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Volume II	Number I & II	January-December 2019
Class Struggle: A Never-Ending Phenomenon <i>Dr. Ritu Sharma</i>	The Chinese Idea of “Tianxia” Vis-à-Vis Sino-Indian Border Dispute <i>Sakshi Srivastav</i>	
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EDITORIAL NOTE

Any vibrant society, across the globe, has to undergo a common phenomenon titled “social change”. An alteration of human interaction and relationship vis-à-vis each other lies at the core of a social change, which brings certain variations in the existing norms influencing cultural and social institutions. From the standpoint of its functionality, these changes are effectuated through movements, protests, reservation, blockades, etc. Some profound examples of such change have resulted from social movements in civil rights, women's rights, and LGBTQ rights, to name just a few. If not for these changes, it is not an overstatement that society would suffer from doldrums and could not unshackle itself from the miseries of poverty, inequality, trafficking, etc. It is also pertinent to note that these changes cannot be isolated from the active role of society in general and various stakeholders in particular. One such stakeholder in this process has been the academicians or scholars who through their constant research have endeavoured to make a meaningful contribution.

To further their role, various manuscripts under RSSR Volume-II have been painstakingly scrutinized and edited through its Editorial Team. It is no gainsaying that, the present issue is the culmination of various manuscripts dealing with a range of issues such as class struggles, crimes against women, caste-based elitism in an educational institution, drug abuse, human exploitation under the British colonial era, evolving and amending arbitration as a forum of grievance-redressal, persistent threat posed by China on India's security, comparative analysis of international arbitration centre, criminal liability of companies operating through e-commerce platforms, matrimonial offences and menace of climate changes along with consequent security concerns.

While delving deep into this issue, the opening submission titled “Class struggle: A Never-Ending Phenomenon” apprise us of the challenges initiated by the class struggle or class conflict. In further discourse, it mentions that no social progress can be achieved without class conflict. The progressive development of a society becomes faster when the class struggle of the exploited against the exploiters becomes organized and stubborn. Covid-19 have amplified this struggle and the plight of migrant laborer's, daily wage earners, and the socially marginalized sector in the pandemic condition has highlighted and reinforced the inequality of Indian society. In the present paper, the class struggle has been discussed on the backdrop of the global health crisis.

The second submission titled “Crimes Against Women in Punjab: A Socio-Economic Analysis” accentuates the alarmingly rise in number of cases of violence against women in Punjab. This study presents a critical analysis of poorly performing socio-economic indicators leading to economic stress and increased domestic violence cases in the state of Punjab. In this context, it pins

down various factors, which could be utilized as a parameter, such as literacy rate; sex ratio; poverty rate; unemployment rate; consumer price inflation; incidence of drug addiction, dowry demands; fertility rate; women empowerment; accessibility to the legal system and other social factors.

In the submission titled “Understanding Caste Privilege in Elite Educational Institutions”, author attempts to study how caste privilege is reproduced in elite educational institutions while simultaneously placing this question within the discourse of elite studies. It is befitting to have such elite institutions at a focal point due its progressive overtones and its persistent endeavour to reflect the ideals of equality, open dialogue, social justice, etc. while in reality they have sustained constant critique.

In the next submission titled “Drug Abuse: Punjab Finds Itself in Tight Grip of Addiction”, author initiates his discussion with the challenges of drug abuse and India and State of Punjab more specifically in the midst of this problem due to its proximity with Golden Crescent (Iran, Pakistan, Afghanistan). Despite it being declared contraband nationwide, its uses have amassed and has engulfed the youth of Punjab. The precise question this research intends to reflect upon is to figure out the way through which youth of Punjab could be cured from the scourge of drugs.

The fifth submission titled “Salt in India – And A Monstrous Hedge” starts with presenting some cold facts pertaining to availability of salt in India (generally speaking its abundance in India) while also mentioning its uses and effect in food. While getting impetus from English author Roy Moxham’s book, *The Great Hedge of India* author opines through this research that salt in this context means reading the story of British India from its gory backside. It is the story of human exploitation, corruption, death by the millions, and total changes of sociological structures. It then accounts for all the degradation suffered by masses due to the wrath unfolded upon them and their response.

“The Arbitration & Conciliation (Amendment) Act 2019 – Timelines Reinforced and Insufficiencies Addressed” is another fascinating submission bringing into the fore three laws approved by the Indian Parliament between 2015 and 2019 aimed at promoting arbitration. Additionally, it also focuses on Arbitration and Conciliation Act (ACA) 2015 which left unaddressed flaws in the fundamental Act, ACA 1996, which were remedied in the new Act, the ACA 2019.

By problematizing the security concerns for India, the submission titled “The Chinese Idea of “Tianxia” Vis-À-Vis Sino-Indian Border Dispute” author attempts to explain Chinese irredentism in relation to India by drawing a connection with the ancient Chinese doctrine of “Tianxia”. The research, inter-alia, also highlights the genesis and the history of the border dispute between these two large Asian nations. It concludes with some observation on gravity of

the threat posed by China on India's security and proffers some suggestions on tackling the same.

In yet another endeavour to foster arbitration as mode of redressal, the submission titled *The New Delhi International Arbitration Centre Act 2019 and the Arbitration and Conciliation (Amendment) Act 2019 – Twin Acts for Big Push in Institutional Arbitration in India* author focusses on the development of an International Arbitration Centre in New Delhi. The present research assesses the viability of Justice B. N. Srikrishna Committee Report, Parliamentary arguments during the passage of ACA 2019. It is supplemented with the study of international arbitration centres, particularly those in which Indian parties are valued consumers, has been conducted as a way to link to the goal of playing catch up in the area of arbitration.

Shifting focus from arbitration to the criminal liability of e-commerce companies, the submission interrogates the foundational underpinnings and role of culpability within the general scheme of corporate criminal law. While carving out the relevance of Mill's 'harm principle', according to which the individual autonomy can be facilitated by criminalizing conduct that results in harm to others, it contextualizes the same principle for the imposition of criminal liability on a corporate body through subjective fault, objective fault and no-fault offences. Whilst juxtaposing its application vis-à-vis the natural being, the element of *mens rea* is ardent to gauge in the case of corporate entities. With that in mind, author adopts certain approach which may contribute towards achieving legal certainty especially in prosecuting criminal corporations.

Next submission titled "Cruelty by Husband and his Relatives: A Fit Case for Compounding or Not?" is critical research in the realm of matrimonial offences. It seeks to evolve the standards of legal procedure when it comes to protecting the women from the suffering inflicted upon her, by her in-laws. There are numerous substantive provisions dealing with this challenging issue and more specifically Section 498A of Indian Penal Code, but plethora of instances suggest that this provision has earned a shady reputation given it is utilized as a weapon rather than shield by the angry wife. This article analyses the ingredients of the section, legislative provisions regarding compounding of offences, arguments in favour or against making Section 498A compoundable and the judicial attitude towards this offence.

In the final submission titled "Climate Change and Security Concern", the author paints a scary picture in the wake of threat posed by the climate change. To emphasize upon the claim, Papua New Guinea's representative, at the UN Security Council, had emphatically stated that the incessant dangers faced due to climate change would be far worse than those conflicts of the past where mankind was threatened by weapons and ammunition. In this backdrop, author shall deal with host of issue, though intertwined, such as firstly interplay

between climate change and conflict, secondly critically analyze the defense strategies adopted at national levels, adaptations in response to climate change, thirdly nexus between climate change and strategic policies implemented by various nations to enhance and strengthen their Geo-economic security, and finally analyze the status of climate refugees in international law and their plight after being forced to migrate as a consequence of geological adversities.

With these collections, this RSSR issue would present an enthralling opportunity to disseminate vital knowledge to our putative reader and aspire them for making contribution through their research in this domain. The Editorial team is immensely thankful to all the contributors for their patience and extremely insightful contributions. We also sincerely hope that the collection of articles encompassing various contemporary issues are beneficial and perceptible to the readers.



Ms. Jasmine Kaur

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CLASS STRUGGLE: A NEVER-ENDING PHENOMENON

Dr. Ritu Sharma*

1. Introduction

Social conflict is a vital part of every nation and it has potential of bringing about social change. It can range from polity to economy to culture to community. Social conflict is nothing but the outcome of class struggle which is dependent on social stratification and structure. Social class is determined in terms of property only, not by income or any other status. Usually same or similar classes share their interests and help each other while class struggle is seen between different classes or dissimilar classes. Political power and economic power are somehow responsible for this class struggle. Social mobility is a means through which individuals can overcome this class struggle or class conflict. Class struggle is present in all class-based societies but it is acute in China and western countries like Europe and the USA (Heller, 2019).

Class struggle is seen of various kinds, among which the most prominent one is the conflict between landlord class and working class. The major components of class struggle are power, rights, and interests (Davis & Moore, 1945).

Effective class conflict management can be done with effective communication, policy, and access to opportunities and basic facilities such as healthcare, education, etc. Classless society is simply not possible or desired as this will make society stagnant, saturated and motivation will vanish and growth will stop. So struggle for survival and struggle for betterment is required in all societies but strict supervision is to be maintained from the side of government so that nobody can be exploited and cheated in this process. The class struggle comes with competition, revolution, and inequality. German sociologist Max Weber said that class conflict is acceptable until it becomes a threat to the nation. The reason for class struggle is multidimensional from polity to the economy to cultural to communal and often caste and religion are also involved in it (Weber, 2018).

2. Formation of Classes

Previously social class was determined based on property (land mainly) but nowadays social class is formed based on wealth, prestige, occupation, educational attainment, influence, and monthly income. Many people believe in a simple three-

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class model i.e., upper class, middle class, and lower class. But the real scenario cannot be explained by three classes only. The maximum number of people belong to this middle-class stratum thus it can be divided into two categories i.e., upper middle class and lower middle class. Three P's are very important to determine class, and they are Power, Prestige, and Property. The result of growing socio-economic inequality is the formation of class, and class identity is vital to determine social interest and political mobilization (Eidlin, 2014).

Social stratification i.e., categorization of a group of people is an important concept in sociology which depends on wealth, family background, education, income, and power. Social class is often influenced by the caste system hierarchy. Social standing and social ranking can be changed by hard work and motivation. Cultural beliefs and value systems often reinforce the inequalities of the social classes. In some cultures, elderly people are given immense power to make decisions for the community based on their experience and moral values (Kumar & Sastry, 2020).

In some cases, the pattern of lifestyle is the determinant of social class, as the lifestyle is the reflection of one's social standing or success in life. The occupational structure is also an important factor to determine social class. Since lifestyle and occupation can be modified, thus social position or class may change. On the other hand, the caste system is a closed stratification system in which the caste designation by birth cannot be changed. The caste system is dependent on family background and occupation and the class system is dependent on individual achievement and success (Manstead, 2018).

3. Classes and the Class Struggle

In the class system occupation is not fixed at birth as individuals have full freedom in the choice of the profession based on talent and interest. So, the class system is an open form of social stratification. The social class helps to form social identity which is crucial for occupational goals and achievements (Aries & Seider, 2007).

Class struggle and class conflict increase with urbanization and social mobility. When class struggle reaches the top, it is reflected in political agenda and economic reforms, but generally, class struggle is present in each and every society. So, this struggle is present in all three classes of society lower, middle and upper, and the intensity of struggle depends on the individual needs and motivation. But sometimes, it is related to government policies and recession. In the pandemic situation of COVID-19, class struggle is reaching its highest level as many people are losing their jobs, remuneration is deducted, losing business scopes

and marketing interventions, and many more. Thus, people are adjusting their lifestyle patterns and exploring new virtual interventions to earn their livelihood (Jha, 2020).

According to Karl Marx, 'class consciousness' comes from 'political consciousness'. But nowadays in a democratic environment the definition of class consciousness has changed and it is more dependent on social status or social standing; ambitions; success; achievement; competition; etc. Thus, class struggle is reduced to some extent now as compared to the time of Karl Marx and the approach is now more apolitical and personal. People are more concerned now in their individual goals rather than the goals of the community. People are more involved in increasing the standard of life and to fulfill their selfish motives. Thus, vertical social mobility is seen everywhere in the society. Working-class or wage workers are still present in our society but their income has risen and their quality of life has also improved a lot in the past decade. People are more socially conscious nowadays thus exploitation of lower-class people has diminished by establishing mutual respect and dignity of labor (Ansart, 2001).

4. Marxian Class Theory

Marx was the pioneer in this sociological field of class struggle. He explained this concept with the help of capitalism and productivity. He said that productivity is the driving force for social evolution and social mobility. On the other hand, Emile Durkheim said that elements of the society are interdependent so the class struggle is necessary for the proper functioning of society and survival of the society (Brown, 2018).

According to Marx, class originates from materialistic conception in the light of communism i.e., in the favor of the working class or lower class. He developed a two-class model in which there is an oppressor on one side and the oppressed on the other side. Marx and Engel both have viewed the concept of class from the angle of struggle, conflict, and revolution which comes from opposing the system from lower strata (Xiao, 2012).

The oppressor is called the ruling class and the oppressed are called the working class or laborers. He said that in capitalist society we cannot avoid class conflict. Capitalists' attitude is not the only reason behind class struggle, the traditional structure of society and the attitude of workers are also the key factors behind it. This attitude refers to class consciousness which comes from self-image and identity formation (Milner, 2019).

The competition between rival capitalists is responsible for the difference between productivity and distribution of resources and goods. In this turmoil, the ultimate loss is faced by common people or masses. Karl Marx had envisaged and advocated about contingency and immediate class positions which are also dynamic and crucial in capitalism (Milner, 2019). Marxian class struggle is a laborcentered movement that is referred to as neoliberal globalization. All the Marxian interpretations for class struggle are Eurocentric and directly related to polity and economy (Levien et al., 2018). The whole capitalism concept deals mainly with productivity networks, capital money accumulation, and wage hierarchy. Marx termed class struggle as a feverish agitation which is a growing pandemic i.e., spreading in the whole world slowly at that time (1847). He also cultured about the global nature of capitalist expansion and successful industrialization which were the two major determinants of class conflict (Brown, 2018).

5. Class Conflict in India

The class conflict originated in India during British Raj and colonial rule affected India the most and created elite class and working class during that time. From 1925-26, India saw many strikes and agitation by factory workers and they demanded land, food, and peace, especially in Mumbai and Calcutta. This class conflict eventually turned into a movement for freedom and liberty. Indian freedom fighters got inspiration from the French Revolution (1789), the Italian Revolution (1871), the Russian Revolution (1917), and the Irish revolutionary struggle (1919-1921). India achieved its political freedom on 15th August 1947 and a new constitution was written based on equality, equity, justice, liberty, fraternity, etc. But farmers and laborers are still exploited and given meager wages or value for their commodity or services (Roy, 2018).

The misery of the Indian working class continues but the intensity is reduced from the past. Humanitarian socialism is the only way to maintain peace and harmony in society and in people's lives. It can only be achieved by avoiding imperialism which is a kind of superiority or money power over the masses (Roy, 2018).

Conflict can bind people together and can foster cooperation and solidarity. Sometimes social conflict is necessary for social identity formation and moral improvement of society. Nationalism or patriotism can work like glue during any kind of social conflict or struggle. But communism and extreme leftism are deep-rooted in India, especially for the rural-poor and neglected masses. They are deprived of education, transport, nutrition, health, and many more basic facilities

and services. Some villages are still far from electricity or primary school and roads are poorly maintained. People remain silent most of the time but that does not mean there is no social conflict. Leninism, Marxism, and Maoist form of movements are proven as the only solution many times to resolve class struggle in its acute form. According to Marx, social structure is dependent on economic structure and political structure and he also added that modern society is facing not only social conflict but also alienation i.e., isolation of the individual from society, work, and oneself (O'Kelly, 2018).

At present, the minority or immigrant workers are marginalized in India and they also lack social support. In the pandemic situation of COVID-19, we witnessed the tremendous harassment and deaths of these immigrant workers. They do not get social support and support from the government as well, even in emergencies. In the labor market they have to face communal and ethnic conflict also, and mostly they are given very low wages. Trade union politics often play behind class conflict and religion-specific differences among the working class who live on daily wage (Dasgupta, 2009).

6. Effect of Class Conflict on Employment

Globalization or global transformation is giving tremendous uncertainty and insecurity in the employment sector which is enhancing class conflict (Standing, 2015). Gender division of labor and ethnic division of labor are some of the reasons behind unemployment in India. Urbanization, industrialization, and modernization are to some extent increasing the class conflict but also increasing employment opportunities. The class struggle comes with insecurity and uncertainty which can affect the global economy sometimes. Though the working class is the spine of society, they are often exploited in terms of labor as well as wage. The top-level group in the social structure pyramid is called the super citizens and they have informal power also - in terms of political, financial, and social power, but their number is less compared to the population of the country (Bhaumik & Chakrabarty, 2006).

The majority of people are from the middle-class level and are salaried employees. In the private organization, no rules are followed during remuneration fixation, and no job security is ensured. The majority of the salaried private jobs are contractual and nowadays government organizations are also taking term based contractual employees. Thus, middle-class people also face a challenge to run their family (Bhaumik & Chakrabarty, 2006).

Privatization of public sectors is also a serious threat for employees as the salaries may shrink, many can lose jobs and the designations also may fall. During pandemic COVID -19, many are losing their jobs and salary is being cut by stating showing various multiple reasons and also, privatization of many government-owned companies in sectors such as telecommunications and railways are in the process. Small and large businesses are also facing challenges during COVID –19 outbreak as lockdown is strictly maintained across the globe. This pandemic affected the food, accommodation, travel, retail marketing, manufacturing, and distribution sectors in grave ways (Gössling et al., 2020). Administrative works are also hampered and many people are facing a financial crisis that will continue for many months, maybe years. New income ideas and virtual/digital strategies can solve this problem of 2020. Senior citizens and children below 10 years old are the most vulnerable group for infections by COVID -19. But in India the masses belong to the working class and they don't have medical insurance or retirement benefits. During any kind of medical crisis, hard money is required to save a life but during COVID -19, the global economy is crashing, which is alarming for our present and future (Nicola et al., 2020).

7. Healthcare and Distinction of Class

Public hospitals are facing many serious challenges over the past few decades which have not been addressed properly till now. The notable challenges are poor infrastructure, poor manpower, unmanageable patient load, poor quality of services, and high expenditure (Bajpai, 2014). Now during a pandemic situation like COVID -19, these drawbacks are coming out with many other issues like patient refusal. Patient refusal is done based on high body temperature that is one of the symptoms of COVID -19 but also symptoms of many other diseases like meningitis, typhoid, mumps, influenza, and so on. Private hospitals usually do not refuse patients as they give services in return for huge amount of money which is not affordable for the lower middle class or lower-class people. In a study, it is seen that waiting time at non-emergency healthcare services has a positive correlation with social class and caste (Shaikh et al., 2018).

In the same study, it is also said that socio-demographic factors like basic education, family income, social status, geographic location (urban or rural), etc. are also linked with waiting time at healthcare services. They have proved that lower social class people have longer waiting times at non-emergency healthcare services (Shaikh et al., 2018).

The cost of treatment is also increasing day by day, which is painful for the lower strata of society. Only the mediclaim holders and those who have medical benefits from the company they work for can get quality service. The common mass of India is the rural poor people who have to sacrifice their lives without any proper treatment. A situation like COVID-19, getting admission to a city hospital is a big challenge and after getting admitted the cost of ICU (Intensive care unit) and ventilator for critical patients are very demanding and difficult to attain for middle-class families (Shah & Jaffrelot, 2020).

Recently, in some city hospitals in India, home-care services for COVID -19 patients have started which cost around Rs.500 a day. Similarly, the COVID-19 monitoring kit is also available from July with an expense of Rs.5000. This health crisis is not only felt in developing countries, developed countries like the USA are also facing a healthcare crisis during the 2020 pandemic and death toll of coronavirus patients is increasing rapidly for the last three months. The world economy has crashed due to COVID -19 pandemic and a political game has been started in the meantime.

8. Conclusion and Recommendations

Class struggle has increased a thousand folds during pandemic 2020 which is alarming for the ruling party or governing body. The suffering of the working class has increased because of the pandemic condition and due to lockdown. The poor laboring class people have suffered most in this condition. The marginalized sections of the society faced an immense crisis due to the volatile job market and also the meltdown of the economy. This crisis has engulfed both the formal and the informal working-class people. This crisis has pushed a major section towards poverty, downsizing the savings of the working class.

The poor migrant laborers, skilled technicians, and daily wage earners are the most affected section of society. Even the socially marginalized groups such as Dalits, Muslims, and Adivasis also will face suffering in the coming days. Therefore, mobilizing the struggling poor people towards a more secure economy as well as a healthy future depends on how this class inequality is dealt with in the present situation. The existing legal framework in India is inadequate and lacks specific statutory provisions to deal with class inequality. This demonstrates a need for a holistic law, in consonance with international standards, to ensure effective preparedness and response to such a crisis.

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CRIMES AGAINST WOMEN IN PUNJAB: A SOCIO-ECONOMIC ANALYSIS

Ojasvi Goyal*

1. Introduction

The lack of women's empowerment is a perilous form of inequality which is quite evident in the region of Punjab. While there are countless roadblocks in the way of empowerment, violence against women is both "a cause and a consequence" of gender inequality. Hence, a two-way implication exists between the violence against women and gender inequality. Undoubtedly, increasing crimes against women are underpinned by the persistence of a male dominating society and existing gender hierarchies. In addition to that, it is significant to draw the attention of policymakers towards the (often unnoticed) economic downturn which is stimulating the acts of violence against women. The erstwhile title of "Most Prosperous State" is ensnared in a economic quagmire faced by Punjab. The state's fundamental economic variables are in a dismal state. The natural corollary of a down turning economy is peaking unemployment rates and high inflation which is bound to manifest psychological stress and building frustration amongst people. As per National Family Health Survey (NFHS) 2015-16, one in three ever-married women aged between 15 to 49 years' experience a physical, sexual, or emotional form of spousal violence. Domestic violence cases are more likely to happen when the family is going through a financial crisis which leads to the building up of frustration and psychological resentment in the so-called breadwinners (males) of the family. There exists a strong inverse relationship between financial stability of the family and a woman's risk of being a victim to domestic violence. The likelihood of violence decreases as the social and financial status of the family improves over time. The widespread socio-economic dependency of women, the fear of social exclusion and banishment, the lack of prompt response to violence sees the Indian woman face continuing violence and intimidation. As the economic recession has worsened and unemployment as risen in Punjab, it is bound to impact the crime rates. Hence, in order to address the issue of violence against women in the policy discourse and develop specific programs and policies, it is of utmost significance to analyse the causative socio-economic factors leading to violence.

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In the present paper, an attempt has been made to provide a snapshot of major crimes against women in Punjab with reference to sex ratio, dowry deaths and all the other crimes committed with an intent to outrage a women's modesty.

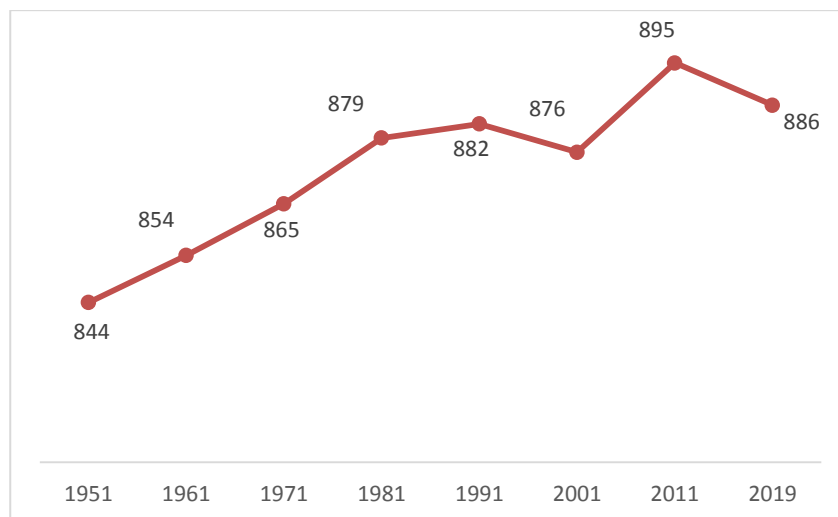
2. Research Methodology

Keeping in view the nature of the study, both quantitative and qualitative tools are used to draw inferences from the secondary data. The data has been collected from various official sources such as National Crime Records Bureau (NCRB) Handbook, NFHS, Economic and Statistical Organisation-Punjab, NITI Aayog, Periodic Labour Force Survey, National Commission for Women etc.

3. A Snapshot of Key Statistics

3.1 Sex Ratio: Across the country, the prominent northern States - Punjab and Haryana have assimilated the worst sex ratio amongst all. Sex Ratio is defined as the number of females per 1000 males. The ratio can be used as a parameter to gauge the status of women in the society. The sex ratio in the state of Punjab for last seven decades is shown in figure 1.

Figure 1: Sex Ratio in Punjab for Last Seven Decades

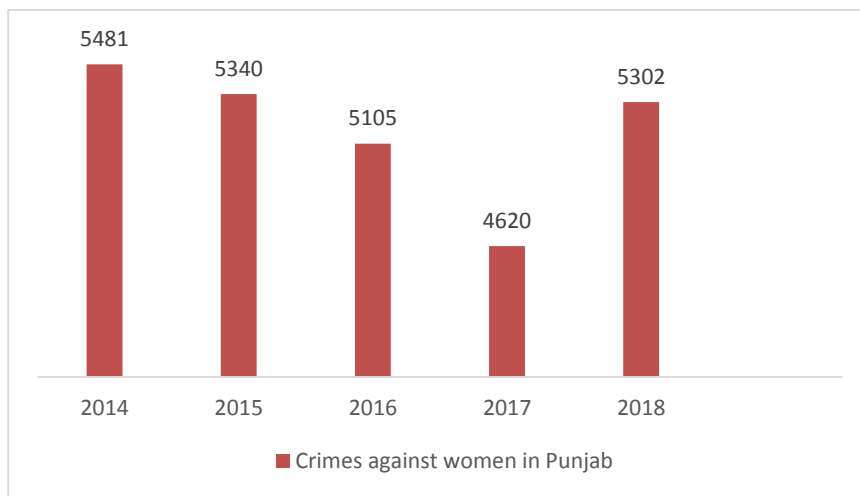


Source: Gender Statistics of Punjab (various years), Economic and Statistical Organisation, Punjab

From 1981 to 2019, the sex ratio in the state has improved by a meagre 0.79% which points out towards the inefficiency of the state to address the issues centered around women empowerment. In order to establish the correlation between poor sex ratio and increasing crime rates against women, it is important to consider divergent arguments in this regard. The argument states that as the sex ratio worsens that is the number of females per 1000 males falls, the prospect of a man easily finding a wife worsens. As more men are not able to derive the stability that comes along with marriage, they tend to channelize the extra testosterone by engaging in violent activities and crimes against women. The first argument points out towards an indirect relationship between sex ratio and crimes against women. Also, a highly masculinized society puts women at a greater risk of partner violence/domestic violence and controlling behavior by husbands. Some studies have pointed out that a worsening sex ratio also assigns greater weightage to women's reproductive capacities and lesser weightage to their education and careers.

In a largely male dominated Indian society, the preferred sex of offspring remains male. A girl child is still considered as a liability and not as an asset, a consumer and not a producer. The tapered perspective of patriarchal society has led to gruesome practices of female foeticide, infanticide. As per the report of National Crime Records Bureau, a total of 1728 cases of miscarriage, foeticide, infanticide were recorded in India for the year 2018. Out of 1728 cases, Punjab has recorded 54 of such cases which accounts for 3.12% of total cases in India. Demographic experience in developed countries suggests that the preference for male child declines with economic development. The present study asserts that since the economic growth is not gaining momentum in the state, the society's stereotypical behavior towards women is also in a grim state.

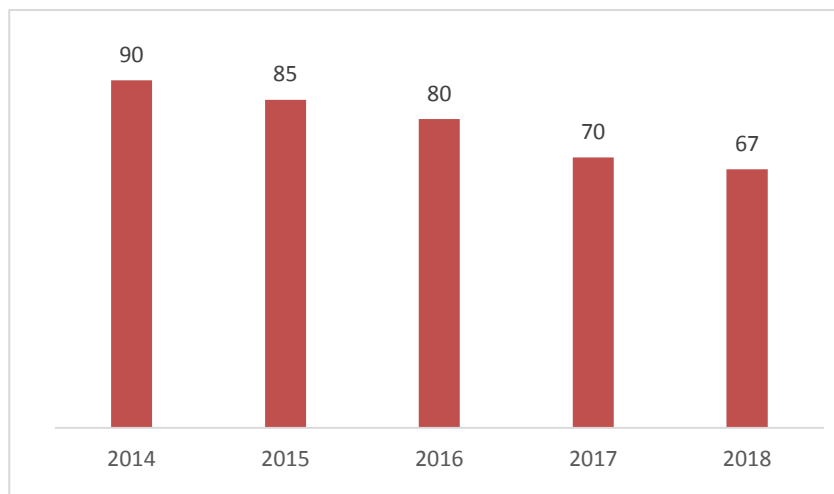
3.2 Crimes Against Women: Majority of crimes of violence against women can be categorized as "Cruelty by husband or relatives"; "Assault on women with an intent to outrage her modesty"; "Abduction and Kidnapping" and "Rape". As per NCRB's data a total of 5302 cases under various provisions of law were registered as crimes against women in the state of Punjab. For the last 5 years, the crimes against women have been centered around 5000 with a slight dip observed in the year 2017 as shown in figure 2.

Figure 2: Crimes Against Women in Punjab during 2014 - 2018

Source: National Crime Records Bureau Handbook 2016, 2017, 2018

3.3 Dowry Deaths: ‘Dowry’ is the most paradoxical of all social crimes. The society’s perception of dowry demand is widely acceptable but the guilty are still ostracized. Dowry has become an instrument to gain quick upward financial transition. Although the provisions and acts applicable to dowry are different from domestic violence, it is imperative to look at dowry deaths as a manifestation of extreme domestic violence where a women loses her life at the end. The subordination of women gender in the dowry related deaths navigates from dowry demands to dowry harassment to dowry deaths. In India, dowry demand qualifies as a tradition whereas dowry related harassment, violence and death are considered as a crime. In Punjab, despite countless measures undertaken to eliminate social evils, the numbers of dowry deaths are still substantial as shown in figure 3.

The state recorded 126 dowry deaths in 2012, the number reached 90 in 2014, 70 in 2017 and 67 in 2018. The data presented by NCRB reveals a consistent trend of female dowry deaths accounting for 40-50% of total female homicides recorded annually in India. Despite having a strong legal framework, the practice is prevalent throughout the country.

Figure 3: Dowry Deaths in Punjab during 2014-2018

Source: National Crime Records Bureau Handbook 2016, 2017, 2018

Often, it has been discussed that the number of cases reported can never project the true crime rate prevailing in the region because a considerable number of crimes against women are not reported. Out of the cases reported in Punjab, the state tops the dubious list amongst all the other states in terms of having the highest pendency rate of cases. Pendency rate is calculated as the cases on which the investigation is pending at the year end out of total cases registered for investigation in the same year. By the end of 2018, Punjab had 36,295 cases pending. The high pendency rate of 50.8% points out towards the inefficiency of the system and also the rampant corruption at the grassroots level.

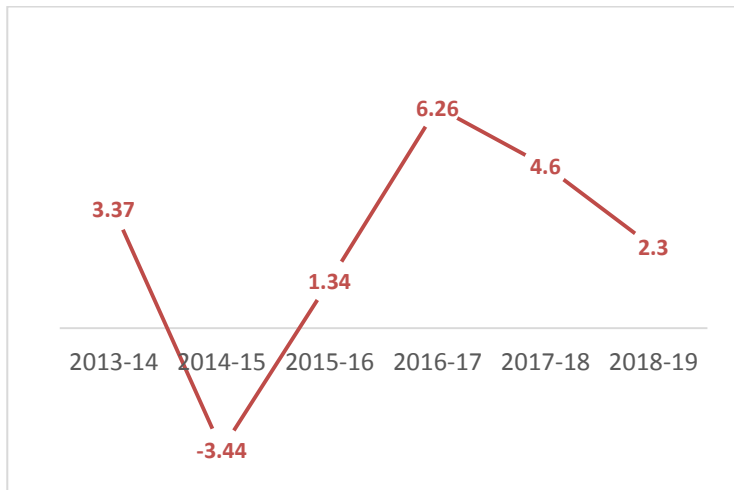
The political interference in police functioning also acts as a bottleneck behind such poor disposal of cases resolved. The pendency rate is lower in states like Jharkhand (46.5%), Uttarakhand (45.9%) as compared to Punjab.

3.4 Socio-Economic Causative Factors: Multiple economic and social challenges have engulfed the state in the last decade which are impeding its growth at the macro and micro level. The study asserts that the impact of ever worsening economic variables are percolating down to individual households which is in turn leading to increasing rates of crimes against women.

3.5 Agriculture Sector: Over the years, the agriculture sector in Punjab has not just witnessed a decline rather the growth rates have gone negative in the year 2014-

15. The sluggish growth of agriculture sector, which was considered to be the backbone of Punjab's economy has aggravated the economic downturn in the state. Figure 4 indicates the growth rate in the agriculture sector of Punjab during 2013 to 2019.

Figure 4: Agriculture Sector Growth Rate (%) in Punjab during 2013 to 2019



Source: Economic and Statistical Organization, Punjab

According to Census 2011, agriculture sector in the state affects more than 7 million people who directly or indirectly depend on this sector. The primary sector is witnessing large fluctuations in terms of its growth rate, from more than 3% in 2013-14 to a negative 3.4% in the subsequent year. In the year 2018-19, the growth rate was centered around 2% which is quite dismal. Over the period 2004-05 to 2013-14, agricultural gross domestic product (GDP) grew by just 1% per annum, compared with the national average of 3% per annum. Punjab's economy has seen a slowdown, mainly due to stagnation in agricultural productivity.

3.6 Unemployment: Punjab ranks 8th in terms of unemployment in the country. Considering the comparative edge which the state has in terms of its large working age population, the challenge is to provide job opportunities which align with the skill sets of the workforce. The state is going through a critical transition phase where the young workforce is exiting the traditional agriculture sector because of its highly fluctuating returns. There is a desire to secure white collar jobs manufacturing and services sector but the lack of requisite skills has left the state's youth in a limbo.

Table 1: Labour Force Participation Rate (LFPR), Worker Population Ratio and Unemployment Rate in Punjab

Parameter	2015-16	2017-18
LFPR	42.7	46.5
Worker Population Ratio	40.2	42.9
Unemployment Rate	5.8	7.7

Source: Periodic Labour Force Survey 2017-18 and EUS 2015-16

Labour Force Participation Rate (LFPR), Worker Population Ratio and Unemployment Rate (UR) in Punjab are shown in Table 1. The data shows that both LFPR and Unemployment rate have witnessed a steady increase. The additional data LFPR for females is abysmally low at 17.2% which is much lower than the national average of 25%. Gender gap in work participation rate in Punjab is much higher that is 41.25% as against 27.75% in India. There has been a widespread perception of linking unemployment rate with crime rate. The incidence of domestic violence varies with the economic cycle and rising unemployment has in a way triggered domestic violence against women in Punjab. It is to be highlighted that although the job creation by the state has largely remained positive, female labour force participation is low and declining over the years. The direct consequence of unemployment is financial stress in the families. Unemployment can produce a chain of effects as it pushes the household towards poverty which further leads to deprivation of resources and education. The vicious trap can lead to violent behaviors amongst men and they are more likely to indulge in violence.

3.7 Poverty Rate: Punjab was considered to be India's most prosperous state since independence. Yet, economic growth has been modest in the state after 2005 and some regions within the state display high levels of poverty. Poverty reduction in rural parts of Punjab calls for diversification of the agrarian economy, which the state is unable to do. Reportedly, there is a budding addiction to psychotropic drugs and alcohol among Punjab's urban and rural youth. The district wise analysis suggests that there exist large areas with high poverty in many parts of rural Punjab. Firozpur district with 73% of population in the rural areas has the highest poverty rate in the state. Given Punjab's rural prosperity and high demand for agri-labour, one may have expected the correlation between agriculture labour and poverty to be less prevalent in this state. But close to half of Punjab's agricultural workers are landless and the

micro-level analysis shows exceedingly high proportion of agricultural labourers in areas of high poverty rates. Also, it is noteworthy to highlight that Punjab is the only state where urban poverty rate 9.2% exceeds rural poverty rate 7.7%.

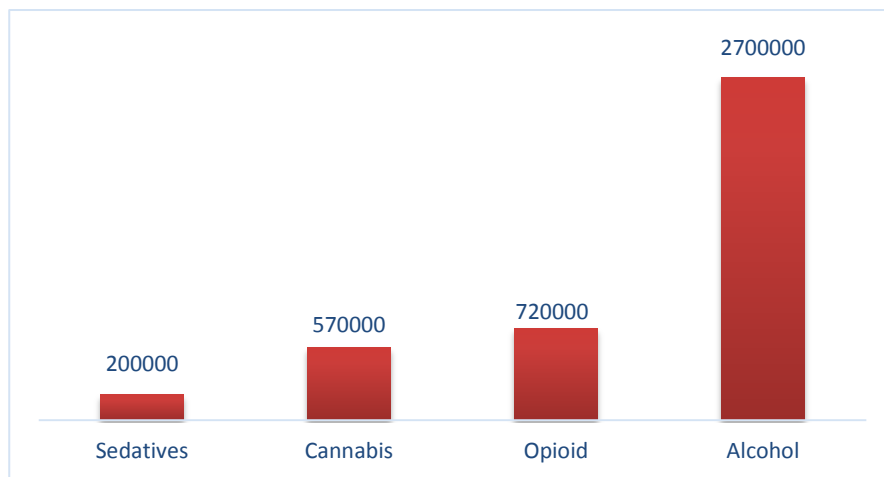
3.8 Literacy Rate: In the last decade, Punjab has made substantial progress in redefining the literacy levels in the state. According to NFHS 2015-16, the female literacy rate has increased by 11 percentage points from 70.7% in 2011 to 81.4% in 2015-16. The budget allocation under education head has also been substantially raised but the average annual dropout rate at the primary level has increased, from 1.3% in 2014-15 to 3.1% in 2015-16.¹

In Punjab, 84% of primary-age students were enrolled in primary school in 2015-16, but only half (51.6%) of secondary-age school students were enrolled in secondary school. Though learning levels in the state are higher than many other Indian states, many students are left behind, and others don't learn at the grade level. For instance, in 2016, in rural Punjab, less than half (48.7%) of grade III children surveyed in households could subtract, while as few as 35.2% could read a grade II level text. In order to build the relationship between education attainment and crimes against women, it is important to highlight that high education levels do not necessarily imply a decline in number of crimes against women. But this parameter is of immense importance because a higher level of education attainment in women can play a significant role in opposing the acts of violence against them. Similarly, if a child has attained primary or secondary education that also reduces the likelihood of his/her mother being a victim of domestic violence or any other crime. Education can be referred to as a weapon to fight against the crimes and also lessens the risk of victimisation. An educated person is quite aware of the consequences of committing a crime which an illiterate person might not.

3.9 Drug Abuse/ Substance Abuse: The unique and deeply entrenched challenge confronted by the state of Punjab is of drug addiction and abuse. According to Punjab Opioid Dependence Survey, there are approximately 2.3 lakh opioid dependents and 8.6 lakh opioid users in the state whereas more than 10.9 lakh sedatives users.

¹ Source- District Information for System Education (DISE) Data

Figure 5: Number of Users Seeking Help Against Addiction



Source: Magnitude of substance use in India 2019, NDDTC, AIIMS

The state government follows a ‘Zero Tolerance Policy’ against drug dealers and suppliers. It proposes ‘permanent cure, perfect rehabilitation’ through a new legislation for the speedy trial of those who engage in the drug trade, and confiscation of their property, along with a policy of rehabilitation for those who ‘have been wrecked by this evil’. Anyone who registers themselves at a district de-addiction centres treated free of cost, and receive training so that they can earn their livelihood.

4. Recommendations and Way Forward

In order to address the plaguing issue of increasing crimes against women in Punjab, there is a need to look beyond the “Carrot and stick” approach against the offenders rather follow a “Dig in deeper” approach to analyse the causative factors leading to such crimes. An in-depth analysis of causative factors and finding appropriate rectification mechanism can bring about a change in the crimes against women. There exists a dire need for the state to tackle the menace of substance abuse by using a multi-pronged approach to catch the drug peddlers in the region. In terms of demographic advantage, there lies a huge untapped potential of young workforce in Punjab by channelizing their skills in the desired manner. The state has to provide more opportunities for women depending on their skills and competencies. As the economy is going through a critical transition phase from agriculture to industrial and

services sector, the state needs to impart relevant skills to the workforce so that they can be absorbed into the labour market.

As the study has highlighted the concern of very high pendency rate in Punjab which points out the inability to ensure accountability and redress for victims. This has in turn led to an increase of violence against women and the continued discriminatory treatment of victims. There is a need to steadfast the process of solving cases and fast track courts needs to be strengthened to provide quick redressal of grievances.

Although the state has adopted legislative measures to address the crimes specific to women but significant loopholes remain in the system. Punjab should adopt a holistic approach that addresses the root and structural causes of violence against women. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the community and on printed and electronic media platforms, the elimination of violence against women remains a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women

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UNDERSTANDING CASTE PRIVILEGE IN ELITE EDUCATIONAL INSTITUTIONS

Ravneet Param*

This essay is an invitation to begin a conversation on elite educational institutions in particular and elites in general. The attempt is to understand how privilege is reproduced through such institutions. My attempt is to understand how caste privilege is reproduced in elite educational institutions while simultaneously placing this question within the discourse of elite studies. The attempt is to understand how such institutions obscure structural inequality that they help reproduce (Khan 2012). However, this is not to say that institutions which aren't considered as elite are less exclusionary (Deshpande and Zacharias 2013). The importance of looking at elite educational institutions as exclusionary spaces or as spaces which reproduce caste privilege lies in the fact that these institutions symbolise in particular (or higher education in general) as gateways of aspirations, mobility and success. Narratives of progressivism, equality (especially after implementation of affirmative actions in admission and seemingly increased visibility of students coming from historically oppressed backgrounds), open dialogue, social justice etc. continue to revolve around such institutions even after a sustained critique, both academic and political, overturning the same (Guru 2002, Kumar 2016, Mahanad 2016, Madhukar 2016).

1. Introduction

Social science practice in India has harboured a cultural hierarchy dividing it into a vast, inferior mass of academics who pursue empirical social science and a privileged few who are considered the theoretical pundits with reflective capacity which makes them intellectually superior to the former. To use a familiar analogy, Indian social science represents a pernicious divide between theoretical brahmins and empirical shudras. (Guru 2002, 5003)

Guru's articulation is a reminder of unsaid but extremely palpable hierarchy within social sciences in particular and Indian academic space in general. Student's protests after Rohith Vemula and J Muthukrishnan's suicide (and several others) in University of Hyderabad and Jawaharlal Nehru University (UoH and JNU henceforth) respectively, violently brought the narrative of institutional apathy towards students coming from marginalized and oppressed identities to the

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forefront. Muthu wrote on a social networking site, a couple of days before taking his own life,

There is no equality in Mphil/Ph.D. Admission, there is no equality in Viva-voce, there is only denial of equality, denying Prof. Sukhadeo Thorat recommendation, denying students protest places in administration block, denying the education of the marginals. When equality is denied, everything is denied. (Krishnan, Facebook post, 10th March, 2017).

Muthu Krishnan's angst against an educational institution which is considered one of the most premier universities of this country, reflects experiences of scores of students belonging to marginalized identities within such spaces, which claim to be progressive and egalitarian. His status update is a testimony which underscores the exclusionary nature of elite educational institutions in India. Bargi (2017) writes, how for modern institutions these deaths were a condition to recognize these lives as violated and how at the same time they became a moment of liberation because "It enabled many Dalit students to prove that they are being marginalised in spaces that are modern and enlightened" (p. 3).

Guru (2002) while writing about the importance of the principle of egalitarianism within social sciences as a discourse in India, talks about the division of the same in *inferiorized empirical social sciences and the privileged abstract social sciences* (p. 5003). His argument revolves around above mentioned cultural hierarchies which operate through academic and institutional structures. The importance of Guru's argument lies in the fact that it paves the way to uncover academic institutions', which according to him are agraharas, exclusionary practices. He argues how the practice of social science continues to remain exclusive, undemocratic in nature and lacks egalitarian character (p. 5004).

He further argues how the academicians belonging to 'twice born' communities monopolised institutions to maintain historical lead in epistemological status as well as canonised discourse which entailed defining ground rules and compartmentalising institutions around chosen themes. These ground rules, according to Guru, are inhibiting and the language used is frightening which proves as discouraging for dalit/bahujan scholars who are trying to move from the empirical to the theoretical.

2. Literature Review

The prospective aim of this study is to unveil ways in which structural inequalities are produced and reproduced through elite educational institutions while simultaneously looking at how groups which have been historically occupying

dominant positions reproduce their caste privileges. Newman and Deshpande's work suggested that inclusion in one of these institutions doesn't translate into a desired employment specifically for students coming from marginalized backgrounds. Most scholarly (Khan 2011, Howard and Gaztambide-Fernandez 2010, Maxwell 2015, Van Zanten 2015, Subramanian 2015) work on elite educational institutions interrogate the way elite lives are being reproduced in those institutions. Khan (2012) describes elites as those who have vastly disproportionate control over or access to a resource. Within this definition we can think of elites as occupying a position that provides them with access and control or as possessing resources that advantage them.. Understanding elites means not just making sense of the resource they control or have access to; it also means considering the conversion of that resource into other forms of capital (p. 362).

To understand increasing inequalities, the gaze is being shifted from those being marginalised to those having access to power and resources. The study of elite involves scrutinising economic, social, cultural and political capital which could entail looking at the role played by institutions (in reproducing elites lives and capital) such as schools (Aggleton and Maxwell: 2010, Khan: 2012, Colin and Khan: 2013), families, marriage, subcultures in producing and reproducing inequalities and privileges.

Khan (2012) while tracing the trajectory of American scholarship on 'elite theory, talks about how there is a lack of coherent explanation of the term 'elite'. He observes two approaches taken by various scholars— a) those following Weberian understanding of class think of elites in relation to resources and power they possess; b) those following a Marxist approach think of elites as occupying dominant positions within social relations (p. 362). The scholarship of the elite, then, is a study of power, dominance, hegemony and the scrutiny of the processes of reproduction of privileges from the top. He identifies five resources mobilized by elites: political, economic, cultural, social and knowledge capital. He further identifies three institutions and social organizations which aid in creating resources: clubs, families and schools.

Weis (2010) while referring to literature underlining how the intersect of class and race in families and educational institutions influence academic achievement, college-going patterns and social and economic outcomes, concludes that working class and poor students are less equipped than their privileged counterparts for college and university admissions and subsequent stable, high paying jobs (p. 5). He notes that even though the number of such students taking admission in

institutes for higher education has increased, the expansion of educational opportunities has benefitted those who are already privileged (p. vii). He warns that by paying disproportionate scholarly attention to the ways in which educational institutions marginalize or open up opportunities for the historically disenfranchised, we might ignore how such institutions work for the privileged and how the privileged actively work to create and maintain distinction.

The invitation is to centre ‘privilege’ within the conversations about merit as well as exclusion. The gaze, as I mentioned earlier, needs now to be shifted to the privileged, rather than the excluded to understand how privilege becomes a fundamental tool through which new modalities of exclusion take place within elite educational institutions.

3. Elite Educational Institutions as Dens of Caste-Based Discrimination

Bargi (2017) writes, how hostility to the reservation system is characteristic of the Hindu mind’s reluctance to share a common space with the avarnas. Humiliation becomes an everyday experience of historically oppressed groups as their existence in classrooms, canteens or conferences is not even recognized. Guru (2002) shares a similar experience of humiliation faced by dalit students when they try to question the ‘big boss’ of social sciences. Sukumar (2013) echoes same experiences of dalit students. Bargi further argues that humiliation becomes a potent tool of harassment because there is no way to prove it and becomes legitimate because dalit, bahujan, adivasi students’ presence is already marked as illegitimate in a casteist academic space.

A report (2007) brought out by a committee headed by SK Thorat to investigate cases of harassment and abuse of SC/ST students at All India Institute of Medical Sciences (AIIMS) subsequently found out that there was no provision of remedial coaching for SC/ST students which all government funded educational institutions are required to implement (p. 63). 69 percent of students reported failed support from faculty members because of reasons cited such as inaccessibility and indifference. Around 72 percent of students reported experience of some form of discrimination. 84 percent of the total respondents claimed that their evaluation in viva voce and practical exam was not fair. 76 percent of students reported that their caste background was asked by the examiner and 84 percent claimed discrepancy in their grades because of their caste background (ibid 65). There is a presence of anti-reservation agitation at AIIMS in which The Resident Doctors Association plays a significant role and those resident doctors who didn’t take part of the agitation had to face severe repercussions (ibid 67).

Quoting Sheetal Sathe's song *Hum padhte hai toh jatiwad khoon kholta, phir unke munh se jatiwadi manu bolta*, Jadumani Mahanad (2016) writes how dalit students use education as a tool in their fight against caste, brahminism, patriarchy and capitalism. He asserts, while writing about the idea of a university that it is supposed to be a space for learning and critical pedagogy, that education's role is also to transform conservative socio-cultural relations to build an egalitarian society. However, dalit students' are reduced to their immediate identity the moment they question the established authority of the right wing as well as the progressive left. Rohith is remembered and idolised after his death by all shades of political organisation, he says, but Ambedkarite politics' presence within Jawaharlal Nehru University (JNU) campus was not even recognized.

Describing universities as modern day *agraharas*, Sukumar (2016) argues how *The nature of the classroom is exclusive, partisan and humiliating, thereby creating a stigmatising space. No wonder, in many institutions of 'higher learning' in India, students are forced to kill themselves, to escape the dishonour that they experience in the classroom.* (p. 1). Between 2007- 2011, around 20 dalit students in premier universities were forced to take their own lives because of caste based discriminatory practices, he writes. He reiterates what many students from historically oppressed identities through various students' political organisations within campuses have been claiming that how university as a space needs to be democratic as opposed to being a site for reproducing structural inequalities (ibid 2).

Newman and Deshpande (2007) attempt to trace different outcomes of post-university employment outcomes between dalit and non-dalit students from elite educational backgrounds. In their study, labour market becomes a site to uncover differential treatment received by dalit and non-dalit students because of their respective caste backgrounds. This study is important because it underscores the point that a mere inclusion to an elite educational institution doesn't suffice, the idea is to go beyond and look at ways in which caste and class become factors in first being at ease in a university space and subsequently getting employed (Deshpande and Zacharias 2013). Their work is inspired by Deirdre Royster's (2003) study who looked at the school-to-work transition for working class black and white men (p. 4133). Similarly, their sample is taken from Delhi University, Jawaharlal Nehru University and Jamia Millia Islamia.

Even though the training they receive is comparable which should lead to same credentials but their study found out how dalit students lacked certain important

advantages which were important for them to get employed. The employers' hostility and scepticism against the reservations lead to a scepticism of dalit students' credential as a future employee. For example, during the interviews, most of the employers asked about their family background which was interpreted as an interrogation of caste background by dalit students, some sort of a *hidden agenda* (p. 4138). Social and cultural capital play a crucial role in securing employment in urban, formal sector labour markets as their study suggests.

4. Consolidation of Caste Privilege in and through Premier Institutions of Higher Education

There is a myriad of literature cataloguing the paradoxical character of higher education. Even though it promises mobility especially to hitherto oppressed groups, it continues to disguise ways in which it leads to structural inequalities. Higher education in general and elite educational institutions in particular have been spaces which reproduce *privilege* and *elite lives* (Khan 2011, Howard and Gaztambide-Fernandez 2010, Maxwell 2015, Van Zanten 2015) while simultaneously claiming to favour excellence and merit. Merit as a category has been unpacked and dismantled to unveil a synthesis of social, cultural and economic capital (Khan and Jerolmack 2012, Subramanian 2019) which supposedly produces a meritorious student. However, the term still hasn't lost its constituency and continues to surface during debates around the efficacy of policies regarding affirmative actions (Deshpande 2006, Illaiah 2006, Subramanian 2015).

While talking about how the dynamic of elite educational institutions has changed in terms of accessibility to groups which have been previously excluded, Khan (2012: 372) discusses how they still remain *engines of inequality, often helping to convert birthright into credentials and thereby obscuring some of the ways elites are reproduced*. The necessity of looking at the changing nature of social institutions and an ever increasing inequality from above is to locate how conditions of disadvantage have been produced by the elites. He further argues that opening up of elite institutions makes it pertinent to acknowledge that inequality doesn't necessarily rely on social closure and exclusion. It becomes important, then, to look at the ways in which such institutions cover structural inequality that they help produce and reproduce. Caste-based reservation in institutions of higher education and jobs have opened up these spaces which were formerly dominated by members of the upper castes. But admittance in an institute did not remit caste hierarchies. As Subramanian (2019) argues that caste doesn't need to speak through its own language for it can use other modalities.

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DRUG ABUSE: PUNJAB FINDS ITSELF IN TIGHT GRIP OF ADDICTION

Yuvraj Mathur*

1. Drug Abuse: Contours and Characteristics

Drug abuse is a global phenomenon, affecting more or less every country, except its degree and attributes juxtapose from one locale to another. India is also trapped in this vicious circle of drug abuse, and the extent of drug addicts is mounting gradually. The most contemptible facet of drug persecution in Punjab is that it has procured the magnitude of an epidemic that has jolted the whole community in the state. It is perceived that in Punjab “drug abuse” is a seething pandemic, predominantly amidst the new generation.

Adolescents have been the most exceedingly awful victims of the unlawful drug trade in Punjab. Despite the fact that contrabands have spread their limbs taking all things together parts, the bane of drugs has been amassed in specific regions, villages, and clusters. The interest for unlawful drug in Punjab is to a great extent met from outside the state through a stockpile web monitored by the global, inter-state and local drug traffickers.¹

Concentrated among youth, the intake of illegal drug has become a worldwide issue in both developed and developing nations. As indicated by the World Drug Report 2016 by the United Nations Office on Drugs and Crime, a fourth of a billion people between the ages of 15 years and 64 years utilized at least one drug in 2014. India, wedged between the narco-drug delivering “Golden Crescent” and “Golden Triangle” nations, is influenced by drug misuse and dealing. The Golden Triangle is the region where the boundaries of Myanmar, Laos and Thailand meet at the intersection of the Mekong and Ruak streams. The Golden Crescent area of the South Asia includes Pakistan, Iran and Afghanistan. These two regions are known as the significant opium producing areas of the world. India is likewise approved to produce opium for pharmaceutical uses. Also, it is “a significant maker of antecedent synthetics including pseudo-ephedrine, ephedrine and acidic anhydride”.²

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¹ Mohan, Vijay. “Spurt in Smuggling Activities along Border in Punjab.” *The Tribune*, 6 June 2012, <https://www.tribuneindia.com/2012/20120607/punjab.htm#23>. Accessed 8 December 2021.

² Mahapatra, Dhanajay. “Drug Dealers have Destroyed Punjab Youth, says CJI HL Dattu.” *Times of India*, Chandigarh, 24 Nov 2015, <https://timesofindia.indiatimes.com/india/drug-dealers-have-destroyed-punjab-youth-says-cji-h-l-dattu/articleshow/49899811.cms> Accessed 8 December 2021.

Illegal drug abuse not just influences the lives and wellbeing of people but also subverts the cultural, social and political foundation of the nation. The issue of drug dependence produce emotional expenses to all social orders as far as exorbitant usage of medical care, crime, lost efficiency, transmission of infectious diseases and family and social problem are considered.³ The picture is dismal if the world figures on the drugs situation is examined. With a turnover of \$500 billion, it is the third biggest business on the planet, close to oil and arms trade.⁴ About 190 million individuals everywhere in the world devour one drug or the other. Chronic drug use causes immense human pain, and the unlawful creation and appropriation of drugs have generated wrongdoing and violence around the world. Today, there is no region of the world that is liberated from the scourge of drug trafficking and chronic drug use. A great many drug addicts, everywhere in the world, are having hopeless existences, between life and death.⁵

After liquor and tobacco, hashish, opium, cannabis and heroin are the most generally utilized drugs in India. Nonetheless, some proof shows that there is an escalating commonness of methamphetamine too. Drug clients are for the most part young and preponderantly male. A National Survey (2004) on the degree, example, and patterns of drug maltreatment in India found that opiates are essential drugs manhandled and 49% of respondent's families had a past filled with drug abuse.⁶ The investigation directed by the Institute of Development and Communication uncovered that a larger part of drug abusers, i.e., 70% had a provincial foundation and were snared to drugs and opium which they secured from town medical shops.

2. History of Drugs in Punjab

Neither the investigation, in spite of its solid sociological data sources in regards to chronic drug use, nor the overall awareness was truly engaged to know the sorts of drugs consumed by Punjabis. It was plainly expressed in the investigation that liquor, poppy husk (bhuki), opium and smack were the primary drugs about which the

³ "Remote Villages New Hot Beds of Drug Trade." *Hindustan Times*, 18th May 2010.

⁴ Ray, R. *The Extent, Pattern and Trends of Drug Abuse in India: National Survey*. Ministry of Social Justice and Empowerment, Government of India and United Nations Office on Drugs and Crime, Regional Office for South Asia, 2004.

⁵ Verma, P. S. and Mishra V. *Study on Drug Abuse in the Border Districts of Punjab*. Institute for Development and Communication, Chandigarh, 2010.

⁶ *Rapid Situation and Response Assessment of Drugs and HIV in Bangladesh, Bhutan, India, Nepal and Sri Lanka: A Regional Report*. United Nations Office on Drugs and Crime, 2008.

information were gathered and strangely, just 20.17% were dependent on psychoactive substances and smack.⁷

Luckily, onlooker accounts about the use of drugs in nineteenth century in Punjab are accessible. One such record is of an official in the court of Ranjit Singh, Lieutenant Colonel Steinbach. Published in 1846, his book contained a perception on drug use among the Punjabis in this manner:

The Sikhs are forbid the use of tobacco, but allowed to indulge in spirituous liquors, which they almost drink to the excess, and it is rare to see a Sikh soldier after sunset quite sober. Their drink is an ardent spirit made in the Punjab, but they have no objections to either the wine or spirits of Europe when they can obtain them. The use of opium to intoxicate is very common with the Sikhs, as with most of the military tribes in India. They also take Bhang, another inebriating drug.

Liquor, bhang (cannabis) and opium have been generally burned through for quite a long time in India, of which bhang was unequivocally associated with the Saivite custom as a sacrosanct contribution (prasad) devoured differently. Among the Sikhs, Nihangs use bhang as a beverage and they call it 'sukha'. Opium use is by all accounts connected with warriors; be that as it may, liquor is by all accounts the beverage for normal use and was not restricted to a specific gathering. There existed a caste called Kalals whose occupation was a refining of alcohol and the presence of such cases was normal in different regions of India. What may appear to be unmistakable about liquor utilization in Punjab was its far and wide use among individuals - something common with the ancestral populace.

Not with standing, the ascent in illicit drug use is an exact reality and its belongings are noticeable in the border zones of Punjab. The overall discernment is that drug traffic is occurring along the border line with Pakistan. Strangely, certain towns have gotten famous for drug trafficking.⁸ Tarn Taran District's village Havelian has the qualification of having the greater part of its men serving jail terms for drug trafficking. Not with standing, the swelled figures in the utilization of drugs in Punjab were crafted by the political groups.

⁷ Varma, V. K., et. al. "Extent and pattern of alcohol use and alcohol-related problems in north India." *Indian J Psychiatry*, vol. 22, no. 4, 1980, pp. 331-337.

⁸ Basu, D., et. al. "Changing pattern of substance abuse in patients attending a de-addiction centre in North India (1978 - 2008)." *Indian Journal of Medical Research*. vol. 135, no. 6, 2012, pp. 830-836.

3. Drug Abuse: Uncovering the Drug Abuse in Punjab

Due to the close proximity of the State of Punjab to Golden Crescent (Iran, Pakistan, Afghanistan), it is impressively influenced by the illegal drug menace. Not with standing, Punjab is neither one of the producer's plant-based characteristic substances like opium, cannabis, and their subsidiaries nor makes the forerunner synthetics which are handled into psychotropic and synthetic drugs. The most unmistakable element of the interest for unlawful opiate drugs in Punjab is that it is totally met from outside the state through a stock organization managed by the nearby, interstate, and global groups of thugs. For quite a while, certain synthetic drugs (ICE/crystal methamphetamine) were fabricated at certain spots in the state yet the labs were destroyed. The multicore artificial narcotic drug rackets were uncovered in June 2012 and March 2013. All things considered, unlawful drugs have destroyed numerous youthful lives addressing all segments and classes of individuals in the metropolitan and rustic regions of Punjab.

An investigation embraced by the Institute for Development and Communications, Chandigarh, on drug abuse uncovered that a mind-boggling number (75.8%) of the sample of substance abusers (1,527) from the border locale of Punjab had a place with the age gathering of 15–35 years. Also, All India Institute of Medical Sciences (AIIMS), New Delhi, and National Drug Dependence Treatment Centre (NDDTC) in partnership with Society for Promotion of Youth and Masses (SPYM), conducted Punjab Opioid Dependence Survey (PODS) directed in 2015, uncovered that 76% narcotic wards in Punjab were in the age gathering of 18–35 years. Further, the examination proposed that among the 18–35 years age group in Punjab, around 4 out of 100 were narcotic dependents, while 15 of every 100 were opioid users (PODS nd).⁹ As per a few specialists, even kids matured 9–16 years were snared to drugs like pot (marijuana), husk, poppy and tobacco.¹⁰

A Rapid Situation and Response Assessment among 5800 male drug clients uncovered that 76% of the narcotic clients as of now infused buprenorphine, 76% infused heroin, 70% chasing, and 64% injecting propoxyphene. Most drug clients associatively utilized liquor (80%). As per the World Drug Report, of 81,802 treatment seekers in India in 2004–2005, 61.3% revealed utilization of opioids; 15.5% cannabis; 4.1% tranquilizers; 1.5% cocaine; 0.2% amphetamines; and 0.9% solvents.

⁹ *International Narcotics Control Strategy (INCSR) Report*. Bureau of International Narcotics and Law Enforcement Affairs, 2013.

¹⁰ Verma, P. S. "Punjab's Drug Problem." *Economic and Political Weekly*, vol. 52, no. 3, 21 January 2017.

The worst thing about drug abuse in Punjab is that it has obtained the extents of a plague that has shaken the whole society in the state. It is seen that in Punjab “drug abuse” is a seething plague, particularly among the youth. As per a study, 66% of the school-going understudies in the state devour “gutka” or tobacco; each third male and each tenth female have taken to drugs on some guise and seven out of ten school-going are into drug abuse.

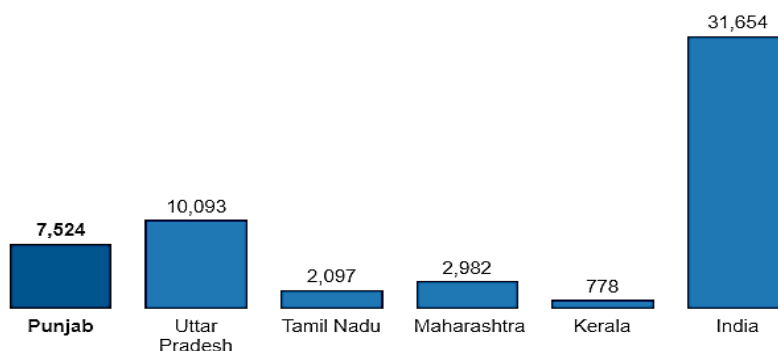
4. Scale of Problem

The Punjab Opioid Dependence Survey, which was conducted between February and April 2015, tracked down those 230,000 individuals in the state were drug abusers. That means 836 drug clients for every 100,000 individuals in the state. The All-India number is 250 for every 100,000 (for 2012), as per the service of social justice and empowerment.¹¹

4.1 Worrying Picture

As per the number of crimes reported under the Narcotics Drugs and Psychotropic Substances (NDPS) Act, there were on an average 7,524 occurrences of violations identified with drugs in Punjab every year between 2005 and 2014. That is second just to Uttar Pradesh, India's most crowded state. Figure 1 depicts the average of crime under NDPS Act from 2005-2014.

Figure 1: Average Incidences of Crime Under NDPS Act During 2005-2014



Source: CMIE States of India, Census 2011¹²

¹¹ Kumar, S. M. *Rapid Assessment Survey of Drug Abuse in India*. Ministry of Social Justice and Empowerment, Government of India and United Nations office on Drugs and Crime (UNODC) Regional office for South Asia, 2002.

¹² CMIE States of India, Census 2011.

4.2 Quantity of Drugs Seized

Various drugs like smack, heroin, cannabis, poppy husk, opium, synthetic drugs and infusions had acquired attraction in Punjab before the end of the 1990s, however expected disturbing extents in the new millennium. On 4th November 2015, Punjab government in its report to the Punjab and Haryana High Court stated that since 2012 police had recuperated 8 crore tablets; 5 lakh kg poppy husk; 4 lakh injections; 3,082 kg bhang; 2,969 kg opium; 1,744 kg heroin; 468 kg charas; 112 kg smack; and 3 kg cocaine. In 2012, the state police busted a drug peddler ring including some non-resident Indians (NRIs) and held onto synthetic drugs worth Rs. 200 crores and in 2013 a multicrores psychotropic drug racket Rs. 6,000 crores was uncovered and on 11 November 2013, the supposed brains were captured with their partners. These occurrences additionally uncovered the linkages between the politics and drug problem. Punjab figures among the top 5 states with highest drug seizures in India, albeit the quantity seized is erratic. Table 1 indicates top 5 states with highest quantity of drug seizures from 2011 to 2014.

Table 1: Quantity of Drugs Seized During 2011 to 2014

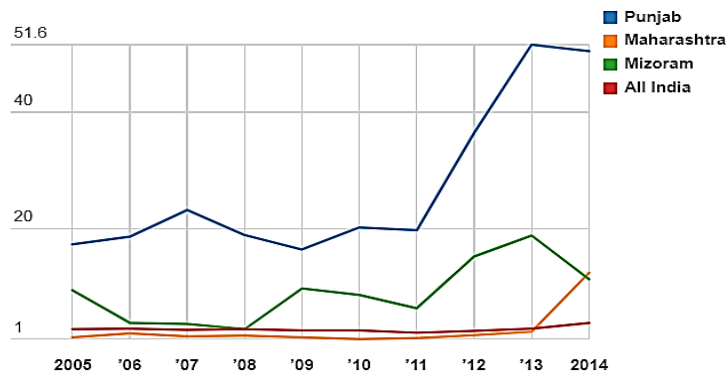
State	2011	2012	2013	2014
Mizoram	2,854.60	9,837.30	33,048	2,469.20
Punjab	7,231.70	105.5	30,840.70	885.9
Manipur	1,518.80	4,023.70	3,187.40	433.1
Assam	1,496.90	2.4	1,273.70	248.1
UP	228.8	102.3	1,598.60	143.7
All India	13,837	14,485.80	76,849.90	4,859.40

Source: Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." *Livemint*¹⁵

4.3 How Punjab Stands Out

The drive against drug peddlers got extreme and obvious in 2012. In 2012, as many as 11,715 people were captured which was practically twofold the number in 2011. The total number of arrests made in three years took off to 45,558. Each year normal of 4,864 arrests during 2000–11 leaped to 15,186 during 2012–14. Analysts claimed that the greater part of the denounced were either small drug peddlers or drug dependents. Figure 2 indicates the rate of crime (per lakh population) in top three states of India with highest crime rates during 2005 to 2014. Crime rate under NDPS Act in Punjab has been consistently higher than all other states.

Figure 2: Rate of Crime (per lakh population) During 2005 to 2014

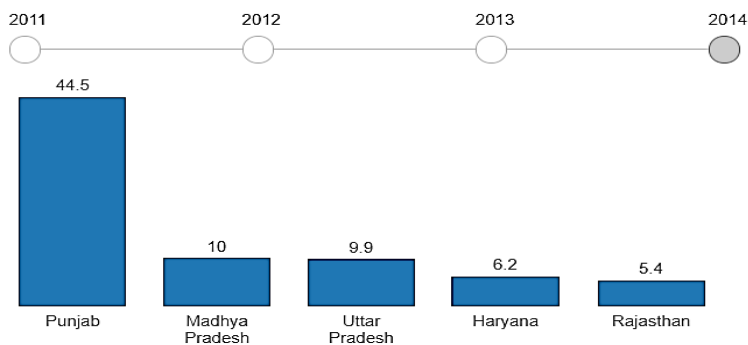


Source: Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." Livemint¹⁵

4.4 Convicts under NDPS Act

According to reports, 44.5% of the total convicts under the NDPS Act were in Punjab and the numbers subsequently increased over the years.¹³ Figures 3 indicates percentage of convicts in each state as share of total convicts in India under NDPS Act at the end of each year. Punjab forms 44.5% of total convicts in India under the NDPS Act in 2014, much more than the next highest state at 10%.

Figure 3: Percentage of Convicts as Share of Total Convicts in 2014



Source: Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." Livemint

¹³ Rockville, M. D. 2012 *National Survey on Drug Use and Health: Summary of National Findings*. Substance Abuse and Mental Health Services Administration, 2012.

4.5 Suicides from Drug Abuse

In 2014, suicides because of drug addiction or abuse made up 2.8% of all suicides in India. On account of Punjab, this remained at 4%. Drug related suicide deaths in Punjab have diminished somewhere in between 2011 and 2014, however it actually figures among the top five states.¹⁴ Table 2 shows percentage of suicides in each state due to drug abuse addiction. Percentage of suicides in Punjab due to drug addiction has come down over the years, although it still ranks among the top 5 states.

Table 2: Percentage of Suicides in States Due to Drug Abuse.

Top 5 states	Maharashtra	Kerala	Mizoram	Punjab	Tamil Nadu	India
2011	8.9	2.80	5.60	11.4	1.6	2.7
2012	10.5	3.2	35.30	8.8	1.40	3.30
2013	10.8	4.60	8.4	6.80	2.6	3.40
2014	8.4	5.60	4.3	4	3.40	2.80

Source: Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." Livemint

Other than arresting peddlers, the state has extended enormously the offices for restoration and de-addiction. In December 2014, the special secretary of health said that more than three lakh drug addicts were treated as outpatients at the five 50-bed model de-addiction centres and 25 other government-run de-addiction centres since 19 June 2014 when the de-addiction crusade was launched. Likewise, 10,000 were conceded at different centres and around 22,669 were treated at the eight central jails. This separated, 7,763 patients were treated at government homeopathic dispensaries.

With the crackdown on peddlers decreasing the stockpile and expanding costs of the contrabands, drug dependents had to rush to de-addiction centres for an option in contrast to prohibited drugs. Some de-addiction centres in civil emergency clinics answered to have gotten 300 to 400 drug patients consistently. In Tarn Taran, 6,620 drug addicts were treated in October 2014 as outpatients at the common emergency clinic de-addiction centre.

¹⁴ Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." *Livemint*, 9 Jun 2016. <https://www.livemint.com/Opinion/CbtQvesZxzWezejNXC8K/Six-charts-that-show-the-seriousness-of-Punjabs-drug-proble.html>. Accessed 8 December 2021.

4.6 The Punjab Picture

The Punjab Opioid Dependence Survey tracked down that 89% of narcotic dependents in Punjab are literate and educated; 83% are employed and they are 'males' invent of the cases. 89% of Opioid dependent people in Punjab are literate and educated, while 83% of them have jobs.

Table 3: Demographic Profile of Opioid Dependent Individuals in Punjab

Males	99%
Literate and educated	89%
Married	54%
Employed	83%
Punjabi as mother tongue	99%
Opioid dependent population in rural areas	55%
Most common opioid drug: Heroin	53%
Using drugs through injecting route	33%
Most common reason for starting opioid use: Peer-influence	75%
Ever tried to quit?	80%
Ever received any help for quitting?	35%
Lower bound estimate of opioid dependent individuals	1,74,642
Upper bound estimate of opioid dependent individuals	3,22,416
Amount spent on opioid drugs per day by opioid dependent people	Rs 20 cr
Annual expenditure on opioid drugs	Rs 7575 cr
Unskilled Worker/ Labourer	27%
Farmer	21%
Clerical jobs/ businessmen	15%
Transport Worker	14%
Skilled Worker	13%

Source: Jain, Dipti. "Six charts that show the seriousness of Punjab's drug problem." Livemint

In spite of the fact that drug abuse is inescapable in the rural areas, it has unleashed no less destruction in metropolitan areas. As far as force, drug abuse and dealing are more gathered in certain areas, villages and ghetto ruled territories where addiction has demonstrated terrifying and excruciating for a few families. In the event that some have died because of drug glut, some needed to leave behind their property or genealogical properties little by little to support their habit.

5. Modus Operandi of Drug Trade

The utilization of exceptionally addictive drugs like heroin in Punjab is a branch of the inflow of Afghan heroin through Pakistan. The 553 km-long India–Pakistan (Indo–Pak) border in Punjab is utilized as a course for pirating heroin from Afghanistan. Prior, dealers of gold and different items had worked on this course. It is accepted that around 90% of the heroin arriving at worldwide objections originates in Afghanistan. A negligible part of the pirated heroin is devoured in the state, the rest arrives at the metropolitan urban areas in India, and is smuggled to unfamiliar foreign terrains. Nearly, the seizures of narco-drugs along the Indo–Pak line have been higher in Punjab than in the other three border states. The explanation is the since quite a while ago settled organization and syndicates of dealers and nearness of residences and developed fields straight up to the Zero Line on the two sides which makes individual to-individual contact generally simpler.

The smugglers on either side of the Zero line have been very much associated and every now and again change SIM cards to cheat reconnaissance on the line. The financial backwardness of border towns has likewise been abused by the drug cartels to draw the jobless individuals to go about as dispatchers and peddlers. The couriers, according to Border Security Force (BSF) authorities, “are generally unaware about the origin and final destination of the consignment due to which security agencies are not able to apprehend the kingpins behind the drug racket”.¹⁵

Among the strategies used by the smugglers to sneak heroin into Punjab included: utilizing the flowing water of rivers and unfenced riverine gaps; concealing heroin bundles underneath crop residue or in an hollow tree trunk or into openings in the fields in front of the fence for the Indian accomplice to retrieve; pushing the plastic

¹⁵ Kumar, Vinod. “Heroin most abused drug in Punjab, finds four – year study.” *The Times of India*, 5th Aug 2020, [https://timesofindia.indiatimes.com/city/chandigarh/heroin-most-abused-drug-in-punjab-finds-four-year-study/articleshow/77363051.cms#:~:text=The%20four%2Dyear%20study%20found,%25\)%20participants%20were%20consuming%20cannabis](https://timesofindia.indiatimes.com/city/chandigarh/heroin-most-abused-drug-in-punjab-finds-four-year-study/articleshow/77363051.cms#:~:text=The%20four%2Dyear%20study%20found,%25)%20participants%20were%20consuming%20cannabis). Accessed 8 December 2021.

pipes containing drugs through the fence; utilizing little fabric sacks with elastic strings to toss heroin over the fence; and tossing little parcels of 1–3 kg across the security barrier. Indeed, even the merchandise train shipping concrete in to India from Pakistan by means of the Attari–Wagha route has been often trafficking for carrying heroin. Many Indian and Pakistani peddlers are arrested by the BSF consistently. In 2012, 34 Pakistanis were captured and seven were encountered on the border. Likewise, 23 Indians were captured and one was executed around the same time. According to the union minister of state for home affairs, other than smugglers, 68 representatives from various offices (police, BSF, jails, railways, and so forth) were additionally detained in drug cases since 2012. Many Indian and Pakistani peddlers are arrested by the BSF consistently. In 2012, 34 Pakistanis were captured and seven were encountered on the border. Likewise, 23 Indians were captured and one was executed around the same time. According to the union minister of state for home affairs, other than smugglers, 68 representatives from various offices (police,BSF, jails, railways,and so forth) were additionally detained in drug cases since 2012.¹⁶

Aside from heroin, unlawful drugs like cannabis, poppy husk and opium have been dealt into Punjab from various parts, including the adjoining states. Cannabis, which is furtively developed in the detached harsh rugged territories, has been perpetually hawked into Punjab by smugglers. The narco-drug traffickers of Punjab have connected low-income bunch local adolescents and ladies for dealing of charas extricated from cannabis. Besides, opium and poppy husk have been dealt into Punjab from the remote of different states. The smugglers have been changing their techniques, strategies, routes and modes as per the circumstance to trick the police. The nearby and interstate drug dealer profit by “a decent paying limit” in Punjab, and in this way, have smuggled an ever increasing number of contrabands into the state from various zones through rail, buses, motorbikes, cars, taxies and trucks.¹⁷

Certain villages of Punjab in the connecting locale had become a safe house for addicts and drug peddlers. Drug smuggling absorbed in bunches of people as it has gotten three times more revenue in Punjab.

¹⁶ Verma, P. S. *The Drug Menace: Dimensions, Trends and Tribulations in Punjab*. Institute for Development and Communication, Chandigarh, 2014.

¹⁷ Vasudev, R. “To Check Drug Menace, BSF Keeps Tabs on its Men.” *Hindustan Times*, 27 January 2016, <https://www.hindustantimes.com/india/to-check-drug-menace-bsf-keeps-tabs-on-its-own-men/story-psvo80uFaCqeWMYahzXyoN.html>. Accessed 8 December 2021.

6. The Rise of Female Drug Addicts

The State's drug emergency has joined another league following a consistent expansion in the quantity of female addicts. In spite of the fact that there is no figure for the specific number of women drug addicts in Punjab, specialists say it would handily run into a few thousands. Every one of the symptoms of the issue found in the men are reflected in the ladies - to say the very least. They come from all segments of society: poor or affluent, uneducated or educated, first generation drug abusers as well as second, conservative as well as liberal family settings, and so forth. At that point they fall into the classical drug abuse age demographic, the most productive 18-40 age group.¹⁸

A large portion of them is traumatized by low self-esteem or depression, incest, physical and sexual abuse, and aggressive behaviour at home. There are occasions of spouses getting them snared and sexually abusing them.

The issue lies undetected, the authority said, in view of women's requirement for protection to admit to chronic drug addiction and have it cured. Punjab, for example, has 31 government de-addiction centres. However, relatively few females approach them as they don't bear the cost of protection. Privacy separated; the Punjab government as well has started to get sharpened to the issue. Rehabilitation centres have been started altogether locale of the state. Furthermore, presently, at whatever point a women drug addict turns up at the Guru Nanak Dev Hospital managed Swami Vivekananda drug de-addiction centre, they are tenderly convinced to get their associate too.¹⁹

Be that as it may, data on the number of de-addiction centres for women or on number of women addicts are not accessible. Only one de-addiction centre has been made exclusively for women out of the 31 government-run de-addiction centres. It was established in Kapurthala in July 2017.

7. Impact of COVID-19 on Punjab's War on Drugs

With Punjab imposing lockdown and strict curfew to fight against COVID-19 pandemic, there was a massive increase in the figure of drug addicts making

¹⁸ Vasudeva, Vikas. "Punjab's new addicts: on the rise of female drug addicts." *The Hindu*, 8 September 2018, <https://www.thehindu.com/news/national/other-states/punjab-new-addicts/article61535183.ece>. Accessed 8 December 2021.

¹⁹ "Udta Punjab: The other half of Punjab's drug problem." *The Indian Express*, 2 November 2016.

beeline to Outpatient Opioid Assisted Treatment (OOAT) centres by dint of drug supply channels getting logged.

In October 2017, the idea to establish Outpatient Opioid Assisted Treatment centres in Punjab sprouted. The centres were established to oversee de-addiction medication, a blend of naloxone and buprenorphine, to the addicts enrolling with them. Administered as a pill, the opioid assisted treatment as the name proposes is basically for addicts who are snared to and reliant on different narcotic drugs, including opium, poppy husk and heroin. The centres were established seven months after Punjab CM Amarinder Singh shaped a Special Task Force (STF) to handle the ongoing drug addiction and take on drug mafia in the state. There are right now 199 government-run OOAT centres where medication is given liberated from cost.²⁰

When government of Punjab imposed a strict lockdown and curfew in the state from 23rd March to 17th June, 1,29,504 new addicts enrolled in the OOAT centres during the unlock relaxations. Around 1.2 lakh of them enrolled during the period when curfew and lockdown was strictly in place. As of June 17, the total number of addicts enrolled with OOAT centres were 5,44,125, which means consequently that 23% of the total registered under a quarter of a year alone during the pandemic.²¹

The information gathered by the Punjab government uncovers that new enrolments for treatment incorporate addicts from practically all the age groups, from aged less than 20 years to more than 80. According to the information, there are 38,152 new addicts in the age group of 30 to 39 who enlisted in under a quarter of a year, greatest for an age section.

During October 26, 2017 when OOAT centres became utilitarian to March 22, 2020, Bathinda region had 13,955 addicts enlisted for treatment. From March 23 to June 17, around 13,517 additional addicts decided on treatment in OOAT centres.²² Fazilka region, which has an absolute 11,251 enrolments, had 4,003 addicts enlisting with OOAT centres from March 23rd to June 17th, the greater part of the

²⁰ Gopal, Navjeevan. "Explained: How Covid-19 is helping Punjab's war on drugs." *The Indian Express*, 8 March 2021.

²¹ Naqshbandi, Aurangzeb. "Covid-19 lockdown dealt blow to Punjab drugsmuggling: Official." *Hindustan Times*, 16 April 2020, <https://www.hindustantimes.com/india-news/covid-19-lockdown-dealt-blow-to-punjab-drug-smuggling-official/story-aqmBGMnh2d9Gxvs7wKwm5K.html>. Accessed 8 December 2021.

²² "COVID-19 blessings: Over 5 lakh drug addicts treated in Punjab." *The Tribune*, 11 May 2020, <https://www.tribuneindia.com/news/punjab/covid-19-blessings-over-5-lakh-drug-addicts-treated-in-punjab-83453>. Accessed 8 December 2021.

all outnumbered. Likewise for Mansa locale which had 8,047 enlisted till March 22 and 5,132 new enrolments from March 23 to June 17. Various different locale revealed relatively lesser rate expansion in the comparing time frames. During October 26, 2017 to March 22, 2020, 41,4621 had enrolled for treatment in OOAT centres across the state.²³

According to functionaries of Punjab government and anti-drug STF, this is an invite advancement where countless addicts enlisted for treatment in a limited capacity to focus, the treatment solicited. With lockdown relaxations, in any case, there are apprehensions that among the new addicts enrolling for treatment. There might be backslides if inventory network of illicit drug resumes.²⁴

Without drugs, addicts create actual responses and symptoms, for example, serious body torments, spewing, sleep deprivation, looseness of the bowels and watery nose and eyes. The failure to manage these side effects constrains them to look for treatment, to stifle the hankering and to dispose of the pain. This is the means by which the lockdown implementation accidentally drove the addicts to look for help.²⁵

8. Overcoming Drug Problem: The Best Strategy

There have all the earmarks of being various reasons why Punjab is at present amidst a drug plague, for example, rampaging joblessness, simple and cheap accessibility of heroin, and the geolocation of Punjab implies that the majority of the drugs will go through this territory on its way to India. With most drug users being in the productive age group of 18–35 years, the damage with regard to human potential is inestimable. The harm to the intellectual, ethical, psychological and physical growth of the young is extremely high. Juvenile drug abuse is one of the significant regions of worry in young adult and youngsters' conduct.²⁶

²³ “Story in numbers | Covid-19 lockdown helped Punjab fight drug addiction.” *Business Standard*, 2 August 2020, [business-standard.com/article/current-affairs/story-in-numbers-covid-19-lockdown-helped-punjab-fight-drug-addiction-120080200600_1.html](https://www.business-standard.com/article/current-affairs/story-in-numbers-covid-19-lockdown-helped-punjab-fight-drug-addiction-120080200600_1.html). Accessed 8 December 2021.

²⁴ Moudgil, Manu. “In Punjab, the coronavirus lockdown has driven drug addicts to seek help.” *Scroll.in*, 25 July 2020, <https://scroll.in/article/968439/in-punjab-the-coronavirus-lockdown-has-unwittingly-driven-drug-addicts-to-seek-help>. Accessed 8 December 2021.

²⁵ Moudgil, Manu. “Unable To Get Drugs During Lockdown, Punjab’s Addicts Are Quitting. But This May Not Last.” *India Spend*, 24 July 2020, <https://www.indiaspend.com/unable-to-get-drugs-during-lockdown-punjab-addicts-are-quitting-but-this-may-not-last/>. Accessed 8 December 2021.

²⁶ Sharma, Bhuwan, et. al. “Drug abuse: Uncovering the burden in rural Punjab.” *Journal of Family Medicine and Primary Care*, vol. 6, no. 3, Jul – Sep 2017, pp. 558–562.

To overcome the issue of drug abuse in Punjab, the government needs to devise a plan to build rehabilitation and de-addiction centres with recreational amenities for the addicts. Different non-government associations and charitable organisations can be included to start imparting professional skills and other employment schemes for jobless addicts. Fitting linkages between community leaders; medical personnel; teachers; and religious workers for arranging rehabilitation and deterrence exercises for drug abuse ought to be set up. Regular outreach cognizance events for anti-drug abuse activities in the society and government schools are also required to be commenced.

Drug abuse affects all of us in one way or the other. Hence, it is high time when we should step forward and prevent these unnecessary deaths. Fake prescribers of the drugs should be distinguished from the doctors legitimately practising. Also, social media platforms, TVs and radios can be used to educate families about drug-abuse prevention.

Establishment and implementation of medical guidelines for treatment of chronic pain can help the abusers to come out of the grip of this problem. Affordability, availability and access to drug treatment programmes should be increased. Patient should also be educated about what good addiction treatment must include.

9. Critical Analysis and Conclusion

The issue of drug abuse in the young people of Punjab involves a genuine worry as every third individual is snared to drugs other than liquor and tobacco. The other striking perceptions were the high predominance of heroin and intravenous drug abuse. To summarize, the likely factors which have added to the development of drug menace in Punjab include: decline in the normative spheres of the social milieu entailing parental affection and care; lack of employment opportunities; inadequacies in the rehabilitation of drug addicts as productive members of the society; good paying capacity of the people in Punjab; easy availability of synthetic drugs at counters; lack of regulation of pharmaceutical trade; the network of cross-border trafficking; corruption; and the state's close proximity to the poppy and heroin producing region.

The most despicable aspect of drug abuse in Punjab is that it has procured the extents of an epidemic that has shaken the whole society in the state. It is seen that in Punjab "drug abuse" is a seething pandemic, particularly among the new generation. The harm to the intellectual, ethical, psychological and physical growth of the young is

extremely high. Juvenile drug abuse is one of the significant regions of worry in young adult and youngsters' conduct. Drug abuse affect all of us in one way or the other. Hence, it is high time when we should step forward and prevent these unnecessary deaths.

SALT IN INDIA – AND A MONSTROUS HEDGE

Elisabeth J. Singh*

1. Introduction

The tall and spiky customs hedge that in the 19th century traversed India went from Torbela in Punjab and almost to the bay of Bengal. It was 2,504 miles long, and was constructed to extract tax on salt from the Indian population.

Let me guess: You would surely be aware of the fact that salt is an important commodity for man and beast. But then? Have you ever given salt another thought, except when you try to avoid the excess of it in your food, since salt, in our modern world, has a tendency to enhance your blood pressure?

India has salt in abundance. Gujrat, Tamil Nadu and Rajasthan are surplus salt producing states accounting for about 96% of the country's production. Gujrat contributes 76% to the total production, followed by Tamil Nadu 12%, and Rajasthan 8%. These are the cold facts of today. But let us take a look at history. There has always been a lot of salt in India – but this fact made a very small number of people filthy rich, while millions died – indirectly, at least - from salt depletion.

When I started reading the English author Roy Moxhams book, *The Great Hedge of India*, I had no idea what I was digging into: But reading about salt, means reading the story of British India from its gory backside. It is the story of human exploitation, corruption, death by the millions, and total changes of sociological structures.

Well - how far back should we go? It is always difficult to proclaim a certain year or month or day to be the beginning of this or that. But let us start with Robert Clive and the battle of Plassey in 1757, easy to remember as it took place a full century before the Mutiny. Clive was the first real villain of the famous play called *The East India Company*.

In 1759, the Company acquired land near Calcutta, land on which there were salt works, and this was the beginning of an enterprise which during the next almost two centuries would amass great loads of wealth for the British. Robert Clive put Mir Jafar on the throne of the acquired state as a puppet ruler without power, and soon *Clive was to become one of the wealthiest Englishmen of all*. The battle at Baksar in 1764, where the Mughals were totally defeated, marks the beginning of the British rule. A private company named The Exclusive Company was established by sixty-

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one civil administrators with Clive at its head, and given a total monopoly on the revenues of tobacco, betel nut, and salt.

At first, this was strictly against instructions from London, and Clive had overstepped grossly. Outrage was expressed by the authorities in England, who declared that they considered it too disgraceful, and below the dignity of the present situation, to allow such a monopoly. Clive responded by offering the Company 1,200,000 Rs. per annum from the profits made, but the authorities in England were not easily moved. Due to the pressure they exerted, the monopoly of tobacco and betel nut was stopped in 1767, followed by the annulment of the salt monopoly in 1768. Clive returned to England in 1767, was widely criticized for his greed, and died at age 49.

His wealth had obviously not made him happy. At the time of his death he was an opium addict, and he ended his life cutting his own throat with a penknife.

But England and India were very far apart. Instructions took six months one way and six months back, and attitudes changed with the change of people who held the power. A couple of years later, the Government of England had forgotten all about its criticism of greed. *In the 1770 famine of Bengal*, the Company collected land revenue without mercy – this had only been sporadically collected by the Mughals. *At least ten million people perished*, and the heavier the death toll, the harder the Land Tax was coerced (extracted) from the survivors. The same applied to the Salt Tax. The effect on the population was devastating. People remained ill for years afterwards, and hundreds of thousands of erstwhile farmers were reduced to pauperism and were forced to turn to smuggling and banditry.

In 1772, Warren Hastings entered the scene. Hastings was brilliant, ambitious and ruthless, and had joined the Company already in 1750. In 1772, salt was still being freely manufactured, but the salt works were leased out to subcontractors, who in their turn delivered salt at a fixed price to the Company. *In 1773, Hastings was appointed the first Governor-General of India*, and he soon brought the salt trade once again under the Company's control.

The salt workers had always been cruelly exploited. The mines were horrible places to be subjected to forced labour. At Khewra in Punjab, the workers (men, women and children), were locked inside and not let out until they had filled their quotas of salt. In 1876, 12 people were shot and killed as they objected to these working conditions. Old-fashioned excavation methods implied blasting a bigger and bigger cavern until it collapsed, often burying the workers inside. Later, the room-and-pillar method was introduced, a method which deliberately leaves about half of the mineral deposit

undisturbed in the form of pillars to prevent the cavern's ceiling from falling in.

At the coastal salt works, lack of proper clothing and footwear resulted in cracked skin from the damp salt and the evaporations pans, and the intense glare from the salt ruined the workers' eyes. One hundred years earlier, Hastings had introduced a new system that basically was to last until the British left. The *malangis* (salt workers) were from then on placed under several Agencies and were partly salaried, and partly given a commission. The working conditions hardly improved, but the revenue for the British did: By 1785, the revenue had risen to such an extraordinary level that the Company had become dependent on it. This was ominous.

Salt production had become gold mines. Methods had to be explored to secure maximum outcome of these prospects.

Googling salt mines, salt quarries, salt pits and Punjab, one name keeps popping up: *The Khewra Salt Mines*, situated 200 km from Lahore in Pakistan – north of Pind Dadan Khan. The Khewra mines are said to be the world's second largest mines and produce an annual 350,000 tons of salt. Alexander the Great discovered the salt reserves at Khewra as he crossed the Jhelum and Mianwali region during his Indian campaign around 322 B.C. - or rather, his horses did; they were observed licking at stones. However, no organized mining is recorded until a millennium-and-a-half later by the Janjua tribe in the 13th century, but the site was probably exploited by small scale operations all along. In the 16th century the first Mughal Emperor, Babur, swept through, and the Mughals made good use of the mines until they were ousted by the British. For nearly 40 years, starting in 1809, the mines were owned and run by the Sikhs, and they were the ones who named the mines Khewra.

But what kind of odd name is that? My suspicion is that it could be a garbled/corrupt version of the word quarry. (Prove me wrong).

Let us take a quick look at the Punjabi city Ludhiana: The Lodhis founded the city in the 15th century, so the name might simply be Lodhiana. But etymological roots are seldom as straightforward as that, and I suspect that the name might be much older. As *Ldvana* means salt in Sanskrit, my guess is that 'salt' would be the origin of the name Ludhiana, and not the Lodhis, given that salt quarries in the region has a history that goes way back to pre-Alexander days. Look up 'salt mines, Ludhiana', and you will be assailed by references to salt: Rock salt and black salt; iodized salt and edible salt, refined salt and crystal salt, detergent salt, industrial salt, inorganic salt, antimony salt, you-name-it-salt.

But no operating salt pit? Are they exhausted?

Anyway, four years into the 19th century, the British meant business. In 1804, they monopolized salt in the newly conquered state of Orissa. In return, they advanced money to the *malangis* against future salt production, resulting in the *malangis* becoming debtors to the British, and thus virtually becoming economic slaves. The Orissa zamindars, who had earlier controlled the local salt trade, tried to persuade the *malangis* not to work for the British, but to no avail.

A law of 1803 had provided for the establishment of a 'chowkey' (customs house) in every administrative district. The chowkies were erected close to legal salt works to prevent salt being smuggled out.

In 1801, the Nawab of Oudh was forced to hand over half his dominions to the Company. In 1802-3, after the war against the Marathas, the British had acquired control of Delhi and Agra. All these lands became the North-Western Provinces of the Bengal Presidency, and soon the entire eastern coast was under British control. A wide corridor of British controlled territories linked the western districts of the Bengal Presidency to the Bombay Presidency. *After 1818, almost all of India was now under some sort of British control – with the exception of Punjab and Sindh.* The Kingdom of Oudh formed an independent enclave within the Bengal Presidency. Not to forget the hundreds of Princely States, which were under some sort of precarious indirect control.

The shutters had in a sinister way begun to come down.... The British had taken control of the entire eastern coast and its salt-making capacity, and in 1823 the Commissioner of Customs at Agra, George Saunders, suggested a new defence. Someone came up with the unprecedented idea of establishing a Customs Barrier, starting in Greater Bengal. A secondary line of customs posts was to be put on the trading routes running alongside the Yamuna. This line of chowkies marked the start of the great Customs Line. During the next fifty years, the line would be moved many times, but it nevertheless grew longer, stronger and more forbidding every year, so that in the end it was one long, solid impenetrable and impassable bulwark, 2504 miles long. By way of this vicious construction, the British were able to control the salt trade completely.

2. The Customs Hedge

So here starts the story of a crazy hedge, another long forgotten folly committed by the British in the 19th century. It was constructed to facilitate the collection of the Salt Tax by British customs officers.

We are not talking of a piece of British whim constructed to extract a minor tax from the Indian people. At its peak between 1869 and 1879 the hedge was *2504 miles long*, and it stretched from Torbela between Peshawar and Rawalpindi and almost to the bay of Bengal (stopping at Sonapur). That is, the hedge proper, which was thorny and impenetrable (abt. 13 feet wide and 10 feet high), went from Leia north of Multan to south of Burhanpur, which means it made up around 2/3 of the formidable, afore-said Customs Line.

The paradox is that there has been salt enough in India for everybody and every use, there is rock salts, saline earth, saline lakes, and seasalt along the long Indian coast, but large-scale salt production in India has always been feasible only at few sites. Huge populations live hundreds of miles from the nearest source of salt. It was this geological accident that made it possible for the British to control the movement of salt across India by constructing a barrier.

In 1869 an Inland Customs Department was established, and in 1869-70 the Salt Tax collected on the Customs Line was 12,500,000 Rs. This huge income enabled the Department to employ *12,000 men to guard the line*, with *1,727 guard-posts*. The most heavily guarded part of the line was a stretch of 1.428 miles, starting at Multan. It required ten men for every mile, supervised by a *jemadar*.

The body needs salt – sodium chloride – to function, as it is a vital constituent of blood and other fluids. But when the crops failed, when people had a particularly hard time paying the Salt Tax, no allowance was made by the Company for hardship; the tax was still assiduously collected from the starving, and smuggling was ruthlessly punished.

It was G.H. Smith (appointed Commissioner of Customs in 1834) who transformed the Customs Line from a series of separate customs post into a coherent strong barrier. The hedge consisted partly of green hedge (live hedge), dry hedge (thorny material) and stone wall and ditches (where growing/cultivating was impossible). The construction and upkeep of this extraordinary endeavour required labour and logistics beyond imagination, and the customs officers were up against heavy attacks by hot stormy winds that swept parts of the hedge away, colonies of white ants, parasital creepers, frosts, pests, field rats, and locusts.

During the famine in 1877-8, which killed 6,5 million people, there was no remission of the Salt Tax. Indeed, in all the famines, the tax was always charged in full. *How many millions of Indians who have died because of salt deprivation is impossible to say, as these numbers have been glossed over in the official accounts, and buried in a*

mass of other death statistics. The government was well aware of the fact that the Indian consumption of salt was way below the minimum considered necessary for their own (British) soldiers in India, and well below the minimum prescribed for prisoners in English jails. The protests made by British doctors working in India were ignored by the British government for the sake of preserving an easily collectable tax.

3. A Common Misdiagnosis

Death from salt depletion has through all times often been misdiagnosed. Salt depletion does not produce an increased craving for salt. And, what is rather confusing, any salt hunger that a person may feel, is not linked to salt deprivation. The victim feels unwell, but does not know why. Lassitude, apathy, headaches and muscular weakness are the initial symptoms, often followed by giddiness and fainting. Then follows nausea and vomiting, which will reduce the intake of food, and further salt depletion. Then the damage has gone full circle, and the person dies. *Victims of salt depletion will often have their death ascribed to toxæmia, uræmia or circulatory failure, whereas the root of it all is simply lack of salt.* And salt needs to be taken regularly: The body cannot store salt for more than a few days.

During more than 40 years, the East India Company had forced up a sporadically collected minor tax (some of the Princely States hadn't collected it at all) into one that was mercilessly collected at a punitive rate. And this for such a basic commodity as salt, without which the body cannot function, and falls prey to lassitude and all sorts of serious malfunctions. *Typhus, giardia, and amoebic dysentery* have at all times made up big health problems in India. The dehydration and salt loss that follow the diarrhoea caused by these very common sicknesses, will often have dire consequences and result in death. People who have never fallen prey to the total listlessness following serious dehydration, will have a hard time understanding how it will lead to the ruin of an otherwise healthy body (I have personally been the victim of a serious case of giardia, which would have killed me if untreated). And then try to imagine how it must be for an overexploited, emaciated work force who is already malnourished and at the end of their tether.

Let us sidestep and look at some numbers. A list of major famines during British rule is almost unbelievable in its utter grimness: the Great Bengal Famine (1770), Madras (1782-83), Chalisa Famine (1783-84) in Delhi and the adjoining areas, Doji bara Famine (1791-92) around Hyderabad, Agra Famine (1837-38), Orissa Famine (1866), Bihar Famine (1873-74), Southern India Famine (1876-77), the Indian Famine (1896-1900 approx.), Bombay Famine (1905-06), and the Bengal Famine (1943-44).

(Shashi Tharoor: *Inglorious Empire*, 2017, p. 150-51, abbreviated.)

From 1770 to 1900, 25 million Indians are estimated to have died in famines. Including the famines of the twentieth century, the total figure surpasses 35 millions.

(Note: In the entire 107 years from 1793 to 1900, only an estimated 5 million people had died in all the wars around the world combined. Other numbers: 25 millions died in Stalin's political purges, 45 million died in Mao's cultural revolution, 55 millions died world wide during WW2. *The death toll from the colonial holocausts is right up there with some of the most harrowing examples of man's inhumanity to man in modern times.*)

How many Indian deaths can be ascribed to salt deficiency? As before mentioned, it is impossible to say..... As we have seen, there were huge deposits of rock salt in the (now Pakistani) Punjab - some of the mines were among the oldest in the world; there were great salt lakes in central India, in addition to the salt collected from India's long coastal line. In the beginning of the 18th century, some 60,000 people worked at digging dams and canals; they built the salt pans to extract the salt, and lots and lots of people were employed in finding the firewood for the boiling houses.

Back to the monstrous hedge:

4. Who Paid for the Hedge?

The officers in charge of the *rowannah chowkies* were given every incentive to be vigilant: They were entitled to a reward of *thirty-five per cent* of confiscated goods. However, in line with usual practice, *this is what they got*: The salary of the junior staff was deplorably inadequate which in turn led to gross abuses. The Company acquiesced, as they saved a lot of money this way. And this is worthy of taking note of: *This was the Company way*.

5. Who Paid for the Company's Armies?

In the 18th century the Company standard procedure was to outsource its military efforts to mercenaries and armed bands of various sorts. Execution of violence and coercion was contracted to non-state actors. Whoever of the mercenary warrior units had the highest bid would be licenced to provide for themselves in the various campaigns. Pillage and extortion as the troops advanced took place with Lord Cornwallis' blessing; indeed on his order. Advancing armies need food, and they need a lot of it. One can only try to imagine what this meant to the suffering inhabitants along the route. The free-lance warriors and mercenaries associated with the Company enjoyed the licence to loot everything they could lay their hands on: A horrid example of bad governance if there ever was one.

The mercenaries and (lower) customs officers had one thing in common: none of them received any proper salary, and were in fact given carte blanche to loot. An English observer stated that there never was a service in a state of such utter degradation as the subordinate native officers in the customs department. He noted that they hardly had any regular salary at all, and that they therefore were let loose upon the trade and communications of the country, to derive the best subsistence they could from extortion and collusion.

The farmers, the poor, and the common man paid for it all.

6. A Forerunner to the Barbed Wire

Barbed wire was patented in the US in 1873. On a military scale it was first implemented by the Spanish force in defence of Santiago on Cuba in the Spanish-American war in 1898. It was extensively used by the Germans in WW1, and anyone who have read reports of the battles of Somme and Verdun in France will remember the horror of soldiers being helplessly caught in the wire and left to die. This compact and thorny hedge, The Parmat Line - made up mainly by Acacia and Indian plum – was a forerunner to the vicious steel barbed wire. A hedge may sound innocent enough compared with the barbed steel wire, but the Acacia that was used has double needle-like spikes standing out from the base of each leaf stalk, fully two inches long, and they are almost impossible to break.

7. Bushes and Plants used for the Hedge

Carissa carandas, easy to grow, draught resistant sturdy shrub that grows in a variety of soil and produces berry size fruits rich in iron and vitamine C which is used for pickle, was one of the shrubs used because it is ideal for hedges, growing rapidly, densely and needing little attention. *Senegalia catechu* (babool or Kikar), zizyphues jujube (amla), prickly pear (opuntia), and *Euphorbia* (thuer), *Capparis decidua* (kair) and *Calotropis gigantea*, were also used.

The construction of the hedge started with dry material, carried from long distances by poor day labourers, who were in fact digging their own grave. G.H. Smith, who was Commissioner of Customs from 1834 to 1854, started the live hedge sometimes in the 1840s. Another officer recorded that 'it happened at first to spring up by chance'. Presumably this happened when parts of the material – the cut thorn-bush branches – took root. This gave way to a fresh approach: Smith judged a live hedge to be much easier to maintain than a dry barrier hedge. There exists an official report saying that by 1854, when Smith left the job, the hedge had 'energetically taken root'.

The next Commissioner of Inland Customs, Allan Octavian Hume, complained in his reports of having a hard time maintaining this construction, and we believe him: We were now at the end of the 1860s, and the hedge was now into its last decade, 2,504 miles long, and near perfection. It was nowhere less than eight feet high and four to five feet thick (long stretches were higher and thicker), and it was almost impossible to penetrate at any place. But local accidents happened all the time: The parts of it that still consisted of dry material, was subject to storms, ants, fires, etc. The live parts were often drowned in floodings, but by the 1860s, the hedge was built on elevated ground, embankments – which is part of the reason that almost every trace of the wretched hedge is now obliterated: these embankments have proved perfect to build roads upon, and the rest have been ploughed up. The lifetime of the planted bushes or trees is only about 60 years, which means that they have dried up and gone a long time ago, - except at the very, very few places where seeds have taken new growth, and the locality is such that the land is left alone.

Left alone like Chambal, in the Etawah District, Madhya Pradesh, where the natural old ravines are home to bands of criminals, and where visitors are well advised to keep out. Roy Moxham went in anyway – very brave of him – and he found indeed, after much searching - some token remains of the incredible hedge! I vividly recall an incident some years ago, when driver Deepak and I were on one of our long tours eastbound, towards Benares. As we passed through Chambal, I wanted to stop, but Deepak refused flatly: - *I am not stopping here, this is Phoolan Devi land*, the area is infested with bandits. At the time I knew nothing about The Great Customs Barrier, The Great Hedge of India, or The Parmat Line, but had I been aware of it, I would have given the landscape a closer look - through the car window, at least. From the main road, the scenery looked flat and deserted, and I couldn't see any ravines. But they are there, further in - and they have an eerie atmosphere (see Chambal, video).

8. Abandonment

Several British viceroys considered dismantling the line, as it was a major obstacle to free travel and trade across the subcontinent. And in 1879, the hedge was abandoned. By then, the British controlled such vast parts of India that the hedge was judged redundant.

In 1900 and 1905, India was one of the largest producers of salt in the world, with a yield of 1,021,426 metric tons and 1,212,600 metric tonnes respectively. In 1923, under the viceroyalty of Lord Reading, a bill was passed doubling the salt tax. Since the introduction of the first taxes on salt by the East India Company, the laws were subject to fervent criticism. Scores of eminent people, in India as well as in England,

thundered against this most cruel Revenue imposed in any civilised country.... (Dadabhai Naoroji, 1894), but the most universally wellknown and effective demonstration was of course Mahatma Gandhi's Great Salt March in 1930. It had a huge impact, and will be remembered forever. In 1930, a great number of Indians still had the Great Barrier Hedge (The Parmat Line) fresh in mind, although it had by then been abolished two generations earlier.

9. The Dandi March and the Great Soul

On March 12th 1930, Mahatma Gandhi embarked on a *sathyagraha* with 79 followers from Sabarmati Ashram to Dandi on the Arabian sea coast. This march, known as the Dandi March, was covered by the international press.

(Mahatma Gandhi introduced a new word: *Satyagraha* from *sadagraha*, which means 'firmness in a good cause'. *Satyagraha* = 'The Force of Truth').

The foreign news media were fascinated by this little man marching against the entire British Empire, and cheered him on from all over the world.

The British hoped he would die (Lord Irwin). But that didn't happen. Gandhi reached Dandi on April 6th, and after his morning *bhajan* (prayer), he waded into the sea shore and picked up a handful of salt. He then proclaimed that with this handful of salt, he marked the end of the British Empire. The police arrived and arrested thousands of national leaders including Gandhi. Gandhi's bold defiance of the salt law encouraged other Indians to break the law as well.

Soon after the conclusion of the Salt *satyagraha* at Dandi, Gandhi intended to lead a gathering of *satyagrahas* to the Dharasana Salt Works in Gujrat, but was arrested by the police. A few days later, Congress leader Abbas Tyabji was also arrested. So it was Sarojini Naidu who lead the peaceful *sathyagrahis* at Dharasana.

So please, history, why couldn't you have stopped this chain of events here? It would have made such a happy ending....

But history has no way with happy endings.

10. The British Manslaughter at Dharasana

The peaceful *satyagrahis* were stopped by the police and beaten down mercilessly with steeltipped lathis. The American journalist Webb Miller witnessed the gruesome scene, and he counted around 320 *bodies and hundreds of others seriously wounded*.

While India exploded, Gandhi sat in prison spinning cotton. A large number of protesters were in prison.

On March 31, Lord Irwin signed the Gandhi-Irwin pact, ending the salt campaign. Indians living on the coast were to be permitted to collect salt – for their own use only. Political prisoners were released.

Miller's reporting of the violence at the Dharasana Salt Works was later credited for helping turn the world opinion against British colonial rule in India.

About the preposterous salt customs hedge, only very scant information can be found in the official archives. Originally, there must have been tons of documents about this disgraceful undertaking which employed so many thousands of people during so many years, and generated such vast sums of money – for the Company, and later for the British government. One might suspect that the ignominy of it has urged someone in high places to call for its total obliteration from history.

Roy Moxham has done a formidable job in bringing this shameful piece of Raj history into light again.

11. Random Notes

Did you know that.....

- By 1850 nearly half the salt consumed in Bengal came from England. The development of the Indian Railways facilitated the influx of cheaply produced salt from other regions in India also. Salt manufacture in Bengal gradually declined, and by 1862 all legal production had ceased.
- Great famines had occurred periodically since the imposition of the Salt Tax.
- The Chinese wall was also constructed partly because of the need to control the taxes on salt.
- Remnants of the hedge are hard to find today. The reason for this is partly that the bushes and the trees that were used had a life span of abt. 60 years. Another reason is that in order to avoid the hedge being swallowed by the regular floodings in the monsoon, the hedge was planted on elevated foundations of mud. This made a perfect foundation for the later construction of roads. On long stretches, *roads are hiding the old rotting roots of the hedge*. Other parts have been ploughed up.

- In the Roman Empire the soldiers received an extra allowance to purchase salt, the *salarium*– hence the word salary!
- Mahatma Gandhi wrote his first article on the salt tax in 1891.
- The salt monopoly was enforced with the greatest rigour after the Mutiny in 1857.
- The Salt Tax wasn't abolished till the 28th February 1947.
- Today, every year in September, thousands of migrant workers arrive in Gujarat to work 7-day weeks until the salt season ends in the spring, often for only a dollar a day. Many of the workers are children, and many are from the lowest castes, and they are often hopelessly in debt to the salt producers. The white glare of the salt renders many of them blind or with seriously impaired vision.

Still no happy end to the history of salt..

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THE ARBITRATION & CONCILIATION (AMENDMENT) ACT 2019 - TIMELINES REINFORCED AND INSUFFICIENCIES ADDRESSED

Maneesh Kumar*

1. Introduction

Scathing criticism has been levelled towards the primary Arbitration & Conciliation Act 1996 for its ambiguities and inadequacies. The ACA Act of 2005 made a legitimate effort to solve them. The Arbitration & Conciliation Amendment (ACA) Act 2019 is a rewrite and expansion of the original legislation. The ACA Act of 2019 not only established deadlines for additional treatments, but it also improved the overall organisation and effectiveness of the arbitral process from beginning to conclusion.

2. The Arbitration and Conciliation (Amendment) Act 2019 - Journeyed through Parliament

As of July 2019, the ACA Act 2019 has been enacted by the Parliament, making significant changes to the primary Act, which is the ACA 1996. As of August 9th, 2019, the ACA Act 2019 has been approved by the President of India, and it was published in the official gazette on the same day. The most crucial components of this legislation have been explored and critically analysed in the following paragraphs.

3. Graded Arbitral Institutions to be Designated by Supreme Court/High Court

For international commercial arbitration and non-commercial arbitration, the Supreme Court and the High Court have the ability to choose arbitral institutions. The list would, however, only contain arbitral institutes recognised by the Indian Arbitration Council. High Court Chief Justices have the option of retaining an arbitral panel that is subject to periodic review, if no graded arbitration institution is easily accessible.

According to ACA 1996, parties may choose an arbitrator to settle a disagreement at any stage in the process. It would be ideal if a single arbitrator could be selected. If the parties agree to each choose one arbitrator, then the two arbitrators will choose a

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The author's opinions in this paper are his or her own and do not represent legal advice or the views of the Ministry of Railways, Government of India.

third arbitrator to preside over the arbitration. These two events necessitate the appointment of an arbitrator. Additionally, failing to follow the agreed-upon process may also lead to the appointment of arbitrators under duress. For an overview of how arbitrators are selected, see to Table 1. Compulsory appointments for arbitrators are shown below as a result of substantive amendments made by the ACA Act 2019:

Table 1: Appointment of Arbitrators

Before ACA Act 2019	After ACA Act 2019
Party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court	The appointment shall be made, on an application of the party, by the arbitral institution designated by the Supreme Court, in case of international commercial arbitration, or by the High Court, in case of arbitrations other than international commercial arbitration, as the case may be

Source: Arbitration and Conciliation Act, 1996

As a result, the process has been simplified. Instead of the proper court, the Supreme Court/High Court will appoint arbitrators via the graded arbitral institution it has chosen. The term "arbitral institution" has been used in the past without clear meaning. The ACA Act 2019 defines arbitral institutes recognised by the Supreme Court or a High Court. This is also addressed in the ACA Act 2019.

The suggestions made by certain academics about the selection of arbitral institutions should be taken into account. This section is missing a crucial feature that both the IAA and the HKO include since it is based on Singapore's International Arbitration Act and Hong Kong's Arbitration Ordinance. The Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKO) are both appointed by the same AI. As a result, it misses an essential argument in favour of restricting AI to a single type: quality.

Only one or two would have been ideal in a perfect world: one to arbitrate international disputes and one for internal ones. Only a limited number of court-appointed IAs should have been appointed, in my opinion. A provision in the bill prevents judges from starting the designation process for an infinite number of artificial intelligences (AIs).¹

¹ Proposed 2018 Indian Arbitration Law Amendments: A Watershed Moment or Legislative Screwup? Pranav Rai contributed to this article. <http://arbitrationblog.kluwerarbitration.com/2018/11/24/proposed-2018-amendments-to-indian-arbitration-law-a-historic-moment-or-legislative-blunder-2/>

It's worth noting that unlike Singapore and Hong Kong, India is a large country where domestic institutional arbitration is also a goal of this amending Act, which was passed earlier this year. When it comes to transitioning from an informal to an institutionalised arbitration system, it's a big task. We will be able to travel more easily if there are more arbitral competitions in other places, which would also offer up chances for our young legal population. The Arbitration Council of India should take the rise of arbitral institutions without quality control, as noted in the critical evaluation above, very seriously.

4. Timelines Reinforced in Appointment of Arbitrators

Application to the arbitral institution for appointment of an arbitrator might take place in two ways (s). An arbitrator's appointment does not take place in cases where there is no agreement between parties. Agreement between parties has been reached and it has not worked out. An application for appointment of arbitrator(s) prior to the ACA Act 2019 had to be made to the Supreme Court/High Court, as applicable, within 60 days after its submission. However, this was just desirable and not necessary. It has been reduced from 60 days to 30 days and is now binding. For your convenience, the two positions are shown below:

Table 2: Timelines Reinforced in Appointment of Arbitrators

Before ACA Act 2019	After ACA Act 2019
An application made for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.	An application made for appointment of an arbitrator or arbitrators shall be disposed of by the arbitral institution within a period of thirty days from the date of service of notice on the opposite party.

Source: Arbitration and Conciliation Act, 1996

5. Timelines Laid for Filing Statement of Claim and Defence

Under the ACA Act 2019, there are stringent deadlines for submitting a statement of claim and defence. An arbitrator's or arbitrators' appointment notification must be received in writing within six months of the date the statement of claim and defence under this section is due, according to Section 23 (4).

There have been concerns expressed concerning the six-month binding period that has been imposed. "It may cause problems for an arbitral institution since it ignores procedural elements that are inherent in a sophisticated international arbitration." After meeting with the parties, the arbitrators established a timeline for the preparation of documents and testimony, among other things, during international arbitration (e.g., see Rule 24 of the 2017 ICC Arbitration Rules). It may be impossible to properly execute multi-party arbitrations with large documents in six months if Section 23(4) forbids a tribunal from being in command of its activities. Parties will also be significantly limited in their ability to set their own procedural timelines. There would always be uncertainty if Section 23(4)'s time constraints are not strictly adhered to.²

The required clause of Section 23(4) may seem unnecessary in complicated multi-party international arbitrations, but it is not an insurmountable legislative challenge and may be handled. Many institutional arbitrations have benefited from this narrowing of time schedules, notwithstanding the difficulties in a few situations. As an aside, it's worth noting that ACA Act 2019 expressly addressed the issue of a 12-month required arbitration award-giving term for international commercial arbitration in ACA Act 2015.

6. Timelines for Awarding Arbitral Prizes in International Commercial Arbitration

For awards to be made, there are no timeframes set under Section 29 (Arbitration & Conciliation Act 1996) . The ACA Act of 2015 sets a deadline for awarding prizes. Subsections 29A and 29B have been added below the previous section 29, which had nine and six sub-clauses, respectively. Within 12 months, an arbitral tribunal is required under the ACA Act 2015 to make an award. The ACA Act 2019 limited such required time restriction to international commercial arbitration when issues were discovered in reality check. The pre-ACA Act 2019 and post-ACA Act 2019 positions are shown below:

² Is the Indian Arbitration Act's 2019 revision a typical instance of one stride forward, two steps back? <http://arbitrationblog.kluwerarbitration.com/2019/08/25/the-2019-amendment-to-the-indian-arbitration-act-a-classic-case-of-one-step-forward-two-steps-backward/> by Subhiksh Vasudev Accessed 30.11.2019.

Table 3: Timelines for Awarding Arbitral Prizes in International Commercial Arbitration

Before ACA Act 2019	After ACA Act 2019
The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.(i.e. date on which arbitrator(s) have received notice of appointment in writing)	The award in the matter other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings. Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings.

Source: Arbitration and Conciliation Act, 1996

A show-cause period before lowering the arbitrator's fee is contemplated before the pending application for an extension with court checks expires after twelve plus six months (s).

7. Confidentiality - Publishing Awards in Line with Global Practices

Arbitrators, arbitral institutions, and parties to arbitration agreements must keep all arbitration proceedings confidential, unless disclosure is required for award implementation or enforcement. Section 42A of the ACA Act 2019 outlines this. This move has been enthusiastically applauded, but further analytical investigations revealed that there were additional expectations.

International Chamber of Commerce (ICC) Arbitration: A Guide for Parties and Tribunals As of January 1, 2019, awards awarded after that date may be disclosed two years after notice under an opt-out procedure if they are made public within two years after notification. Recent revisions have been made to the International Chamber of Commerce (ICC). If a party does not want their award to be publicly disclosed, they can use the opt-out option to have it sanitised or redacted at any time. According to the parties' agreement, if the award is not publicised, then it will either be sanitised or censored in compliance with the agreement. Who will make the determination that an award must be made

public in order for it to be implemented?³

8. Date of Effect of ACA Act 2015 Clarified in ACA Act 2019

An ordinance published by the Indian President on October 23 is presumed to have come into effect on October 23, 2015, according to a Gazette Notification. Legislative clarification was necessitated by lengthy litigations in multiple High Courts and differing viewpoints among them. There is now an additional section in the principal act that specifies that the ACA Act 2015 will only apply to arbitral proceedings initiated after October 23, 2015, unless the parties agree otherwise, and will not apply to arbitral proceedings commenced before or after that date, or to court proceedings arising from those proceedings.

9. Concluding Remarks

Since 2015, the ACA Act has undergone a major overhaul to make arbitration a viable alternative method of dispute settlement. It corrects deficiencies and eliminates ambiguity in the existing procedure. Stakeholders in the alternative dispute resolution system are being assured. If we want to make India an arbitration-friendly nation, timely legislative, judicial, and executive adjustments would be necessary in the future.

³ The 2019 amendment to the Indian Arbitration Act: A classic case of one step forward two steps backward? By Subhiksh Vasudev <http://arbitrationblog.kluwerarbitration.com/2019/08/25/the-2019-amendment-to-the-indian-arbitration-act-a-classic-case-of-one-step-forward-two-steps-backward/> Accessed 30.11.2019.

THE CHINESE IDEA OF “*TIANXIA*” VIS-À-VIS SINO-INDIAN BORDER DISPUTE

Sakshi Srivastav*

1. Introduction

The June 15 flare-up between the Indian Army and People’s Liberation Army (PLA) of China, leading to the death of 20 Indian Army Personnel in the Galwan valley, has given Sino-Indian border dispute, after the 2017 Doklam issue, a global spotlight again. While the situation appeared to be returning back to normal in July, when both the nations seemingly took measures to disengage along the LAC, it can only be said to have worsened with both countries accusing one another of firing warning gunshots. Such accusations have marked yet another unprecedented turn in Sino-Indian relations, as it puts decades old protocol on compromise that bars the use of guns and other arsenal along the border.¹

For a better grasp of the situation, it is pertinent to dig deeper into the border relations between these two powerful Asian nations and fathom the Chinese interests involved.

Recent times have seen China grow into an economically and militarily powerful nation. As per the World Bank, China is the second largest economy in the world after the US. It is also militarily one of the most powerful countries. China, which is called ZhongGuo in Mandarin, means “middle country”. An ancient Chinese idea of *Tianxia*, which meant “all under the heaven”, divided the world into three parts, the middle kingdom, the tributaries, and the barbarians.² Now, by augmenting its military and economic prowess further, China wants to regain its ancient glory as the Middle Kingdom; being at the centre of the world and viewing other countries either as tributaries, accepting its dominance and being rewarded with trade benefits and non-aggression; or as barbarians, opposing and challenging the Chinese power and thus being viewed as a threat by China. One example of this can be China’s simmering cold war with the US, which is currently the undisputed Superpower in the world. Another example of this could be China’s growing aggressiveness in its territorial disputes. If China’s recent activities are to be observed closely, the country has matters ruffling up

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¹ Gettleman, Jeffrey. “Shots Fired Along India-China Border for First Time in Years.” *The New York Times*, 8 September 2020, <https://www.nytimes.com/2020/09/08/world/asia/india-china-border.html>. Accessed 21 July 2021.

² Sarmah, Saurav. “Belt and Road Initiative: A Civilisational Perspective – Part 1.” *FINS Journal on Diplomacy & Strategy*, vol. 2, no. 2, 2019.

at many fronts, mainly Hong Kong, Taiwan, South-China Sea and the Sino- Indian border. In this difficult time, when the world is grappling with Covid-19 pandemic, China has chosen to strategically buttress its dream of what may be called “Akhand China”³. China asserts that in its weak time it had lost lands and its tributaries to foreign encroachment and now that the country is one of the most powerful ones across the globe, it aims to recover those “lost lands” and the tributaries on which it exercised influence and rebuild an Akhand China.⁴

As far as the Sino-Indian border dispute is concerned, it has not been considered a major eyesore to Chinese irredentism. However, what happened on June 15th is being described as an “Inflection point” in India-China relations⁵ as it has the potential to change the current relation-paradigm between the nations, existing on the support of several peace agreements since 1993. Let us have a look at the dispute.

The Sino-Indian border dispute draws its breath from the fact that both countries’ claimed border lines overlap. In the 1950s, Mao Zedong, had asserted that Tibet is China’s right palm which has lost all its five fingers, Ladakh, Bhutan, Sikkim, Arunachal Pradesh and Nepal.⁶ Of these five, three lie in India and while Sikkim has been accepted to be an Indian territory by China in 2003, its border disputes with India along Ladakh and Arunachal Pradesh border remain unsettled till date.

Presence of different claim lines makes skirmishes along the border not less frequent. However, the June 15-16 border skirmish in the Galwan region along the LAC took an ugly form and resulted in the death of 20 Indian army personnel. Interestingly, the violent clash in the Galwan Valley of Ladakh took place when after a month long standoff, de-escalation process between the troops was underway. The gravity of this saddening incident can be demonstrated by the fact that it is the first time in 45 years that any border face-off has resulted into casualties⁷; and the first time in 52 years that an escalation to this scale has taken place. The current standoff at several points

³ Desai, Meghnad. “China’s War on India.” *The Indian Express*, 31 May 2020, <https://indianexpress.com/article/opinion/columns/india-china-border-dispute-meghnad-desai-6435036/>. Accessed 21 December 2021.

⁴ Maxwell, Neville. “Sino-Indian Border Dispute Reconsidered.” *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 905.

⁵ Sinha, Amitabh. “India-China border faceoff: Inflexion point in ties, time for Delhi to make policy reappraisal.” *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/india/india-china-border-faceoff-inflexion-point-in-ties-time-for-delhi-to-make-policy-reappraisal-6464057/>. Accessed 21 December 2021.

⁶ Chowdhury, Adhir Ranjan. “Chinese intrusion in Ladakh has created a challenge that must be met.” *The Indian Express*, 17 June 2020, <https://indianexpress.com/article/opinion/columns/resolve-and-prudence-india-china-border-dispute-galwan-valley-ladakh-6462309/>. Accessed 21 December 2021.

⁷ Ibid.

along the LAC, the Galwan valley face-off being its high point, is said to have started from a clash that took place at PangongTso on May 5 and the subsequent conflicts that arose in Galwan valley, Hotsprings/gogra in Ladakh and Naku la in Sikkim. As said before, small clashes on the border are not less frequent. These face-offs take place owing to the fact that there are at least 23 disputed points on the Line of Actual Control known as the Areas of Different Perception (ADPs).⁸ The LAC is very loosely demarcated which gives rise to such ADPs or the areas where there is no mutually agreed LAC. These disputed areas are patrolled by the armies of both sides which many a time results into small melees. The afore-mentioned clashes are said to have taken place because of Chinese occupation of these areas, which India claims to be on its side of the LAC. Hitherto, Galwan had not been one of these 23 ADPs.⁹ This indicates that China, which has now begun claiming the entire Galwan valley, is enlarging the area of disputes in favour of its expansion policy.

China seems to be following its great military strategist Sun Tzu's dictum from his book "The Art of War" in which he said that "the supreme act of war is to subdue the enemy without fighting".¹⁰ In this scenario, China is doing so by attempting to grab Indian lands using what may be called its "Salami slicing tactics"- a technique to slowly occupy small parts of someone else's land (here the bordering country's territory) over a long span of time.¹¹ This is being done through aggressive patrolling and boundary violations and as per reports, over a thousand boundary violations by China have been recorded in the last ten years.¹² Ashley Tellis, a US observer, says that the pattern of Chinese patrolling since the late 1990s suggests that Beijing, which already controls a major part of Aksai Chin, seeks to eventually control the entire Aksai Chin plateau on which parts of Ladakh are located.¹³

The recent developments that have sent shock waves across India are extraordinarily important in Sino-Indian relations. The questions however are- Why has the Sino-Indian border dispute not been settled? Why do the two countries have a poorly

⁸ Mitra, Devirupa. "Modi's 'No Intrusion' by China Claim Contradicts India's Stand, Raises Multiple Questions." *The Wire*, 20 June 2020, <https://thewire.in/security/modis-no-intrusion-by-china-claim-contradicts-indias-stand-raises-multiple-questions>. Accessed 21 Decmeber 2021.

⁹ Ibid.

¹⁰ Ibid at 6.

¹¹ Sarkar, Shankhyaneel. "China's 'salami-slicing tactics' displays disregard for India's efforts at peace." *Hindustan Times*, 6 June 2020, <https://www.hindustantimes.com/world-news/china-s-salami-slicing-tactics-displays-disregard-for-india-s-efforts-at-peace/story-ujHFW5zcwTbKiP7j0QghGL.html>. Accessed 21 December 2021.

¹² Madhav, Ram. "China has changed tactics, not goals. India must demonstrate strong national power." *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/opinion/columns/facing-the-incursion-india-china-lac-border-situation-6463920/>. Accessed 21 December 2021.

¹³ Ibid at 11.

demarcated border? How did the LAC come into being and why do both sides have its different perception? Only after knowing the answers to these questions could one fully comprehend the occurrence of Galwan valley face-off or for that matter, any past clash.

The recent border tensions may be said to have emanated from the early may clashes at PangongTso and several other points along the LAC, but the genesis of the border dispute *per se* can be traced back to mid-19th century. However, before getting into the nitty-gritty of the dispute, let us understand the structure of the border as it stands today.

2. The Sino-Indian Border

2.1 Current Structure of the Border

The Sino-Indian border can be divided into three sectors, namely; Ladakh border which forms the western sector, the middle sector that consists of Himachal Pradesh and Uttarakhand, and the eastern sector that comprises of Sikkim and Arunachal Pradesh.

Currently, Line of Actual Control (LAC), a *de facto* border, is the demarcation that separates Indian-controlled territory from the territory controlled by China.¹⁴ In the western sector, the LAC is very poorly drawn; while in the eastern sector, the LAC runs along the McMahon line¹⁵ giving rise to disputes relatively minor than those raised by the former. As a result of the loose demarcation of the LAC, especially in the western sector, India considers the LAC to be 3,488 kilometres long, while the Chinese consider it to be only around 2,000 km.¹⁶ As already said, there are at least 23 disputes sites on the LAC not to mention that China is very shrewdly working on increasing their number.

It is interesting to note that the LAC, which is differently perceived by both nations, is just a *de facto* border and not their actual claim line.

For China, the LAC corresponds mostly to its claim line, however in the eastern sector, China does not recognise McMahon line and claims Arunachal Pradesh to be

¹⁴ Singh, Sushant Singh. "Line of Actual Control: Where it is located, and where India and China differ." *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

¹⁵ Ibid.

¹⁶ Ibid.

its territory (which is to the south of both countries' versions of the LAC).¹⁷ In the western sector, India puts its claim on Aksai Chin that it believes to be under China's illegal occupation,¹⁸ (in both versions of the LAC, Aksai Chin falls under China). In addition to this, India claims Gilgit- Baltistan in Pakistan occupied Kashmir (Pok), to be forming its northern most border with China. In all, besides the disputes along the LAC, China claims approximately 90,000 square kilometres of Indian Territory in the state of Arunachal Pradesh and the Indian Territory under the occupation of China in the Union Territory of Ladakh is approximately 38,000 square kilometres, as per the reports of the Indian Ministry of External affairs.¹⁹ The Ministry reports further mention, "Under the so-called China-Pakistan Boundary Agreement signed between China and Pakistan on March 2, 1963, Pakistan has illegally ceded 5,180 square kilometres of Indian territory in PoK to China".²⁰

Of the three sectors, the middle sector is clearly demarcated and is the least controversial of all.²¹ The Eastern sector, may be contested, is demarcated nonetheless. This however could not be said for the western sector. The western or Ladakh sector is not only highly contested but also undemarcated which makes it the central point of the border disagreement.

Here is an account of the genesis of the border dispute at the eastern and the western sectors respectively-

2.2 The Eastern Sector

British India gained a common border with Tibet (China) in the year 1824 with the annexation of Assam. Subsequent annexations, as a result of Anglo Burmese war, expanded British India's border with Tibet (China) in the eastern sector.²²

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ "Arunachal, J&K, Ladakh integral parts of India, fact conveyed to China on several occasions: MEA." *The Economic Times*, 11 March 2020, <https://economictimes.indiatimes.com/news/defence/arunachal-jk-ladakh-integral-parts-of-india-fact-conveyed-to-china-on-several-occasions-mea/articleshow/74576724.cms?from=mdr>. Accessed 21 December 2021.

²⁰ Ibid.

²¹ Singh, Sushant. "Line of Actual Control: Where it is located, and where India and China differ." *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

²² Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1313.

In 1913, when Tibet declared its independence from China²³, a need was felt to regulate relations between Beijing and Lhasa²⁴ and to determine Tibet's status and its border²⁵. In furtherance of this, the representatives of China, Tibet and India met in Shimla to draw up an agreement. The agreement, which came to be called the 1914 Shimla Convention, had the map of the proposed McMahon line attached to it.²⁶ This line, which was drawn by British negotiator Henry McMahon, demarcated Tibet's border with British India (British India included modern day Myanmar until 1937 henceforth, the line extends till Myanmar). However, after the initiation of the agreement, China objected to the proposed Sino-Tibet border and did not rectify it.²⁷ Upon this, British India and Tibet signed and rectified the treaty as a bilateral accord.²⁸ Nevertheless, due to the controversial nature of the accord, the line was not shown on the Indian map until 1938.²⁹

China, which reclaimed its authority over Tibet in 1951³⁰, considers the 1914 Simla Convention and the McMahon line to be illegal, taking recourse to the fact that it had repudiated from the agreement and Tibet being a local government did not have the power to enter into any international treaty.³¹

Interestingly, China has accepted McMahon line's demarcation as far as Myanmar's boundaries extend but it considers McMahon Line on India-China boundary illegitimate till date.³²

2.3 The Western Sector

Subhashis Sen, in his article written for the 75th volume of the journal *Proceedings of the Indian History Congress*, says that, the earliest treaties regarding the western sector boundaries could be traced to 1842. When the Sikh confederacy of Punjab, who had

²³ "Tibet profile – Timeline", *BBC News*, November 13, 2014, <https://www.bbc.com/news/world-asia-pacific-17046222>. Accessed 21 December 2021.

²⁴ Maxwell, Neville. "Sino-Indian Border Dispute Reconsidered." *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 907.

²⁵ Ibid at 22.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ "Tibet profile – Timeline." *BBC News*, 13 November 2014, <https://www.bbc.com/news/world-asia-pacific-17046222>. Accessed 21 December 2021.

³¹ Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1313.

³² "McMahon Line illegal: China Responds to Doval." *The Wire*, 25 May 2015, <https://thewire.in/diplomacy/mcmahon-line-illegal-china-responds-to-doval>. Accessed 21 December 2021.

annexed Ladakh into their territory of J&K in 1834, invaded Tibet in 1841, they were defeated by the Chinese and made to sign a treaty with China stipulating non-transgression and non-interference in either country's frontiers.³³ When the British got hold of Ladakh after defeating the Sikhs in 1846, their attempt to demarcate the border with Chinese cooperation failed, as both sides agreed that the traditional border defined by natural elements was sufficient and there was no need for any official demarcation.³⁴ Interestingly, the extreme points of the boundary viz. Karakoram pass and Pangong Lake lay well-defined while Aksai Chin, the middle portion, was quite undefined.³⁵

When British India's map was being drawn, W.H Johnson, a civil servant with the Survey of India, proposed the "Johnson line" for the western border with Xinjiang (now Xinjiang Autonomous Region under China) and Tibet in 1865.³⁶ This line, which included Aksai Chin, was not presented to the Chinese as they weren't controlling Xinjiang at this particular time. Johnson also included areas north of Aksai Chin in India for which he was reprimanded by the British Government.³⁷

In 1899, the British Indian Government presented the "Macartney-Macdonald line" to the Chinese. This line did not include Aksai Chin and was adopted from a map presented to Macartney, a British consul-general in Xinjiang by a Chinese official in 1893.³⁸

The British used the Macartney-Macdonald line on their map for India until 1908, though after 1911 they officially started using the Johnson line. In addition to this, from 1917-1933, the "Postal Atlas of China" published by the Government of China in Peking and the 1925 published "Peking University Map", put Aksai Chin in India.³⁹

Johnson line was further dropped from usage in 1927 (it kept showing on the official Indian map though) but was back in official use by the 1940s.⁴⁰ The British, however, did not make any attempt to establish outposts or assert actual control along the

³³ Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1308.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1309.

³⁷ Ibid.

³⁸ Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1310.

³⁹ Sen, Subhashis. "Sino-Indian Border Dispute." *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1311.

⁴⁰ Ibid.

Johnson line.⁴¹ So, when India got independent in 1947, its boundary in the western sector lay undemarcated.

2.4 Post- Independence

According to Neville Maxwell, a famous British Journalist, independence of India in 1947 and the establishment of the People's Republic of China (PRC) in 1949 brought forth a common task for both nations – to convert their frontiers into boundaries.⁴² From the history of the frontiers described in the previous section, it becomes clear that it was going to be a very taxing task and might have led to conflicts. So it did.

Upon Independence, the Indian government used a slightly modified version of Johnson line as the basis for drawing its official boundary with China in the western sector⁴³ (it dropped the areas north of Aksai Chin, as the British has berated Johnson for their inclusion).

In the 1950s, the official map of India was released by the *Survey of India* which showed Aksai Chin in the western sector and McMahon line in the eastern on it.⁴⁴ This map is used by India till date.⁴⁵

On the western sector, the then Prime Minister, Jawaharlal Nehru was quoted as saying, “Aksai Chin was part of the Ladakh region for centuries and that the northern border was a firm and definite one which was not open to discussion with anybody”⁴⁶. China, in the late 1950s stated that Macartney-Macdonald line was the only line ever presented to China.⁴⁷ It further said that since India didn't have any outpost at Aksai Chin and China had actual control in the area, the status quo must be taken into consideration.⁴⁸

In the eastern sector, China doesn't recognise McMahon line and considers Arunachal

⁴¹ Ibid.

⁴² Maxwell, Neville. “Sino-Indian Border Dispute Reconsidered.” *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 905.

⁴³ Ibid at 39.

⁴⁴ Maxwell, Neville. “Sino-Indian Border Dispute Reconsidered.” *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 905.

⁴⁵ Singh, Sushant. “Line of Actual Control: Where it is located, and where India and China differ.” *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

⁴⁶ Sen, Subhashis. “Sino-Indian Border Dispute.” *Proceedings of the Indian History Congress*, vol. 75, no. 1, 2014, p. 1312.

⁴⁷ Ibid.

⁴⁸ Ibid.

Pradesh, to be part of southern Tibet and therefore claims the region as its territory⁴⁹, further it also claims parts of Northern Sikkim.

2.5 *Line of Actual Control*

The border dispute properly came to surface in 1958, when China published an article in *China Pictorial* regarding construction of a road connecting Xinjiang to Tibet.⁵⁰ A section of the road (179 Kms long), which was 1200 Kms in length, ran south of the Johnson line through Aksai Chin.⁵¹ This clearly meant that the Chinese had control over that tract of the land.

On this, the Indian government sent a formal complaint to Beijing raising objection over the international borders of China displayed in the article, as it did not coincide with the 1954 official Map of India.⁵² The complaint also had the mention of a dialogue that transpired between Zhou Enlai, the Chinese Premier and Nehru in 1954. Zhou Enlai had then reassured Nehru that the current Chinese maps were based on old maps and the PRC had yet not had the time to correct them.⁵³

In its reply, Beijing just rephrased Zhou's statement and said that the boundaries were based on the old maps and it would not be appropriate to alter them unilaterally without conducting surveys and holding consultations with India.⁵⁴

Zhou wrote a letter to Nehru in 1959, which was his reply to the letter written by Nehru raising objection to the Chinese map. In this letter, Zhou said that Aksai Chin had always been China's and under its control, and regarding McMahon line he maintained that China does not consider it legitimate but it would accept the alignment if India gave up its claim on Aksai Chin.⁵⁵ This however was to be done through negotiations. Zhou, in this letter, made an important exclamation; he said since Sino-India border had never been formally delimited, discrepancies in both countries' maps were unavoidable.⁵⁶ He therefore made the proposal to temporarily

⁴⁹ Singh, Sushant. "Line of Actual Control: Where it is located, and where India and China differ." *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

⁵⁰ Maxwell, Neville. "Sino-Indian Border Dispute Reconsidered." *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 909.

⁵¹ Ibid at 46.

⁵² Maxwell, Neville. "Sino-Indian Border Dispute Reconsidered." *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 911.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

stick to the status quo as a provisional measure. What he meant by saying this was, until negotiations take place between both nations, as a temporary measure both sides should keep till those border areas where they exercised jurisdiction (and not claim). In simple words, both should stick to the areas where they had actual control, i.e. the Line of Actual Control. Zhou exclaimed that the LAC consisted of “the so-called McMahon Line in the east and the line up to which each side exercises actual control in the west”⁵⁷

India rejected the proposed line, creating tensions at the border. Further, the failure of the 1960 India- China summit, which was held after the clash at the Kongka Pass, led to a complete deadlock between the nations.⁵⁸ Nehru then launched his “Forward policy” in 1960-62 under which military outposts and excessive patrolling were to be established at Indian Territory under Chinese control (as per India’s map), majorly in the western sector. In a report that remains officially classified, Henderson Brooks, a former Indian army General officer, blamed this policy of Nehru for the break out of 1962 Sino-Indian war.⁵⁹ The war broke out between the nations in October, 1962 and culminated in November the same year. The Chinese were declared victorious.

Post-war, Zhou wrote another letter to Nehru clarifying the LAC, “To put it concretely, in the eastern sector it coincides in the main with the so-called McMahon Line, and in the western and middle sectors it coincides in the main with the traditional customary line which has consistently been pointed out by China”⁶⁰ this new LAC was a little different from the first one in the context that the Chinese had claimed to withdraw 20 Kms behind the LAC of 1959.

Having rejected the LAC, in 1959 and then again in 1962, India formally accepted it in 1993 when the then PM of India P.V. Narsimha Rao along with his counterpart, signed the ‘Agreement to Maintain Peace and Tranquillity at the LAC’.⁶¹ India may

⁵⁷ Singh, Sushant. “Line of Actual Control: Where it is located, and where India and China differ.” *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

⁵⁸ Maxwell, Neville. “Sino-Indian Border Dispute Reconsidered.” *Economic and Political Weekly*, vol. 34, no. 15, 1999, p. 912.

⁵⁹ “Forward Policy of Nehru govt. blamed for 1962 debacle.” *Deccan Herald*, 18 March 2014, <https://www.deccanherald.com/content/392828/forward-policy-nehru-govt-blamed.html>. Accessed 21 December 2021.

⁶⁰ Singh, Sushant. “Line of Actual Control: Where it is located, and where India and China differ.” *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

⁶¹ Ibid.

have accepted the LAC but its claim line is still the same, so is the case with China.

The LAC has been undoubtedly accepted by India, but this acceptance did not lead to any dispute resolution. In contrast, it has added to the already existing border disputes. The reason behind this is the loose demarcation of the LAC. As per Shivshankar Menon, India’s former National Security Advisor, the LAC presented by China “is a disconnected series of points on a map that could be joined up in many ways”.⁶² This is the reason as to why the Indian and the Chinese perception of the LAC are so different that there are dozens of disputed areas along the line. To top it all, any attempt to clarify the LAC has stopped since 2002, the last proposal for demarcation was made by Narendra Modi in 2015, but it was refused by the Chinese.⁶³

This loose demarcation of the LAC has given rise to many disputes along the LAC post acceptance too *viz.* the 2013 *Depsang* conflict, the 2014 *Demchok* dispute, the 2017 Doklam Standoff and most recently, the Galwan river valley face-off of 2020.

3. Sino-Indian Relations: An Analysis

Sino-Indian relations can be described as one of both co-operation and conflict. In the present scenario, the relations have unquestionably hit a low. Even in those phases where the relationship had been socio-economically amiable, a state of perpetual tension always underscored such co-operation owing to a number of unresolved issues. China and India have viewed one another as potential threats since long. What makes their relations critical in International politics is the fact that these nations are nuclear-armed, highly populated, fast growing economies that share borders and exercise considerable influence over Asian politics. China, which will soon replace the United States to become the next superpower if nothing is done to contain it, views India as a threat because it is another country that has the potential to become a superpower other than China itself. On the other hand, India views China, an unquestionably stronger power, as a big threat to India’s security. Even if we were to put aside the border dispute, China has a significant geopolitical advantage over India which it is constantly trying to strengthen under its foreign policy of Belt and Road Initiatives (BRI). BRI, which was announced in 2013 and is based on the ancient Eurasian trade route commonly called as “Silk Road”,⁶⁴ is a major policy aimed at increasing China’s geopolitical reach by enhancing its trade routes.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Sarmah, Saurav. “Belt and Road Initiative: A Civilisational Perspective – Part 1.” *FINS Journal on Diplomacy & Strategy*, vol. 2, no. 2, 2019.

Post-Independence, Sino-Indian relationship started off on a positive note, as Nehru initially had a very idealistic approach towards China. An evidence of this could be the Panchsheel agreement signed between the two nations in 1954 highlighting India's foreign policy towards China in five principles of peaceful-co-existence.⁶⁵ These principles, however, failed to establish peace and harmony between the two nations. China, taking advantage of the undefined nature of the boundary, controlled areas India claimed to be its and this led to a series of disputes culminating into the 1962 Sino-Indian war. Post war, after getting a sense of Chinese irredentism and its threat to India's security, the Indian Government did away with its idealist "hindi-chinibhaibhai" approach and adopted a realist ideology towards China.

Post- 1987, when the last major conflict took place between them (hitherto), Sino-Indian relations, despite occasional skirmishes along the border, have been considered amiable in the socio-economic arena. The foundation for this cooperation was laid down by Rajiv Gandhi in 1988 when he was the Prime Minister and was strengthened by P V Narsimha Rao under whose leadership the first of many peace accords was signed by both nations. The current standoff has however, thrown everything into disarray. India, in the course of the months following the Galwan valley face-off, has banned scores of Chinese apps as a measure to prevent any potential illegal transfer of data to the Chinese regime. This step might not affect the Chinese economy but has sent shock waves in China and socio-economic relations are bound to suffer.

We already know that the LAC is un-demarcated and therefore a lot of areas along the LAC are disputed. China wants to get a hold on some north-western ADPs not only because it considers them to be its territory but also because these are strategically very important locations especially for China's Belt and Road Initiative (BRI).

Belt and Road Initiative, launched as One Belt One Road (OBOR) in 2013, is China's biggest foreign policy till date aimed at exercising immense geopolitical influence over Asia. It did not take root in 2013 rather it was just given this mega name that year. In reality this project consists of a series of existing policies that China had been working upon since a long time. Controlling important land and maritime routes of a particular area has always been the policy of countries trying to create dominance in a region, for example- the British had control over all important routes of Asia when it ruled India and other Asian countries. Such influence not only serves economic purposes but also helps keep other rising powers or enemies at bay by providing for strategic geopolitical locations. BRI will thus help China become the unquestioned leader of Asia in terms of

⁶⁵ S Y Surendra Kumar. "Strengthening India-China Relations: The Relevance of Panchsheel." *World Affairs: The Journal of International Issues*, vol. 16, no. 2, 2012, p. 90.

trade and will also make it geopolitically stronger than ever before, much in India's disinterest.

The objective of the Project as per European Bank for Reconstruction and Development reads "to connect Asia with Africa and Europe via land and maritime networks along six corridors with the aim of improving regional integration, increasing trade and stimulating economic growth".⁶⁶ One such corridor is the China Pakistan Economic Corridor, which is a USD 54 billion investment majorly financed by Chinese.⁶⁷ The proposed rail and road tracks to be built under CPEC will pass through Pakistan occupied Ladakh (PoL, earlier PoK) and will therefore pose a threat to India's sovereignty. Moreover, if China gets a hold of the whole of Aksai Chin and adjacent areas that India claims to lie on its side of the LAC then it will further help China in connecting its Xinjiang Province with Pakistan.

CPEC, though quite troublesome, is not the only way in which BRI would affect India, China through BRI is also paving way for its ambition of asserting influence in the Indian Ocean or what the Americans call as its "String of pearls" project.⁶⁸ It is China's shrewdness to surround India in the name of trade with various ports and airfields, thus gaining a strategic gain over India if any prospect of war arises in the future. Some of the examples of this could be the Hambantota port in Sri Lanka which has been given to China on a 99 year lease, Chittagong port (Bangladesh), Port Sudan (Sudan), Maldives, and most importantly Gwadar port in Pakistan..

India as a counter has established control over the Chabahar port in Iran to minimise Chinese influence in the Arabian Sea that China would get through Gwadar port. The current government of Maldives also favours India over China and India is helping the Maldivian government repay the loan China has provided so that they don't suffer the same fate that Sri Lanka suffered at Hambantota Port. However, these steps are unfortunately not enough and to counter China's rapidly growing influence, some significant strategy needs to be adopted.

⁶⁶ "Belt and Road Initiative." *European Bank For Reconstruction and Development*, <https://www.ebrd.com/what-we-do/belt-and-road/overview.html>. Accessed 21 December 2021.

⁶⁷ Talat, Haider. "5 Ways India's Going to Be Affected When CPEC Changes World Trade", *The Quint*, 23 March 2017, <https://www.thequint.com/voices/blogs/ways-india-going-to-be-affected-when-china-pakistan-cpec-changes-world-trade-gwadar>. Accessed 21 December 2021.

⁶⁸ Ibid.

4. Conclusion

There is no doubt that China views India as barbarian (as per its *Tianxia Theory*). India is an emerging power and has the potential to become a ‘great power’, to China’s disadvantage. The Chinese project of BRI clearly indicates that one of the aims of China under this is to contain India. At the borders too, it is quite clear that China does want to negotiate with India.

Arranging one piece after the other, China’s intention becomes very visible. It has always taken advantage of the LAC’s loose demarcation to pursue irredentism. As eloquently described by India’s former NSA, Menon, “the vagueness of the Chinese definition of the LAC has left it open for China to continue its creeping attempt to change facts on the ground by military force”.⁶⁹ China has been transgressing or intruding into the Indian side of the LAC at various sites, and illegally occupying them. If left unnoticed by the Indian side, which is possible given the remote accessibility of the border pertaining to harsh terrain and lack of road connectivity, they may forever illegally occupy that site and if caught then that territory may just get enlisted in the list of Areas of different Perception along the LAC and the number would keep increasing.

What turn this on-going standoff takes is for the future to hold. The only thing we could be certain about is that the overlapping border claim lines and the poorly drawn LAC are the reasons for every border dispute that has ever taken place between India and China. Recently, Narendra Modi, the Indian PM, warning China on its irredentism said that the age of expansionism is over and this is the age of development. However, unless the border is clearly demarcated, China will continue nibbling away our land under the garb of different perception of the LAC; and incidents of Depsang, Demchok, Doklam, Galwan, or worse, even 1962 and 1967 Sino-Indian wars, will keep repeating themselves.

In such a scenario, India has two options. One, it could give in to China’s dominance, negotiate with China by giving up its claim on certain disputed territories in the western sector and getting China to rectify the McMahon line as had been its offer in the 1959 letter written by Zhou. So far, India had been trying to negotiate (and was being duly ignored) with China on getting a clear perception of the LAC. Giving up of the claim altogether will help stir the Chinese and an agreement for doing away with the temporary, undefined Line of Actual Control and establishing a clearly demarcated

⁶⁹ Singh, Sushant. “Line of Actual Control: Where it is located, and where India and China differ.” *The Indian Express*, 18 June 2020, <https://indianexpress.com/article/explained/line-of-actual-control-where-it-is-located-and-where-india-and-china-differ-6436436/>. Accessed 21 December 2021.

permanent border could be reached. This would help India put a stop to Chinese irredentism altogether as the Chinese under the garb of the loosely demarcated nature of the LAC had also been occupying areas they never put a claim on in the past. This option, however, is not feasible. It would not only make India appear weak but would also not guarantee resolution of disputes. As is evident from China's realpolitik, agreements don't really seem significant to the Chinese, it keeps its national interest above everything else. Therefore if an agreement does not suit to the Chinese interest it may as well disrespect it. So even if India and China were to reach to an agreement, there is no guarantee that it would permanently shut its claim over the so called three (out of the five) fingers of Tibet that lie in India. Further, at this juncture, China is in a stronger position than it used to be in the 1950s and is definitely more powerful than India. The China of 1959 might have proposed to rectify the McMahon line had India given up its claim on Aksai Chin. The modern day China would not see any reason in negotiating with the Indians on establishing a permanent, demarcated border as long as their irredentism is suiting them.

We must not forget that tensions between India and China extend beyond boundary related disputes. Both nations strive to become the most powerful Asian figure with a pre-dominant influence over its politics. In such a scenario, tensions are bound to arise between these realists nations. The Indian PM, Narendra Modi after coming to power has on many occasions conveyed that he wants India and China to jointly dominate Asian politics. China, however, through BRI and its recent behaviour along the border, has made it very clear that it certainly wants sole proprietorship over Asia and isn't looking forward to any sorts of partnership. This brings us to the second option that is fighting back. India, after taking a lesson from the 1962 Sino-Indian war, might have adopted the policy of realism and made it militarily strong but to be very practical, India is not yet in a position to face China all by itself.

India for its own security must form an alliance to fight against the Chinese force. This alliance could be made with other nations that are or will be tremendously affected if China is not contained. An example of such countries could be the western states especially the United States of America, the current superpower. An informal “strategic forum” named Quadrilateral Security Dialogue (QUAD), consisting of India, Japan, Australia and the USA, does exist for holding semi-regular summits, information exchanges and military drills.⁷⁰ This forum, although very important to contain Chinese influence in the Indian Ocean, is not a military alliance in the liking of NATO as India

⁷⁰ Griffiths, James. “A border dispute with China may push India closer to some of Beijing's top rivals.” *CNN*, 18 June 2020, <https://edition.cnn.com/2020/06/18/asia/china-india-border-dispute-quad-us-intl-hnk/index.html>. Accessed 21 December 2021.

does not have any treaty alliance with other members⁷¹ and therefore these nations would not be obliged to come to India's rescue in any war like situation.

An alliance between India and the USA will prove to be a mutually beneficial and constructive association. Both countries have their personal reasons to contain China. USA must follow the realistic policy of "Thucydides trap" named after the great Greek Scholar Thucydides. As per this trap, the superior power must thrash the country which is a potential threat to its dominance while the other is still in its emerging state, instead for waiting for it to become equally strong and capable of posing an immediate threat. In the present scenario, USA is the superior power while China is a potential threat to its unilateral hegemony. A realist approach for the USA would be to form an alliance with India (and other states whose interests are involved) to contain China while it is still comparatively a weaker power. The only challenge to this is the US- China trade relations as both the nations are big trading partners. As per United States Census Bureau, USA's total foreign trade with China amounted for an export of 106, 447 million USD and an import of 451, 651 million USD.⁷² Such strong trade relations make partnership with India non-viable. Therefore if India wants to form an alliance with the US, it will have to offer more and become an alternative of China in terms of trade. India thus needs to build its economy more robust and stable.

To conclude, the immediate threat in the form of the on-going border dispute is quite perilous and may take any unexpected turn (we have witnessed two major unexpected turn of events already). India must in all circumstance remain prepared for the worst and develop its strategy accordingly.

⁷¹ "A new dimension: On India-U.S.-Australia-Japan Quadrilateral." *The Hindu*, 5 September 2020, <https://www.thehindu.com/opinion/editorial/a-new-dimension-the-hindu-editorial-on-india-us-australia-japan-quadrilateral/article32526589.ece>. Accessed 21 December 2021.

⁷² "Trade in Goods with China." *Foreign Trade, United States Census Bureau*, <https://www.census.gov/foreign-trade/balance/c5700.html>. Accessed on 21 December 2021.

**THE NEW DELHI INTERNATIONAL ARBITRATION CENTRE ACT 2019
AND THE ARBITRATION AND CONCILIATION (AMENDMENT)
ACT 2019 – TWIN ACTS FOR BIG PUSH IN INSTITUTIONAL
ARBITRATION IN INDIA**

Maneesh Kumar*

1. Introduction

With the advent of LPG in 1991, India is unable to catch up with the global trends in Alternative Dispute Resolution (ADR) after twenty-eight years. Statistics don't paint a positive picture of life. Ad hoc arbitration is still deeply ingrained in Indian society as a whole. Over thirty arbitral institutions may be found in major cities, although when compared to long-established international arbitral institutions, their caseload is negligible¹.

India was one of just six Asian countries to sign the Geneva Convention of 1927, according to a little-known fact. Having signed as one of the ten initial signatories to the New York Convention, it went on to become the fourth country to ratify it. That happened in July 1960. The United States approved it in 1970, and the United Kingdom ratified it in 1975. Only in the mid-1990s did China, Singapore, and Malaysia (shown) ratify it. When it comes to international commercial arbitration, India is one of the few countries to have contributed significantly to its development. This is a new and difficult situation for us as the rest of the world has made tremendous progress in this area².

2. Woken Up to Painful Scenario

The number of high-level arbitrations between Indian companies and the Indian government has increased significantly (generally seated outside India). Most people have a hard time adapting to a new environment and a new conflict resolution system. The Indian Government was humiliated by the unanimous Bilateral Investment Treaty (BIT) damages awarded to India in November 2011, which held that India was obligated to pay damages for delays of more than nine years in

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The author's opinions in this paper are his or her own and do not represent legal advice or the views of the Ministry of Railways, Government of India.

¹ <http://legalaffairs.gov.in/nyh/sites/default/files/Report-HLC.pdf>. Accessed 23 November 2019.

² Kachwaha, Sumeet. India As A Global Destination For International Arbitration: What Will It Take To Reach There? <https://kaplegal.com/upload/pdf/20170224135037045.pdf>. Accessed 27 November 2019.

enforcement of an ICC Award (White Industries Australia Limited vs. India). "*Effective methods of pursuing claims and enforcing rights*" were denied the Australian investor, among other things, by the Tribunal. Japan's NTT, Daiichi and Devas have all recently won judgments totaling more than US \$ 2.5 billion against Indian defendants, including Ranbaxy (SIAC, Singapore), Tata Sons (LCIA, London) and Antrix Corp. (ICC, Paris). Additionally, there are alarming figures in the BIT arbitrations currently being reviewed. \$25 billion in arbitration claims in the telecom, energy, and infrastructure industries are owing to India's government. When it comes to such kinds of concerns, India is a virtual outsider in this system.³

3. Enormity of Under Preparedness

The immensity of our lack of readiness in this highly specialised field may be seen in the preceding paragraph. Since domestic greatness precedes international excellence in arbitration, the importance of the institutional arbitration process cannot be overstated in this context. Confidence is lacking in our domestic arbitration situation. We don't like the international norm, which is to use institutional arbitration as the preferred method of arbitration. Globally, 79 percent of arbitrations during the previous five years have been institutional rather than ad hoc, according to one poll, which is consistent with following surveys, such as 73 percent in 2006 and 86 percent in 2008. We don't keep track of how many individuals we have in India. Surveys from PricewaterhouseCoopers and Queen Mary University of London were also included in the Justice B. N. Srikrishna Report (QMUL). Ad hoc arbitration and institutional arbitration data are really not available. Arbitration specialists backed by an authorised academic institution must conduct an accurate pan-India survey. To fix an issue, we have to size it up first.

4. The New Delhi International Arbitration Centre (NDIAC 2019) – Tumultuous Journey Culminated in Legislative Enactment

The New Delhi International Arbitration Centre (NDIAC 2019) has a bumpy ride ahead of it. ADR International (formerly known as ICADR) was founded in 1995 and is based in Washington, DC. "It is a really unfortunate state of affairs, which I desire to communicate with the House," says Indian Law Minister Shri Ravi Shankar Prasad. In addition to land, the Government of India has provided Rs. 30 crores. Only 55 arbitrations were conducted by the 700-member body in 27 years, and not all of them were completed⁵. There were just a few arbitrations in the previous three years, but there was a lot of jet-setting at seminars and conferences. I have nothing else to

³ <http://164.100.47.5/newdebate/249/18072019/Fullday.pdf>. Accessed 22 November 2019.

add. New Delhi's Centre for International Commercial Arbitration has so far received 49 cases for arbitration, including four international commercial disputes, according to its own Annual Report 2015-16. High-Level Committee members say that "ICADR's track record since its creation in 1995 falls considerably short of what it should have been." The ICADR's structure and governance model need to be totally reworked in order for it to fulfil its original goal of being India's flag bearer for institutional arbitration. The current structure of the ICADR may not allow for such a change. That's why taking over the ICADR may be in everyone's best interest." As a result, the 2019 New Delhi International Arbitration Center Act, which replaces the ICADR, should be taken into account.

On January 4th, 2019, the Lok Sabha passed the NDIAC Bill 2018, which would establish an autonomous and independent arbitration institution in India, Elections prevented the Rajya Sabha from taking a vote on the bill. President Modi of India signed into law the New Delhi International Arbitration Centre Ordinance, 2019, on March 2, 2019, to replace the lapsed Bill. The Delhi High Court ruled that the Ordinance was unconstitutional. On May 16th, 2019, the ad interim injunction ordered on March 7th was lifted. The New Delhi Arbitration Centre Bill 2019 was passed by both the Lok Sabha and Rajya Sabha in the first session following the General Elections. The Act was signed into law by the President of India on July 26, 2019, and it was published in the Official Gazette the same day. However, the effective date is the date of the Ordinance's promulgation, which is March 2nd, 2019. Restructuring is part of the plan to make the New Delhi International Arbitration Centre one of the world's most prominent arbitration centres. ICADR, which has taken over the infrastructure and other facilities from ICADR, is responsible for conducting international and domestic arbitration as well as conciliation.

A group of academics and experienced arbitration practitioners have reacted negatively to the fact that all of the members, including the chairman, are appointed by the government. Such large-scale projects, such as the construction of a mega centre, typically originate in the government sector. Legislative amendments that change the makeup of the current components and replace them with the finest in arbitration, both locally and worldwide, may further instil trust in the system.

Figure 1: Organisational Structure of New Delhi International Arbitration Centre (NDIAC)



5. The Arbitration and Conciliation (Amendment) Act 2019 – The Other Twin

In contrast to the NDIAC 2019, the ACA ACT 2019 proposes fundamental amendments to the AC Act 1996, which is the primary law governing arbitration in India. When the President of India signed off on ACA Act 2019 on August 9, it was published in the Official Gazette, making it law. According to the Gazette announcement of 9th August, 2019, the effective date is 9th August, 2019.

As a result of these revisions, a new portion, referred to as Part 1A, was added to the primary Act. In spite of the ACA Act 2019's broad scope, this research focuses on its proposed institutional structure. Part 1A has been added to provide this information. Thirteen sections from 43A to 43M have been included in this section to match the NDIAC 2019 in a significant way. Institutional arbitration is a key goal of this legislation in India. As of now, 36 arbitral institutes are operating in India's major cities. This Amendment Act intends to expand this network of institutions to more and more places.

6. High Level Committee to Review Institutionlisation of Arbitration Mechanism in India

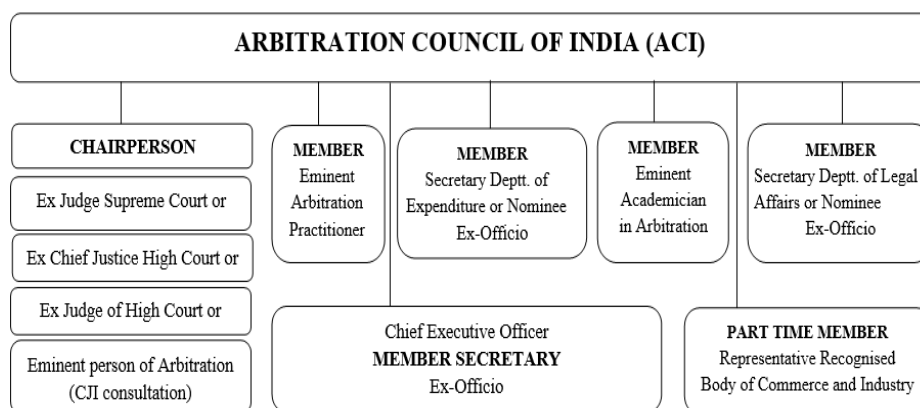
Justice B. N. Srikrishna, a former Supreme Court of India justice, will chair a high-level group. The Committee's report looked at alternative dispute resolution on all

fours and suggested that institutional arbitration in India move at a snail's pace. Accreditation of arbitrators by professional bodies recognised by APCI, the development of a specialised arbitration bar, the construction of a specifically trained arbitration bench, and ICADR's acquisition are among the Committee's most important proposals. In arbitrations involving BITs, there are suggestions for the arbitrators to consider (BIT). It is clear that the ACA Act 2019 and NDIAC 2019 rely heavily on this document.

7. Incorporation of Arbitration Council of India (ACI) – A Body Corporate

The Amendment's description of the Arbitration Council of India includes important aspects of a corporate body, such as the ability to enter into contracts, acquire property, and sue and be sued. Listed here are the ACI's many parts:

Figure 2: Organisational Structure of Arbitration Council of India (ACI)



The arbitrators will be graded by the Arbitration Council of India (ACI). Significant is the eighth schedule of the ACA Act 2019. In addition to the requirements for becoming an arbitrator, there are broad standards for judging arbitrators. As stated in the Schedule, the arbitrator must be a person of high moral character who is competent to use objectivity in resolving disputes. Among other qualities, he must be unbiased and unbiased. In the statutes themselves, these characteristics are referred to. A panel of arbitrators from India's Arbitration Council will grade them. Arbitrators and arbitral institutions shall be graded by the Council. Workshops, training, and other events will be held. Those who have been rated or recognised by the High Court in domestic arbitration and the Supreme Court in international

arbitration will be designated as arbitrators. Arbitration will not be conducted by the Indian arbitral body. Only arbitral institutions will be graded and reviewed by them. Practical factors necessitate the use of a third-party arbiter. There might be a problem with IT, a problem with the contract, or a problem with the energy supply. Arbitrators with expertise in these subjects are available. The client will select the arbiter from the group.

As with NDIAC, critics have not been kind to the ACI's constituents for similar reasons. After setting the basis, removal and replacement by the finest in the arbitration sector might be regarded a further trust building strategy. Members of ACI may also be required to take arbitration familiarity courses from globally renowned professional schools, since they will be accredited arbitrators with recognised qualifications, expertise, and reputation in this highly specialised sector.. Arbitrators and arbitral institutions may be accredited by international accreditation organisations, or even by the ACI itself. Stakeholders would also scrutinise NDIAC's professed criteria/norms for accreditation before deciding whether or not to use the services of NDIAC, which will maintain such a panel.

8. International Arbitration Centres

The Arbitration Centre in London, which was established in 1892, has seen a number of changes throughout the years. The Singapore Centre, Tokyo Centre, Shanghai Centre, Hong Kong Centre, Vienna Centre, Paris, New York Centre, and Zurich Centre have all arisen and evolved since the Singapore Centre's inception. Setting establishing a self-regulatory entity like the Arbitration Council of India is first and foremost under the immediate Act. Despite the fact that the majority of the members are appointed by the government, everyone agrees that there must be a self-regulatory body. According to research, the Singapore and Hong Kong arbitration eco systems have been a success because of governmental involvement in the founding of those entities. The ICC Court, the LCIA, the HKIAC, the SIAC, and the Stockholm Chamber of Commerce SCC are the five most popular arbitration institutions in the world⁴.

⁴ http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2010_InternationalArbitrationSurveyReport.pdf. Accessed 23 November 2019.

9. Singapore International Arbitration Centre (SIAC)

In 1991, the Singapore International Arbitration Centre (SIAC) was founded. The SIAC had made a name for itself as an impartial arbitrator in the eyes of the world's corporations. GIFT/Gandhinagar is SIAC's abroad representative office.⁵ India's political parties are among the most frequent users of SIAC, ranking third. Cases involving at least one Indian party have multiplied by five from 2001 till 2012. According to the SIAC's 2018 Annual Report, India is the second most often arbitrated country, behind the United States, with 109 cases.⁶ An effort by Singapore to attract Indian political parties to SIAC has been successful. The highly developed arbitration centre with a global secretariat in Singapore, which handles arbitration regardless of the location of the dispute and the location of the arbitration hearings. Indian arbitration is also handled by SIAC. So, in the simplest terms, through its Singapore office, SIAC facilitates arbitration between disputing parties, regardless of where they are located or how they want to resolve their differences. As a result, the Singapore International Arbitration Centre (SIAC) is not limited to organising arbitration in Singapore.

10. Hong Kong International Arbitration Centre (HKIAC)

Established in 1985, an arbitration and alternative dispute resolution service hub for the Asian region was incorporated. HKIAC received its first funding from the Hong Kong government and business sector as a non-profit organisation limited by guarantee under Hong Kong legislation. For the first time ever, the Center is no longer a joint venture between the business community and the government, but rather an autonomous, self-sustaining organisation. Several firms and experts of different nationalities make up the Council that governs it. The Center's Secretary-General serves as the Secretariat's administrator for arbitration. Additionally, HKIAC maintains an International Advisory Board that offers policy recommendations to HKIAC.⁷

⁵ <http://www.siac.org.sg/2014-11-03-13-33-43/about-us/siac-india-representative-offices>. Accessed 23 November 2019.

⁶ http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_AR2018-Complete-Web.pdf. Accessed 23 November 2019.

⁷ https://en.wikipedia.org/wiki/Hong_Kong_International_Arbitration_Centre | “Council Members and Committees | HKIAC.” *hkiac.org*. Accessed 23 November 2019.

11. Challenging Scenario - Catching Pace Through Collective Efforts

The twin Acts' goals are admirable, such as making India a centre for arbitration, but it's not the first time this type of goal setting has been attempted. In spite of more than two decades of effort, we are still lagging well behind the competition, both domestically and internationally. There are mixed feelings among arbitration experts concerning the outcome of these two pieces of legislation. Some are optimistic, while others are pessimistic. The author, in light of the many opposing viewpoints, respectfully acknowledges that a serious endeavour has been undertaken, albeit somewhat belatedly and primarily in response to the suggestions of an expert committee. Let's wait and see what happens. If we imagine a world without it, we may conclude that taking the risk is worth it, even if it isn't flawless and doesn't line up perfectly with other institutions in other countries. Legislators can resolve any concerns about the institution's governance, regulation, or autonomy in future amendments after conducting a reality check. What makes countries great is their ability to overcome adversity and persevere in the face of it. We can't succeed until we make an effort to do so, and that effort might be several. The urgent need of the hour is for coordinated action by the legislative, judicial, and executive branches of government, as well as the private sector, individual arbitrators, and arbitral organisations.

12. Concluding Remarks

With the right set of rules and a safe environment, arbitration may function as a self-regulating system. It has some resemblance to the laissez-faire attitude of classical liberalism. The driving forces are: expertise, objectivity, fairness, effectiveness, and professionalism. If even one of them isn't there, the whole thing comes to a grinding halt. There are certain to be some difficulties in executing the twin legislations that were introduced with the best of intentions. It's possible to fix problems, such as inconsistencies and inefficiencies. In order to catch up with the rest of the world, what direction and speed are we heading in currently must be carefully watched at the top level and any necessary changes must be made without delay, in order to realise the goal of making India an arbitration-friendly country.

CRIMINAL LIABILITY OF E-COMMERCE COMPANIES: CONCEPT, PERSPECTIVE AND CHALLENGES

Dr. Umamahesh Sathyanarayan*

1. Introduction

This chapter assesses the foundational underpinnings and role of culpability within the general scheme of corporate criminal law. At the time the Indian Penal Code (IPC) came into force, the British in India were of the opinion that criminal offences could only be conducted by human beings. This opinion seems to have been influenced by Mill's '*harm principle*', according to which the individual autonomy can be facilitated by criminalizing conduct that results in harm to others¹. Similarly, the autonomy granted to a corporate body by law such as the recognition of separate legal personality², may provide an opportunity to commit wrongful acts and conduct itself in a way that harms others. It is therefore that the Indian laws make provision for the imposition of criminal liability on a corporate body through subjective fault, objective fault and no-fault offences. Indeed, the majority of the regulatory offences are prescribed by the statute. However, the problem largely persists in applying mens rea to the corporation, despite the fact that the Supreme Court has upheld that a corporation can be tried for *mens rea*³ offences. The practice of attributing criminal intent to corporations has undergone tremendous legal transformation. The requirement of ascribing 'criminal intent' to corporations has now turned from being an exception into a general rule, thereby subjecting various kinds of legal entities, almost without any limitation, to the authority of criminal law. Consequently, the doctrine of criminal liability has expanded from offenses of 'omission' to include offenses related to 'active behavior'. At the same time, the doctrine has shifted from vicarious liability to principles of direct liability. The result of this process is that, at present, corporations are routinely charged for almost every offense against person or property⁴. Therefore, evaluating some closely connected

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¹ Mill, J.S. *On Liberty*, John W. Parker and Sons, London, 1859, p. 21.

² *Salomon v. A Salomon & Co Ltd*, (1897) AC 22.

³ *Standard Chartered Bank v. Directorate of Enforcement*, AIR 2005 SC 2622.

⁴ Lederman, Eli. "Models for Imposing Corporate Criminal Liability: From Adaptation and Imitation Toward Aggregation and the Search for Self-Identity." *Buffalo Criminal Law Review*, vol. 4, no. 1, 2000, pp. 641-708.

concepts, both in India and globally, are necessary to understand the existing predicaments in the criminal law in regulating corporate criminal behaviour. (a) The origin and significance of *mens rea* concept in corporate liability jurisprudence (b) The relevance of the concept of corporate personhood (c) Understanding the current corporate structures and decision-making process (d) the expanded liability concept and (e) implications of culpability element for sentencing (f) issue of jurisdiction (g) corporate blameworthiness. Adopting this approach may contribute towards achieving legal certainty especially in prosecuting criminal corporations. With all of this in mind, each of the issues identified above will be discussed in the following sections.

2. The Origin and Significance of ‘Mens Rea’ in Corporate Criminal Law

Mens rea has been an essential feature of Anglo-American jurisdictions. In the words of Francis Sayre, “For hundreds of years the books have repeated with unbroken cadence that *Actus non facit reum nisi mens sit rea*—all crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact⁵.” This notion stems from the strong influence of canon law that punishment should be dependent on moral guilt and the very spirit of moral guilt is reflected in state of mind⁶. On applying this proposition, the most probable inference was drawn by the court in *Sutton Hospital*⁷ case, where the court observed that “a corporation cannot commit treason, or felony, or other crime, in its corporate capacity: though its members may in their individual capacities.” Although, vicarious liability principles were established under tort law, the common law refused to extend this principle to the imposition of criminal liability⁸. The position until 19th century predominantly continued to be that corporations could not be held vicariously liable for “acts of immorality,” which derive from the corrupt mind of the person committing it⁹.

The blanket immunity accorded to corporations from criminal liability began to fade in the case of *Birmingham and Gloucester Railway Company*¹⁰ case, where the corporate entities were held strictly liable for the omission of their duty. Interestingly in 1877, the corporations were subjected to general

⁵ Sayre, Francis B. “Mens Rea.” *Harvard Law Review*, vol. 45, no. 6, 1932, pp. 974–1026.

⁶ Anderson, James M. and Ivan Waggoner. *The Changing Role of Criminal Law in Controlling Corporate Behaviour*, RAND Corporation, 2014.

⁷ (1612) 77 Eng Rep 960.

⁸ *R v. Huggins* (1730) 92 Eng. Rep 518.

⁹ *Ibid* at 6.

¹⁰ *R v. Birmingham and Gloucester Railway Co.*, (1842) 114 E.R. 492.

criminal liability with court interpreting the word ‘person’ to include legal person along with natural persons¹¹. Parallely, during this period, the Indian Penal Code came to be enacted and section 11 defines ‘person’ to include company or association of persons whether incorporated or not.

Later, the court while deciding a civil liability case incidentally attributed a specific state of mind to the corporation¹². However, the attribution of state of mind was not based on vicarious liability principle rather on identification doctrine. This is seen as a drastic shift from the earlier stated position that was summed up by Finlay J, as the count of manslaughter cannot be maintained against corporate body, as it was incapable of having the requisite *mens rea*¹³. The U.S on the contrary propounded the *respondent superior* doctrine, where the vicarious liability principle was applied to attribute subjective fault element to corporations. Further, the U.S. Supreme Court although upheld the criminal liability of corporations for specific intent crimes it categorically mentioned that some classes of crime cannot be committed by them¹⁴. This observation of the court however, was not accompanied by any additional explanation. In essence, both the jurisdictions have attributed criminal intent to the corporations based on civil liability principles and understanding. This *ad hoc* arrangement was adopted by the India Supreme court as it is in the landmark *Standard Chartered* case¹⁵.

While expanding the scope of corporate criminal liability in *United States v. Park*¹⁶, the relevance of *mens rea* element got diluted. Here, the U.S. Supreme Court reaffirmed that a corporate officer could be held criminally liable even without the criminal intent. The preliminary analysis of the cases therefore reveals that the main goal of criminal law is to regulate conduct not to punish morally culpable conduct¹⁷. As a result, the early cases of corporate liability served ‘well-defined objectives’. Conversely, the developments post 19th century was based on pragmatic approach rather than moral justification for imposing criminal liability.¹⁸

¹¹ *Royal Mail Steam Packet Co. v. Braham*, (1877) 2 App Cas 381 (PC) 386.

¹² *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co*, (1915) AC 705.

¹³ *R v. Cory Brothers & Co.*, (1927) 1 KB 810.

¹⁴ *New York Central Railway Co. v. United States*, (1909) 212 U.S. 481.

¹⁵ AIR 2005 SC 2622.

¹⁶ (1975) 421 U.S 658.

¹⁷ Holmes Jr., Oliver Wendell. *The Common Law*. Little, Brown & Co, 1881, pp. 44–45.

¹⁸ Brickey, Kathleen F. “Criminal Liability of Corporate Officers for Strict Liability Offenses—Another View.” *Vanderbilt Law Review*, vol. 35, no. 6, November 1982, pp. 1337–1382.

3. The Relevance of the Concept of Corporate Personhood

Unlike human beings, corporations do not exist naturally rather they are created by law.¹⁹ From legal lenses corporation is an entity which can think and act beyond its stakeholders. In economic perspective, its role is largely restricted to the production of goods and services.²⁰ Therefore, the corporation's legal existence is necessary for economic growth²¹ and tends to move towards the understanding that it is an economic entity concerned with profit rather than just being a legal entity. The legal doctrine of corporate personhood is an external attribute which enables corporations to accomplish economic purpose.²² The recognition of the concept of corporate personhood has resulted in corporations attaining certain distinct and permanent features²³:

A corporation acquires a common will and has a continual life. It is more than merely the sum of its members. The independence of the entity from its members renders the exact membership of the entity immaterial: allows for ownership of property and the assumption of debts; limited liability for owners; and permits the delegation of responsibilities down the corporate ladder.

The industrialization and urbanization phenomenon are largely responsible for bringing corporations into the ambit of criminal law. However, fitting the corporation into criminal law is severely criticized as an attempt to fit a square peg into a round hole. According to Prof. Skupski, 'the law has abruptly squeezed corporations into the existing criminal law without adequate consideration of the distinction between organisational and individual behaviour'.²⁴ This treatment of criminal law to corporations may in part be due to the uncertainty that prevails over theoretical justifications of corporate personhood. Following is the analysis of the three theories of corporate personhood discussed below: the artificial entity theory, aggregate theory, and real entity theory.

¹⁹ Wright, James. "A Step Too Far: Recent Trends in Corporate Personhood and the Overexpansion of Corporate Rights." *UIC Law Review*, vol. 49, no. 3, Spring 2016, pp. 889-924.

²⁰ Greenfield, Kent. "Defending Stakeholder Governance." *Case Western Reserve Law Review*, vol. 58, no. 4, 2008, pp. 1043-1065.

²¹ McWilliams, Phillips L. "Magnolia North v. Heritage communities: The South Carolina Court of Appeals' end run around the necessity of equitable justifications when disregarding the Corporate Form." *South Carolina Law Review*, vol. 64, no. 4, p 830.

²² Cherensky, Steven. "A Penny for Their Thoughts: Employee-Inventors, Preinvention Assignment Agreements, Property, and Personhood." *California Law Review*, vol. 81, no. 2, 1993, pp. 595-669.

²³ Laufer, William S. *Corporate Bodies and Guilty Minds: The failure of Corporate Criminal Liability*. University of Chicago Press, 2008, p. 50.

²⁴ Skupski, George R. "The Senior Management Mens Rea: Another Stab at a Workable integration of organisational culpability into corporate criminal liability." *Case Western Law Review*, vol. 62, no. 1, 2011, p. 263.

i. Artificial Entity Theory

The nature of corporation was for the first time explained in the case of *Trustees of Dartmouth College v. Woodward*²⁵ as;

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect [sic] the object for which it was created.

In Dartmouth, the court viewed corporate personhood as an analogy to make contracts or hold property and they are not entitled to all the rights of natural persons. The artificial entity theory therefore does not view corporations as distinctly separate persons.

ii. Aggregate Theory

The aggregate theory was proposed in the case of *Bank of United States v. Deveaux*²⁶, holding that a corporation cannot be sued unless it is viewed as an aggregate of individuals, representing it under a corporate name. These individuals also bring rights along with them that flow to the corporation. According to this theory, the corporation can do nothing unless human beings act on its behalf and its existence is based on the existence of the human actors²⁷.

iii. Organic Theory

The view that corporation is a separate entity distinct from its shareholders was formulated by Chief Justice Marshall in his dissenting opinion rendered in the case of *Bank of United States v. Dandridge*²⁸. The dissent note observed that the “corporation is one entire impersonal entity, distinct from the individuals who compose it.” Consequently, corporations are identified as real persons with real rights.

Although the theories of corporate personhood are useful in the context of criminal law, yet no single theory is accepted as a standard in case of corporate criminality. From Indian viewpoint, the substantive law treats corporation as a person only to the extent it is needed by the statute for the purpose of attributing individual’s blame to it. This rigid conception of corporate personhood fails to capture the real dynamics of organisational

²⁵ 17 U.S 518.

²⁶ (1809) 9 U.S 61.

²⁷ Johnson, Lyman, and David Millon. “Corporate Law After ‘Hobby Lobby.’” *The Business Lawyer*, vol. 70, no. 1, 2014, p. 9.

²⁸ (1827) 25 U.S.64 .

culpability²⁹. This argument is further strengthened by Bucy's ethos theory, which assumes corporation to be a distinct characteristic spirit reflected by the manner of dress and camaraderie of the employees along with the written goals and policies of the corporate entity³⁰. Most courts across different jurisdictions seem to alternate between the three theories to support a preferred outcome. For instance, the aggregate and real entity theories are applied for granting rights and the artificial entity theory is rather used to restrict corporate rights³¹. In order to develop an effective system for attributing culpability, it is necessary to shed the analogy of corporations to human actors and rather analyze the behaviour of the corporation in its real form as a 'complex organisation'³².

3.1 *Underlying Issues Pertaining to Corporate Personality*

A company is seen as a separate legal entity, distinct from its board of directors or the shareholders. The limited liability that flows from separate legal personality is a fundamental feature of modern corporate law and businesses in general.³³ Nonetheless the limited liability is mainly enjoyed by the shareholders of a company and not by the company itself. Therefore, when the separate legal personality of a company is sort to be established, the purpose thereof should be borne in mind and accordingly, a purposive approach to separate legal personality is required.³⁴

According to *Benade*, there are two issues in understanding corporate personality. First, as a pre-condition it is necessary to comprehend the nature of the corporation as a 'juristic person'. Thus, making it imperative to define what constitutes juristic person. In second case, the corporation as a juristic person is accepted as a matter of fact and the applicable rules or provisions are evaluated accordingly.³⁵ The latter part is considered to be a functional approach where the uncertainty regarding the nature of the corporation can be conveniently eliminated. Therefore, the question of identifying

²⁹ *Supra* note 49.

³⁰ Bucy, Pamela H. "Corporate Ethos: A standard for imposing corporate criminal liability." *Minnesota Law Review*, vol. 75, 1991, p. 1121.

³¹ Chatman, Carliss N. *Judgment Without Notice: The Unconstitutionality of Constructive Notice Following Citizens United*, *Kentucky Law Journal*, vol. 105, no. 1, 2016, pp. 76–78.

³² Clinard, Marshall B. and Peter C. Yeager. *Corporate Crime*. Macmillan Publishing Company, 2006, p. 43.

³³ *Salomon v A Salomon & Co Ltd* (1897) AC 22.

³⁴ Jordaan, L. "New perspectives on the criminal Liability of corporate bodies." *Acta Juridica*, vol. 48, no. 1, 2003, p. 63.

³⁵ Foster, Nicholas H.D. "Perception, Language and Reality in Corporate Law Theory." *King's Law Journal*, vol.17, no. 2, 2006, p. 299.

an appropriate theory can also be ignored.³⁶ Finding the nature of corporate personality has been a real concern in the case of corporate criminal liability. There are two divergent theories used to determine the nature of corporate personality. The organic theory views corporation as a metaphysical entity, whereas fiction theorists clearly abstain from attributing individual human qualities to the corporation.³⁷ Therefore, in order to understand the basis to hold a corporation criminally liable, these theories should be adequately understood.

3.2 *Fiction Theory*

Fiction theory is one of the most predominant and orthodox theories used to explain the nature of corporate personality. This theory presumes that the juristic person is a creation of the statute and the corporations can have no independent existence other than those created by the instrument of law³⁸. Therefore, the legal capacity including the rights and duties that are applicable to a juristic person is imaginary in nature. Also, the rights and duties so attached with the corporations are limited to property only³⁹. Fiction theory finds relevance in many Anglo-American jurisdictions till date.

3.3 *Real Entity Theory*

According to Maitland, a company is a living organism and a real person with the body and will of its own⁴⁰. Corporation is more than the aggregate of members forming it and its mind is distinct from the minds of its members⁴¹. As a departure from the fiction theory, real entity theory recognizes that the company can be held criminally liable for the unlawful acts committed by it⁴². However, this theory holds that the corporation cannot act by itself and could only function through its organs⁴³. For instance, the board of directors is considered to be the organ of the company. Although both the theories view corporation differently in terms of their nature, invariably they both are human centric and is constantly compared with individuals constituting it⁴⁴.

³⁶ Hopt, K.J. "Comparative Company Law." *The Oxford Handbook of Comparative Law*, edited by M. Reimann & R. Zimmermann, Oxford University Press, 2006, pp. 1161-1191.

³⁷ Fisse, Brent. "Corporate Criminal Responsibility." *Criminal Law Journal*, vol. 15, no. 1, 1991, pp. 173-174.

³⁸ Petrin, Martin. "Reconceptualising the theory of the firm." *Penn State Law Review*, vol. 118, no. 1, 2003, p. 9.

³⁹ Watson, S. "How the company became an entity: A new understanding of corporate law." *Journal of Business Law*, vol. 2, no. 1, 2015, pp. 120-141.

⁴⁰ Maitland, F.W. "The Corporation Sole." *Law Quarterly Review*, vol. 16, no. 1, 1900, pp. 335-336.

⁴¹ Laski, H.J. "The Personality of Associations." *Harvard Law Review* vol. 29, no. 1, 1916, p. 415.

⁴² *Supra* note 57 p 12

⁴³ Johnson, L. "Law and Legal theory in the history of corporate responsibility: Corporate Personhood." *Seattle University Law Review*, vol. 35, no. 1, 2012, pp. 1135-1164.

⁴⁴ Machen, A.W. "Corporate Personality." *Harvard Law Review*, vol. 24, no. 1, 1911, pp. 252-267.

4. Understanding E-commerce Entities, Corporate Structure and Decision-Making Process

Taking thread from the preceding section, attributing culpability to corporations essentially mandates an understanding of the current complex corporate form. This includes examining the nature, structure and decision-making process of the e-commerce entities.

4.1 E-commerce Entity as Corporation

The next important step in understanding the corporate culpability is to delineate the corporate structure and the decision-making process. Although the argument whether corporation should be criminally liable may have died down due to their ever-increasing roles and functions. The corporations can now in reality hold properties, offer goods and services and legally enjoy much more rights, obligations that are distinct from the members constituting it. Even though it is a settled proposition that corporations can be subjected to the authority of criminal law, the technological developments have further aided in complicating the nature of the corporations. Section 11 of the Indian Penal Code, defines ‘person’ to include company or association of persons whether incorporated or not. It is imperative to understand the nature of the new species known as e-commerce entities within the broad definition of ‘corporation’ for the purpose of ascribing culpability. E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the companies Act, 2013 or an office, branch agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business⁴⁵. Apart from the legal requirements of physical incorporation, this article shall make an effort to capture the unique features of this virtual market, where business transactions are conducted via open networks based on the internet infrastructure.

In this regard, this paper analyzes four key e-commerce business models; B2C, B2B, C2B and C2C. The B2C is the most common business model that sells all goods and services to its end users. Anything and everything like wardrobes to shoes, books, fruits, groceries etc. that we purchase online as consumers is covered under this model. Amazon, big basket and likes are some of the examples of this model. In B2B model, a business sells its products and services to another business. Here the

⁴⁵ “E-Commerce Business Model.” *Department of Industrial Policy and Promotion, Ministry of Commerce and Industry*, 11 December 2019, Press Release.

customer is not the end user. For instance, Alibaba, India Mart falls under this category of business. C2B is a reverse model that allows individuals to sell goods and services to companies. To illustrate, Quicksell, India's first C2B marketplace enables consumers to sell their used vehicles to auto dealers. A C2C model like 'eBay' is one which connects the consumers to exchange goods and services in lieu of a transaction fee.

An e-commerce entity is treated differently from the other wholesale traders, retailers and manufacturers. A press note issued by the Ministry of Commerce and Industry distinguishes e-commerce entity between *Inventory based* and *Marketplace based* model. In inventory-based model the goods and services are owned by the e-commerce entity and is sold to the consumers directly. Whereas in a marketplace model the e-commerce entity acts through a digital and electronic network as a facilitator between buyer and seller⁴⁶. In the latter case, the e-commerce entity may assume the role of an '*online intermediary*'. For that reason, the roles and responsibilities of e-commerce companies hosting online platforms stands exalted. Due to this nature, different laws and regulations like the Information Technology Act 2000 (hereinafter referred to as IT Act), Income Tax Act 1961 (hereinafter referred to as ITA), Companies Act, 2013 and others apply to e-commerce entities. So are the disputes that are inevitable to any business, whether online or offline. The disputes which an e-commerce enterprise may encounter are both contractual and non-contractual including the commission of a crime.

4.2 *Analyzing the E-commerce Corporate Structure*

While there may be no unitary structure for an e-commerce company, nonetheless the organisational structure throws light on the behaviour of the corporation in the context of criminal law. The organizational structure shall enable an extensive control on global operations considering the nature of the e-commerce business. This invariably will establish a system for interaction among the members of the company. For instance, a report prepared for *Synapse Energy Economics* by *STAR Foundation Riverkeepers* discusses the state of affairs of the U.S multinational corporations in energy sector⁴⁷:

Over the last ten years, the ownership of an increasing number of nuclear plants has been transferred to a relatively small number of very large corporations. These large corporations have adopted business structures that create separate limited liability subsidiaries for each nuclear plant and, in a number of instances, separate operating

⁴⁶ *Supra* note 45.

⁴⁷ Synapse Energy Economics Report, 2002, p. 2.

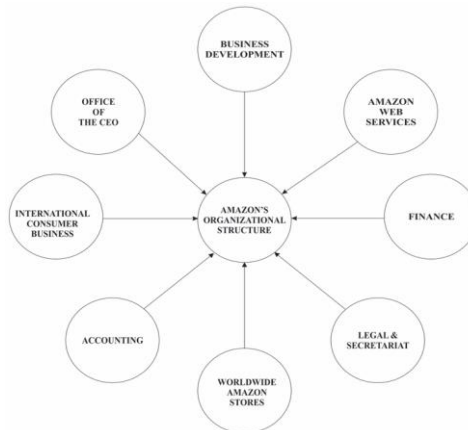
and ownership entities that provide additional liability buffers between the nuclear plant and its ultimate owners. The limited liability structures being utilized are effective mechanisms for transferring profits to the parent/owner while avoiding tax payments. They also provide a financial shield for the parent/owner if an accident, equipment failure, safety upgrade, or unusual maintenance need at one particular plant creates a large, unanticipated cost. The parent/owner can walk away, by declaring bankruptcy for that separate unit, without jeopardizing its other nuclear and non-nuclear investments.

Having understood the importance of organisational structure, this paper attempts to explain the corporate structure of *AmazonInc.* This approach will help address the issues associated with locating and attributing culpability to complex e-commerce companies.

Amazon has over 590,000 employees in the U.S., 115,000 in Europe and 95,000 in Asia⁴⁸. Amazon Inc. has a *functional* organizational structure. Here the focus is on the business functions as the basis for determining the interactions among various components of the organization. The following characteristics are prominent in Amazon's corporate structure⁴⁹:

1. Global function-based groups
2. Global hierarchy
3. Geographic division

Figure 1: Global Function-Based Groups



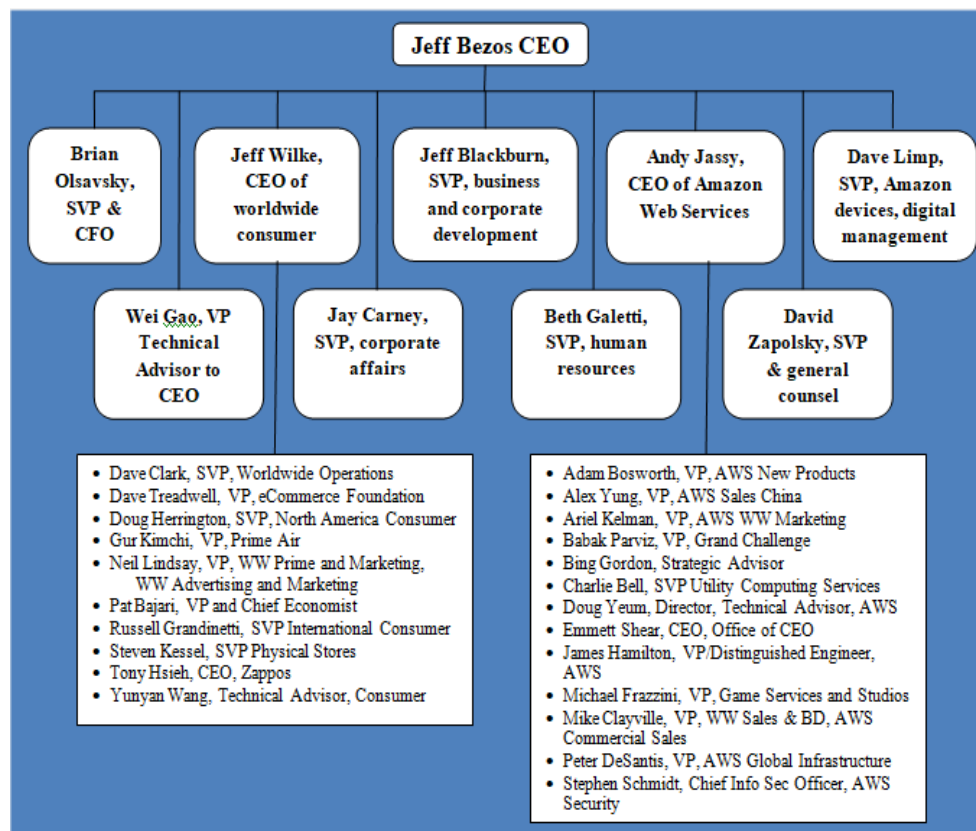
Source: Meyer, Pauline. *Amazon.com Inc.'s Organizational Structure Characteristics (An Analysis)* - Panmore Institute, February 2019

⁴⁸ Amazon Inc, Notice of 2020 Annual Meeting of Shareholders and proxy statement, 2020, p. 4.

⁴⁹ Meyer, Pauline. *Amazon.com Inc.'s Organizational Structure Characteristics (An Analysis)*. Panmore Institute, February 2019.

The internal structure of Amazon Inc consists of around 10 levels. Levels 2 and 3 consist of manual labourers who work for the Amazon fulfillment centers on an hourly wage. Level 4 is made up of new recruits, mostly fresh graduates with a bachelor's degree. Program managers or product managers are at Level 5 and senior product managers are in Level 6. At Level 7 are senior managers who largely oversee L5 and L6 employees. The Directors are placed at Level 8 and Vice presidents at Level 10. While Senior Vice presidents are placed at Level 11 along with Amazon's newly created leadership teams, the 'D Team', which manages the Amazon's digital efforts. Finally at Level 12 it's Jeff Bezos, the founder of Amazon Inc⁵⁰.

Figure 2: Global Hierarchy in Amazon's Corporate Structure



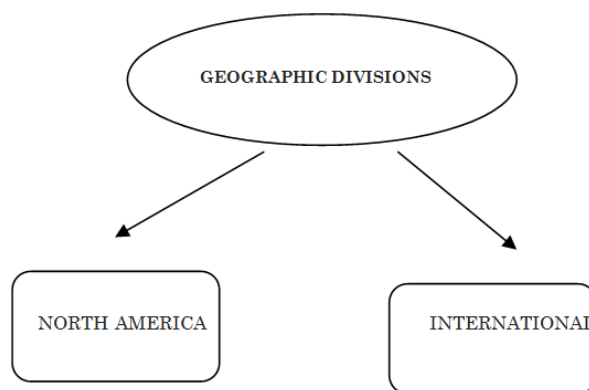
Source: Annual Report (2019) Amazon Inc, Bloomberg

⁵⁰ Stone, Brad. "Why It's So Difficult to Climb Amazon's Corporate Ladder." *Bloomberg*, 15 October 2013, <https://www.bloomberg.com/news/articles/2013-10-15/careers-at-amazon-why-its-so-hard-to-climb-jeff-bezoss-corporate-ladder>. Accessed 20 December 2021.

In the case of Amazon.com Inc., the structure consists of vertical lines of command and authority that influence the company. For instance, senior managers' directives are applied throughout the organization, affecting all relevant offices of the company globally. The strategic objective of this feature of the corporate structure is to facilitate managerial control of Amazon's entire organization⁵¹.

Amazon Inc's organizational structure involves geographic divisions. The groups are based on geographic regions along with their business goals. The objective is to enable the company to deal with issues that concern each geographic region, considering the divergence in their respective regional markets.

Figure 3: Geographic Divisions of Amazon



Source: Panmore Institute

4.3 Assessing the Modern Decision-Making Process

Most corporations based in India are registered under the *Companies Act 1956* or *Act of 2013*. Mere incorporation does not entail a company to adopt a decentralized or organisational decision-making structure. In all modern corporations, the policies are not determined by an individual. Drafting, approving and implementing the policies of a company may be carried out by different persons within. Against this reality, the question that arises, in terms of culpability, is whether and how a corporation and its agents be tried if such policy leads to the commission of a crime. Corporate criminal liability can be effective only when based on a strong understanding of the decision making

⁵¹ *Supra* note 37.

process within a corporation. Pursuant to this goal, the paper shall draw from the work of *Philip Pettit* and *Foerschler*. The central thrust of this exercise is to figure out if there are any differences between the corporate decisions and individual decisions within an organisation. This distinction is crucial for locating and attributing culpability to a corporation.

Philip Pettit claimed that ‘certain collectives make them into subjects in their own right, giving them a way of being minded that is starkly discontinuous with the mentality of its members’⁵². To further exemplify this proposition, the paper shall make use of Pettit’s matrix to recreate a sequence from the infamous ford pinto case. Let’s say company ‘X’ has introduced a new model car. The company was also aware of the weakness in the car design at the time of launch. Post launch, the car was very well received by the public and generated huge profits for the company. Few months later, rumors began to surface that the car has the tendency to catch fire in rear-end collisions. In this background, three members of the board of directors decide to meet to vote on three suggestions that will decide the next course of action for the company X. The three suggestions placed before the board for consideration are as follows;

Suggestion 1: Company X should continue manufacturing and sales of the cars

Suggestion 2: Company X should recall all the cars that were previously launched and rectify them.

Suggestion 3: Company X should undertake some temporary measures to rectify the weakness in the car design as the entire overhauling of the design may cost heavily for the company

List of Members	Suggestion 1	Suggestion 2	Suggestion 3
Member 1	Yes	No	No
Member 2	No	No	Yes
Member 3	Yes	Yes	Yes

Taking the composite view, the company decides to implement suggestion No 1 and 3 but not 2. So, the company will now continue to manufacture and sell new cars by carrying out some temporary or stop-gap arrangement to fix the issue in the car design. However, no rectification will be carried out as regards the cars

⁵² Pettit, Philip. “Groups with minds of their own.” *Socializing Metaphysics: The Nature of Social Reality*, edited by Frederick F. Schmitt, Rowman and Littlefield Publishers, 2003, pp. 167-193.

that were already launched. Surprisingly, no individual member voted for this outcome. Therefore, the position taken by the company is strikingly different from that of its members. This situation is what Pettit addresses to as ‘discursive dilemma’, where he implies that all aggregates are not rational agents. But can become rational by adopting suitable procedures⁵³. Thus, the decision-making process of the corporation which is different from its individual members is termed as the ‘autonomy of corporate intentionality’⁵⁴. This model is particularly relevant in case of attributing culpability. Here, the intention of the members of the company was very different from that of the decision arrived at by the corporation. The significance of Pettit’s model is to understand and appreciate the element of corporate culpability which is independent of individual culpability. The discussion on applicability of this model to the theories of corporate criminal liability will be covered in subsequent chapters.

4.4 The Expanded Liability Concept

The EU regulation on the secondary liability of online intermediaries was introduced along with the e-commerce Directive⁵⁵. The intermediaries who act as mere conduit or hosting services are exempt from secondary liability. Specifically, the host providers are exempted as long as they do not have the ‘knowledge’ of hosting illegal activities or contents⁵⁶. One of the keyfocus of this paper is to address the issue of secondary criminal liability of e-commerce companies that may ensue by unlawful activities initiated by its users. The thrust is therefore not on the unlawful activities directly committed by the e-commerce companies. Secondary criminal liability of e-commerce companies for third-party acts can either be contributory or vicarious. Contributory liability in terms of criminal law arises when an online intermediary aids or abets its users to commit an offence. In case of vicarious criminal liability, the cardinal principle of criminal jurisprudence is that there is no vicarious liability unless the statute expressly provides for the same⁵⁷.

Although there is no legal certainty, different jurisdictions recognize the secondary liability of intermediaries to different extent and in diverse conditions. For instance, in *Napster* case⁵⁸, it was held that providing the site and facilities

⁵³ Pettit, Philip. “Collective Persons and Powers.” *Legal Theory*, vol. 8, no. 4, 2002, p. 452.

⁵⁴ Pettit, Philip. “Responsibility Incorporated.” *Ethics*, vol. 117, no. 2, 2007, p. 181.

⁵⁵ Electronic Commerce Directive, Directive 2000/31/EC.

⁵⁶ Article 14, EU Electronic Commerce Directive 2000/31/EC.

⁵⁷ *Sunil Mittal v. CBI*, 2015 (1) SCALE 140.

⁵⁸ [2001] 239 F.3d 1004.

online for infringement materially contributed to the conduct. While in *Netcom* case⁵⁹, the failure to prevent the distribution of unlawful content was considered to be substantial participation. The EU parliamentary report on providers' liability, discusses three possible approaches such as strict liability, negligence liability and liability under safe harbor provisions that are relevant to online intermediaries. For strict liability, enabling the illegality is sufficient. However, in case of negligence liability it is 'the violation of a duty of care to take measures to monitor user's behaviour or prevent harmful actions'. Finally, in order to attract liability under safe harbor conditions, the element of specific omission by an intermediary is essential.⁶⁰ The issue of secondary liability of e-commerce companies in the context of criminal law remains fairly unexplored in India. Although the issue of criminal liability of e-commerce companies surfaced in *Avnish Bajaj* and later in *India Mart* case, the legal question on how to attribute secondary criminal liability and to what extent remains unanswered. The new technologies not only provide e-commerce companies with new potentials but also facilitates in the commission of crime. Therefore, in this radically changed scenario, there is need for establishing cogent secondary criminal liability principles to adequately deal with e-commerce entities.

4.5 Implications of Culpability Element for Sentencing

We shall now move on to consider the implications of culpability element in sentencing. The issues of criminal liability, sentencing and punishment for crime are interrelated and prudence demands that they all be treated as part of the justice delivery mechanism. The argument addressed in this sub-section will be in three parts: 1) the objective of sentencing becomes meaningless without adequately resolving the issues relating to liability and culpability. 2) That the corporation cannot be punished but be 'harmed'. 3) If corporations cannot be punished, then in terms of theories of justification for punishment, the main goal of criminal sanction is to achieve deterrence. In that case, criminal sanctions may not be the only means to deter misconduct. The civil sanctions may also prove to be effective. This may even blur the distinction between civil and criminal sanctions.

Culpability is essential for the purposes of crime control and the criminal

⁵⁹ [1995] 907 F. Supp.1361.

⁶⁰ Sartor, Giovanni. *Providers liability: From the eCommerce Directive to the future*. Directorate General of Internal policies, 2017, <http://www.europarl.europa.eu/studies>. Accessed 15 December 2021.

sanctions are commensurate with culpability⁶¹. Therefore, while sentencing the corporation, the moral connotations represented in the intent requirements are to be considered. An understanding of the corporation's culpability has two distinct purposes; during pre-conviction stage the use of culpability element is mainly identify the organization's state of mind. Post-conviction, the question is how severely should the corporation be punished? This is in essence an assessment of interaction between the blameworthiness and harm⁶².

According to Gray, suffering is an incidental side-effect of punishment⁶³. There can be no rationale in imposing hard treatment without suffering. In case of corporations, even the indirect impacts it may have in punishing the officers or employees, is in no way connected to the principle of punishing the corporation for its misconduct. Consequently, without the aspect of suffering, the hard treatment does not serve both deterrence and retributive goals of punishment⁶⁴. Corporation is an agent with economic interests and goals. The corporation can utmost be 'harmed' by punishment. For instance, confiscating the assets or temporary closure of the company will harm the entity but not make it suffer. Also, the corporation as an agent cannot feel shame or remorse⁶⁵.

Lastly, in terms of justification for punishment, the goal of punishing the corporation is primarily deterrent in nature rather than retribution. This has important implications for corporations because; the focus of the criminal sanctions is therefore to deter misconduct and not to punish the morally blameworthy corporation⁶⁶. The moment deterrence is presumed to be the only objective of punishing a corporation; its comparison with other methods becomes inevitable. In this context, civil sanctions can also be sufficient or perhaps more effective. This is one of the important rationales behind some jurisdictions refusing to impose criminal liability on corporations. A detailed comparison and analysis of civil and criminal sanctions in select jurisdictions will be dealt in the substantive chapter six.

⁶¹ Ashworth, Andrew. *Principles of Criminal Law*, Oxford University Press, 1991, pp. 12-16.

⁶² Laufer, William S. "Culpability and the Sentencing of Corporations." *Nebraska Law Review*, vol. 71, no. 4, 1992.

⁶³ Gray, David. "Punishment as Suffering." *Vanderbilt Law Review*, vol. 63, no. 6, 2010, p. 1622.

⁶⁴ Rich, Sylvia. "Corporate Criminals and Punishment Theory." *Canadian Journal of Law and Jurisprudence*, vol. 29, no. 1, 2016, pp. 97-118.

⁶⁵ May, Larry and Stacey Hoffman. "Introduction." *Collective Responsibility: Five Decades of Debate in Theoretical and Applied Ethics*, edited by Larry May and Stacey Hoffman, Rowman & Littlefield, 1991, p. 3.

⁶⁶ *Supra* note 31.

At present, the complex corporate structures, dynamic role of technology, the ever-increasing powers of individuals who take part in day to day functioning of corporations pose multitude of challenges in the context of criminal law. Especially, in case of e-commerce entities, the corporate structure is multi-layered with diverse models and global hierarchy of command or control. With this backdrop, attributing culpability to e-commerce companies is both controversial and legally unconventional. More so, the fundamental issues to what extent, and in what ways, should a corporation be held legally liable for criminal acts committed by them is far from settled. In these circumstances, it is mandatory to examine the basis of liability and method of ascribing culpability to corporations. In this era of multi-national corporations where most transactions are cross border, there is growing need to assess the applicability and effectiveness of centuries old criminal liability principles. For that reason, in subsequent chapters, the key criminal liability principles will be evaluated in the light of constantly evolving of e-commerce entities.

5. E-commerce Companies as Intermediaries and their Criminal Liability

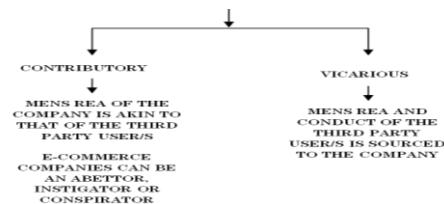
With technological innovation, the e-commerce companies are not only an expression of economic freedom but also an online engine of human avarice filled with infringed products, spams, stolen goods and other illegal activities. The question is no longer should the e-commerce companies be criminally liable but how. Many jurisdictions recognize secondary liabilities of intermediaries to different extents. Secondary liability of e-commerce companies for third-party acts can either be contributory or vicarious. Looking forward, this paper shall mainly focus on attributing culpability on intermediaries for the unlawful act initiated by the third-party users. In these cases, the intermediary rather provides the infrastructure which enables or facilitates the third-party criminal behaviour.

In this sub-section, the paper shall in brief examine certain existing practices in understanding third party liability across two different aspects of law: vicarious liability and copyright. The article attempts to discuss different legal positions related to third party users in order to spot the common characteristics of liability which may later guide us in attributing culpability. In *Sony Corporation of America v. Universal City Studios, Inc*, the court observed that "*Whoever actively induces infringement of a patent shall be liable as an infringer.*" Further, it was held that primary infringement is a condition precedent for secondary liability. Although for direct infringement, some element of direct participation is essential⁶⁷. Vicarious liability in copyright cases revolves around

⁶⁷ *Playboy v. Russ Hardenburgh*, (1997) 982 F. Supp. 503, 512.

two cases the "dance hall" and 'landlord'. In former case, the dance hall operators were held liable for infringement by bands that performed the copyrighted works in their organization⁶⁸. Whereas in the latter case, the liability is not imposed on landlords for leasing out the space without knowledge or control of the infringement⁶⁹. Therefore, the vicarious liability vis-a-vis the third party arises when the third party has the right and ability to control and possess a direct financial interest in the use⁷⁰. Thus, contributory liability requires the element of 'knowledge' of direct infringement; vicarious liability, on the other hand ensues when there is a right and ability to control the infringement and its failure to prevent entails direct financial benefit. This implies that vicarious liability in copyright exists when a defendant has the required 'relationship' with an infringer. As a result, the vicarious copyright liability is not fault based. But contributory liability is essentially fault-based as it necessitates defendant's knowledge and material contribution to the infringement of another⁷¹.

Figure 4: Secondary Criminal Liability of E-commerce Companies



6. Corporate Blameworthiness

Corporate blameworthiness arises out of the notion that a corporation is capable of being criminally liable on its own⁷² and can be directly correlated to the attribution of fault elements. It is considered that the corporate is what holds the knowledge of the various individuals constituting it. Hence the corporate blameworthiness is a direct liability and while attributing corporate criminal liability, not only individual's state of mind should be considered but it must be established that the corporate *itself* is blameworthy⁷³.

⁶⁸ *Dreamland Ballroom v. Shapiro, Bernstein*, (1929) 36 F.2d 354.

⁶⁹ *Deutsch v. Arnold*, (1938) 98 F.2d 686.

⁷⁰ *Shapiro, Bernstein v. H.L. Green*, (1963) 316 F. 2d 304.

⁷¹ Hirning, Robert N. "Contributory and Vicarious Copyright infringement in Computer Software." *Chicago-Kent Journal of Intellectual Property*, vol. 6, no. 1, 2006, p. 10.

⁷² Woolf, Tahnee, "The Criminal Code Act 1995 (Cth) – Towards a Realist Vision of Corporate Criminal Liability." *Criminal Law Journal*, vol. 21, no. 5, 1997, pp. 257, 258.

⁷³ Colvin, Eric. "Corporate Personality and Corporate Crime." *Criminal Law Forum*, vol. 6, no. 1, 1995, pp. 1, 24.

7. Understanding the Concept of Jurisdiction and E-commerce Criminal Liability

A criminal complaint was filed against the Directors of Snapdeal for exhibiting and sale of drugs on its platform without a license, hence in violating Section 18(c) of Drugs and Cosmetics Act, 1940. The lower court took up jurisdiction of the matter under the said Act and passed an order against the Directors. The Directors later challenged the order stating that their role was limited as intermediaries and their liability was exempt under Section 79 of the IT Act.

The primary question before the High Court was whether an intermediary can be held criminally liable for the fault of the third-party seller. The Hon'ble High Court took into consideration the argument of the Directors that Snapdeal was merely an intermediary and as per Section 79 of the IT Act, Snapdeal has observed due-diligence and has specifically included 'Prescription Medicines and Drugs' as a prohibited product and have a separate policy for consequences for selling prohibited products. While observing the distinction between an 'inventory-based model' and 'marketplace model' as defined under the Consumer Disputes (e-commerce) Rules 2020 the high court held that Snap deal was a marketplace entity and had complied with due diligence requirements. Therefore, Snapdeal was not criminally held liable.

Importantly, the case also laid down the basis of determining the jurisdiction of the court with respect to e-commerce entities. If the offence has been committed within the jurisdiction of the Magistrate where the entity has an office, then that Magistrate shall have the jurisdiction. In case, the offence is committed within the jurisdiction of the Magistrate where the entity does not have an office, then the Magistrate will have to conduct an enquiry to determine grounds to proceed against the accused entity under Section 202 of the CrPC.

8. Conclusion

For some e-commerce is an evolving concept which requires new laws or modern approach. While others opine that unlike technology, the legal issues are not new and therefore existing laws can address the question of criminal liability of e-commerce companies. However, none of them seem to justify their argument completely. The rationale behind this chapter is to investigate certain theoretical constructs for building an analytical framework which is essential to ascribe culpability to internet intermediaries (e-commerce entities) for the actions of third party user/s.

i) Corporate Personality

Firstly, the concept of corporate personality mainly focuses on the nature of the corporation rather than considering its function. Also, the fictional and realist theories of corporate personality view corporation differently in terms of their nature. But invariably they both are human centric and is constantly compared with individuals constituting it. To substantiate further, *Philip Pettit's* model amply demonstrates that corporation's mind and decision-making process may not same as the individuals constituting it.

ii) E-commerce Entities as Corporation

Unlike traditional businesses, e-commerce business is classified into inventory and marketplace models. In inventory-based model the goods and services is owned by the e-commerce entity and is sold to the consumers directly. Whereas in a marketplace model the e-commerce entity acts through a digital and electronic network as a facilitator between buyer and seller. In the latter case, the e-commerce entity may assume the role of an '*online intermediary*'. For that reason, the roles and responsibilities of e-commerce companies hosting online platforms stands exalted. Due to this nature, different laws and regulations like the Information Technology Act, Income Tax Act, Companies Act, and others apply to e-commerce entities. So are the disputes that are inevitable to any business, whether online or offline. So, e-commerce entities essentially don both the roles of an 'intermediary' and corporation.

iii) Expanded Liability

Secondary criminal liability of e-commerce companies for third-party acts can either be contributory or vicarious. Contributory liability in terms of criminal law arises when an online intermediary aids or abets its users to commit an offence. In case of vicarious criminal liability, the cardinal principle of criminal jurisprudence is that there is no vicarious liability unless the statute expressly provides for the same. On the other hand, the application of vicarious liability principle to attribute culpability in case of corporations lacks clarity.

Also, if corporations cannot be punished, then in terms of theories of justification for punishment, the main goal of criminal sanction is to achieve deterrence. In that case, criminal sanctions may not be the only means to deter misconduct. The civil sanctions may also prove to be effective. This may even blur the distinction between civil and criminal sanctions.

CRUELTY BY HUSBAND AND HIS RELATIVES: A FIT CASE FOR COMPOUNDING OR NOT?

Dr. Shruti Goyal*

1. Introduction

In India, marriage is considered as a sacred relationship. After marriage, a woman is supposed to receive attention and care from her husband and his family. However, there are instances when the woman receives the wrath of the family in place of love. This can be due to numerous reasons like infertility, not bearing a male child, dowry, alcoholism etc. to name a few. In Indian custom, the lady endures numerous inconveniences, sufferings, and even insults in silence with the express purpose of ensuring the marriage's prosperity.¹ However, at times she is subjected to such level of cruelty or harassment, that she is forced to end her life.

In order to protect the women from cruelty a number of legislation have been enacted. In order to protect the women from the wrath of her in-laws for dowry, the Dowry Prohibition Act was enacted in 1961. Section 498A was introduced in 1983 in the Indian Penal Code, 1860 to combat the evil of dowry and cruelty in the Indian societal set up so that the woman can live with dignity in her matrimonial home.² Further, in 2005 in order to protect women from cruelty and domestic violence, the “Protection of Women from Domestic Violence Act” was passed. This Act is a civil law and aims to provide support to women. The Act provides for passage of residence orders, custody orders, protection orders, monetary relief and compensation orders in order to address the problem of violence against woman within her home.

In recent times, there has been an outburst of matrimonial disputes. The Courts are flooded with complaints regarding matrimonial discord and allied provisions. The Parliament passed these laws in the name of a good cause: to address the threat of dowry killings and harassment of women by their husbands or relatives.³ However, over the years with the changing attitude of people in the society, section 498A of the Indian Penal Code has earned a shady reputation as a provision that is utilized as a weapon rather than shield by the angry wife.

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¹ V.S. Malimath, Committee Report on ‘Reforms of Criminal Justice System (2003)’, p. 191.

² *Krishan Lal vs. Union of India* 1994 Cri LJ 3472.

³ *Noorjahan vs. State* AIR 2008 SC 2131.

Section 498A is a handy tool in such cases as offence under section 498 A is cognizable, non-bailable and non compoundable under the Code of Criminal Procedure (CrPC). The majority of 498A complaints are submitted in the heat of the moment and as a result of ego disputes.⁴ Many a times the parties later on agree to a settlement and decide to either stay together or part ways amicably. In cases of amicable settlement between the parties, the non-compoundability of section 498A leads to abuse of process of court. The author in this article analyses the ingredients of the section, legislative provisions regarding compounding of offences, arguments in favour or against making 498 A compoundable and the judicial attitude towards this offence.

2. Ingredients of the Section

Before going into other details it is important to look into the legislative provision of the section. Section 498 A provides punishment for husband and his relatives for subjecting a woman to cruelty. The punishment is imprisonment which may extend to three years and fine. The explanation attached to the section provides that cruelty is a behaviour that forces a woman to commit suicide or puts her bodily and mental health in great risk. It encompasses in itself an act of harassment where harassment is done to coerce the woman or her relative to give dowry. Thus, the basic ingredient is ‘cruelty or harassment’ by husband or his relatives.⁵

It's worth mentioning that the term 'husband' isn't defined in the Code. In *Koppiseti Subbharao @ Subramaniam vs. State of A.P.*,⁶ the court held that “the term ‘husband’ need not be legally wedded husband but also includes any person ostensibly entering into marital relationship and thereby assuming for himself the position of husband to live, co-habitate and exercise authority as such husband over another woman.” In *U. Suvetha vs. State by Insp. of Police and Another*,⁷ the Court held that “the term ‘relative’ would ordinarily include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person.” Relative of husband principally includes person related to him by blood, marriage or adoption.⁸ Many a times, a question that comes before the court is whether a ‘girl friend’ or a ‘concubine’ can be considered as relative?

⁴ *Chandrabhan vs. State*, (2008) 151 DLT 691.

⁵ *Bhaskar Lal Sharma vs. Monica*, 2009 (10) SCC 604.

⁶ *Koppiseti Subbharao @ Subramaniam vs. State of A.P.*, AIR 2009 SC 2684.

⁷ 2009 Cri LJ 2974.

⁸ *Vijeta Gajra vs. State of NCT of Delhi*, AIR 2010 SC 2712.

The Supreme Court has said that being a penal provision section 498 A has to be given a strict construction and by no stretch of imagination they can be included in the definition of relative.⁹

It is pertinent to note that mere harassment of woman does not amount to cruelty. Under section 498A, it must be proven that the woman was beaten or harassed in order to drive her to commit suicide or to comply with the husband's or in-laws' unlawful dowry demands.

3. Legislative Provisions Regarding Compounding of Offence

3.1 Meaning

The phrase 'compounding' refers to the process of arranging, negotiating, and reaching to an agreement with a creditor. It also refers to the process of dealing with a creditor to his satisfaction.¹⁰ Compounding an offence means that the individual who committed the offence has gotten some form of reward, not necessarily monetary, in exchange for his desire to avoid punishment. The victim has either received some pecuniary benefit or the attitude between the victim and the accused has changed towards each other. Compounding is essentially predicated on the mutuality of the parties involved.¹¹

3.2 Legislative Provisions

Section 320 of CrPC contains provisions for the compounding of offences. The section catalogs offences of the Indian Penal Code which can be compounded.¹² Where the offence is compoundable, the abetment or attempt of such offence is also compoundable.¹³ In case of minor, idiot or lunatic person, any other person who is legally competent to contract may compound the offence. In such cases, compounding can be done only with the Court's consent.¹⁴ If the individual who would ordinarily be able to compound is deceased, his legal representatives may do so with the court's permission.¹⁵ Compounding results in acquittal.¹⁶ The Legislature's position under this section is that in the event of minor offences

⁹ *Sunita Jha vs. State of Jharkhand and Another*, (2010) 10 SCC 190.

¹⁰ P. Ramanatha Aiyer, Law Lexicon, 1997 Edition.

¹¹ *Abasaheb Yadav Honmane and Ashwini Abasaheb Honmane vs. State of Maharashtra*, 2008 (2) MhLj 856.

¹² Code of Criminal Procedure, 1973 Ss. 320 (1) and (2).

¹³ Code of Criminal Procedure, 1973 S. 320 (3).

¹⁴ Code of Criminal Procedure, 1973 S. 320 (4) (a).

¹⁵ Code of Criminal Procedure, 1973 S. 320(4) (b).

¹⁶ Code of Criminal Procedure, 1973 S. 320(8).

when the public interest is not at stake, the complainant should be allowed to reach an agreement with the party against whom he is complaining.¹⁷

The Code specifically provides that “no offence shall be compounded except as provided in the section”.¹⁸ The Supreme Court in *Surendra Nath Mohanty vs. State of Orissa*¹⁹ (three judge bench) made it clear that section 320 of the Code contains complete scheme for compounding of offences and therefore no offence other than those specified in section 320 can be compounded.

4. Compounding of Offence Under Section 498A

An important question that arises is whether the offence under section 498A can be compounded or not? It is important to note that section 498A is not mentioned in the table of compounding offences. It is pertinent to note that section 498A has been made compoundable in the State of Andhra Pradesh.

The arguments advanced in favour of making the offence under section 498A compoundable are manifold. Firstly, if the wife is willing to put up with the abuse the husband has incurred on her and settle the dispute due to repentance on the part of husband or change in attitude or reparation of injury caused to her, then law should not stand in her way.²⁰ Marriage is a spiritual rite. The purpose of marriage is to help the husband and wife to stay together and happy with each other. Little matrimonial squabbles, on the other hand, can erupt out of nowhere, often leading to the commission of heinous crimes in which family elders are also involved, rendering those who could have counselled and brought about reconciliation helpless when they are named as defendants in a criminal case.²¹ The interest of the society would be better served if the institution of marriage is protected. Therefore, in case of amicable settlements between the parties whereby the parties agree to live together, the offence should be compounded. In cases where they decide to part ways and there is agreement for divorce by mutual consent, then also it will be in the interest of the woman to compound the offence as this will help her to settle fast.

¹⁷ *Biswabahan Das vs. Gopen Chandra Hazarika and Others*, AIR 1967 SC 895.

¹⁸ Code of Criminal Procedure, 1973 S. 320(9).

¹⁹ AIR 1999 SC 2181.

²⁰ The Law Commission of India, Two Hundred Thirty Seventh Report on ‘Compounding of (IPC) Offences (2011)’, p. 16.

²¹ *K. Srinivas Rao vs. D.A. Deepa*, (2013) 5 SCC 226.

The arguments advanced against making the offence under section 498A compoundable are manifold. Firstly, it is argued that dowry is a societal scourge, and the legislation intended to penalise those who annoy spouses with dowry demands should not be permitted to avoid the reach of the law by reaching certain private bargains. Secondly, it will be a kind of legal recognition to the factum of violence against women. Thirdly, woman especially the uneducated woman may be coerced to arrive at some compromise.

5. Views of Commissions and Committees

The Law Commission in its 154th report recommended that section 320 should be amended and compounding shall be allowed with the permission of the Court”.²² This recommendation was again reiterated by the Law Commission in its 177th report (2001).²³ The Commission in this report observed that it had received recommendations from various organization and individuals to make the offence compoundable. The *Malimath Committee on Reforms of Criminal Justice System* also supported the plea that offence under section 498 A should be made compoundable.²⁴ The Criminal Law (Amendment) Bill, 2003 contained provision for making offence under section 498A compoundable so that section 498 A is not misused.²⁵ The ‘*Department-Related Parliamentary Standing Committee on Home Affairs*’ in its 111th report also advocated that offence under section 498A should be made compoundable so that a chance is given to the estranged spouse to come together.²⁶ The Department-Related Parliamentary Standing Committee on Home Affairs in its 128th report again advocated that offence under section 498A should be made compoundable.²⁷ The Law Commission of India in its 237th Report specifically dealt with the question of compounding of offence under section 498A. The report was prepared in the wake of Supreme Court’s observations in *Preeti Gupta vs. State*

²² ‘The Law Commission of India, One Hundred Fifty Fourth Report on ‘The Code of Criminal Procedure, 1973 (1996)’, p. 48.

²³ The Law Commission of India, One Hundred Seventy Seventh Report on ‘Law Relating to Arrest (2001)’, p. 112.

²⁴ V.S. Malimath, Committee Report on ‘Reforms of Criminal Justice System (2003)’, p. 191.

²⁵ The Criminal Law (Amendment) Bill, 2003 is available at prsindia.org/uploads/media/1167468093/bill21_2007032821_Criminal_Law_Bill_2003.pdf.

²⁶ Departmental Related Parliamentary Standing Committee on Home Affairs, 111th Report, Government of India, Available at <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Home%20Affairs/111threport.htm>.

²⁷ Departmental Related Parliamentary Standing Committee on Home Affairs, 128th Report, Government of India. Available at <http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20Home%20Affairs/128threport.pdf>.

of *Jharkhand*²⁸ where the Court had referred the matter of misuse of section 498 A to the Commission. After analyzing the pros and cons and making in-depth study on the topic, the Commission proposed that a section 498 A offence be made compoundable with the Court's authorization.²⁹ The Commission in this report also suggested certain safeguards to assuage fears that the wife may be pressured into making a compromise. This view was again reiterated by the Law Commission in its 243rd report.³⁰

6. Judicial Approach towards Compounding Under 498 A

Section 498A is non-compoundable. However, the Bombay High Court as long back as in 1992, in *Suresh Nathmal Rathie vs. State of Maharashtra*³¹ made a strong suggestion “to amend Section 320 of CrPC in order to include Section 498A within that Section”. The Supreme Court in *Ramgopal vs. State of M.P.*³² observed that “the offences under Section 498A among others can be made compoundable by introducing suitable amendment to law”. Thereafter in *K.Srinivas Rao vs. D.A. Deepa*,³³ the Court has issued specific directions. The directions are “that the criminal courts dealing with the complaint under Section 498-A of the Indian Penal Code should at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigor, purport and efficacy of Section 498-A of the Indian Penal Code is not diluted”.

In view of above discussion, it can be said that apparently section 498A cannot be compounded even with the permission of the Court in view of the embargo laid in section 320(9) of the Code and the Supreme Court's (three judge bench) decision in case of *Surendra Nath Mohanty vs. State of Orissa*³⁴. However, this proposition creates a lot of difficulty in cases where the parties have entered into compromise with each other. Therefore, another way out to this anomaly is quashing of FIR filed by the complainant. Now, the question arises is whether FIR filed under section 498A be quashed in case of settlement

²⁸ AIR 2010 SC 3363.

²⁹ The Law Commission of India, Two Hundred Thirty Seventh Report on ‘Compounding of (IPC) Offences (2011)’.

³⁰ The Law Commission of India, Two Hundred Forty Third Report on ‘Section 498A IPC (2012)’, p. ii.

³¹ 1992 Cri.LJ 2106.

³² (2010) 13 SCC 540.

³³ (2013) 5 SCC 226.

³⁴ AIR 1999 SC 2181.

between the parties?

The first case on the point is *B.S. Joshi vs. State of Haryana*³⁵ (two Judge Bench). In this case the accused was charged with an offence under Section 498A and 406 (punishment for criminal breach of trust) of IPC and FIR was filed by the wife against her husband and his relatives. Later on an agreement was reached between the parties whereby both the parties agreed to mutual divorce. So, the wife filed an affidavit that the dispute was finally settled between her and the accused and therefore they prayed for quashing FIR under section 482 of CrPC.³⁶ The High Court declined her prayer to quash the FIR under section 482 on the ground that the offence under section 498A and 406 are non-compoundable. However, the Supreme Court on appeal reversed the order and held that High Court in such cases can quash the criminal proceedings. The Court in this case referred to its own earlier decision in *Madhu Limaye v. State of Maharashtra*³⁷ wherein it was held that “the power under Section 482 should not be exercised when there is an express bar in some other provision of the Code”. Despite, Madhu Limaye’s case, the Supreme Court relied on the case of *State of Karnataka v. L. Muniswamy*³⁸ and observed that “the High Court under Section 482 can quash the criminal proceedings if it comes to the conclusion that the ends of justice so requires e.g. where there would almost be no chance of conviction. The Court said that in the instant case for the purpose of securing the ends of justice, quashing of FIR is necessary”. Non-quashing of FIR would prevent the woman from settling earlier and would be anti-thesis to the object of section 498A. The phrase “nothing in this Code” in section 482 is a non-obstante clause that gives it precedence over other Code sections. The premise was that the inherent authority under Section 482 can be employed to subserve the interests of justice since Section 320 of the Code of Criminal Procedure does not restrict or affect the powers exercised under Section 482.

³⁵ (2003) 4 SCC 675.

³⁶ Section 482 gives inherent powers of the High Court to make such orders as may be necessary to secure the ends of justice or give effect to any order or to prevent abuse of the process of Court.

³⁷ 1978 CriLJ 165.

³⁸ 1977 CriLJ 1125.

The principle cited above by Supreme Court in *B.S.Joshi's* case was later on followed in the case of *Nikhil Merchant vs. CBI*³⁹ and *Manoj Sharma vs. State*⁴⁰. In *Nikhil Merchant's case*, there was a civil dispute between two parties having certain criminal facets. CBI had filed chargesheet against the five accused for criminal conspiracy, cheating, forgery and criminal misconduct by a public servant under Prevention of Corruption Act, 1988. The offence of cheating is compoundable whereas the offence of forgery is non-compoundable. The dispute revolved around non-payment of loans taken from the bank. The CBI's submission of the charge-sheet was preceded by a lawsuit between the delinquent Company and the Bank, which resulted in a settlement. After compromise, both the parties withdrew all claims and allegations against each other. Thereafter petition was filed for quashing of criminal proceedings. The High Court rejected the claim. The Supreme Court under Article 142 of the Constitution⁴¹ accepted the plea and following the ratio laid in *Joshi's case* held that the continuation of proceedings in such a case would be a futile exercise. In *Manoj Sharma's case*, which was on similar grounds as that of *Nikhil Merchant's*, the Supreme Court held that High Court had the power to quash FIR either under section 482 of CrPC or Article 226 of the Constitution and such power is not circumscribed by section 320 of CrPC and has to be exercised on the facts of each case. The Court in this case observed that “a larger bench needs to decide the non-compoundable cases in which FIR can be quashed under Section 482 CrPC or Article 226 of the Constitution on the basis that the parties have entered into a compromise”.

Thereafter, in 2012 in *Gian Singh v. State of Punjab and Another*⁴² (three judge bench), the Court expressed that “certain offences which overwhelmingly and predominantly bear civil flavor like those arising out of matrimony, particularly relating to dowry, etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may quash the criminal proceedings if it feels that by not quashing the same, the ends of justice shall be defeated”.

³⁹ (2008) 9 SCC 677.

⁴⁰ (2008) 16 SCC 1.

⁴¹ Under Article 142 of the Constitution the Supreme Court has the power to pass orders for doing complete justice.

⁴² (2012) 10 SCC 303.

Recently in 2017, in *Rajesh Sharma vs. State of U.P.*,⁴³ the Supreme Court went a step forward and directed that “in cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord; instead of parties being required to move High Court only for that purpose”.

7. Conclusion and Suggestions

It may be said that a balanced and holistic approach is required for handling sensitive issues like family relations. Reconciliation or revival of marital relation should be the key factor. Remedial steps are required to see that uncalled for implication of husband and his relatives is not done. The law has always stressed upon the policy of effecting reconciliation between warring couples. Reconciliation without compounding is not practically possible. As far as the problem of dowry is concerned, it should be borne in mind that cruelty may also be occasioned because of causes other than dowry. As far as coercion for settling the dispute is concerned, the offence under section 498A should be made compoundable only with the permission of the court. Moreover, in case of settlement between the parties, the continuity of the case would only lead to increase in agony or harassment of the victim also because in such cases the chance of conviction is a rear possibility and continuation of the proceedings would delay her settlement in life. Continuation of proceedings in spite of settlement between parties would lead to undue hardship to parties.

Therefore, the Legislature should play a progressive role and amend Section 320 of the Code of Criminal Procedure so that the offence is compoundable with the permission of the Court. The judges should play an active part to see that no coercion or undue pressure or influence is exerted on the woman to compound the offence. Till the law is amended, the directions issued by the Supreme Court in case of *Rajesh Sharma* shall be followed and the Court dealing with the case shall have the power to terminate the proceedings in case of settlement between the parties. Marriage is one of the strongest

⁴³ 2017 SCC Online SC 821.

institutions of the India's rich culture and efforts should be made to preserve the institution of marriage.

CLIMATE CHANGE AND SECURITY CONCERNS

Sanchit Meena*

1. Introduction

*We are the first generation to feel the effect of climate change and the last generation who can do something about it.*¹

-Barack Obama, Former U.S. President

Climate change can be simply defined as a significant alteration of the topographical and global weather patterns. They may be induced by human activities or due to naturally existing forces in play. The greatest factor contributing to drastic climate change, especially after the late 20s, is the colossal consumption of fossil fuels for variegated purposes. One of the sizable consequences of such incessant fossil consumption is that of increased carbon dioxide levels. This in turn has resulted in significant climate change. It has been estimated that since 1976, there has been an increase of 0.6 degrees in the average global temperature.²

The patterns of precipitation have been altered; it has led to the desertification of land in the arid region while some areas have become increasingly wet. If there is no active intervention to do away with increasing temperatures, the same might lead to an increase up to 5.8 degrees by the year 2100.³ Such climate change pose multifarious security concerns, which can be in the nature of food, water, socio-economic, displacement, etc., which, in effect, stress the available resources and even lead to violent conflicts in some situations.

The international community reacted to climate change in their first World Climate Conference which was held in 1979.⁴ Since then, several important meetings have been held to discuss scientific and policy decisions pertaining to the fight against climate change. The United Nations Environment Programme and the World Meteorological Organization created the Inter-governmental Panel on Climate Change (IPCC) which provided assessment reports containing climate change-oriented research. Soon after, the UN Framework Convention on Climate Change

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¹ Remark by President Obama at the first session of COP21, Le Bourget, Paris, France 23rd September 2014.

² McMichael, Anthony J., et al. "Global Climate Change." The Comparative Quantification of Health Risks, UNSCN, 2003.

³ Ibid.

⁴ Oppenheimer, M. "Developing Policies for Responding to Climatic Change." *Climate Change*, vol. 15, no. 1, 1989, pp. 1-4.

was formulated. It was the first codified document addressing the legal principles that must ideally govern climate change. This further gave rise to the formulation of numerous other legal instruments like the Kyoto Protocol (1997), Buenos Aires Plan of Action, Marrakesh Accords, etc.⁵

However, it is pertinent to note that the practical realities are extremely different from the theoretical perspectives.⁶ Though various conventions and treaties have aimed to curb emissions and attain Sustainable Development, nations have not been very keen on implementing the same. The divide created between the Global North and the Global South has been a cause for conflict since the former is not willing to curb its emissions to allow the latter to develop economically. Furthermore, instances like the withdrawal of the United States of America from the Paris Agreement in 2017⁷ and the failed COP-25 held in Madrid, Spain,⁸ signify the nonchalant approach adopted by nations regarding climate change. Hence, there lies an urgent need to address these practical difficulties.

2. Literature Review

2.1 Climate Change, Geo-Security, and Challenges to Conflict Prevention

For this particular segment of the paper, the author has reviewed five kinds of literature. The first literature (*Report on Linking Environment and Conflict Prevention*)⁹, the first part gives a comprehensive account of the interplay which is there between climate change and conflicts resulting therefrom. The literature gives several mitigating and aggravating factors that have a bearing on such conflicts. In part two, the role of the United Nations in the prevention of such conflicts and promoting peacebuilding activities have been enumerated. The last part provides for several conflict prevention measures across various security threats such as energy security, food security, climate change, dialog-oriented approaches, and economic-political approaches.

⁵ Agrawala, S. "Context and Early Origins of the Inter governmental Panel on Climate Change." *Climatic Change*, vol. 39, no. 1, 1998, pp. 605–620.

⁶ Fawzy, Samer. "Strategies for Mitigation of Climate Change." *Environmental Chemistry Letters*, vol. 18, no. 1, 2020, pp. 2069-2094.

⁷ McGrath, Matt "Climate Change: The US Formally Withdraws from Paris Agreement." *BBC News*, 2 November 2020.

⁸ Gopalakrishnan, Tarun. "Climate Emergency COP-25: A Failure on Key Deliverables." *Down To Earth*, 16 January 2019.

⁹ *Linking Environment and Conflict Prevention: The Role of United Nations*, Center for Security Studies (CSS) ETH Zurich, 2014.

In the second literature (conflict prevention in an era of climate change)¹⁰, the authors of this literature, has given a detailed overview of a different form of climatic-conflicts, which, may be in the nature of the environmental, resource, or economic-political conflict, triggered as a direct or the indirect impact of climate change. Thereafter, the literature presents a substantial case-study of Nigeria from a climate-security perspective to give the readers of various nuances that such conflicts may entail. The author concludes by providing certainly feasible suggestions for the resolution of the issue addressed.

The two kinds of literature (Making peace with conflict adaptation)¹¹ and (climate change adaptation)¹² demonstrate a similar objective on part of the authors. In both these kinds of literature, the authors first give a detailed account of the issue of climate change and the issue of security threats arising therefrom. The authors then gradually move to their objectives of providing for methodologies that may be adopted by an individual as well as by the State to adjust to and prepare for such climatic changes.

Lastly, the literature (When Rain Turns to Dust)¹³ deals specifically with the vulnerabilities of the areas with pre-existing conflicts. It uses different case studies to bring to light the susceptibility of areas suffering chronic conflicts to climatic changes. It shows the shortcomings of the adaptive strategies to cope with climate changes in view of the on-going conflicts, and eventually end up stressing the resources rather than their management. The author in the concluding part has also provided for certain resolution strategies to do away with the problem highlighted.

2.2 *Modification of Defence Requirements to Suit Climate Change*

In this particular segment of the paper, three pieces of literature have been primarily reviewed. Firstly, "Ready for take-off? Military Responses to Climate change" by Schaik, Zandee, Lossow, Dekker, Maas, and Halima¹⁴ has been reviewed. This report has compiled the military responses of 11 Nations across the world to the changing climatic conditions. For the purpose of analysis, purposes the authors of the report

¹⁰ Day, Adam., and Jessica Caus. *Conflict Prevention in an Era of Climate Change: Adapting the UN to climate-security risks*, United Nations University, Centre for Policy Research, 2019.

¹¹ Schaik, Louise van, et al. *Making Peace with Climate Adaptation*, Background Paper For Global Commission on Adaptation, Clingendael, 2019.

¹² *Climate Change Adaptation*, Institute of Securities Studies, 2013.

¹³ "Seven things you need to know about climate change and conflict." *International Committee of the Red Cross*, 9 July 2020.

¹⁴ Schaik, Louise van., et al. *Ready for take-off Military responses to climate change*. Clingendael Institute, 2020.

conducted research on the following main points: a) specific climate variations affecting respective national security, b) defense mechanisms implemented in light of the climate change, c) relation with other countries on an international level, d) consequences of such mechanisms, e) "greenification" of armed forces. This paper goes a step further in categorizing these adaptations of different countries into preventive, remedial, research, and pro-active approaches and analyzing the consequences thereof on an international level.

Secondly, "National Climate-Related Security Policies of the Permanent Member States of the United Nations Security Council Report"¹⁵ by Zhou has been reviewed. This report has analyzed the adaptations made by defense forces specifically by the permanent members of the United Nations Security Council in light of climate change. This paper has attempted to cross-compare the findings of this report with those of the earlier mentioned report and present a combined, detailed overview on the subject.

Thirdly, "Climatizing' military strategy? A case study of the Indian armed forces"¹⁶ by Dhanasree Jayaram has been reviewed. This paper specifically addresses India's approach to adapting its defense forces to suit climate change and securitization. The present paper attempts to go a step further and critically compare India's efforts with the approaches taken by other countries.

Additionally, official documents of nations, secondary data from research conducted based on interviews with defense and academic personnel, and case studies of individual nations have been reviewed. The methodology adopted is qualitative, interpretational, observational, and non-doctrinal.

2.3 *Climate Change and Effects on Geo-Economic Security*

Different types of geo-economic approaches have been identified and conceptualized (Wigell, 2016)¹⁷. The author has recognized key areas of interest for states to use their geo-economic security to tackle various international issues. He states that there are two types of traits followed by nations, i.e., competitive or cooperative, to establish their supremacy. Wigell has noted the minimal existence of literature in this

¹⁵ Zhou, Jiayi. *National Climate-related Security Policies of the Permanent Member States of the United Nations Security Council*, Stockholm International Peace Research Institute, 2017.

¹⁶ Jayaram, Dhanasree. " 'Climatizing' military strategy? A case study of the Indian armed forces." *Int Polit*, vol. 58, no. 1, 2021, pp. 619-639.

¹⁷ Wigell, Mikael. "Conceptualizing Regional Powers Geo-Economic Strategies: Neo-imperialism, Neo-mercantilism, Hegemony, and Liberal Institutionalism." *Asia Europe Journal*, vol. 14, no. 2, 2016, pp. 135-151.

particular area and has thus, accurately established the relationship between the geo-economic security of nations and strategic regional powers. However, it is pertinent to note that though the paper has delved extensively into the various international issues affecting geo-economic security, climate change is blatantly missing.

Both geopolitical and geo-economic equations regarding climate change have been analyzed to a great extent (Paskal, 2009)¹⁸. The author believes that climate change and environmental degradation is a novel variable that will change the strategic dynamics. The paper rightfully states that these changes will result in the creation of opportunities as well as vulnerabilities for various States. Paskal has mentioned the unwavering politics even in dire times like these. World leaders view this as an opportunity for establishing their economic and political supremacy. The paper accurately suggests that there lies a need to understand these variables and incorporate them into the international realm as well as ensure geo-economic security.

Geo-economic security and climate change have also been examined and studied from the purview of specific nations (Krzysztof, 2012)¹⁹. The concept of geo-economics itself has been discussed at great lengths. Its inception signifies the nexus between the economic capabilities of a nation and its strategic ties with other nations. Though the article has majorly focused on the Polish perspective related to geo-economic security and climate change, various factors have been dealt with. These comprise of competitiveness of the economy, the targeted emission requirements for Poland and other nations, and the regime for maintaining food and energy security. However, instead of adopting a more cooperative method, the author has criticized the existing treaties and protocols to suit Polish interests.

2.4 *Influence of Climate Change on Migration Patterns*

The first piece of the literature analyzed was provided by the International Organization for Migration in their research series. The paper is titled “*Climate Change, Migration and Critical International Security Concerns*.”²⁰ This paper focuses on the recurring pattern of climate change and its subsequent impact on migration. The authors focus on how this pattern is likely to result in large-scale

¹⁸ Paskal, Cleo. “From Constants to Variables: How Environmental Change Alters the Geopolitical and Geo-Economic Equation.” *International Affairs*, vol. 85, no. 6, 2009, pp. 1143-1156.

¹⁹ Ksiezopolski, Krzysztof M. “The Geo-Economics of Climate Change Regime–Polish Perspective.” *Climate Change, Economy, And Society–Interactions In The Baltic Sea Region*, vol. 29, no. 1, 2012, pp.105-119.

²⁰ Hakala, Emma. *India and the Global Geoeconomics of Climate Change: Gains from Cooperation*, Observer Research Foundation (ORF), Issue no.291, May 2019.

migration and displacement of individuals owing to adverse environmental impacts resulting from climate change. These impacts address droughts, floods, tsunamis, and other destructive natural disasters. Such disasters will likely result in resource scarcity causing mass instability and chaos. In response to such destruction, the authors call for international efforts to actively cut down greenhouse gas emissions and other forms of acts that cause environmental degradation resulting in climate change.

The second piece of literature analysis was also written by the International Organization for Migration in their research series. The paper is titled “*Migration and Climate Change*.”²¹ This paper addresses the ongoing battle with climate change and the pattern that it has followed since the start. This paper does not just address forced migration or climate refugees but it also focuses on the developmental implications of climate change across the globe. There is active emphasis paid to vulnerabilities of specific regions across the continents. Further, the paper addresses the impact of environmental degradation on economic and political stability. The authors provide a new angle by highlighting the likelihood of ethnic conflicts owing to the scarcity of resources. However, after analyzing the above enumerated issues, the authors do not address the need for certain states to alter their immigration policies and fence borders to curb the rapid migrant influx.

The third piece of the literature analyzed is written by Clionadh Raleigh, Lisa Jordan, and Idean Salehyan and presented in the World Bank’s Social Dimensions of Climate Change Workshop.

The paper is titled “*Assessing the Impact of Climate Change on Migration and Conflict*.”²² This paper focuses on the environmental consequences of climate change. It emphasizes the higher likelihood of droughts, famines, floods, landslides, cyclones, hurricanes, and the like. This paper addresses the pressing issue of global warming and its impact on rising temperatures and sea levels. In this light, the authors highlight existing hotspots based on EM-DAT statistics. Consequently, they also address the potential types of migration that may arise as a consequence of climate change. These types range from distress migration to aid-seeking migration. However, after analyzing the potential migrant influx, the authors do not address the policies and measures that may be adopted by receiving states to accommodate the environmentally vulnerable migrants.

²¹ *Climate Change, Migration, and Critical International Security Concerns*. IOM International Organization for Migration, Migration Research Series, no.42, 2011.

²² *Migration and Climate Change*. International Organization for Migration, IOM Migration Research Series, no.31, 2008.

The last piece of the literature analyzed was written by Paramjit S. Jaswal and Stellina Jolly and published in the Journal of the Indian Law Institute. The paper is titled “*Climate Refugees: Challenges and Opportunities for International Law*.”²³ This paper specifically addresses the concept of climate refugees and their position in international law. Natural disasters resulting from environmental degradation often leave several people in helpless positions of being unable to earn their livelihoods. Climate change has significantly impacted people forcing them to flee their present residence to a new country. These individuals are often referred to as climate refugees even though the term ‘climate refugee’ is not recognized in international law. This paper addresses the challenges faced by these climate refugees and how they must be protected under international law. However, the nature and mechanism of protection are not provided.

3. Climate Change, Geo-Security and Challenges to Conflict Prevention

3.1 The Interplay Between Climate Change and Geo-Security

Natural resources such as water, forest, food, etc. have not only been a source of contention but have also resulted in some conflicts. The primary drivers of the same have been events like population growth and climate change have exacerbated the issue in almost all nations. However, the extent varies as per the scarcity of resources in the area. The issue of climate change has had a catalyst effect on the existing problems of environmental concern, social inequality, poverty, social tension, etc.²⁴ it is true that climate change does not by itself cause conflict but its far-reaching impact leads to social tensions among competing groups. For instance, the resource conflict or contracting tensions between the herders and the farmers has been on a surge. The threat of such risks is further aggravated in territories or regions cursed with greater poverty rates, social inequality, existing conflicts, and the feeble nature of governance. The security threats resulting from climate change can be inter or intra-state conflicts.

Both pose diverse natures of risks, some of which, have been discussed herein. The interstate security risks include trans-border conflicts, *inter alia*, pertaining to water deficiency, food insecurity, and migration patterns. Conflicts relating to water occur due to the availability of lesser water owing to climate change and/or the riverine country increasingly using water. Such conflicts may even be heightened with the construction of dams.

²³ Raleigh, C., et al. *Assessing the Impact of Climate Change on Migration and Conflict*, Social Dimensions of Climate Change Workshop, World Bank, 2008.

²⁴ Jaswal, Paramjit S., and Stellina Jolly, “Climate Refugees: Challenges and Opportunities for International Law”, *Journal of the Indian Law Institute*, vol. 55, no. 1, 2013, pp. 45-58.

The dependence of international food trade on the international infrastructure makes it a vulnerable security risk. The hazards of changing weather patterns might render the trade route disrupted.²⁵ A double-whammy of high waters in the Mississippi and drought leading to restrictions in the Panama Canal, resulted in a shortage of supplies consequential price rise, and food security repercussions much beyond the trade markets.²⁶ The relations between states (especially bordering states) are disrupted by the migration induced by climate changes.²⁷ Such uncontrolled migrations make the migrants vulnerable as well as increases tensions between the state of origin and host states (e.g. Rohingyas in Bangladesh, Myanmar, and India).²⁸

Similar events of disruptions, even occur at the intrastate level owing to climate change. Major and prolonged droughts have resulted in certain events of violence.²⁹ In areas with less resilience, the resultant insecurity and hardships have even been seen as instability on the social and political front.³⁰ Climate change has detrimentally impacted the livelihood of those dependent on agriculture, with changing rainfall patterns, and variable weather conditions, even resulting in forced migrations within the states and provoking tensions.³¹ However, climate change is not directly responsible for conflicts. Supplementary factors such as economic instability, prior conflict, social exclusion, inefficient resource management, etc. culminate into such conflicts. In states with strong institutions and management qualities, with no aggravating factors, climate change in itself does not cause violent conflicts.³²

3.2 *Pieces of Evidence of Conflict Risk Vis-a-Vis Climatic Change*

Over the past few decades, there has been growing research on the interplay between conflicts owing to climate change. The global climatic changes have led to an increased risk of violent clashes owing to stressed resources like arable lands, drinking water, and forests. Studies have established a direct link between varied

²⁵ Ligtvoet, Willem, et al. *The Geography of Future Water Challenges-Bending The Trend*, PBL Netherlands Environmental Assessment Agency, 2018.

²⁶ Bailey, Rob, and Laura Wellesley. *Chokepoints and Vulnerabilities in Global Food Trade*. Chatman House Report London: The Royal Institute Of International Affairs, 2017.

²⁷ Ibid.

²⁸ Selby, Jan. "Climate Change and the Syrian Civil War, Part II : The Jazira's Agrarian Crisis." *Geoforum*, vol. 101, no.1, 2019, pp. 260-274.

²⁹ *Supra* Note 10.

³⁰ Schaik, Louise van, et al. *Making Peace with Climate Adaptation*, Background Paper For Global Commission on Adaptation, Clingendael, 2019.

³¹ Collier, Paul, and Anke Hoefler. "Greed and Grievance in Civil War." *Oxford Economic Papers*, vol. 56, no. 4, 2004, pp. 563-595 .

³² Fjelde, Hanne. "Farming or Fighting? Agricultural Price Shocks and Civil War in Africa." *World Development*. vol. 67, no. 1, 2015, pp. 525-534.

rainfall and small-scale conflicts within Africa.³³ Similar results have appeared from the research in the Sahelian countries. The increased likelihood of civil conflicts has been depicted within Saharan Africa due to the economic stress imposed by sustained droughts.³⁴ Even the unrest caused in the Arab region during 2011, has been bestowed upon the damaging impacts of extreme climatic conditions on food prices globally.³⁵

This being said, some studies have even shown contrary results and weak nexus between climate change and violent conflicts.³⁶ While some even show that instead of aggravating tensions climate change has rather had a pacifying effect on the existing tensions.³⁷ The author believes that the genuineness of such studies cannot be questioned, however, what they depict are only the exceptions and not the general reality. For this purpose, the author would briefly provide the case study of Bangladesh (one amongst many such instances), which has been marred by both internal and external conflicts owing to climate change.

With the maximum population of the country located in the riverine and coastal region, Bangladesh, besides being blessed with fertile soil, is also quite susceptible to bearing the brunt of climate change, which has been quoted as an “*existential threat*” by the Bangladeshi Prime Minister.³⁸ Due to the geographical location of the country, the climatic impact has been flooding, increased salinity of the groundwater, and rising instances of cyclones, which have triggered migration from rural to urban areas within the country. Floods have been a seasonal phenomenon in Bangladesh. However, the magnitude, as well as the frequency of them, has been on a steady rise.³⁹ The climatic changes have been tagged as a “*threat multiplier*” to violent clashes.⁴⁰

³³ Benjaminsen, T.A., et al. “Does climate change drive and use conflicts.” *Journal of Peace Research*, vol. 49, no. 1, 2012.

³⁴ Raleigh, Clionadh, and Dominic Kniveton. “Come Rain or Shine: An Analysis of Conflict and Climate Variability in East Africa.” *Journal of Peace Research*, vol. 49, issue 1, 2012, pp. 51-64; Hendrix, C.S., and Idean Salehyan. “Climate Change, Rainfall, and Social Conflict in Africa.” *Journal of Peace Research*, vol. 49, no. 1, 2012, pp. 35-50.

³⁵ Hendrix, Cullen, and Sarah M. Glaser. “Trends and Triggers: Climate, Climate Change and Civil Conflict in Sub-Saharan Africa.” *Political Geography*, vol. 26, no. 6, 2007, pp. 695-715.

³⁶ Johnstone, Sarah, and Jeffrey Mazo. “Global Warming and the Arab Spring.” *Global Politics and Strategy*, vol. 53, no. 2, 2011, pp. 11-17.

³⁷ Theisen, O.M. “Climate Clashes? Weather Variability, Land Pressure and Organized Violence in Kenya.” *Journal of Peace Research*, vol. 49, no. 1, 2012, pp. 81-96.

³⁸ Ibid.

³⁹ H.E. Her Excellency Sheikh Hasina, Inaugural Speech by Sheikh Hasina, Dara, 14 November 2011. <https://darainet.org/2011/11/14/2726/inauguration-of-the-climate-vulnerable-forum-2011/>; See also *Bangladesh Declares Climate Change a Planetary Emergency*. United Nations Office for Disaster Risk Reduction, 2019.

⁴⁰ Ayeb-Karlsson, Sonja, et al. “A People-Centered Perspective on Climate Change, Environmental Stress, and Livelihood Resilience in Bangladesh.” *Sustainability Science*, vol. 11, no. 1, 2016, pp. 679-694.

In the conflict-prone areas of the Chittagong Hill Tract, there has been an incessant and uncontrolled entrance of Rohingya groups. The resultant population growth has further impacted the water table that was already stressed due to environmental phenomena. This has created increased violence in the region. Reduction in the arable land and migration in fertile regions has been followed by events of land grabbing, by even resorting to violent activities, which has further increased tensions in the already existing ones.⁴¹ Further, the increment in the rate of crop failure, resulting in severe food shortages, has caused confrontation of the inhabitant population with the Government.⁴²

Besides the increased stress between the inhabitant communities within the State, climate change has triggered the long-existing tensions between Bangladesh and the bordering state of India. The two primary reasons are the migrations driven by climate and the rivers commonly running through both countries.⁴³ According to reports, lakhs of Bangladeshis migrate to India on an annual basis. The Indian Government considering the same as a threat to National security has increased surveillance in the area, while the security forces had to even resort to killing thousands of Bangladeshis since 2000 to stop such migrations.⁴⁴ The immigration in Assam in the last decades, resulting in heightened conflict risks and an intolerant anti-Muslim sentiment. The same has been indirectly driven by prominent climatic changes, namely increased migration flooding and salt-water intrusions from Bangladesh, and displacements caused by flooding within Assam itself.⁴⁵

The aforementioned part analyses the proliferation of inter as well as intra-state conflicts due to climate changes. The next part will see the impact which climate change has on the conflict-resolution strategies in states with pre-existing conflict issues.

⁴¹ Supranote 10.

⁴² Dalrymple, Sarah, et al. *Climate Change and Security in Bangladesh: A Case Study*. Bangladesh Institute of International and Strategic Studies and Saferworld, June 2009.

⁴³ Blondel, Alice. *Climate Change Fuelling Resource-Based Conflicts in the Asia-Pacific*. Asia-Pacific Human Development Report Background Papers Series 2012/12, UNDP, 2012.

⁴⁴ Parven, Afshana and Shahudul Hasan. "Trans-Boundary Water Conflicts Between Bangladesh and India: Water Governance Practice for Conflict Resolution." *International Journal of Agricultural Research, Innovation and Technology*, vol. 8, no. 1, 2018, pp. 79-84 ; Malhotra, Pia. *Water Issues between Nepal, India & Bangladesh: A Review of Literature*, Institute of Peace And Conflict Studies, 2010, New Delhi.

⁴⁵ "Human Rights Violations by Indian Border Security Forces Against Bangladeshi Citizens." *Odhikar*, 22 March 2020, <http://odhikar.org/statistics/statistics-on-violations-in-the-border-area/>. Accessed 21 December 2021.

3.3 Conflict-Based Challenges to Adaptive Strategies Against Climatic-Conflicts

Besides the conflict originating due to climate changes, certain climate changes are also initiated by conflicts. It is important to understand that a society that is facing conflicts, in addition to the substantial result of civilian deaths, is also accompanied by disruption of the political, economic, and social dynamics of the civilization.⁴⁶ This being said, the environmental damage that such conflicts caused cannot be turned a blind eye to. Such damages, trigger the prolonged continuation of such conflicts and even reduce the ability to implement adaptive strategies to solve such conflicts.⁴⁷ With the adaptive capacity of such countries or regions being reduced, they become more prone to environmental shocks.⁴⁸

This reduced adaptive capacity is owed to the detrimental impacts of the impaired economic, food, and health security, limited access to the available services, and the inability on part of the government to provide adequate support.⁴⁹ The approach to adapting to climate change may be as simple as changing the nature of the particular crop cultivated or may require profound social, economic, or cultural changes. However, with the concerned authorities being pre-occupied with the immediate challenges, hardly pay any heed to future challenges posed by climatic change. For a clear understanding of this phenomenon, the author will be taking three prominent instances, wherein the same has occurred. Starting from northern Mali to the Central African Region and finally moving to southern Iraq, which is susceptible to adverse impacts of climate change due to their locations, but even more so on account of the long-lasting conflicts.

In the southern part of Mali, as an adaptive response to drought, the herders carried their cattle for longer distances to find suitable land for grazing. In such a situation, the state would come forward to provide food or water. However, since the emergence of the armed conflict in 2012, the deaths, economic stress, and displacements have been unfathomable. It has adversely impacted the ability of the State to deal with climate change as well. In 2018, when the crops were damaged owing to heavy rains, the pastoralist was deterred from moving to far distances under the fear of attack from armed groups.

⁴⁶ Zeiger, Ashley. "India's Assam Shows Second-Order, Dangerous Effects of Climate Change in South Asia." *New Security Beat*, 2013.

⁴⁷ Collier, Paul, et al. *Breaking the Conflict Trap, Civil War and Development Policy*. A World Bank Policy Research Report, 2003.

⁴⁸ "Seven things you need to know about climate change and conflict." *International Committee of the Red Cross*, 9 July 2020.

⁴⁹ Pearson, Daniel, and Peter Newman. "Climate Security and a Vulnerability Model for Conflict Prevention." *Sustain Earth*, vol. 2, no. 1, 2019, pp. 24-31.

They were even forced to sell their animals at a discounted price, as they were prevented by security threats to travel and selling them in the live stock markets. The armed conflict inevitably impacted the ability of the people to adapt to climatic changes.

The chronic conflict issues in the Central African Region (CAR) resulting in armed conflict since 2013, have left its vulnerabilities to be further exploited by climatic changes. Unlike the inherent climatic threats faced by Iraq and Mali, the CAR is not particularly susceptible to climate change. However, it has been exposed to great environmental hazards by ongoing conflicts. The State is marred by extreme poverty, limited access to resources, and weak governing institutions and infrastructure. As a result, it has failed to cope with the effect of floods in 2019⁵⁰ and the desertification caused around Lake Chad, causing transhumance patterns to change and creating tensions among communities for the available resources. Therefore, the growing impact of climate change on CAR can be bestowed upon the lack of resilience that the country has shown to climate change as well as its limitation in doing so.

When it comes to Iraq, is a water-deficient region. The adaptive response of Iraq is dependent on efficacious management of the available water as well as diplomatic policies with the neighboring countries as the primary source of its water supply are the Tigris and Euphrates rivers.⁵¹ During the Iraq-Iran war, the date palms were chopped for the military, which the local people attribute as the primary reason for farming and water-related problems. The armed conflicts have paralyzed the institutions from managing their water resources.⁵² The quantity and quality of the water flowing in Iraq have worsened with the construction of dams on these rivers, which was done at a time when the capacity of the nation to negotiate with its neighbors has also been impacted. Due to constant conflicts, air pollution, accumulation of hazardous waste, contamination of weapons, etc. have caused ecological damages that have become further causation of direct and indirect conflicts.⁵³

The aforementioned instances depict the paralyzing impact that existing conflicts have on the adaptive response of the people and state in the affected areas.

⁵⁰ "Climate Change in the Central African Republic: What Threats?" *International Committee of the Red Cross*, 1st February 2021.

⁵¹ *Supra* Note 10.

⁵² Fawzi, Nadia Al-Mudaffar, and Bayan A. Mahdi. "Iraq's in land Water quality and their impact on the North-Western Arabian Gulf Introduction." *Marsh Bulletin*, vol. 9, no. 1, 2014, pp. 1-22.

⁵³ "Seventhings you need to know about climate change and conflict." *International Committee of the Red Cross*, 9th July 2020.

3.4 *Suggestions*

In light of the impugned issues, the author suggests:

- i. Need for the adoption of programs with short and long-term goals aimed at protecting the minimum standards of living of an individual as well as the environment.
- ii. A coordinated response across sectors within and financial support from allies is needed for the governments of conflict-affected states to build strong institutions to specifically respond to climate change without deferring the same for the sake of immediate security concerns.
- iii. Work towards reducing risk and building resilience to climate change. Programs capable of anticipating shocks provide an opportunity to respond early and work on building a robust and resilient response.
- iv. There is an ardent need to lessen the damage caused to the environment through human activities. The use of a renewable source of energy should be promoted to reduce greenhouse emissions, and water and waste management is another key contribution. Such efforts to reduce the rate of climatic change must be coupled with efforts to evolve a resilient system against the consequences of such climatic changes.
- v. The International Humanitarian Law, by setting the rules for reducing environmental damaging during conflicts, protects natural resources like water, and agricultural lands, as an intrinsic part of human survival. Greater adherence to the International Humanitarian Law can limit environmental degradation, consequentially, climate change and resultant conflicts may also be reduced.

4. *Modification of Defence Requirements to Suit Climate Change*

The unpropitious ramifications of climate change can be observed in all parts of the globe. The nature of challenges faced may vary following the specific geographical set-up of the countries; the resources available to mitigate the disasters; and the efficient allocation thereof. However, it is an undisputable position that each State is required to adopt appropriate measures to secure their people from the incessant and inevitable climate changes.

Climate change inadvertently also leads to increased political stresses, international conflicts, non-military wars, armed invasions, and disturbing migration patterns. Thus, these aspects make the involvement of defense forces inevitable. For example, the increasing sea levels in the Indian Ocean, abrupt variations of river channels

especially in countries that share borders, and the melting of glaciers in the Himalayas have already led to international as well as regional conflicts.⁵⁴ With increasing change in climate patterns, these stresses are expected to rise further. Maritime conflicts are also expected to worsen especially in the "Exclusive Economic Zones" in light of the escalating sea-levels.

The role of the defense ministries in ensuring this security is quintessential. Nations of the world have already implemented suitable defense mechanisms of variegated nature. This segment purports to critically compare and analyze these adaptations, and the limitations thereof and further suggest future policies. It also attempts to analyze the probability of increased conflicts as a result of climate change, which would indirectly make military and defense involvement furthermore inevitable.

4.1 *Emergency Operations*

UK, US, Australia, and France are some of the countries which have made significant adaptations to their defense forces to ensure speedy reactivity to emergencies arising out of climate change.⁵⁵ The tabling and consequent adoption of the "2017 Australian White Paper", is a noteworthy mention in this regard.⁵⁶ A similar reflection is observed in New Zealand's "Defence Assessment on Climate Change, 2018."⁵⁷ Indian army's activities employed in the "Military Operations Other than War" (MOOTW) and significant participation in the "Humanitarian Assistance and Disaster relief" HADR is especially noteworthy.⁵⁸ The "Armed Forces Assistance for National Disasters" strategy paper prepared by India's Defense Crisis Management Group (DCMG) and "National Disaster Response Force" comprising paramilitary forces are exemplary.⁵⁹

4.2 *Preventive Measures and Related Research Activities*

An excellent illustration of a State having recognized climate change as a crucial

⁵⁴ Ibid.

⁵⁵ Pai, N. *Climate Change and National Security*. In Proceedings of Centre for Law Warfare Studies Conference, January, New Delhi, 2017.

⁵⁶ Schaik, Zandee, et al. *Ready for take-off? Military responses to climate change*. Clingendael Institute, 2020.

⁵⁷ *Climate Change in Australia*. Defence White Paper, Australian Government Department of Defence, 2017 ; *Impacts & Adaptation Information for Australia's NRM Regions*. The Commonwealth Scientific and Industrial Research Organisation, 2019.

⁵⁸ *The Climate Crisis: defense, Readiness, and Responsibilities*, Strategic Defence Policy Statement Ministry of Defence, New Zealand Government, 2018.

⁵⁹ Jayaram, Dhanasree. " 'Climatizing' military strategy? A case study of the Indian armed forces." *Int Polit*, vol. 58, no. 1, 2021, pp. 619-639.

factor impacting the armed forces is the UK. While quick and adequate responsiveness to emergencies arising due to climate change is the primary focus of the relevant military force, certain preventive policies have also been adopted to date.⁶⁰ One such preventive function is performed by the "Development, Concept and Doctrine Centre", which engages in predicting upcoming and probable disasters.⁶¹ This task is supported by the "Defence Infrastructure Organization" which conducts research activities to identify the consequences and plan further courses of action.⁶² A similar function is also performed by France's "Observatory on Defence and Climate"⁶³. India also indirectly engages in research activities to incorporate armed forces in the process of climate securitization and the National Security Advisory Board's contribution in this regard is exemplary.⁶⁴

4.3 Pro-Active Projects Undertaken by National Militaries

The military and armed forces of Nation-States are irreplaceable assets of the countries owing to the strong sense of discipline, work-ethic which is imbibed in the personnel. Moreover, they are extensively trained to work in critical environmental conditions and are thus capable of attaining results that civilian groups might not be able to. Thus, militaries have often adapted to climate change and undertaken pro-active projects which may not be limited to emergency or imminent threat situations. The Indian "Ecological Task Force's" work in the afforestation of barren land in Uttarakhand and cleaning of the river Ganga may be cited as relevant examples.⁶⁵

4.4 Joint Approaches by Nation-States at International Level

Some instances suggest that the defense forces of different Nations act in coordination to adapt to climate change. Joint research ventures between New Zealand, and North African countries along with France and Australia specifically under the FRANZ agreement may be cited.⁶⁶ New Zealand's involvement in

⁶⁰ Ibid.

⁶¹ Steven Wade, et al. *Assessing climate change and its likely impacts elected UKO verse as Territories: Inception Report*, Met Office, 2015.

⁶² Sears, Ben. "Battling the Elements—adapting to climate change on the UK's defense estate." *Acclimatise*, vol. 20, no. 1, 2018.

⁶³ *UK Climate Change Risk Assessment 2017*, HM Government, January 2017.

⁶⁴ *Défense et climat—La France s'engage/ Defence and climate: France is committed*, Direction general des relations internationales et de la stratégie/Directorate General for International Relations and Strategy, 2018.

⁶⁵ Singh, A. "Climate Change and Maritime Security in the Indian Ocean Region." *Journal of Defence Studies*, vol. 9, no. 1, 2015, pp.63–82.

⁶⁶ Zhou, Jiayi. *National Climate-Related Security Policies of the Permanent Member States of the United Nations Security Council*. Working Paper, Stockholm International Peace Research Institute December 2017.

Antarctica and USA's in Africa, the Indian Ocean, and the Arctic are other relevant examples. The "International Military Council for Climate and Security (IMCCS)" initiated at the "2019 Planetary Security Conference in the Hague" is another example of international co-ordination between nation-states to involve national defense and military forces for global "climate security".⁶⁷ Furthermore, the employment of national defense forces in other countries suffering from adverse climate changes in pursuance of "Humanitarian Assistance and Disaster relief"(HADR) is noteworthy.

4.5 *Modifications made in Defense Forces to Suit Environmental Needs*

It is an undisputed fact that most of the climate change is due to human actions. If certain greener and more environment-friendly ways are adopted, climate change itself would reduce, thereby decreasing the problems created by it. Interestingly, many nation states have adopted greener mechanisms concerning defense personnel and equipment in light of positively protecting the environment from climate change as much as possible.

France's "Frem Frigates" and "Eco Camp 2025" purporting to systematically reduce energy, water, and fuel consumption are two of the leading examples in this regard. UK's achievements in this regard are also significant.⁶⁸ Virtual training programs to ensure fewer energy consumption and cooling effects made mandatory on high-functioning military equipment are noteworthy.⁶⁹ Various strategy policies have been tabled in this regard. Pertinent to note are France's "Sustainable Defence Strategy, 2016"; UK's "sustainable MoD strategy";⁷⁰ Sweden's "Defence Material Administration Strategy" and Canada's "Defence Energy and Environment Strategy, 2017".⁷¹

US's efforts to minimize the carbon footprint created by the Army,⁷² Jordan's "2.5 million tree- plantation" projects across military lands,⁷³ Finland's goal of completely going "non-fossil" for creation of fuel; and Australia indulging in solar panel

⁶⁷ Zhou, Jiayi. *National Climate-Related Security Policies of the Permanent Member States of the United Nations Security Council*. Working Paper, Stockholm International Peace Research Institute December 2017.

⁶⁸ *Defence Sustainable Strategy 2016-2020– Synthesis*, December 2016.

⁶⁹ *The Defence Equipment Plan 2018-Financial Summary*, November 2018.

⁷⁰ *Sustainable MoD–Annual Report 2017-18*. Ministry of Defence, UK Government.

⁷¹ *Defence Energy and Environmental Strategy* Department of National Defence, 2017.

⁷² Greenley, H.L. *Department of Defence Energy Management: background and issues for Congress*. Congressional Research Service, CRS Report Prepared for Members and Committees of Congress, July 25, 2019.

⁷³ Doyle, Alister. "Jordanenlists my in the climate fight." *REUTERS*, 19 February 2010.

construction for military buildings are especially noteworthy.⁷⁴ All such illustrations can be classified as adaptations made by the defense forces of different nations-States to indirectly safeguard the present and future world from climate change to a certain extent.

Indian army's attempts to reduce the carbon emissions considerably by 2030, Naval set up of Green Cell to achieve zero carbon footprint, implement ab initio energy efficient projects, and engineering vessels running on bio-fuels highlight India's contribution in the adaptation of defense forces to suit the changing climatic needs.⁷⁵

4.6 Countries that have not Integrated Climate Change into their Defense Policies Per Se

Whereas almost all countries unanimously agree on the deplorable impact of climate change on their nations, the inclusion of defense forces in the mitigation of resulting disasters has not been incorporated in the strategies of a few countries, for example, Germany. Other countries such as Norway and Sweden have implemented civil emergency planning structures to fight against climate change. However, even these countries are in the process of following suit with other countries, to integrate defense forces in response to climate change. "Germany's Bundeswehr Office for Defence Planning"⁷⁶ and "Norwegian Long-Term Defence Plan (2021-2024)" may be cited as relevant examples for the same.

China has always shared its intentions to adapt changes in defense policies in light of climate change and securitization, however any concrete steps to realize such declarations are missing. Both defenses, as well as foreign policy sectors, lack in this regard. Moreover, it claims climate change to be a problem falling within the ambit of "sustainable development" and does not consider it to be a valid criterion under defense and security.⁷⁷

Arguably, India does not have a strict codification of defense and security policy concerning climate change specifically. However, it is often contended that the

⁷⁴ Schaik, Zandee, et al. *Ready for take-off? Military responses to climate change*. Clingendael Institute, 2020.

⁷⁵ "Indian Navy Pledges 1.5 Percent of its Works Budget towards Renewable Energy Generation: World Environment Day 2016." *Ministry of Defence, Government of India*, 05 June 2016. Press Information Bureau.

⁷⁶ Bayer, Stefan., and Simon Struck. *Strategische Ausrichtung von Streitkräften im Klimawandel*, German Institute For Defence And Strategic Studies, 2019.

⁷⁷ Zhou, Jiayi. *National Climate-Related Security Policies of the Permanent Member States of the United Nations Security Council*. Working Paper, Stockholm International Peace Research Institute December 2017.

nation's military must preserve environmental values and as such, it has been encapsulated in the spirit and preamble of the Indian Constitution. The same has been reflected in the "Joint Doctrine of the Indian Armed forces (JDIAF), 2017".⁷⁸

4.7 Issue of Climate Change Viewed from a Political Lens

The internal political conflicts and policies of Nation-States have always defined the emphasis on climate change as a concern, and the efficacy in implementation models, especially concerning the defense forces. The changing politics of the USA can be cited as the best example of this particular phenomenon. Under the Obama-led government, climate change was considered to have a serious impact on national security, and as such manifold policies and programs were implemented to enable appropriate adaptations of the US military forces. However, this position changed considerably in the Trump-governed USA.⁷⁹

As far as Russia's interests in climate change are considered, they are primarily limited to the Arctic zone. Interestingly, Russia is counting on certain climate changes to occur, so that it can explore its own political and economic strategies.⁸⁰

4.8 Comparative and Critical Analysis

Different countries have adopted certain systematic approaches to adapt their defense forces and align them with the inevitable climate changes to mitigate the dangerous consequences to a large extent. While some countries have recognized climate security as a major concern and thus, adopted strict measures; others are either slow in recognizing the threats or they do not have adequate resources/infrastructure to make the necessary adaptations.

France seems to be at the forefront of military adaptations in consonance with climate securitization. It has adopted sufficient preventive as well as remedial measures to combat climate change. New Zealand, the UK, Finland, and Canada are also in close pursuit. Jordan, despite its adverse arid conditions and lack of water resources, has successfully employed appropriate defense forces for a considerably long period.

With regard to climate securitization with the aid of defense forces, two main

⁷⁸ Jayaram, Dhanasree. "‘Climatizing’ military strategy? A case study of the Indian armed forces." *Int Polit*, vol. 58, no. 1, 2021, pp. 619-639.

⁷⁹ Zhou, Jiayi. *National Climate-Related Security Policies of the Permanent Member States of the United Nations Security Council*. Working Paper, Stockholm International Peace Research Institute December 2017.

⁸⁰ Ibid.

objectives need to be addressed critically. Firstly, discerning the specific phenomena of climate variations that would directly impact the respective national military functioning. In light of this, it is pertinent for the Nation-States to acknowledge climate change as a threat in its accurate intensity and identify how their defense strategy could be affected. Secondly, and perhaps more crucially, implementation of adequate, quick, and efficient adaptation mechanisms becomes pertinent.

While most nations have addressed the first objective to a large extent, no country is fully equipped at present to address the second objective sufficiently. Such is also the case in developed countries like the UK, the US, Australia, Finland, and New Zealand. On the other hand, some nations have adequate resources to fulfill the second objective but are rather reluctant to acknowledge climate change as a serious threat to defense strategies. Such could be the case wherein the nations are relatively new in accepting climate security threats such as Germany and Norway; or wherein the Nations are restricted due to their general political stance on the matter such as Australia, the US (especially during the Trump Administration) and China (which considers this issue to prevail under the ambit of "sustainable development").

4.9 *Suggestions*

- i. As far as the EU is concerned, detailed risk analysis and evaluation especially pertaining to rising sea levels and appropriate incorporations into the defense forces is suggested.
- ii. Increased discussion and dialogue on the securitization of climate is recommended at a NATO level, specifically with regard to the Arctic region.
- iii. To make the HADR responses stronger in foreign jurisdictions, the targeted raising of funds is suggested.
- iv. Nation-States should transition to bio-fuels in already existing military equipment and endeavor to reduce energy consumption at ab-initio stages as far as new models of equipment are concerned.
- v. Codifying international as well as regional frameworks for smoother civil-military cooperation in HADR operations is suggested.
- vi. The employment of experts in the process of risk-assessment and modification strategies is recommended. Such personnel as compared to standard government employees will be better equipped to formulate effective solutions.

5. Climate Change And Effects on Geo-Economic Security

5.1 *Climate Change and its Relation with Geo-Economic Security*

The concept of geo-economy developed in the late 20th century. This idea was first introduced by Edward Luttwak, who stated that all conflicts existing between different nations must be viewed from the lens of their economy as well as competitive trade.⁸¹ Hence, an era of geo-economics has ushered in.⁸² Due to this, a nation will not deploy its weapons or military to ensure its supremacy, rather it will use its economy and financial measures to severely impact other nations.⁸³ The trade-war that occurred between USA and China in 2019 is a case in point. Similarly, Pascal Lorot, a French economist, also modeled the theory of geo-economics. He was of the view that controlling other nation's territory is not the goal, but to preserve and control of one's resources to guarantee supremacy later is the primary objective.⁸⁴ The rise of globalization has not only brought nations closer but has also severely impacted the environment.

Climate change has shifted the global dynamics from a geopolitical perspective to that of geo-economics.⁸⁵ Thus, the focus needs to be laid upon factors including trade and tariffs, interdependence among States, availability of resources, etc. This allows a nation to build upon its strategic policies by taking into consideration new incentives, opportunities, and vulnerabilities. A 180- degree turn needs to be made to include geo-economy security as a means and end to tackling climate change.⁸⁶ There lies no doubt that climate change is a concern that affects everyone, however, there are different ways in which a nation can choose to overcome this. Instead of creating an international mechanism for cooperation between all states, they try to find ways that will benefit their objectives. This implies that there can be two goals for a state to deal with climate change, i.e., either an economic objective or to achieve political gains. Due to this, there exist four types of methods that can be

⁸¹ Luttwak, Edward. "From Geopolitics to Geo-economics : Logic of Conflict, Grammar of Commerce." *The National Interest*, vol. 20, no. 1, 1990, pp. 17-23.

⁸² Luttwak, Edward. *Turbo-Capitalism : Winners and Losers in the Global Economy*. Harper Collins vol. 127, no. 1, 2000.

⁸³ Luttwak, Edward. *The Endangered American Dream*. Simon & Schuster, 1993, pp. 399-403.

⁸⁴ Lorot, P. *Lagéoéconomie, nouvel legrammairedes rivalités internationals.* *L'INFORMATION Géographique*, vol. 116, no. 1, 2001.

⁸⁵ Wigell, Mikael., and Antto Vihma. "Geo politics versus geo economics : the case of Russia's geostrategy and its effects on the EU." *International Affairs*, vol. 92, no. 3, 2016, pp. 605-627.

⁸⁶ Dalby, Simon. "Rethinking Geopolitics : Climate Security in the Anthropocene." *Global policy* vol. 5, no. 1, 2014, pp. 1-9.

adopted by a state to either collaborate or compete with other States to preserve the environment⁸⁷ –

- i. *Neo-mercantilism* – where economic power is the goal itself by competing with other states.
- ii. *Neo-imperialism* – where, as the name suggests, the goal is to become a political power.
- iii. *Liberal-institutionalism* – where the main objective of a State is to become an economic power through cooperation.
- iv. *Hegemony* – where a State is both, an economic and political power.

5.2 Food and Energy – (In) Security

There exist multifaceted consequences of climate change. Climate disasters like floods, droughts, cyclones, tsunamis, etc. can have various repercussions. Some of them comprise food and energy insecurity. In the relation to the former, the agricultural pattern of any state plays an imperative role in ensuring livelihood for everyone. Climate change can not only hinder this but also lead to a shortage of basic nutrients. A two-fold inference can be drawn in the case of food insecurity. Firstly, accessibility to food will decline at a rampant rate. Less developed nations will suffer immensely as they do not possess the relevant resources to overcome such a situation. Secondly, the entire food-supply chain of the world will be disturbed. Developing as well as least-developed nations will not have production to feed every citizen. Further, their financial instability will render them desperate in need of food aid from different, more developed nations.⁸⁸ Climate change will put developed nations in danger of food insecurity and nations that are already suffering from such insecurity will be affected disproportionately. Some of these countries include Brazil, India, Venezuela, and Indonesia, among others. The heatwave felt by the European nation back in 2003 led to a 30% drop in crop production.⁸⁹ The drought suffered by Spain and Portugal in 2005 also resulted in massive food insecurity.⁹⁰ Such instances signify the importance of a strengthened economy to ensure climate change does not negatively affect citizens of any nation.

⁸⁷ Wigell, Mikael. “Conceptualizing Regional Powers Geoeconomics Strategies : Neo-imperialism, Neo-mercantilism, Hegemony, and Liberal Institutionalism.”, vol. 14, no. 2, *Asia Europe Journal*, 2016, pp. 135-151.

⁸⁸ *Climate Change and Food Security : A Framework Document*. Food and Agriculture Organization of United Nations, 2008.

⁸⁹ *Impacts of Europe’s Changing Climate : An Indicator – based Assessment*. European Environment Agency, EEA Report, No 2, 2004.

⁹⁰ “Iberian Misery as Drought Bites.” *BBC News*, 13 June 2005, Accessed 18 May 2021.

There is a possibility that by 2080 around 200-600 million can be affected worldwide due to a shortage of food resources.⁹¹ Geo-economic security of State results in either, one nation helping the other, or one nation overpowering the other. Three aspects need to be taken into consideration in this regard, i.e., right to food, food security, and lastly, food sovereignty. The right to food is a basic human right that has been enshrined in the UDHR.⁹² If climate change results in food insecurity, then this human right will be violated for millions of people. Food security is a means of preserving this essential right. It has been defined as nations vis-à-vis people having access to sufficient nutritious food at all times. This includes both physical and economic access.⁹³ It is the principle of food sovereignty that has gained importance overtime.⁹⁴ Food sovereignty comprises a nation's right to produce food that is both ecological and sustainable.⁹⁵ It thus, grants every nation a right to land, resources as well as means to produce food for all. However, using one's geoeconomic strength to provide for some other nation's lack of resources to an absolute extent can result in putting the latter nation's sovereignty in danger. A competitive geoeconomics strategy to ensure food security can result in *neo-imperialism*. There lies a need to use one's economic strength to aid other nations in need rather than establishing their supremacy.

The production of energy is an industry in itself throughout the world. Its manufacture, distribution, and generation require extensive well-developed infrastructure. These energy production sites can damage the environment drastically. In turn, this climate change can hamper energy plants. Any change in price, as well as the availability of energy resources, leads to loss of welfare, and there exists energy insecurity.⁹⁶ Climate change can affect both, the physical availability and price of energy resources. For instance, in 2005, Hurricane Katrina severely affected the Gulf of Mexico. This resulted in various energy manufacturing units being shut down. The unavailability and rise in prices led to the International Energy Agency releasing its oil stocks. Rampant economic development can lead to environmental damage, consequently resulting in energy insecurity. However, ensuring energy efficiency requires immense resources as well as money. With the

⁹¹ Yohe et al., *Perspectives on Climate Change and Sustainability*. Cambridge University Press, 2007, pp. 811-841.

⁹² Art. 25(1), UDHR, 1948.

⁹³ *Climate Change and Food Security : A Framework Document*. Food and Agriculture Organization of United Nations, 2008.

⁹⁴ Via Campesina, *The Right to Produce and Access to Land*, 1996.

⁹⁵ Declaration of Nyéléni, 2007.

⁹⁶ Bohi, D.R., and M.A. Toman. *The Economics of Energy Security*. Kluwer Academics Publishers, 1996.

rise in demand for various nations for nuclear energy as well as the widespread use of energy through coal, petroleum, etc., the establishment of energy insecurity is well within its way. Developed nations can create mechanisms for climate change mitigation through energy security, but difficult for less developed nations to do so. This will, again, result in a geo-economic disparity. This brings us back to the type of geo-economic leadership a state can portray. Either they can adopt a competitive ideology by following *neo-mercantilism* or cooperate in times of need through *liberal-institutionalism*.

5.3 *World Leaders: Using Geo-economy as a Weapon against Climate Change?*

Climate change has brought together nations to combat the same. Be it the Earth Summit, UNFCCC, Kyoto Protocol, and the Paris Agreement, nations have not left any stone unturned to preserve the environment. The growing trend of geo-economics has impacted this cooperation by creating economic warfare. It is evident that world leaders, in the name of climate change, impose their economic ideologies. These include the USA, China, EU, and even India. China, for instance, has decided to focus more on domestic growth than environmental protection. Its Belt and Road Initiative along with the Polar Silk Initiative only aims at fostering better strategic ties. This would allow China to increase its commercial activities, including trade and resource extraction.⁹⁷ Hence, any thought given over climate is abysmal. Further, ensuring energy security also requires lithium to produce clean and green energy. 50% of this rare mineral is available in China, which has restricted its supply to other nations by implementing a condition of a barter system. One has to provide a mineral in return for their mineral.⁹⁸ Thus, China has abandoned the cooperative process to attain its political objectives through economic power, signifying an amalgamation of *neo-mercantilism* and *neo-imperialism* approach.

The USA, under the Trump administration, had also aimed at preserving its national interests rather than promoting international cooperation. Being a strong economic power, the USA could have easily understood the implications of climate change and influenced other nations to work for the same. However, it has always been hesitant to collaborate on concerning issues. It did not take the responsibility as the Global North to reduce its carbon emissions, and also withdrew from the Paris Agreement in

⁹⁷ Pfluger, Friedbert. *A New Security Challenge : The Geopolitical Implications of Climate Change*. Atlantic Council, 10 February 2020.

⁹⁸ Parthemore, Christine et al. "A Strategy for American Power : Energy Climate and National Security." *CNAS*, 2008.

2017. Though it is possible that with the change in administration it adopts a more *liberal-institutionalism* or *hegemonic* approach to tackle climate change through its geo-economic security. Apart from this, the EU and India have adopted a more cooperative stance. EU, having a stronger economy, has shown exemplary performance in how to combat climate change. It has introduced various reforms and signed treaties and agreements to ensure environment preservation. India, being a weaker economy, has still been active on the international front to combat climate issues. The launch of the International Solar Alliance by India is a hallmark example of using one's geo-economic power to protect the environment.⁹⁹

Economic assistance is being viewed as a means for attaining geopolitical gains. The G20 cooperation summit is viewed by African, Asian, and Latin American nations to foster their geo-economic competition.¹⁰⁰ However, various other initiatives like the Central African Forest Initiative and Pacific Resilience Project have showcased the importance of geo-economic security to address climate change concerns through cooperation and collaboration.

5.4 *The International Law Ramifications*

Climate change can affect the geo-economic security of many States. This can also entail legal consequences. For instance, the United Nations Convention on the Law of the Sea (UNCLOS) lays down provisions for Exclusive Economic Zones (EEZ),¹⁰¹ as well as its breadth, i.e., 200 nautical miles from the baseline.¹⁰² Global warming leads to a rise in temperatures, which can then result in a rise in sea levels. Consequently, the measurement of these coastlines can change substantially. Around four States are vulnerable to such a situation, including Bangladesh, Seychelles, Maldives, and Tuvalu.¹⁰³ In Bangladesh, a minimal rise in sea-level can flood the coast to hundreds of kilometers inland. This would then disrupt its existing EEZ. Various fossil fuel resources available on its coastline will then exist outside its EEZ, making it vulnerable to exploitation. Another example is the Tuvalu islands in the Pacific Ocean. Extreme weather conditions due to climate change can result in its

⁹⁹ Krishnankutty, Pia. "All About International Solar Alliance, co-founded by France and India, to promote solar energy." *The Print*, 29 January 2021.

¹⁰⁰ Chugh, Abhinav. "Why we Need to Re think Geo-economics to Beat Climate Change." *World Economic Forum*, 12 Dec. 2019.

¹⁰¹ Art. 55, UNCLOS, 1982.

¹⁰² Art. 57, UNCLOS, 1982.

¹⁰³ Powers, Ann. "Sea-Level Rise and Its Impact on the Vulnerable States : Four Examples", *Louisiana Law Review*, vol. 73, no. 1, Fall 2012.

inundation within the ocean and loss of territory.¹⁰⁴ The question that arises is what happens when an entire nation disappears due to the effects of climate change. Does it lose its sovereignty and identity in the global order? Further, its geo-economics, geopolitics, as well as sovereignty are disturbed. This grey area of law has not yet been given a definite answer. Many developed nations like USA and UK have strategic bases in such small islands. Their strategic policies concerning this conundrum would signify their geo-economic stance and approach.

5.5 Suggestions

Certain measures that can be adopted by states to ensure geo-economic security is attained and used to tackle climate change are –

- i. Cooperation is the need of the hour. Instead of adopting a competitive approach, nations need to collaborate to use their economies to their advantage. Stronger economies should help and provide aid to weaker economies, without impacting their sovereignty.
- ii. ‘Green economy’ is an essential means of achieving climate preservation. This involves using sustainable methods to attain environment efficiency through judicious utilization of resources. If every nation establishes a green economy, geo-economic security will automatically be attained.
- iii. The Global North and Global South should not view each other as competitors. Both are interdependent to use their economic resources to curb harmful emissions of gases and any other activity that harms the environment.
- iv. Strict implementation of agreements and treaties will go a long way in environmental preservation as well as strengthening geo-economics. When nations agree to all terms and conditions, the economic warfare to ascertain political gains would subside.
- v. There also exists a need to revisit these treaties to create contingency provisions that take into account new variables that might arise due to climate change.

6. Influence of Climate Change on Migration Patterns

Climate change has invariably harmed the world which has forced people to migrate. For instance, the reduced agricultural output in El Salvador, Honduras, and Guatemala directly impacted the food access and livelihood of the dependents thereby forcing them to migrate.¹⁰⁵ Increased migration often poses vast security and

¹⁰⁴ *Tuvalu's National Adaptation Program of Action*. Ministry of Natural Resources, Environment, Agriculture and Lands, Department of Environment, May 2007.

¹⁰⁵ Gaea Sukumar, 18010125324, Division–D.

stability concerns as it often poses direct political, social, and economic problems to the receiving State.

6.1 Causes of Increased Migration

The Intergovernmental Panel on Climate Change (IPCC) was of the impression that the biggest negative effect of climate change was going to be in the form of large-scale migration. Such migration was believed to be a consequence of drought, flooding, or landslides.¹⁰⁶ The people who flee are often more commonly known as “climate refugees.” The IPCC has predicted such climate refugees to be almost 200 million in number by 2050.¹⁰⁷ It is pertinent to note that scholars determine the primary cause of migration due to climate change is because of rising sea levels and natural disasters. Further, drought, fresh water scarcity, melting glaciers causing outburst floods and increased aridity often force people to migrate for sustenance.¹⁰⁸

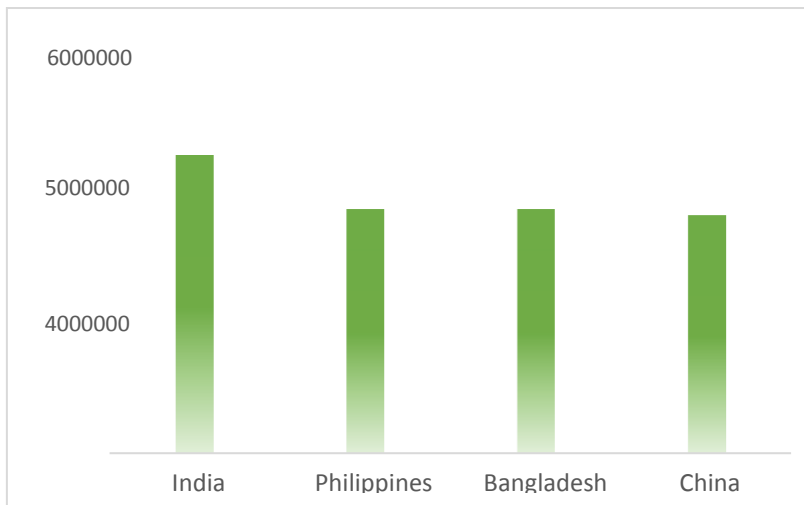
State response to such disasters often affects the reaction of the populous to environmental concerns. Government policy pertaining to disaster relief and overall resource distribution directly affects how vulnerable people feel. For instance, even though Japan is prone to earthquakes and tsunamis, their earthquake-resistant infrastructure and quick relief response in the form of providing packages with essentials to people keep the population from migrating. However, when we look into South American countries like Chile, which is in the ring of fire, there is a higher ratio of individuals attempting to migrate to their less disaster-prone neighboring countries.

The largest number of displacements due to climate change disasters came in the form of tropical storms and monsoons in 2019-2020. Such erratic climate patterns forced people to migrate to continue sustaining themselves. South, East, and Central Asia saw more than 17 million individuals being displaced solely due to erratic monsoon rains and other related storms. The chart below depicts the countries with the highest displacement due to erratic climate conditions.

¹⁰⁶ Reyer, Christopher. et. al. “Climate change impacts in Latin America and the Caribbean and their implications for development.” *Regional Environmental Change*, vol. 17, no. 6, 2017, pp. 1601–1621.

¹⁰⁷ Barnes, Hannah. “How Many Climate Migrants will there be?” *BBC News*, 2013. <https://www.bbc.com/news/magazine-23899195>.

¹⁰⁸ Kamal, Baher. “Climate Migrants Might Reach One Billion by 2050.” *Reliefweb*, 2017. <https://reliefweb.int/report/world/climate-migrants-might-reach-one-billion-2050>.

Figure 1: Climate Refugees in Asia from 2019-2020

Source: IDMC, *Internal Displacement in 2019*, Internal Displacement Monitoring Centre (2020)¹⁰⁹

6.2 Climate Refugees

The term climate refugees are not recognized in international law. However, climate refugees are defined as individuals who are forced to "due to sudden or gradual alterations in the natural environment related to at least one of three impacts of climate change: sea-level rise, extreme weather events, and drought and water scarcity."¹¹⁰

This form of mass movement of individuals into another state causes four primary impacts on the receiving state:¹¹¹

- i. Pressure to provide infrastructure and services to the incoming populous.
- ii. Reduced economic growth as the resources available in the State needs to be distributed among a greater number of people.
- iii. Increased risk of conflict, more likely between migrants and pre-existing domiciles.

¹⁰⁹ *Internal Displacement in 2019*. Internal Displacement Monitoring Centre, 2020, <https://www.internal-displacement.org/global-report/grid-2020/>

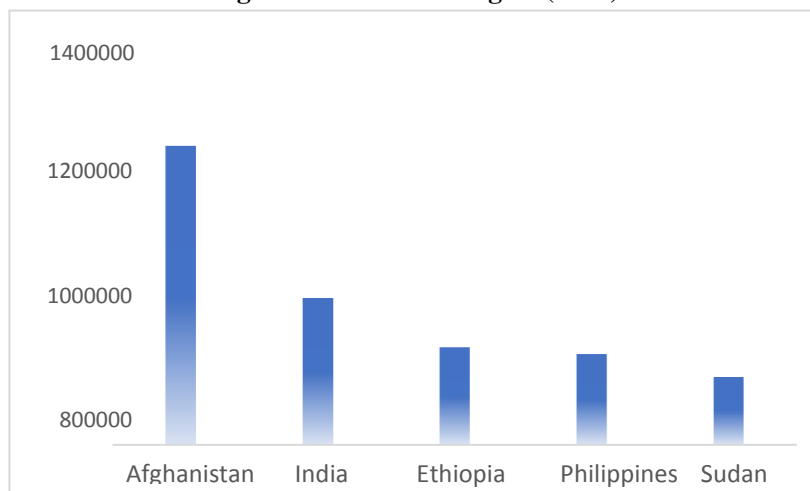
¹¹⁰ *Global Governance Project*. Forum on Climate Change, 2012. <https://www.glogov.org/?pageid=80>.

¹¹¹ Gaynor, Tim. *Climate change is the defining crisis of our time and it particularly impacts the displaced*, UNHCR, 2020. <https://www.unhcr.org/news/latest/2020/11/5fbf73384/climate-change-defining-crisis-time-particularly-impacts-displaced.html>.

- iv. The cumulative decline in social indicators like HDI and Happiness Index, education, and other welfare initiatives provided to the people.

However, as can be seen in the large-scale migration from the South American States to the United States of America, states often do not respond favorably to climate refugees. In 2019, after a five-year drought, there were floods in Guatemala. This left many farmers to lose their crops while already being crippled in debt owing to the lack of rain for the last five years. After this natural calamity, the farmers were left with no choice but to flee to the United States of America.¹¹² However, the Trump administration had closed off borders with limited access to all types of refugees. In a world where even political refugees facing a grave threat of persecution were not given asylum or aid, climate refugees stood no chance of survival. The year 2019 saw a total displacement of 5.1 million individuals due to climate change. Similarly, within the first six months of 2020, there was a displacement of more than 98 million people owing to climate change-related adversities. Figure 2 and 3 depict the States with the largest number of climate refugees in recent years owing to similar adversities as mentioned above

Figure 2: Climate Refugees (2019)



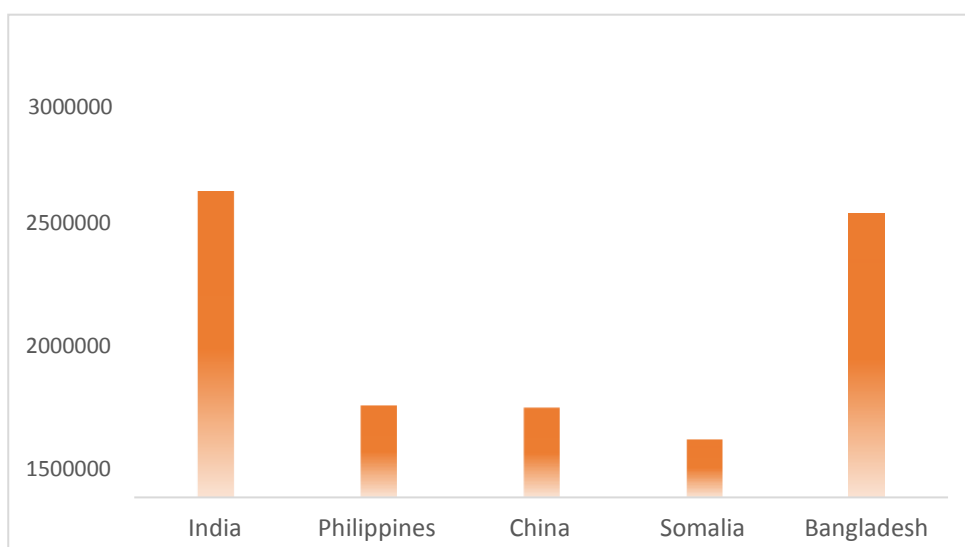
*Source: IDMC, Internal Displacement in 2020, Mid Year Update Internal Displacement Monitoring Centre (2020)*¹¹³

¹¹² Abraham Lust garden, Abrahm. "The Great Climate Migration." *The New York Times*, 2019. <https://www.nytimes.com/interactive/2020/07/23/magazine/climate-migration.html>.

¹¹³ *Internal Displacement in 2019*. Internal Displacement Monitoring Centre, 2020, <https://www.internal-displacement.org/global-report/grid2020/>

Since climate refugees lack recognition in international law, this form of insecurity is insufficient grounds to admin persons.¹¹⁴ Refugees are expected to be facing a grave threat to their lives as a consequence of persecution, violent conflict, or other forms of the disorder. While political refugees are still provided protection, climate refugees are side-lined. Therefore, their threat to livelihood and sustenance continues with them having no option to escape. There has been discussion relating to broadening the definition of the term refugee in international law to include climate refugees. However, most States are reluctant to allow such a large number of individuals to migrate due to concerns pertaining to the above-mentioned negative impacts.¹¹⁵

Figure 3: Climate Refugees (2020)



Source: IDMC, *Internal Displacement in 2020, Mid Year Update Internal Displacement Monitoring Centre (2020)*¹¹⁶

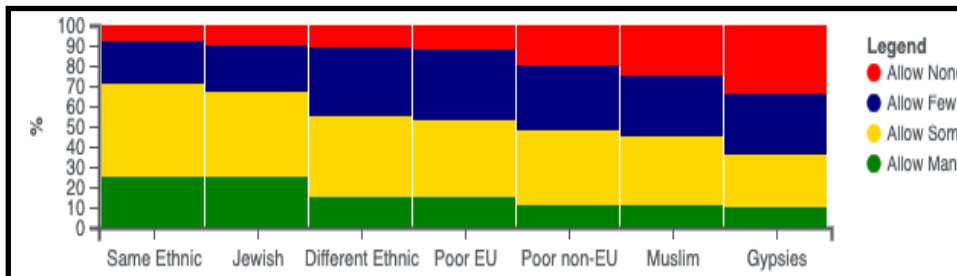
¹¹⁴ “Climate Change Could Force Over 140 Million to Migrate Within Countries by 2050: WorldBankReport.” *World Bank*, PressRelease, 2018, <https://www.worldbank.org/en/news/press-release/2018/03/19/climate-change-could-force-over-140-million-to-migrate-within-countries-by-2050-world-bank-report>.

¹¹⁵ Brown, Oli. *Climate Change and Forced Migration: Observations, Projections and Implications*, HumanDevelopment Report, Human Development Report Office, 2008. http://hdr.undp.org/sites/default/files/brown_oli.pdf.

¹¹⁶ *Internal Displacement 2020 Mid-year Update*, Internal Displacement Monitoring Centre, 2020. <https://www.internal-displacement.org/sites/default/files/publications/documents/2020%20Mid-year%20update.pdf>.

6.3 Causal Link Between Migration and Security

Figure 4: Attitudes Towards Different Sorts of Migrant



Source: Attitudes towards Immigrants and their Antecedents, European Social Survey, London (2016)¹¹⁷

Climate change does not directly cause security risks. However, when there is a mass influx of individuals into a State, there are often social, economic, and political security concerns. As depicted in the chart above, it can be seen that States are often not equipped to handle a population above a certain threshold.¹¹⁸ This can be seen in the European refugee crisis where resource scarcity directly led to a rampant increase in crime. Such crime pertained to discrimination against refugees owing to the increasing anxiety of the nationals within the State.¹¹⁹

Figure 4 represents ethnic biases held by States during the European refugee crisis in 2015. Further, most migrants and refugees are directly viewed as individuals who take away the jobs of the nationals. Therefore, migrants are often subject to discrimination and violence. In the absence of job opportunities and State initiatives to accommodate migrants, the migrants are also more likely to commit crimes out of desperation to sustain themselves and their families. Survival-driven crime is also a direct security concern for the receiving State.

It is pertinent to note that its practically impossible for a State to provide welfare initiatives for a mass influx of migrants. This is due to economic and political constraints. Accumulating the requisite funds will likely result in grave debt for the

¹¹⁷ Heath, A., and L. Richards. *Attitudes towards Immigrants and their Antecedents*, European Social Survey, London, 2016.

¹¹⁸ "Germany hate crime : Nearly 10 attacks a day on migrants in 2016." *BBC News*, 2017. <https://www.bbc.com/news/world-europe-39096833>.

¹¹⁹ Dieng, Adama. *Street by Street: Systematic Dehumanization in Europe*. Op-Ed by Special Adviser on the Prevention of Genocide, United Nations, 2016. [https://www.un.org/en/genocideprevention/documents/Adama % 20 Dieng-Systematic % 20 Dehumanization % 20 in %20 Europe. pdf](https://www.un.org/en/genocideprevention/documents/Adama%20Dieng-Systematic%20Dehumanization%20in%20Europe.pdf).

State which will give rise to political instability. However, if the State does not provide its welfare schemes to citizens as a consequence of budget allotment to accommodate migrants, resources will be scarce.

In the instance that there exists resource scarcity, as predicted in the environmentally degraded future, there is a greater likelihood of conflict between individuals within the area. If the conflict continues without intervention, there is a high likelihood of it turning violent. This is capable of breaking down the institution of governance, thereby taking away the institution that has been gathering resources in the first place. This becomes a vicious cycle of increased scarcity resulting in conflict and violence.

6.4 *Suggestions*

The primary issue that can be understood to require immediate action is the lack of a legal mechanism to accommodate individuals who flee climate change and migrate to less severely affected regions. There is a need to include protective mechanisms for ‘climate refugees’ in international law.¹²⁰ Currently, there is no mention of such individuals in the 1951 Refugee Convention or the 1967 Refugee Protocol. There needs to be a broader definition for refugees wherein even individuals who have been affected by climate change, environmental degradation, and natural disasters must be included. By adding a broader definition of who a refugee is, the international community is in a better position to prepare themselves for situations where there may be a mass influx of climate refugees. For instance, the inter-governmental panel on climate change predicts a potential 100cm rise in the sea levels surrounding the Maldives.¹²¹ In the occurrence of the same, it could be helpful if neighboring countries are prepared to offer any assistance necessary for protecting the individuals living in such locations.

Further, several international organizations, including the World Bank, International Organization for Migration in addition to the UN High Commissioner for Refugees, have emphasized the need to have an explicit mention of ‘climate migrant’ or ‘climate refugee’ in international law. The change is to be addressed urgently as climate change impacts like economic or job insecurity is not considered to be sufficient reason to grant asylum. However, individuals who lose their income as a consequence of climate change damaging crop yields need asylum in this regard as

¹²⁰ Ammer, Margit. and Lisa Stadlmayr. *Legal Status and Legal Treatment of Environmental Refugees*. Federal Environment Agency (Germany), 54/2010, 2010. https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=6671.

¹²¹ Singh, Archana. “A Sinking Feeling.” *The Hindu Business Line*, 2020.

they cannot sustain themselves otherwise.

In furtherance of international law being more accommodative to climate refugees, states should actively take initiative to be ready in the instance that are confronted by climate change adversities. This initiative can be in the form of stimulus packages and subsidies offered to the affected people. states can also build infrastructure which caters to combatting climate change adversity like desalination plants or saline water management plants to provide fresh water in States that do not have access to the same owing to water scarcity.¹²² Similarly, countries that are relatively safer from climate change disasters must take active initiative in accommodating climate refugees and providing asylum when necessary. They may combat the resource allocation mismatch by proactively preparing in advance before the mass influx of refugees like in the case of Germany during the European refugee crisis.

7. Conclusion

Thus, it is evident that rampant climate change entails multifaceted security concerns. The menace of climate change and resultant conflicts are an existential threat to regions and their inhabitants facing such effects. From the aforementioned analysis, there are certain key takeaways namely, the inability of climate change to exclusively cause such conflicts. There need to be some aggravating factors leading to violent conflicts. Further, the states or regions with pre-existing conflicts are even more susceptible to climate-based conflicts.¹²³ It is further concluded that climate change has large-scale repercussions on the military forces in direct as well as indirect forms. Direct effects are observed in terms of military power and proficiency. Indirect implications come in the form of climate variations which act as security threat triggers or multipliers. The disadvantageous implications can be prevented or minimized if nations acknowledge the specific climate threats as soon as possible and thereafter, adequately integrate such changes into their military operations and strategies. Risk evaluation, preventive as well as pro-active measures, quick responsiveness to remedy emergencies, co-operative efforts at an international level, and, suitable greener modifications in military equipment become pertinent. Countries that are resistant to making such adaptations are perhaps not realizing the serious threats that climate change poses to global defense security. It is suggested that more international dialogues are initiated. Apart from the United Nations, discussions may be convened at the EU and NATO levels. Vigorous national-level

¹²² Robbins, Jim. *As Water Scarcity Increases, Desalination Plants are on the Rise*, Yale Environment, 2019. <https://e360.yale.edu/features/as-water-scarcity-increases-desalination-plants-are-on-the-rise>.

¹²³ Avishek Mehrotra, 18010125319, Division-D.

efforts are also quintessential because climate change is perhaps the worst conflict that mankind will ever have to face.¹²⁴

While it is true that climate change has become an international cause for concern, nations have dealt with this issue by ensuring their economic gains. Climate change is regulated through geo-economic security. When states with a secure and strong economy rise to tackle climate change, they do so by focusing more on new opportunities that would benefit them. It is impossible for states with weak economies to counter this with minimal resources. The economic interdependence between nations will only increase with the rise in food and energy insecurity. This competitive approach adopted by world leaders has put less developed nations at the risk of becoming subservient to their power and authority. Hence, only cooperative strategic policies can ensure regulating climate change through geo-economic security.¹²⁵ Moreover, Climate refugees are in dire need of protection under the law. The best way to ensure their protection is by providing a legal framework in international law requiring party States to take initiative in pursuance of the same. However, there must also be an active initiative in reducing any form of environmental degradation. With greater conservation of the environment, there is lesser need to be prepared for climate refugees and other adverse impacts of climate change.¹²⁶

¹²⁴ Avanti Deval, 18010125321, Division–D.

¹²⁵ Charvi Krishna, 18010125320, Division–D.

¹²⁶ Gaea Sukumar, 18010125324, Division –D.

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