turnover for each year of the continuance of such agreement, whichever is higher.

⁶⁵ Comp AT 146 (2013).

⁶⁶ *Ibid*, para 63.

⁶⁷ In re Aluminium Phosphide Tablets Manufacturers, Suo Moto Case, CCI 24 (2012).

prevails in the determination. For example, in the Cement Case,⁶⁸ the penalty imposed was much below the ceiling provided under the law i.e. only 0.5 times of the profits from 2009 to 2011.⁶⁹ For the streamlining of the penalty/fine imposition, the Bar has also suggested⁷⁰ that competition authorities in India must borrow from the guidelines adopted by the EU, where competition law is more developed. The response of the COMPAT on the same has been:

*"...those guidelines are undoubtedly relevant in arriving at the issue of deciding upon the turn over. However, those guidelines cannot be treated as be all and end all in the matter and would have to be considered in the light of the facts of each case."*⁷¹

Thus, a strong system of sanctions prescribing the appropriate procedure for calculation of fines against cartels needs to be detailed out, similar to the guidelines adopted in EU, to provide a threat to violators and also to reduce uncertainty by clarifying the content of prohibitions. Also, guidelines would ensure predictability and certainty in relation to the maximum limit of fines or sanctions that can be imposed by the authorities. When adopting from countries like the US and the UK where more clarity is provided with regard to fine and thereby reducing the scope of discretion of the authorities.

5.1 Leniency Policy in India

In India, Competition Act under Section 46 provides for a provision relevant for leniency, wherein the Commission may impose a lesser penalty as it may deem fit, on any producer, seller, distributor, trader or service provider, if he makes a full and true disclosure of the alleged violations.⁷² The leniency programme is available to both enterprises as well as individuals. To make leniency programme effective, CCI (Lesser Penalty) Amendment Regulations, 2017 has been enacted.

⁶⁸ Builders Association of India V. Cement Manufactures Assn. & Ors., CCI 42 (2012).

⁶⁹ Mausam. "Deterring Cartel in India: A Half (Un) Done Job.", *Indian JL & Just.*, vol. 7, 2016, p. 167.

⁷⁰ Olson, Lindsey A. "Takeaways from Recent Remarks on the DOJ Antitrust Leniency Program." *National Law Review*, 2020.

⁷¹ *Ibid.*

⁷² CA 2002, *Supra* note 60, s 46.

The quantum of immunity available under the leniency provisions is as under : Up to or equal to 100% benefit of reduction in case of first disclosure of existence of cartel.

- i. The second and third applicant in priority would be benefitted by the reduction on submitting evidence as the same would provide for a significant added value evidence with the Commission.⁷³

India's leniency program is still at a nascent stage however, the Commission passed its first leniency order in January 2017. Also, the trend as apparent clearly illustrates that CCI in order to ensure cartel detection may agree to reduce fines or provide with 100% immunity. Recently, Draft Competition (Amendment) Bill, introduced by the Ministry of Corporate Affairs on February 2020 had proposed the introduction of the US Antitrust Division's concept of "Amnesty or Leniency Plus." The same is proposed to be incorporated by inserting sub-sec. (3) to Sec. 46. Also, the same has not been recognized in the EU's Leniency framework, but is recommended to be included in the India's jurisdiction. However, the same may not be as appropriate in the Indian scenario due to the absence of criminal sanctions, unlike the US, which adopts amnesty plus as well as the penalty plus. So, in order to incorporate this in the Indian law, first of all, there is a need to incorporate penalty plus in the leniency programme.

5.2 Criminalization of Cartels

Cartel's activities have received criminal sanctions in various countries around the globe like the USA, UK, South Africa etc. thus, the question for India, is there a need to adopt criminal sanctions for cartel? Criminal sanction against cartels is considered to be an important tool to create deterrent effect than civil penalties. As these sanctions create more fear. In case of developing country like India, adoption of criminal sanctions would be considered to be a good solution to reduce the cartel activities without reducing/affecting competition in the market. Also, monetary fines have their own limitations. Looking into the state of companies in India, higher amount of penalty is not a viable option and imposing lesser fine would not be sufficient to have deterrent effect. Thus, situation demands to look for a better option than fines. To substantiate criminalization of cartels in India, a reference may be made to the Companies Act, 2013, under which if person relating to an unregistered company is found guilty of insider trading, he may be convicted of

⁷³ CCI (Lesser Penalty) Amendment Regulations (No. 1 of 2017), Reg. 4(b).

five years imprisonment.⁷⁴ Therefore, the number, size and the damage caused by cartels to our country's economy and to the people at large is substantial and thus, present a need for criminalization of some hard-core cartels.

6. Conclusion and Suggestions

The EC 2006 guidelines which has been adopted has served the basic purpose of creating deterrence on the undertakings by imposing sanctions. Also, on comparison of the same with the penalty guidelines of UK and USA, it can be concluded that the guidelines are more or less based on the same jurisprudence of creating deterrent effect. But the guidelines of the three countries may vary in terms of determination of fine, calculation of turnover, imposition of sanctions on individuals etc. For example, in EU, individual sanctions are not mentioned, unlike UK and US. Thus, due to non- introduction of individual sanctions, there exists under-deterrence in the current model of penalty. So, more attention should be paid to the shortcomings of the current model of framework. Also, adoption of a better institutional model is recommended which gives priority to the sanctions of individuals when it is needed.

However, the Indian situation is different. In India, CCI's inconsistent and contradictory views on the enforcement of cartel cases and the interference of COMPAT, has not provided a clear formula for the setting up of fines. Thus, India should also develop guidelines on penalizing cartel cases similar to that of EU guidelines that would ensure both transparency and stability in imposing penalty rather than deciding each case anew. Also, with the increasing cases of cartels and the impact it has on the economy, it would be appropriate for the country to impose criminal sanctions in cases of hard-core cartels. The comparison of the three countries with India gives a model plan that can be adopted in the Indian scenario to adopt as consistent penalty regime already prescribed under the law leaving less discretion to be exercised by the authorities. For example:

- i. Like the US adopting the policy of criminalizing offenders of cartels in order to create deterrence and to reduce the number of cases in India would prove beneficial.
- ii. In terms of leniency policy, adopting the concept of leniency plus in India would secure a proper transparent and effective mechanism for recognizing the rising number of cartel cases in India.

⁷⁴ Companies Act, 2013, s 195.

- iii. The exhaustive overview of the EU laws especially over the leniency programme provides enough guidance for India to consider the list of aggravating and mitigating factors to be considered in India.
- iv. Also, while determining sanctions that can be imposed different countries have different approach and each country's law would act as an example for India as to how sanctions can be granted in the Indian context when formation of cartels is recognized in India.

HIGHER EDUCATION FOR WHAT? AN INQUIRY INTO THE LIVES OF "PADHI-LIKHI" WOMEN OF PANJAB UNIVERSITY

Meenu Bala*

Abstract

“If you educate a man, you educate an individual, but if you educate a woman, you educate a family”- Jawahar Lal Nehru.

A well-educated woman is not only an asset to a nation but also prepares a path where future generations could prosper. Therefore, investment in women, particularly in their education plays a crucial factor in defining any nation's development. The educational landscape in India has undertaken a positive shift with an increasing number of women getting enrolled in higher educational institutes. Hence it becomes crucial to understand the reason(s) behind this positive shift. Drawing on findings from in-depth interviews with women alumni of Panjab University, this paper utilises a narrative approach to examine this phenomenon through the educational journeys of women. Through their lens, this paper not only aspires to provide an in-depth understanding of the subjective experiences of “educated” women but also to unravel whether the societal shifts surrounding this term are a lived reality or a mere myth. Their voices are a mirror reflecting the subtle interplay between tradition and change, individual aspiration and societal limitation, thereby shedding light on the broader societal implications of being ‘Padhi-Likhi’ in a changing world. Reflecting upon the prevailing perception of the society towards these “Padhi-likhi” women, this paper tries to highlight the need to create an enabling and inclusive environment for women to actively pursue their academic pursuits in increasing numbers.

Keywords: higher education in India, working women, educated women, tradition and change, female education

1. Introduction

A nation cannot fully flourish economically or socially if it does not recognise and completely exploit the potential of its people. The efficient and effective use of resources is essential to the growth and competitiveness of a nation and for the

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overall well-being of the people residing in it. Education is one such resource which holds immense significance as a crucial indicator for a society's overall progress and well-being. High levels of educational attainment in a nation will eventually result in economic prosperity as it ensures higher intellectual and professional capabilities among citizens.¹

Human talent is an essential resource, and women comprise half of this valuable asset. As such, investing in their education become crucial to harness the full potential of this valuable resource. It is one of the most important means of empowering women with the knowledge, skills and self-confidence necessary to participate fully in the development process.

However, participation of women in higher education has caused concerns across the globe due to their disproportionate representation in this sector. Intriguingly, this narrative is slowly faltering in case of India where the educational landscape has undergone a significant change with increasing number of women getting educational access. According to the AISHE Report² (released by the Ministry of Education), gender parity has reached 1.1 for the first time in higher education system in India which means greater number of female students are entering the educational sector in comparison to men. As per the report, Women currently make up 49% of all students enrolled in higher education in India. Their enrolment in this sector has increased by 18% nationwide between 2015 and 2019 across the national level.

But are enrolment numbers enough to assume that the gender gap in higher education is almost completely closed? There is no set answer to this question. A substantial increase in women's enrolment in higher education is commendable but a holistic understanding of gender disparities necessitates a deeper examination of enabling factors and the underlying reasons responsible for this steadily increasing numbers. We need to understand that women in India do not form a homogenous group and the socio-cultural environment also influences their educational trajectory. Therefore, deeper examination of such environment also becomes significant.

In the context of this study, the term 'Padhi-likhi' holds a multifaceted significance. Literally translated as 'educated', it encapsulates the essence of academic attainment and intellectual empowerment among women. However, its

¹ Government of India. *Report to the People on Education*, Ministry of Human Resource Development, 2011-12.

² Government of India. *All India Survey on Higher Education*, Ministry of Education, 2020-21.

true depth and meaning extend far beyond mere literacy. The increase in enrolment numbers must also be accompanied with women staying longer in the education system. As continued education, not only equips them with literacy skills but also empowers them by fostering inner confidence, enabling self-earned income, and granting the ability to make informed decisions.³ Furthermore, it should also result in enhanced employment prospects for women, as increased education levels contribute to higher productivity, more competitiveness and create a stronger motivation for women to participate in the workforce.

Surprisingly, prior research conducted on the educational access of women indicates an inverse relationship between the level of education attained by women and their likelihood of labour force participation. In the context of India, it is observed that an enhancement in education levels does not correspondingly lead to increased women's participation in the labour force, instead there appears to be a decline in the rate of participation among women with higher levels of education.⁴

Chatterjee⁵ in a study based on the employment patterns of secondary school graduates, revealed that the primary factor leading to low number of educated women entering the labour force was the "income effect" within households. In other words, as household income increases, the likelihood of women from such households to engage in income earning activities diminishes. The possible reasons behind this phenomenon relates to maintaining status of the family by confining women to gender traditional roles.

In this context, the significance of various societal factors impacting women's educational journeys becomes salient. While there may have been improvements in educational accessibility, it remains imperative to examine whether these changes have effectively altered the dynamics of societal stereotypes surrounding education of women.

Chanana⁶ conducted a study examining the impact of education on the social status of women by analysing the life histories of three generations of Punjabi women. The research revealed a positive shift in attitude among the mothers, who

³ Kabeer, Naila. "Gender equality and women's empowerment: A critical analysis of the third millennium development goal 1." *Gender and Development*, vol. 13, 2005, pp. 13-24.

⁴ Chatterjee, Esha, et al. "Indian Paradox: Rising education, declining womens' employment." *Demographic Research*, vol. 38, 2018, pp. 855-878.

⁵ *Ibid.*

⁶ Chanana, Karuna. "The Dialectics of Tradition and Modernity and Women's Education in India." *Sociological Bulletin*, vol., 39, 1990, pp. 75-91.

themselves had previously been indifferent towards education. They recognized the importance of educating their daughters, not solely for employment opportunities, but to equip them with the necessary skills for economic independence. But such independence was primarily viewed as a safeguard in situations such as widowhood, divorce etc. Therefore, the perceived role of education was contingent on specific circumstances, and its transformative potential was not expected to extend beyond those situations. Apart from societal setup, there have been studies on understanding the academic and workplace related experiences of educated women.

Kathleen N. Smith⁷ in their study examined the gendered experiences of graduating senior women in engineering in their constructivist case study. The study explored the biases faced by these women in both academic and workplace environments. The study revealed that women in engineering faced bias in both academic and workplace settings. While academia was predominantly characterized by implicit bias, the workplace included instances of implicit bias, sexism, and sexual harassment, particularly during internship experiences.

While studies have touched upon the issues of prevailing perceptions on educated women, they have often provided a surface-level understanding of these perceptions. They have tried to explore the broad stereotypes and societal attitudes without delving into the nuanced aspects that shape these perceptions which this study seeks to understand. Further, existing literature has tried to investigate the gendered experiences of women in academic settings but there is limited exploration of these gendered experiences getting unfold in a complex web of cultural expectations, family environment and gender role expectations.

This paper, in this sense, takes a distinct approach by amplifying the voices of educated women on their own engagement and interlinkages with the contextual factors that shape their educational choices. These factors either work as motivators or act as a deterrent. Supportive societal attitudes can help overcome educational barriers, provide access to educational resources and help foster a sense of confidence and ambition amongst women. Conversely, negative environment that stereotype educated women and undervalue their intellectual abilities can significantly limit their educational opportunities, leading to lower enrolment rates. Therefore, these factors are crucial to define the future course for higher educational institutes and also to help them attract a rising number of female students.

⁷ Smith, Kathleen N. and Joy Gaston Gayles. "Girl Power : Gendered Academic and Workplace Experiences of College Women in Engineering." *Social Sciences*, vol. 7, no. 1, 2018, p. 11.

Considering the aforementioned context, this paper moves beyond the surface level examination of rising enrolment figures and tries to gain a comprehensive understanding of factors that not only explain the reasons behind these steadily rising numbers but also provide a nuanced picture of the challenges that hinder women's educational opportunities. This has been done through in-depth examination of the narratives of educated women where they recount their educational journeys. Through their lens, this paper aspires to paint a vivid and authentic portrait, illuminating not just the personal journeys but also the broader societal implications of being 'educated' in today's world. Therefore, it becomes crucial to understand the familial and societal landscape around which the educational trajectory of these women unfolds. This paper is their platform, their narrative, and their testament to the shifting sands of perception and reality that these women navigate.

Apart from the introductory paragraph, the paper is structured into four sections. The first segment starts with a discussion on the methodology adopted for the paper along with the theoretical framework. The Second part tries to analyse the perception of Society towards "Educated" women in which the role of dual realities of societal perceptions & familial support have been studied in detail. The third section tries to provide an insight into the educational aspirations and motivations of university educated women. This section mainly interrogates the subjective reasons that led these women to pursue higher education. All the above-mentioned arguments have been put across through a discussion grounded on the narratives of women. The last section consists of the concluding remarks.

2. Data and Methodology

The study investigated upon the reasons for university educated women to pursue higher education for themselves. For this purpose, the study adopted a qualitative method of investigation in which a narrative approach has been used. Narrative approach seeks to uncover and make sense of unique perspectives and subjective realities of individuals through stories shared by them.

Data collection involved in-depth interviews of 20 women alumni who did their Post Graduation from Panjab University, Chandigarh. Panjab University was selected for the study as it serves as a hub of higher education which encourages women from many states and diverse backgrounds to attain higher education. All the respondents in the sample were from adjoining states of Chandigarh namely Haryana, Punjab and Himachal Pradesh. Snowball technique was used in the sample process for the interviews. The interviewees incorporated both married and

unmarried women who had diverse academic qualifications. 14 respondents were from Humanities and Arts background and 6 out of them did their post-graduation in Sciences and Management.

A small number of respondents were chosen to be interviewed as the study emphasized upon qualitative and in-depth exploration of the lived experiences of the women within their specific context. Insightful conversations with the participants promoted open and candid discussions, that allowed to capture the intricacies and nuances of individual narratives and their unique challenges. To maintain the confidentiality of the women respondents, their names have not been mentioned anywhere in the study.

3. Theoretical Framework

The Capability approach, developed by Amartya Sen⁸ provides a comprehensive lens to understand the intricate relationship between women's educational journey and the multitude of factors that shape their educational path. For Sen, Capabilities represents individual's substantive freedoms to do and be what they value. Education is one such facilitator that enhances women's capabilities by equipping them with knowledge and skills that enable them to exercise their agency and make choices that align with their own values and goals. However, for Sen, any initiative towards enhancing access to education should not be guided by the benefits it brings to the family or society. In other words, the intrinsic value of education must not be overshadowed by its instrumental benefits. "It should be focused upon how it effects individuals and their capabilities to lead the life they value."⁹

The capability approach seeks to examine the educational experiences of women beyond educational attainment and access. It recognizes that women's capabilities are influenced by complex interplay of contextual factors such as societal norms, cultural practices and economic opportunities etc. These factors considerably effect and shape women's agency, choices and conversion of educational opportunities into substantive freedoms. For Sen, Women's ability to address these social structures defines the extent to which their education enhances their capabilities. In this way, this framework allows for a nuanced analysis of women's educational experiences within their specific socio-cultural contexts and helps to bring out the inter-linkages between external factors and individual agency.

⁸ Sen, Amartya. *Development as Freedom*. Oxford University Press, 1999.

⁹ Elaine, Unterhalter. "Education, capabilities and social justice." Background paper for the *EFA Global Monitoring Report 2003/4, Gender and Education for All: The Leap to Equality*, Paris: UNESCO. 2003.

4. Navigating Dual Realities: Women's Education and the Interplay of Familial and Societal Perspectives

Women's access education has experienced a notable increase in contemporary times, marking a shift from earlier times where only a limited number of women had the opportunity to pursue an education. This social privilege was typically reserved for women belonging to the upper class and those who had a strong financial background. Education, at that time, was considered important so that the daughters of upper-class people could find a "good spouse". Thus, the purpose of education was more likely to produce a skilled housewife than an educated person "and education was more "moral rather than intellectual" ¹⁰.

In recent decades, there has been significant growth in enrolment numbers of women. Amidst this shifting educational landscape, an inquiry arises as to whether the societal perceptions have also undergone transformations in response to the increasing prominence of women in educational sector. Furthermore, there is need to understand if this evolving context has engendered a reconsideration of the intertwining between marital aspects and women's educational endeavours. We have attempted to answer these questions through the accounts of educated women themselves. We got varied responses, where each narrative presented us with multiple realities that coexist in a woman's life. One of the respondents, who did her Post graduation in Humanities, states that

I come from a community where it was established that boys will look out for the family in the future but a girl's ultimate destiny lies in eventually transitioning to her husband's house, so she does not need to study. But my parents supported me to pursue higher education. They went above the community norms and sent me to study further in an unknown city.

It is evident from the above-mentioned narrative that parents of these women, supported their continued education despite community limitations. It clearly demonstrates that there are still some communities where girls' education is looked down upon. Mandal¹¹ highlighted this dichotomy of Indian society where boys' education is prioritised above daughters. Girls' education is still viewed as less important than boys', and this phenomenon helps to explain why girls drop out of school or colleges in high numbers. Boys are still expected to provide for the entire family. However, these women had a different story to tell. They moved above the

¹⁰ Parker, Franklin. "Womens' Education : Historical and International View." *Contemporary Education*, vol. 43, no. 4, 1972, pp. 198-201.

¹¹ Mandal, Divya Raina. "Educated Women and contradictions in the Indian Society." *International Journal of Education & Management Studies*, vol. 2, no. 4, 2012, pp. 392-394.

societal norms with parents who supported them to have higher education. Another respondent came up with a similar story:

My parents worked tirelessly to provide me with the best education possible. I was the first girl in my locality to migrate to another city and get a postgraduate degree. I come from a town where girls don't typically go outside to pursue any sort of education. Women with education are looked upon as spoiled and egoistic. It was my parents' mindset that allowed me to remain unaffected from the opinion of these people.

In a specific narrative, where the respondent's parents displayed support for her education, the adherence to distinct gender roles presented challenges in her career decision-making process. From the outset, she was provided with a limited range of career options. Consequently, her ability to choose a profession was hindered by the predetermined roles assigned to her as a 'woman'.

Sharing her experience, she stated:

I found it quite challenging to first convince my parents of my academic interests in a university far from our town. Once they agreed, the next challenge was to go for a job they wanted. I have been raised in an environment where the mindset is that I must either secure a prestigious job like that of an officer or refrain from working altogether and focus on getting married in a well-off family. There seems to be no middle ground for me to explore alternative career options. My fate was determined, not on the basis of my preferences but on the suitability of a woman towards a particular job route.

This narrative highlights the influence of gender norms and societal expectations in shaping individuals' career choices, even when educational support is present. This binary thinking compels women to choose between extremes and limit their options. These perceptions stem from the belief that an educated woman reflects the honour and status of her family or community. Consequently, many women find themselves trapped in balancing household responsibilities with their careers, as straying from the prescribed path may lead to diminished societal regard. The respect and preference bestowed upon them becomes dependent upon their adherence to societal expectations. Here the value of education gets reduced to its instrumental value where it becomes one of the most required qualifications for a girl's marriage.¹²

¹² Cho, Uhn. "Gender inequality and patriarchal order recontextualized." *Contemporary South Korean Society*, edited by Hee-Yeon Cho, Lawrence Surendra, Hyo-Je Cho, Routledge, 2012, 10.

Contrastingly, in another narrative, the prevailing perceptions had no bearing on the way parents approached their daughter's education. They embraced their daughter's aspirations and provided unwavering support and encouragement for them to excel. As one respondent, who did her Masters in Philosophy from the University (now pursuing Doctorate of Philosophy in Economics) stated that her motivation to undertake higher education came from having parents who were educated. She lamented:

The difference is entirely due to having a mother who is educated. She was the one who encouraged me to seek higher education on my own. My father too, who is an army person, advised me to pursue education so I wouldn't have to ask for money in future and to never have to settle for less than what i deserve. My upbringing emphasised mobility and independence. Educated parents always want their children to follow their route or, better yet, to outperform them. Parents with education do make a significant difference.

Clearly, the respondent's decision to pursue further education was shaped by her parents' education. However, some respondents had a different viewpoint contrasting with the above narrative. Though, their Parents were not well educated, they nevertheless wanted the best of education for their daughters. They understood and valued the importance of education and the employment options open to an educated person from their own experiences. As a result, they encouraged their daughters to pursue further education.

These set of respondents personally believed that "Education was a lost hope for their parents and educating their children reflected their desire for this lost vision."

As one respondent who pursued M.Sc. in Physics stated:

I am from a poor, economically and socially backward household. My father, a small-time vendor, struggles to pay for my sisters' and my education. But they nevertheless continue to encourage us to pursue further education and find employment. My parents believe that their children should not be deprived of opportunities, for a better life, through education which they missed when they were young.

In addition to receiving inspiration to seek further education from their parents, a few married respondents acknowledged their in-laws for inspiring them to do so. As one respondent puts it:

Times have changed now. People desire educated daughters-in-law who will not spend the entire day at home. Before marriage, the first thing my mother-in-law told me was that after marriage, I need to go out and work. Apart from being a requirement for finding a compatible partner, Education is today

considered to be of more importance than in earlier times. While looking out for suitable partner, a well-educated woman remains the first preference.

Such narratives clearly demonstrate the preference given to educated women in today's marriage market. Moreover, this preference is linked to a high social standing and prestige where women with education are given precedence over others. Education alone, however, is insufficient if the majority of women are confined at home and are not allowed to work outside the home. A study¹³ revealed that the main cause of women's low rates of labour force participation is the impact of household income which means the likelihood, that a woman in a household will go outside for work decreases with the amount of income that a household has.

One such narrative comes from a respondent who aspired to study further but the circumstances landed her somewhere else. While narrating her experience, she says:

I got married into a family who assured me of their support in my educational journey. But I was forbidden to take time out for my studies immediately following the wedding. Whenever I insisted on being spared some time for my studies, I would be told that they don't need me to earn as they come from a wealthy family, a miniscule amount of the money that I would get, is not going to make much of a difference.

The narrative clearly indicates how a women's education gets relegated to the status of a showcase. Such an approach does not challenge the prevalent patriarchal gender norms, rather it reinforces them. Education becomes useless where it doesn't translate into giving women the agency and freedom to prosper. The failing to connect the advantages of education with women themselves is the site of harshest discrimination.¹⁴

The opinions of society towards educated women was another factor brought up in these interviews. Educated women are preferred and respected but such respect is conditional. Women with education level that surpasses that of a man, are seen to be more self-centred, egoistic and forward-thinking. As one respondent states:

I ended up leaving the relationship with a man whom I had plans to marry, because he was not comfortable with me being preoccupied with my profession. He called me egoistic and self-centred because I was less available to talk. Being educated was not the main problem but being more educated than the boy was the problem.

¹³ Chatterjee, Esha, et al. "Indian Paradox: Rising Education, Declining Womens' Employment." *Demographic Research*, vol. 38, 2018, pp. 855-878.

¹⁴ Suen, Serena. "The Education of Women as a Tool in Development: Challenging the African maxim." *Hydra Interdisciplinary Journal of Social Sciences*, vol. 1, no. 2, 2013, pp. 60-76.

These stories provide a complex picture of the familial and societal preference for educated women. However, at the core, the fundamental issue persists where the girls are required to seek permission from others to pursue their own path. The financial status of the family too forbids a girl to work. This income effect along with their cultural traditions, places more value on keeping women at home. This can be described in terms of the Sanskritization effect on households as they attempt to elevate their status by imitating the practices of upper spectrum households.¹⁵

These narratives highlight discernible patterns on the intricate interrelationship between these women's educational journey and multitude of factors that shape their educational choices. It was evident that women hailing from rural backgrounds encountered formidable barriers and societal pressures in their pursuit of higher education, owing to deeply entrenched norms and expectations. In contrast, women from urban backgrounds, benefiting from the presence of educated parents and a supportive environment, experienced relatively smoother educational trajectories.

Furthermore, the narratives highlighted the dual realities of familial and societal landscape surrounding women. On one hand, prevailing societal perceptions often created barriers for these women and reinforce gender-based biases, particularly in cases where their educational attainments surpassed those of men. Such perceptions often portrayed educated women as egoistic, excessively ambitious, or as challenging traditional gender roles. These observations indicate the enduring presence of gender stereotypes and the existence of a gendered lens through which educated women are frequently viewed. On other hand, Parents and in some cases, in laws presented a contrasting picture wherein they actively counter-balanced societal misconceptions by fostering a conducive environment for their daughters' academic pursuits. to excel in their studies. They created a buffer zone to shield women from any such negative influences.

However, it is crucial to recognize that familial landscape is not immune to the broader societal context and external pressures. While some families proactively fight the societal norms and actively promote gender equality within their households, other may unknowingly reinforce societal biases. In this complex interplay of familial and societal spheres, family serve as both agent of change and conduits of societal limitations. It requires resilience and determination on the part

¹⁵ Kingdon, Geeta Gandhi and Jeemol Unni. "Education and Womens' Labour Market Outcomes in India." *Education Economics*, vol. 9, 2001, pp. 173-195.

of women to balance out the positive role of familial support with the constraining societal landscape. By acknowledging and engaging with these dual realities, stakeholders can work towards creating an inclusive and enabling environment for women where their education is valued.

Having explored the societal and familial landscape surrounding the educational path of women, the subsequent section shifts the focus to women themselves where they narrate their aspirations and motivations to pursue higher education.

5. Women Entering Higher Education: Aspirations and Motivations

We questioned the participants about their reasons that led them to pursue higher education. We obtained diverse responses from each respondent based on the background they came from. While, a few interviewees were less satisfied with the condition of their homes, others desired to pursue higher education for the betterment of their families. Low parental incomes, the absence of a parent due to divorce or death, family tensions primarily caused by material deprivation, or difficulties caused by lack of financial support during their early education led them to take up higher education in a city, where they could get better education.

Other set of respondents considered their financial situation was adequate enough to finance their education. They pursued further education mostly in order to develop their skills, and land a desired position in their professional field. The decisions they made regarding their careers or education were largely unaffected by the dynamics of their families. Rather, most of these respondents credited their Parents' to be their ultimate guides who led them to go beyond their limits and challenge themselves.

Elaborating upon the above-mentioned section, we have determined four groups of responses about the reasons and motivations to pursue higher education amongst university-educated women.

5.1 Better Life-Start

This category includes women who were motivated by financial hardship or the desire for a better life for oneself and one's family. In this situation, the motivation to study is mostly driven by their family's needs and requirements rather than their professional aspirations.

As one respondent says:

I realised that I would not be getting the best of education in my hometown so my parents and i decided to get outside those four walls of my house. I

competed my Secondary education in my hometown, but I knew from the start, that there was no progress at home beyond that.

Other women chose higher education for themselves, not only for financial reasons but also in order to break down cultural boundaries. With a university education, these ladies were able to live more independently once they moved to a new city. Their education would provide them with a fresh start and new knowledge. In the academic setting, they would interact with a variety of people. They would develop both professionally and personally while also embracing a new way of life for themselves and their family along this journey.

5.2 University Education

Some responses cited the quality of education a university has to offer, to be the main deciding factor.

As a respondent answered:

I wanted to graduate from a prestigious university to increase my prospects of finding employment, and at that time, Panjab University seemed to be the best available option. In my opinion, returning home was the choice that seemed least likely. I came here not only to study but also to work in a profession where my education would be valued and respected.

Other respondent had her own reasons, in which the employment concerns took precedence over other possible factors: She states:

Given that the demands of a profession call for a specific skill set, a university education would provide women with increased opportunities and better skills. The job market is highly varied and in today's times, it actively seeks out more female employees on all levels. You can meet this increasing need by pursuing higher education.

5.3 Better Employment and Financial Support

These set of respondents placed a lot of value on their academic success. They wanted successful careers that would combine the benefits occurring from their higher education with the income, they get. Their individual goals pushed them to improve their skills in the competitive labour market. As one respondent stated:

You require a few key skills to be prepared for employment as you consider pursuing further education. You receive hands-on training and gain knowledge of practical skills from the material covered in professional courses. Apart from that, you develop the leadership qualities necessary to forge your own path in life and progress your profession.

Apart from developing their abilities in a competitive work market, respondents were motivated by the desire to become a contributing member of the family they would marry into. They chose to pursue further education because they wanted to be respected and have their own identity.

One such respondent expressed her thoughts and responded:

An educated woman is always treated with more respect. The dowry expectations from their prospective groom are lesser. Even if the girl isn't attractive, she can still find a groom if she is making enough money. Because she provides for herself, no one in the family would view her as a burden even if she decides to stay single.

The responses demonstrate that these women wanted their education to be regarded and valued in the job market along with providing a dignified place in their marital homes.

5.4 Delay in Marriage

There are two kind of responses who belong to this category. One group of respondents consisted of women from average households who enrolled in universities to earn degrees but had no immediate plans to pursue employment after getting married. Till their marriage is fixed, they keep on doing M.A., M.Sc., M.B.A. etc whatever Masters course they can get admission to. Although they wanted to have education but getting a job was not something they preferred. This phenomenon of getting degrees without any serious intent of making use of their education, came out to be an important factor.

The other kind of respondents were ones who had put off getting married by enrolling themselves in a degree course in the University. A widely held belief amongst these women was that education should be finished prior to marriage so that she is free to assume family obligations. These respondents wanted to get advanced education before marriage because they believe they won't have the opportunity or flexibility to do so after they are married. As a result, their education helped them in delaying the marital responsibilities that would follow thereafter.

The aforementioned section sheds light on the significant role of societal and financial considerations in shaping women's educational journeys. On one hand, there were women who demonstrated remarkable determination and resilience in pursuing higher education despite facing financial hardships. These women viewed education as a transformative tool that could enhance their future prospects, expand their career opportunities, and break the cycle of poverty. On the other hand, a

distinct subgroup of women regarded their education as a strategic means to delay marriage or as a means to acquire a better position in the marriage market. For these women, education served as a temporary phase to navigate societal expectations while simultaneously increasing their matrimonial prospects. It is pertinent to emphasise here that these decisions are not always shaped by individual agency alone. Rather, there is an array of influential factors which contribute to their choices. These decisions, necessarily are not always gender neutral since their perception is shaped by gender role socialisation.¹⁶ This gendered socialisation works through the institution of family. Hence, understanding the complex interplay between individual agency, external influences and gendered socialization becomes crucial in comprehending the multifaceted motivations behind women's pursuit to higher education. By acknowledging the impact of these multifaceted factors on women's educational journeys, this research underscores the need for targeted interventions which could enlighten women to make informed choices about their education, careers, and personal lives.

6. Conclusion

The participation of women in higher education is a highly debated topic. Through the narratives of these women, this paper aimed to illustrate how society shapes and perceives such participation. The interviews highlight the evolving yet incomplete shift in societal attitudes towards women's education. Educated women are preferred and respected but this preference often stems from subjective reasons intertwined with the desire to uphold traditional gender roles. While, many of these educated, aspirational women got confined by the standards of domesticity and were content with continuing their education over immediate marriage prospects, other women demonstrated a strong determination to pursue their desired careers despite various roadblocks. Additionally, Parental support came out to be a powerful force in nurturing and empowering these women's educational journeys but the societal attitude towards educated women came out to be disheartening but evolving with time.

The findings of this paper hold significant policy implications to design targeted interventions that not only lead to women's access to higher education but also dismantle long standing discriminatory and orthodox beliefs that stereotype educated women. There is need for educational institutions and policymakers to

¹⁶ Eddy, Pamela L., et al. *Critical Approaches to Women and Gender in Higher Education*. Palgrave Mcmillan, 2017.

implement programs that challenge gender stereotypes from an early age. This can include initiatives such as mentorship programs, awareness campaigns and exposing girls to successful women professionals which would enlighten them on the long-term benefits of their education. Financial incentives such as merit-based stipends and grants can be offered to recognise academic excellence among women students especially those from marginalised sections.

To foster supportive environment for women, public awareness campaigns along aiming to shift societal attitudes and challenge traditional gender norms can be launched at grass root level. This can involve collaboration with community leaders, religious institutions and media to encourage and enlighten people on the intrinsic worth of education for women. Parental guidance programmes can also prove helpful in fostering a culture that recognizes the importance of girl's education and separates it from marital prospects. Though the societal landscape is gradually changing but it is yet to recover from the patriarchal mindset that indirectly assigns women to sex-segregated roles and puts their career path in a direction that favours domesticity and femininity.

ELECTIONS AND ELECTORAL LAWS IN INDIA: CHALLENGES AND REFORMS

Saurabh Sinha*

Abstract

Conducting elections to elect our representatives in the world's largest democracy with the second highest population is a humungous task. Considering the demographic divides, socio-economic status, vast disparities etc., and the task of living up to the expectations of the electorate becomes all the more challenging. The Election Commission therefore has an onerous duty of successful conduct elections in a fair and transparent manner gaining the confidence of all. The electoral laws covered by the Representation of the People Act, 1951 needs amendments to overcome the current malpractices which are plaguing the electoral process in India. This article deals with all these at length including electoral finance, simultaneous elections, elections and technology, electoral bonds et al.

Keywords: electoral laws, elections in India, democracy, fairness and transparency, electoral malpractices

1. Introduction

The mammoth exercise of conducting the last parliamentary elections spread over seven phases was completed in 2019. It was followed by State Assembly elections in many states in the years that followed including the five states of Uttar Pradesh, Uttarakhand, Punjab, Goa, and Manipur in 2022. Despite all the controversies which surround all elections in India, the conduct of elections by the Election Commission of India (ECI) is largely fair. With a little over a year left for the next Lok Sabha elections and a host of states going to polls in 2023 with elections to Tripura, Meghalaya and Nagaland being over, and the states of Karnataka, Chhattisgarh, Telangana and Mizoram going to polls later this year, the issue of electoral reforms and the cleansing the electoral system of the ills plaguing it remains a point of discussion and debate. Considering the range and gamut of issues which elections cover, a comprehensive analysis of the electoral system is necessary.

Good democracies thrive and survive on fair and transparent conduct of elections. The representatives' whom we select to work for us, therefore, must have some

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accountability towards those who have selected them. Ironically, the distance between the governing and the governed widens after each election and the representatives reap the benefits of the strategy which they deployed to manipulate the voters, tap on their behavioural psychology, and fuel their confirmation biases with an intuitive appeal, hitting them hard enough to arouse a strong emotion. The illusory picture painted by them before the electorate during campaigning begins to vanish with the passage of time. Massive and stringent changes in electoral laws and steps for their successful implementation are required for conduct of elections to hold some value and meaning.

1.1 Reforming The System

1.1.1 Educational Qualifications

The first and the foremost debatable issue with respect to electoral reforms is the educational qualification of the candidates whom we are selecting to represent us from municipal bodies to Parliament. An elected representative must perform the dual task of law making as well as policy planning and those serving as ministers in the Union or State Governments many times have to represent the nation abroad for strengthening bilateral ties. A high-level delegation generally visits other countries headed by the minister. For performing such multifarious task, one just cannot expect the representative members of Parliament/Legislature not to possess any educational qualifications or at least some minimum qualification and get selected riding on the wave of public sentiments by fiery and lofty speeches taking the electorate in a world of illusions by banking upon their emotions.

Making sound policy decisions, debating in Parliament or State legislature, or raising questions of public importance as well as performing the intricate task legislation requires thorough knowledge and understanding of issues which cannot be dealt and resolved only by an interaction with the public. While acting upon these, a representative cannot be expected to perform his task surrounded by a coterie of well-educated and learned bureaucrats upon whose advice solely, he can rely upon and act. Good governance functions cannot be carried out in an effective manner unless the representative can independently understand and act upon policy making decisions and legislation with respect to the ministry which he is heading. A representative elected solely based on projecting himself as a strong leader and a true embodiment of a representative democracy without possessing any educational qualifications is more likely to prove hollow when it comes to act upon the above attributes.

Public perception about a leader based upon the narratives which he has framed for himself as well as the image which he is trying to portray through various media platforms can be vastly different from his actual personality and this difference can make a big difference when it comes to carrying out governance function effectively as well as performing public welfare functions. It may quite be possible that the representative who is selected as a parliamentarian or is heading a ministry solely based on the perception which the public holds of him, may not even be fit to become a law maker. It will portend a dangerous trend for democracy then.

Education empowers the mind, shapes the confidence as well as makes an individual an enlightened human. It is only through education that an individual as well as a nation can progress. Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹

Ironically, both the Constitution and the Representation of the People Act, 1951, are silent and create a vacuum when it comes to providing a minimum educational qualification for being a Member of Parliament or State Legislature. While Articles 84 and 173 of the Constitution provide the minimum age for being selected to the Parliament² and the State Legislature³ coupled with the requirement of a compulsory Indian citizenship, sections 3-6 of the Representative of the People Act (RPA), 1951 while providing other qualifications and requirements for being a member of Parliament or State Legislature⁴, is also silent on the educational qualification of the elected representatives.

Elected representatives, just like any other profession are also doing a job of serving the people whom they represent and while there are minimum educational

¹ Brown vs Board of Education, 347 U.S. 483 (1954)

² Council of States and House of People

³ Legislative Council and Legislative Assembly

⁴ Both the houses in either case

qualifications for all other professions, one cannot expect the law makers to perform their task without having/possessing any educational qualification and doing it solely based on the vote which the citizens bestowed on them. Some schools of thought believe that democracy is not about the “best government”, it is merely about electing a government chosen by the people. The belief that those who have no formal education are incapable of governing and representing their needs or that those who have higher education somehow become ‘model political representatives’ incapable of corrupt practices by virtue of their financial conditions’ smacks of classist prejudices.⁵

The opinion seems to be tilting on a wrong premise. In a democracy, the electorate elects the representatives not only for the purpose of exercising their statutory right, but on the assumption that the elected representatives would work in the best interest of the people. It would serve no real purpose of holding elections if dummy representatives are placed in Parliament and State Legislatures. It is only the best government which works in the best interests of the people. An unworkable elected government will serve no real purpose in democracy.

A large chunk of Indian electorate is from the rural areas. India has often been perceived as primarily a rural democracy, with 69 percent of its population inhabiting in rural areas.⁶ Further, a majority of Indian voters are illiterate or semi-literate who may not be able to understand the fine intricacies of work which the elected representative has to perform while in his office. A mere relativity to the candidate on account of he/she being able to speak the language of the voter or appeal to the emotion of the electorate may not be the sole ground to brush aside the educational factor of the candidate in totality. The fulfilling of promises made by the representative to the voter at the time of elections made on popular sentiments or on religion, caste, or other things unviable may have to face a litmus test even if the legislator wants to implement it. It might even have to withstand court scrutiny if the policy is in contravention of any law and thus may hit a roadblock.

A fine balance needs to be maintained between the rhetorical promises at the time of elections and the practicality of the implementation. The flow of emotional brouhaha during the elections season in which the voter gets swayed only to be

⁵ Saikumar, Rajgopal. ‘Uprooted from Democracy: Rajbala vs State of Haryana.’ (The Hindu Centre for Politics and Public Policy, 21 April 2018) <www.thehinducentre.com/the-arena/current-issues/article8049649.ece> accessed 25 June, 2021.

⁶ EPW Engage, ‘How does India Vote? A short reading list’ www.epw.in/engage/article/how-does-india-vote-a-short-reading-list ISSN (online): 2349-8846. Last accessed 10 March, 2023.

disappointed later, is not good for the working of the system. To fulfil some of the promises, the legislator may have to take a digression from the rules, bypass a law or otherwise work against the ethics and principles of governance, the life of which may not be very long lasting. It is here that an educated voter and an educated parliamentarian/legislator can bring a big difference. A voter educated may very well be able to understand the logic and practicality of the promise made to him by the candidate at the time of the election, an educated legislator on the other hand, understanding the implication of his lofty promises and ideal dreams, may desist from making a world too utopian for the voter.

A line of demarcation needs to be drawn between an educated candidate and a rich candidate. A candidate may be rich but not educated and vice versa. Hence the assumption that an educated candidate is less likely to indulge in corruption owing to his financial condition is based on the wrong assumption. Moreover, corruption as an issue in election cannot be equated to education alone. Education will help in easing the day to day working of the legislator who has to frame policies and work on the tedious task of law making. Hence it is desirable that the one who is fighting an election must at least be a graduate. This educational qualification should apply uniformly from municipal to parliamentary elections.

1.1.2 Political Finance

The other most controversial and contentious issue in conducting elections in India is the amount of money spent in elections. Various committees and commissions have expressed serious consternation on the amount of money in elections but there seems to be no solution in sight for the malaise. The amount spent by the candidates and the parties is breached unashamedly in blatant violation of the legal limit.

The irony is, to curb the malpractice, the necessary changes in electoral laws will have to be made by the same legislators who violate the law, and hence there will not be any willingness on their part to work against their own interests. Money for elections is needed by the candidates for a wide variety of purposes. These range from the publicity blitzkrieg to capture voters mind and imagination, manipulative advertising, adversely affecting the behavioural psychology of voters, distributing liquor, freebies, and cash to voters to sway them in their favour, and deleterious propaganda to brainwash the voters in favour of or against any candidate, and thus disturbing the sanctity of elections.

Some of them have been explicitly stated as corrupt practices under Section 123 of the RPA while some others also qualify but fail to find a mentioned as they have

been masqueraded as genuine. On a realistic assessment of electoral spending, it may be safe to conclude that the amount spent is less for campaigning and highlighting the works done by the incumbent government in its tenure period and more on manipulating, bribing, and indoctrinating the voters to vote for a particular party or candidate. Short term gains to voters like a certain amount of money for a few months, gifts, dinner, or liquor is enough to shift their allegiance to the party offering them overlooking the sufferings they have been facing in the incumbent's tenure during the past five years. In a country like India with large social disparities and inequalities, and a large proportion of voters being poor, this allurements is enough to forget the promises the candidates to have made in the present or previous manifestos. Voters lack farsightedness and tend to ignore the long-term benefits by making an informed choice in lieu of these short-term gains. All this generates a vicious cycle where, after coming to power, the winning party wants to recover the amount spent on elections. Thus, it does by increasing the number of taxes and cess or by raising the price of different commodities.

According to filings with the Election Commission of India, the BJP spent Rs. 714 crore on the 2014 general election while the congress spent Rs. 516 crore. This figure does not include the amount spent by individual candidates within their constituencies and it obviously does not include any expenditure using black money.⁷ In 2019 Lok Sabha elections, an estimated Rs. 60,000 crore were spent according to a report by the Centre for Media studies. The report estimated that Rs.700 per vote was spent and, on an average, nearly Rs.100 crore per Lok Sabha constituency was spent in these elections.⁸ Till the last phase of the Lok Sabha elections, 2019 the total seizures made by the Election Commission crossed the Rs. 3300 crore mark with a seizure of Rs. 935 crores from Tamil Nadu alone.⁹ The above figures are separate from the total spending on social media campaigns of parties.

Between February and May political parties spent a total of Rs. 53 crores on ads on like Google and Facebook. The BJP spent Rs. 4.23 crore on 2,500 ads on Facebook, on Google platforms it spent Rs. 17 crore. The Indian National Congress spent Rs. 1.46 crore on Facebook for 3,686 ads and Rs. 2.71 crores on Google's

⁷ Singh, Shivam Shankar. *How to Win an Indian Election*. 1st edition, Penguin Random House India 2019.

⁸ An estimated 60,000 crore spent in 2019 Lok Sabha elections: CMS Report [www.newsclick.in/poll-expenditure-Lok Sabha 2019](http://www.newsclick.in/poll-expenditure-Lok-Sabha-2019) accessed 25 June 2021.

⁹ Venkatramakrishnan, Rohan, The Electoral Fix: Cash seized and electoral bonds alone account for \$ 1 billion in Indian Polls (scroll.in, 13 May, 2019)

platforms with 425 ads.¹⁰ The above figures are much higher than the permissible limits under Rule 90 of the Conduct of Election Rules, 1961. Under the said rule, the maximum permissible limit is Rs. 70, 00,000 for Parliamentary elections and Rs. 28, 00,000 for State Assembly elections. Ironically, there is no ceiling on the amount of money a party can spend in elections on branding and advertising.¹¹ An unholy nexus of crony capitalism carves out a skewed policy and decision-making scenario having the same adverse effect which social and financial disparities have in the socio-economic stratification in India.

Opacity in political donations compounds the problem of electoral spending in India. An unwarranted and deemed quid pro quo exists between large corporate donors and those at the helm of power with the former shaping the landscape of policy decisions in India and the latter giving a leeway to the former on account of their obligations and compulsions. The problem cannot be dealt by laws alone. Effective laws are the first requirement to clean the system and the malaise, and their strict enforcement is also necessary to avoid making the law redundant. A systemic change is required in which one organization or entity cannot be expected to bring about the reforms needed for an overhaul.

Sadly, there is an unwillingness on the part of the law makers themselves to bring about any effective and meaningful reforms else their methodology of winning elections would cease to have any force. Voter awareness and voter education with respect to the present nexus of conducting elections is necessary to bring about any meaningful change. The role of the Election Commission in conducting the elections should display stealth, grit and robustness and the independence which is expected of it. In the past few years, the nation has witnessed the vulnerabilities of constitutional and statutory bodies and the extent to which they can become subservient to people at the helm.

The role of the Election Commission in conducting the 2019 Lok Sabha elections was shrouded in controversies on account of a series of decisions which the Commission took, raising eyebrows. The dissent within the Commission was exposed to the citizens. Control over one organization must be distinguished from exercising command over it. While the former is necessary by the authorities superior to the organization/body to ensure checking of organizational excesses, the

¹⁰ Lok Sabha Election 2019: BJP, Congress, Other Political parties spend over Rs 53 crore on Facebook, Google www.business today.in/lok-sabha-elections-2019/news/lok-sabha-election-2019-bjp-congress-other-political-parties-spend-over-rs-53-crore-on-facebook-google/story/348017.html accessed 25 June 2021.

¹¹ *Supra*, note 7, at 166.

latter is not desirable as it interferes in the day-to-day functioning of the organization and takes away the autonomy and independence which it should enjoy for its smooth functioning and effective governance special if the above attributes have been conferred by the Constitution. Though the Election Commission is under the control of Ministry of Law and Justice, it is the executive that holds on to what it can. In this case the executive is the President of India, and in many instances has direct control over the Chief Election Commissioner (CEC) and Election Commissioners. For example, foreign travel by the CEC and Commissioners requires to be 'cleared' by the government while applications for leave, (even for a half day casual leave) by commissioners necessitates a formal application addressed directly to the President of India, which ends up on the law minister's desk.¹²

Merely because the President acts on the aid and advice of the council of ministers under Article 74 of the Constitution of India, does not in any way mean that he cannot exercise independent judgment in exercise of his power. Erosion of public trust and confidence is another dent which constitutional and statutory bodies face if autonomy and independence is compromised with. Hence it is necessary to let them work with the requisite amount of autonomy and independence in the most impartial manner.

In November and December 2022, the Supreme Court of India heard arguments on the way the Election Commission of India should be constituted, and the judgment is expected in January 2023. To ensure requisite degree of institutional autonomy, it is sine-qua-non that their manner of appointment should be altered. The best method is to appoint Chief and other Election Commissioners is to select them by conducting an interview by the Union Public Service Commission which is itself a constitutional body of repute. The panel of names should also be prepared by the UPSC. Law makers, as mentioned earlier have themselves to bring about the changes in law as well as other meaningful reforms. But due to vested interests, instead of making political campaign, financing, and donations more transparent, have made it opaque by introducing electoral bonds.

1.1.3 Electoral bonds

Electoral bonds were introduced to collect political donations through the Finance Bill, 2017. Through the said bill amendments were made in the Reserve Bank of

¹² Chawla, Navin. *Every Vote Counts: The story of Indian elections*, 1st edition, Harper Collins, 2019.

India Act, 1924 adding a new clause (3) to section 31 introducing the provision of electoral bonds. Electoral bonds are instruments in promissory notes issued by banks. They are interest free instruments that can be purchased from specified branches of the State Bank of India by any citizen of India or body incorporated in India within fixed periods.¹³

Since the introduction of the bonds for taking political donations, they have been shrouded in controversy owing to its opacity. The identity of the donor is not known and the political party to whom he is giving donations is also concealed i.e., it is not available in public domain. Only the political party to whom the donation is being made knows the identity of the donor.

The bonds can be purchased in denominations from Rs. 1000 to Rs. 1, 00, 00,000 and is valid for fifteen days. Further, the Finance Act, 2017 also did away with the condition of declaring all donations above Rs. 20, 0000 provided it is in the form of electoral bonds. Earlier it was a mandatory requirement under section 29C of the RPA.¹⁴ Another amendment in the Foreign Contribution Regulation Act (FCRA) paves the way for foreign companies to donate to Indian political parties. In a nutshell, a foreign company can anonymously donate unlimited sums to an Indian Political Party without the EC or the IT department ever getting to know. It also eliminated the 7.5% cap on company donations (which means even loss-making companies can make unlimited donations).¹⁵

In Financial year 2017-18, the total value of electoral bonds purchased was Rs. 215 crore. Of this, 98% or Rs. 210 crore went to BJP.¹⁶ SBI sold electoral bonds worth Rs. 1, 716 crores in January and March 2019 against Rs. 1.056 crore of bonds sold in six months in 2018.¹⁷ An RTI query revealed that in the run-up to the Delhi Assembly elections in February 2020, 139 electoral bonds worth Rs. 89.67 crores were sold by various branches of SBI.¹⁸ A recent report by the Association for

¹³ 'What are electoral bonds,' *The Hindu* (Delhi, 11 April 2019).

¹⁴ Chopra, Ritika. 'Explained: Why is the electoral bond scheme being opposed by transparency activists' <<https://www.indianexpress.com/article/electoral-bond-scheme-transparency-elections-7243078.html>> Last accessed March 10, 2023.

¹⁵ Sampath, G. 'The dangers of electoral bonds' *The Hindu* (Delhi, 21 November 2017).

¹⁶ In 2019, Is BJP riding a Modi wave or a money wave <www.thewire.in/politics/bjp-modi-political-funding-money> accessed June 25, 2021.

¹⁷ Electoral bonds worth Rs 1,716 crore sold in 2019 <www.economictimes.indiatimes.com/markets/bonds/electoral-bonds-worth-rs-1716-crores-sold-in-2019/articleshow/68691754.cms> accessed June 25, 2021.

¹⁸ Rs 81.67 crore worth electoral bonds sold before Delhi polls, says response to RTI query <www.thehindu.com/news/national/8167-cr-worth-electoral-bonds-sold-before-delhi-polls-rti-query-shows/article30804578.ece>

Democratic Reforms (ADR) further reveals that of the total donations made through electoral trusts and submitted to the election Commission of India in their annual report of 2019-20, 76 percent of it went to the Bhartiya Janta party.¹⁹

Given the magnitude of donations through electoral bonds, it can safely be inferred that the malaise of political donations cannot be tackled effectively without active participation from the citizens. Unless stiff resistance is displayed from the public showing a keenness towards electoral transparency, the malpractices of political donations cannot be done away with. On the part of the government, the best way to end it is to ensure only online political donations doing away with the practice of cash, electoral bonds or any other opaque or anonymous source of donation. But as mentioned earlier it will end the vicious cycle of manipulating elections to remain in power. Public awareness and education especially among the rural and illiterate voters are a must to change the current practice. Ironically, the Supreme Court, while hearing a petition on electoral bonds refused to stay on its use for the West Bengal Assembly Elections in 2021 despite red flags being raised by the Election Commission earlier.

1.1.4 *Criminals in Politics*

Nearly half of the newly elected Lok Sabha members have criminal charges against them, a 26% increase as compared to 2014. Of the 533 winning candidates, as many as 233 MPs or 43% have criminal charges. The BJP has 116 MPs or 39% of its winning candidates with criminal cases, followed by 29 MPs (57%) from the Congress, 13 (81%) from the JDU, 10 (43%) from the DMK, and 9 (41%) from the TMC.²⁰ Despite a lot of hue and cry about candidates from criminal background, many with serious criminal cases like murder, rape, dacoity etc., being a part of discussion on barring them from entering the Parliament, the practice seems to continue unabated.

Since under the law only a convicted, and not a charge sheeted or a person against whom an FIR has been filed is barred from contesting elections, political parties continue to field candidates with criminal background despite an adverse public opinion about it. The current law, which bars politicians from contesting elections from six years after being convicted, rarely comes into effect because such

¹⁹ <https://www.adrindia.org/content/bjp-got-76-electoral-bonds-sold-fy-2019-20-congress-received-9-adr-o>. Last accessed March 10, 2023.

²⁰ '43% newly elected Lok Sabha MPs have criminal record: ADR' *The Hindu* (Delhi, 26 May 2019).

convictions are rarity and often takes decades.²¹ The psychology of voters is to a large extent affected by the persona of the candidate which *inter-alia* includes the manner and demeanour in which he presents himself before the electorate and convinces them to vote for him. Powerful speeches coupled with deep voices are enough to create a deep and convincing impact on voters howsoever hollow they may turn out in future.

Power symbolises a sense of security, and psychologically speaking, a voter is more likely to turn to a candidate who can instil in him the confidence which he aspires in them to see owing to his clout and influence as compared to a highly educated candidate who asks for vote or tries to convince the electorate solely on the basis some principles which might appear too idealistic to them. The electorate wants their work to be done and if power, influence, or clout is to be taken as a sole determining factor, the voter might even tend to unconsciously overlook the criminal background of the candidate.

The corrupt or criminal MLAs or MPs would lose influence if government services were delivered efficiently. If the nation's education, healthcare, water, and electricity reached people, law and order prevailed, and they had the opportunities for employment, they would be a lot less likely to elect local strongmen. A faster judicial set-up would also reduce the number of criminals in politics.²² Assuming the conduct of elections to be an economic transaction taking place in a vast marketplace, and assessing the electoral process in economic terms, analogically speaking, the relation between a voter and a candidate is quite similar to that of a buyer and seller in the business world of economics where production of goods and services takes place and the seller is offering his product or service to the buyer in return for a price.

In the electoral arena, the relation between a candidate and voter is like that of a buyer and seller in the market where the value of the vote of the latter is equivalent to the money which the buyer is paying for purchasing the goods, and the goods or product in the case of the former is the services or the work which he is going to give in return for the vote, and the reason why many candidates with criminal background get selected despite the voters being aware about their antecedents is that in a nation like ours where most government malfunction, underperform or are unable to live up to the expectations of the electorate, it is easier for a criminal to

²¹ *Supra*, note 10 at 169.

²² *Ibid*, at 170.

get the work done by wielding his authority, clout or even their intimidatory tactics much easily as compared to the Government.

There is a very clear nexus between crime and politics in India that is being fuelled by two sets of factors. First, as elections have gone costlier, parties are desperate to identify candidates with deep pockets. This has led them to embrace wealthy individuals with often dubious reputations. Second, voters have their own reasons to support candidates with questionable pasts. Where government is unable to fulfil its basic responsibilities and social divisions are rife, voters seek refuge in strongmen who can deliver what the state cannot.²³ Beyond money, in contexts where the rule of law is weak and social divisions are highly salient, politicians can often use their criminality as a badge of honour- a signal of their credibility to protect the interests of their community and its allies, casting themselves as modern day Robin Hoods operating in a polarized society.²⁴

Systemic changes are again required to cleanse politics with criminal elements. The onus again for this humungous change is with the political parties themselves. Major reforms take time and are slow but deliver results. The parties themselves should change their performance parameters on deliverables, win the confidence of voters by performance, by actions through which they can relate and by providing justice where the electorate have been victimised or been the subject of injustice either individually or en masse. When governance failures, not a lack of information, are to blame for the criminal-politician market place humming, policy makers must turn to a very specific set of policy remedies. These include quickening the wheels of justice in India, building the state's capacity to efficiently deliver basic goods and services, and freeing the economy from the shackles of state control.²⁵

2. Changing and Improving the Electoral Process

2.1 *Safeguards for Conduct of Elections*

Conduct of elections in a nation as vast as India is not an easy task and all poll officials entrusted with the same have to perform an arduous task and demanding hours, moving from one place to another sometimes not even getting the basic

²³ *Ibid*, at 168.

²⁴ Vaishnav, Milan. *When Crime Pays: Money and Muscle in Indian Politics*, 2nd edn, Harper Collins, 2018.

²⁵ *Ibid*, at 21.

facilities of lodging, food or transportation. It is necessary to provide good facilities to the poll officials.

The Conduct of Election Rules 1961 should be amended to provide for Rule 35-B which should read as follows: Additional facilities for public servants on election duty- *All public servants and poll officials on election duty shall be made to stay in a hotel nearest to their polling booth with facilities for dinner on the previous night of the poll date, and breakfast, lunch, and tea on the date of the poll.*

All election officials on duty for each polling centre shall be asked to assemble at a designated spot on the previous day of the poll at a particular time from where they shall be picked up by a vehicle provided by the Election Commission and transported to the hotel and from the hotel to the polling centre the next day.

The expenses of these facilities shall be partly borne by the Election Commission and partly by the electors from the constituency. An amount of Rs 100 should be collected in cash from each voter against a receipt who comes to vote on the day of election.

The Commission should ensure that the hotel is not owned by any politician or his relative.

3. Elections and Technology

Rapid advancements in technology have made it possible to keep the wheel of progress and development move at an astounding pace. Technology, however, can be harnessed in both positive and negative, constructive and destructive ways. With respect to the conduct of elections also, technology can have both a positive/constructive and negative/destructive impact.

3.1 Negative Employment of Technology: Fake News

The purpose of dissemination of fake news is manipulative and the primary aim is to target the right audience by harvesting data from their social media accounts, understand their psychology and then sent messages and information which may cement their confirmation biases and may have an emotional impact on them. This is done to achieve the final desired result- convincing a voter to vote for a particular party or candidate.

All political parties have professionalized IT cells where their volunteers and political strategists frame and forward such messages with emotional appeals.

Unfortunately, despite massive awareness campaigns with respect to fake news and numerous facts checking website popping up to check the menace, the problem only seems to compound. This is generally because people tend to believe the information, they receive which lends support to their way of thinking or the opinion they hold about any person without even realizing consciously or unconsciously that this is a manipulative strategy aimed to alter their minds. This is sometimes also called micro-targeting.

Technology has made micro targeting a real possibility where political parties can show different people entirely different messages based on their preferences. Such messaging can easily be done along religious or caste lines, offering encouragement to voters to support a specific party because that party would fight something that the voters have been told is a great threat through repeated messaging.²⁶

By making use of people's pre-existing biases, individuals could be turned into supporters by a party through messaging that would make them believe that the party had the same goals as they did.²⁷

Giant tech companies and social media platforms are not limited in its purpose of connecting geographically displaced and separated people on a single platform as is commonly understood. With the sheer size of their organization and the humungous amount of their net worth running into billions or trillions of dollars annually, these tech giants now influence Government decisions, determine policy outcomes and play an instrumental role in shaping the outcome of electoral battles. Platforms like Facebook and twitter employ sophisticated technology like algorithms based Artificial Intelligence (AI), bots etc. to massively harvest and use data. These platforms have become a psychological and manipulative gameplay which are used to trap the user for whatever purpose they want. This is done by them by using the data which a user bequeaths to them through posts, comments, and tweets on this platform. With scant regard for the data of the individual and privacy the user becomes a lucrative commercial commodity for them. At the time of elections, the user data is sold to data mining companies which micro target them through targeted electoral campaigns on behalf of the politician or political party for which they are working. Tech researcher around the world have held that electoral outcomes in many countries have been determined through this

²⁶ *Supra*, note 17 at 75.

²⁷ *Ibid*, at 81.

disingenuous and manipulative process. Procedures like these may not be said to be fair.

Facebook has partnerships with quietly powerful ‘data brokers’ like Acxiom, which has information on over 500 million active consumers worldwide, with thousands of data points per person: things like age, race, sex, weight, height, marital status, education level, politics, buying habits, health worries and holidays often scooped up from other shops and records. Armed with all this information, cross-referenced, and analysed, companies can target you with even more refined advertising.²⁸

The tech giants have turned the psychological weaknesses into a structural feature of news consumption and exploited them for money. Their financial incentives sometimes run directly contrary to the democratic need of people to be informed and draw from a wide range of accurate sources and ideas.²⁹

Given the humungous proportions of fake news and information that is shared through social media platforms and the pace at which it is shared and forwarded to have the desired impact, the only plausible solution in sight to curb the menace is to bring social media platforms within the purview of the Model Code of Conduct which comes into place after the announcement of poll dates. By amending the relevant laws, it should be ensured that no social media platform should share the data of the user directly with a political party or to a data mining company working at the behest of the politician or political party from the date of the announcement of the election date till the declaration of results.

3.2 *Progressive Technology in Elections: Shifting from Electronic Voting Machine (EVMs)*

Doubts regarding manipulating or rigging of EVM’s may be unfounded or without substance or the margin of error may be negligible, but with rapid advancements in technology it is always wise to shift to newer and more safe and reliable modes. In future EVMs may be replaced by the following:

- i. Ballot scanning device - Election by this method is a mix of ballot paper and electronic voting. The voter is given an OMR sheet and he has to completely darken the circle in front of the candidate of his choice. The voter then takes the sheet to a ballot scanning device with a screen. Instructions on scanning the ballot

²⁸ Bartlett, Jamie. *The People vs Tech: How the Internet is Killing Democracy*. 1st edn, Penguin Random House UK, 2018.

²⁹ *Ibid*, at 60.

is displayed on the screen. After putting the sheet in the scanner, the screen displays if any error has been committed by the voter in marking his candidate. If the OMR sheet has been marked correctly, the screens prompt the voter to cast his ballot with the same option appearing on the touch screen. After selecting the option, the vote by the voter has been cast. Two images of the Ballot Scanning Device are shown below:

ii. Block chain voting - Though this type of voting is futuristic and not in prevalence in the present times, this is the most secure method of future fair elections. Voters would have to create an id and login before they are issued a digital id making voting anonymous. The voter database and process would be distributed among everyone dispensing with the need for control over election process by one authority. Each voter could digitally open the ballot box database, locate their vote, and check that it is unaltered and accounted for. By tallying all these even illegitimate votes could be prevented.

Considering the demographic profile of voter database in India, however, where most of the voters are from rural background and illiterate and alien to technology, a massive education and training programme would have to be initiated before switching to this mode. Poll officials would also have to be trained thoroughly to enable them to adopt this technology.

4. Voter Behaviour and Pattern

4.1 Voting Perception

Elections in India are multi layered and are held to select our representatives across different levels of hierarchy from municipal bodies to parliament. The purpose of conducting these is to elect those who can work for the electorate from ward level to state assembly and parliamentary constituency. It seems however, that the electorate holds an erroneous perception with respect to the purpose of conducting such elections. It also affects their thinking and voting pattern for each level of election. It is pertinent to mention that for each election, the voter should vote for the candidate who will work or has worked for their constituency if he is selected for two consecutive terms and not for the leader of the party to whom the candidate represents and whom the party projects as a larger-than-life figure who has a magic wand to rid the nation of all the ills plaguing the nation.

This perception paves the way for wrong voting choice by the electorate as they go to vote keeping in mind the image of a *super Rambo* in mind without even knowing

anything about the candidate or even having heard his name and thus making the most deserving candidate lose.

This pattern is largely visible especially in the Lok Sabha elections where the persona of a single person is portrayed in a manner through various media platforms repeatedly to the extent of depriving the voter of his rational thinking power. People vote keeping in mind the national character of elections and thus get swayed by the image of the leader being projected.

There is an urgent need to for a massive voter education programme to make them understand the purpose of elections and change the erroneous perception they hold.

4.2 *None of the Above (NOTA)*

NOTA is the last button on the Electronic Voting Machine (EVM) and gives the voter the option to use it in case he thinks no candidate to be worthy enough of being elected.

NOTA was first used in India in 2009. Chhattisgarh was the first State in India to give the voters the option of NOTA in local government elections. NOTA button made its debut in Assembly elections in 2013 in four States- Chhattisgarh, Mizoram, Rajasthan and Madhya Pradesh and the National Capital Territory of Delhi.³⁰

The provision regarding NOTA has been provided in Rule 49 'O' of the Conduct of Elections Rules, 1961. However, despite many voters exercising this option since its inception, it does not seem to fulfil its purpose. This is because if the total number of votes polled to NOTA are higher than the number of votes polled to any candidate, the person securing the second highest votes is declared winner on account of Rule 64³¹ of the Conduct of Election Rules, 1961 read with section 65³² of the RPA thus defeating the very purpose of conducting elections. There is a need to amend Rule 64 and clause aa should be added which should read as follows: If the number of votes polled to NOTA under rule 49 'O' of the Conduct of Elections Rules, 1961 is more than the votes polled to any candidate, the returning officer shall declare the result to be void and write to the Election Commission for conducting fresh elections within a period of two months.

³⁰ None of the Above <en.wikipedia.org/wiki/None_of_the_above> accessed 25 June, 2021.

³¹ Declaration of Result of Election and return of election.

³² Equality of votes.

5. Simultaneous Elections: A Suggestion Too Implausible

During the last six to seven years, the principles of federalism as provided and enshrined in our constitution has taken a backseat. Not only it is being reflected in the conduct of elections, but in other areas of governance viz, role and conduct of Governors, subverting provisions of the constitution and undermining constitutional authorities and institutions. The Union Government has become all too powerful, and through use of its brute prowess not only divesting the states of its power to rule and govern, but also encroaching upon domain and areas which are the sole repository of the State Government. Since the last few years, the issue of conducting simultaneous elections has gained momentum. It entails conducting elections for the Lok Sabha and the State Assembly Elections together as against the current practice of conducting them as and when the term of the Parliament or the State Legislature ends. i.e., five years.

This part will discuss at length the issue of simultaneous elections, the arguments advanced in favour of it and why it is not a practical suggestion.

5.1 *History of Simultaneous Elections*

The issue of simultaneous elections is not new. The first Parliamentary elections and the elections to all the State Legislative Assemblies after independence were held together in 1951-52. It continued till the late 1960's after which the practice came to a halt owing largely due to the premature dissolution of some state legislative assemblies in 1968 and 1969. Thereafter, the Lok Sabha was dissolved in 1970 and fresh elections were held in 1971. The 6th, 7th, 9th, 11th, 12th and 13th Lok Sabha were dissolved prematurely as well.

The practice thus discontinued owing to the Parliament or the State Legislative Assembly not completing their full term of five years. The demand has again been raised in the past few years. The Law Commission of India's 170th Report on Electoral Laws followed by the 79th Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law, and Justice. More recently, the NITI Aayog released a discussion paper on simultaneous elections.

Various arguments are advanced in favour of conducting simultaneous elections. Some of them are as follows:

- i. Conducting elections separately for the parliamentary and state election will entail huge expenditure which otherwise can be saved if the elections are conducted simultaneously. The Niti Aayog report on simultaneous

elections pegged the cost of conducting the 2009 Lok Sabha elections as Rs. 1115 crore which rose exponentially to 3870 crores in 2014.

- ii. The conduct of simultaneous elections emanating from the Model Code of Conduct (MCC) seriously hampers governance as with various restrictions in place after the announcement of election dates, all development programmes are put on hold in the poll bound states. Further, frequent elections put on hold the Model Code of Conduct for prolonged periods of time.
- iii. Conducting frequenting elections acts as an incentive to the political parties to boost their efforts of generating funds and contributions which in turn leads to corruption and circulation of black money. Conducting simultaneous elections will curb this practice.
- iv. Conducting simultaneous elections divert the political parties from making better policies and programmes as with the urgency of gaining electorally frequently, all energies are channelized in chalking out strategies for winning, with the resultant effect of populist measures being given primacy for long term electoral gains. Simultaneous elections will result in better policy outcomes and therefore better governance.

All these arguments are based on factually, legally, and constitutionally erroneous inferences and presumptions.

Firstly, Articles 83 (2) and 172 (1) of the Constitution mandates a fixed term of five years for the Lok Sabha and State Legislative Assemblies respectively. With the conduct of simultaneous elections, this constitutional provision will stand diluted and with it the mandate of the electorate will be disrespected. Further, given the volatile nature of Indian politics, and looking at the chequered history of Indian elections, the premature dissolution of Lok Sabha and the State Legislative Assemblies in future cannot be ruled out. The compulsions of coalition politics further strengthen the above argument. This possibility, looking at the volatile nature of Indian politics, does not seem too implausible. If, for example, after the result of simultaneous elections, the assembly in two states is dissolved owing to withdrawing of support by the coalition partners, the entire cycle of elections will be desynchronised and disturbed.

Further, the election issues for the assemblies and parliamentary elections are different and cannot be equated. Leaders at the local and state level better

understand the issues of the electorate which are fought on a different pedestal compared to Lok Sabha elections. The voting pattern and behaviour of the electorate for the state assembly and parliamentary elections are also different and many times the voter tends to vote for different parties for the two elections. With simultaneous elections in place, there are highly likely chances that the voter may end up voting for the same party both at the centre and the states getting swayed by the electoral festival taking place and by the publicity glitz from a party who is far ahead resources wise from other competitors in the fray.

Conducting an election either parliamentary or state assembly elections is a huge responsibility for the election commission. Given the size of most of the states, the elections are generally conducted in a phased manner. The election commission is already stretched conducting elections in various phases which involves meticulous planning, humungous amounts on manpower and resources and other logistical preparations.

With the conduct of simultaneous elections, the burden on these resources and logistical arrangements will increase manifold, which by practical considerations considering the geographical diversity of the nation might not be a feasible idea.

Secondly, the idea and concept of the Model Code of Conduct (MCC) with respect to conduct of elections has been misplaced, or rather intentionally misplaced. The Model Code of Conduct has been interpreted as an embargo on carrying on developmental programmes and thus hampering governance. Before expatiating further on this, a look (in a nutshell) at what the Model Code of Conduct says will be practical. These are the main points of the Model Code of Conduct³³:

- i. Before using loudspeakers during their poll campaigning, candidates and political parties must take permission or license from the local authorities. The candidates should inform the local police for conducting election rallies to enable the police authorities to make required security arrangements.

³³ Chhokar, Jagdeep S. Simultaneous Elections: Striking at The Root of Parliamentary Democracy, Issue Brief No. 8, The Hindu Centre for Politics and Public Policy and Association for Democratic Reforms, 13.

- ii. The contesting candidates and their campaigners must respect the home life of their rivals and should not disturb them by holding road shows or demonstrations in front of their houses.
- iii. The election campaign rallies, and road shows must not hinder road traffic.
- iv. The code requires the candidates to refrain from distributing liquor to voters.

Further, the MCC says that the following types of existing works can be continued by the government agencies without reference to the Election Commission³⁴:

- i. Work projects that have already started on the ground after obtaining all necessary sanctions;
- ii. Beneficiary-projects where specific beneficiaries have been identified, by name, before coming of Model Code into force;
- iii. Registered beneficiaries of MNREGA may be covered under existing projects. New projects under MNREGA that may be mandated under the provisions of the Act may be taken up only if it is for the already registered beneficiaries and the project is already listed in the approved and sanctioned shelf of projects for which funds are also already earmarked;
- iv. There shall be no bar to the release of funds for the completed portion of any work subject to observance of laid down procedures and concurrence of Finance Department;
- v. Payments directly to the hospitals from Chief Minister's relief fund/Prime Minister's relief fund, in lieu of direct cash payments to individual patients (beneficiaries), will be permissible without reference to the Election Commission.

Thus, on a realistic assessment of the Model Code of Conduct, it can be safely inferred that the claims made against it for pushing simultaneous elections does not stand sound reasoning. The Model Code of conduct only prohibits introduction of new programmes and particularly those that have a direct bearing on the upcoming elections. It does not in any way hamper continuance of existing programmes. Normal governance thus is not put on hold. Former Chief Election Commissioner S.Y. Quraishi in his book *An Undocumented Wonder: The Making of the Great Indian Election* has said "ECI only says, no new announcement will be done,

³⁴ Manual on Model Code of Conduct, Election Commission of India, Document 21- Edition 1, 34.

which would seduce the voter. And if during an ongoing election, the government feels the urgency to carry out an act in the public interest, which it is sure will not “seduce the voter”, it can always ask for the opinion of the ECI.

With an erroneous interpretation of the MCC therefore, the argument that Governments are prevented from making better policies and programmes does not hold ground.

The reasoning that with the conduct of simultaneous elections the flow of black money and corruption will be curbed stands negated by the Governments stand. The Finance Bill, 2017 made amendments in the Reserve Bank of India Act, 1934 and Income Tax Act, 1961 exempting political parties from disclosing the identity of donors through the introduction of electoral bonds as discussed earlier. The Finance Bill 2018 amended retrospectively the Foreign Contribution Regulation Act, 2010 to exempt from scrutiny foreign funds received by political parties with retrospective effect from 1976. This was to negate an order of the Delhi High Court which indicted both the BJP and the Congress for receiving foreign funds from Vedanta and its subsidiaries in violation of the then existing FCRA Act.³⁵ The reduction in capping of anonymous cash donations to political parties from Rs. 20,000 to Rs. 2,000 did not make any improvement.³⁶ The introduction of opaque electoral bonds enabled the donor to make small donations without disclosing the identity.

Thus, it can be safely inferred that the introduction of simultaneous elections will not do any good to the electoral politics of India as all the arguments advanced are based on misplaced assumptions and factually incorrect inferences. Moreover, the conduct of simultaneous elections will seriously damage and erode the principles and federalism and basic structure which are a part and parcel of our constitution. It will make the Union all powerful with a strong inclination of centralizing tendencies making the states comparatively weaker and powerless thus undermining their power.

The best that can be done minimize the flow of electoral cycle is to conduct the Parliamentary and State Assembly elections of those states together in which their

³⁵ FCRA changes will help BJP, Congress <https://www.thehindu.com/news/national/fcra-amendment-in-finance-bill/article22636668.ece> Last accessed March 10, 2023.

³⁶ Dey, Abhishek. ‘Will the Rs. 2,000 cap on cash donations for political parties bring more transparency in the system’ <<https://www.scroll.in/article/828281-will-the-rs-2000-cap-on-cash-donations-for-political-parties-bring-more-transparency-in-the-system>> Last accessed March 10, 2023.

electoral period of five years is going to be completed in the same year but at different times. This can be done by advancing the election date of the state or parliamentary election (as the case may be) to coincide with each other. For example, if the Parliamentary elections are scheduled to be held in April and the term of assembly in a state is ending in November, the elections for that state may be advanced to April to be held with the Parliamentary elections together.

Amendment to section 83 (2) and 172 (1) can be done in the following manner *“Provided that where the term of the Lok Sabha and any State Assembly are going to be completed in the same year but during different months, the term of the Parliamentary or State Assembly (whichever is ending later) may be advanced to be held together. The advancement of the term of the Lok Sabha or the State assembly shall be deemed to be a complete term of five years.*

6. Miscellaneous

6.1 Declaration of Assets

Form 26 of the Conduct of Election Rules, 1961 mandates the candidates to declare the movable, immovable assets, investments, savings, total agricultural land etc. both for themselves and their spouse. The form also directs the candidate to declare the number of criminal cases pending against them.

It has generally been seen and observed that between two consecutive elections, the assets and total property of a candidate rises exponentially. The rise may even be five, six or even ten times the previous declaration by the same candidate in the last election without the candidate having the need to explain the rise and declare the sources from where he got the wealth.

A column should be added in Form 26 where the candidate should be directed to explain the rise in income and assets from the previous election and the sources from where he got it. If the assets are found to be disproportionate to his known sources of income, he should be prosecuted under the relevant laws and punished.

6.2 Deregistration of Political Parties

Section 29-A of the RPA provides for Registration of political parties by simply making an application before the election commission and fulfilling certain other conditions as mandated by the section. However, there is no provision in the Act to deregister a political party with the result that the number of political parties in India has multiplied by leaps and bounds in the past decade.

Till March 09, 2019, there were a total of 2,293 registered political parties in India with seven recognised national and fifty-nine recognised state political parties. These registered but unrecognised political parties do not have the privilege of contesting elections on a fixed symbol of their own but have to choose from a list of free symbols from the poll panel.³⁷

Many of these parties become defunct with the passage of time and many may not contest elections even a few years after registration. Though the Election Commission in 2022 ordered to delist 86 Registered Unrecognized Political Parties as it failed to meet the criteria of clause 9 of section 29-A, the section needs to be more specific and makes de-registration process stricter with more clauses under which a political party can face de-registration.

6.3 *Undermining the Sanctity of Electoral Process*

The beauty of democracy lies in the electoral process. The citizens are able to select their representatives by exercising their franchise after a fixed term in different democracies. In India, this electoral period ends every five years both for the parliamentary and state legislative assembly elections. The incumbent's fate is decided by his performance during this period. Electoral history of the past several decades has shown different colours with respect to electoral outcomes. While in some states, the incumbent was able to continue for several terms; even for several decades, in many others the government was not able to continue beyond its stipulated term of five years. The same scenario has been witnessed in Parliamentary elections if the historical background is investigated. Whatever may be the outcome and whatever may be the reasons for those outcomes, the ultimate authority in this respect vests with the citizens for deciding electoral outcomes through the voting process.

However, in the recent past a trend has emerged which is very disturbing for democracy as well as the electoral process. Since the past few years in many states, attempts have been made to topple democratically elected governments within a few months or years of being elected. The last couple of years has witnessed such toppling or attempts of toppling in the state of Karnataka, Madhya Pradesh and more recently in Rajasthan which is still in a precarious position. While the Governments in Karnataka and Madhya Pradesh were toppled blatantly, defying

³⁷ 'India now has, 2,293 political parties, 149 registered between February and March www.economictimes.indiatimes.com/news/elections/lok-sabha/india-now-has-2,293-political-parties-149-unregistered-between-february-march/articleshow/68451605.cms> accessed 25 June, 2021.

the mandate of the electorate, and unashamedly overlooking and debilitating constitutional and legal provisions, similar attempts in Rajasthan are going on since the last few months. Besides tweaking the provisions of Anti-defection law contained in the Tenth Schedule of the Constitution with deftness and ingenuity to make the position favourable for the power seeker, this kind of brazenness also erodes the faith of the people in the electoral process and dampens their spirit. The long term intended consequence of such a conduct might be their lack of enthusiasm towards voting as well as gradual abstention especially among the urban, educated, and young voters. There are two aspects to this quagmire:

- i. Legal and Procedural (tweaking of constitutional provisions)
- ii. Lack of ethical conduct and morality.

In the entire scenario of subverting the democratic process by toppling the elected governments, the role of constitutional authorities like speaker and governor have also been shrouded in controversy many times. Persons holding constitutional positions of power are expected to conduct themselves with high rectitude and manner which is expected of a person occupying the esteemed chair. They are expected to give up any partisan attitude or allegiance which they had before holding the post. But in scenarios like these, reverse trend has been witnessed. Since speakers and governors are political persons, they are not able to de-link their allegiance to the party to whom they belonged before holding the coveted post and are many times guided by the dictates of the Government at the centre. It also disturbs the principles of federalism enshrined in the Constitution. Many times, their decisions have been challenged in the Court on this count alone. Clause (3) of Article 190 of the Constitution which gives discretionary power to the speaker with respect to deciding the voluntariness of the resignation of a member; puts his discretionary power to test on the scales of morality and loyalty with many times the scales tilted in favour of the latter. To solve this ugly scenario the following steps should be adopted:

- i. The lawmaker tendering his/her resignation under clause (3) of Article 190 should submit an affidavit before the election commission with respect to the voluntariness of the resignation and it not being influenced by any external factor of inducement (financial or otherwise), any ministerial position or berth etc. In other words, the burden to prove the voluntariness should rest on the individual member. The election commission, on receipt of the affidavit should direct the Intelligence Bureau (IB) to conduct a 360-degree review of the legislator concerned with respect to his bank

details and other financial assets and if the averments in the affidavit are found to be true. If found otherwise, the legislator should be prosecuted under the relevant provisions of the law.

- ii. The post of Speaker and Governor should not be a political post, but the holder of such post should be an academician and a legal professional with experience of teaching or research or a social activist with vast knowledge and command over the Constitution and administrative matters. The post should be filled by a vacancy advertised by the Union Public Service Commission and an interview and preferably a written exam for filling it. This way the holder of the post may be able to conduct itself in a more unbiased manner.

Reforming a system is not an easy task. It requires meticulous planning, a willingness for change coupled with a keen inclination for its voluntary acceptance. With respect to electoral laws in India, this task becomes more challenging considering the size of the country, the number of voters, the amount of money involved and the malpractices that are in prevalence in planning and winning elections. The changes are not possible unless the policy makers are themselves willing for conducting a clean and fair elections by making relevant changes in the electoral laws.

The voters have their share of responsibility of voting for the right candidate with reasonable foresightedness and not be swayed by extraneous considerations and short term gains a few months before elections. Unless both are synchronized, any meaningful electoral reforms appear a difficult task.

EMERGING LABOUR LAWS IN INDIA AND FEMALE WORK PARTICIPATION

Unnati Nigam *
Deveshi Gupta**

Abstract

Women are presumed to be the finest creations of God and constitute half of the population of society. Unlike ancient times, the Industrial revolution led to the enhancement of the social status of women and at the same time encouraged them to work and further contribute towards the growing economy. But to involve them and support them to participate in myriad sectors and for improving their work participation, various laws should be implemented in order to maintain their safety and to ensure that no discrimination is done against them based on gender, caste religion etc. In recent years, it has been discovered that there is an increase of female work participation in the labour industry. Evidence shows that even after such an increment, one-third of the total women work as labourers. With the enhanced work participation and ameliorated comprehensive status we see that there are developing labour legislations pertaining to women. All these legislations are in consonance with the constitution which leads the way in order to improve the working conditions, safety measures, and other policies regarding the Indian women. The constitution framers always believed that improving the social condition would be a constructive way to help grow the economy and nation. The statutory provisions like Article 14, Article 15, Article 16, etc., are quite evident provisions which exhibit the same. The paper attempts to trace the developed and developing laws in the country in order to protect and safeguard the interests of working women. It additionally focuses on how these legislations provide various benefits, concessions, and variety of suggestions for their protection from any impending risk which might occur in their lives.

Keywords: labour laws, work participation, legislation, India, women's work

1. Introduction

With radical transformations in the Indian economy over the decades, leading to emergence of plethora of labour legislations pertaining to females there has been a

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humongous shift in their workforce participation. To begin with, there has been a fluctuating involvement shown by women in the labour sector. Women, who have been depicted as a divine entity throughout history and beyond have faced the wrath of the world in unimaginable ways. Though there has been an improvement in the labour sector regarding workforce participation of women. However, it varies from nation to nation, with differences in education attainment levels, family support, income earned, economic development and other welfare services. Still, it reflects a fall in the female participation specifically in rural areas irrespective of rise in wages and development factors. Ingrained inequality is a considerable factor contributing to women's condition in labour sector. In developing nations like India, there still exists a significant gap in pay-scale between women and men, women are not given adequate representation in various sectors and occupations, issues like work-life imbalance due to unreasonable work norms and policies, etc. persists in the society. It's urgently needed that nations and their respective government take relevant measures to ameliorate the situation existing and meet the ends. Policy interventions should be considered by the authorities along with increase in job opportunities for women, inculcation of various training programmes, education access, and policies should be framed for ease of domestic duties and other measures as it deems fit looking into the situation.

After the Industrial revolution, when multi-dimensional concepts like liberalisation and globalisation emerged, involvement of women in the working sector saw a rise and parallel growth was seen in the labour laws and regulations. According to the sociological school of Jurisprudence, *law is a means of social control*¹. Law has to serve two-fold objectives: firstly, to maintain stability and order in society and secondly, to change itself with the changing needs of the society. Following this principle of agency of social control, a potent change is being seen in the labour legislations pertaining to the needs of the society specifically in the female workforce sector.

2. Research Methodology

The authors of this paper have used both an analytical and descriptive approach to the developing labour laws, mixing their discussion of those laws with discussion of the role of women in the labour sector. The authors have drawn from a wide range of original materials, such as books, Indian statutory law, and a variety of other laws and regulations. Books by authors such as Avtar Singh and SN Mishra

¹ Fuller, Lon L. "Law as an Instrument of Social Control." *Brigham Young Univ. Law Review*, vol no.1, 1975.

have been helpful in gaining a better understanding of the historical context of labour laws and contrasting those laws with more recent labour legislation. Several pieces of legislation, including but not limited to the Factories Act of 1948, the Mines Act of 1952, the Employment State Insurance Act of 1948, the Equal Remuneration Act of 1976, the Domestic Workers (Registration, Social Security, and Welfare) Act of 2008, and the Maternity Benefit Act of 1961, etc., have been taken into consideration. A variety of secondary sources, such as websites like ILO and UNO as well as journals, newspaper articles, have also been referred in order to accomplish the goals of increasing the involvement of women in this field and shielding them from any kind of discrimination or inequity. In addition to this, the authors have concentrated on the many existing backlogs and provided solutions in order to increase the number of female workers who participate in the labour sector.

3. Historical Development

Since human evolution, certain category of work has been entrusted to men and women with women being responsible for all work in the domestic arena and men on the other hand, being responsible for all work taking place outside the domestic environment. Women are entrusted with the duty to take care of children at home, cook food for the family, perform daily chores, etc. Men in society are expected to go for wars, run errands, go to sea, and perform activities like hunting, gathering and many more. However, with the rise in social consciousness of women's status, now a number of women have started to leave the protected environment of their homes and venture out looking for work in order to share the economic burden of the family.

In the archaic times, the sole role of women was to provide progeny to men. They were confined within the four walls of the house with no economic development on their end. Men had the duty to protect women of their family including their mother sisters, or daughters. Always being under the protection of men and living in a male dominated society restricted women from raising their voice and coming out of their shells, thus, not being able to get involved into any kind of outside employment opportunities leading to no contribution economically.

With the commencement of the medieval period, their condition further worsened and became pathetic. Social evils like child marriage, female infanticide, polygamy, sati, ban on widow remarriage, etc. came into play. Women were considered as an object and were always placed on a lower pedestal than men in a

patriarchal society. They were exploited, tortured, treated barbarically, and were given no respect. Women did not have any identity of their own, they were either known by their father's or husband's identity and status. Financially, as well, they were dependent on the males of the family. Due to the patriarchal mind-set prevailing in the society, laws framed during the ancient and medieval times were male-oriented and were made for the promotion of welfare of men.

It was during the British colonisation of India when the winds of western culture impacted the mindset of the society. It influenced the people to think from a feminine perspective i.e., regarding the welfare of the women in the society. Period of Renaissance² was witnessed in India during the British Raj. The Renaissance movement was aimed at reformation of the Indian society. Being part of the movement, Raja Ram Mohan Roy accompanied by various other leaders promulgated the ideas of social equality, freedom, and secularism along with modern nationalism and democracy as their ideologies. The old society governed under the British rule was uprooted and prevailing oppression and exploitation was exposed and measures were taken to curb such ill-acts. Major contributions were made by leaders of this movement like Annie Besant who understood the importance of concept of Dharma, while Jawaharlal Nehru promulgated the notion of democracy and Raja Ram Mohan Roy was credited to make abolition of sati practice a success. They, all in a way, promoted formation of laws that were secular and female welfare oriented. Mahatma Gandhi also pleaded for the economic independence of the women. Thus, this period of reforms and riots led to the liberation of women.

After Industrialization³, role of women in society underwent a significant change. Women started to leave their homes and contribute to the economy by working in mills, factories, quarries, etc. Due to rapid growth in every sector, new roles emerged along with social norms. With the change in attitude towards life, families think it necessary to supplement its needs with some additional income. Globalization impacted every sector irrespective of being men or women driven. With all these factors women employment has increased however the participation rate is still on lower end in comparison to men. The industrial revolution did contribute towards the enhancement of condition of women but with added problems of discrimination and exploitation.

² "Three Phases of Indian Renaissance." *Frontline*, vol. 38, no. 12, 2021, pp. 12-15.

³ Anand, Bhuvana, et al. "The curious case of Indian working women". Mint, www.livemint.com/politics/policy/the-curious-case-of-indian-working-women-11646677021016.html

Even after constituting one-third of the labour population, working environment conditions remain unsatisfactory and unsafe for them.

4. Labour Situation of Women in India

Every individual has the right to work, to free choice of employment and to just and favourable employment as enshrined under *Article 23 of the United Nations Declaration on Human Rights*.⁴ In the declaration the concept of equal pay for equal work without any discrimination is significantly laid. Any contribution to an environment that values labour efficiency and decent working conditions would aid in the development of the national human resource. Examination of the labour laws in India has to be placed on this basic idea as such laws do get influenced by human rights as well as other international standards and conventions originating from ILO and United Nations (UN). Various labour laws led to the formation of India's Labour policy. The Indian Constitution, being the most comprehensive document in the field in its preamble says, as quoted, "*securing to all citizens equality of status and opportunity as well as justice – social, economic and political*"⁵ The Constitution through its provisions prohibits any kind of discrimination against women in socio-cultural and educational welfare. Moreover, it also promotes enhancement of women's welfare⁶ by the state.

Depending upon a category of class, caste, religion, sector, location, etc., the labour situation varies and same applies in the case of women also. Female labour workforce has always been volatile in India rather than being constant or stable. There are innumerable challenges and issues faced by this sector which calls for a pressing priority on such obstacles in order to cross them. One of the factors for measuring the labour situation is the Work Participation Rate (WPR) i.e. percentage of total workers to that of total population.⁷ Statistically, as per the 2011 census WPR in case of females account for 25.51% of the population in India, while males account for 53.26%. While males have no rural-urban gap (53%), females have a significant rural-urban gap (rural-30%, urban-15.4%). Thus, there is an increment seen in Workforce Participation Rate in the organized and unorganized sector.

⁴ Chatterjee, Deen K. "Udhr." Encyclopedia of Global Justice, 2011, p. 1102.

⁵ "Preamble" *Constitution of India*, 1950.

⁶ *Supra*, note 3.

⁷ Olivier. "The situation of women in India." Humanium, www.humanium.org/en/situation-women-india/, Accessed 3 Sep. 2023.

In a developing country like India, most of its female labour are employed in the unorganised sector which is not fully covered under the purview of labour law provisions and so are not provided with welfare benefits. While, the remaining percentage employed in the formal sector comes under the umbrella of the labour legislations and are protected under it. This highlights the imbalanced ratio of female employees in the organised and unorganised sector. Though, it is often deliberated upon by the world leaders that “*what could be the factors responsible for concentration of female workers in the unorganised sectors*” however still no conclusive outcome has been reached.

5. Protection for Women Labour In the Indian Constitution

The framers of the Constitution took salient and constructive measures in favour of women welfare. Due to revolutionary changes made by the Constitution and women themselves, they were able to earn the respect in society equivalent to men. Being a revolutionary document, the Indian Constitution not only provides for the measures but also solutions for the problems in existence. It also empowers the state to take positive measures in favour of women.⁸

The Directive Principles of State Policy enshrined under the Indian Constitution provides for protection of female workers through *Articles 39 provides for Certain principles of policy to be followed by the State*⁹ and Article 42 deals with *Provision for just and humane conditions of work and maternity relief*¹⁰, majorly. While, under the Fundamental Rights constituted in Part III, Article 15(3) provides for the *wherein Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth* thus making it a paramount provision. Article 46¹¹ being a directory provision directs state to promote the educational and economic interests of the poorer sections of the population, is also regarded as a directive to improve employment opportunities and working conditions for women. In consonance with such provisions, special clauses have been added in various labour law for providing protection to women and at the same time investigate their welfare in industries, quarries, factories, etc.

⁸ Women Rights Under Indian Labour Laws: A Socio-Economic Study.

⁹ Government of India. “*Constitution of India, Part IV, Directive Principles.*” Government of India, 1950, GOV. INDIA 21.

¹⁰ Government of India. *Constitution of India, PART IV, Directive Principles*, GOV. INDIA 21 (1950).

¹¹ *Id.*

6. Emergence of Labour Legislations

History of labour laws is intertwined with that of British colonialism. Formation of the early laws were the outcome of various British political considerations. Growth in labour laws took place in India with parallel growth of the labour industry. In the 18th century, India was portrayed as a paramount agricultural and industrial nation. From 1863 onwards, plethora of acts were passed to regulate the recruitment process in a plantation industry in Assam. This was the first industry to attract such legislation. Recruitments were being made by professional recruiters and workers were not permitted to leave the tea gardens. However, these laws so enacted safeguarded the interests of employers more than protecting the interests of workers.¹²

In India, myriad labour legislations have been enacted to promulgate the notion of labour promotion with the view of development of industry and economy. It is of utmost importance that for industrial rejuvenation, the co-partners in the industry respect their significant others. After Independence, the legislature and political opinions have contributed towards improvement of meagre conditions of the workers. While, it is the employers who have not appreciated this fact and not taken appropriate measures to do the same. It is the need of the hour that these employers realise that workers are also in a majority position with them and, it's due to their co-operation, coordination, respect, discipline, and sincerity that profitable results are produced or gained. They are required to understand that it's not just the finest machinery available that helps in efficient completion of a task but also the human interaction which is involved with that machine which leads to the expected outcome. Profits earned out of the laborious work and efforts put up by each member of the industry should be shared amongst all workers, employers as well as the community. Change in approach of employers or people in the supervisory role is needed along with a certain level of understanding of labour psychology. If the above two factors are considered and fulfilled Industrial peace shall prevail. Practices of getting work done through coercion, influence, or threat must not be encouraged. Labourers in the vice versa situation shall also have a certain sense of responsibility and dignity within them. Unnecessary riots, fights, violence must be avoided. Employers and workers are like two sides of the same coin wherein coin represents the industry where they work and the sides represents the two major members without which industry cannot achieve its objective. It's just like a coin has no value if it doesn't have its

¹² Kumar, Amit. *Labour Legislation and Protection of Women*. 2007, p. 81.

two sides present. There exists an interrelation between them and in case of any disruption, peace elopes. Socialist Democracy can only be achieved when there is harmony in the industry and amongst the community for its own amelioration.

7. Legislative Support for Women

India being a multicultural and regionally diverse nation has a vast population belonging to various castes, religions, as well as sections of the society. These factors owe a huge role in policy decision making in India, as even if one decision made is against or discriminatory in any way to anyone it will create a humongous impact on that section further leading to bandhs and even violent riots. Thus, the policy framers have to consider all such factors along with others while drafting new policies. Therefore, causing adverse impact on female workforce participation rate in India. Cultural restrictions and family responsibility are two major factors contributing to limited female participation in the economy. Pertaining to this issue are certain other factors which affect women participation like gender discrimination, safety of women, working hours and conditions of employment, etc.¹³ Owing to these issues, Indian legislature has been actively focusing on diminishing bias and simultaneously promoting a fair and equitable treatment amongst people.

The Indian Administrative system is multi-layered while in case of labour legislations centre and state both have powers regarding enactment of required legislations. In order to deal with issues pertaining to women particularly government has created an independent body known as the Ministry of Women and Child Development.¹⁴ Purpose of its enactment was to curb discrimination in pay scale, prohibit any kind of abuse on the basis of gender and initiate programs for the welfare of the female community. Till now myriad legislations been enacted for the welfare of women however their enforcement depends upon the government and the society at large. It is the women community who are required to be politically and socially empowered in order to have an effective compliance to the legislations enacted.

¹³ *Supra*, note 12.

¹⁴ Ministry of Women & Child Development. “*About the Ministry.*” Ministry of Women & Child Development, Government of India, <https://wcd.nic.in/about-us/about-ministry>.

The Labour legislations can be classified under three categories owing to their purpose of enactment:

7.1 *Labour Laws for Protection*

7.1.1 *The Factories Act, 1948*

The purpose of enactment is to regulate the labour issues taking place in factories. Its applicability is throughout the country and was enforced on 1st April, 1949. It ensures safety and welfare of workers employed in factories specifically. It is a legislation which contains measures for labour welfare including women with regards to health, safety, working hours pay, etc. Certain provisions which have been included are: prohibition of females to work during night and working in hazardous occupations, providing crèche, bathing and washing facilities; separate urinals; latrines and canteens; as well as provisions regarding maternity benefits.

7.1.2 *The Mines Act, 1952*

The purpose of enactment of this act was to amend and consolidate the law pertaining to labour safety regulation in mines. It provides for various measures to be taken in order to ensure labour safety and security during their time in mines and areas around. The provisions enshrined in the act regarding the female workforce are, that no female shall be allowed to be employed in a mine which is below the ground or any mine if above ground then subject to certain specific timings of work as provided by the central government. Additionally, it is specified that no female worker shall be employed during 10 p.m. to 5 a.m.

7.1.3 *Plantations Labour Act, 1951*

The Act was enacted in the year 1951¹⁵ and provides for labour welfare and to regulate work conditions in plantations. Basically, protecting plantation worker's rights. Applying to any such land used or intended to be used for growing crops like coffee, tea, rubber, cardamom, or any such plant measuring 5 hectares or more¹⁶ and where ten or more workers are employed. Covering various elements like wages, working hours, security and safety, the act is a contemporary document. Though an archaic act but contained provisions pertaining to

¹⁵ Tantri, Malini L. "Need a Revisit." 2018.

¹⁶ Supra, note 12.

maternity allowances as well as crèche facilities to women, which are being included in the modern-day legislations. Thus, making it a prospective act.

7.2 *Legislations Pertaining to Social Security*

7.2.1 *The Employment State Insurance Act, 1948*

The provisions under this act provides for benefits especially medical and insurance related to employees employed in factories which are registered under the ESI (Employment State Insurance) Corporation. Section 32¹⁷ of the new code enables financial support to the laborers during their times of medical contingencies, such as:¹⁸

- i. **Sickness Benefit-** Periodical payments are provided to the insured person, who in case of sickness which is duly certified by a medical practitioner or any such person with relevant qualifications and experience therein as certified by the corporation. Section 2 (77)¹⁹ of the code defines the term “sickness” as, “*a condition which requires medical treatment and attendance and necessitates abstention from work on medical ground;*”

Additionally, section 32(3)²⁰ provides for qualification of person claiming any benefit or rate, period and conditions related to such benefit shall be such as prescribed by the Central Government.

- ii. **Maternity Benefit-** This ensures periodical payments to an insured person being a woman in case of confinement, miscarriage, sickness out of pregnancy, premature birth of child being eligible to such payments by the authority i.e. Central Government in this case. Section 2 (18) of the code defines “confinement” as “*labour resulting in the issue of a living child, or labour after twenty-six weeks of pregnancy resulting in the issue of a child whether alive or dead.*”

Section 41(4)²¹ provides that an insured person shall not be entitled to receive for the same period, a) Both sickness and maternity benefit, b) Both maternity

¹⁷ Ministry of Law and Justice. “*The Code on Social Security, 2020.*” MINIST. LAW JUSTICE, 2020.

¹⁸ Indian Legal Solutions. “*Employees State Insurance Act 1948: Overview.*” Indian Legal Solutions, <https://indianlegalsolution.com/employees-state-insurance-act-1948-overview/>.

¹⁹ Supra, note 17.

²⁰ Ministry of Law and Justice. *The Code on Social Security, 2020*, MINIST. LAW JUSTICE 1 (2020).

²¹ Supra, note 17.

benefit and disablement benefit (temporary), c) Both sickness benefit and disablement benefit (temporary). Further, under the code, any woman employee eligible for availing maternity benefit under chapter VII shall not be able to claim the benefit under chapter VI.

- iii. Disablement Benefit-This provides for payments in periods to an insured person who is suffering from any kind of disablement due to employment injury. Section 2(28) defines “*employment injury*” as “*a personal injury caused to an employee due to an accident or occupational disease*”. While, provision 41(1 – 4, 7) states that any person who is eligible for disablement benefit under chapter IV shall not be eligible for claiming the same benefit under chapter VII.
- iv. Dependent’s Benefit-Periodical payments are provided to persons who are insured and dies as a result of employment injury. The code defines “*dependent*” under section 2(24)²².
- v. Medical Benefit-Under this, medical treatment and attendance is provided to the insured persons. Treatment given in form of OPD (Out Patient Department) and attendance in hospital, clinic, dispensary or other institutions, by home visits, treatment in IPD (In Patient Department) in hospital or other institutions is enshrined under section 39 of the Social Security Code, 2020²³.
- vi. Funeral Expenses-Payment is made to the eldest surviving member of family for funerary expenditure, and if no member exists then to the person taking care of such funeral expenses at that time. It is further provided that the claim for the payment shall be made within three months from such date.

This act serves as a social security scheme and thus has been subsumed by the latest labour law code on Social Security, 2020²⁴. Under this, chapter 4 deals with benefits pertaining to Employment State Insurance.

7.2.2 The Maternity Benefit Act, 1961

A mandate is set to benefit pregnant women for securing their jobs and having a peaceful time with family in the happiest phase of their life. The purpose is to

²² *Id.*

²³ *Id.*

²⁴ *Id.*

preserve the self-respect of motherliness, protect health of women and ensure complete safety of child. Its need is so that a woman is able to give quality time to her child without worrying about whether she will lose her job and her source of income. This act was enacted in order to reduce disparities relating to maternity benefits. However, this act was amended in 2017 and then further repealed by the Social Security Code in 2020²⁵ wherein chapter VI deals with provisions pertaining to same.

In the case of *Air India vs Nergesh Meerza and others* (1981 4 SCC 335) wherein the court held that regulation regarding termination of service on pregnancy violates Article 14 and struck down part of regulation 47 which suffers from an excessive delegation of powers to managing director without reasonable guidelines to exercise the same. Further, another landmark case of *Navtej Singh Johar & others vs Union of India* (AIR 2018 SC 4321) the entire contention with regards to male and female employees of Air India²⁶ and their differential retirement ages was brought to question and consequently overruled. The link between the both cases is rooted in discrimination on the basis of sex under Article 15(1) of the Constitution of India. The earlier view was criticized by Justice D.Y. Chandrachud. Therefore, court found the classification given in the Nergesh Meerza case between male and female employees on roles they were supposed to conform to as discriminatory and violates Article 14, 15 of the Indian Constitution, thus overruling the same.

In Toto, there are 8 maternity benefits which have been discussed broadly under the code of 2020:

- i. Maternity Leave of 26 Weeks under Section 60(3)-The maximum period for leave is 26 weeks and for women having her 3rd child as well as 2 or more surviving children is 12 weeks. If woman dies during this period, then up to such date of her death. Also, if woman dies during childbirth or days after then until such day and if further child dies then up to the day of death of the child.
- ii. Maternity Leave for Adopting Women and Commissioning Women under Section 60(4)-A commissioning mother or a woman who adopts a child below 3 months of age then benefit for 12 weeks from the day the child is handed over.

²⁵ *Id.*

²⁶ *Id.*

- iii. Work from Home under Section 60(5)- If the nature of work is such that work from home is possible then the employer shall allow such woman to do so. Due to the Covid-19 pandemic in June 2021, Government of India issued an advisory encouraging employers to provide work from home benefit to nursing mothers wherever nature permits for at least a year from childbirth.

In the case of *Prachi Sen vs Ministry of Defence*²⁷, the Karnataka High Court reiterated the work from home benefit could be given only in cases where nature of work assigned to women allows her to work from home. Court noted that the employee was involved in research work which was both sensitive and complicated i.e., nature of work was such which could not be carried on from home. Therefore, the court held that work from home benefit would not be applicable in present case.

- i. Medical Bonus, Pre/Post-Natal Care by Employer under Section 64- Every woman entitled to benefit shall also be entitled to medical bonus of Rs. 3500/- or amount prescribed by central government, if no pre/post-natal care is provided for by employer free of charge.
- ii. Nursing Breaks under Section 66- Every woman who returns to work after childbirth shall be given in course of her daily work 2 breaks of such duration as prescribed by the central government until child attains the age of 15 months.
- iii. Crèche Facility under Section 67- Every establishment having 50 or more employees shall have crèche facility within a distance as prescribed by central government either separately or along with common facilities.
- iv. Maternity Benefits in cases of Leave for Miscarriage, etc under section 65- In cases of miscarriage or medical termination of pregnancy (MTP) a woman on production of proof is entitled to for 6 weeks leave immediately following the same. In case of Tubectomy operation, the leave to be availed is of 2 weeks from such operation.
- v. Critical Illness Post-maternity under Section 65(3)- In case of illness post or out of pregnancy, premature birth, miscarriage, MTP shall by

²⁷ Work From Home under Maternity Benefit Act can be availed only if nature of work assigned to women is possible for them to work from home: Kar HC.” SCC Blog, <https://www.scconline.com/blog/post/2022/05/12/work-from-home-under-maternity-benefit-act-can-be-availed-only-if-nature-of-work-assigned-to-women-is-possible-for-them-to-work-from-home/>, Accessed 3 September 2023.

proving to the central government additionally to period of absence allowed under section 62(1) to leave at wage rate for period of 1 month.

7.2.3 *Domestic Workers (Registration, Social Security and Welfare) Act, 2008*

Introduction of this act was made to improve conditions of work and payment as well as to check exploitation and trafficking of women.²⁸ Generally, the domestic workers are in the unorganised sector. The act is applicable on both men and women, assuming the significance of women due to their huge population in the sector. Specific provisions inculcated in the act are with regards to working hours, annual leave with wages, minimum wages, and safety provisions.

7.2.4 *Unorganized Worker's Social Security Act, 2008*

Enacted for the unorganized and self-employed female workforce this act is established at Central and local levels. It provides for formulation of social security provisions for the welfare of such workers including health, registration of all unorganised workers, security, etc.

7.3 *Wages and Bonus Legislations*

7.3.1 *The Payment of Wages Act, 1936*

It helps in regulating as the name suggests payment of wages to workers whether directly or indirectly. It acts as a remedy for all those unauthorized deductions made by the employer. Regular payment of wages, mode of payment, deductions from wages and excessive deduction claims as well as non-payments are certain specific provisions included in this act.

7.3.2 *The Minimum Wages Act, 1948*

It provides for a set framework which declares minimum wage rate which are required to be paid to the employees both in organized and unorganized sector. Thus, saving the interests of the workers belonging to such sectors.²⁹ The act puts a mandate over the employer to provide minimum wages to the workers periodically. The appropriate government (either Central or State Government) fixes the amount of minimum wages without any bias. It provides for provisions regarding working hours and overtime. It allows to payments when worker has worked for lesser

²⁸ *Supra*, note 16.

²⁹ *Supra*, note 16.

hours not due to his own fault, minimum wage where floor level is fixed by the appropriate government for highly skilled, skilled, unskilled, semi-skilled workers.

7.3.3 *The Payment of Bonus Act, 1965*

Suggestive from the name itself, the act deals with bonus payments i.e. a reward which are to be provided to the employees. Due to frequent collisions between employer and employee on bonus payments this act came into picture to resolve such disputes.

7.3.4 *The Equal Remuneration Act, 1976*

As enshrined in the Part IV i.e. Directive Principles of State Policy under Article 39(d)³⁰ of the Indian Constitution, it states that “*that there is equal pay for equal work for both men and women*”.

This reflects that the makers of the Constitution have given significance to such concept of Equal pay for equal work especially for women. Commonly, it has been believed that men are stronger as compared to women and thus women shall be paid less for the same work. This is a serious concern in the developed economies as well that even after progressing in various aspects they lack to change this very aspect. Therefore, in order to inculcate the effectiveness of Article 39, this particular act was enacted by the Parliament.

All the above-mentioned legislations provided in this section of the paper have been subsumed under the four new labour codes which have been enacted recently:

- i. The Code on Wages, 2019
- ii. The Industrial Relations Code, 2020
- iii. The Code on Social Security, 2020
- iv. The Occupational Safety, Health, and Working Conditions Code, 2020.

8. Feminine Correlation with the Growth of Laws

In the Industrial sector, women now have been provided with a specific position considering their physical, mental, and biological uniqueness. Few acts including women into its ambit were enacted during the British Colonialism and even after Independence in 1947. These not only inculcated the provisions relating to the working hours of women but also took into factors like health, safety, social

³⁰ *Supra*, note 10.

welfare, discrimination, etc. Equality and freedom of work were also considered. Recommendations of committees and International Labour Organisation³¹ (ILO)³² adopted conventions were what inspired legislature into passing such laws for the welfare of women. Purpose behind passing of such legislations was none other than welfare of women like for improving their work efficiency, providing suitable and safe working environment, increasing their work participation, promoting infant care, and equal pay for equal work.

Even after a plethora of legislations being passed for women workers under the Constitution as well as considering the recommendations of ILO and other international organisations women lag technical men in terms of employment quality and work participation. Women's work is not documented because of them being employed in the unorganised sector and contributing to the economic liability of the family is not counted. Female workforce participation in the formal or the organized sector is on the lower end owing to the cultural and social restrictions. Additionally, other concerns add on to the worries namely, pay gap, discrimination, workplace safety, employment environment, etc. The legislature has been pro-active in dealing with such situation to extirpate inequality from the society and promote the idea of just, fair and equal environment to work in.

Unlike the Indian Administrative structure which is multi-layered, wherein states autonomy is protected in the Labour legislations both centre and state have authority to enact laws as deemed fit by them. Creation of an independent body namely, Ministry of Women and Child Development³³ show cases the stance of the government to enhance the position of women along with their protection from ill practices prevailing in the society as a whole.

9. Judicial Reforms and Government Initiatives

In the case of *Apparel Export Promotion Council v. A.K. Chopra*³⁴, the law which was devised in the Vishaka's case was reiterated. It emphasized on the term sexual harassment have as a kind of sexual discrimination through unwanted sexual advances, requests for sexual favours, and other verbal or

³¹ International Labour Organization.

³² Zabyelina, Yuliya, Kimberley L. Thachuk, and Ernesto U. Savona. "The Private Sector and Organized Crime: Criminal Entrepreneurship, Illicit Profits, and Private Sector Security Governance." 296.

³³ *Supra*, note 14.

³⁴ *Apparel Export Promotion Council v. A.K. Chopra*. Jus Corpus. Accessed September 3, 2023. <https://www.juscorpus.com/apparel-export-promotion-council-v-a-k-chopra/>.

physical conduct with sexual overtones, whether directly or indirectly, particularly when submission to or rejection of such conduct by the female employee was capable of effecting the female employee's employment and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment. It broadened the definition of sexual harassment in the workplace by declaring that physical contact is not required to constitute sexual harassment at work.

Furthermore, observing-

“There is no denying that each episode of sexual harassment at work violates fundamental rights to gender equality as well as the right to life and personal liberty - the two most important fundamental rights protected by India's constitution.”³⁵

In the Apex court's decision in the case of *Chairman Railway Board and Others v. Mrs. Chandrima Das and others*³⁶, wherein the sexual harassment issue has been assumed with broader dimensions. Herein the employer was held vicariously liable for gang rape of the victim a stranger (foreigner), by the employees within the precinct itself. Therefore, if a female employee or even a stranger is a victim to such a grave offence committed by another employee then the employer being vicariously liable for the acts of his servants are considered to be eye opening and real for the employer. Similarly, in a Andhra Pradesh High Court's judgement in the case of *K.S. Triveni and others v. Union of India and others*³⁷, following the footsteps of the Madras High Court wherein *section 66(1)(b) of the Factories Act, 1948* was struck down for being unconstitutional. It provided for prohibition of female workers to be employed in night shifts. Thus, this is where the Vishaka guidelines comes into picture, which provided measures in order to get female employees to work in night shifts subject to provisions and guidelines.

The Apex court has been on a watch in such cases of sexual harassment and has dealt with matters rigidly. Critically, reflecting from the reported cases the judiciary as an organ has played a multitudinal role by sustaining the rights provided to the women under the Constitution. Moreover, the government has enacted various laws in the context of labour market for the welfare of the women. Furthermore, these legislations can be classified into two categories

³⁵ “Book-on-women-safety.PDF.” Accessed 3 September 2023.

³⁶ “The Chairman, Railway Board & ORS v. Mrs. Chandrima Das & ORS.” Women And Justice, Legal Information Institute, US Law, LII.

³⁷ *Supra*, note 35.

namely, the first one includes those acts or laws which are exclusively for female workers. For example- The Maternity Benefit Act, 1961, The Equal Remuneration Act, 1976. While coming towards the second kind is which constitutes measures for the labourers at large however, simultaneously contain women welfare (workers) related provisions or clauses. Few of such statutes falling under the category are, The Factories Act, 1948, The Mines Act, 1952, The Plantation Labor Act, 1951, The Beedi and Cigar Workers (Conditions of Employment) Act, 1996, etc.

Along with the abovementioned precedents there are certain notable initiatives taken up by the government in order to encourage female workforce participation and protection to women. Smt. Smriti Irani (The Union Minister for Women and Child Development) on fourth world conference's 25th anniversary said that "*India recognises the importance of gender equality and women's empowerment in all sectors of the development agenda*". The Indian government has devised various schemes for women empowerment. Some of which are:

- i. Sukanya Samriddhi Yojana (SSY)- This is a savings scheme started by the government under the *Beti Bachao Beti Padhao Scheme*. In this scheme any girl below 10 years or of 10 years can open an account wherein she gets high interest rates and various tax benefits. As per the Indian Post Office, "*a legal guardian/natural guardian can open an SSA in the name of a girl child with a minimum deposit of Rs 250 and a maximum of 1,50,000 per financial year. The subsequent deposits in the account can be made in multiples of Rs 50.*"³⁸
- ii. One-stop Centre Scheme- This scheme was introduced in the year 2015 with the objective of providing essential medical assistance and receives its funding from Nirbhaya fund. Herein the state government get funding in order to protect women from any kind of discrimination, abuse or exploitation and alongside provide medical help, legal assistance and counselling services all under the same roof.
- iii. SWADHAR Greh- Launched in 2018 with the aim to ensure socio-economic and health, housing and fooding facilities. It encourages women to take initiative and provides legal support.

³⁸ Gupta, Sirali. "Women's Day 2023: Women defying gender norms to make impact - Best women empowerment schemes in India." Zee Business, <https://www.zeebiz.com/personal-finance/news-womens-day-2023-women-defying-gender-norms-to-make-impact-best-women-empowerment-schemes-in-india-224752>.

- iv. Mahila Shakti Kendras (MSK)- One of the paramount schemes launched by the Indian government for women empowerment in 2017. Its objective is to " *one stop convergent support services for empowering rural women with opportunities for skill development, employment, digital literacy, health and nutrition*"³⁹ It plays the role of an interface between rural women and the government in order to approach them. Its aim is to provide equal opportunities to men and women in various aspects.
- v. Mahila Samman Bachat Patra Scheme- also known as Mahila Samman Saving Certificate Scheme. In 2023, while announcing the budget, finance minister Ms. Nirmala Sitharaman announced this scheme with the object of empowering women financially. Availability of this scheme is till March 2025. Being a one-time small savings scheme offering an interest rate of 7.5% for a maximum deposit of Rs. 2,00,000/-.⁴⁰

10. Female Workforce Participation

The post-Industrial Revolution period has been a transitional period for female workers. Moving of women out of the primary sector i.e. agricultural to the service (tertiary) sector and migrating from rural to urban areas (urbanisation) were the two herculean transitions that were witnessed. Sink in female fertility rates and increase in the educational awareness rates, and other such socio-economic aspects of the participation have contributed to influence the women workforce participation in the economy, especially in the Labour sector.

However, there exists a complex relationship between female workforce participation and enormous developmental results. In accordance with this view, employment of women shall be motivated by necessity on one hand and other factors like educational attainment, awareness, on the other. Basically, a woman tends to work during the period of economic crisis at her place or household. But, when women do get employed they work in low paying and less productive jobs. Thus, not reflecting a women's engagement in the labour industry being a rising access to a satisfactory job. Additionally, women's work in this field is not recognised on the same platform as compared to that of the working men, due to the fact that females are considered to be householders and caregivers.

³⁹ *Supra*, note 38.

⁴⁰ *Id.*

Female workforce participation has shown stability for two decades straight starting from 1990 to 2010, at around 52% approximately.⁴¹ Women participation varies for developing countries in comparison to the men. Many South Asian countries exhibit vexing trends in female workforce participation rates with India being exclusive in this aspect due to its recent fall. With reflection of stability in two decades, fertility rate has been declining and educational attainment is on a significant rise on the other hand. Researchers and policy framers were taken aback by such a decline in the participation rate caused by a decrease in number of women working in the rural regions in this context. While the rates in neighbouring countries like Bangladesh are on a rise while in Sri Lanka are stable despite human development and rapid expansion.

Eventually, in order to understand the complicated nature of women participation in the labour market one needs to consider various contributors at macro, local, and household levels.⁴²

11. Low Female Participation in South Asian Labour Market: An Overview

In a region like South Asia, wherein socio-cultural and ethnic groups coexist with economic and political forces impacting woman's life. It is a densely populated arena dependent on agriculture majorly and being bound by traditions⁴³. Herein, with increase in female literacy there is a simultaneous decrease in its fertility rates. Nations like Sri Lanka and India have been sustaining high growth rates in the economy. Creation of employment or job opportunities still remains to be the herculean challenge in existence irrespective of the economic growth. Economically, it is important to show that whether these developments benefitted women or not. Even after being a part of a dynamic society historical stereotypes continue to influence the same. Viewing the Industrial composition, it is vivid and clear that in all agrarian economies women participation is more in the agricultural sector than in any other sector.

Even the women who wish to work are finding it challenging to find jobs in order to get themselves employed. Possibly, this is due to the scarcity in the employment opportunities women are limited to certain sectors only, whereas

⁴¹ Chaudhary, Ruchika and Sher Verick. *"Female Labour Force Participation in India and Beyond."* ILO ASIA-PACIFIC WORK. PAP. SER. 1, 2014.

⁴² *Id.*

⁴³ Verick, Sher. *"Women's Labour Force Participation in India: Why Is It so Low?"* International Labour Organization, 2014, p. 1.

men have a broader range to pick from. Agriculture and export manufacturing are two sectors where women outnumber the men. Predominantly, males have been involved in industries such as trade, commerce, transportation, and construction. Women may be discouraged from pursuing types of occupations due to social views and concerns pertaining to safety, transportation and housing. Additionally, there are significant difference in salary between men and women.

12. Women's Labour Market Outcomes in India

According to Lewis (1954), one of the most striking elements of economic progress is the shift of women's labour from the home to commercial employment. However, there is one area where India's track record has been abysmal. A low female labour force participation rate is, in fact, one of the factors limiting India's overall labour force participation rate. According to the ILO's Global Employment Trends 2013 report, India ranks 11th from the bottom in female labour force participation among 131 countries with available data.⁴⁴

Women's workforce participation rate (also known as the employment population ratio) has been steadily declining since the 1980's. The unemployment rate has remained largely consistent throughout. Nonetheless, the labour market change is progressing with a decline in the share of workers engaged in agricultural sector and an increase in the number of ones employed in regular employments. Therefore, understanding the gender characteristics of job developments in India is crucial in this context. Despite robust development in the 2000's, female participation has been on the lower end in a developing nation like India, however, with a significant distinction between rural and urban areas. Furthermore, wider gender inequalities in participation rates exist. There was an abrupt fall in the female labour force participation from 1990's to 2005. The evidence from the 68th Round indicates that there has been no widespread turnaround in the female workforce participation rate, which is estimated to be 22.5 per cent (for all ages), a further slump from 23.3 per cent reported in 2009-2010.⁴⁵ In the urban regions, however, there is a noticeable disparity. In this sense, the female workforce participation rate in rural areas has been steadily dropping, whereas it is on a rise in the urban areas. In India, the participation rate of females decreased in rural areas while simultaneously it rose in urban areas. Contributing factors in this context are more and more women getting

⁴⁴ *Supra*, note 41.

⁴⁵ *Id.*

enrolled into educational institutions in order to avail themselves education and be able to suffice their families. While potential reasons for the decline could be scarce employment opportunities as well as measurement issues to an extent.

13. Determinants of Low Female Workforce Participation in India

While standing out amongst the advancing markets with rise in growth as a nation, India's female labour force participation rate is still low and is vexing. Simultaneously, some push in the participation rate could serve as a source of growth and welfare. In order to achieve the same, assessing the determinants of female labour force participation can play a prominent role. For other nations included in the BRICS or the OECD⁴⁶, India stands inversely correlated with education and incomes and female participation. Socio-cultural factors add to the issue. The participation rate is largely influenced by infrastructure, household, banking facilities, etc. Additionally, factors like financial inclusion and development have a positive influence on this aspect. Female autonomy increases with her own bank account providing her with a say of her own. Financial access on the other hand provides them to sustain themselves by initiating their own start-ups, self-employments, and other such opportunities. Moreover, market policies or welfare programs like National Rural Employment programme helps them to overcome barriers existing in the society. Thus, leading to reduction in wage gaps with men.

Therefore, the statistical data⁴⁷ and trends in such data reflects certain paramount determinants of participation in India, which are, income, education, infrastructure, socio-cultural factors, individual characteristics, access to finance, banking services, welfare schemes and programmes as well as access to the resources.

14. Policy Inputs and Suggestions

Being a progressive developing nation, India is initiatively taking steps towards women empowerment as well as for increasing female workforce participation. For female employees specifically the government of India has been introducing new and advanced labour legislations in order to create a conducive environment for women. Following are certain suggestions and inputs pertaining to emerging labour laws as well as female workforce participation in the nation:

⁴⁶ *Supra*, note 41.

⁴⁷ Sorsa, Piritta et al. "*Determinants Of The Low Female Labour Force Participation In India.*" Economic Department Working Paper No. 1207, 2015.

- i. Flexible Work Arrangements Availability- Labour legislations for flexible work arrangements should be reformed, such as part-time work and job sharing. Thus, helping women to balance their work life and personal life further enabling them to participate wholly in the labour workforce.
- ii. Equal Pay for Equal Work Promotion- Need for implementation and enforcement of equal pay for equal work for women in the workforce sector. Further reducing pay gaps amongst genders and improving female work participation.
- iii. Provide for Childcare Facilities- in order to support working mothers and enable them to participate in labour activities without compromising with their family responsibilities.
- iv. Leadership Role Encouragement Policies should be framed to promote women's leadership roles in workplace. Thus, creating more inclusive work environment for women.
- v. Strengthening Implementation of Existing Laws- Ensuring effective implementation of such laws, further helping in protection of women from any kind of discrimination.
- vi. Awareness- As a nation, India needs to conduct campaigns wherein female workers rights under labour laws are discussed. Therefore, making rural and urban women to be aware of their rights.
- vii. Confronting Cultural Barriers- With the prepressing society, India needs to take measures to address cultural restriction still existing in the society in order to encourage more and more female workforce participation in the country.
- viii. Assistance to Women Entrepreneurs- Various support facilities like finance, mentorship as well as training sessions in order to encourage them to establish their own businesses and contribute to the Indian and Global economy.

15. Conclusion

In a sustainably inclusive developmental process, there are two necessary components i.e. Women's labour force participation and their access to decent work in the society. Inordinately, women in our society still face many obstacles

while entering the labour market. A range of challenges are faced by them on their way to access to decent work like pay gap, social security, discrimination or biasness, imbalance in work and personal life. They mostly get jobs in unorganised sector thus leading to informal income and no recognition. Considering the above aspects and facts, the Indian policy framers should take a panoramic approach for improving such conditions persistent in our economy. It is through improving education access, child care and maternity protection schemes, access to justice, promotion of creation of formal sector job opportunities and enacting laws keeping in mind such factors for the welfare of the women shall lead us to the advancement we perceive for. Ultimately, our objective is not just to increase female labour workforce participation. Rather, after looking at the bigger picture our aim is to provide and create opportunities in the society for decent work which shall further contribute to the growth and economic empowerment of women.

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JUSTIFICATION TO CHILD LABOUR: A PERSPECTIVE OF THIRD-WORLD NATION

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Abstract

In the present world, when different organizations and countries perceive child labour as a blot on the face of social security, development and human rights, there are few that seeks to justify it based on different parameters and circumstance. These two stringent yet opposite analogies lead to one prominent and valid question as to whether child labour can be justified in any circumstances? Or whether child labour in any form should be penalized in a progressive society? On that line this paper tries to produce answer even if not concrete yet dedicated to upholding the rights of the child. In that process, the author attempts to analyse the explicit and implicit forces that drive the cart of child labour, especially in context of vulnerable, marginalized and third world nations like India, Pakistan, Africa etcetera. More so a fair and in-depth doctrinal research has also been conducted on the pros and cons of the contentions supporting bona fide situation wherein employment of children in the supply chains might be justified. More so, this paper also establishes a backdrop on the legal, judicial, and administrative reform of child labour in India. Alongside an attempt is made to answer another set of question pertaining to imposing ban on all form of child labour and revocation of minimum age bracket for child employment. At the end, the author concluded the paper with a few outcomes of the research and certain constructive suggestions that can be implemented.

Keywords: child labour, employers, justification, hazardous, ban, supply chain etcetera

1. Introduction

Recently, the news of a Nashik tribal family who in their struggle to survive sold their kids to goatherds for mere Rs 10 thousand shocked the inner conscience of the whole nation and once again forced us to refrain from big talks and introspect.¹ On one hand we are talking about being in the race for world's biggest economy,

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¹ The Indian Express, "Child labour: Nashik tribals struggle to survive, give kids to goatherds for Rs 10K" *THE INDIAN EXPRESS*, <https://www.google.com/amp/s/www.newindianexpress.com/cities/mumbai/2022/sep/11/child-labour-nashik-tribals-struggle-to-survive-give-kids-to-goatherds-for-rs-10k-2497125.amp>, Accessed 17 March 2023.

surpassing the UK and on the other hand, the rights of the child are being compromised because of starvation and child labour. To emphasize, child labours is not an alien concept. It is a frequent but objectionable reality of world, especially among the so called ‘Third World Nation.’ It is ubiquitous and a supply chain is submerged in it. There are few, utilizing every possible mean to exterminate it from their supply chains whilst few are unaware or negligent to address this issue

However, when we intend to address child labour as an issue, we do not refer to those who are engaged with household chores or lending a helpful hand in family business. We direct the conversation towards the grave and harmful form of child labour as define under Article 3 of ILO Convention No. 182 or The Child Labour Act of 1986 for that matter, which mentions the exploitative works in which children are engaged such as prostitution, slavery, illegal drugs, pornography, working in hazardous industries etcetera. On a concise note, Child Labour primarily talks about ‘Labour that endanger the mental, moral and physical welfare of the children, either because of its nature or because of the conditions in which it is carried out, is known as “hazardous work”’.²

The definition and understanding of child labour have different connotation for different organizations and countries. However, the one prominent thing is the minimum age criteria and the nature of work involved. From the *Millennium Development Goals* Target 8.7, which that aims to eradicate child labour by 2025 to The Indian reservation in Article 35, every step aimed at the uplifting child’s right across the world. However, in practical life scenario it barely helped, on the contrary it led to various contradicting viewpoints that this paper tries to resolve by employing certain set of arguments.

2 Literature Review

Saha. S. (2012) in Child Labour in India -Should It Be Legalized?

- i. The author through this paper tries to analyse the present issue and loopholes that ate there in the Indian legal system, when it comes to eradication of child labour.
- ii. The author also wants to suggest some practical plans that might work in the Indian economic and social scenario and helps to tackle this deadly issue.

² What is child labor, *INTERNATIONAL LABOUR ORGNISATION*, <https://www.ilo.org/ipec/facts/lang--en/index.htm>, Accessed 16 Aug 2023.

- iii. It also elucidates the reason behind this present issue and how instead of banning child labour all together there is another way to curb this issue. For instance, by legalization of child labour.³

Rena, Ravinder (2006) The Child Labour in Developing Countries – A Challenge to Millennium Development Goals.

- i. The author in this paper elucidates the reasons child with the child labour. It also establishes the relation between poverty and child labour, education and its effort on child labour etcetera.
- ii. The author in this paper also tries to demonstrate as to how education opportunities *and welfare initiatives reduces child labor*.⁴

Naveed. J (2015) Importance of Child Labour for the Survival of the Family.

- i. The author through this artist tries to put forward the reason that forces children to work.
- ii. The author also makes an attempt to justify child labour using the economic situation in a third world nation like Pakistan.⁵

3. Research Problem

The pre-existing literature on this subject matter points to the eminent fact that child labour in itself is cancer for the society and leads to endless issues. Some of those literatures attempts to justify child labour on the basis of certain parameters. Few of them wants the world community to abolish all form of labour and on the other hand, few seek to abolish minimum age bracket for child labour. However, these literatures lack proper justification and reasoning to substantiate their arguments. Hence come this research paper, which aims to bridge all those gaps and propose suitable and harmonious justification, even if not concrete yet inclined towards child right.

³ Sampa, Saha. "Child Labor in India -Should It Be Legalized?" *RESEACHGATE*, <https://www.researchgate.net/>. Accessed 31 Aug 2023.

⁴ Ravinder, Rena. "The Child Labor in Developing Countries – A Challenge to Millennium Development Goals", *MPRA*, Paper No. 13073, Sep 16, 2022, <https://mpira.ub.uni-muenchen.de/13073/>, Accessed 31 Aug 2023.

⁵ Juhi, Naveed. "Importance of Child Labor for the Survival of the Family", *EUROPEAN ACADEMIC RESEARCH*, vol 2, issue 10, January 2015, Accessed 31 Aug 2023.

4. Research Objectives

The present study has been conducted with following objectives:

- i. To study the reasons associated with Child labour in the world.
- ii. To analyse different contention proposed to justify child labour.
- iii. To understand as to whether child labour in any form should be banned or not.
- iv. To understand and point out the consequences, if a minimum age bracket for child labour is revoked.
- v. To look into the attempts made by Indian government, Indian judiciary and Indian administrative system for eradication of child labour and promotion of child welfare environment in India.
- vi. To try to provide certain suggestion that harmonize the conflicting opinions and improve the situation of child not only in working place but across the world.

5. Research Questions

Below mentioned are the set of research question that instigated this research paper.

- i. Whether child labour can be justified in any circumstances or not?
- ii. Whether child labour in any form be absolutely banned or not?
- iii. Whether the minimum age bracket for employment be revoked or not?

6. Research Methodology

This research paper is fairly based on the Doctrinal research methodology. The primary sources used for the same is labour law books, statue and Notifications. On the other hand, secondary data includes online sources, blogs, newspaper articles, different reports published by ILO and UNICEF and journal article. Since the scope of this paper is substantially, the amalgamation of critical analysis and theoretical studies, the author has opted this methodology. More so, viewing the current scenarios it was most reasonable for the author to proceed with this methodology.

7. Causes of Child Labour

In an ideal world, with contemporary liberal-minded existences, no child should be working, every child should be happy, playing, studying, and enjoying the childhood, away from economic liabilities, and secured from injuries that working life might inflict on their education, opportunities, health and overall development. Yet unfortunately the world is not a fairy tale. In the far-from-ideal world the harsh reality is that even after centuries of efforts towards eradicating child labour through legislating restrictive penal statute, ratification of numerous conventions and treaties, forming polices and employing deterrent, child labour is a chronic and self-replicating virus that amounts to 160 million worldwide as per 2021 UNICEF report.⁶

Imagining children spending most of their walking time in factories, farm, in household or in mines it appear disastrous. As estimated by the ILO there are around 250 million working children in the third world and developing countries, out of which approximately 120 million are full time worker. Of these working children 61% are in Asia, 32% in Africa and 7% in Latin America. However, the main objection remains the same as to why after a global abolitionist perspective, there exist a reality full of small hands crafting bangles and weaving carpets. Why the countries like Africa and Bangladesh still could not do away with child labour?⁷

The reasoning behind this question might or might not be acceptable but it is a truth that child labour and exploitation are nothing but a detrimental consequence of poverty, lack of access to quality education, social norms condoning them, poor access to decent work opportunities for adults, migration, climate change and most importantly reluctant behaviour and a casual attitude towards this affair. Most frequently children are involved in labour because their family believes it to be 'normal' for children to work for their own survival and that of their families. These components are not only the reasons but also the repercussions of societal disparity underpinned by social, economic, and political discrimination.⁸

⁶ Child labor rises to 160 million – first increase in two decades, *UNICEF*, [https://www.unicef.org/press-releases/child-labour-rises-160-million-first-increase-two-decades#:~:text=NEW%20YORK%20GENEVA%2C%2010%20June,Organization%20\(ILO\)%20and%20UNICEF](https://www.unicef.org/press-releases/child-labour-rises-160-million-first-increase-two-decades#:~:text=NEW%20YORK%20GENEVA%2C%2010%20June,Organization%20(ILO)%20and%20UNICEF), 16 Aug 2023

⁷ Id

⁸ Why does child labor happen? Here are some of the root causes, *ECLT*, <https://www.eclt.org/en/news/child-labour-causes>, Accessed 31 Aug 2023.

8. Justification, Excuse or Merely a Myth

Do the families whose children work love their kids any less? Or do the children who work do not want equal opportunity, education, and fair chance to enjoy their life? Do they love working in awful and hazardous places? The answer to all these questions is simple they do not. They work because the situation forces them. Poverty leads to a suitable and prone environment for child labour. It stimulates the desire among children to work. They work because they want to earn bread for their family.

In marginalized African states, families survive on mud and live a Sub-standard life, the only option to survive is to work. children who work are impaired in terms of development and education. No big talks of education for all and equality will feed their aching stomach. For those with impoverished earning who will and ought-not-to count on societal safety net, need every member of family to work in order to assist struggling and hunger prone families and provide additional source of income.⁹

However, this argument justifying child labour is rebuttable to some extent. According to some economic school of thought, child labour is not only economically absurd but its, moral and ethical values can also be challenged. Any contention in favour of child labour cannot be classified as liberal mind-set and it does not hold water, on the contrary the opposite is true as child labour maintains poverty. Child labour and the cycle of poverty is vicious, symbiotic and one cannot be dissected from another. To be precise, many a times poverty compels child to work, of times at the expense of their health and education, which curb their chances to end up in secure and well-off jobs in future. Mostly it so happens that those who enters the workforce at an early stage of their life acquire less skills and education and get stuck in unsecured and minimum wage earnings job. Also, they more unquestionably drag their children in workforce environment. This everlasting circle maintain the status quo or sometimes even assist poverty in an already poor country.¹⁰

Moreover, in the present era of technological advancement, educated work force is the prerequisite for economic advancement. Quality education in this era is the only

⁹ Selvi, Darling. "Poverty Stricken: The Cause for Child Labor", *RESEACHGATE*, https://www.researchgate.net/publication/351823687_Poverty_Stricken_The_Cause_for_Child_Labour, Accessed 31 Aug 2023.

¹⁰ Editor. "Child labour termed cause of vicious cycle of poverty", *THE NEWS*, <https://www.google.com/amp/s/www.thenews.com.pk/amp/965644-child-labour-termed-cause-of-vicious-cycle-of-poverty>, Accessed 31 Aug 2023,

prominent key for the advancement of a nation. As the skills required to work with innovative technologies will only come with higher learning standards. General population needs to be literate for the economic growth of a nation. If an effort is made to educate children, the education base of the nation will develop and with that the nation's probability for development. Hence encouraging higher education instead of child labour will begin to end this cycle of poverty and limit the educational handicap.

Hasten to add, another set of pro child labour arguments is derived from the statement that many small enterprises in third-world nation can employ child labour to extract more benefit by paying lower wages to them as well as the families on receiving end also get benefited as they get meagre income opposed to none. In addition to that, this setup facilitates the functioning of all these small businesses, and it eventually assist economic development of the nation.¹¹

The above posed contention might appear fascinating on the face of it but deep-down child labour leads to unemployment among adults. This whole scandalous business model offers safe option to those willing to operate as cheaply as possible. The kids working in this kind of setup are easy to exploit and are the cheapest form of labour. They can easily be manipulated to work for longer hours. On top of that, as a consequence of this exploitative measures, adult population are left without any earning and the children who work instead of getting educated end up in low paid jobs and the same old poverty cycle continues. Eventually another set of children end up in labour market.¹²

Another ridiculous assertion supporting child labour is that the 'Child love to work' and they learn skills that help them in future. However, the truth is that child never likes to work, nor does working in field or factories will sharpen their skills for good. Not to mention this argument fails as the only drive for Child to work is sociological and financial hardship.¹³

Also, the argument that children are required to perform necessary and intricate task that needs small hand and fast learning is nothing but a myth. These myths put the

¹¹ Colleen, Theron. "Can Child Labor ever be justified", *ARDEA INTERNATIONAL*, <https://www.ardeainternational.com/thinking/can-child-labour-ever-justified-vic-manzano-clt-envirolaw/>, Accessed 31 Aug 2023.

¹² *Id.*

¹³ Jo, Becker. Kids want to work' is a poor justification for laws that legalize work by 10-year-olds", *HRW ORGANISATION*, <https://www.hrw.org/news/2014/09/05/kids-want-work-poor-justification-laws-legalize-work-10-year-olds>, Accessed 31 Aug 2023.

life of the child in threatening and hazardous workspace. Those work places needs skilled, trained, and adult labour. Who are aware of their rights and are in a better place to ask for good working condition which a child totally lacks. In fact, there is no prove that a child is more skilled and better to do certain task that an adult cannot do, however, the contrary is true.¹⁴

More to that, certainly people also believe that in a patriarchal society, young girls get no opportunity for education particularly if there is a male child. Therefore, certain work provides them with some form of income that she can use for herself. But busting this justification, these mind-set supports gender discrimination and keep girls away from education. Sometimes, they end up in forced prostitution or remains at home helping her mother to clean house and do dishes, receiving no education.

In fact, when we talk about a developing country like India, child trafficking is rampant happening. In 2020 alone, around 59,262 children were reported missing and among then 45,687 were girls. Unfortunately, the percentage of missing girl child has rocketed from about 70% in 2018 to 71% in 2019, and further to 77% in 2020.¹⁵

According to 2018 study conducted by World Vision India, 78% of the sex trafficking victims were traded under the garb of job opportunities but practically were forced into the pit of sex work. The commercial sexual exploitation of young children is the worst forms of child labour and only in India there are around 1.2 million children involved in prostitution.¹⁶

9. Child Labour in any Form Should be Banned

The ILO's Minimum Age Convention No. 138 and the Worst Forms of Child Labour Convention No. 182, works to achieve the effective abolition of child labour at least in its worst form, which include prostitution, slavery, hazardous works etcetera.¹⁷

¹⁴ Theron, Colleen. "Can Child Labor ever be justified", *ARDEA INTERNATIONAL*, <https://www.ardeainternational.com/thinking/can-child-labour-ever-justified-vic-manzano-clt-envirolaw/>, Accessed 31 Aug 2023.

¹⁵ Nagaland Page, "India sees sharp spike in missing kids' cases in last 2 years", *NAGALAND PAGE*, <https://www.google.com/amp/s/nagalandpage.com/india-sees-sharp-spike-in-missing-kids-cases-in-last-2-years/%3famp=1>, Accessed 31 Aug 2023.

¹⁶ *Id.*

¹⁷ ILO Conventions on child labour, *INTERNATIONAL LABOUR ORGANISATION*, <https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>, (Sep 27, 2022 Accessed 31 Aug 2023).

A one-line answer to the million-dollar question as to whether child labour should be banned is yes, it must be. In a normative perspective, everyone nods towards banning child labour as it is draconian and reprehensible.

However, the answer is not that simple. An ideal world might offer labour free childhood to everyone, but the reality could not sustain it. Even though, this ideal is being reflected or rather included in international convention, municipal laws of nations and in the corporate social responsibility policies of various institutions and companies like Marks & Spencer, Philips, Unilever and of those selling branded consumer goods.¹⁸

Similarly, many nations have outlawed child labour not in their territory but also for imported products. For instance, UK imposes penalties on companies for trading with suppliers that employ children. In meantime a New Zealand based foundation is operating a labelling system that authenticates clothing as free of child labour. On face of all these initiatives appear prudent attempt to protect vulnerable group. However, this issue is beyond exceptional in various third world nation.¹⁹

It can be submitted that a formal ban on child labour might be the logical endeavour for child reform in economically backward nations, but on a larger scale, eradicating all forms of child labour depict western naive ideals on complex third-world issues, as it disregards implicit and explicit consequences.²⁰

For instance, in many parts of the globe, the economic disparity is such that people are eating mud. In all those areas child labour in its usual form obviously helps the family. In fact, The Forum for African Investigative Reporters, shared a report wherein, a Cameroonian farmer stated that “child labour is the part of the household chores. Children do it to help their parents and it cannot be considered as child abuse because this generate income that is used to pay the school fees”.²¹

¹⁸ Wijen, Frank. *banning child labor imposes naive western ideals on complex problems*, THE GURDIAN, <https://www.google.com/amp/s/amp.theguardian.com/sustainable-business/2015/aug/26/ban-child-labour-developing-countries-imposes-naive-western-ideals-complex-problems>, Accessed 31 Aug 2023.

¹⁹ *Id.*

²⁰ Liu-Beers, Chris. “Raise Your Hand if You Support Child Labor”, NC COUNCIL OF CHURCHES, <https://www.ncchurches.org/2011/06/raise-your-hand-if-you-support-child-labor/>, Accessed 31 Aug 2023

²¹ Before wasting food, see what Haiti people are forced to eat, INDIA TODAY, <https://www.google.com/amp/s/www.indiatoday.in/amp/education-today/gk-current-affairs/story/haiti-mud-cakes-330727-2016-07-23>, Accessed 31 Aug 2023

Hence imposing a complete ban on foreign producers is nothing but deploying extant western ideologies that might be devastating. The family suffering the consequence of this ban might die in abject poverty or resort to underground jobs like prostitution or any other underpaid job. Either way the child will inherit the blunt affect.

Apart from that, this ban will not help the family in anyway as it restricted the working rights of the child and therefore, they will have to work in hush-hush. Which mean either they have to work in the same old job but this time without any contract, securities and on top of that illegally. Hence, in fear of losing job both the family and children are unlikely to complain to the authorities for their working condition, exploitation, wages, discrimination etcetera.

Not to mention, critics has also pointed out that employed children appreciate the value of money, time, and efforts. They make honest income and do not have to steal or beg for their survival. Which in one way seems convincing.

Furthermore, pointing out the vulnerability in this sector does not essentially substantiate the incapacitation and restriction on the matter. This argument is similar to the fact that females are more vulnerable to sexual exploitation they go outside at night. However, it does not justify the restriction on women walking alone at night. On the contrary this solution sounds absolutely orthodox and outdated at least from the contemporary angle.

Having a gradualist mind-set towards child labour that supports both ideal and non-ideal scenario might be affective. But in the given non-ideal world, we must accept certain forms of child labour. The primary initiatives must be taken to uproot worst form of child labour and then addressing all other kind.

10. Should Minimum Age Bracket for Child Labour be Revoked?

With Bolivia passing a law that legalizes work by 10-year-old child brought a new wave of controversy that questions the minimum age contention. The question arose as to whether the minimum age bracket for child labour should be abolished for good or not?²²

The International Labour Organisation's Minimum Age Convention No. 138, aims to establish minimum age bracket for employment based on the sociological and

²² Olivier. "A new Bolivian law on child labour: Legalising illegality", *HUMANIUM*, <https://www.humanium.org/en/a-new-bolivian-law-on-child-labour-legalising-illegality-2/>, Accessed 31 Aug 2023.

economical factor of different nations. For example, in a developed nation a child of minimum 15-year-old can work while, on the other, hand, minimum age for employment in developing nation is 14. This arrangement authorizes adolescents to unite school and work at the same time, or otherwise work fulltime if they have finished school and work environment is safe. Further the light work provision given under Convention No. 138 permit a child between 13 - 15 or 12-14 to do light works for up to 14 hours a week and a child of any age to do household chores. To be precise these conventions provide children with numerous chances to attain skills and gain income. However, it aims to preserve them from working at an incredibly young age and for longer period that might badly influence their health and education.²³

It is agreeable that working by children expropriate to the age and under hazard free workplace effectively contribute to the mental and physical. But doing away with the minimum employment age policy is injudicious to the child. Different studies have proven that working at noticeably immature age or for longer hours is detrimental to the health, education, and future earning potential of a child. Many a times, they lag behind in education or drop out their school as they fail to manage higher working hours with schooling.

Various child labour advocates contend that establishing minimum age of employment redirect the concentration, wealth, and resources from serious workplace issues towards child labour abolition efforts. If this minimum cap on employment is removed those resources can be utilized in improving working condition of the child. However, there are countries that focus both on working environment and child labour abolition. Imposing minimum age limit will not obviate the grave attempt to wipe out the worst forms of child labour. Moreover, investing wealth and assets on improvising work environment of a child is let alone advantageous than deploying those wealth and assets in ameliorating the livelihoods and education standards of a family.

11. Child Labour: A Tale of India

It has been three decades since India rectified the United Nations Convention on the Rights of the Child and pledged to eradicate all forms of child labour however the truth is open to all.

²³ ILO Conventions on child labour, *INTERNATIONAL LABOUR ORGANISATION*, <https://www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang--en/index.htm>, Accessed 31 Aug 2023.

A reservation was also made in Article 32, that gave immunity to the Indian government to formulated laws towards progressively banning all forms of child labour. Nearly after 30 years India attempted to amend the legislation in children's favour by legalizing children to work after attaining 14 year of age. This amendment is based on the perspective that a child can manage both education and work after attaining certain age. However, the 2016 legislation and Ratification of international conventions is not the only legislation that prohibit child from work. For instance:

- i. *The Factories Act 1948* restrict employment of anyone below 14 years of age in any factory.
- ii. *The Child Labour (Prohibition and Regulation) Act, 1986* also restrict the child below 14 years of age to work in industries that are hazardous. The list of hazardous industries if also perceived to remove any ambiguity.
- iii. *The Mines Act of 1952* is another statute that prohibits embayment of any individual below 18 years of age in mines.
- iv. *Another welfare legations in India that prescribe penal action against anyone who employs children in hazardous work environment is Juvenile Justice (Care and Protection) of Children Act 2000.*
- v. *Right of Children to Free and Compulsory Education Act 2009* is another welfare legislation that mandates free and compulsory education to every child between the age 6 to 14. Moreover, the Act also prescribe mandatory reservation of 25% seat for disadvantaged groups and physically challenged in every school.
- vi. Even the guardian of all law "the Constitution of India' undue Article 21A, Article 23, Article 24, Article 39 (e) Article 51A(k), Article 47, Article 39(f) etcetera in explicit or implicit ways deals with the right of child.²⁴

In addition to the laws and administrative efforts, the judicial activism and legal jurisprudence has also extended a helping hand to regularise the child labour framework. One of the landmark judgements in this regard was served by the Apex Court in the case of *M.C Mehta v. State of Tamil Nadu and others* (AIR 1997 SC 699), wherein a directive was served to eradicate child labour in India. This case suggested to:

²⁴ Lego Desk, "Top 10 Labour Laws in India you Should Know", <https://legodesk.com/legopedia/labour-law-in-india-you-should-know/>, Accessed 31 Aug 2023.

- i. Conduct a survey for identifying children who works.
- ii. Restrict employment of children in hazardous workplace
- iii. Make sure that a proper education is provided to the children and impose Rs. 20,000/- per child on employers who violates the law.
- iv. Limit work hours to ensure two hours of education for those who are working.²⁵

A similar dictum was served in the case of Labourers work on Salal hydroelectric project v. State of J&K and Others (1983) 2 SCC 181, wherein Justices P. N. Bhagwati and R. B. Misra held that no child below 14 years of age should be employed in any hazardous workplace buy either contractor of subcontractor.²⁶

In addition to that there are other cases like People's Union for Democratic Rights v. Union of India (1982), Krishnaraj v. The Principal Secretary and TMA Pai Foundation v. Union of India (2002) that seek to uphold the rights of child labour in India.

More so, there are initiatives like mid -day-meal, The NCLP Scheme, cash transfer programs etcetera that aim to reduce poverty, eradicate child labour and lure children towards education. But, unfortunately even after all these incentives, laws and judgement the child exploitation through work has never decreased. Still millions of children work in harmful and hazardous industries like bangle making in Firozabad, firecracker in Tamil Nadu and mines in Jharkhand and Odisha.

12. Conclusion and Way Forward

Child labour is a global issue and it requires a global solution. Any argument justifying child labour cannot be entertained especially in context of worse form of employment. However, banning child labour in all forms might be detrimental to the wellbeing of children in third world nation like Africa, India, Pakistan, Bangladesh etcetera. So does it mean everything goes? The answer is no. Every organisation can and should ameliorate the working condition of child workers. Working hours must also be minimized and the work assigned to them should be proportionate to the mental and physical ability of the child. Operating unbendable regulations all around the supply chains can also be helpful. For instance, bonded labour and hazardous working condition of the child be categorically forbidden. Having said that, different industries employing child labours might also said the

²⁵ *M.C Mehta v. State of Tamil Nadu and Others* (AIR 1997 SC 699).

²⁶ *Salal Hydroelectric Project v. State of J&K and Others* (1983) 2 SCC 181

cause by establishing on-the-job schools. For instance, the idea to open “garment villages” in Bangladesh can smoothly include these amenities for child labourers.

Nonetheless, categorical ban on child labour might appear as an encouraging move, yet it is an ailing action. In countries like America that have not rectified ILO Convention on child labour and established 16 as the minimum age for work except in agricultural sector has witnessed a wide range of problem. Since the definition of farm has evolved in states like North Carolina and El Salvador. Extensive agro-industry employ large scale pesticides and heavy machinery which do not mix well with kids. Therefore, no matter what children in every field including agribusiness should be protected alongside the children working in other industry.²⁷

Furthermore, whenever child labour is financial necessity the families as well as employers must record that these supplementary earnings will be utilized to meet their basic necessities like food, cloth, health facilities etcetera.

The critics of child labour mostly argue that if child labour is banned many families will not sustain. They work to help out families or because education is not available or prohibitively expensive in different countries. Therefore, banning child labour without resolving these persistent issues will not suffice. The ideal to eradicate child labour cannot be achieved in vacuum, it should be supplemented by a range of other measures. Every Nation-State that is a signatory to the ILO Convention are also the part of Convention on the Rights of the Child and hence alongside child labour eradication they are also obligated to ensure the right to free and compulsory education and adequate living standard.²⁸

Different initiatives like “cash transfer programs” can be incorporated by nations states, wherein a guaranteed monthly income is credited to the marginalized families and eventually this will help in eradicating poverty, facilitate school enrolment, and reduce child labour. This method has been proven successful in countries like Brazil and India where around 5 and 60 million people have benefited.²⁹

²⁷ Liu-Beers, Chris. “Raise Your Hand if You Support Child Labor”, *NC COUNCIL OF CHURCHES*, <https://www.ncchurches.org/2011/06/raise-your-hand-if-you-support-child-labor/>, Accessed 31 Aug 2023.

²⁸ Kielburger, Craig. “Why Can't We Ban Child Labor? Knee-Jerk Solutions Won't Work”, <https://www.forbes.com/sites/forbesnonprofitcouncil/2019/07/29/why-cant-we-ban-child-labor-knee-jerk-solutions-wont-work/?sh=69b6091bdbdf>, Accessed 31 Aug 2023.

²⁹ Vyasulu, Vinod. “Brazil's 'fome zero' strategy: Can India implement cash transfers?” *RESEACHGATE*,

After due course of discussion, it can be concluded that child labour is a curse for society until and unless it is regulated and child friendly. Somehow somewhere, it assists many backward families and inculcate the virtues like respect and commitment towards work, punctuality, time management and many more. Neither banning all form of child labour nor eliminating age limit will fill the gap. However, harmonious construction between the two, education, and social

responsibility among individuals can help the present situation and aid in the all-round development of a child.

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POSITIVE INTRAPERSONAL COMMUNICATION FOR MENTAL WELL-BEING

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Abstract

Communication is a process of transfer and interchange of ideas, emotions, and information. Humans are not able to communicate, be it with other people or the self within. Being a vast concept, communication can be classified in several ways. Out of these, one important classification is that of intra-personal communication, commonly known as 'self-talk'. The thinking, rethinking and even over-thinking is a part of intrapersonal communication.

It is an integral part of every individual's mind and is momentous to the point that it can determine the overall mental state and trajectory of a person's life.

The field of intrapersonal communication has a correlation with a variety of other fields like neurology, psychology, historical evolution, etc. It requires further research in order to understand their linkages, which would further help in developing better and efficient techniques and treatments for curing mental illnesses.

This paper is an attempt to delve into the linkage between intra-personal communication and mental wellbeing of people, with the intent to reconnoitre the relationship between positive self-talk and its impact upon the self-image of a person which crucial for good mental health. The investigation into the issue began with background research on intra-personal communication in the field of sports and general psychology, which has also been explored to an extent.

Also, the idea is to explore the problems in the field of mental health and their recourses through the method of intra-personal communication. Apart from examining the concerns and obstacles involved with battling mental health disorders from the standpoint of intra-personal communication, this paper briefly discusses and gives way for research into future technological breakthroughs and their use in the field, along with renewed focus on age-old yoga practices.

Keywords: mental health, self-communication, introspection, policy intervention

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1. Introduction

“The way we communicate with others and with ourselves ultimately determines the quality of our lives” (Robbins, 2012). Communication being a vast concept, can be classified in various ways depending on the context, including social and personal communication (based on the no. of people involved), aesthetic and expressive communication (depending on the mode of communication), one-way and two-way communication (based on the correspondence between sender and receiver), interpersonal communication and intrapersonal communication and so on.

Talking about one such classification based on the purpose of communication viz. interpersonal and intrapersonal communication, interpersonal communication is when emotions, ideas, information etc. are exchanged with other people while intrapersonal communication is *self-communication*.

In other words, when the same person acts as the sender and the receiver i.e., when one communicates internally with one’s own self, it is called intrapersonal communication. Interpersonal communication is basically associated with the exchange of thoughts and ideas, etc. with others while on the contrary, intrapersonal communication associates itself with the analysis and awareness of thoughts, introspection, retrospection, etc. which only concern oneself. “Intrapersonal communication is the communication of what we are saying unto ourselves” (Don Brown, 2016).

Intrapersonal communication incorporates the usage of various forms and methods, including internal vocalization, reflective thinking, meditation, visualization, etc. which play a pivotal role in the shaping of one’s perspective and development of overall persona. All the thinking, rethinking and even over thinking is a part of intrapersonal communication. The three forms it generally takes are as follows:

- i. Internal Discourse includes all the quiet day-dreaming, praying, contemplating, concentrating, retrospection that goes through one’s mind. It is an inner monologue and can be said to be the primary source of all intrapersonal communication (psychologists even include all the night and day dreaming in this category).
- ii. Vocal is literally self-talking i.e., talking to oneself out loud, for rehearsing, clarifying a thought or just letting off steam, etc.
- iii. Written helps to make living more organized and productive and generally includes all one writes for reading and reminding, like journals, lists, notes, etc.

Though each person has his/her own way of going about intrapersonal communication, an attempt is made to classify it into *three general types* which are as follows:

- i. Self-Awareness- It means knowing one's own standing, characteristics, inherent strengths, weaknesses, feelings, etc. This is what determines the ideas, beliefs, values and attitude of a person. It is influenced by other people's perception and also by the way one views himself/ herself.
- ii. Perception- It is awareness attained through interpreting, understanding, analyzing what is received from the senses. This is what makes a person stand out from others. While self-awareness's focus on the inner thoughts, perception's focus is towards other people and the world in general.
- iii. Expectations- It comprises of the anticipations, presuppositions, beliefs, day-dreaming, long term and short-term goals, hopes, plans, etc. for the future. It forms a significant part of self- communication and is often the driving force behind an individual's actions.

Through these and various other types and forms, intrapersonal communication serves numerous social as well as personal functions. It is an integral part of all human lives and is so significant that it can determine the trajectory of an individual's life. In the context of communication, it is an integral part of being a good listener as well as a good speaker. For instance, how can it be expected from someone to be honestly and transparently expressive if the person isn't even self-aware or doesn't have a clear connection with his/her own self?

Similarly, a person who has a chaotic mind, bereft of constructive intrapersonal communication, cannot listen with proper concentration and thus, cannot be a good listener. A sound connection with oneself is required for proper articulation of one's thoughts and, also, appropriate interpretation of other's opinions and statements. Hence, the way one connects and communicates with himself/herself plays a *pivotal role in interpersonal communication* as well.

As Aristotle said, "*Knowing yourself is the beginning of all wisdom*" (Aristotle, 2023). It defines how a person views himself with respect to the world and consequentially how he/ she perceives the world and circumstances around to be. It is nearly impossible to break the morale of a person who knows his/ her true standing, which can be attained through healthy intrapersonal communication.

Sanguine intrapersonal communication also contributes to *improve emotional intelligence*, which steers an individual towards success. It enhances the ability to empathize with others and understand the situation of another. It also makes the person's *decision-making* ability stronger. "Noticing where our awareness is gives us the freedom to discern what is important in any given moment, be it related to work or our personal life" (Lass, 2018). One can then think clearly, which makes analyzing and tackling problems easy and efficient.

Another basic yet pivotal classification of intrapersonal communication is that of positive and negative intrapersonal communication. Positive Intrapersonal Communication in simple words, means self-talk that has healthy and optimistic approach. It constitutes of sentiments like self-compassion, self-recognition and can take many forms including:

- i. Self-instruction which guides one towards successful completion of the tasks at hand
- ii. Self-motivation which focuses on the optimistic side of situations and serves as self-encouragement
- iii. Self-evaluation which rightly emphasizes one's strong suit, helping to maintain a healthy self-esteem

On the other hand, *Negative Intrapersonal Communication* simply means self-communication that has a pessimistic, demeaning or self-loathing tone, etc. This distinction is important to signify because this apparently basic classification is potentially what makes all the difference. On one side where positive intrapersonal communication can help to interpret and process everything in an optimistic manner, negative intrapersonal communication can do the exact opposite.

Healthy Intrapersonal communication is instrumental in every creative field, be it science (creating wonderful inventions, etc.); arts (like self-expression art); business (making efficient, advantageous decisions, improving good leadership skills, etc.) or literature (writing self-help books, fictions, etc.). For instance, a self-motivated individual like Thomas Alva Edison failed numerable times and yet didn't give up. His never-say-die attitude stemming from his positive intrapersonal communication kept him going. Eventually, he succeeded at inventing the light bulb. One famous saying of his that reflects his healthy intrapersonal communication goes- "I have not failed. I've just found 10, 000 ways that won't work" (Edison, 2023).

Authors extensively rely on intrapersonal communication which has brought about literary masterpieces for centuries. From short stories, poems and novels to classical

dramas, imagination and intrapersonal communication are the life blood of a vast expanse of literature. A good case in point is the written intrapersonal communication of Anne Frank in the form of a diary which was published later as ‘The Diary of a Young Girl’ (Frank, 2019), is a beautiful example of how positive intrapersonal communication can help a person survive the harshest of times.

She wrote, “I hope I will be able to confide everything to you, as I have never been able to confide in anyone, and I hope you will be a great source of comfort and support” (Frank, 2019). Indeed, her diary ultimately became her confidant to which she entrusted all her innermost thoughts, throughout the despairing time she spent in hiding during the Nazi holocaust, serving as a source of inspiration for the masses.

Some notable examples from her writing include, “I know what I want, I have a goal, an opinion, I have a religion and love. Let me be myself and then I am satisfied. I know that I am a woman, a woman with inward strength and plenty of courage.”(an example of self-awareness in intrapersonal communication); “I don’t think of all the misery but of the beauty that still remains” (perceptual intrapersonal communication); “What a beautiful thought it is that some the best days of our life haven’t happened yet” (expectational intrapersonal communication).

Alternatively, negativity in intrapersonal communication can lead to detrimental effects in all aspects of life, including profession, health and emotional well-being, and hampers self- growth. It allows festering of ill-feelings towards one’s own self like self-loathing, self- abasement, etc. leading to bad mental health. If not managed, unfortunately, it can even have disastrous consequences like self-sabotage, personal neglect, anticipating failures, social isolation, difficulty in making decisions, contemplating and attempting suicide, etc. Hence, it is crucial to understand this distinction and practice intrapersonal communication in a constructive manner.

As has been put by James Allen, “He who would be useful, strong, and happy must cease to be a passive receptacle for the negative, beggarly, and impure streams of thought” (Allen, 1907).

Thus, as Ms. Lisa M. Haye aptly put it, “*Be careful how you are talking to yourself because YOU are listening*” (Haye, 2023).

1.1 *Intrapersonal Communication and Mental Health*

The mental health of an individual is a very crucial aspect of their life. This gets affected with the perceptions surrounding people. These perceptions can be of the

society, a specific individual or the person herself. A common idea might be, how would a person's perception of their own self or their self-image have any effect on their mental health? Self-image, has a lot to do with the way we present ourselves to the world. The kind of confidence one has in giving a presentation for instance depends on how well prepared she is in her own opinion. The self- image of a person affects the way they live their lives. The subconscious voice or the inner voice plays a pertinent role in the upkeep of mental health in people.

The way society's poor perception can have a lasting impact on anyone, self-image would lead to similar if not more devastating results. This situation can escalate pretty quickly from a mere negative self-image to self-harm and then suicide down the line in no time. Coupled with the stigmatizing effect a mental health issue or an illness has on the victims would mean no treatment in proper time. Indeed, the scenario is changing but the taboo that comes along with a mental health issue continues to be an obstacle in the way of patients.

The self-image of a person depends mostly on the kind of intra-personal communication they are practicing. Indeed, public perception has an effect on people's mental health, as that changes people's perception of themselves. When a person, for instance is praised by a superior, that makes his self-image better. In the opposite case, on being regularly chastised by a superior, people start doubting their own capabilities, eventually they begin negative intra-personal communication. Changing their own self-image in the process, from a good worker to maybe a useless and undependable individual. This is why in professional settings people are advised to care and appreciate others' effort.

There could be other examples from daily life. Self-talk is helpful as it purges out the negativity from the mind of people, making them focus on the right and positive side of things. This is somewhat similar to programming a little code, making the computer do a certain task. Self-talk is in a way programming our mind. Which way it works, depends on the outlook created within a person due to self-talk. The flaws in a situation would become easily visible to someone feeding negativity inside themselves. As every coin has two sides, a person communicating positively will end up looking at the positive side of the situation. Intrapersonal communication has a major role to play in the mental well-being of an individual.

As can be observed above, the direction in which the stream of self-communication is headed determines the mental state of a person. One of the causes for depression and other mental issues, therefore, can be said to be negative intrapersonal communication. Self-talk also taps into what is known as neuro-linguistic

programming (NLP). It's a method by which you can change the way in which you think so as to create more positive outcomes in your life. By talking to yourself and internally reaffirming positive statements, you can increase your self-esteem and the way you see yourself, leading to self-improvements. Scientific findings have proven that positive self-talk can be a means of increasing cognitive function, which, in essence, heightens brain performance (Matt, 2023).

Self-talk is about communicating with the self. This helps in the development of self-respect within the individual. The research proves that self-respect is more beneficial than criticism as it improves greater decision-making functions. In certain cases, however even negative self-talk has had effects of increase in the self-criticism within the individual, only this criticism also has positive implications later on. This criticism helps people remain motivated and careful. Although excessive self-talk is detrimental, but a healthy balance of the two is an effective measure for the improvement of general mental health in people (Kim). The research clearly proves how useful positive self-talk has been in the overall mental and physical improvement of people.

2. Background

The field of intrapersonal communication has been a topic of research since 1880s, however, it has not got the due attention it deserves yet. Self-talk has indeed been researched experimentally for as long as developmental psychology has existed, with scientists in the 1880s interested in comprehending the nature and purpose of self-talk and what people would say to themselves. Vygotsky's (1986) sociocultural theory was one of the first theories that emphasise inner discourse. He proposed that when infants integrate culture and value in the form of language, inner speech evolves and becomes the channel of awareness (Van Raalte).

Further into the early 20th century, developmental psychologists Lev Vygotsky and Jean Piaget also contemplated on whether private speech i.e. intrapersonal communication develops from social speech and is later internalized in the form of internal monologue, or is it vice versa. The interpretation of *Lev Vygotsky* (above stated) has come to be the more widely accepted approach, and is supported by empirical research (Kipp, 2010).

Self-talk did not develop as a study topic in sports psychology until the enlightenment period in the 1970s, when academics began to consider how players' cognition affected ability and perceptions in sport. Early research on self-talk in sports was heavily influenced by *Albert Ellis' Rational Emotive Behavior Therapy*

and Aaron Beck's *Cognitive Therapy*, both of which emphasised self-talk as a vital approach to acquire understanding into flawed or illogical assumptions that drive emotion and behaviour.

Such basic tenets can be found in sport psychology studies investigating how different types of self-talk affect performance (Hatzigeorgiadis, Zourbanos, Galanis, & Theodorakis, 2011; Tod, Hardy, & Oliver, 2011), and in the field of self-efficacy, where self-talk is considered a means to comprehend and respond with fundamental assumptions about oneself (Son, Jackson, Grove, & Feltz, 2011; Weinberg, Grove, & Jackson, 1992) and studies contrasting upper tier performers to other sportsmen in terms of self-talk found that upper echelon of performers had higher levels of self-talk than other sportsmen (Mahoney & Avenier, 1977).

Track and field legend Carl Lewis who won nine Olympic gold medals, and one silver once said, *“My thoughts before a big race are usually pretty simple. I tell myself: Get out of the blocks, run your race, stay relaxed. If you run your race, you’ll win ... Channel your energy. Focus”* (Funatsu, 2018).

The majority of study in the self-talk research literature has concentrated on the self-regulatory role of self-talk. Self-talk is essentially regulatory in the sense that it may be used purposefully to guide concentration, boost morale, control efforts, manage psychological and cognitive processes, and assist spontaneous performance (Theodorakis, 2008). Intentionally utilised self-talk may also aid in self-regulation through mental modelling and introspective analysis, resulting in improved results (Van Raalte, 2016).

Despite these researches gaining prominence in the previous century, the research has mainly been centred around the sports field, and the ways self-talk can be utilized by sportspersons. This field needs several researches in the direction of its linkage and effect on people already struggling with mental health issues.

The concrete analysis of such a situation would be akin to gauging the depth of influence self-talk could have on a patient which would be no less than a very important discovery in the current era of stress and sickness. Mental health issues are already a domain previously neglected by the whole world for a really long time. The necessity of a healthy mind has been repeatedly emphasized upon through India's and world's cultural literature. However, until the technology became advanced enough nothing could be actively achieved in that direction. The society took its own sweet time accepting the changes coming in the modern world.

Although India is one of the few countries which has almost latest laws upon the issues of mental illnesses and mental health, and a really long history of legislations beginning in 1912 with Indian Lunacy Act, the narrow-mindedness of the society and the citizens backwardness made this reception even harder. The society in India is slowly welcoming the issue of mental health as an important aspect of their lives. With Mental Healthcare Act 2017 enacted which lays special emphasis upon the human rights of people with mental illness (PMI), the scenario in India is undergoing a much-needed change of perception.

PMI through the above-mentioned act have been provided the options of advance directives and nominated representatives which is a regulation at par with some of the most developed western countries. The act provides right to information and at the same time right to confidentiality to PMI. Although the bill has been criticised for certain imperfections and flaws which would further hamper the execution of the act, the existence of the act itself is a huge step forward in the right direction. As compared to the previous laws and legislations, the act indeed is a revolutionary development. It does however, need some more clarity of thought and refinement in the essence.

Despite this changing situation, there is a crippling lack of research into possible remedies to mental health issues other than the medical aspect of it. By other possible remedies, there is an implication made towards methods like self-talk. Even though in the present not much literature is available about the interaction of intrapersonal communication with other fields of study like neurology, psychology, historical evolution, etc. The linkages between such fields of study is imperative as it can be of major help in devising better policies and treatment regimens for ensuring mental well-being till the last mile.

3. Problem

“No one would ever tell a cancer patient to “just get over it.” Why people think they can tell those with a mental illness as much is baffling” (Ella, 2019).

Mental health has still not achieved the status of a full-fledged illness in India. First and foremost, it is crucial to recognize mental health as an important aspect of every individual. There is widespread misinformation about the topic. Mental health is commonly confused with mental illness like Alzheimer’s disease and schizophrenia. These are advanced stages of mental illnesses. On the other hand, mental health issues like depression and anxiety are taken as excuses for availing benefits like more holidays or even sympathy from the masses. In this way the society often neglects the

real problem that mental health issues can become in the coming years. There are quite a few central and private multi-speciality hospitals without any psychiatric ward or psychiatrists in India. On the global stage this issue is being slowly taken seriously, and given the centre stage.

A study conducted by the World Health Organization in 2015 shows that “one in five Indians may suffer from depression in their lifetime, equivalent to 200 million people. Due to the stigma associated with mental illness, a lack of awareness, and limited access to professional help, only 10-12% of these sufferers will seek help,” according to experts with the World Economic Forum (Lobo, 2023). The COVID-19 Pandemic additionally aggravated the issue of mental health as a 25% increase in the prevalent anxiety and depression can be seen worldwide. According to WHO, despite the widespread mental health problem, the funding for this global issue remains short in supply in middle-income countries (Rajratnam, 2023).

Going by the data provided by the Indian Psychiatry Society, it is confirmed that over 40% of Indians suffer from mental health issues. The mental health infrastructure in India, however, is not yet developed enough to cater to such large numbers which makes it imperative for interventions to be made at the national level. The union government did recognize the gravity of the situation and has lately brought mental health to the fore, including the National Tele Mental Health program provided for in the budget 2022 with National Institute of Mental Health and Neurosciences (NIMHANS), Bangalore as its nodal center and International Institute of Information Technology- Bangalore (IIITB) providing the necessary technological support, along with the Tele-MANAS or the Tele Mental Health Assistance and Networking Across State initiative (launched in October 2022). “With a network of 23 tele-mental health Centers of Excellence under NIMHANS, it will ensure quality mental health counseling for all,” Dr. Mansukh Mandviya tweeted (NIMHANS).

Though the policy interventions are noteworthy, their success depends upon successful execution. For instance, the Mental Health Act of 2017 hasn’t made much headway due to lack of proper implementation. Livid over the Maharashtra Mental Health Authority's non-functioning and lackadaisical attitude, the honorable High court of Bombay while hearing a PIL (December 2022) against the non-implementation of the Mental Healthcare Act of 2017 expressed dissatisfaction with the progress report submitted by the State. It noted that though the Authority was established in 2018, it has remained non-functional and that for last almost five years no progress at all has been achieved by Authority (Hakim, 2023).

On knowing that there exists only one psychiatrist to attend all prisoners in the state with mental illness, the Honorable Orissa High Court expressed deep concerns on the issue of the mental health of prisoners and noted that the situation is unsustainable considering that it is physically impossible for just one psychiatrist to cater to the needs of all the prisoners (Pandey). In another petition on seeking rehabilitation of thousands of mentally ill patients who are languishing in hospitals or mental asylums, the Union Government informed the Supreme Court that the online dashboard where State Governments can feed in the information with respect to mental health facilities available, capacities for half-way homes would be ready and functional within a month's time (Chowdhury, 2023).

Such technology driven policies, however, fail to deliver to the digitally handicapped and illiterate masses who are among the most vulnerable. In April 2022, The Kerala High Court had taken notice of the concerns raised regarding the alleged alarming and inhuman condition of the patients in the Thiruvananthapuram Mental Health Centre and asked a District Judge to inspect & submit a report on the matter (Varghese, 2023). It is quite unfortunate that such conditions prevail, signifying the importance of proper execution and review of the policies already in place along with researching further for strengthening the framework. The findings of the National Mental Health Survey, 2015 – 16 are quite significant (Ministry of Health and Family Welfare, Government of India). Apart from our own national surveys and findings, useful insights can be drawn from how different countries are helping their citizens maintain mental health.

A case in point is Australia that has adopted very hands-on policies. In 1992 “The Commonwealth, State and Territory Governments of Australia endorsed the National Mental Health Strategy. This strategy had the following aims: to improve the lives of people with mental illness and people who care for them, to promote the mental health of the Australian community (where possible), to prevent the development of mental health problems and mental disorders, to reduce the impact of mental disorders on individuals, families and the community and to assure the rights of people with mental disorders,” according to the Organization for Economic Co-Operation and Development (OECD) report.

One of the distinguishing factors of Australian mental health care is their push for community-based care versus institutional levels of care. In fact, this very unique shift caused the number of individuals in inpatient care to drop to nearly nothing. Overall, their dedication has significantly helped in reducing the mental health global issue. Our neighbouring country China's National Planning Guideline for the

Healthcare Service System promoted direct measures, wherein One of the main objectives was to achieve the licensing of the needed 40,000 psychiatrists (and assistant psychiatrists) by 2020.

This was a quite noteworthy initiative, crucial for establishing a robust mental health infrastructure. With regard to the stigma over mental health, new studies are beginning to show that millennials in the USA are more proactive when it comes to seeking mental health care, as well as, focusing on their overall emotional well-being than previous generations.

Additionally, many American celebrities have begun to give voice to the significance of self-care, mental health, and overall well-being on various national platforms, fostering a safer and more proactive environment. In several countries across the world, lack of awareness and the stigma regarding mental health are major concerns. hamper the successful execution of well-meaning policies and schemes. In India, the stigma around mental illness is deeply entrenched and hampers the execution of well-meaning policies and schemes. in a study with the World Economic Forum 87% of respondents showed some awareness of mental illness, yet 71% utilized strong terms that were rooted in stigma.

“In my experience, one of the most important hindrances is parents and family primarily refuse to acknowledge that there is an individual who is suffering,” shared the Live Laugh Love foundation counselor and chairperson Anna Chandy in an interview. Despite the positive impact of organizations like Live Laugh Love, the biggest threat to India and its people remains the deeply-rooted negative stigmas associated with mental illness.

Secondly it is important to make a note of the significant role self-communication plays in mental well-being. The unawareness of mental health as a crucial health issue kept aside. Hardly people think about self-talk as having an impact on their state of mind. The taboo regarding self-talk is no less. People with the habit of thinking constantly or communicating with themselves are treated as lunatics by the society. A person doesn't dare to talk to herself out loud, from the fear of being labelled as a mentally ill person. That label itself is the root of society's deep-rooted stigma on the issue.

The principal issue is the unawareness of the masses, followed by the lack of access to the right kind of recourse and complete misinformation if not a total lack of awareness about self-talk a cause and a recourse for the mentally ill patient and a person struggling with mental health issues like depression.

“What people never understand is that depression isn't about the outside; it's about the inside. Something inside me is wrong. Sure, there are things in my life that make me feel alone, but nothing makes me feel more isolated and terrified than my own voice inside my head” (Warga, 2015).

Intra-personal communication is like the voice of the mind, the main lead directing the outlook of people in a certain way. It plays a part in maintaining our biases and also changing them for good or worse. Several daily life issues like low confidence stem from wrong communication habits and later on spiral into serious mental health issues. For instance, overthinking about every mistake might make an individual doubtful of their own abilities, and thus underconfident. This habit could become a cause of anxiety in the productivity and performance-oriented world that we have in the present.

Peer pressure easily influences some people and to many others it does not have an effect. In this example too, Intra-personal communication or self-talk is the key. When an individual ruminates upon a fact too much, regardless of its credibility or truth, she is bound to start believing it if not proved otherwise in time. This is the effect of self-talk. It conditions our mind in a strong way, so much so that when steps are taken in the direction of positive intra personal communication, it can become a remedy for mental health issues.

Emotions usually come with their own stereotypical tags attached. Crying is a women's thing, and so men shouldn't cry, women are expected to be docile and obedient and being strong and hot-blooded is a complement to men but an insult to women. The very act of crying has no gender, instead crying as a psychological stress relief mechanism helps people diffuse the heavy stress in their minds. Only the ever stereotypical and perpetually unaware but still a necessary evil, the society were to understand this point of view.

Imposing age-old symbolisms of strength upon men and of fragility upon women, also all the while ignoring the existence of the others entirely, hampers their mental health. They are unable to completely accept their failures and instead of moving on with a fresh spirit, their past catastrophes shackle them. Without expressing grief or shame or even anger in cases of women when they need to, the mental health of people gets severely impacted in the long run. Emotions should not be bound with stereotypical approaches which forces people not to share their problems.

Mental health is not an extensively developed field especially in India and requires a lot more intervention on the part of both the society and the Government. People on

an individual level need education about the concept of mental health. Some stats that show the massive mental health pandemic that came about in the covid pandemic or shall we say, got uncovered, and got a renewed thrust on the global stage after covid.

People were locked away in their homes for months, with death and despair all around, mental health being in a very fragile situation got to bear the impact of the pandemic even without people getting the disease. This was the impact of a global pandemic which then brought out this important issue to fore. On the local and individual level, families are unaware of several mental health issues and sensitive times in the life of an individual where they need special attention on their mental health. After marriage, women have a complete change in their habitat. They need to adjust and settle in an entirely new space.

No amount of mental preparedness can make the impact of such a change on the mental health of the new brides negligible. Only if the new family of the bride is supporting and encouraging of her along with support from her parents, can this transition be smooth. This makes marriage a common cause of depression among women. Instead of family pressure to adjust to the new and different lifestyle, the women should be given time and space to slowly adapt to things around them. And of-course, in case of a situation like depression, complete freedom and encouragement to see a therapist or doctor, instead of ridicule and baseless judgements hampering her health even further.

Since eliminating such entrenched taboos and stigmas surrounding mental health would take time, educating people about inculcation of positive intrapersonal communication can serve to help at the individual and grassroot levels. The stigma associated with a mental health issue in every sense is an obstacle that needs to be removed by the way of spreading awareness and education amongst the masses apart from research on a global level. Positive intrapersonal communication is one of the elementary ingredients that helps individuals improve their mental state and help to nip the evil in the bud itself, thus preventing their intensification into grave, advanced-stage illnesses and saving costs of their complex and expensive treatments.

4. Recourses

“By learning, training and directing intrapersonal skills we can open our inner potential and lead ourselves towards better mental wellness.” From individual to national and international communities, the arena of mental health requires intervention at all levels.

Starting at an individualistic level, inculcating some very basic practices involving positive intrapersonal communication can be quite effective in ensuring mental well-being. People are often caught up in situations where they end up criticizing and judging themselves brutally for some act or situation, which affects one's mental health adversely. Since judgements are a part of a rational conscience, *it is not the judgements that can be dispensed with. Rather it's the way in which they are made.* In other words, it's not about suppressing the judgements; it's about flipping them to turn them into something positive. It is, therefore, recommended to try and transform the life energy that drives and runs underneath those brutal criticisms in order to change the way we talk to ourselves.

For instance, one way of transforming negative thoughts to positives can be to add the word 'yet' to the end of those sentences, turning the outlook from pessimism to optimism (for e.g. I am not good at English *yet* I am getting there slowly.) Other ways that may be of help include the following:

- i. Preparing a schedule- It would allow a plenty of constructive self-communication and consequently sort out many complex thoughts. As the popular saying goes, "an idle mind is a devil's workshop". Preparing a scheme and schedule of things to be done during the day and for further longer terms helps to maintain efficiency by breaking the chain of negative thoughts and provides a feeling of accomplishment with every task completed, aiding self-possession, and developing aplomb.
- ii. Meditating- Concentration is important for efficient completion of any task. Meditation aids focus and concentration by calming one's mind and sidelining any unnecessary, pessimistic, or distracting thoughts. It helps to improve one's self-esteem and self-awareness which are important aspects of developing positive self-communication.
- iii. Maintaining a Journal- Follow the approach that is suggested by many-keeping a diary like Anne Frank did. It helps to concretize complex emotions and vent them out through writing, making illustrations, etc. It would result in a more relaxed and uncluttered mind. If it can get Anne Frank through the holocaust, it can certainly be of help to someone in need of a trusted confidant. Also, *self-honesty and self-empathy* are important values to be fostered for healthy self-communication and consequently mental well-being. Imagining positive outcomes can have a calming effect on the mind and eventually make one more productive. Manifesting goals, objectives and dreams can thus prove fruitful. Even constructive dreaming and

daydreaming can be tried as a meditative (not necessarily mindful) experience.

iv. Introspection- For maintaining mental well-being, it is crucial to know and understand thyself. Therefore, one must carve out some time regularly to recognize and connect with the inner thoughts, exploring the origin of repetitive thought-processes. With this, an individual can figure out the context and the situations that bring out certain emotions. Thereafter it becomes easy to mitigate the effect of negative thoughts.

One can also refer to trusted self-help books, podcasts and other reliable sources that help to construct positive self-communication. Since every individual is different, methods and techniques may differ from person to person and one must work out a comprehensive way suiting to the needs and requirements.

When these techniques are found to insufficient, one can seek intervention of others around and competent authorities. Important at all stages of life- from childhood to old age, making sure mental development is smooth and comprehensive and devoid of stereotypes and foundations over expression and validation of emotions

“Constantly talking isn’t necessarily communicating” (Kaufman, 2023). A person needs to communicate with the inner self and not just talk. The transfer of feelings and emotions is what constitutes communication, not the mere transfer of words. It could be understood by the example of difference between making small-talk to a stranger, and having an in-depth conversation with a spouse regarding the problems in their relationship. Communication in all possible ways is action-oriented. Communication is not worthless banter, rather it is an act of thinking before uttering words and those words hold their importance in the minds of the speaker and in most cases the listener. In case of intra-personal communication, there is this point that the speaker is the receiver of the communication.

This is mostly a subconscious action in essence but has a visible impact on the conduct, motivation and self-esteem of the individual. In the earlier example the discussion of problems in the relationship of a couple is a communication which calls for actions of solving those problems or in certain cases an end to the relationship itself. This example can be used to indicate how in a similar condition if people engage in self-talk actively, they have a higher chance of finding solutions to their personal problems. The solution to problems people have within themselves, can be found at the same place. This process is similar to introspection. Only it’s a more active form of thinking and includes the addition of verbal qualities to thoughts and communications of and individual.

This is the communication sometimes actively channelled towards people's subconscious, for instance, in a very dangerous situation, a solitary individual might reassure herself with the use of this very mode of communication, that is self-talk. The end results could however differ, if the person above think she will survive it constantly, she will at-least have the motivation and will to survive. This is what positive self-talk sounds like. Whereas, on the other hand if the same person regularly thinks how easy it is to lose her life or how unlikely she is to survive, her mental momentum would be more inclined towards giving up rather than hoping for survival.

Developing a strong intra-personal communication is the key to people staying concentrated in an increasingly distracted world. With the kind of multifarious developments around us, there comes a risk of easily losing motivation in our lives. This insight might indeed have a philosophical flavour to it, but the ground reality is not all that utopian either. There are people struggling with addictions of drugs and cigarette. In the more rural areas this addiction has been taking the form of a silent murderer born out of substances like illegal and poisonous liquor and poorly made tobacco products.

There are several kinds of addictions, but substance addiction is not something that can be overlooked. According to a report by American Lung Association, lifetime smoking rates are higher in patients who are diagnosed with major depression disorder (59%), bipolar disorder (83%), or schizophrenia and other psychotic disorders (90%) compared to 32% among adults with no mental illness (Smith. 2014). Mental health disorders are closely linked with addiction and substance abuse. This is also a situation corrupting the youth and working population across the world. People often resort to these measures initially for the purpose of stress-relief, eventually they end up getting addicted.

This addiction is in certain cases more lethal than mental health diseases and illnesses often resulting in death or severe chronic disease like oral cancer. This is also a major reason to investigate the potent impact of intra-personal communication. People need motivation from within to take steps like cessation of substance abuse. Despite wanting to quit, several people might not feel empowered enough to take that step, the lack of confidence upon the abilities of oneself is a reason for the poor will to quit. Positive self-talk will have a strong and supportive effect on such individuals on whom society might have already given up. Proper training in self-communication is the need of the hour.

A quick google search gives mantras for psychological well-being, these mantras are essentially the monologue people are supposed to make to feel better and more confident. This is nothing but the positive intrapersonal communication being promoted in various ways as a helpful tool to overcome self-doubt and faltering self-esteem.

5. Future Research Directions

This article can give way into further research on positive self-talk through both new age technologies and the age-old yoga. At times people cannot think positively regardless of the amount of therapy or conditioning. In this situation, like several self-talking AI software that are available, there can be one developed for healthy intra-personal communication. A software like the smart-watch, which instead of counting the number of steps, reads the kind of self-communication happening inside a person. This can be used to highlight when someone is indulging into too much negativity. In case of thoughts of self-harm or suicide, the software could update the psychiatrist of the patient, or his family as per his discretion. Another way could be making an application for doing the task of self-communication. People could be talking to an AI bot like they would have to themselves. Only in such a situation, the bot would not go down the negative self-talk line. Psychiatrists could be using self-talk records for better diagnosis and correct prescription of medicine or therapy. These records would help to get a clear picture of the progress of the patient. Further research is needed to trace the correct extent of effect of intra-personal communication on an individual. This could be used as an effective way of treatment for the mentally ill people. Technology is at the point where more spotlight in this direction might after-all lead to a very efficient treatment plan for a patient.

The renewed focus on traditional practices and techniques of yoga in overall mental well-being is another direction that calls for deeper research. Yoga strengthens parts of the brain that play a key role in memory, attention, awareness, thought, and language. It can affect mood by elevating levels of a brain chemical called gamma-aminobutyric acid (GABA), which is associated with better mood and decreased anxiety. Meditation also reduces activity in the limbic system—the part of the brain dedicated to emotions.

As emotional reactivity diminishes, you have a more tempered response when faced with stressful situations. Drugs and talk therapy have traditionally been the go-to remedies for depression and anxiety. But complementary approaches, such as yoga, also helps, and yoga stacks up well when compared with other complementary therapies (Harvard Health). Thus, further delving into the significance of

intrapersonal communication in yoga can have far-reaching implications, helping the Indian commoners which comprises of a vast multitude of people, including ones who have strong faith in traditional, time-tested approaches and specifically those who have apprehensions regarding newer technologies or are digitally handicapped.

6. Conclusion

“The inner speech, your thoughts, can cause you to be rich or poor, loved or unloved, happy or unhappy, attractive or unattractive, powerful or weak” (Charell, 2023). Intrapersonal communication is one of the determining facets of one’s relationship with oneself as well as the world as a whole because it is the way we communicate with ourselves that determines our mental state to a significant extent. Therefore, it is very important to invest the time required to keep it healthy, positive and constructive. *“Positive self-talk is to emotional pain as pain pill is to physical pain”*(Mbiaka, 2023). Like any other double-edged-sword, self-talk has its merits and demerits. As effective positive self-talk helps in directing one’s thoughts towards wellness, negative self-talk is just as detrimental.

The thoughts of self-harm and suicide are examples of what negative self-talk could lead to. Being a phenomenon that happens within a person, this aspect of communication has been left much unexplored. It has the potential of subconsciously self-regulating an individual. Given the growing number of people dealing with stress in their life leading to mental health issues, self-communication might not become a panacea. But in a case where there is hardly any correct way of dealing with the issues of mental health, self-talk can play the role of a much-needed relief.

Mental disorders affect everyone, irrespective of age, gender, residence and living standards, even though some groups are at a higher risk for certain illnesses; only the impact varies. Promoting and inculcating positive intrapersonal communication can serve as an initial intervention that can cure mental illnesses at a preliminary stage, thus averting their further intensification.

At present, especially after the pandemic, the importance of a healthy mind has been brought into the spotlight once again. This was a somewhat foreseeable impact of the pandemic given the kind of morbid atmosphere all over the world which put the strongest people in the clutches of despair and depression stemming from social and physical isolation. Our cultural and traditional teachings have always stressed upon the health of both the body and the mind. With mental health gaining an important position in the global bend of politics and medical sciences, this emerging field needs more innovation in the direction of self-talk. Self-talk, in the various researches has

been established to yield results upon the psyche and the mental wellbeing of an individual.

With new laws made by several countries, corporates taking up the baton of providing mental health days for better productivity and the awareness and education of the masses being taken seriously, the future does indeed seem promising. This future should rightfully hold an important place for positive self-talk as a mechanism crucial to the upkeep of human mind.

Also, “*Communication works for those who work at it*” (Powell, 2023). Inculcating positive Intrapersonal communication is a skill that if honed, can effectively prevent, and also serve as an effective therapy in several mental problems like anxiety, depression, etc. All it requires is time, patience, some small, gradual steps in the right direction and positivity.

One can endeavour to foster positive intrapersonal communication using simple techniques on an individualistic level. If one is not successful individually, one should not hesitate and seek help from others and competent authorities. There are various governmental and societal institutions, schemes and policies at various levels in the field of mental health, which have come about as a result of increasing recognition of the significance mental wellness holds.

The technology is advancing steadily, the introduction of AI in this research would utilize the potential of self-talk to the maximum. The technology is capable of replicating human thought process. In no time AI will also be able to guide self-talk or intra-personal communication happening within the human minds to the positive course. With the active assistance of medical science and government initiatives coupled with the inventiveness displayed by non-governmental organizations towards the cause is sure to make the mammoth task of helping PMI in early determination and treatment of their issues. AI is already making things easier for the neurosurgeons as robotic equipment are being increasingly used for several complex brain surgeries already.

The regular improvements in technology and enactment of beneficial legislations by the parliament is the positive progression needed to secure the health and lives of millions and in future further many people struggling with mental health disorders and illnesses. Along with upcoming technologies, Yoga, which has stood the test of time in helping people maintain good physical and mental health, can be of great significance for people from all walks of life. With renewed focus on Yoga, the

involvement of intrapersonal communication in yoga and allied fields of study like neurology, psychology, etc. can also be explored.

Further still, ineffective implementation, deeply entrenched taboos and prejudices and many other problems hold firm. The provisions of the Mental Healthcare Act, 2017, the overarching legislation focusing on the advancement of India's mental health infrastructure for instance, does comprise of noteworthy and well thought out provisions like that of advance directives, nominated representatives, establishment of mental health authorities, clear demarcations of the rights and duties of the patients and government authorities involved, etc. which are at par with some of the most developed countries. Regrettably, however, most of these provisions remain only on paper, aloof from the common populace's knowledge, let alone the possibility of their utilization. The sorry situation of the established authorities has been brought to the attention of the judiciary time and again by way of PILs, to which it has expressed serious dissatisfaction and ire towards the lackadaisical attitude of the concerned authorities. Such lax enforcement and lack of awareness amongst people regarding their rights renders legislations nugatory, thwarting any endeavours for improvement in the existing scenario.

It is often observed that long-winding judicial trials drain out an individual both economically and emotionally. Not only this, the changes need to be brought about at the grassroot levels where law students need to be educated about mental health laws as an elective and public policy opportunities should be made available for the representation of the PMI in the law-making bodies. Legislative authorities can play a part in the improvement of the legal situation of PMI in India by introducing legal and medically enforceable policies for the safeguarding of moral and legal rights of the PMI. Medical authorities should work for the inclusion of psychiatry as an undergraduate specialization and outreach to medically inaccessible and rural areas should be looked into. The crimes where PMI are either victims or the accused should be taken extra care of. A mechanism must, henceforth, be established for speedy trials for PMI especially, considering their degree of precarity, in turn preventing the illness from intensifying further and aiding expeditious recovery. The road to universal mental well-being, therefore, is long and demanding on which inculcation of healthy intrapersonal communication can play a significant role. Henceforth, exploration and emphasis of this elementary and integral part of every human's mind is called for.

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ROLE OF LEGAL LANGUAGE IN GROWTH & DEVELOPMENT OF LEGAL SYSTEM IN INDIA

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Abstract

Legal language in India is sometimes beyond understanding, coupled with jargons which pave way for further technicalities and complexities for a common man that proves to be one of the biggest hurdles in the growth and development of legal system in India. The researchers intend to analyse the pros and cons of highly technical and complex legal language prevalent in Indian courts since independence. Researchers are willing to tabulate the responses by empirical method to conclude the study to check the effectiveness of legal language used in the legal education and legal profession in India. The researchers plan to conclude the study with feasible outcomes and key suggestions in order to explore and establish new dimensions of legal language as a pivotal instrument to develop legal system in India. Lastly, this paper will be proved as an innovative tool to counter contemporary challenges in front of Indian Legal System.

Keywords : legal language, legal system in India, legal profession

1. Introduction

In the 21st Century it would not be appropriate to embark upon the importance of language in the growth and development of a discipline. Since the beginning language itself is one of the primary subject, which is evolving, so that concepts could be understood by the generations across the globe. On account of absence of means of communication and transport, scholars across the globe worked in isolation to develop the language to communicate. As a result, we got several languages across the globe. Focusing about legal profession especially, which was primarily introduced by Mughal period in Urdu language followed by Britisher's in English Language still mixed with other local languages has created a web of languages and made a significant trouble to law students and judges and society as a whole to understand and implement the policies across India.

The legal language is used to draft related documents like contracts, licenses, indictments or subpoenas, briefs. It is high time that the law school curriculum is revised which focuses more on practiced multidisciplinary, legal language should

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be known to every person in the country not matter as a right like a responsibility. We have to make a curriculum for the students to learn effective legal language. It is sad to known that 80 % of the people in our country didn't know about basic rights introspection must be done by all of us. In India the problem of Indian legal language persists because it is felt to adapt a single language to be the Indian legal language. This is one of the most sensitive issues which could not be solved by the Constituent Assembly. The Law Commission of India in its 14th report has said the legal system which has been applied in India since two centuries though originated from the British system but it evolved and developed in the Indian situation and now it has settled its roots in India. To think about fundamental change now at this stage, it could be devastating and disastrous for our future. In the following words of Socrates, the researches conducts the research to suggest feasible solution of the problem:

Four things belong to a Judge; to hear courteously, to proceed wisely, to consider soberly and to decide impartially.
-Socrates

Onus to bring the revolutionary change is not only on the judges but equally on the lawyers, law students and society as a whole.

2. Defining Legal Language

Legal language is formalized language based on logic rules which differ from the ordinary natural language in vocabulary, morphology, syntax, and semantics, as well other linguistic features, aimed to achieve consistency, validity, completeness, and soundness, while keeping the benefits of a human like language such as intuitive execution, complete meaning, and open upgrade.

3. Statutory Excerpts of Legal language in India

“Article 348 (1) of the Constitution of India provides that all proceedings in the Supreme Court and in every High Court shall be in English language until parliament law otherwise provides.”¹

Article 348 (2) provides that the Governor of the State may, with the previous consent of the President, authorize the use of the Hindi language or any other language used for any official purpose of the State, in the proceedings of the High Court having its principal seat in that State provided that decrees, judgments or orders passed by such High Courts shall be in English². The Official Language Act,

¹ Article 348(1) Constitution of India

² Article 348(2) Constitution of India

1963 reiterates this and provides under Section 7 that the use of Hindi or official language of a State in addition to the English language may be authorized, with the consent of the President of India, by the Governor of the State for the purpose of judgments, decrees etc. made by the High Court for that State. No law has been made in this regard by the Parliament so far. Therefore, English continues to be the language for all the proceedings of the Supreme Court.

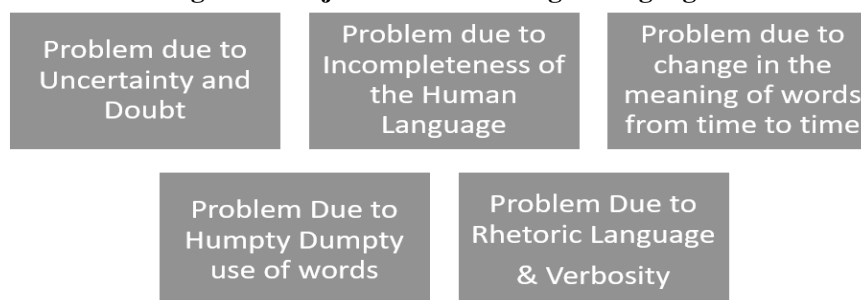
The 18th Law Commission of India in its 216th Report on Non-Feasibility of Introduction of Hindi as Compulsory Language in the Supreme Court of India (2008) has, after detailed discussions with all stake-holders, inter-alia, recommended that the higher judiciary should not be subjected to any kind of even persuasive change in the present societal context. The Government has accepted the stand of the Commission.

In this competitive world, the legal professionals and the litigants expect that their concerns are communicated and conveyed through effective ideas and expressions before a Court of law in a legal language in India that fulfils the duality of communication and clarity of understanding. The genius of any human expression emanates from the spark that is ignited by ideas, whatever be the language employed to communicate the same.”

4. Genesis of the Problems of Legal Language in India

There are many problems relating to the legal language, these are as depicted in the chart below:

Figure 1: Major Problems of Legal Language³



The complexity of a legal language arises because of four reasons:

³ Bhatnagar, R P. Law And Language, Edi. 1, Pg. 376

Figure 2: Probable Reasons Behind Complex Legal Language⁴

The use of Latin, and sometimes French, words, and phrases to express a rule, principle, doctrine, maximum, etc. which can be easily phrased in English

The use of obsolete, archaic or old English words which have passed from the English language but have been kept alive by their frequent use in the Legal profession.

The practice of assigning common English words a new, different, unusual and purely legal meaning or assigning these words some exclusive legal definitions and

The ridiculed tendency of legal professionals both lawyers and judges to write often long and complex sentences without any punctuation.

5. Comparative Analysis between Simple English and Complex English Language in Indian Legal System

It is pertinent to mention here that legislators and hon'ble courts have expedited the importance of simple legal language, however due to influence of western legal system over Indian legal system, almost at every stage; complex English language was used to draft legislations and to write judgments too. For instance, the preamble of Indian Constitution reads as under:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

⁴ Gandhi, B. M. Legal Language, Legal Writing & General English Edi. 1, Pg. 761

and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

*IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do
HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS
CONSTITUTION”⁵*

Whereas in another words of a poem written by a great author Guru Rabindranath Tagore in his book titled “Gitanjali” in 1913 reiterated as under:

*“Where the mind is without fear and the head is held high
Where knowledge is free
Where the world has not been broken up into fragments
By narrow domestic walls
Where words come out from the depth of truth
Where tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Into the dreary desert sand of dead habit
Where the mind is led forward by thee
Into ever-widening thought and action
Into that heaven of freedom, my Father, let my country awake.”⁶*

After analysing both the Preamble and the poem written by the eminent members of constituent assembly of Indian Constitution in the year 1949 and by Rabindranath Tagore in the year 1913 respectively, it can be easily concluded that the poem is narrated in simplest words depicting a clear aim and objective which can be easily understood by every citizen of the country. Whereas language used in the Preamble is highly complex and the same was further interpreted by the hon’ble courts since independence in several landmark judgments including Kesavananda Bharti v. State of Kerala⁷.

Hence, complex language used in the legal system creates several problems for future and the same would be interpreted by the hon’ble courts to settle the questions whereas simple legal language is self-explanatory and eliminates the risk of arbitrariness and vagueness in future.

⁵ Preamble, Constitution of India, Jan 26, 1949

⁶ Tagore, Rabindranath, Gitanjali, Macmillan and co. Ltd. 1913

⁷ AIR 1973 SC 1461

6. Conclusion and Recommendations

English language applied in Indian Legal system is full of jargons and maxims. In a series of cases decided by the courts in India, judges have shown their dissent to accept such excerpts. For instance, consider this paragraph from the *M. N. Samarth v Marotrao and another*'s⁸ judgment:

“A tricky issue of statutory construction, beset with semantic ambiguity and pervasive possibility, and a prickly provision which, if interpreted literally, leads to absurdity and if construed liberally, leads to rationality, confront the court in these dual appeals by special leave spinning around the eligibility for candidature of an employee under the Life Insurance Corporation and the declaration of his rival, 1st respondent, as duly returned in a City Corporation election. A tremendous trifle in one sense, since almost the whole term has run out.”

The above para was written to analyse the rationality behind appointment of a candidate in LIC but cited with too much complex words and lengthy phrases, which makes the interpretation highly difficult for the court. Moreover, Judgments are not necessarily meant only for other judges and advocates. After all, a court's public interest and public reasoning function mandate that it should be intelligible and understandable to the general public. Every judgement is highly important and beneficial for the understanding of the general public and it must convey the direction to the authorities with full clarity and feasibility.

In another instance the Apex Court termed a judgment of a division bench of Himachal Pradesh HC “incomprehensible” and “difficult to navigate through” even for the SC judges who have spent more than two decades as constitutional court judges, the bench said, “A litigant for whom the judgment is primarily meant would be placed in an even more difficult position. Untrained in the law, the litigant is confronted with language which is not heard, written or spoken in contemporary expression.”

Tussle over the selection of national language in India has become a question of National Importance. Constitution of India has clearly established that Hindi is national language of India but the apex court of India is still empowered to retain English as the only language. Whereas in all the High Courts, English is used as official language. If we examine the local courts across India, documents are written in local languages and scripts. Hence, local courts are using different

⁸ AIR 1979 SC 1084

languages in the court proceedings. During the Mughal period, Urdu language was used in the legal system and still several Urdu words are used in the court rooms by especially by the Police Dept. while writing FIR, Charge-sheets, Statements of the witness etc. After reviewing the complete picture from domestic to national level in the Indian Legal System, it can be concluded that Indian Legal System has become one of the complex system across the world due to use of several languages. In addition to that, English language is a weak language which is made too complex and over complicated by the lawyers and judges. “

Lawyers are the pillars of the Legal System in India. Lawyers are highly responsible for complex writing of complaints, affidavits, written statements etc. Every lawyer must understand that endless writing of a document will result in to lingering of the issue without an end. Lawyers use complex English language to persuade the court and to impress the clients. The researchers like to quote the words of sir Albert Einstein:

If you can't explain it simply, it means that you have not understood it well enough”

Albert Einstein

Or in other words, lawyers and judges must realize that legal profession is a noble profession and because of complex language only, it is out of bound for the poor and needy litigants. In absence of ethical code of conduct for lawyers and judges for use of English language. The situation is becoming more worst day by day.

A bench including Justice D.Y. Chandrachud and Justice M.R. Shah at Supreme Court of India observed that judges must use simple language to write the judgments. They have quoted the instance in the following para:

“Provisions whereof, unveils, qua the afore provision, making an explicit statutory expression, where through, the award, of, the Tribunal concerned, is, made amenable for execution, alike the execution, of, a decree, of, a Civil Court, or explicit statutory expression(s), become(s) borne therein, for, an award, of, the Tribunal concerned...”

If the above para is further expanded in the next 10-15 pages with the same language skill set, we can assume that it further results in to hardships to not only judges but also to the authorities and to the general public. Five hundred years back King Edward VI is quoted to have said, “I would wish that the superfluous and

tedious statutes were brought into one sum together and made more plain and short so that men might better understand them”.

Jonathan Swift, in *Gulliver’s Travels* (1726), wrote of a society of lawyers who spoke in “peculiar cant and jargon of their own, that no other mortal can understand.” Thomas Jefferson complained in the late 18th century that “in drafting statutes my fellow lawyers have the habit of making every other word a ‘said’ or ‘aforesaid’ and saying everything over two or three times, so that nobody but we of the craft can untwist the diction and find out what it means...”

7. Legal Language and Judgment Writing

Trial in a court begins with filing of a plaint. Plaint must be filed in simple language with simple words and facts. Thereafter Written statement should be filed in simple sentences for the proper conduct of the trial. Henceforth, statement of the witnesses, arguments advanced by the lawyers must be kept as simple as it can be. At the end, the prime and foremost duty of the judge begins to write the judgement. Judgment comprises of two objectives. First is Ratio Decidendi, that must be written by the judges in simple language and secondly, Obiter Dictum shall also be dictated by the judges in the same line. Use of simple language must be added in the ethical code of judges and lawyers. In the words of Chief Justice Sabyasachi Mukharji, “The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment.”

In the case of *Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Ltd*⁹, the Supreme Court of India has laid out the following guidelines essentials to write a judgement;

- i. It was made that these guidelines are directory in nature and not mandatory.
- ii. Judgement must be crisp, clear, complete and there shall be no repetition of the facts. Judges must avoid citing irrelevant judgments.
- iii. Draft must be carefully reviewed by the judges after writing the judgements and they must remove jargons, complex terms, maxims, irrelevant instances etc.

⁹ (2010) 6 SCC 384

- iv. Judgments must be continuous in some chronological order so that anyone can understand it to the full extent. Judgment must not part midway to decide the issues inter se.
- v. Judges must avoid citing historical background of the subject matter, philosophical ideas, evolutionary evidences, comparative analysis etc. while writing the judgement. They must not overload the judgment with their legal knowledge and must focus on clarity and not on confusion.
- vi. Language must be kept simple and effective to convey the message loud and clear.
- vii. Once arguments are completed, judges must not take more than 90 days to pronounce the judgments because eventually unreasonable delay is caused in justice delivery due to writing lengthy and glamorous judgments causing trouble to the public at large.
- viii. At last Judges must not write several other incidents or story's to prove or disprove any contentions. It's the primary duty of the judge to be concise and precise in writing the judgment.

In another words of hon'ble Justice R.V. Raveendran while writing other judgments, "The duty of a Judge is thus, to render justice and not to win popularity. The temptation to gain easy popularity by being liberal in granting admission and interim orders will ultimately damage the credibility of the judiciary as an institution, apart from causing undue hardship and loss to those who are unnecessarily drawn into the litigation or unjustly subjected to the interim order."

Hence to conclude, both Bar and Bench is responsible to carefully adapt to simple legal language to run the effective legal system because legal system must be highly efficient to impart the speedy justice. Complex legal language is indirectly hindering the timely delivery of justice in India since independence. Eventually, this has made justice system inaccessible to the needy and poor litigants.

8. Conclusion

It is noteworthy to mention here that a developing country like India, which has borrowed its legal system from west in English language, it would be impossible to change the language either to Hindi or Sanskrit. Language is a medium to convey the principles of learning and understanding. Language is highly important to educate people of India about their rights and duties. India since its inception has developed several unique languages and scripts from states to provinces. Hence, to

conclude, the author suggests that at first, India must choose a single language for all purposes as a national language under the principle of one nation-one language.

Secondly, by the time, we have to focus on development of English language in Indian Legal System, which is possible by significant changes in the legal education. Syllabi of the course English-Law and language, which is being taught to law students, shall be drafted by the Bar Council of India. It should be enriched with uniform practices aiming at establishing a transparent and accountable legal system free from lingual dynamics and hardships.

Lastly, eminent jurists and judges must accept the dire need of writing the judgements in simple words avoiding legal jargons, pro-verbs, legal maxims and other complex words and sentences. Judgments must be outcome based, written in simple words, signifying direct impressions, focusing on feasibility and free from absurdness and vagueness.

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