



RGNUL Social Sciences Review

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

Volume III	Number I & II	January-December 2022
Migration, Displacement and Covid <i>Dr. Ritu Sharma</i>	Mental Health & Post-Rehabilitative Conditions as Factors for Recidivism - A Review Article <i>Anisha Bodapati</i>	
Victims Beyond Doubt: A Feminist Critique of Theories of Domestic Violence <i>Dr. Suman Dash Bhattamishra</i>	Non-Entry of Women in National Defence Academy <i>Kush Kalra</i>	
Reducing Plastic Waste Through Legislative Intervention in India <i>Dr. Jaswinder Kaur and Jashandeep Kaur</i>	Witch Branding in India: Issues and Challenges <i>Rishav Jain</i>	
Postpartum Disorders and The Defense of Insanity in Maternal Filicide Cases: An Analysis <i>Sreeparvathy G</i>	An Analysis of Protection of Children from Sexual Offences Act, 2012 <i>Gurdas Singh Dahot</i>	
Understanding Objectivity in History <i>Dr. Rachna Sharma</i>	Assessing Homemaker's Financial Decision-Making Skills Through Financial Literacy Parameters <i>Ms. Somya Chaturvedi & Dr. Hiteshkumar Thakkar</i>	

RGNUL Social Sciences Review
Volume III Number I & II January-December 2022

Chief Patron

Hon'ble Mr. Justice Ravi Shankar Jha
*Chief Justice, Punjab & Haryana High Court and
Chancellor, RGNUL, Punjab*

Patron & Executive Editor

Professor (Dr.) Anand Pawar
*Vice-Chancellor (Officiating) and
Registrar, RGNUL, Punjab*

Advisory Panel

Professor (Dr.) Manjit Singh Kang

Former Vice-Chancellor, Punjab Agricultural University, Ludhiana

Professor (Dr.) Birinder Pal Singh

Professor of Eminence Department of Sociology, Punjabi University, Patiala

Professor (Dr.) R.K. Kohli

Vice-Chancellor, Central University of Punjab, Bathinda

Ms. Julie Selman Ayetey

Barrister of Supreme Court of Lahore, Ghana

Professor (Dr.) Rajesh Gill

Professor, Department of Sociology, Panjab University, Chandigarh

Professor (Dr.) Aslam Parvej Menon

Pro-Vice-Chancellor, University of Salford, Manchester, Pakistan

Editor in Chief

Ms. Jasmine Kaur, *Assistant Professor in Economics, RGNUL, Punjab*

Editorial Board

Mr. Saurabh Sharma, *Assistant Professor in Legal Research, RGNUL, Punjab*

Mr. Aashish Gaur, *Assistant Professor in Sociology, RGNUL, Punjab*

Ms. Aditi Dubey, *Assistant Professor in Political Science, RGNUL, Punjab*

Mr. Sourav Kumar, *Assistant Professor in Political Science, RGNUL, Punjab*

Email: rgnulrjs@rgnul.ac.in

Subscription Details

One Year	₹500/-	Two Year	₹900/-
Three Year	₹1300/-	Five Year	₹2000/-
Overseas US/UK	\$20 /£10	Life Membership	₹10,000/-

Price Per Copy

Individual	₹300/-	Institution	₹400/-	Alumni /Students	₹200/-
------------	--------	-------------	--------	------------------	--------

Copyright: © 2016 Rajiv Gandhi National University of Law, Punjab

Any reproduction and publication of the material from this journal without the prior permission of the publishers is punishable under the Copyright Law.

Disclaimer: The views expressed by the contributors are personal and do not in any way represent the opinions of the University.

Mode of Citation : MLA Citation Style, 9th Edition

A Refereed / Peer Reviewed Journal

Printed and Published by Professor (Dr.) Anand Pawar on behalf of Rajiv Gandhi National University of Law, Punjab. Printed at Phulkian Press, C-165, Focal Point, Patiala, Publish from Rajiv Gandhi National University of Law, Punjab, Bhadson Road Sidhuwal, Patiala.

RGNUL *Social Sciences Review*

JANUARY – DECEMBER, 2022



RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

SIDHUWAL, BHADSON ROAD, PATIALA - 147 006

TEL.: 0175 – 2391600, 2391601, 2391602, 2391603,

TELEFAX: 0175 – 2391690, 2391692

E-MAIL: info@rgnul.ac.in WEBSITE: www.rgnul.ac.in

EDITORIAL NOTE

At the core of any societal development is social change, largely emanating in the form of variations in social institutions and rules of social behaviour, along with deviances from culturally-inherited values. The social changes are nothing but a collection of frictions, revolutions, debates, discussions and novel social movements, which then culminates into transformation of social structure, whereby maintaining equilibrium and balance within an established social system. The efficacy of such changes lies in overhauling the social fabrics by upending the status flow and structural inequalities permeating within a given society.

Diametrically opposite to the phenomenon of social change, is social continuity which resists changes by maintenance of the traditions and social structures that bring stability to a society. Be it social changes or social continuity, the common factor is human's effort in tuning with his surroundings, thereby deeply impacting his experiences. The individual's interactions with their environment and their ability to function within such surroundings is called 'social functioning'. Social functioning analyses the ability of individuals to fulfill the assigned role within such environments as work, social activities, and relationships with partners and family. Impairment of social functioning is detrimental and negatively impacts the *homo sapiens*, and this lays an impetus for extensive research to understand the root cause and disseminate some concrete solutions.

In light of the above, various manuscripts under RSSR Volume III, No. I & II have been painstakingly scrutinized and edited through its Editorial Team. The following multidisciplinary issues have been discussed within this volume: (a) critically analysing the conditions of migrant workers during pandemic, (b) gauging feminist perspective in domestic violence, (c) role of legislation in curbing the menace of plastic waste, (d) evaluating legality of postpartum disorders from the threshold of legal insanity under section 84 of Indian Penal, (e) revisiting an element of objectivity in History for the development of Historical studies on scientific lines, (f) examining the aspects of mental health and post-rehabilitative conditions as factors for recidivism, (g) breach of constitutional safeguard due to non-entry of

women in National Defence Academy, (h) apprising about social evils in the form of witch branding/witch hunting in India, (i) assessing the role of Protection of Children from Sexual Offence Act, 2012 in securing rights of children, and (j) assessing homemaker's financial decision-making skills through financial literacy parameters and linking it with women empowerment.

The aforesaid research has mirrored those concerns, which human beings are currently suffering, by not only carrying out investigation from social perspective, but having a semblance of legality too. Based on that, it could be attributed as socio-legal research having its foundation in theoretical, practical and methodological considerations ingrained within its attempt to study society particularly its needs, customs and traditions. Such research in return assists in disintegrating prejudices, misconceptions, and superstitions, and thus precipitating social progress and creating a more inclusive society. For practical relevance, the authors have engaged in adopting certain methodology for the purpose of analysing these issues and to provide concrete solutions. This has been shaped largely through multidisciplinary approach as the legal problems in the society are largely in connection with the social, economic, political and psychological issues. The authors have dealt with the complex issues which cross boundaries of disciplines and they have provided policy inputs for solving the problems and challenges faced by the individuals in the society.

With these collections, this RSSR issue would present a captivating opportunity to disseminate vital knowledge to our putative readers 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

*Assistant Professor in Economics
Public Relation Officer*

Rajiv Gandhi National University of Law, Punjab

Volume III	January-December 2022	Number I & II
-------------------	------------------------------	--------------------------

CONTENTS

Sr. No.	Articles	Author(s)	Page Nos.
(I)	Migration, Displacement and Covid	<i>Dr. Ritu Sharma</i>	1-12
(II)	Victims Beyond Doubt: A Feminist Critique of Theories of Domestic Violence	<i>Dr. Suman Dash Bhattamishra</i>	13-30
(III)	Reducing Plastic Waste Through Legislative Intervention in India	<i>Dr. Jaswinder Kaur and Jashandeep Kaur</i>	31-44
(IV)	Postpartum Disorders and The Defense of Insanity in Maternal Filicide Cases: An Analysis	<i>Sreeparvathy G</i>	45-60
(V)	Understanding Objectivity in History	<i>Dr. Rachna Sharma</i>	61-72
(VI)	Mental Health & Post-Rehabilitative Conditions as Factors for Recidivism - A Review Article	<i>Anisha Bodapati</i>	73-86
(VII)	Non-Entry of Women in National Defence Academy	<i>Kush Kalra</i>	87-98
(VIII)	Witch Branding in India: Issues and Challenges	<i>Rishav Jain</i>	99-112
(IX)	An Analysis of Protection of Children from Sexual Offences Act, 2012	<i>Gurdas Singh Dahot</i>	113-122

Sr. No.	Articles	Author(s)	Page Nos.
(X)	Assessing Homemaker's Financial Decision-Making Skills Through Financial Literacy Parameters	<i>Ms. Somya Chaturvedi & Dr. Hitesh Kumar Thakkar</i>	123-146

MIGRATION, DISPLACEMENT AND COVID

Dr. Ritu Sharma*

1. The Colossal Covid

Previously, epidemics of this kind were not concerned with the livelihood and the migration of people throughout colonial India, even though the prime Indian cities like Mumbai, Kolkata, Chennai and several other urban regions suffered from the plague, influenza, malaria, smallpox, and cholera (Davis, 1951). However, in India, the prevailing Covid-19 virus epidemics led to an escape of people from all these cities, after the lockdown was pronounced on 24 March 2020. The corona virus outbreak generated an unprecedented exodus and panic of migrant workers from all these Indian cities, a kind of evocative mass migration at the time of the Partition in 1947. Several workers walked to their respective destinations (Banthia and Dyson, 1999). The fear started mounting, assuming that these migrant people will spread infections in every rural area, establishment and system. Due to this, a substantial number of people lost their daily earnings, while living in camps or stranded in the city areas in the makeshift shelters provided by the government (BBC, 2020).

In fact, these migrant workers constitute the backbone of the Indian construction industry, and they make up the main strength of the Indian economy. In India, there are almost 494 million workers, out of which, 196 million are semi-permanent and permanent migrant workers stated in the 2011 Census survey (Hill, 2011). Moreover, around 16 million migrant workers operate on a short-term, temporary and circulatory nature. Considering the major states, the rate of migrant workers and their migration levels are larger in high-income earning states like Goa, Delhi, Gujarat, Karnataka, Punjab, Haryana and Maharashtra. In the present situation, many of them are strongly affected due to the COVID-19 virus, when compared to the states of low-income earning areas like UP, Bihar, Odisha, Jharkhand and Rajasthan. Many believe that there are many prominent and conspicuous networks, operating migratory corridors in India, from Bihar to Haryana, Delhi and Punjab and so on. It is also possible that the COVID-19 incidence started showing its harshness as migrating workers in the poorest income states started returning home quickly (First Post, 2020).

* Associate Professor of Sociology, National Law University, Delhi.

Moreover, as per the UN Department of Social Affairs and Economics, India is the most prominent country of origin for immigrant communities and expatriates with an 18.4 million-strong diaspora worldwide. India is a labour-oriented country and Indians are scattered in many geographic locales globally. As per the latest UN Worldometer data of 11 January 2020, the population of India was 1,374,603,585 and the international migrants form a large number of about 18.4 million people (United Nations, 2019). India further maintains its position as the leading remittance recipient country to the tune of US\$ 79.4 billion, as per World Migration Report, (2020).

As per the WHO, the virus has consistently spread in the world. Half of such cases are observed mainly in three countries: the USA, where 4.3 million victims have suffered, Brazil has 2.3 million patients, and India 1.55 million (Swapnil, Singh, 2020).

The COVID-19 outbreak has brought international migrants from India into sharp focus because India shares the main migration corridors with the rest of the world. Several developed countries like the USA, Italy, Spain, Germany and United Kingdom have observed a spectacular increase in the COVID 19 cases during the recent few months. The Indian Government has taken appropriate steps to rescue several emigrants from such affected countries before the commencement of lockdown in India (First Post, 2020). Regarding the Gulf countries, several Indian migrants were forced to stay where they are, in crowded environs, bringing fears that they will become the foremost coronavirus hotbed. Other countries informed the migrant workers to remain home, while they stopped making their payments. Apart from that, the lockdown imposed in several gulf countries radically slowed the economic transformations. Apart from the loss affecting the overall workers, the respective state economies also traumatized (The Indian Express, 2020). Several international migrants were forced to return to India after the lifting of lockdown, either because they became jobless or to avoid future agonies from happening.

2. The Economic Crisis

The consumer spending habits, opening of various small businesses, and employment process occurred in several cases before the shut-down. The data were assessed for many hours along with their movement patterns (Villas-Boas et al. 2020). Moreover, they demonstrated the latest policies created after the end of shutdowns in several states like Delhi and Kolkata, which showed considerable increase in economic activities, suggesting that the major economic activity barrier threat is mainly due to

COVID-19, as opposed to legislated economic failures and shutdowns (Karthikeyan Iyengar et al., 2020).

They also highlighted the importance of the Covid-19 pandemic in the resilience and diversification of supply chains along with the concept relevance of strategic autonomy, said S Jaishankar, the External Affairs Minister of India (Bartik et al. 2020).

Whereas, migrant workers of India had to face multiple hardships during this COVID-19 pandemic. All the workplaces and factories shut down because of the lockdown imposed in India, when millions of migrant workers were traumatized and had to deal and manage with food shortages, loss of income, and uncertainty concerning their future.

The pandemic underscored the requirement of larger rebalancing with more reasonable worldly outlook. In India, there was an urgent necessity to reinforce and intensify the national process capability of self-reliant India, “Atmanirbhar Bharat” initiative. This was explained through the ASEAN-India Network and informed the roundtable of Think Tanks (Baker et al., 2020).

Going beyond the organizations, industries and their structures, it was more evident by considering the individual attitude and behaviour in several states. Therefore, the major issue confronting the thinking tank of the world is not merely the economic condition, but the overall damage to all the societies and related challenges to the governance. The debate further took the direction towards the global affairs, related migrant physical and mental condition and the entire position of the world order and disorder, it formed where we all are going to live (Gupta et al., 2020).

The unprecedented challenge has been created by Covid-19 crisis along with a great proportion of uncertainty, while the real extent of destruction it generated remains unclear. So to say, it is not simply another happening, on a bigger extent. On the contrary, the Coronavirus impact has reached beyond all imagination. The prevailing estimated cumulative loss to this country is around USD 5.9 to 8.9 trillion, which is about 8.5% of the world GDP, the External Affairs Minister of India said (Hindustan Times, New Delhi, 2020).

3. The Crisis Upshot- Homeless People

It was a complete plight and a dilemma of migrant workers under the shadow of COVID-19. While before, they were living on the meagre margins stipulated by the

society, now they have been isolated completely (Hindustan Times, New Delhi, 2020).

In a world where bigotry is growing, social division flourishes and nationalism concepts are increasing, the words ‘asylum seekers’, ‘refugees’ and ‘migrant workers’ trigger intolerance and prejudice. These terms generate an image of ‘the separate, other and different versions, feeding suspicion, and strengthening tribalism, while our common virtue and wisdom of humanity is entirely denied (Karthikeyan Iyengar et al., 2020).

The migrant workers are mainly facing risk from Covid-19, aggravated by the severity of economic impact due to the xenophobic abuse, the fear and hatred, while only the pandemic linked to this kind of confusion. In fact, the migrant workers, carry a very few or no specific labour rights universally. They are discarded, ignored and discriminated from the Middle East to India. Particularly, the migrants of Japanese and Chinese appearance in the US and many other places undergo a horrible experience of abuse and violence, and thousands have been left in the refugee camps across the Middle East, Europe and Gaza, in an unsafe condition in the camps without proper medical care or support (Kamath Sagarika et al., 2020).

Even prior to the Covid-19 pandemic erupted, the migrant workers were mostly marginalized, mistrusted, and they always remained in danger. Many Indians working as domestic helpers in the Gulf countries, live in the overcrowded refugee camps. These men, with women and children are highly vulnerable to all sorts of abuses, swamped and live with uncertainty and the fear. For instance, almost 9,000 people live in an accommodation designed for 3,840 people.

Homeless, hungry and at a high risk of attracting coronavirus, these migrant workers were reacted towards with neglect and ignored by the Indian government, as emphasized by the UN Special Report, which mentioned regarding the right housing and support to be provided for the extreme line of poverty of migrant workers. They were, on 4 June 2020, appalled at the disrespect and ignorance exhibited by the Government of India towards the Indian migrant workers and laborers, specifically, those belonging to marginalized minority communities and lower castes. The Government machinery was unsuccessful to meet their dire humanitarian needs under these situations. Moreover, they intensified their vulnerability by way of police brutality by failing to take care of migrants, considering them to be stigmatized as carriers of the virus (Kamath Sagarika et al., 2020).

4. History Repeats- The Contemporary Period of Slavery

Covid-19 further highlighted and instigated the destructive practices and social inequalities all around the world. Such issues suggest the murky emergence of human mindset and affairs. In fact, this is the best opportunity to be presented to make reforms by making changes in practices and attitudes of people (Hindustan Times, New Delhi, 2020).

There appears to be the fundamental need to overhaul of employment conditions and rights of migrant workers in the entire world. The migrant workers should receive the same facilities and protections like those of native employees, and that includes the access to their health care, limits on their working hours, pay rates, days off and so on (Hindustan Times, New Delhi, 2020).

Migrants are also human beings, but are fleeing violent conflicts and are always subject to persecution, trauma, and economic hardship. They also undergo a rigorous journey to understand their unknown future and hence, they are always treacherous, feel very uncertain. An intense has been vacuum left by the government and other regional authorities similar to the EU, they must process an asylum application in designated facilities in the designated centres offering them a safe passage. Many criminal gangs manage and control several migration routes and travel methods, which are extortionately expensive and unsafe. Deaths become commonplace, while exploitation and abuse are widespread. In case they survive all the agony of dangers and arrive safely in their respective destined country, many, too often, view them with antagonism and distrust, rather than warmly welcoming them. They are thrown into the shadows of society's margins, offered modest help without any state support to make them feel unwanted (Golechha, Mahaveer, 2020).

This should change; and all must be embraced equally, not merely those having skills. But the idea of judging should not be the country related to certain discriminatory value system linked to their national value and need. The Australian way maintains a shameful and disgraceful immigration record, like the UK government has proposed, that reduces human value to commodities. Many people are highly valuable and the country is concerned about the 'open market to promote immigration' than many other aspects, which is entirely abhorrent and objectionable (Hindustan Times, New Delhi, 2020).

While dealing with the migration causes and effects, help is required to construct a peaceful world by sharing, cooperating and building cordial relationships. This can

be done by rejecting nationalism and competition in favour of tolerance and unity to observe a dramatic reduction in many migrant workers and their family members to leave the homeland, either to search for opportunity or safety (Graham Peebles, 2020).

5. The Government Intervention

In fact, India implemented sufficient measures related to migrant workers. To mitigate the pandemic impact, the Indian government implemented severe measures, declaring Sanitizers and Masks as the basic commodities, stepped up the testing efforts and contact-tracing measures; Permitting private laboratories to perform testing; announced instant relief packages to meet the immediate needs of migrant workers and for jobless people to get urgent assistance (Hindustan Times, New Delhi, 2020).

The entire COVID-19 virus and subsequent lockdown have affected and disturbed every citizen of every country to varying degrees, while the migrant workers were severely involved to be emerging as the most impacted citizens of India. Almost all of them were stranded in the major cities, without work, no place to stay and no livelihood, because of the closure of all the economic activities. Most of them had no choice but to try reverse migration to their hometown. At the same time, there was a fear of this exodus, the mass departure and migration that could eventually spread the virus into the interior parts of the country (United Nations, 2019). This kind of fear led the government to act swiftly to restrain this, while many people could not return home. They were provided temporary shelters and facilities to live, provided by the Indian state governments. At the same time, the central government provided the hunger centres and commenced a protocol of migrant mapping to make easy accessibility of relief measures to them. Thereafter, the Supreme Court jurisdiction of India was invoked in several matters concerning the provisions to be made with respect to the payment of minimum salary and wages to workers, provision of basic amenities to ensure that all the workers and migrants are covered by the flagship healthcare scheme of the government. They were also allowed a free access to COVID-19 testing in hospitals and private labs. Even after all such elaborate measures, the refugee plight and troubles remained the same, because some of them continued to be excluded and preferred to remain away from the main stream of these facilities. Hence, they could not have a complete access to any such benefits (United Nations, 2019).

6. Implementing Wise Learning From The Past

The Indian government took enough measures to set up new and special helplines to remotely extend assistance, while the migrant women were reluctant to get help and approach government authorities because of their indefinite legal status, due to fear of reprisal in their own communities. One more concern was the lack of enough or viable financial help available to migrant communities. When no relief was offered under state or central relief package implementation or alternating livelihood support measures, migrants constantly remained struggling to make their ends meet. A considerable number of migrant families, who depended on remittances from abroad or from the local relatives, who were based away from India also could not access financial assistance and help from the systems, mainly because banks, who could provide money transferring facilities, were closed (Finsterwalder & Kuppelwieser, 2020). Moreover, several community members expressed their concern regarding the migrants' inability to deposit rent for the hired premises and unable to pay rent to their landlords because of loss of livelihood. In this respect, the state governments issued several directions with advisories with a request to landlords to refrain from evicting the migrant tenants because of non-payment of monthly rent, like what happened in New Delhi. The state government offered to provide assistance to migrants by covering the house rent of those workers who could not meet the needs and obligations. Yet, they continued to receive reports regarding the untimely evictions of migrants because these types of facilities were not available and the measures were not extended to them (Mahmoud Saleh & Karia, 2020).

In fact, the Indian government performed a gigantic work during the Coronavirus lockdown, to look after and take care of as many as 132 million migrant workers, while trying to nurture them during the prevailing COVID-19 crisis (Finsterwalder & Kuppelwieser, 2020).

The government should initiate several specific measures to provide a wide-ranging unemployment allowance to sustain and care for the migrant workers because of such COVID-19 like crisis may emerge again. Hence, in anticipation of the welfare of them, proper system should be gainfully employed to continue with their work (Mishra, 2020).

7. The Present Scenario

While there were tremendous economic and social measures and costs involved due to coronavirus lockdowns, social distancing and travel bans imposed primarily to

focus on international migrants, more attention was paid to the internal migrant troubles.

The economic crisis, lockdown, unemployment and desperation of migrant workers have aggravated the misery and stress levels in millions of people, mainly governed through fear (United Nations, 2019).

The World Bank also estimated that the large-scale internal migration was around 250% more than international migration. Within India, there were about 42 million internal migrants, working mainly to manage the informal economy, and they were severely impacted (Chopra, 2020).

Initially, the transportation system was completely shut down in India. Hence, many workers found no recourse or option to travel back home to their villages, and that resulted in stressful and traumatic journeys home. Moreover, those who managed to reach home found that the villagers refused their entry due to the fear of virus transmission (United Nations, 2019).

The lockdown was specifically imposed for the people to shelter-in-place or stay-at-home to avoid transmission of the virus from the affected areas. This resulted in many awful images of migrants, having no choice, they were forced to walk to their villages. That displayed the enormity of the lockdown crisis apart from many challenges imposed by an extensive and instant lockdown in India, where millions of people live in poverty, with hand to mouth existence and cannot afford to stay without work and earning (Mishra, 2020).

8. Conclusion and Recommendations

The lockdown due to Covid-19 gave a healing touch to the planet with vital environmental changes for the Earth's sustainability, never seen in India before. New Delhi was the most polluted place on a global scale mentioned by WHO in May 2014. The air quality index was 200. The pollution level increased to 900 and at times, soared beyond the measurement scale. However, during the lockdown, factories, construction activities were brought to a complete halt, while 10.8 million registered vehicles remained off the roads, bringing AQI- Air Quality Index levels to below 20. The skies started piercing blue, even the birds started singing louder. The air pollution level plunged by 73% within a week, reducing 93 micrograms / cubic meter between March 20 and 26, after the lockdown commenced. Dolphins spotted near Kolkata ghats, many flamingos were seen in Mumbai, Ganga water became suitable for drinking in Haridwar (Goswami, 2020).

This new government scheme was introduced exclusively for the Healthcare professionals, wards of Doctors, Service personnel and many government employees, who participated to protect our countrymen and migrants during the COVID Pandemic, specifically those highly affected people during this lockdown, more particularly, the migrant workers and laborers, who had left their villages and homes to seek odd jobs at numerous places, from rural and urban areas in construction industries, services, and also in agriculture (Patel Champa, 2020).

This unorganized operating Indian sector accounts for 92% workforce, according to the survey of India 2020 population and publication. In essence, in the unorganized sector, there is no authentic data to understand the labor workforce operating details (Golechha, Mahaveer, 2020).

Hence, the Migrant workers were caught unaware after imposition of the lockdown, not knowing where to go and what to do, in the absence of work and earning. Hence, they preferred reverse migration towards their villages, the place of origin, many by foot, because the entire public transport machinery was closed abruptly. Particularly, the Rohingya community people were driven out of camps, and were unable to receive enough assistance because of tremendous restrictions and access to their settlement (Patel Champa, 2020).

The traumatic episode did not end there, but many migrant workers left feeling like "stateless people" were sent back from the state borders, as they were unwelcoming in their own villages due to fear of carriers of the corona virus. They were in a state of disarray created by the unexpected lockdown. In fact, the migrant workers add to the informal economy, and they are national assets. Hence, the petty interstate narrow outlook, and parochialism should be avoided (Patel Champa, 2020). These incidents point towards having a proper policy and laws to address such issues so there is a need to re-visit our laws at one hand and to develop a strong community network so that the people in crisis do not feel orphaned or abandoned.

9. References

- Baker, Scott R., et al. "Income, Liquidity, and the Consumption Response to the 2020 Economic Stimulus Payments." *NBER Working Paper* No. 27097, May 2020.
- Banthia, Jayant., and Tim Dyson. "Smallpox in Nineteenth Century India". *Population and Development Review*, vol. 25, no. 4, 1999, pp. 649-680.

- Bartik, Alexander W., et al. "Labor Market Impacts of COVID-19 on Hourly Workers in Small- and Medium-Sized Businesses: Four Facts from Homebase Data". *California Policy Lab*, 2020.
- Champa, Patel. "COVID-19: The Hidden Majority in India's Migration Crisis, Director." *Chatham House*, 13 July 2020, <https://www.chathamhouse.org/expert/comment/covid-19-hidden-majority-indias-migration-crisis>.
- Chopra, Vanshika. "How Consumer Behaviour Is Going To Be Affected By Lockdown And Economic Crisis." *Inventiva*, 2 May 2020, <https://www.inventiva.co.in/trends/vanshika/how-consumer-behaviour-is-going-to-be-affected-by-lockdown-and-economic-crisis>.
- "Coronavirus deepens struggles of migrant workers in Gulf countries." *The Indian Express*, 14 April 2020, <https://indianexpress.com/article/coronavirus/coronavirus-deepens-struggles-formigrants-in-persian-gulf-6361636/>.
- "Coronavirus: India's pandemic lockdown turns into a human tragedy." *BBC News*, 30 March 2020, <https://www.bbc.com/news/world-asia-india-52086274> accessed on 6 April 2020.
- "Covid-19 highlighted the importance of diversification and resilience of supply chains, says Jaishankar." *Hindustan Times*, New Delhi, 20 August 2020, <https://www.hindustantimes.com/india-news/covid-19-highlighted-importance-of-diversification-and-resilience-of-supply-chains-says-jaishankar/story-V2apQhseaCgaBPJ2p09EuN.html>.
- Davis, Kingsley. "The Population of India and Pakistan." *Princeton University Press*, Princeton, 1951.
- Finsterwalder, Jörg., and Kuppelwieser, Volker G. "Equilibrating resources and challenges during crises: a framework for service ecosystem well-being." *Journal of Service Management*, vol. 31, no. 6, pp. 1107-1129.
- Golechha, Mahaveer. "India should ramp up its emergency medicine and critical care infrastructure to combat COVID-19." *Postgrad Medical Journal*, 2020, <https://pmj.bmj.com/content/early/2020/08/12/postgradmedj-2020-138454.abstract>
- Goswami, Kajari. "Covid-19: 4 unbelievable environmental changes seen in India since lockdown." *Worldly Science*, 2 May 2020, <https://www.indiatoday.in/education-today/gk-current-affairs/story/covid-19-4-vital-environmental-changes-evidenced-in-india-since-lockdown-1673726-2020-05-02>.

- Gupta, Sumedha., et al. "Tracking Public and Private Responses to the COVID19 Epidemic: Evidence from State and Local Government Actions." *NBER Working Paper No. 27027*, 2020.
- Hill, Kenneth. "Influenza in India 1918: Excess Mortality Reassessed". *Genus*, Vol. 67, No. 2, 2011, pp. 9-29.
- "International Migrant Stock 2019." *United Nations*, 2019, https://www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation_2019.pdf.
- Iyengar, Karthikeyan P. et al "Current situation with doctors and healthcare workers during COVID-19 pandemic in India." *Postgraduate Medical Journal*, vol. 98, issue 2, 2020, pp. e121-e122. <https://pmj.bmj.com/content/early/2020/08/12/postgradmedj-2020-138454.abstract>.
- Kamath, Sagarika., et al. "COVID-19 Pandemic in India: Challenges and Silver Linings". *Postgrad Medical Journal*, 2020, <https://pmj.bmj.com/content/early/2020/08/12/postgradmedj-2020-138454.abstract>.
- Mahmoud, Saleh et al. "Benchmarks for INGOs' Effective Responses during COVID-19 Pandemic". *Benchmarking: An International Journal*, vol. 27, no. 10, Emerald, Oct. 2020, pp. 2863-2886, <https://doi.org/10.1108/BIJ-04-2020-0157>.
- Mishra, Hari Hara. "Coronavirus lockdown: How to keep 130 million migrant workers afloat during COVID-19 crisis." *Business Today*, 13 April 2020, <https://www.businesstoday.in/opinion/columns/coronavirus-lockdown-130-million-migrant-workers-afloat-covid-19-crisis-unorganised-sector/story/400806.html>.
- Peebles, Graham. "The plight of refugees and migrant workers under COVID". *New Age*, 2020, <https://www.nationofchange.org/2020/08/08/the-plight-of-refugees-and-migrant-workers-under-covid/>.
- "Return Migration and COVID-19: Data suggests Kerala, TN, Punjab, UP, Bihar may be future red zones for contagion risk." *First Post*, 03 April 2020, <https://www.firstpost.com/health/coronavirus-outbreak-return-migration-andcovid-19-inindia-data-suggests-kerala-tamil-nadu-punjab-up-bihar-may-be-futurered-zones-forcontagion-risk-8221531.html>.

Singh, Swapnil. "The virus is still circulating in the world: WHO." *Inventiva*, 30 July 2020, <https://www.inventiva.co.in/stories/swapnil/the-virus-is-still-circulating-in-the-world-who/>.

Sofia B., Villas-Boas, et al. "Are We #StayingHome to Flatten the Curve?" *UC Berkeley: Department of Agricultural and Resource Economics CUDARE Working Papers*, 2020, <https://escholarship.org/uc/item/5h97n884>.

VICTIMS BEYOND DOUBT: A FEMINIST CRITIQUE OF THEORIES OF DOMESTIC VIOLENCE

Dr. Suman Dash Bhattamishra*

1. Introduction

While women constitute about a half of the world's population, they do not share the same space as their male counterparts in the exercise of civil, political, social and economic rights. From swanky corporate offices to bustling courtrooms, sporting zones and centres of educational excellence, women's experience of inequality finds its way into all corners of civil existence. While feminists have been fighting for equal and fair treatment of women in all these areas, their most painful experiences have been in the privacy of homes- in the form of domestic violence. Statistics point out that in 2014, about forty percent of the murders perpetrated against women were by an intimate partner.¹ That figure jumped to fifty-eight percent in 2020, when the Covid-19 pandemic shook the world.² From deaths to dismemberment, grievous hurt, rape and even unnatural offences, domestic violence has serious manifestations and its ramifications deeply impair the health and well-being of women.

Despite these consequences, traditionally "wife-battering" has been condoned across all societies.³ As will be evident from the pages that follow, many theories have been put forth by social scientists, aiming to explain why men are violent towards women. From high testosterone levels being a contributor, to women's incompetence in household chores acting as trigger, the oldest and most common narratives tend to justify the perpetration of domestic violence by men as a natural instinct.⁴ It is pertinent to note that these socio-psychological theories not only normalised and naturalised domestic violence against women but also showcased them as abettors and contributors and not mere victims of the crime. Feminist interventions resulted in more nuanced deliberations in this area, thereby positioning women as victims and male abusers as

* Assistant Professor of Law, National Law University Odisha.

¹ Alfred, Charlotte. "These 20 Countries have no law against Domestic Violence." *Huffpost*, 2014, Available at https://www.huffpost.com/entry/countries-no-domestic-violence-law_n_4918784. Accessed 15 August 2022.

² "Facts and Figures: Ending Violence against Women." *UN Women*, 2021, Available at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>. Accessed 15 August, 2022.

³ Pleck, Elizabeth. "Criminal Approaches to Family Violence, 1640-1980." *Crime and Justice*, vol. 11, no. 19, 1989, pp. 221-232.

⁴ Indermour, David. "Perceptions of Violence." *Psychiatry, Psychology and Law*, vol. 3, no. 2, September 2009, pp. 129-141.

aggressors.⁵ This article explores the journey towards that goal by dissecting various theories of domestic violence and spelling out feminist reservations, rejections and interpretations over a period of time.

2. Psychological Theories

2.1 *Violence as an Abnormality and Consequent Impunity*

Theories of Psychology dominated the study of Domestic Violence and Matrimonial Cruelty in the mid-twentieth century and provided various explanations for the cause of this phenomenon.⁶ These theories had two primary approaches towards causation in domestic violence: firstly, that violence is an abnormality and is triggered in men by their environment and secondly, that being an abnormality, it can be remedied by therapeutic interventions and not punitive measures.⁷

Psychologists argued that the origin of all forms of domestic violence was in relationship abnormalities or dysfunctions that were the consequence of incompatible traits in the personalities of the couple.⁸ They shifted the focus to deficient relationships, thereby avoiding any ascription of fault to violent male partners. In their studies, three prominent theories were used by psychologists to trace causality in domestic violence, viz., Object Relations, Attachment and Trauma.⁹

2.1.1 *Unmet Childhood Needs*

The Object Relations Theory was used to explain that early childhood experiences were responsible for perpetration of violence by adults.¹⁰ Proponents of this theory argued that during childhood, human beings are motivated by the need for significant relationships with others who are referred to as “objects”.¹¹ According to them, violence is the expression of unmet childhood needs for security that mutate into rage and aggression in adulthood. The reason for such mutation is inadequate channelling of

⁵ *Supra* note 4.

⁶ Houston, Claire. “How Feminist Theory Became (Criminal) Law: Tracing the Path to Mandatory Criminal Intervention in Domestic Violence Cases.” *Michigan Journal of Gender and Law*, vol. 21, no. 2, 2014, pp. 217-271.

⁷ *ibid.*

⁸ Kasalova et. al, “Personality Disorder in Marriage and Partnership- a Narrative Review.” *Neuroendocrinology Letters*, vol. 39, no. 3, 2018, pp. 101-113.

⁹ *ibid.*

¹⁰ McHugh, Shannon V. “Object Relations Theory: An Overview.” *eCounseling.com*, 24 April 2023, Available at <https://www.e-counseling.com/articles/object-relations-theory/>. Accessed 31 December 2022.

¹¹ Harris, Chris. “Domestic Violence in Latin American Literary Texts: Thinking through the idea of ‘Toxic Couples’.” *Confluencia*, vol. 33, no. 2, Spring 2018, pp. 31-34.

feelings of rejection that come from the absence of affection, security and care in childhood.¹² Through their results, psychological theories situated the problem of violence as one that male perpetrators could not be held accountable for- their conduct was perceived as an emotional ailment that required treatment.

2.1.2 *Attachment and Loss*

The British psychiatrist John Bowlby developed a landmark theory in his trilogy titled “Attachment and Loss”, which is still used to study the perpetration of domestic violence by men against women.¹³ Along with Mary Ainsworth, he laid the foundation of the Attachment theory in Psychology through his magnum opus.¹⁴ The gist of Bowlby’s theory is that violence is the result of negative emotions that arise when the natural state of attachment of infants with their care-givers is broken or interfered with.¹⁵ Based on observational studies of infants, Bowlby located a three-fold behaviour pattern in such children- protest, despair and detachment.¹⁶ He concluded that these feelings had the potential to generate violent interpersonal relationships in children who were raised by unresponsive care-givers that neglected them.¹⁷ In short, Bowlby’s theory led to the understanding that men who did not receive adequate response from their primary care-givers, usually the mother, grew up as insecure individuals and such insecurity manifested as violence.¹⁸

His theory was developed further by Prof. Donald Dutton, a psychoanalyst who pointed out that men who perpetrate violence against their intimate partners generally had a history of witnessing violence in the family of origin as well as facing parental rejection.¹⁹ Psychologists like Smart, Hutchinson and Saunders also supported Dutton’s work and built on it.²⁰

2.1.3 *Social Learning, Trauma and Imitative Violence*

Thereafter, by combining Social Learning principles with the Trauma theory,

¹² *ibid.*

¹³ “Attachment Theory and Domestic Violence.” 2012, *Criminal Justice*, Available at <http://criminal-justice.iresearchnet.com/system/attachment-theory-domestic-violence/>. Accessed 20 July 2022.

¹⁴ *ibid.*

¹⁵ Finkel et. al. “An Attachment Theory Perspective on the Perpetuation of Intimate Partner Violence.” *De Paul Law Review*, vol. 56, no.3, Spring 2007, pp. 898-899.

¹⁶ *ibid.*

¹⁷ Sonkin, Daniel J. “Domestic Violence and Attachment Theory: Clinical Applications to Treatment of Perpetrators.” 2009, Available at <http://www.danielsonkin.com/articles/sonkin82405.html>. Accessed 2 January 2022.

¹⁸ *Supra* note 15.

¹⁹ *Supra* note 17.

²⁰ *ibid.*

psychologists emphasised on behavioural and cognitive factors that are responsible for men perpetrating domestic violence against women.²¹ Experiments were conducted to reveal that children who witnessed the trauma of abuse in their childhood, perpetuated it in their adulthood.²² These theories were used to explain inter-generational transmission of domestic violence resulting from childhood trauma.²³ Social Learning is based on the principle that human beings, by their nature are inclined to learn by imitation and its use is seen in early development of skills in children like moral decision making, learning language, aggression, etc.²⁴ This principle was extended to domestic violence to indicate that men learnt to treat their partners violently by imitating others in their immediate environment. In many ways, therefore, psychological theories presented the perpetrator as the victim.

2.1.4 Limitations of Psychological Theories

As one may infer from the above discussion, psychological theories pointed out that the violent abuser is always a person in distress either because he had unmet childhood needs or because he was the victim of trauma in his social environment. Arguably, these explanations are limited and narrow for several reasons. For example, they fail to explain why the batterer, while being abusive towards his wife could be absolutely non-violent in public.

Moreover, these theories justify impunity by treating domestic violence as a private problem that did not require any state intervention and could be remedied by therapy. This perception, of which the foundation was laid by psychoanalysts, is still widely prevalent. All over the world, battered women are forced or encouraged to undergo counselling with their spouses and make efforts to “mend” them- irrespective of the dangers that this process holds for them.²⁵

2.2 Violence as a Consequence of Social Stress and Environment

The sociological theory is widely used to explain the occurrence of Domestic Violence. Sociological theorists perceive violence among men as a consequence of the impact of their immediate society.

²¹ Banks, Eric. “Childhood Trauma and Intergenerational Transmission of Family Violence in a Court-Ordered Batterer Intervention Program.” *ScholarWorks*, 2014, Available at <https://scholarworks.calstate.edu/downloads/c247dv39b?locale=en>. Accessed 18 August, 2022.

²² *ibid.*

²³ Pollak, Robert A. “An Intergenerational Model of Domestic Violence.” *Journal of Population Economics*, vol.17, no.1, June 2004, pp. 311-329.

²⁴ *Supra* note 3.

²⁵ Selden, Shannon. “The Practice of Domestic Violence.” *UCLA Women’s Law Journal*, vol. 12, no. 1, 2003, pp. 44-46.

2.2.1 *Family as a contributor*

According to the Family Systems theory, the entire family contributes to the perpetuation of Domestic Violence against a woman.²⁶ The contribution is positive and constructive which signifies the presence of wilfulness on the part of the perpetrator. Apart from perpetration of acts of violence, the victim also plays a role by silently suffering through it.²⁷ As a consequence, not only is domestic violence perpetrated against a woman, it is also transmitted across generations over a period of time as a cyclic process. Another prominent theory is the Social Learning Theory, according to which, people learn behaviour by interaction with other members of society.

2.2.2 *Stress as a consequence of Social Expectations*

Sociologists also came up with the theory of Social Stress which, according to them, was the reason behind domestic violence and cruelty. They rejected the contention of psychologists who emphasised on the interaction of dysfunctional personalities as the cause of domestic violence. On the contrary, they suggested that social expectations based on specific structure of the society were responsible for violent matrimonial relationships.²⁸ Murray A. Strauss, Richard J. Gelles and Suzanne Steinmetz were the chief proponents of this theory.

Social stress or strain revolved around the idea that social expectations based on socially approved roles of individuals resulted in aggression and violence. The theory was used to explain and sometimes, even justify the conduct of husbands who battered their wives. Gelles went a step further as he suggested that when husbands were unable to fulfil their socially expected roles due to lack of resources or capacity, they engaged in violence.²⁹

2.2.3 *Stress as an Explanation for Role of Women in Domestic Violence*

Feminists had serious problems with such sociological explanations as according to them, in the garb of understanding violence and aggression of male partners in marital relationships, sociologists tried to justify such conduct. The biggest controversy related to the stress theory was when Strauss released his research results

²⁶ Hyde-Nolan, M.E., and Juliao, T. "Theoretical Basis for Family Violence." *Family Violence: What Health Care Providers Need to Know*. edited by R.S. Fife and S. Scharger, Jones and Barlett Learning, Ontario, 2012, pp. 5-16.

²⁷ *ibid.*

²⁸ *Supra* note 26.

²⁹ *ibid.*

indicating that conflict in marital relationship also led to violent female partners who physically assaulted their male counterparts.³⁰ At a time when feminists were struggling to highlight the problems of women victimised by domestic violence and establishing effective control mechanisms, Strauss' s research was rejected as a great obstacle.

The theories of intra-family violence discussed above were severely criticised by feminists. A major criticism by feminist scholars was that instead of treating women as victims of violence in abusive relationships, the theorists had tried to justify, explain and "understand" the cause of violence. The analyses have proved to be counter-productive as all along, sociologists and psychologists tried to highlight an active participation of victims in domestic violence whereas their real focus should have been on evolving strategies and mechanisms to protect women battered by aggressive and violent husbands.

2.3 *Violence as a Reaction to Victim's Conduct: Victim Blaming*

The factor of "victim blaming" was widely prevalent in the twentieth century and was severely criticised by feminists.³¹ As a concept, the term meant that the victim must be blamed for the crime committed against her for she either encourages the abuser to violate her or provokes him by her conduct.

2.3.1 *Violence as "Pleasure"*

One of the major arguments advanced for victim blaming was the concept of "masochism", which was originally coined by Dr Richard von Krafft-Ebing who defined it as 'the wish to suffer pain and be subjected to force.' In later years, it was introduced by Sigmund Freud as a sexualised wish to be beaten- a modality to draw pleasure from pain.³² and developed further by Helene Deutsch in the 1930s.³³ Masochism connotes the idea of finding pleasure in pain, which according to Freud, is an essential feature of feminine personality.³⁴ The problem of this theory was in the acceptance of domestic violence as a part of women's social life and even worse, in the recognition of matrimonial cruelty as something that gave "pleasure" to women. These constructs, were later on, entirely rejected by feminists as gender-

³⁰ *id.*, at p. 228.

³¹ *Supra* note 25.

³² Howell, Elizabeth F. "Masochism: A bridge to the other side of abuse." *Attachment: New Directions in Relational Psychoanalysis and Psychotherapy*, vol.7, no.3, 2013, pp.231-242.

³³ *ibid.*

³⁴ *ibid.*

biased and insensitive.³⁵ It was believed that anything that blamed the victim for enduring matrimonial or domestic violence had to be done away with and the focus had to be shifted to perpetration of violence in matrimonial relationships.

2.3.2 *Violence as a Result of Victim Provocation*

The other important theory which was advanced to explain domestic violence is the Theory of Victim Provocation. Richard Gelles maintained that the victim's role in family violence is not just crucial but also a very active one. In saying so, Gelles explained how various actions of a victim amount to "vital intervening events" in a stress scenario.³⁶ Thus, by stopping a partner from violently chastising the children, arguing or engaging in criticism, the victim actively provokes the male partner, who is under the influence of social stress to become aggressive or violent.³⁷ Gelles maintained that it takes two to engage in family violence and that the role played by the victim's role is contributory.³⁸ By evolving the theory of Victim Provocation, scholars made the victim jointly responsible for the marital violence. This, according to feminists, was unacceptable and unfair and added to the pain and trauma of the victim instead of holding the perpetrator responsible for his violence and aggression.

2.4 *Violence as a Private Matter*

Apart from "victim blaming", a second approach associated with the psychological theories explaining domestic violence is that they treated it as a private family matter. This meant that victims were conditioned to put up with the trauma of such violence and deal with it through counselling and other alternative measures. This, combined with the discourse of psychologists that women enjoyed being violated, played a fundamental role in making matrimonial cruelty acceptable in societies and therefore, this approach was severely criticised by feminists.

2.4.1 *Justifying Therapeutic Interventions to "Mend" Broken Relationships*

Psychological theories indicated that the solution or intervention strategy for violence in marriages could be found privately, between two individuals.³⁹ It was also the reason behind the frequent prescription of "counselling" as a technique

³⁵ Moss, V.A. "Battered Women and the Myth of Masochism." *Journal of Psychosocial Nursing and Mental Health Services*, vol. 29, no. 7, July 1991, pp. 18-23.

³⁶ Roberts, Albert R. "Myths, Facts and Realities regarding Battered Women and their Children: An Overview", *Handbook of Domestic Violence Intervention Strategies: Policies, Programs and Legal Remedies*. edited by Albert R. Roberts, Oxford University Press, 2002, p. 49.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *Supra* note 26.

to prevent matrimonial cruelty by “repairing” broken individuals and relationships.⁴⁰

The narrow, rather technical analysis of matrimonial cruelty was unacceptable to many, primarily feminists and advocates of gender equality on the ground that confinement of domestic violence to personal and private spheres gives ample scope to offenders to avoid state intervention in such serious matters although technically they qualify as offences/crimes and very well form the subject matter of criminal sanctions. Further, it was also argued that psychological theories placed the blame on victims and by doing that, added to the suffering of women which was clearly unfair.

2.5 *Violence as Natural Behaviour: Socio Biological Theories*

While many of the psychological and sociological theories justified or normalised violence, in the twentieth century, socio-biological theories linked men’s violent behaviour with biological factors- and by doing so, they attempted to naturalise violence. These theories used evolutionary principles and biological theories to explain social problems. Their studies indicated that an increased level of serum testosterone is associated with high degree of verbal aggression and physical violence.⁴¹ Although these studies are not conclusive or absolute in nature, socio-biologists establish a strong link between naturally occurring high levels of testosterone and violent behaviour.

2.5.1 *Evolutionary Explanations of Violence in Men*

Lee Ellis, proponent of the Evolutionary Neuroandrogenic theory proposes that evolutionary factors are the reason behind violence and aggression being so common among men.⁴² He explains the case by stating that in primitive societies, men were preferred by women as mates or partners based on their reproductive abilities and their capacity to provide for the family.⁴³ Classically therefore, he argues, men are pre-disposed and conditioned to compete with other men to be able to provide more for the family.

Since early societies were pre-dominantly based on hunting and fighting for making provisions for food, men had to be physically more competent in order to

⁴⁰ *Supra* note 25.

⁴¹ Buzawa, E.S. et al. *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services*, SAGE, Los Angeles, 2011.

⁴² *Supra* note 26.

⁴³ *ibid.*

provide for the family. Such men were also more preferable as partners or mates as physical strength was seen as an indicator of greater reproductive ability. The need and desire in men to be physically stronger than the others resulted in men developing higher testosterone levels with each passing generation. However, as society changed from pre-historic to a modern one, dependence of physically challenging activities like hunting gradually declined and therefore, the channelization of competitive aggressive behaviour required new routes. In a technologically competitive world, reliance is more on factors like intelligence, soft skills, etc. So, Ellis opines, those men, in whom aggression fails to find more purposive routes, tend to become more violent physically.⁴⁴

2.5.2 *Linking Violence to Hormones*

According to sociologists, the findings of Ellis can be corroborated by other studies conducted in this field. For example, experimentation and research done by Kandel and Freed show that frequent and chronic exposure to androgens like testosterone are associated with frequent and sudden outbursts of rage, a condition known as “Roid Rage” and clinically termed as “episodic dyscontrol”.⁴⁵ Various other studies in criminal behaviour also seem to suggest that higher testosterone levels are linked with violent crimes. A study conducted by Bradford and Bourget in 1986 also shows that violent sex offenders had very high levels of testosterone in comparison to others.⁴⁶

Some sociologists, in course of their research came across a distinct bio-chemistry of men who indulged in marital violence. They identified lower levels of serotonin in such persons and a high level of testosterone. Serotonin is also known as the “contentment hormone” and a lack of it along with high testosterone is considered to be a potent cause of rage, anger and violence. In 2006, a group of scientists concluded that defects in processing serotonin and testosterone affected made men more violent and threw light on the distinct traits of such people like over-reaction to certain stimuli, hyper-sensitivity to tones, words and looks.⁴⁷ It was also suggested that by administering certain chemicals called Selective Serotonin Reuptake Inhibitors (SSRIs), there can be an increase in blood serum level of serotonin, which might also have the impact of reducing aggression and frequent

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Bourget, Dominique. “Evidential Basis for the Assessment and Treatment of Sex Offenders.” *Oxford Journals: Brief Treatment and Crisis Interventions*, vol.8, no. 1, January 2008, pp. 130-136.

⁴⁷ *Supra* note 46.

outbursts of violence.⁴⁸ So, administering drugs to control aggression was suggested by socio-biological theorists for “curing”, controlling or rectifying violent behaviour in men.

2.5.3 A Roadmap to Evade Culpability

As is evident from the discussion above, there are many shortcomings of the Biological Theory. To begin with, the theory tends to illicitly generalise men who batter women and therefore, it fails to answer why many women, with much lower levels of testosterone have violent tendencies. The Biological Theory clearly suffers from scientific inaccuracy and is therefore, inapplicable as a general explanatory principle.

From a strictly legal perspective, it will be apt to say that the consequences of accepting that certain biological factors are responsible for men indulging in violence against women in a domestic relationship, is disastrous. Since punishment mechanisms are based on the establishment of *mens rea* or intention, confining domestic violence to biological factors would mean that the intention to cause damage was minimal or diluted. This would lead to further victimisation of the victim, which is both unfair and unacceptable. Blaming hormones for conduct which can very well be described as criminal is a controversial proposition and may boomerang to cause even greater harm.

3. The Feminist Critique and New Dimensions: Treating Abusers as Aggressors, Not Patients

Feminists have rejected all models and theories that put the onus of violent conduct on external circumstances and people and not the perpetrator.⁴⁹ Their primary contention is that these theories tend to justify, explain and understand violent men and by doing so, they insist that ‘rectification’ of their conduct is possible through appropriate therapeutic interventions.⁵⁰ These theories portray men as broken individuals who require treatment and not as abusers and aggressors. These theories not only normalise violence but also naturalise it. To worsen things, they also pin the blame on the victim’s conduct and suggest that abusive conduct is encouraged, provoked, demanded and even enjoyed by women.⁵¹

⁴⁸ *Supra* note 32.

⁴⁹ Thomas, Dorothy Q., and Michele E. Beasley. “Domestic Violence as a Human Rights issue.” *Human Rights Quarterly*, vol. 15, no. 36, 1993, p. 41.

⁵⁰ *Supra* note 35.

⁵¹ *ibid.*

Further, these theories point towards domestic violence as a private problem between individuals that can be rectified by counselling or in some cases, medication- thereby, making a case for excluding state intervention.⁵²

Rising feminist discontent and their interventions in these areas led to the idea that domestic violence needed deeper analyses that focussed on showing why violence against women must stop and what reasons contribute to targeting women as victims.⁵³

These feminist concerns were addressed by theorists who presented as behaviour that had found acceptance because of several reasons. Sociological, psychological and evolutionary principles that looked into the problem from the perspective of women as victims and male as aggressors and not passive participants or patients replaced the dated, patriarchal models. These models linked violence against women by their male partners with factors such as power and control triggered by an individual's social position and role. Inequality and not inability, was cited by feminists as the reason for violence and this change triggered the demand for legal protection and state intervention in matters of abuse. A few significant principles are discussed below.

3.1 *Functional Division of Labour and Social Stratification*

3.1.1 *Creating Inequality through Systematic Stratification*

The theory of Functionalism which attained prominence after the publication of the Davis-Moore thesis in 1945, argues that the more important a social function, the higher the reward for it.⁵⁴ It was also used to explain the principle of social stratification, which is seen as consequence of existing inequalities in society. One form of social stratification is "functional division".⁵⁵ For instance, origins of the caste system in India are linked with the need to divide society on the basis of functional division of labour. The division of labour in Indian society gave rise to the caste system, which gradually became hereditary though some scholars claim that it was not meant to be so, originally. Structural models of gender argue that like caste, gender came to be used as an index of division in social institutions as well as

⁵² *Supra* note 49.

⁵³ Goodmark, Leigh. *A Troubled Marriage*, New York University Press, New York, 2011, pp. 54-136.

⁵⁴ Wrong, Dennis H. "Inequality and the Division of Labour." *European Journal of Sociology*, vol. 40, no. 2, 1999, pp. 233-256.

⁵⁵ Crossman, Ashley. "Understanding Durkheim's Division of Labor." *Thought Co.*, 24 October 2019, Available at <https://www.thoughtco.com/mechanical-solidarity-3026761>. Accessed 10 August 2022.

relationships.⁵⁶ The use of gender systematically to stratify society ultimately placed men and women in unequal categories.⁵⁷

3.1.2 *Gender Roles, Economics and Power*

The functional division of labour created numerous layers in the social structure based on competencies and capabilities. In the Indian context, a comprehension of the functional division of labour in society needs to be deliberated on from the perspective of gender roles. For instances, there are references to women being the “queen of the household” in Vedic societies while men were supposed to engage in the public spheres of life and contribute to the household by earning material wealth.⁵⁸ In this way, society tried to divide the roles and functions of men and women in society.

The problem of confining women’s roles to the household was that they were completely divorced from positions of power and responsibility in public life and gradually, labels of inferiority and superiority started being attached to the roles ascribed to men and women. Household functions were treated as repetitive and lacking in intellect and challenges whereas men’s role in public life was more important, rewarding and profitable.

3.2 *Violence as Goal-oriented Behaviour*

3.2.1 *Violence as Instrumental Behaviour*

Studies have shown that men use violence as a modality to exercise control and in this sense, violence is perceived as behaviour directed towards the accomplishment of certain goals. In his research Campbell, an American sociologist revealed that in male dominated societies, violence or aggression are perceived as tools to acquire material or social goals. When men succeed in the accomplishment of these goals by using violence as the modality, they tend to justify and rationalise the use of violence.⁵⁹ According to him, violence is seen as “rational, understandable or reasonable” under such circumstances.⁶⁰ Campbell offers a contrast by comparing such societies with those governed by female centric tasks. He goes on to state that in an ambience where

⁵⁶ Anderson, Kristin L. “Who Gets Out? Gender as Structure and the Dissolution of Violent Heterosexual Relationships.” *Gender and Society*, vol. 21, no.2, 2007, pp. 173-201.

⁵⁷ *ibid.*

⁵⁸ Mondal, Pujja. “Status of Women in Vedic and Post Vedic India.” *Your Article Library*, Available at <https://www.yourarticlelibrary.com/society/status-of-women-in-vedic-and-post-vedic-period/4397>. Accessed 19 August, 2022.

⁵⁹ *Supra* note 3.

⁶⁰ *ibid.*

work centres around caring for others and non-violent behaviour, violence and aggression are seen as redundant, chiefly because they have no role to play in accomplishing goals. In 1994, Campbell and Muncer conducted studies on two categories of groups and found that both men and women working as nurses found the use of violence to be “non-functional”. On the other hand, male and female employees serving in the army found aggression to be “instrumental” in accomplishing goals.⁶¹ His theories were developed further by Florian Kaiser and his colleagues in 2010 to apply this method in resolving larger social issues such as climate change.⁶²

3.2.2 *Making a Case for State Intervention*

Studies conducted by social scientists in this field are significant as they point towards the factors that are conducive to the growth of violence in society. So far, research has conclusively established that in societies and cultures, where violence is excused on one ground or the other, its use is considered as legitimate by offenders. On the other hand, if violence is discouraged, its use in all forms except under extra ordinary circumstances is considered to be illegitimate.⁶³ Indermour writes that if violence is considered to be unacceptable in any society, culture or group, then its use in any form to accomplish any goal whatsoever (except for the purpose of preventing injury) is discouraged and looked down upon.⁶⁴ However, if the focus of agencies of the state is to find fault with the complaint and sequence of events that led to the use of violence, then it is an express denial of responsibility for the use of violence by the aggressor. In short, Indermour points out that by doing so, instrumentalities of the state may actually contribute to the cause of violence and sanction its use as per the individual’s discretion.⁶⁵

3.2.3 *Bringing the Burden Back to Men: Violence as Choice*

All the issues discussed above point towards the direction that men find justification in the use of violence as it provides them with one benefit or the other. That justification is a choice they make with the objective of securing a reward. For some it could be an instrument to accomplish goals, for others, an aid to solve problems or vent frustration. Whatever the end result is, it is aimed at getting a prize at the end and therefore qualifies, in the mind of the offender, as a legitimate tool for attaining the reward.

⁶¹ *ibid.*

⁶² Kaiser et. al. “Reviving Campbell’s Paradigm for Attitude Research.” *Personality and Social Psychology Review*, vol. 14, no. 4, April 2010, pp. 351-367.

⁶³ *Supra* note 4.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

This brings us to the factor of rational choice, a theory used to explain criminal and illegal behaviour by individuals. Almost all scholars indicate that the process of decision-making which leads to the actual violent behaviour is a vital process from the point of view of the offender.⁶⁶ Application of the rational choice theory may help in further analysing the psychological state of the offender. This implies that when men decide to use violence, they rationally choose to do so by weighing the pros and cons of using it. When the benefits outweigh the shortcomings, they go ahead with being violent. Social tendency to excuse violence in private or intimate relationships, tacit approval to use violence against women for chastising them, apathy of social control mechanisms towards family violence- all these factors count as benefits for using violence in intimate relationships. In patriarchal structures, the benefits work more in favour of men than the collective demerits. Historically, feminist scholarship has linked patriarchal⁶⁷ social structures with all forms of violence against women including marital violence.⁶⁸

3.3 *Culture as a Factor*

Speaking of culture, Michael Freeman argues that cultures are important in societies because they provide “meaning, value and guidance to human life”⁶⁹. Culture not only motivates and justifies people’s action and on most of the occasions, provides a sense of identity.⁷⁰ Freeman further argues that apart from providing an environment for people to act, culture also provides modalities to them to legitimise certain outcomes in social relationships. So, cultural patterns and conduct are used to assess the righteousness or otherwise of certain social practices, values, norms and mores.

3.3.1 *Cultural Impunity*

In most societies, cultural impunity of marital violence is an overarching phenomenon. Marital violence has been historically justified, excused and accepted all over the world. Sometimes through religion and on other occasions through literature and social media, violence against women by their husbands has been romanticised⁷¹ and explained, even celebrated⁷². Both western and oriental cultures are privy to the

⁶⁶ *ibid.*

⁶⁷ Weissman, Deborah M. “Law, Social Movements, and the Political Economy of Domestic Violence.” *Duke Journal of Gender Law and Policy*, vol. 20, no. 2, Spring 2012, pp. 221-254.

⁶⁸ *ibid.*

⁶⁹ Freeman, Michael. “Human Rights and Real Cultures: Towards a Dialogue on Asian Values.” *Netherlands Quarterly of Human Rights*, vol. 16, no. 1, 1998, pp. 25-29.

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*

unequal relationships that exist in the family and have at many points of time, rationalised the occurrence of violence against women by their intimate partners.

A general argument advanced in favour of marital violence is that it occurs within the private space of family relationships. Traditionally, legal systems and social structures have conferred greater immunity on matters of the family as intervention of the state in these matters would lead to an undesirable breakdown of families.⁷³ Based on the factor of privacy, certain social constructs were created within various cultures that led to the notion that law should not engage with traditional patterns of support as by doing so, it would endanger social order.⁷⁴

Therefore, various arguments were made to justify existing social order which was premised on justifications of violence based on economic dependency of women, the need for their chastisement and the belief of their general lack of intelligence.⁷⁵ Privacy was also used as an argument to justify marital rape to the extent that it has been granted cultural impunity till date. Cultural practices often indicate that the woman must tolerate and accept marital violence as a part of life.

3.3.2 *Patriarchy and its Prescription to Endure Violence*

An analysis of cultural premises on issues of domestic violence has been made by Kumaralingam Amirthalingam in her research on the efficacy of domestic violence laws in Singapore and Malaysia.⁷⁶ In one of his works, he cites the example of a 26 - year old Malaysian executive who was battered by her husband continuously and approached a religious officer for advice. She was advised by the religious officer to “be patient” and “pray for change”.⁷⁷ She was also told that as a woman that was her role.⁷⁸ The woman went back and continued to stay with her abuser who used to beat her every day.⁷⁹ One day, he beat her so much that her leg broke and she went on crutches to see the religious officer. Finally, he helped her get a divorce from her husband.

⁷³ Pleck, Elizabeth. “Criminal Approaches to Family Violence, 1640-1980”, *Crime and Justice*, vol. 11, 1989, pp. 20- 21.

⁷⁴ *Supra* note 53.

⁷⁵ *ibid.*

⁷⁶ Amirthalingam, Kumaralingam. “A Feminist Critique of Domestic Violence Laws in Singapore and Malaysia.” *Asia Research Institute Working Paper Series*, no. 6, July 2003.

⁷⁷ *ibid.*

⁷⁸ *ibid.*

⁷⁹ *ibid.*

Amirthalingam argues that in most cultures, as a consequence of existing patriarchal structures, women are expected to endure violence in some form and to a certain degree.⁸⁰ In other words, violence to a certain extent against women is acceptable in family spheres. The problem with acceptance of violence in some measure is that it gives offenders the scope to be violent to their partner. The limitations on the use of violence are not relevant at any point of time because what appears externally as an idea of some measure of violence is in reality, an unconditional license to use violence against women in the privacy of family and marital relationships.

Violence against women in all forms, including marital violence is widely prevalent across both European and Asian cultures.⁸¹ In fact, most social systems (and therefore, legal institutions) around the world are governed by patriarchal structures. That is the biggest undoing of women's equality. It would not be right to say that marital violence is relevant only in a certain category of cultures or nation-states. In this context, the United Nations in its 1994 Declaration on the Elimination of all forms of Violence against Women urged all its member nations to do away with such cultural practices, traditions or religious considerations which impede the equality of women with their male counterparts.

3.4 Women as Victims beyond Doubt: Feminist Models of Domestic Violence

The consequence of nuanced correlation of power and control with socio-cultural and economic inequality gave rise to more enduring models of domestic violence that placed women as victims and men as abusers, whose conduct was driven by their choices. In 1989, Kimberle Crenshaw discovered a unique dimension to the theory of violence by highlighting that it is the impact of unequal relationships, which in turn is influenced by various intersectional factors like socio-economic status, race, caste, etc.⁸² Crenshaw's theories have received further support from feminists like Patricia Hill Collins.

Another contribution of feminism to the understanding of violence in family contexts is the Dominance Theory put forth by Catharine A. Mac Kinnon.⁸³ She argues that dominance of one spouse on the other is the reason behind occurrence of violence in families. Such dominance is dependent on configurations of power in relationships.

⁸⁰ *Supra* note 76.

⁸¹ Montoya, Celeste., and Lise Rolandsen Agustín. "The Othering of Domestic Violence: The EU and Cultural Framings of Violence against Women." *Social Politics*, vol. 20, no. 4, 2013, pp. 534-557.

⁸² Crenshaw, Kimberle. "Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color." *Stanford Law Review*, vol. 43, no. 6, July 1991, pp. 1241-1299.

⁸³ Jackson, Emily. "Catharine Mac Kinnon and Feminist Jurisprudence: A Critical Appraisal." *Journal of Law and Society*, vol. 19, no. 2, Summer 1992, pp.195-213.

Since women are more frequently dominated by their spouses in heterosexual relationships, unequal treatment and therefore, violence against them is perpetrated very often.

Feminist scholars maintain that the roots of domestic violence lie in men's desire to exercise power and take active steps to maintain control over women.⁸⁴ What distinguishes marital/intimate/domestic violence from isolated acts of violence is the fact that it is repetitive in nature, depicting a continuous process of subordinating the victim.⁸⁵ Physical violence is only one of the methods of subjecting the victim to oppression. Violent behaviour towards the victim may include verbal and emotional abuse, economic deprivation, stalking, intimidation, reproductive coercion and many other aspects. Social science researchers caution that particular forms of marital violence should not be studied in isolation. Rather they should be studied as an integrated whole in order to explore a pattern of power and control that forms the substratum of the offender's psyche. The chain of abuse distinguishes marital violence from all other forms of violence. The victim's autonomy is relegated into a state of suspension and thereby, she is subjected to the control of the offender. The ability to exercise power by subjugating the victim is the underlying feature of all forms of domestic violence including marital violence.⁸⁶ As a consequence of these models, feminists argued for state intervention in matters of domestic violence and this led to nations adopting anti-domestic violence laws to protect women. While law enforcement in this area still remains a matter of concern, credit goes to feminists for going against the tide to ensure the recognition of domestic violence as a crime and not an ordinary dispute. While this may not be the end of the journey, it is definitely one with a roadmap destined to defend women from violence behind closed doors.

4. Conclusion

From shattering discursive notions such as masochism to rejecting patriarchal undertones, the journey of feminists in setting the tone of victimisation in the context of female abuse has been long and arduous. These theories enabled feminists to argue for state intervention in matters of domestic violence which ultimately led several nations to adopt anti-domestic violence laws. While law enforcement in this area still

⁸⁴ Anderson, Kristin L. "Gender, Status and Domestic Violence: An Integration of Feminist and Family Violence Approaches.", *Journal of Marriage and Family*, vol. 59, no. 3, August 1997, pp. 655-69.

⁸⁵ Mulligan, Steve. "Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation." *Children's Legal Rights Journal Legal*, vol. 29, no. 1, 2009, p.33.

⁸⁶ Lowenstein, L.F. "Domestic Violence Recent Research: Incidence, Types and Causes", *The Police Journal*, vol. 78, no. 2, 2005, p. 147.

remains a matter of concern, credit goes to feminists for going against the tide to ensure the recognition of domestic violence as a crime and not an ordinary dispute. Although this may not be the end of the journey, it is definitely one with a roadmap destined to defend women from violence behind closed doors.

REDUCING PLASTIC WASTE THROUGH LEGISLATIVE INTERVENTION IN INDIA

*Dr. Jaswinder Kaur **
*Ms. Jashandeep Kaur***

1. Introduction

The Earth still contains every piece of plastic we have ever touched. It might still be present, unbroken, or crumbling. From the lowest ocean depths to the highest mountain top, plastic debris can be found everywhere. And each second sees more plastic enters the system. The plastic pollution catastrophe has been elevated so high on the world agenda as a result of this circumstance. Once more, something with the potential to be helpful turned into an unstoppable threat. Based on its fundamental characteristics of malleability, elasticity, and durability, plastic is a necessary commodity with a variety of uses. Plastic, a by-product of the oil and gas refining process, has proven vital to easing our lives¹.

Think of plastic insulation on electric wires that are providing electricity to us other than this plastic has become an important part of life because of its advantages and uses. Plastics are likely to be the best materials for sectors that require designing options, geometry, and various textures. As compared to metals, plastics are far more flexible. When compared to metals, plastics are less expensive. The production of plastic parts is inexpensive. Plastics are extremely strong and can survive for an extremely long time. On the other hand, metals are significantly more vulnerable to weather and chemical exposure. Plastic has a significantly lower specific gravity than metal, making it a very light substance. When compared to the production of metals, plastic is produced more quickly. Other than this plastic is used in our daily lives, from a small pen to parts of buses and cars etc. are made up of plastic. Think of the medical equipment made up of plastic including the personal protective equipment (PPE) that saved many lives during the COVID pandemic.

* Assistant Professor, Rajiv Gandhi National University of Law, Punjab.
Email id: jaswinderkaur@rgnul.ac.in.

** Ms. Jashandeep Kaur, Student member of the Centre for Advanced Studies in Human Rights (CASIHR), Rajiv Gandhi National University of Law, Punjab.
Email id: jashandeepkaur21083@rgnul.ac.in.

¹ Kantai, Tallash. *Confronting the Plastic Pollution Pandemic*. International Institute for Sustainable Development (IISD), 22 December 2020, <https://www.iisd.org/articles/deep-dive/confronting-plastic-pollution-pandemic>. Accessed 20 January 2022.

The technology, agriculture, industries, fisheries, transportation, renewable energy, retail, textiles, personal care goods, and all the other sectors that either directly or indirectly touch our everyday lives are replete with plastics. Additionally, consider the plastic debris that ends up on our beaches and in marine ecosystems, such as bottles, cigarette filters, cups, wrappers, straws, stirrers, flip-flops, and micro-plastics. Plastic has made our lives more convenient, but at a cost that was higher than we had anticipated. Waste products and packaging make up the majority of the plastic pollution that overflows and contaminates the landfills, chokes the waterways, and permeates the ocean. Plastic has a long life span and lasts for more than thousands of years, slowly breaking down into smaller fragments but never completely deteriorating. In fact, one of the main benefits of plastic is its durability but now its durability is becoming a sin rather than giving more benefits. Almost every product that we buy comes in plastic packaging, and many plastic objects are made to be thrown away after one use only. Throwaway plastic is an oxymoron, but it has unfortunately become a part of our sad and perilous reality. We can see large dumps of plastic waste in almost every city and the increasing rate of plastic use is increasing the problem of plastic every day. This is a crisis that we can see with the naked eye. It has a very worse impact on the environment and the climate.

Everything has both pros and cons. The same is the case with plastic, it is useful to us in many ways but it has depleted our environment and it is a great threat to the environment. Most of these are discussed in other parts of this research paper. Due to such harmful effects of plastic many countries are avoiding the use of plastic. Strict actions such as full or partial ban has been imposed on the use of plastic in many countries. Mostly single use plastic is banned as it is difficult to recycle and uses more energy. It is necessary to stop the excessive use of plastic to save the environment, and earth and have a healthy and safe environment. This is the main reason why countries are imposing a ban on single-use plastic. Around 5.6 million metric tonnes of plastic waste is generated annually in India. Therefore, the government has banned single-use plastic recently. It has been viewed that plastic pollution or plastic is harmful to the humans and environment and in India every person has the right to a safe and clean environment under the Right to life. Plastic pollution is a threat to the environment and it endangers the life of humans. There are various laws in the country that deal with plastic, plastic waste, and plastic pollution. In this research paper, the researcher has tried to analyse those laws and also how these laws are implemented in the present scenario. This has been discussed in detail in this research paper.

2. Ban on Plastic

Banning of a product means to prohibit its use, especially using legal means. A ban on plastic has been imposed to strictly prohibit its use. Various countries around the world are taking strict steps to control plastic pollution². Banning single use plastic is one of them. Recently, India has also banned single use plastic. Before knowing about banning we need to know that why is there a need to ban plastic. There are various reasons why plastic has been banned. Some of them are discussed here³.

The biggest threat posed by plastic bags is the numerous ways in which they affect the ecosystem. Plastic bags harm both the land and the water since they are lightweight and may travel enormous distances by water and wind. Moreover, these plastic bags are made from non-renewable elements. Most plastic bags are made of polypropylene, an element produced from gas and oil. These are non-renewable resources that rely on fossil fuels and have an adverse effect on the climate. Ironically, we are exploiting non-renewable resources to manufacture a product that affects the environment and has very negative effects on nature and biodiversity. It has very harmful effects on the environment and biodiversity.

Several reports claim that a significant amount of energy is needed to produce plastic. Nine plastic bags are produced with the same amount of energy as one kilometre of car operation (more than 0.5 miles). It is not a smart idea to use these non-renewable and significant resources to produce plastic bags because they only endure for 12 minutes. It can be difficult to recycle plastic bags as well. Most plastics can't be recycled. Although some plastic bag types can be recycled, many of the plastic bags could not be recycled and many industries lack the equipment or facilities to do so. "The real recycling rate for the plastic bags is between 5 percent to 6 percent, according to various estimates". It is very difficult to recycle thin plastic like polythene. There is lack of technology to recycle such plastic and also it consumes a lot of energy to recycle such plastic. The plastic which cannot be recycled is more harmful. It is non-biodegradable; thus it remains in environments even after hundreds of years. Large amounts of plastic waste can be seen in landfills and water bodies which when mix with environment creates a lot of problems. It is harmful for humans as well as animals and environment.

² "Where is single-use plastic banned in the world?" *Business Today*, 3 October 2019, <https://www.businesstoday.in/latest/economy-politics/story/not-just-india-countries-already-banned-singleuse-plastic-232598-2019-10-03>. Accessed 20 January 2022.

³ Thompson, Richard C., et. al. "Plastics, the Environment and Human Health: Current Consensus and Future Trends." *Philosophical Transactions: Biological Sciences*, vol. 364, no. 1526, 2009, pp. 2153–66.

Plastic bags wind up in the ocean because they cannot be recycled. They disintegrate into teeny fragments as they reach, and wildlife eats them. “Every square mile of the world’s oceans is thought to contain 46,000–1,000,000 floating pieces of plastic⁴. They are frequently mistaken for food by animals, birds, and marine life including fish, whales, and sea turtles because of their size. As a result, their digestive system would become clogged, which could result in diseases or even death from suffocation”. Additionally, many creatures become entangled or stuck. The plastic waste in ocean threatens the life of the marine animals⁵.

The effects of plastic on human health are very negative. The blood and organs can be harmed by the toxic substances in plastic bags. Repeated exposures can lead to cancers, birth defects, lowered immunity, hormonal changes, endocrine disruption, and other serious illnesses. As was already stated, it has caused a number of chronic diseases. Additionally, because there is a lack of a secure and healthy environment for people in India, it threatens or violates their right to life.

3. International Perspective on Plastic Ban

While the plastic ban is being implemented in India, it has already been outlawed completely or in part in almost 60 other nations. For instance, single-use plastic has been outlawed in numerous US communities, including San Francisco and Seattle. Cities like Washington, DC, and Boston have levied charges on plastic bags to discourage people from using them.

In 2017, Kenya outright outlawed plastic bags. A \$40,000 fine or imprisonment might be imposed on anyone who disobeys the rule⁶. Rwanda is the second African nation after Kenya to outright forbid the use of plastic. In addition to the fines imposed, the Rwandan authorities even check the car at border crossings for any packing or plastic bags. Styrofoam containers are likewise prohibited in Zimbabwe; failure to comply with this rule can result in fines of up to \$5,000.

France has previously prohibited plastic bags, but in 2016 it also outlawed plastic

⁴ Wilcox, Chris., et. al. “Threat of Plastic Pollution to Seabirds Is Global, Pervasive, and Increasing.” *Proceedings of the National Academy of Sciences of the United States of America*, vol. 112, no. 38, 2015, pp. 11899–904.

⁵ Mearns, Alan J., et. al. “Effects of Pollution on Marine Organisms.” *Water Environment Research*, vol. 87, no. 10, 2015, pp. 1718–1816.

⁶ Anami, Luke. “Kenya’s single use plastic ban takes effect.” *The East African*, 8 June 2020, <https://www.theeastafrican.co.ke/tea/news/east-africa/kenya-s-single-use-plastic-ban-takes-effect-1442902#:~:text=By%20LUKE%20ANAMI,Kenya's%20decision%20to%20ban%20single%20use%20plastic%20products%20in%20all,Conference%20in%20Canada%20last%20year>. Accessed 20 January 2022.

cups, plates, and utensils⁷. Additionally, the administration of Justin Trudeau chose to take the required actions to lessen plastic pollution in Canada. In Canada, efforts are being made to outlaw plastic bags, bottles, and straws as early as 2021. However, plastic goods are already prohibited in Montreal. If detected, one could be fined up to \$1,000 by Canadian authorities. Since last year, Taiwan has prohibited the use of plastic bags, straws, utensils, and cups. Plastic bags are no longer allowed at South Korea's large supermarkets. The average fine for violators is \$2,700.

Bangladesh was the first nation to outlaw thinner plastic bags in 2002⁸. In 2016, Morocco imposed a state wide ban on the manufacture and use of plastic bags. According to the Moroccan Ministry of Industry, the nation uses about 3 billion plastic bags annually, making it the second-largest consumer of the material behind the United States.

Jacinda Ardern, the prime minister of New Zealand, outlawed plastic bags in 2018. With stronger restrictions and a prohibition on the import of plastic bags and Styrofoam products, the island nation of Antigua and Barbuda also hopes to outlaw single-use plastic in the upcoming years.

4. Ban on Single Use Plastic in India

In order to reduce the pollution caused by unmanaged and discarded plastic waste, "the Plastic Waste Management Amendment Rules, 2021 were issued by the Ministry of Environment, Forests, and Climate Change of the Government of India on August 12, 2021. The production, import, stocking, distribution, use, and sale of single-use plastic (SUP) products that have a high propensity for littering have also been outlawed in India". India being a party to United Nation Environment Assembly signed a resolution or an agreement that will be legally binding for the signatories to address the full cycle of the plastic from its production to its disposal⁹.

This ban is specifically for single use plastic and it will not be applied to the commodities which are made of compostable plastic¹⁰. The government has given ten

⁷ "French ban on plastic packaging for fruit and vegetables begins." *BBC News*, 31 December 2021, <https://www.bbc.com/news/world-europe-59843697>. Accessed 20 January 2022.

⁸ "Bangladesh: world leader in banning plastic bags." *Ecospearbd*. Accessed 20 December 2022.

⁹ Bajpai, G.S., and Sangeeta Taak. "Effecting the ban on single-use plastics." *The Hindu*, 2 September, 2022, [https://www.thehindu.com/sci-tech/energy-and-environment/effecting-the-ban-on-single-use-plastics/article65836277.ece#:~:text=Since%20July%201%2C%202022%2C%20India,Nations%20Environment%20Assembly%20\(UNEA\)](https://www.thehindu.com/sci-tech/energy-and-environment/effecting-the-ban-on-single-use-plastics/article65836277.ece#:~:text=Since%20July%201%2C%202022%2C%20India,Nations%20Environment%20Assembly%20(UNEA).). Accessed 20 December 2022.

¹⁰ *Supra* note. 1

years from the date of notification to industry for compliance and banning other plastic goods other than those that have been included in the notification. The government has currently permitted 50 microns' thickness of the plastic bags. It will be increased on 30th September 2021, from 50 microns to 75 microns and then to 120 microns by the end of the 2022 i.e. from 31st December, 2022. The plastic bags with lesser thickness are difficult to recycle and handle while bags with higher thickness have high recyclability and can be easily handled as waste.

Single-use or throwaway plastics are only used once before being discarded or recycled. Plastic has supplanted all previous packaging materials because it is so affordable and practical, but it takes hundreds of years to degrade¹¹. According to the statistics, 43% of the 9.46 million tonnes of plastic garbage produced annually in our nation is single-use plastic. Additionally, petroleum-based plastic is not biodegradable and is typically dumped in a landfill or washes into a body of water before entering the ocean. "The harmful chemicals that were employed to form and harden the plastic are released as it breaks down and end up in our food and water supplies". India is dedicated to taking measures to mitigate the pollution created by littered single use plastics, which has emerged as a significant environmental concern for all nations¹². India served as the lead nation on a resolution to combat pollution from single-use plastic goods at the 4th United Nations Environment Assembly in 2019.

We must decide to completely outlaw the use of plastic bags for the reasons listed above. Regional governments have attempted to tax plastic consumption in the past, but such efforts have proved ineffective. If we continue to use plastic bags, the negative impacts will only get worse and it will be too late to make any more adjustments. In order to prevent inconvenience for people following the prohibition, we must first make sure that we have access to adequate replacements. Since our planet is the only place we can call home, it is crucial that we take all necessary steps to preserve it as soon as possible.

5. Laws to Regulate Plastic Waste

There are many laws in the country to protect the environment and ensure a safe and healthy environment for the people living in the country. The parliament of India intervenes from time to time to make laws to ensure the cleanliness of the

¹¹ "Single-Use Plastic: Ban, Definitions and What Is Being Done." *Managing Plastic Waste in India: Challenges and Agenda*, Centre for Science and Environment, 2020, pp. 21–26.

¹² "Ban on Single-Use Plastic." *Drishti IAS*, 14 August 2021, <https://www.drishtiiias.com/daily-news-analysis/ban-on-single-use-plastic-1>. Accessed 20 December 2022.

environment. Treatment of plastic waste is an important concern in today's time therefore the parliament has made several laws to manage plastic waste and to ban single-use plastic.

5.1 Right to Life and Article 21 of the Constitution

Everybody has the right to life, liberty, and the pursuit of personal safety. The right to life is without a doubt the most fundamental of all liberties. All other rights, which improve the quality of the life at question, must exist for all other rights to function. Given that human rights can only apply to living things, it is possible to assume that the right to life itself would be in some ways paramount. Without it, none of the other rights would have any significance or usefulness. There wouldn't have been any important basic rights if Article 21 of the Indian Constitution had been applied in its original setting. This part will examine how the supreme court of India has construed and applied the right to life.

Article 21¹³ of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to the procedure established by law". The term "life" as used in "Article 21 of the Constitution" refers to more than just breathing. It does not imply a life of pure hardship or just perpetual animal existence. It has a much broader definition that encompasses all rights like the right to a decent life, the right to a means of support, the right to health, the right to clean air, etc. that are necessary for human survival. Our right to life, which encompasses all the elements that contribute to a man's life being meaningful, full, and worthwhile to live, is fundamental to our basic existence and without which we cannot survive as humans. Only this article of the Constitution has been given the broadest interpretation. So many rights have found protection, room to expand, and sustenance under Article 21. The core idea behind the right to life is therefore that everyone has the absolute minimum that is necessary and inevitable for them.

The right to clean water and air is part of the right to life. In *Subhas Kumar v. State of Bihar*¹⁴, it was decided that a Public Interest Litigation could be brought to ensure that people might enjoy clean water and air, which are protected by Article 21 of the Constitution as part of the "right to live." The court in this case observed that:

Right to live is a fundamental right under Article 21 of the constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a

¹³ The Indian Constitution, Article 21.

¹⁴ *Subhash Kumar vs. State. of Bihar*, 1991, 1 SCC 598.

citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

5.1.1 Right to Clean Environment

According to Article 21 of the Indian Constitution¹⁵, “a person has the right to a dignified life in an environment free from the threat of diseases and infection. As they negatively impact residents’ quality of life, amount to slow poisoning, and shorten their lives due to hazards produced if not controlled, maintenance of health, preservation of sanitation”, and the environment have been held to fall under the jurisdiction of Article 21.

5.2 The Environment (Protection) Act, 1986

The United Nations Conference on the Human Environment held in June 1972 in Stockholm in Sweden, served as the catalyst for the creation of this law by pledging to take appropriate action to safeguard and enhance the human environment.

The Environment (Protection) Act of 1986, *Section 3*, “grants the Central Government the authority to take any and all actions it considers necessary to protect and improve the quality of the environment, as well as to prevent, control, and lessen the environmental pollution”.

The Environment (Protection) Act of 1986, *Section 6*, gives the federal government the authority to enact rules pertaining to all or any of the topics mentioned in *Section 3* of the aforementioned act by publication in the Official Gazette.

People handling hazardous substances are required by *Section 8* of The Environment (Protection) Act, 1986, to follow any procedural safeguards that may be established at any moment by the government.

According to *Section 25* of the Environment (Protection) Act of 1986, for the purposes of carrying out the Act, the central government is empowered to issue regulatory requirements that specify things like the limits beyond which environmental pollutants cannot be discharged or emitted, the safety precautions that must be followed when handling hazardous substances, and other things.

The environment (protection) act is an act that deals with environmental issues and it is an important statutory law to regulate the practices which are harmful to the environment. Various sections of this act give the power to the central government to make laws for the betterment of the environment and to tackle the problem of

¹⁵ The Indian Constitution, Article 21.

pollution. Plastic pollution and proper management of plastic waste is an important concern in the present scenario. Therefore, the central government as well as the hon'ble supreme court has made laws and imposed regulations from time to time so that the harmful pollutants or elements that affect the environment should be removed from the environment.

5.3 The Plastic Waste (Management and Handling) Rules, 2011

A detailed condition for carry bags has been specified under the Plastic waste rules 2011:

- i. According to these rules, the carry bags should be made without any added pigments or made with colorants or pigments which confirm the Indian standards.
- ii. The carry bags should not be made up of virgin plastic or recycled compostable plastic which is less than 40 microns in thickness. No person shall manufacture, distribute, stock, or sell such bags.
- iii. No bags made of recycled or compostable plastic shall be used for carrying, storing, or packing food items by any person.
- iv. Plastic sachets shall not be used to manufacture gutka, paan masala or any tobacco product.¹⁶

It has also provided rules for the management of plastic waste:

- v. Plastic garbage must be recycled, recovered, or disposed of in accordance with the guidelines and standards established by the central government.
- vi. Plastic recycling must be done in line with Indian Standard.
- vii. The municipal body is in charge of establishing, implementing, and coordinating the waste management system.
- viii. The local authority may request that the manufacturers set up plastic waste collection centres, either jointly or individually, in accordance with the Extended Producer's Responsibility (EPR) principle, and to contribute the necessary funds to fund the establishment of such a collection centre.
- ix. Additionally, it stated that the procedures of the Indian Standards must be followed when determining the degree of plastic material's degradability and degree of disintegration.
- x. It also stipulated registration requirements for producers or recyclers, stating that anyone producing or planning to produce carry bags and multi-layered

¹⁶ The Plastic Waste (Management and Handling) Rules, 2011.

plastics must submit an application to the State Pollution Control Board¹⁷ (SPCB) and Pollution Control Committee¹⁸ (PCC) for registration or registration renewal.

- xi. The price of carry bags has also been set at a maximum that will be decided by local authority.
- xii. Additionally, it has been stipulated that a “State Pollution Control Board or Pollution Control Committee must draught and submit an annual report to the Central Pollution Control Board by September 30 of every year. The Central Pollution Control Board is required to create a consolidated annual report and submit it to the Central Government by December 30 of every year”.

These rules have mentioned various conditions which are really very impressive and can help a lot to protect the environment. But even after about ten years of these rules the problem of plastic and plastic waste management has not come to an end. With the advancement of technology and development of the country the plastic pollution is rising. The real problem lies with the implementation of these rules. Thus both the central government as well as state governments should focus on implementation of these rules.

5.4 Plastic Waste Management (Amendment) Rules, 2018

The Plastic Waste Management (Amendment) Rules, 2018¹⁹, were created by the Central Government in accordance with the authority granted under” *Sections 3, 6, and 25* of the Environment (Protection) Act of 1986²⁰ and in substitution of the Plastic Waste (Management and Handling) Rules, 2011”²¹. All garbage producers, local governments, Gram Panchayats, manufacturers, importers, and producers are subject to these regulations.

These regulations clearly define the term “extended producer’s responsibility,” which refers to the obligation of the producer to manage a product in an ecologically sound and prescribed manner up until the end of its useful life.

¹⁷ They supplement the CPCB as they are a statutory organization entrusted to implement Environmental Laws and rules within the jurisdiction of a state.

¹⁸ They perform similar functions to SPCB. The difference between the two is that PCC belongs to Union territories.

¹⁹ Plastic waste Management (Amendment) Rules, 2018.

²⁰ The Environment (Protection) Act, 1986, Ss. 3, 6, 25.

²¹ The Plastic Waste (Management and Handling) Rules, 2011.

In order to create a more environmentally friendly atmosphere, it has placed restrictions on the production, importer stocking, distribution, sale, and use of carry bags, plastic sheets, or other items of a similar nature, or covers made of plastic sheets.

It has further stipulated that local bodies must manage plastic waste in their separate jurisdictions. “Each municipal entity is responsible for creating the necessary infrastructure for the segregation, collection, storage, transportation, processing, and disposal of plastic refuse, either independently or in collaboration with outside organizations or manufacturers”²².

Along with the duties of producers, importers, and brand owners, it has also explicitly stated the responsibilities of gram panchayats and waste generators.

The plastic waste management (amendment) rules 2018, has majorly focused on the producers of waste. It has put the responsibility on the garbage producers to use the product in an ecological manner until its usual life ends. These amendment rules have given separate jurisdiction to the local bodies so that they can manage the waste of the local areas at their own level. This will help in the effective management of waste. Various duties are prescribed to the local bodies along with the producers, importers, and waste generators.

The only lapse that is found in this amendment is that no proper provisions or rules are made for the manufacturing units that produce the waste. If the check is imposed on the factories or the industries that are making the plastic bags or products then it will reduce plastic waste in an effective manner²³.

5.5 Draft of Plastic Waste Management (Amendment) Rules, 2021

In order to implement certain changes to the 2016 Plastic Waste Management Rules, the Central Government intends to issue regulations in accordance with the authority granted by Environment (Protection) Act, 1986 under *sections 6, 8, and 25*.

From January 1st, 2022, it is proposed to outlaw the production, importation, stocking, distribution, sale, and use of single-use plastic products such as balloon sticks, flag sticks, candy sticks, ice cream sticks, and earbuds with plastic sticks. It

²² Parrey, ArifAyaz. “Dry Waste Management.” *Model Framework for Segregation: Guidelines for Managing Municipal Solid Waste through Segregation, Reuse and Recycling*, Centre for Science and Environment, 2018, pp. 21–27.

²³ Sareen, Rajneesh, et. al. “Waste.” *Green Sense: Residential Campus Inventory*, edited by Tanya Mathur, Centre for Science and Environment, 2018, pp. 45–58.

would also outlaw the use of polystyrene (Thermocol) for decorations²⁴.

Additionally, it suggests that beginning on July 1, 2022, the following single-use plastic products be banned from production, import, stocking, distribution, selling, and use:

- i. “Plates, cups, glasses, cutlery like forks, spoons, knives, straws, trays, and wrapping/packing films around candy boxes, invitation cards, cigarette packets, plastic/PVC banners less than 100 microns, and stirrers are examples of single-use plastic products (including polystyrene and expanded polystyrene)”.
- ii. Products made of compostable plastic material, such as tote bags, are exempt from the provisions above.

It is suggested that the new Plastic Waste Management (Amendment) Rules, 2021 be enacted in three phases beginning this year and ending in the middle of 2022. With effect starting on September 30, the first set of regulations has been suggested for plastic bags. According to the regulations, each sheet of non-woven plastic carry bag cannot be thinner than 240 microns (60 GSM per square metre). With effect from the same date i.e. 30th September, the carry bags that are composed of the virgin plastic or recycled plastic should be less than 120 microns. The second stage of these rules will go into effect on 1st of January of the following year and will prohibit the sale, use, manufacture, stocking, import, and distribution of six categories of single-use plastic, including candy sticks, ice cream sticks, balloon sticks made of plastic, flags made of plastic, and earbuds with plastic sticks. The inventory of prohibited items will expand in the third stage, which begins on July 1, 2022. It will include disposable plastic plates, cups, glasses, cutlery like forks, spoons, and knives, straws, trays, invitation cards, cigarette packs, and plastic/PVC banners smaller than 100 micron in thickness, and stirrers.

The government has also demanded that the Central Pollution Control Board (CPCB) create a centralised online portal by March 31st, 2022, for the registration and filing of yearly returns by producers, importers, and brand-owners, as well as processors of plastic garbage.

Under the 2016 Plastic Waste Management Rule, it would serve as the single point data repository for orders and guidance pertaining to the implementation of EPR for plastic packaging.

²⁴ Draft of Plastic Waste Management (Amendment) Rules, 2021.

To protect and improve the quality of the environment and to prevent, control, and mitigate environmental pollution, environmental compensation will be assessed based on the polluter pays principle with respect to the non-fulfilment of EPR goals by producers, importers, and brand owners.

Regardless of motivation, the Polluter Pays Principle holds those who contaminate the environment responsible for making reparations and restoring the environment to its pre-pollution condition²⁵.

It will encourage the creation of fresh plastic substitutes and offer companies a road map for switching to sustainable plastic packaging. The recommendations offer a structure for enhancing the circular economy of waste plastic packaging. In order to establish a closed-loop system and minimise resource use, waste production, pollution, and carbon emissions, a circular economy relies on reuse, sharing, repair, refurbishment, remanufacturing, and recycling of resources. These are crucial actions for lowering the pollution that the nation's discarded plastic refuse causes.

The amount of plastic waste produced yearly in India is around 3.4 million tonnes. By 2024, the United Nations Development Program wants to handle plastic waste in 100 cities throughout India, nearly tripling its current capacity.

This draft has prescribed various rules and regulations but it has few drawbacks also as the blanket ban on the use and manufacture of the single use plastic will not stop the manufacturers of single use plastic to manufacture it. Additionally, it will take a long way in finding the substitute for single use plastic and it is a difficult task to provide alternative livelihoods producers, waste pickers and other groups who are involved in this business of plastic in the scenario when there is immense poverty and scarce of employment or means of livelihood²⁶. Furthermore, the government should provide incentives to the producers and other concerned stakeholders instead of imposing fines. Along with this there should be proper mechanism to monitor and promote responsible consumerism. Lastly, and the most important thing is to bring change in the behaviour of the citizens and their contribution by not littering and by helping in the segregation and management of waste at the individual level.

²⁵ Nagarajan, Aravindhan. "Dealing with India's Plastic Waste: Why Single-Use Plastic Bans May Not Work." *India International Centre Quarterly*, vol. 46, no. 3/4, 2019, pp. 184–95.

²⁶ Singh, Siddharth G. "Plastic Recyclers." *The Plastic Life-Cycle*, edited by Souparno Banerjee, Centre for Science and Environment, 2022, pp. 55–63.

6. Conclusion

Considering the difficulties encountered during the execution of the Plastic Waste Management (Amendment) Rules from 2018 and the Environment (Protection) Act from 1986 The Plastic Waste Management (Amendment) Regulations, 2021 are in draught form with the central government.

According to a preliminary study of State-level regulations restricting or outlawing the use of plastic carry bags and some other single-use plastic items, there have been numerous difficulties in putting these rules into practice. However, it seems that some States have had a lot of success. It is suggested that a ban on the production, use, sale, import, and handling of some single-use plastic items be put in place due to the high environmental consequences associated with regulating single-use plastics, especially their detrimental effects on the marine environment, and the need for strong action to supplement the initiative that is taken by various States/Union Territories to overcome plastic pollution.

To stop our ecosystem from getting any worse, strict adherence to the aforementioned laws is urgently required. Problematically, plastic not only threatens the lives of marine and terrestrial animals but also pollutes the air, water, and land, having a negative effect on human existence. It is important to conduct a thorough analysis of the laws in the other countries and to determine why they are not effectively implemented in India. Then, the government of the relevant state must introduce a law that is effective and adheres to international standards, along with awareness-raising campaigns for its citizens.

POSTPARTUM DISORDERS AND THE DEFENSE OF INSANITY IN MATERNAL FILICIDE CASES: AN ANALYSIS

Sreeparvathy G*

1. Introduction

The death of own child is possibly one of the most dreadful nightmares for a mother. Yet, cases where children become victims of homicide by their mothers, commonly referred to as maternal filicide, are not rare.¹ Such incidents very often evoke a strong sense of resentment and anger from the general public. Beyond the shock and anger such a blood-boiling crime may evoke in the family and community, deeper issues must be of concern to the state and society. The social, cultural and economic factors that force a mother to take this unfortunate step warrant serious consideration by social scientists, including lawyers. A survey of decided cases from Indian High Courts shows that factors such as preference for male child,² poverty,³ unwanted pregnancy,⁴ family disputes⁵ and mental health issues⁶ as motives behind cases of filicide by mothers.⁷

Mental health issues, most often caused or triggered by childbirth or lactation, can be identified as one of the prime causes in maternal filicide cases involving children below one year. Modern medical research confirms the possibility of women developing mental illnesses or mental disorders post-childbirth and such disorders are collectively designated as Postpartum Disorders (*hereinafter* PPDs). It can be seen from research that, maternal filicide cases on account of PPDs are either neonaticides (killing of the child within the first 24 hours after birth) or

* Research Scholar, School of Legal Studies, Cochin University of Science and Technology.

¹ A survey by the author found 11 cases (reported by media and confirmed by FIR) of maternal filicide between February 2020 and September 2021 in the State of Kerala alone.

² Female infanticide is a major reason for maternal filicide. See cases such as *Kalaiyarasi v. State* MANU/TN/0891/2009, *Manju v. State*, MANU/DE/0601/2010.

³ *In Re: Sreerangayee*, MANU/TN/0656/1972, *In Re Parvathy Ammal*, MANU/TN/0393/1959, *Kulandai Ammal v. State*, MANU/TN/1327/1999.

⁴ *Cheluvu v. State of Kerala*, MANU/KE/1126/2019.

⁵ *Poovammal v. State*, MANU/TN/0189/2012, *Sabitridas v. State of Tripura*, MANU/TR/0218/2020.

⁶ Cases of maternal filicide on account of mental health issues are discussed in latter parts.

⁷ It is to be noted in this context that most of these cases have resulted in acquittal on account of insufficient evidence giving the accused the benefit of doubt. Even in cases of conviction punishments given were minimal, mostly recommending remission or commutation. See for instance the decision in *infra* note 66.

infanticides (killing beyond 24 hours after birth, but before 12 months).⁸ According to the Indian Penal Code, it is considered culpable homicide.⁹ This is in contrast to the legal position in jurisdictions such as the United Kingdom, where the liability of the accused mother is only for a separate and less serious offence of ‘infanticide.’

In such a scenario, ‘unsoundness of mind’ or the defence of insanity is the provision accused mothers suffering from PPD often resort to. However, defence of insanity, as provided under Sec. 84 of the Indian Penal Code (*hereinafter* IPC) requires the accused to prove that she was legally insane at the relevant point of time. In other words, the defense of insanity requires the accused to prove mental incapacity to the extent required by law beyond a medical diagnosis of mental illness. The question of how far PPDs would pass the threshold of legal insanity contemplated under Sec.84 of the Indian Penal Code is the central issue addressed in this paper. To detail, the paper seeks to analyze the defense of insanity in the light of the available medical literature on postpartum disorders in order to see how far the existing statutory provision and judicial interpretations come as a reprieve for filicidal mothers suffering from PPDs. Although it is a question where medical opinions and individual facts of the case might play a significant role, the paper intends to assess the existing medical and legal literature. The paper will also look into the legal positions of other jurisdictions where the principle of diminished responsibility is recognized. Part II of the paper discusses medical literature on PPDs in order to understand their nature, types, and characteristics. Part III details the defence of insanity and attempts to evaluate whether PPDs are likely to qualify the test of legal insanity. Part IV analyses Indian cases where the defence of insanity is pleaded in order to see how Indian courts have appreciated PPDs in maternal infanticide cases. Part V provides a comparative perspective outlining the two approaches adopted by various jurisdictions with respect to PPDs. Part VI makes the concluding remarks.

⁸ Dobson, Velma, and Bruce D. Sales. “The Science of Infanticide and Mental Illness.” *Psychology, Public Policy and Law*, vol. 6, no. 4, pp. 1098–1112.

⁹ See explanation 3 to Sec. 299 IPC where it is said that causing death of a child in mother’s womb is not homicide. However, it may amount to culpable homicide, if any part of the child has been brought forth, even though the child may not have breathed or been completely born. Thus, a mother who causes the death of her child even in the course of birth can be tried for culpable homicide.

2. Understanding Postpartum Psychiatric Disorders

Postpartum Psychiatric Disorders (PPDs) are a group of mood and anxiety disorders that may affect women post-childbirth. Postpartum period refers to the period following childbirth for up to one year. The period following childbirth is often challenging for women on account of the physical as well as emotional strain associated with childbirth and child care. It is estimated that almost 85% of women experience mood disturbances during the postpartum period though the gravity of symptoms varies.¹⁰ They are also referred to as puerperal psychiatric disorders particularly in early literature.¹¹ Incidence of postpartum disturbances in women has been recorded since the 4th century B.C. Hippocrates seems to have recorded a severe case of “insomnia and restlessness” in a woman who had given birth to twins, six days post-partum.¹² Modern medicine recognizes childbirth as one of the most potent triggers of psychiatric illness.¹³ It can be seen from the literature that knowledge and awareness about PPDs have expanded immensely in the last couple of decades. According to research, PPDs can manifest in a variety of forms such as postpartum depression, Post-Traumatic Stress Disorder (PTSD), eating disorders, postpartum psychosis, obsessive-compulsive disorders (OCD), and Generalized Anxiety Disorder (GAD).¹⁴ However, academic literature commonly divides PPDs into three overlapping categories: baby blues or postpartum blues, postpartum depression, and postpartum psychosis. For instance, Cohen classified postpartum depressive disorders into three overlapping categories. 1) postpartum blues, 2) non-psychotic major depression, and 3) puerperal psychosis.¹⁵ These three disorders can be understood as forming a spectrum¹⁶ or continuum¹⁷ of mood disorders in which postpartum blues is the

¹⁰ Cohen, Lee S. et al. “Treatment of Mood Disorders During Pregnancy and Postpartum.” *Psychiatric Clinics of North America*, vol. 33, no. 2, 2010, pp. 273–293.

¹¹ Puerperal period refers to the six weeks following childbirth. The term puerperal psychiatric disorders is often used in earlier literature in place of postpartum psychiatric disorders which is mostly used now.

¹² Davidson, Michael J. “Feminine Hormonal Defenses: Premenstrual Syndrome and Postpartum Psychosis.” *The Army Lawyer*, vol. 9, no. 1, 2000, pp. 5-19.

¹³ Meltzer-Brody, Samantha, et al. “Postpartum Psychiatric Disorders.” *Nature Reviews Disease Primers*, vol. 26, no. 4, 2018.

¹⁴ Ibid at 1.

¹⁵ Cohen et al. *supra* note 10 at 276.

mildest and postpartum psychosis is the severest.

Researchers have identified a number of factors that may be responsible for the onset of PPDs. Such factors may be categorized as psychosocial or biological. Psychosocial factors such as history of trauma, history of psychiatric disorders,¹⁸ history of domestic violence or abuse, impaired mother-infant attachment, current life stressors, lack of social support, and lack of coping skills are some of them. Poverty, young age, substance misuse, increased parity,¹⁹ multiple births, unwanted pregnancies, neuroticism,²⁰ pregnancy complications, obesity and comorbidities, and neonatal problems are identified by some other studies. In addition, there are biological factors such as genetics, neuroimmune factors,²¹ hormonal alterations associated with pregnancy and childbirth, and sleep alterations that contribute to the onset of PPDs.²² However, the relative prominence of these factors varies from case to case. For instance, it is reported that biological factors might have a greater role in triggering postpartum psychosis, while psychosocial factors might have an important contribution in postpartum depression.²³ In women who have a history of psychiatric diseases, childbirth can act as a trigger and thus are more vulnerable to PPDs. For instance, women who have bipolar disorders are said to be at higher risk of developing

¹⁶ Norhayati, M.N., et al. "Magnitude and Risk Factors for Postpartum Symptoms: A Literature Review." *Journal of Affective Disorders*, vol. 175, no. 1, 2015, pp. 34–52.

¹⁷ Cohen et al., *supra* note 10 at 276.

¹⁸ For instance, it is observed that persons with bipolar disorders are more at the risk of developing postpartum psychosis. Similarly, people with previous history of mood disorders are at the risk of developing postpartum depression and postpartum psychosis. See generally Meltzer-Brody et al., *supra* note 12.

¹⁹ Parity is defined as the number of times that she has given birth to a foetus with a gestational age of 24 weeks or more, regardless of whether the child was born alive or was stillborn. Gravidity and Parity Definitions (Implications in Risk Assessment) | Patient, <https://patient.info/doctor/gravidity-and-parity-definitions-and-their-implications-in-risk-assessment> (last visited Mar 15, 2022).

²⁰ Widiger, Thomas A., and Joshua R. Oltmanns. "Neuroticism is a fundamental domain of personality with enormous public health implications." *World Psychiatry*, vol. 16, no.2, 2017, pp. 144–145. (Neuroticism is the trait disposition to experience negative effects, including anger, anxiety, self-consciousness, irritability, emotional instability, and depression)

²¹ Pregnancy and early postpartum period are characterised by an accelerated immune response on account of medications for healing administered for healing and involution. These immune changes can also cause postpartum depression. Meltzer-Brody et al., *supra* note 12 at 6.

²² *Id.* at 4.

²³ *Id.* at 3.

postpartum psychosis.²⁴ In order to analyse whether these disorders can potentially be legal insanity, each type in the spectrum needs to be looked into in some detail.

2.1 *Postpartum Blues*

Baby blues or postpartum blues are the most common and least severe of the PPDs. Some scholars do not even include it in the category of PPDs.²⁵ It is characterized by mild mood and anxiety symptoms that last only less than a couple of weeks and will resolve without treatment²⁶ and much after effect.²⁷ It is reported that about 25-85% of women have experienced symptoms of baby blues such as diminished appetite, crying, irritability, anxiety disorientation and mood swings.²⁸ Other symptoms of postpartum blues include brief crying spells, anxiety, sadness, poor sleep, confusion, and irritability.²⁹ Clinically baby blues appear within a few days of delivery and last from a few hours to a few days.³⁰

2.2 *Postpartum Depression*

According to World Health Organisation, postpartum depression is a mild behavioural disorder that begins six weeks after delivery.³¹ The Diagnostic and Statistical Manual of Mental Disorders defines postpartum depression as “a depressive episode with moderate to severe severity that begins four weeks after delivery”.³² However, many experts in the field consider the onset of depression symptoms to twelve months after delivery.³³ In general, it may be said that postpartum depression is a “clinical depression occurring during the weeks and

²⁴ *Id.* at 2.

²⁵ *Id.* at 1.

²⁶ Norhayati et al., *supra* note 15 at 35.

²⁷ Meltzer-Brody et al., *supra* note 12 at 1.

²⁸ Manchester, Jessie. “Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women.” *Journal of Criminal Law and Criminology*, vol. 93, no. 2-3, 2003, pp. 713-752.

²⁹ Norhayati et al. *supra* note 15 at 35.

³⁰ Jessie Manchester. *supra* note 27 at 719.

³¹ International Statistical Classification of Diseases and Related Health Problems, 10th revision, https://www.who.int/classifications/icd/ICD10Volume2_en_2010.pdf. Accessed 15 March 2022.

³² Diagnostic and Statistical Manual of Mental Disorders, DSM 5.

³³ Gaynes, Bradley N., et al. “Perinatal Depression: Prevalence, Screening Accuracy, and Screening Outcomes.” *Evidence Report/Technology Assessment, Number 119*, 2005, <http://doi.apa.org/get-pe-doi.cfm?doi=10.1037/e439372005-001>. Accessed 15 March 2022.

months following child birth.”³⁴ It is characterised by dysphoric mood, loss of appetite, sleep disturbance, loss of interest in usually pleasurable activities, difficulties in making decisions, fatigue, excessive guilt, and suicidal thoughts.³⁵ Symptoms such as inability to sleep or sleeping more, mood swings, change in appetite, fear of harming, extreme concern and worry about the baby, sadness or excessive crying, feeling of doubt, guilt and helplessness, difficulty concentrating and remembering, loss of interest in hobbies and usual activities and recurrent thoughts of death including suicidal ideation are also reported.³⁶ It is observed that, in contrast to depression occurring at any time in a woman’s life, in postpartum depression, negative thoughts mainly relate to the new born.³⁷ Feelings of guilt or inadequacy about the new mother’s ability to care for the infant and an obsessive preoccupation with the infant’s well-being or safety are also recorded.³⁸

2.3 Postpartum Psychosis

Postpartum psychosis is the rarest and the severest form of PPD. It is recorded to involve hallucinations or delusions, severe depression and thought disorder.³⁹ In other words, during an episode of postpartum psychosis, like in any other case of psychosis, the patient loses touch with reality and becomes unable to realise what is real and what is not.⁴⁰ It is said to be closely tied to childbirth and usually has an onset within the first weeks of childbirth.⁴¹ Postpartum psychosis is considered as one of the most severe forms of mental illnesses in psychiatric literature. Luckily, this severe form of mental illness occurs only in a very limited number of cases. It must be noted that postpartum psychosis is used as an umbrella term for disorders such as mania, mixed episodes,⁴² psychotic depression, or psychosis not otherwise specified.⁴³ Thus, research suggests that symptoms fluctuate in women

³⁴ Manchester, Jessie, *supra* note 27 at 719.

³⁵ Dobson and Sales, *supra* note 8 at 1105.

³⁶ Norhayati et al., *supra* note 15 at 35.

Rai, Shashi., et al. “Postpartum Psychiatric Disorders: Early Diagnosis and Management.” *Indian Journal of Psychiatry*, vol. 57, no. suppl 2, 2015, pp. S216-221.

³⁸ Ibid.

³⁹ Dobson and Sales, *supra* note 8 at 1106.

⁴⁰ Arciniegas, David B. “Psychosis.” *Continuum*, vol. 21, no. 3, 2015, pp. 715-736.

⁴¹ Dobson and Sales, *supra* note 8 at 1106.

⁴² Mixed episodes refer to the coexistence of depressive and manic symptoms. Sole, Eva, et. al. “Mixed features in bipolar disorder.” *CNS Spectrums*, vol. 22, no. 2, 2017, pp. 134-140.

⁴³ Meltzer-Brody et al., *supra* note 12 at 2.

with postpartum psychosis, and thoughts of infanticide or suicide are also common.⁴⁴ It is reported that about 4% of women suffering from postpartum psychosis commit infanticide, and 5% commit suicide.⁴⁵ According to research, psychotic episodes are more prevalent during the postpartum period than during any other period in a woman's life, and evidence suggests a particular vulnerability in women with bipolar disorder.⁴⁶ Compared to other PPDs, postpartum psychosis is rare, affecting only 0.1-0.2% of mothers.⁴⁷ However, it is considered a psychiatric emergency.⁴⁸ Postpartum psychosis requires emergency treatment on account of the risk of infanticide and suicide.⁴⁹ Symptoms of postpartum psychosis may include "restlessness, agitation, sleep disturbance, paranoia, disorganised thoughts, impulsivity, hallucinations, and delusions."⁵⁰ The symptoms can take diverse forms and may include delusions of guilt, persecution, auditory hallucinations, delirium-like symptoms, confusion and excessive activity.⁵¹ Delusions associated with the infant such that the infant is possessed and has special powers, or is divine, or is dead are often reported.⁵² Past history of postpartum disorders, bipolar disorders and family history of schizophrenia are identified by studies as some of the risk factors.⁵³

3. Defense of Insanity under Indian Law

Unsoundness of mind is a complete defense to a criminal charge. In other words, if proved, a defense of insanity exonerates an accused from criminal liability. Unsoundness of mind is provided as a defense because a person who doesn't possess a sound mind cannot form the *mens rea* or guilty mind necessary to commit an offence. As the basic principle of criminal liability provides, there cannot be a crime without a guilty mind. In addition, a person who has committed

⁴⁴ Ibid. at 12.

⁴⁵ Rai, Pathak, and Sharma, *supra* note 36.
Munk-Olsen, T., et. al. "New parents and mental disorders. A population-based register study." *JAMA Network*, vol. 296, no. 21, 2006, pp. 2582-2589.

⁴⁷ Norhayati et al., *supra* note 15 at 35.

⁴⁸ Cohen et al., *supra* note 10 at 285.

⁴⁹ Norhayati et al., *supra* note 15 at 35.

⁵⁰ Cohen et al., *supra* note 10 at 285.

⁵¹ Rai, Pathak, and Sharma, *supra* note 36.

⁵² Ibid.

⁵³ Ibid.

a wrong without a guilty mind cannot be reformed by punishment. Thus, as one author has rightly pointed out,⁵⁴ absence of a guilty mind necessary to constitute the crime and the impossibility of reformation through punishment can be said to be the underlying rationale for the defence of unsoundness of mind.

Sec. 84 of the IPC that contains the defence under Indian law substantially adopts the ruling of the House of Lords in *R v. Daniel M' Naughten*⁵⁵. According to the verdict in Mc Naughten's case, to establish the defence of unsoundness of mind it must be proved that "at the time of committing of the act, the party accused was labouring under such a *defect of reason, from a disease of the mind*, as not to know the *nature and quality of the act he was doing*, or if he did know it, that he did not know *he was doing what was wrong*."⁵⁶ Thus, the inability of the accused to understand and appreciate the nature of the act or the wrongness of the act on account of a disease of the mind forms the essence of the provision. Further, it is also provided that because every man is presumed to be sane unless the contrary is proved, the burden of proving the presence of circumstances that show an insane mind lies with the accused.⁵⁷ Formulated on similar lines, Sec. 84⁵⁸ requires the accused to prove the following in order to be eligible for the defence-

- i. That the accused was of unsound mind at the time of doing the act in question.
- ii. That the accused, on account of unsoundness of mind, was incapable of knowing the nature of the act, or
- iii. That even if the accused knew the nature of the act, he did not know the act to be wrong or contrary to law on account of his unsound mind.

The first fact to be proved, i.e. the fact of the soundness of mind at the time of committing the offence, is something where medical opinion and medical

⁵⁴ Gaur, K.D. *Criminal Law – Cases and Materials (90th Edition)*. Lexis Nexis, 2019.

⁵⁵ [1843] UKHL J16, Sec. 84 has been formulated in line with 2nd and 3rd answers to the questions in Mc'Naughten' case. However, IPC uses the term 'unsoundness of mind' instead of insanity.

⁵⁶ *Id.* at 90.

⁵⁷ Forty Second Report of the Law Commission of India – Indian Penal Code, 90, 1971, <https://lawcommissionofindia.nic.in/1-50/Report42.pdf>. Accessed 12 March 2022.

⁵⁸ Sec 84 IPC reads "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing is either wrong or contrary to law."

diagnosis can have a role. In other words, to assess the state of mind of the accused at the time of the commission of the offence, a medical diagnosis can be relevant. In some cases, the courts have taken into account prior medical history of mental illness and psychiatric treatment as pointers towards the state of mind of the accused at the time of the commission of offence.⁵⁹ However, a mere diagnosis of medical insanity wouldn't entitle the accused to an acquittal. Further, it is to be proved that the medical insanity thus diagnosed, qualifies to be legal insanity as per the tests laid down in the provision. The unsoundness of mind must be of a such a degree that would make the accused incapable of knowing the 'nature' of the act or that the act was either 'wrong' or 'contrary to law,' must also be proved to make the case come within the purview of legal insanity. Thus, as some authors have pointed out, in addition to medical insanity, cognitive incapacity (incapacity to know the nature of the act) or moral capacity (incapacity to know the act to be wrong), or the capacity to know the act to be contrary to law, must be proved.⁶⁰ This distinction between medical insanity and legal insanity was explained by the Supreme Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat*,⁶¹ where it held that medical insanity is a disease of the mind that impairs the mental faculty of man. In contrast, legal insanity requires 'unsoundness of mind' to affect the cognitive capacity of the defendant to a certain extent. Therefore, medical insanity, in order to entitle a person for the benefit of Sec. 84, must be of a kind that has hindered his capacity to understand the nature of the act or that what he was doing is either wrong or contrary to law. In order to touch the threshold of legal insanity, medical insanity must satisfy the test of either cognitive incapacity or moral incapacity.

Now, coming to the case of PPDs, as evident from the above discussion, whether a particular case of PPD would qualify to be legal insanity would depend on its impact on the cognitive or moral capacity of the individual. As discussed in part II, PPDs are a spectrum that ranges from mild mood and anxiety disorders to severe cases of psychosis. In cases of postpartum psychosis, where the person is

⁵⁹ See for instance, *Jai Lal v. Delhi Administration*, 1969, 1 SCR 140, For a detailed reading see *Infra* note 59.

⁶⁰ Soumya, A.K., et. al. "Shapeshifting and Erroneous: The Many Inconsistencies in the Insanity Defence in India." *NUJS Law Review*, vol. 14, no. 2, 2021, pp. 195-222.

⁶¹ *Dahyabhai Chhaganbhai Thakkar v. State of Gujrat*, AIR 1964 SC 1563.

said to lose touch with reality and suffer from hallucinations and delusions connected with the baby, it is theoretically likely that the accused can prove cognitive or moral incapacity sufficient to touch the threshold of legal insanity. In other cases of PPDs, it is improbable for the accused to make it to the standard contemplated by Sec. 84 in its strict interpretation. However, judicial decisions point out that medical diagnosis does play a role in the court's finding of legal insanity. Some researchers also point out that the courts have manifested the tendency to limit the inquiry to specific mental illnesses and the nature of such illnesses, often ignoring the additional requirements of cognitive and moral incapacity.⁶²

It must also be noted that legal insanity, under Indian law does not extend to acts committed on account of volitional or emotional incapacities.⁶³ For instance, an irresistible impulse is not considered as relevant for the purpose of Sec.84 as held in the case of *Bapu v. State of Rajasthan*⁶⁴ The Supreme Court, in the said case, highlighted the limitation of the defence of insanity to accommodate many shades of abnormal mental state because of which a person may commit an offence. According to the court, "mere abnormality of mind or partial delusion, irresistible impulse, or compulsive behavior of a psychopath affords no protection under Sec. 84 as the law contained in that section is still squarely based on the outdated Mc Naughten rules of 19th century England."⁶⁵ Thus, disorders in the PPD spectrum other than psychosis may not qualify to be considered for the defense as most of the symptoms seem to affect a person's mood and temperament rather than cognitive and moral capacities. Having said this, it is relevant at this juncture to analyze decided cases in order to see how Indian courts have approached a plea of insanity in maternal infanticide cases.

4. Applicability of Section 84 in PPD Cases: Judicial Decisions

Beyond the general perception that a woman must be 'abnormal' to kill her child,⁶⁶ the fact remains that a significant number of cases of maternal filicide involve

⁶² Surendranath, *supra* note 58.

⁶³ Gaur, *supra* note 53 at 121.

⁶⁴ (2007)8SCC66.

⁶⁵ Ibid. Para 11.

⁶⁶ Courts often make observations as how a normal mother could not have committed filicide and often such acts per se are taken as indicators of an abnormal mind. See for instance observations of the courts in *Lalita v. State* (para. 29) *Infra* note 69.

mothers who have mental health issues. Most of these cases concern children below one year, and therefore the probability of accused mothers suffering from PPDs is high. Some of them are cases of severe mental disorders such as psychosis, which squarely falls within the scope of unsoundness of mind. *Shanti Devi v. State*⁶⁷ could be cited as a case in point. It was a Delhi High Court decision where the accused killed her infant son by cutting open his throat with a razor. The accused had a history of mental illness and was admitted to a mental hospital about a month prior to the incident. According to medical opinion, the accused had schizophrenic psychosis, a severe form of mental illness. She was speaking incoherently and had auditory and visual hallucinations. She was abusive and assaultive. The testimony of the witnesses suggested that she did not show any remorse and was sitting there quietly, making no attempt to escape or hide the dead body. The absence of motive was also considered by the court. Thus, in the light of the totality of circumstances, including the evidence showing the mental state of the accused prior to and after the commission of the offence, the court acquitted the accused. However, it is not clear from the facts of the case whether it is a case of PPD, though the age of the victim and prior medical history of the accused make it probable.

However, in milder forms of mental disorders such as depression, divergent opinions have come from different High Courts. For instance, High Court of Madras, in two cases, decided in the same year on similar facts refused to give the accused the benefit of Sec. 84. The first case is *In Re Parvathy Ammal*,⁶⁸ where the accused mother killed three children and attempted suicide on account of poverty and ill-health. Though the defense contended the benefit of Sec. 84 on the ground of ‘periodic fits of depression’, court refused to entertain it in the absence of proof. The court observed that “there can be no doubt that the accused committed these crimes owing to poverty and ill-health. Her ill health appears to have been mental as well as physical, and the evidence shows that she suffered from periodical fits of depression. But there is nothing to show that, at the time of committing these offenses, the accused, by reason of unsoundness of mind, was incapable of knowing the nature of her acts, or that those acts were wrong or contrary to law”.⁶⁹ Similarly, in *In Re Pappathi Ammal*⁷⁰, the accused threw her

⁶⁷ MANU/DE/0029/1968.

⁶⁸ MANU/TN/0393/1959.

⁶⁹ *In Re Parvathi Ammal*, MANU/TN/0393/1959, para 6.

newborn child in to the well four weeks after delivery and attempted suicide. The facts showed that the accused was suffering from diarrhea and fever in the days following childbirth, coupled with lack of support and poverty. The court rejected the prosecution case of insanity on account of somnambulism or sleepwalking for absence of proof. However, the court did hint at the possibility of the accused suffering from “some sort of puerperal disorder”. It may be noted that it is one of the very few cases where the possibility of mental disorder arising out of childbirth is explicitly mentioned. It may be noted that in both these cases, absence of medical opinion regarding the mental state is a common factor.

The above-mentioned decisions may be compared with the approach of the Maharashtra High Court in *Sumitra Shriram v. State of Maharashtra*,⁷¹ where the mother was convicted of killing her two children by throwing them into a well and attempting to kill the third child. She had also attempted to commit suicide. It was pleaded in appeal that the accused, who had given birth two months ago, had not been keeping well. She was also suffering from acute poverty. According to the defense the act of the accused was the result of a fit of delusion, and the fact that she was ill after delivery and had not been taking food for the past couple of days before the incident, shows the act was committed on an occasion of particular stress.⁷² Taking into account the totality of the circumstances- the fact that she was otherwise a devoted mother, she has not been taking food for a couple of days and the facts that she was keeping calm after the incident, and the absence of *mens rea*- the court held that the act was committed by the accused in a depressed state of mind and thus entitling her the benefit of insanity.

In *Jayalekshmi v. State*⁷³, the court seems to have relied on the medical determination of the state of mind of the accused. It was a case where a mother was accused of killing her three children by throwing them in to a well, the youngest being 5 months old. She pleaded insanity and was diagnosed with ‘psycho motor activity retardation’. According to the testimony of the expert witness examined by the Court, any person who suffers from such an illness would have depression, loss of interest in life and urge to commit suicide. The court acquitted her on the ground that, the mental illness was sufficient to render

⁷⁰ MANU/TN/0177/1959.

⁷¹ MANU/MH/1544/1999.

⁷² *Id.* Para 7.

⁷³ 2016-2-LW(Crl)147.

her incapable of knowing the nature of the act on account of unsoundness of mind. Psycho motor activity retardation is a central feature of major depressive disorders that causes physical and cognitive impairments.⁷⁴ The facts of the case clearly mention the factors that led the accused to depression such as poverty, inability to feed the children and hunger. All these factors coupled with the fact of a childbirth in the immediate past and breastfeeding must have led her to a state of depression that made her kill her children and attempt suicide. However, the question whether it is a case of insanity seems to have ended with the diagnosis of mental illness by the medical expert. In other words, the court seems to have based its conclusion on medical insanity without embarking on an inquiry in to the cognitive or moral incapacity of the accused. This decision also seems to be conflicting with the views of the Madras High Court in *Pappathi Ammal* and *Parvati Ammal*.

5. Position in other Jurisdictions – Murder or Infanticide?

Legal systems across the world can be categorised in to two broad categories as far as criminal responsibility of filicidal mothers are concerned. In the first category are countries such as India, United States of America, South Africa⁷⁵ etc. that treat filicide at par with murder where insanity may be pleaded in defence. The second category of jurisdictions adopts the principle of diminished responsibility where a separate offence, namely ‘infanticide’, is created. The second category warrants some discussion.

5.1 Diminished Responsibility and the Offence of Infanticide

The principle of diminished responsibility in criminal law reduces the culpability of the accused on account of his mental incapacity, though it may not amount to insanity.⁷⁶ This principle, that has its origin in Scottish law, was adopted as part of English law by the Homicide Act of 1957. In the context of maternal filicide, jurisdictions that recognise the principle of diminished responsibility have created a separate offence of ‘infanticide’, providing lesser punishment to mothers

⁷⁴ Bennabi, Djamilia., et al. “Psychomotor Retardation in Depression: A Systematic Review of Diagnostic, Pathophysiologic, and Therapeutic Implications.” *Biomedical Research International*, vol. 1, no. 1, 2013, pp. 1–18.

⁷⁵ Stevens, Geert Philip. “A Mother’s Love? Postpartum Disorders, the DSM-5 and Criminal Responsibility – A South African Medicolegal Perspective.” *Psychiatry, Psychology and Law*, vol. 25, no. 2, 2018, pp. 301–311

⁷⁶ Sparks, Richard F. “Diminished Responsibility” in Theory and Practice.” *The Modern Law Review*, vol. 27, no. 1, 1964, pp. 9-34.

accused of killing newborns. It may be seen that the term infanticide denotes the killing of an infant, whereas the penal provisions specifically provide diminished responsibility only for mothers. Thus, an appropriate terminology would have been ‘maternal filicide’ or ‘filicide.’

In addition to the U.K more than 20 European countries have recognised the offence of infanticide.⁷⁷ Australian states such as Tasmania,⁷⁸ New South Wales, and Victoria recognise the offence of infanticide, whereas Western Australia repealed it in 2008.⁷⁹ Hong Kong⁸⁰ and Singapore⁸¹ also recognise the principle of diminished responsibility in maternal filicide cases. Similarly, Canadian Criminal Code⁸² as well as the Criminal Code of Russia⁸³ also contain specific provisions reducing the liability of filicidal mothers to infanticide. The provision creating the offence of infanticide is more or less similar in all these countries, and therefore a discussion of one such jurisdiction would suffice. The following paragraphs discuss the law practiced in United Kingdom regarding diminished responsibility in infanticide cases.

5.1.1 *Infanticide under the English Law*

English law on diminished responsibility, as contained in Infanticide Act, 1938, makes filicide by mothers within a year of giving birth punishable as manslaughter

⁷⁷ Margaret, Spinelli. “Infanticide and American Criminal Justice (1980–2018).” *Archives of Women’s Mental Health*, vol. 22, no. 1, 2019, pp. 173–177.

⁷⁸ Tasmanian Criminal Code Act, 1924, Section- 165A. defines infanticide as killing of a child below the age of 12 months by the mother. It must be proved that, the woman, at the time of causing the death, has not fully recovered from the effect of giving birth to the child and the balance of her mind is disturbed owing to child birth, <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1924-069>. Accessed 12 March 2022.

⁷⁹ Bortoli, Lillian De, et al. “Maternal Infanticide in Australia: Mental Disturbance During the Postpartum Period.” *Psychiatry, Psychology and Law*, vol. 20, no. 2, 2013, pp. 301–311.

⁸⁰ Sec. 47 C of the Offence against the Person Ordinance defines the offence of Infanticide. The exception is made available to a mother of a child below 12 months, whose balance of mind was disturbed by reason of child birth or lactation.

⁸¹ Sec. 310 of the Penal Code 1871 provides that a woman who caused the death of her child below the age of twelve months, will only be liable for infanticide if it is proved that the balance of her mind was disturbed on account of child birth or lactation, <https://sso.agc.gov.sg/Act/PC1871?ProvIds=pr310-1&ViewType=Within&Phrase=infanticide&WiAl=1>. Accessed 12 March 2022.

⁸² Infanticide -233 A. Available at <https://laws-lois.justice.gc.ca/eng/acts/c-46/page-33.html#docCont>

⁸³ The Criminal Code of the Russian Federation, 1996, Article 106. “The killing by a Mother of Her New-born Child- The killing by a mother of her new-born child during or immediately after childbirth or the killing by a mother of her new-born in a mentally traumatizing situation or in a state of mental disorder that does not reach insanity, shall be punishable by deprivation of liberty for a term upto five years.” This is in contrast to the punishment for murder which is for a term from six to fifteen years, https://www.imolin.org/doc/amlid/Russian_Federation_Criminal_Code.pdf. Accessed 12 March 2022.

rather than murder. There are essentially two conditions to be fulfilled for the provision to be applicable, one is that the child who is killed by the wilful act or omission of the child must be below the age of twelve months, and the another condition is that at the time of act or omission, the balance of the mind of the accused mother was disturbed by reason of not having fully recovered from the effect of giving birth to the child or by reason of lactation consequent upon the birth of the child.⁸⁴ Thus, it can be seen that under English law, infanticide acts as a defence to a charge of murder.⁸⁵ In contrast to the defence of insanity, the accused is in an advantageous position as she just has to prove ‘a disturbed mind’ on account of childbirth or lactation. In case of a defence of insanity, she will have to prove that her mental disorder was such that she did not understand the nature and quality of her act of killing.⁸⁶ In addition, judges have more discretion in sentencing in manslaughter compared to murder, and as English authorities demonstrate, the penal policy has been quite liberal in this regard, with many convicts being given probation orders, hospital order, or a complete discharge.⁸⁷

6. Conclusion

Mothers causing the death of infants owing to mental disturbance is a very unfortunate situation where both the mother and the child are to be considered victims. Out of the two approaches that countries adopt in cases of maternal filicide - defence of insanity and the principle of diminished responsibility- the former appears to be cogent and just. The principle of diminished responsibility is beneficial to the accused mother as it only requires her to prove a ‘disturbed mind’ in comparison to a higher standard of proof required in insanity defence. It also gives enough discretionary powers to the judges as far as sentencing is concerned. However, most of the statutes creating the offence of infanticide limit it to a period of one year post-childbirth which is not supported by empirical evidence. The defence of unsoundness of mind in its present form has limitations in accommodating the varied shades of mental disorders a postpartum woman may face. The judiciary, acting within the constraints of archaic legislative provisions,

⁸⁴ Section 1, Infanticide Act 1938, <https://www.legislation.gov.uk/ukpga/Geo6/1-2/36/enacted>. Accessed 17 March 2022.

⁸⁵ Baker, Dennis., and Glanville Williams. *Textbook of Criminal Law (4th Edition)*. Sweet and Maxwell Ltd, 2015.

⁸⁶ Ibid. at 2222.

⁸⁷ Mackay, R.D. “The consequences of killing very young children.”, *Criminal Law Review*, vol. 40, no. 1, 1993, pp. 21-30. (as cited in Baker, *supra* note 85 at 1221).

has been trying to provide justice to filicidal mothers by adopting a very liberal sentencing policy. It can be seen that in cases of conviction, the punishment is reduced to imprisonment for the period already undergone⁸⁸ or a recommendation for reduction or remission of sentences to the appropriate government.⁸⁹ Reform of the provisions regarding the criminal responsibility of the accused suffering from mental disorders must be undertaken involving experts from medico-legal fields keeping in mind the developments in the areas concerned. Only then can we balance the societal interests of keeping the children safe along with supporting women in their reproductive journey.

⁸⁸ See decisions such as *In Re: Sreerangayee* MANU/TN/0656/1972, *In Re Parvathy Ammal*, MANU/TN/0393/1959.

⁸⁹ See for instance Rule 131 of the Kerala Criminal Rules of Practice that mandates the Court of Sessions to make a reference to the government, on the propriety of reducing the sentence, in all cases of murder of infant children by women.

UNDERSTANDING OBJECTIVITY IN HISTORY

Dr. Rachna Sharma*

1. Introduction

History as a discipline is extremely diverse in its application. It focusses on the study of collective experience of the mankind. Edward Hallett Carr, an eminent historian in his book *What is History?* has rightly remarked that “History is a continuous process of interaction between historian and his facts and an unending dialogue between the present and the past.” He further emphasised that the historian and his facts are complementary to each other. The historian without his facts is rootless and futile and the facts without the historian are dead and meaningless.¹ Our past, present and future in history is connected with constant chain of events. So, it is imminent that we study history in order to understand our present through the past which would in turn help us in predicting our future. In this connection, it is quite pertinent to mention that the historian’s main responsibility is to comprehend the past efficiently in order to understand the present in a better way. The study of history entails seeing the past through the eyes of the present. Political conflicts, social animosities and economic hardships are the examples how the enormities of the past continue to influence our present. We will not be able to find solutions to these contemporary problems affecting our polity, society and economy unless we comprehend their historical context. Here comes the role of historian who would not only collect the relevant facts but would also put them to evaluation. In order to seek solution to the contemporary problems, fact based objective analysis is a pre requisite which would be conducted by the historian. Historically speaking, facts are not purely objective as they become facts due to significance historians attribute to them. E.H. Carr further emphasised that “History acquires meaning and Objectivity only when it establishes a coherent relation between past and the future”.²

Objectivity in History is of primary importance for the development of Historical studies on scientific lines. It, in fact, represents the basis on which the structure of historical profession is erected.. With the coming up of the scientific era, all the social sciences claimed scientific status for themselves. Historians wanted the same status for history also. Objectivity is one such characteristic feature which is of utmost importance for any discipline which claims scientific status for itself. There has been a sharp contrast amongst the historians if the objectivity in History is

* Assistant Professor of History, Rajiv Gandhi National University of Law, Punjab.

¹ Carr, Edward H. *What is History?* Vintage Books, 1961, p. 35.

² Ibid. p. 173.

possible or not. This divergence on the question of objectivity has even been bothering the students and the researchers diving into the field of history. This paper is a modest attempt on the part of the researcher to understand Objectivity and bring out the fact if objectivity in History is possible or not and if yes then how and to what extent.

2. Meaning of Objectivity

In simple language, Objectivity means true, disinterested and impartial. In academics, objectivity can be defined as a statement that gets universal acceptance. Historical Objectivity depends upon the ability of a historian to examine historical evidence without any prejudice. It is difficult to understand history if it is not written objectively. Objective writing implies that all narratives, their interpretation and conclusions derived from them must always be based on a solid foundation of historical facts. At the same time it is important that the facts should be selected carefully from a comprehensive source materials, with varying degrees of credibility. History writing involves “Facts and Interpretation” which are considered to be the life and blood of History. It is pertinent to mention that facts are meaningless without interpretation. The knowledge in history is not purely based on intuition. It is derived from critical analysis of the source material that is further verified by referring to the original document.

While mentioning about the objective interpretation of history, Mark Bevir had emphasised that this process must involve the rational criteria of accuracy, comprehensiveness, consistency, progressiveness, fruitfulness and openness.³ However, this type of absolute objectivity may not be considered applicable to the historical enquiry. Historian deals with the human behaviour and man's activities of the past. He is personally involved in the process and there is no separation between the subject and the object. Historical enquiries always involve a human factor. The facts only speak when the historian calls them to the fore; it is the historian who decides to which facts to give importance and in what order or context.⁴ Peter Novick in his work *“That Noble Dream: The ‘Objectivity Question’ and the American Historical Profession”*, has rightly explained that “the objective historian's role is that of a neutral or disinterested, judge; it must never degenerate into that of an advocate or even worse, propagandist. The historian's conclusions are expected to display the standard judicial qualities of balance and even handedness. As with the judiciary these qualities are guarded by the insulation of historical profession from

³ Bevir, Mark. “Objectivity in History.” *History and Theory*, vol. 33, no. 3, 1994, pp. 328-344, p.328.

⁴ Carr, Edward Hallet. *What is History?* Vintage Books, 1961, p. 9.

social pressures or political influence, and by the individual historian avoiding partisanship or bias-not having any investment in arriving at one conclusion rather than another. Objectivity is held to be at grave risk when history is written for utilitarian purposes. One corollary of all this is that historians, as historians must purge themselves of the external loyalties: the historian's primary allegiance is to "the objective historical truth", and to professional colleagues who share a commitment to cooperative, cumulative efforts to advance towards the goal."⁵

3. Arguments Against Objectivity

There are scholars who believe that objectivity is not possible in history. They put forward an argument that historical facts cannot be obtained in pure form⁶ since they are reflected through the mind of the historian. They also contend that every historian has "*point of view*" which starts operating the moment he makes a choice of his subject. He is required to be selective by limiting the scope of his subject as he cannot include all the events of the past. He is required to select facts, based on his hypothesis and his personal judgements. While interpreting the facts, he would allow his personal values, beliefs and interests to set into his evaluation and analysis. It is worth mentioning what Voltaire said about history, that, "it's a pack of tricks we play upon the dead". History cannot be objective since past events do not exist except in the mind of the historian. Re-enacting the past in his mind lead him to superimpose some of his views on it. Speaking about Asoka's renunciation of war, the historian cannot resist the temptation of evaluating Asoka in the light of the present potential danger to peace because of the nuclear weapons. The historian would fail to achieve his main goal of narrating an event as it really happened or describing a person as he had really been in the past.⁷ Owing to different methodology of history, we get different conclusions to the same problem because no two historians can think alike. They do differ on certain points then how can we talk of Objectivity in history.

W.H. Walsh, a twentieth century British Philosopher has talked about four types of obstacles in attaining Historical Objectivity:

3.1 Personal Prejudice: Every historian is first a human being. Being a psychological being, he has his own set of values, outlook, his own personality, likes and dislikes. Being aware of the partialities, he can no doubt, guard against his prejudices. However, at the same time he cannot avoid certain things which are

⁵ Novick, Peter. *That Noble Dream: The 'Objectivity question' and the American Historical Profession*. Cambridge University Press, 1988, pp.1-2.

⁶ Carr, Edward H. *What is History?* Vintage Books, 1961, p. 159.

⁷ Sheik, Ali B. *History: Its Theory and Method*. Macmillan, 1978, p. 61.

embedded in his personality and which inadvertently colour his writings.

3.2 Group Prejudice: Aristotle has rightly remarked that “Man is a social animal”. Being a social being he has his own caste, nationality, religion, family and professional life which influence his personality all the more. All these factors exert influence in a hidden manner. It is reasonable to believe that these group assumptions have rational support and these are based on principles like nationalism and democracy. Not only this, we also need to understand that there is a difference between the outlook of the people belonging to two different countries because they have been brought up in a different social set up. For example: Emperor Akbar is praised by Indians for his liberal policies, however, Pakistanis denounce him for the same. This is another bias which creeps into the writings of the historian and makes it difficult to attain Objectivity.

3.3 Conflicting Theories of Interpretation: These lay stress upon the relative importance of the different causal factors which ultimately pave the way for historical controversies and disagreement amongst the historians concerning same historical reality. If the historian is a Marxist, he will interpret facts according to his own view point and lay stress on economic factors. Similarly, if the historian is an Elitist, he would look for the causes of the French Revolution in context of the ruling class. When we have different interpretations to the same problem, then how can we talk of Objectivity in History because Objectivity is something which is universally accepted by all and this seems impossible in case of History. Danger arises not from the application of these conflicting theories but from the fact that they are given by highly cultivated minds and are used by political and social organisations to justify their interests and aims.

3.4 Difference in Philosophical Views: Like all human beings, every historian has his own vision of life, his own perspective, his own set of moral and metaphysical views. He consciously or unconsciously refers to his judgement of values or we can say his ethical, religious and metaphysical prejudices. Perhaps no historian has been able to escape this. Philosophical Views involuntarily colour the judgement of historians. So, it's difficult to talk about Objectivity in History.

An eminent historian Hegel has rightly put forwarded that “No absolute objectivity is possible in history because even an average historian who claims that he merely relies on facts cannot be so passive in thinking”.⁸

⁸ Passmore, J.A. “The Objectivity of History.” *Philosophy*, vol. 33, no. 125, 1958, pp. 97-111, p. 98.

The debate whether history is objective or not can be traced back to the nineteenth century. It was centred around the development of the Positivist theory which claimed that society and history can be studied by following a series of general laws. Now a question arises, What does it mean when it is said that a piece of writing is objective? Can history attain scientific objectivity? On the basis of above mentioned arguments, it is clear that absolute objectivity is not possible to attain in a subject like history. Moreover, there is a difference between scientific and historical objectivity. Scientific objectivity is the intentness of the scientist on the things external to his mind. There is a rigid separation between the subject and the object while in historians deal with human behaviour and man's activities of the past. So, historian is personally involved in this process and there is no separation between the subject and the object. Then, arises a question, what type of objectivity is possible in a subject like history? What steps should be taken to attain Objectivity in History? Before we discuss this, we need to look into the development of objectivity in context of history.

4. Development of Objectivity

Leopold Von Ranke, a German Historian has been rightly known as the was regarded as the Father or 'Colombus' of Modern History. He is known for his critical method of enquiry. He explained that the historian is required to go back to the document to validate his historical facts. He must access the material available in the archives and use sophisticated techniques for determining the authenticity of the documents and their form of publication. Ranke's sole aim was objective research with the purpose of apprehending the historical phenomena "as they actually were".⁹ This trend initiated by Ranke emphasised that the facts were in the records which the historians needed to discover.¹⁰ He clearly followed the technique of Neibuhr and described "memoirs, diaries, letters, diplomatic reports, and original narratives of eyewitness accounts as his sources."¹¹ During the nineteenth and early decades of the twentieth centuries, historians had blind faith in the sanctity of the facts. It was clear that in such type of history writing, interpretation had very little role to play. As far as the documents related to a particular period were available, it hardly mattered who the historian was. It is important to mention that right from the time period of Herodotus, historians had been following the practice of writing history objectively. Herodotus, rightly known as the "Father of History", travelled to almost all the countries involved in the Persian War, including the countries of the enemies, and

⁹ Sheik, Ali B. *History: Its Theory and Method*. Macmillan, 1978, p. 268.

¹⁰ Chen, Xianchuan. "That Noble Dream: Analysis of the Objectivity Question of the Historiography of Ranke." *Advances in Historical Studies*, vol. 9, no. 3, 2020.

¹¹ Majumdar, R.K. and Srivastava. A.N. *Historiography*. SBD Publishers, 1999, p. 150.

interviewed as many witnesses as possible to ensure that facts presented in his Persian wars were accurate.¹² Using critical analysis, he was able to confirm the information given by the witnesses as true and accurate.

Thucydides, is another great name in history. He excelled Herodotus as a historian. Thucydides was the one who first applied scientific approach to the historical problems, thereby eliminating statements which were based upon credulity. The major difference between Herodotus and Thucydides was that unlike Herodotus, who believed whatever he heard, Thucydides could assess whether the reports were gossip, absurdity, biased opinions, or deliberate lies. He tried hard to find as much facts as possible but also to ensure that those facts were true. It was Thucydides' ingenuity in gathering evidence, conforming the accuracy of the gathered facts and analysing the cause and effect of the Peloponnesian War without reference to the gods that established his status as the father of scientific history.¹³ He observed "My history had been more interesting had I made it more romantic. However, I shall be satisfied if it proves useful to the investigators who wished to know exactly how things happened in the past".¹⁴ He anticipated Ranke by over two thousand years.

Moving forward, the most celebrated historian of the Medieval period was Ibn Khaldun. He was a Muslim scholar who had lived in the fourteenth century. What Thucydides was to Greece and Tacitus to Rome, Ibn Khaldun is to the Arab world, namely its greatest historian.¹⁵ For him, history was not simply a record of events but a description of internal and external social relationships. He resorted to what he considered as the empirical facts of history. The *Muqaddimah*¹⁶, one of the most outstanding works attributed to Ibn Khaldun, is known for its critical interpretation, profundity and breadth of thought and commendable style which gave his work the dignity which was unheard of in Europe until recently. His technique used in it, is extremely critical, analytical and argumentative which had not been adopted before. It is refreshing to find a scholar of fourteenth century who is so original and scientific. Thus, we can make out that even before the times of Ranke, the desire to write objectively was existing amongst the historians.

¹² Wardman, A.E. "Herodotus on the Cause of Greco-Persian Wars." *American Journal of Philology*, vol. 82, no. 2, 1961, pp.133-150, p. 142.

¹³ <http://www.bristol.ac.uk/research/impact/thucydides/>. Accessed 11 January 2022.

¹⁴ Sheik, Ali B. *History: Its Theory and Method*. Macmillan, 1978, p. 187.

¹⁵ *Ibid.*, p. 212.

¹⁶ *Muqaddimah* the most significant and challenging Islamic history of the premodern world written by Fourteenth Century Mediterranean scholar, Ibn Khaldun who was also known as the Father of Universal History. For more details see: Khaldun, Ibn. *Muqaddimah: An Introduction to History*. Princeton University Press, 1967.

In the beginning of the twentieth century, Rankean tradition was criticised on certain grounds. The major criticism attributed to him was that he wrote mainly about the course of treaties, wars and dynasties and hardly paid any attention to generalizations about states, nations, religion, culture etc. He has also been criticised “for neglecting social and economic interests in history and successfully avoiding any historical writing that offended the most conservative interests in the Europe of his own times”.¹⁷ The new trends in historiography in the twentieth century like Marxists¹⁸ and Annals¹⁹ focussed on society and economy and common people as compared to elite individuals. The historians were of the view that it is possible to get close to what exactly happened in case scientific methods of enquiry are used by the historians.

In the later half of the twentieth century, after 1970s, the question of objectivity faced radical challenges. Many scholars came up with a view that the historians deal with the ideas. The subject matter of history is reflective thought which is revived in the historians mind and which cannot be reduced to any scientific analysis. Since facts belong to the past, what remains now is merely a body of ideas, which are subjective. History is not a deductive science. There are no fool proof methods to eliminate errors and subjectivity.²⁰ History therefore is a story told by the historians.

A well known historian, E.H. Carr has emphasised that “historians while writing history are driven by contemporary concerns and their viewing of the past is through the lens of the present”.²¹ This is another factor due to which they are unable to present the past objectively. The evidences collected by the historians are also according to their contemporary preoccupations and ideological bent. There are scholars like Clifford Gertz who have emphasised that the ideas, concepts and languages existing in different societies always affect the accounts of the past. The world is perceived differently by people belonging to different cultures. So, it is impossible to be objective about the histories or societies of different cultures.

This has been referred to as ‘Cultural Relativism’. Objective history writing faced its most radical challenge from the theory of Deconstruction put forwarded by Jacques Derrida. Every individual is a part particular language system. It is not possible for them to understand the reality outside it. Here, the language refers to a self-contained

¹⁷ Thompson, J. W. *A History of Historical Writing Vol. II*. The MacMillan Company, 1942, p. 186.

¹⁸ Iggers, Georg G. *Historiography in the Twentieth Century: From Scientific Objectivity to the Postmodern Challenge*. Wesleyan University Press, 1997, p. 78.

¹⁹ Ibid. at p. 51.

²⁰ Sheik, Ali B. *History: Its Theory and Method*. Macmillan, 1978, p. 73.

²¹ Carr, Edward H. *What is History?* Vintage Books, 1961, p. 163.

system which has no connection with the reality. The author too has no role to play in ascertaining the meaning of the text. Moreover, the language itself has no coherent and logical pattern. In Derrida's view, language has no mixed meaning; it is just a system of arbitrary codification. The text, thus, contains multiple meanings which may differ from one another. Historians like Gabrielle Spiegel, Lawrence Stone and Hayden White considered that the historical narrative cannot lay any claim to truth. It should be considered as a form of fiction.²²

Faced with radical attacks from all sides one is forced to think if it is possible to attain any kind of Objectivity in History.

5. Arguments in Favour of Objectivity

We need to understand that objectivity in history is different from that to other disciplines. Moreover, the social world, which the historian studies, is fundamentally different from that of the physical one.

It is not possible for any historian to present what exactly had happened. Right from the time of Herodotus, historians have been documenting only the significant events and trying to explain how and why that particular event took place. In fact, it is impossible to comprehend the total reality. For example: If some incident happens in front of our eyes, we will not be able to explain what exactly has happened? What is reported in the government reports and Media cannot claim to exhibit the total reality. In this context, If we expect historians to re-enact the reality of the past as a prerequisite to objectivity is a farfetched idea.

According to E.H. Carr, "Objectivity is not made negative by different interpretation of facts". To get total objectivity of a scientist in history is not only impossible but also unhistorical. Owing to its nature history does not hold the view that historians should give similar answers to the same questions.

In selection and collection of facts, the very fact that historian selects certain facts according to his own view point and there is bias in his selection because he chooses certain facts and leaves others. However, despite this bias there is objectivity in history. We need to understand that *Point of View* is very important in history. Historical evidence doesn't carry any meaning without point of view. Moreover, prejudice and point of view are different in the sense that the former is based upon emotions, feelings and blatant interests of an individual or a group or institution

²² <https://www.preservearticles.com/education/what-are-the-historians-concerns-on-achieving-objectivity/24998>. Accessed 12 January 2022.

while the latter is based upon rationality.

According to John Passmore “Greater selectivity of facts would be a step forward towards objectivity and not away from it. A historian has to be arbitrary in the selection of facts because he cannot collect all the facts and has to leave aside those which are irrelevant.” After selection of facts comes interpretation. We do accept different interpretations in history keeping in view the nature of the subject, provided they are based upon concrete facts. These interpretations are not obstacles in the writing of history unless they help in bringing more objectivity and making the historian more rational. Aurthur Marwick , a British social historian who has written a book on the “Nature of History” suggested that if a historian is using a particular perspective, that shall not restrict him from writing objectively. It is imperative that in order to bring out an objective work, he should stick to the facts and try to present them as authentically as possible. History becomes subjective when a historian is driven by ideological considerations, political opinions or any other external authority and finds way to please them rather than presenting the truth.

Maurice Mandelbaum (1967) in his work “The Problem of Historical Knowledge: An Answer to Relativism”, had brushed aside the arguments of the Relativists as unacceptable. He disagreed with the Relativists' notion that history reflected nothing but the thoughts of the historian. He claimed that the Relativists had failed to differentiate between a “statement” and a “judgement”. He argued that truth in history was concerned with the statement and not the judgement. We must understand that it is the statement the “statement” that narrates the event as it had actually happened. For objective presentation, external factors do not influence the statement but the judgement. The argument that historians were selecting facts based on their own desires also seemed to be rejected by Mandelbaum. He agreed with the contention that historians select their facts, however, he disagreed that this was done keeping in view their personal desire or for some specific purpose. He argued that historian usually does this on the basis of the relevance of the facts or in context of the problem he was trying to explore or investigate.²³

E.H. Carr further explains that “We Cannot discuss objectivity in terms of the facts only but of the relation between facts and interpretations, between past, present and future.” All the stages in the history writing are value guided. The relation between facts and values is continuous one and keeps on changing. Carr is of the view that one who understand the relation between facts and values is the most objective

²³ Mink, Louis O. “The Anatomy of Historic Knowledge by Maurice Mandelbaum.” *History and Theory*, vol. 17, no. 2, 1978, pp. 211-222.

historian. Extent of Objectivity entirely depends upon historian's system of values. These are inter related. We cannot get absolute objectivity as in sciences but relative objectivity which depends upon values and later on standard of judgement.

“System of values keep on changing depending upon the thought of the society which affects the historian.” For example, earlier Political history was written. The standard of judgement was achievements in the political sphere. When the historians analysed the working of the kings, that was done keeping in view their political achievements. However, in present times socio economic factors are gaining importance. So, our standard of judgement is now the achievements in socio economic spheres. It depends upon historian how much those values affect his standard of objectivity. That is why we have relative Objectivity in history as we cannot discuss this concept in an isolated way but in relation to values. Complete Objectivity is also unattainable in history, and a small portion of subjectivity is not only inevitable but also desirable. However, this proportion should be only in the ratio of salt in a dish. Any other ratio either less or more will spoil the broth.²⁴

6. Steps to Attain Objectivity in History

- i. While interpreting facts, it is important that the historian should keep a check on his emotions and sentiments. It is essential that he must respect his evidence by not concealing or twisting it in any way for selfish reasons. According to Hegel, a historian must demonstrate intellectual integrity and honesty in his work. W.H. Walsh also remarked that these biases and prejudices should hold no terror for the historian. Although objectivity is difficult, but it is not impossible.
- ii. Critical examination of sources is another pre requisite for attaining objectivity as we do not have any laboratory to check the validity of facts.
- iii. Historian should use Empirical or methods based on concrete facts.
- iv. For objective understanding of the historical reality, the historian must familiarize himself with other scholarly disciplines which is known as Inter-disciplinary Approach.
- v. There is a need to develop historical consciousness amongst historians so that a standard way of thinking on the subject matter is evolved to attain a kind of relative objectivity in the formation of historical perspective and point of view.
- vi. Mark Bevir in his paper on “Objectivity in History”, published in History

²⁴ Sheik, Ali B. *History: Its Theory and Method*. Macmillan, 1978, p. 62.

and Theory had emphasised that in order to attain objectivity the historian should be willing to accept criticism.²⁵ He should not personalise the issue. What has to be scrutinised in any historical work is not “whether the total reality is presented or not” but whether what has been presented is corroborated fully by verified evidences. It is also analysed if the historian has managed to free himself from any external influences during the process of recreating that particular human past.

7. Conclusion

After going through the above discussion, we have come to the conclusion that it is futile for the historian to strive for absolute objectivity and he may have to remain content with relative objectivity. History is objective when based on facts and explained authentically from historian’s perspective. Aurthur Marwick has rightly remarked, “What happened in the past profoundly affects all aspects of our lives in the present and will, indeed, affect what happened in the future”. The objectivity of a historian is useful in so far as it prevents him from reflecting biases or prejudices in his account. The unceasing questioning of objectivity in history keeps on disturbing the serious historians who are genuinely slogging to recreate the past as truthfully as possible within the given limitations. It is better to have different views in history because it will be a step towards achieving the goal of history which is understanding the past in an objective manner. So we can say that it is not a wholly arbitrary process because it is based on the principles of scepticism and involves a definite perspective. The historians cannot aspire for absolute objectivity and have to remain contented with relative objectivity.

8. References

- Anbalakan, K. “Objectivity in History: An Analysis”. *KEMANUSIAAN*, vol. 23, no.1, 2016, pp. 21-33.
- Bevir, Mark. “Objectivity in History”. *History and Theory*, vol. 33, no. 3, October 1994, pp. 328-344.
- Carr, E.H. *What is History?*. Vintage Books, New York, 1961.
- Collinwood, R.G. *The Idea of History*. Oxford University Press, Oxford, 1978.
- Eyler, Marvin H. “Objectivity and Selectivity in Historical Enquiry”. *Journal of Sport History*, vol. 1, no. 1, Spring 1974, pp-63-76.

²⁵ Bevir, Mark. 1961, p. 328.

- Hinshaw, Virgil. "The Objectivity of History". *Philosophy of Science*, vol. 25, no. 1, January 1958, pp. 51-58.
- Mandelbaum, M. *The Problem of Historical Knowledge: An Answer to Relativism*. Liveright Publishing Corporation, New York, 1967.
- Manjunath, T.M. "Problem of Historical Objectivity". *JETIR*, vol. 2, no. 3, March 2015, pp.1132-1136.
- Marwick, Arthur. *The Nature of History*. Macmillan, London, 1989.
- Melden, A.I., "Historical Objectivity: A "Noble Dream"?" *Journal of General Education*, vol. 7, no. 1, October 1952, pp. 17-24.
- Novick, Peter. *The Noble Dream: The Objectivity Question and the American Historical Profession*. Cambridge University Press, New York, 1988.
- Oyewale, Peter Oluwaseun. "Objectivity: A Subject of Discourse in Historical Writing". *AFRREVIJAH*, vol. 3, no. 1, 2014, pp. 18-30.
- Passmore, J.A., "The Objectivity of History". *Philosophy*, vol. 33, no. 125, April 1958, pp. 97-111.
- Thompson, J.W. *A History of Historical Writing*. Vol. II, The MacMillan Company, 1942, p. 186.
- Walsh, W.H. *An Introduction to the Philosophy of History*. Hutchinson, London, 1967.

MENTAL HEALTH & POST-REHABILITATIVE CONDITIONS AS FACTORS FOR RECIDIVISM - A REVIEW ARTICLE

Anisha Bodapati*

1. Introduction

Recidivism can be simply defined as reoffence. It is an issue of significant concern all over the world. In India too, recidivism is evident, yet, there is very little research aimed at this issue considering its importance. According to the National Crime Records Bureau, Crime in India Statistics Vol III, in 2020 the percentage recidivism in all the states is 4.7% under the Indian Penal Code, in all the Union Territories it is 7.1% under the Indian Penal Code and the percentage recidivism for the entire country is 4.8% under Indian Penal Code. The percentage recidivism of all the states is 4.8% under the Special and Local Laws, 13.3% for all the Union Territories under the Special and Local Laws, and the percentage recidivism under the Special and Local Laws all over India is 5%.

According to the Prison Statistics India 2019 given by The National Crime Records Bureau, the percentage of recidivists among the convicted offenders all over India was 3.6%, but in the Prison Statistics India 2020 given by the National Crime Records Bureau, the percentage recidivists among the convicted offenders all over India increased to 4.7%. The highest recidivism percentage was seen in Mizoram with 41.7% and in Delhi with 38.3%. It must be noted that the percentages mentioned are only for the convicted offenders and do not include those under trial. In this case, it must be taken into account that according to the Prison Statistics India 2020 it is seen that the number of undertrial inmates is almost 2.8 times more than the number of convicted offenders. Needless to say, the number of habitual offenders has increased in the last year. To combat the increasing instances of recidivism, the factors that might cause reoffence must be inspected closely and individualized rehabilitation techniques must be used to actively reduce the rate of reoffence.

This paper is a review of the post rehabilitative or post-correctional reintegration factors and mental health-related factors that may be responsible for recidivism. The rehabilitation techniques and reintegration techniques that could help reduce occurrences of recidivism have also been looked at briefly from available resources.

* M.A./M.Sc. Forensic Psychology (pursuing), School of Criminology and Behavioural Sciences, Rashtriya Raksha University, Gujarat

Many techniques used in other countries may not have applications in India due to cultural differences and cultural biases that are inherently present in those techniques. Integration of a few aspects of foreign methods and current Indian methods may help with the growing percentage of recidivists in the country. A theoretical approach to the reintegration difficulties and psychological factors can also be done to understand the problem in-depth and thus combat the current and upcoming situation.

2. Methodology

The current study was done through content analysis. Based on an examination of secondary data sources related to the present study, including books, research papers, articles, book chapters, news articles, reports and other pertinent materials. To fill in gaps in research from a variety of domains, including criminology, psychology, sociology, cybercrime and cyber security, law, and digitization, the article combines a number of findings. Through a study of the literature, we address pertinent ideas and concepts of recidivism and factors influencing it such as the mental health and the challenges faced by offenders after reintegration into society.

3. Literature Review

McNiel & Binder (2007) in their study concluded that mental health courts, which are courts specialized to fit the needs of offenders with any type of mental illness via rehabilitation procedure, treatment, and constant monitoring of the individual by the court, have significantly fewer recidivism rates among the convicts who received treatment under their supervision than similar individuals who received treatment under the supervision of traditional courts.

Rich (2015) has stated that the possible factors for recidivism risk assessment are antisocial behaviour, aggression, and association with a criminally inclined or negative peer group. It has also been concluded that for proper risk assessment, the most important necessity is a trained and experienced professional.

Calleja et al. (2016) in their study have noted that the rates of recidivism in juvenile offenders can be reduced by providing proper mental health treatment and most importantly provide proper reintegration services to these individuals to facilitate reintegration. Services in this context include rehabilitative methods that help their transition into the society and the provision of necessary mental health intervention post reintegration to promote positive social bonds and other economic and basic

services such as the provision of job and housing, education, etc, based on the necessity of the individual.

Martin (2016) in their study has noted that an individual would modify their behaviour based on social approval according to the social exchange theory and thus an individual in society or a peer group where criminal activity is being rewarded by social approval will exhibit criminal behaviour. In the same study, they have noted that the role of mental health in the risk of recidivism is not obsolete but it does play an important role. The easy and ready availability of post-rehabilitation mental health care and if necessary, the prescribed psychotropic medication after the release of the individual would reduce the rates of recidivism significantly.

Palakkappillil & Prasanna (2017) in their study found that nearly 63% of the inmates that they had interviewed had been involved in more than one crime and thus show recidivism. It is interesting to note that out of the total respondents in this study, it was seen that around 60% reported having committed a crime due to various dimensions of peer influence. Other statistics of their study state that most of the respondents were neglected as children, while 60% had peer influence from groups that had been involved in criminal activity, and 63% were known re-offenders. 60% of these respondents committed their first crime at a relatively young age while 74% had peer influence from groups that had already been to jail on various criminal charges. These statistics show that recidivism is influenced by psychological factors such as peer influence and the effect of peer groups on an individual's behaviour and criminality. In the same study, it has been noted that individuals with antisocial personalities and conduct disorder as children due to lack of socialization (Freud 1961, as cited in Palakkappillil & Prasanna, 2017) had more risk of delinquency and thus would exhibit the previously mentioned factors that would increase their risk of being recidivists. It was also noted that the lack of psychological support post-rehabilitation and post-release, and lack of psychological assistance in prison too would increase the risk of recidivism.

Narasimman & Kanaga (2018) said that the rehabilitation and reformation of prisoners is essential to the reduction of recidivism risk, and this can be done via evaluation of mental health status and corresponding treatment of prisoners. The mere act of imprisonment will not prevent reoffence.

Nyamathi et al. (2018) in their study focused on women in prison said that among the various risks of recidivism, mental health issues that are not treated by proper

rehabilitation and behavioural therapy programs in and after prison would lead to recidivism. They suggest that psychological, behavioural, and social intervention would help these individuals reintegrate into society.

Gupta (2019) has noted that there is overcrowding in prisons, a lack of proper funding for rehabilitative functions of correctional facilities and that many of the rehabilitation programs and techniques have been side-lined in India. Kacker & Pandya (2020) noted that recidivism and overcrowded prisons are commonly seen yet important issues that must be dealt with. The prison setting may lead to several psychological disorders and issues in inmates, especially first-time offenders, both juveniles and adults which may function as psychological factors and contribute to future recidivism. Choudhury et al. (2020) said that to combat future recidivism in the case of juvenile offenders, regular risk assessments and psychological assessments must be done, and special care and attention during rehabilitation and psychological help must be provided, so that they may be reintegrated into the society.

Duwe (2020) said that risk assessment is a method to predict the possibility of an individual indulging in criminal behaviour in the future, by evaluating prior data on the history of the individual's life (Mayson 2019, as cited in Duwe, 2020). The assessment may be biased in cases of prior wrongful convictions taken into account while performing the assessment. It is also noted that pre-trial risk assessments are predictive of a person's risk to re-offend, but post-trial assessments are for the rehabilitative purpose usually by using a risk need responsivity model that aims to maintain the proportionality of treatment to recidivism risk of the offender. Thus, post-trial assessments unlike pre-trial allow the monitoring of a possible reduction of risk of reoffence by rehabilitative treatment. It has also been noted that recidivism risk is more in cases of misconduct and suicidal ideation in prisons.

Probst et al. (2020) said that there are set variables that affect recidivism risk which can be classified as pre-treatment variables, treatment-related variables, and follow-up variables. These are based on the process of rehabilitation of the individual. Pre-treatment variables could include first criminal act at a very young age, childhood psychological disorders, etc., treatment-related variables would include aggressive and antisocial behaviour in the prison, and substance abuse, among others. Follow-up variables are related to the post-rehabilitation reintegration process and may include factors such as continued substance abuse or relapse, lack of continual rehabilitative measures and residual mental health treatment outside confinement, social stigma,

etc. It has also been stated that the General Personality and Cognitive Social Learning model of criminal conduct categorizes recidivism factors into strong, moderate, and minor. The strong factors may include prior involvement in criminal acts, criminal peer groups, antisocial behaviour, tendencies, etc., while moderate factors include addictive behaviour such as drug and alcohol dependency, familial unrest and problems, lack of employment or housing, while the minor factors are mental health, etc.

Jacobs & Gottlieb (2020) in their study have noted that unavailability of housing, or homelessness, an unfulfillment of economic and financial needs after release due to social alienation and stigma may lead to recidivism. They have quoted the two theories of crime - General Strain Theory and Rational Choice Theory to explain the phenomenon of recidivism due to these reasons. According to the General Strain Theory, they state that the strain or stressor in these cases is the crisis that the individual faces in fulfilling their economic needs and the lack of basic amenities needed for their survival in society. This may lead to outcomes such as reoffence (Agnew, 1992; Brezina, 2017; Desmond & Kimbro, 2015; Gottlieb & Moose, 2018 as cited in Jacobs & Gottlieb, 2020). The case of the Rational Choice Theory that says that every individual is a rational being and makes a choice based on a calculated understanding of the pros and cons of a particular action, the individual might conclude that the economic crisis that they are facing and their inability to survive in society would be alleviated by committing a criminal act and thus would re-offend (Agnew, 2001; Brezina, 2017; Gottlieb & Moose, 2018, as cited in Jacobs & Gottlieb, 2020). They conclude that homelessness would be a major factor in recidivism.

Wallace & Wang (2020) in their study said that according to the Stress Process Theory (Pearlin 1989; Pearlin et al. 1997 as cited in Wallace & Wang, 2020), imprisonment in itself would be the primary stressor for the individual (Turney, Wildeman, & Schnittker, 2012 as cited in Wallace & Wang, 2020) which would further branch out into secondary stressors such as poor mental health and poor physical health which in some cases is amplified by substance abuse or causes substance abuse once the reintegration process begins. They note that reintegration training while in prison to properly train the individual to settle in the society and proper mental health intervention in prison and upon reintegration would lower recidivism rates significantly.

As mentioned before, individual and personalized rehabilitative methods are necessary to reduce recidivism risk in individuals. Singh & Mohapatra (2021) have noted that for this purpose, the factors that would cause recidivism should be identified as a prerequisite to provide proper rehabilitation and ensure social reintegration, and quantitative methods that identify these variables in first-time offenders via machine learning methods are currently necessary and would be helpful in criminal rehabilitation services.

Pegu (2021) in their insightful study into juvenile recidivism in India points out that to prevent a first-time offender from becoming a regular re-offender, proper rehabilitation must be provided while the individual is still imprisoned. An insight into the various theories of crime that might lead an individual towards crime or might cause reoffence has been outlined. Predictive factors (Carcano 2016, as cited in Pegu, 2021) such as past and present trauma, abusive living conditions, conduct disorders, substance abuse, usually drugs and alcohol, social alienation and stigma, peer pressure and influence of peer groups, economic and financial hardships such as lack of housing and lack of employment, etc. must be taken into account when formulating rehabilitation techniques to reduce the rates of recidivism.

It is stated that for a rehabilitation program to be successful in reducing recidivism, it should be able to provide these individuals with training programs on social interaction, training for various jobs that they could take up after and during reintegration, mental health interventions, and counselling in prison and after release, educational and academically-oriented programs, rehabilitation for drug and alcohol abuse, and other skills necessary for seamless reintegration without resulting in stressors that might lead to recidivism (Marrier & Reyes 2014; Visser et al. 2008, as cited in Pegu, 2021).

4. Discussion

4.1. Criminological Factors of Recidivism

There are various theories of criminal behaviour that have been put forth that explain the possible reasons for an individual's criminal activity. Some of these theories may be used to study the possible causes of recidivism.

- i. **Social Disorganization Theory:** This theory states that in a society where the enforcement of the law is not appropriate and criminal behaviour is rewarded by the various groups present, criminal behaviour is propagated further. This can be

- seen with recidivism. If a person who has been convicted for a crime and has been imprisoned, returns to a community with a lack of regulation that rewards criminal activity, they will re-offend.
- ii. **Differential Association Theory:** Differential Association Theory states that if an individual is associated with a group or community that indulges in deviant behaviour, they too will indulge in such behaviour. This may have many implications in the case of rehabilitation and reintegration processes since prisons generally contain individuals who are convicted of a crime or under trial. Sending an under-trial individual to a community that mainly consists of offenders might lead to delinquent behaviour according to this theory. First Time offenders' acquaintance with established criminals and recidivists might lead to future recidivism in the same way.
 - iii. **Anomie Theory:** The Anomie Theory states that when the necessity of an individual and the social norms are at loggerheads, it may lead to delinquent behaviour as the individual may pursue a criminal approach to meet their necessity. For example, if a person needs a certain amount of money for survival but the socially acceptable methods do not result in the fulfilment of this necessity, the individual might do one of three things. Give up hope, comply with the socially acceptable methods and social norms and disregard their need or try to fulfil their necessity by other improper or unacceptable methods. This may be seen in the context of reintegration, where a person is being denied stable housing and employment due to stigma and alienation by society and thus the individual might go back to practicing unacceptable methods to obtain the basic financial and economic necessities.
 - iv. **Differential Opportunity Theory:** Differential Opportunity Theory states that the social situation or background of an individual may be a limiting factor to the amount and availability of opportunities to be socially and economically or financially stable, usually due to discrimination and stigma. For example, people from poorer socio-economic backgrounds do not have equal opportunities and availability of education and other academic amenities as individuals from a higher socio-economic background. This, in a similar way to the previously mentioned theories, may lead to deviant behaviour, to achieve the required needs.
 - v. **Labelling Theory:** Labelling theory deals with social labels and their effect on the person who is being labelled. These labels may be due to discrimination,

bias, or other subjective interpretation of a majority of society toward a group of people or an individual.

4.2. *Psychological Factors of Recidivism*

The most mentioned psychological aspects from the literature review are peer pressure and stigmatization. Firstly, to talk about peer pressure one must cover the concepts of what a group is and what group polarization means.

A group is a set of individuals with common objectives and are perceived as one unit. Group polarization is a phenomenon that addresses the change seen in a person's attitude or behaviour or thinking when they are in a group as opposed to them as an individual. The attitude or thinking of the individual shifts to become more extreme when they are present in a group. One can take an example of a juvenile with a conduct disorder who falls into a group of individuals who exhibit delinquent behaviour and when in the group they would exhibit more severe criminal behaviour.

A group of delinquents when put together would tend to take part in more severe criminal behaviour than they individually would, and thus if a first-time offender post reintegration goes back to their peer group with delinquent behaviour, they would exhibit recidivistic behaviour.

Similarly, social influence plays an important part in an individual's behaviour, where the societal expectations or even the individual's inherent tendency to fit into a particular social group will affect the individual's behaviour either consciously or unconsciously. It is appropriate, here, to talk about a type of social influence that is known as a normative influence, which is described above as the individual's tendency to fit in. The individual would want to try and conform to the group that they want to fit into or the individuals that they surround themselves with. As noticed, conformity plays a pivotal role. This type of influence can be observed in the case of peer pressure. If a first-time offender makes acquaintance with recidivists or hardened criminals, the individual will indulge in recidivism.

The other aspects that one must elaborate on are prejudice and discrimination. Prejudice can be described as preconceived or pre-established ideas or judgment or interpretation of an individual based on class characteristics such as gender, sexuality, ethnicity, race, etc, and usually does not have a basis in reality. If the individual acts on their prejudice, usually negative, it is termed as discrimination. Stigma is a term related to discrimination, where the society shows disapproval

towards a characteristic that a group or an individual has and discriminates against them. This could be of two types based on who is showing the stigma towards the group or the individual. Structural stigma is when the society as a whole or important institutions or authorities stigmatize certain groups and actively discriminate against them by making laws or norms that would cause harm to certain groups. Interpersonal stigma is of a lower level where an individual or group stigmatize another individual or group and discriminates against them by way of abuse, either mental or physical, and non-institutional means.

By the various theories of crime that have been briefly explained one can say that active discrimination and stigma by the society against an individual who had been imprisoned and rehabilitated during reintegration, can deprive them of employment opportunities and housing opportunities and could lead to recidivism.

4.3. Post-rehabilitative Factors of Recidivism

The post-rehabilitative conditions that may lead to recidivism are related to the stigmatization and alienation of these individuals from society as previously mentioned in both, the criminological theories and the psychological factors. Thus, the reintegration of the individual becomes problematic and they find themselves without a job, a house, and most of the time, without post-reintegration mental health intervention and rehabilitation.

The provision of these basic necessities is through social reforms which would take a long time to manifest properly. The best way to ensure reduced recidivism due to these factors can be through additional programs such as interpersonal skills training and vocational training, behavioural counselling, and social skills training programs among other similar ones during the rehabilitation process as mentioned in Pegu (2021).

4.4. Rehabilitation & Correctional Techniques

As mentioned in the introduction, it is seen that the recidivism rate in India has increased in the past year.

“The efficacy of rehabilitative programs that are provided in the juvenile institutions could be measured by the increasing and decreasing rate of juvenile offenders' recidivism” (Pegu, 2021)¹

Therefore, an update in the current rehabilitation techniques must be necessary to properly combat the future increase in recidivism and possibly initiate a steady decrease instead. Thus, one must be aware of the theories of punishment.

There are three major theories of punishment. They are Retributive Theory, Reformatory Theory, and Deterrence Theory.

The Retributive Theory, as indicated by its name, focuses on retribution or a tit-for-tat mechanism. It talks of proportionality between the offense committed and the punishment given.

Deterrence Theory, as also suggested by the name, focuses on deterring an individual from committing an offense that has been committed by another person by creating a sense of fear or caution around the consequence of that action. This means that an example is being set to the general society that a particular action would lead to a dire consequence.

Reformatory Theory is, just as its name suggests, a theory that focuses on the reformation of an offender so that they can go back into society and not indulge in criminal behaviour again. This approach is the most accommodative of the human rights aspect of dealing with criminal behaviour and of rehabilitation and reintegration.

There are various aspects of criminal behaviour and thus the factors that lead to criminality are varied for each individual. Therefore, the Retributive theory, by only focusing on an individual offender and punishing them does not reduce or combat crime in society. It also would not help to reduce recidivism. The deterrence theory, on the other hand, will work if the only other theory at play would be the rational choice theory of crime which suggests that every individual is a rational being and will only commit a crime based on rational thinking and weighing the pros and cons of the act itself. As mentioned before, the criminality of each individual varies based

¹ Pegu, C. 2021. Identifying risk factors associated with juvenile offenders' recidivism in India: a theoretical understanding. Humanities, Arts and Social Sciences Studies (FORMER NAME SILPAKORN UNIVERSITY JOURNAL OF SOCIAL SCIENCES, HUMANITIES, AND ARTS), pp.346-354.

on multiple factors and would not always include a rational choice. Thus, this method too would not help combat the rates of recidivism.

The reformatory theory is a promising one, where there is more scope for the rehabilitative and reintegrative activity that would, at best, deal with various social, psychological and behavioural factors that cause criminal behaviour and thus reduce recidivism.

[...]the inaccessibility to medical services and legal help is adding up to the misery of the respondents. Treatment of this sort is sure to make a deep impact on the first-time offenders and breed in them contempt for law and officials rather than make them remorseful of their conduct. (Palakkappillil & Prasanna, 2017)²

Thus, it can be said that the reformatory theory executed via effective rehabilitative techniques would indeed reduce the rates of recidivism.

5. Conclusion & Suggestions

India is a vast country and thus has a large number of offenders in prisons, either convicted or under trial. To combat the rates of reoffence to avoid overcrowding in prisons and thus human rights violations, proper rehabilitation techniques must be put in place to ensure proper reintegration of the prisoner into the society with very little to no probability of recidivism.

As mentioned in Singh & Mohapatra (2021), more quantitative methods based on machine learning must be used to predict the risk of recidivism in first-time offenders to eliminate subjective bias from the correctional and rehabilitative officers. More emphasis on reform rather than punishment should be given to ensure the reduction of the risk of criminal behaviour in imprisoned individuals.

As mentioned in Palakkappillil & Prasanna (2017), “The correctional personnel were of the view that inflicting physical torture will generate a kind of fear and will help to control the inmates in jail. They were not very optimistic about chances of reformation, and thought that those who could be thus reformed would only be a very small percentage.”

Thus, the correctional officers and other staff must be sensitized and educated about the reformatory theory and the benefits of rehabilitation over punishment and imprisonment without any psychological, social or behavioural interventions.

² Palakkappillil, J., & Prasanna, C. K., 2017. Criminality Among Youth and Recidivism. The Journal of Development Practice, 3.

Further, as mentioned previously, the rehabilitation process during imprisonment should include behavioural and psychological interventions, interpersonal skills, vocational, academic, and social skill training, education, mental and physical health care and interventions for drug and alcohol abuse. Reintegration methods should primarily include the provision of employment opportunities, housing and continued post-reintegration mental health and psychiatric services.

6. References

- Calleja, Nancy G., et al. "Reducing Juvenile Recidivism through Specialized Reentry Services: A Second Chance Act Project". *Journal of Juvenile Justice*, vol. 5, no. 2, 2016, pp. 1-11.
- Choudhury, R., et al. "A Retrospective Study to Determine the Type of Offence Committed by the Juveniles in the Reformatory Schools of a Capital City of India". *Medico Legal Update*, vol. 20, no. 3, 2020, pp. 180–184.
- Duwe, Grant. "Applying the Risk Principle to Optimize Accuracy and Equity in Correctional Risk Assessment: Results From a Simulation". *International Journal of Offender Therapy and Comparative Criminology*, vol. 65, no. 13–14, SAGE Publications, October 2021, pp. 1473–1495, <https://doi.org/10.1177/0306624X20986523>.
- Gupta, Shalini. "Correctional and Rehabilitative Techniques of Punishment: A Need for Legislative Reform in India". *Indian Journal of Law and Human Behavior*, vol. 5, no. 2, 2019, pp. 225-232.
- Jacobs, Leah A., and Aaron Gottlieb. "The Effect Of Housing Circumstances On Recidivism: Evidence from a Sample of People on Probation in San Francisco". *Criminal Justice and Behavior*, vol. 47, no. 9, SAGE Publications, Sept. 2020, pp. 1097–1115, <https://doi.org/10.1177/0093854820942285>.
- Kacker, P., and A. Pandya. "Forensic Psychology for Prevention of Crime and Rehabilitation of Offenders: Public Health Perspectives." *GAP Indian Journal of Forensics and Behavioural Sciences*. vol. 1, no. 1, January-June 2020, pp. 5-7.

- Martin, M. L. *Effectiveness of Mental Health Follow-up on Recidivism of Psychiatrically Diagnosed Released Inmates*. 2016. Capella University, Doctoral Dissertation.
- McNiel, Dale E., and Renée L. Binder. "Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence". *The American Journal of Psychiatry*, vol. 164, no. 9, Sept. 2007, pp. 1395–1403, <https://doi.org/10.1176/appi.ajp.2007.06101664>.
- Narasimman, V., and G. Kanaga. "Correlates of Mental Health Status of Prisoners- An Empirical Study". *International Journal of Arts, Science and Humanities*, vol. 6, no. 2, 2018, pp. 51-57.
- Nyamathi, Adeline., et al. "Effectiveness of Dialectical Behavioral Therapy on Reduction of Recidivism among Recently Incarcerated Homeless Women: A Pilot Study". *International Journal of Offender Therapy and Comparative Criminology*, vol. 62, no. 15, SAGE Publications, Nov. 2018, pp. 4796–4813, <https://doi.org/10.1177/0306624X18785516>.
- Palakkappillil, J., and C. K. Prasanna. "Criminality Among Youth and Recidivism". *The Journal of Development Practice*, vol. 3, 2017, pp. 1-39.
- Pegu, Chandini. "Identifying Risk Factors Associated with Juvenile Offenders' Recidivism in India: A Theoretical Understanding". *Humanities, Arts and Social Sciences Studies*, vol. 21, no. 2, 2021, pp. 346–354.
- Probst, Thomas., et al. "Criminal Recidivism after Forensic Psychiatric Treatment. A Multicenter Study on the Role of Pretreatment, Treatment-Related, and Follow-up Variables". *Journal of Forensic Sciences*, vol. 65, no. 4, Wiley, July 2020, pp. 1221–1224, <https://doi.org/10.1111/1556-4029.14281>.
- Rich, Phil. *The Assessment of Risk for Sexual Reoffense in Juveniles Who Commit Sexual Offenses*. Research Brief. Sex Offender Management Assessment and Planning Initiative (SOMAPI). *Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)*, Office of Justice Programs, 2015.

Singh, Aman., and Subrajeet Mohapatra. "Development of Risk Assessment Framework for First Time Offenders Using Ensemble Learning". *IEEE Access: Practical Innovations, Open Solutions*, vol. 9, Institute of Electrical and Electronics Engineers (IEEE), 2021, pp. 135024–135033, <https://doi.org10.1109/access.2021.3116205>.

NON-ENTRY OF WOMEN IN NATIONAL DEFENCE ACADEMY

Kush Kalra*

1. Introduction

The National Defence Academy (NDA) concept was conceived at the end of World War -II, when the years of war had brought about a realisation among nations in the need for 'jointness' in modern warfare, and the nations had realised that synergy among the various forces was what provided cutting edge advantages in a conflict situation. It was a concept that was far ahead of its time when the National Defence Academy was established. Since its establishment and formal inauguration on January 16, 1955, the National Defence Academy has established itself as an "iconic institution" and a global brand of excellence in the field of Military Education.

However, eligible female candidates, who are interested and passionate about joining the Armed Forces and are willing to choose their profession as an Officer of the Armed Forces have been denied entry into this iconic and premier institute of excellence simply on the basis of their sex and therefore a constitutional wrong of violations of Articles 14¹, 15², 16³ and 19⁴ has been carried out systematically over the years ever since the establishment of this iconic institute.

* Assistant Professor of Law, UPES, Dehradun

¹ Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

² Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

³ Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any

The National Defence Academy's vision is to be the world's leading joint preparation institution and centre of brilliance for creating junior leaders for the Armed Forces (Indian) and the Armed Forces of foreign countries. The National Defence Academy's mission is to provide cadets with the highest standards of focused training in the professional, intellectual, physical, and leadership spheres, as well as moral and ethical grooming, using innovative techniques. The National Defence Academy was established as an institute of higher learning.

In keeping with the NDA's vision and work, cadet preparation has been intended to offer the cadets the mental, moral, and physical attributes needed to deal with the challenges of the future battlefield, with the objective of leading troops to victory in conventional and non-conventional conflicts.

The design of the course is of such a nature which helps to transform a cadet into a potential Officer and a Gentleman. On the successful completion of the 3 year course at the Academy, the Army trainees continue to the Indian Military Academy at Dehradun, the Naval trainees continue to the Indian Naval Academy at Ezhimala and the Air Force trainees continue to the Air Force Academy at Hyderabad and after successful completion of 1 year (one or one and a half years for Air Force Cadets) training at the respective Academies, the cadets are commissioned as Permanent Commissioned Officers into the particular Services.

Access to this scientific and systematic approach to training, which shapes and moulds youth into future military leaders and provides cadets with rich and valuable experience, expertise, and exposure, has been denied to eligible and willing female applicants solely on the basis of their gender. As a result of this denial of opportunity and access, female officers in the armed forces have limited career advancement opportunities compared to their male counterparts, as they are thought to have gained much more expertise and experience from training at the National Defence Academy. Thus, this systematic denial of access has been perpetuating a practice which is

local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

⁴ Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business

unjustifiable within the four corners of the Indian Constitution and is a clear violation of Articles 14, 15, 16 and 19.

2. NDA and Entry of Women

The National Defence Academy offers a comprehensive and up-to-date academic curriculum. A cadet can join the Science or Humanities Stream based on his or her academic profile and performance in the classification test. At the end of three years, the cadets are awarded degrees by Jawaharlal Nehru University. The syllabus at the National Defence Academy is reviewed and updated on a regular basis by two committees: the Inter-Services Study Group (ISSG) and the Academic Study Group (ASG), both of which are chaired by the Chiefs of Staff Committee.

The NDA has also initiated a Bachelor of Technology programme for the Naval and Air Force Trainees since June 2016 where the first three years of the course are concluded at the NDA and the remaining one year of the course is completed at the Indian Naval Academy and Air Force Academy for the respective Navy and Air Force Cadets. The Bachelor of Technology degree is also affiliated with the Jawaharlal Nehru University and is recognized by the All-India Council for Technical Education (AICTE). The cadets, on fulfilment of certain eligibility criteria, are also taught foreign languages (Arabic, Chinese, French and Russian).

The goal of developing a well-rounded curriculum for cadets is to help them develop their personalities as 'Soldier Scholars,' and to help them emerge as confident leaders who contribute not only to nationwide safety but also to the overall growth of our Nation. The academic curriculum at the National Defence Academy is designed and integrated with military subjects and trains in such a way that cadets have a significant advantage in terms of applying their academic lessons in their life and career as Officers of the Armed Forces.

This is bound to give them an edge when they are required to compete against Officers holding similar academic degrees but whose institution of instruction was not the National Defence Academy but a civilian institute. Eligible female candidates, willing to pursue a career in the Armed Forces and willing to get educated in the National Defence Academy to have an edge when compared to obtaining a degree from a civilian institute are categorically denied the opportunity solely on the ground of their sex, shaped by the conventional and inherently biased gender roles attached to females by the society. This amounts to a violation of the fundamental rights of equality and non-discrimination guaranteed by the

Constitutional provisions under Articles 14, 15, 16 and 19 of the Indian Constitution and there is no constitutionally justifiable explanation for such categorical exclusion.

The National Defence Academy has three different training teams for the cadets opting for the Army, Navy and Air Force. In addition to that, there is also a Joint Training Team. The Army Team educates the trainees to be skilful in basic soldiering expertise which includes skills to guide a section as part of a squad in combat, to use modern-age technical gadgets like Global Positioning System (GPS), Infantry Weapon Effect Simulation System (IWESS), and other Simulators, basic nuances of weapon training and section level tactics like an ambush, patrolling, attack, defence and casualty evacuation.

The Joint Training Team is involved with the grooming of the cadets from their arrival at the National Defence Academy to the penultimate day of their training. Overall, the National Defence Academy is equipped with adequate and modern infrastructure facilities and fine human resources to aid the training of the cadets. The Government bears the expenses incurred for the training of the cadets, the expenses incurred for setting up of the training infrastructure, handling and maintenance costs, and the cost of upgradation of infrastructure from time to time. This essentially means that it is the public exchequer or the taxpayer's money which is being used to support the running of this premier institute of the Country. Any institute dependent on the public exchequer or the taxpayer's money ought not to carry on practices that clearly violate fundamental rights. When the public exchequer is paying for the costs to run the country's premier institute of education and training in the Military sphere, then such training should be accessible to all the eligible candidates and the categorical exclusion of female candidates based on their sex is a patent infringement of the fundamental rights provided under Articles 14, 15, 16 and 19 of Constitution of India.

The eligible and willing female candidates being denied the occasion of admission to the NDA on the ground of their sex and thereby methodically and unconditionally excluding qualified female candidates from the chance to train at the premier joint training institute of the Indian Armed Forces which, at a later point of time, becomes an obstacle in the career advancement opportunities for Female Officers in the Armed Forces. The decision to not allow entry of eligible female candidates into the NOA has a detrimental effect on the career advancement opportunity of a Female Officer in the Indian Armed Forces and hence is violative of Articles 14, 15, 16 and 19 of the Constitution of India.

The National Defence Academy is undoubtedly the premier institute for military education and training in India. For the youth who aspire for a career in the Armed Forces, the National Defence Academy provides the perfect platform to join the Armed Forces at a young age. Out of the different modes of entry for Permanent Commission Officers into the Armed Forces, the National Defence Academy and Naval Academy Entrance Examination is the first point of entry available to the youth. However, ever since the establishment of the National Defence Academy, entry to the National Defence Academy has been restricted to only male candidates and entry has been denied to eligible female candidates solely on the basis of their sex which violates the fundamental rights of equality and non-discrimination guaranteed under Articles 14, 15, 16 and 19 of the Indian Constitution.

3. Union Public Service Commission and NDA

The Union Public Service Commission (UPSC) organize the entry examination titled the "National Defence Academy & Naval Academy Examination" and as per the eligibility criteria, "any unmarried male candidate, with the required educational qualification and aged between 15-18 years can sit for the examination and on qualifying the exam and on successful completion of training at the National Defence Academy and the subsequent training at the respective Academy of the Service the cadet opts for, gets commissioned into the Service as a Permanent Commissioned Officer by the age of 19-22 years old". This chance to take the National Defence Academy and Naval Academy Examination at the age of 15-18 years, with the eligible academic qualifications is not available to eligible and willing female candidates and the only cause for this segregation is on the basis of their sex. The Union Public Service Commission is an institution envisioned in the Constitution of India and has been set up as per the provisions in Part XIV, Chapter II (Articles 315-323) of the Constitution of India.

Being a Constitutional Body itself, the Union Public Service Commission has been perpetually violating the fundamental rights guaranteed under Articles 14, 15, 16 and 19 of the Indian Constitution by categorically excluding female candidates from applying for the National Defence Academy and Naval Academy Examination by expressly limiting it to unmarried male candidates.

The National Defence Academy has set certain training objectives for the cadets and over the years, has moulded the training in a manner to obtain the said objectives. One of the most striking objectives among the different objectives of the training model at the National Defence Academy is to "Conduct high-quality service training

to enable cadets to have a substantial edge over their counterparts during their service careers." This training objective and its successful achievement have been a factor in boosting the chances of career advancement of the cadets who pass out from the National Defence Academy.

Therefore, the Officers in the three Services whose alma mater was the National Defence Academy have proved to be the *creme de la creme* among the Officers of the Indian Armed Forces and the fact that out of the 30 Chiefs of the Army Staff, 13 had passed out from the National Defence Academy and similarly, out of the 26 Chiefs of the Air Staff, 9 had passed out from the National Defence Academy and out of the 26 Chiefs of the Naval Staff, 11 had passed out from the National Defence Academy goes on to prove that the National Defence Academy is, in fact, the premier institution in the field of military education and training in India. Moreover, the National Defence Academy has also produced 3 Param Vir Chakra Awardees, 12 Ashok Chakra Awardees, 31 Mahavir Chakra Awardees, 160 Vir Chakra Awardees, 43 Kirti Chakra Awardees and 149 Shaurya Chakra Awardees. This training objective has been successfully achieved by the National Defence Academy over the years through the training regimen that has been put in place and is followed with utmost sincerity, dedication and in a very professional manner.

This training regimen, which is supposed to shape cadets into the best Officers among the highly professional Indian Armed Forces Officers has been systematically denied to eligible female candidates. Such violation of fundamental rights guaranteed under Articles 14, 15, 16 and 19, solely on the basis of sex, by a premier and exemplary institute of the country producing the best future Officers of the Armed Forces is not justifiable by any constitutional reasoning. This systematic and categorical exclusion of female candidates also plays a role in the advancement of the careers of female Officers who are able to join the Armed Forces through the Short Service Commission Entry points as they have a relatively short training period before being commissioned as Officers and as a result, often end up losing the career advancement opportunities to their male counterparts who have passed out from the National Defence Academy and are considered much more qualified to have relatively more expertise and experience. This has systematically perpetuated the Constitutional wrong of discrimination against women solely on the basis of their sex.

4. Women in Defence Forces

This Hon'ble Supreme Court passed the Judgment in the matter of Secretary, *Ministry of Defence v. Babita Puniya and Ors.*⁵, wherein the Court laid down directions in relation to the issue of extension of Permanent Commission to the Women Officers of the Indian Army and in the Judgment, Hon'ble Court pointed out that restraining the position of Women Officers in the Army is a constitutional wrong the constitutional wrong committed with regards to restraining the function of women Officers in the Army is not based on grounds, but is based on sex stereotyping.

With the resolution of the aforementioned matter, women officers of the Indian Army will be able to serve as Permanent Commissioned Officers of the Army. However, there are no routes for women to join the Army as Permanent Commission Officers. Under the current situation, female candidates who are eligible and willing to serve in the Army must wait until they have completed their graduation degree. Following that, aspiring female candidates must apply to join the Army through one of the limited Short Service Commission Entry Points available to them, and after 10 years of service, Women Short Service Commission Officers will have the option of opting for Permanent Commission.

The period of training for the Short Service Commission Women Officers is extremely less compared to the training that a male Permanent Commission Officer, who gets entry through the National Defence Academy gains. This naturally places a women Short Service Commission Officer at a disadvantageous position in the matter of career progression, as the Women Officer is naturally considered less qualified and underprepared for handling some challenges. Further, due to the fact that unmarried male candidates aged between 15-19 years can join the National Defence Academy, by the age of 19-22 years, such cadets are commissioned as Permanent Commissioned Officers of the Indian Armed Forces. Therefore, such male Officers have a comparably a long service life. As a natural corollary of the aforesaid proposition, the Male Officers who have gained entry to the Armed Forces through the National Defence Academy have higher chances of career progression and a higher chance of being promoted to the Higher Ranks of the Armed Forces, including the Ranks of Chiefs of the Armed Forces. Therefore, this categorical exclusion of eligible female candidates from joining the National Defence Academy places the Women Officers of the Armed Forces at a very disadvantageous position

⁵ (2020)7 SCC 469.

in terms of their career progression and this categorical exclusion violates the fundamental rights guaranteed under Indian Constitution.

The Ministry of Defence, in the academic year 2018-2019, carried out a Pilot Project for the admission of girl children in Sainik School, Chhingchhip in Mizoram and after its success, in the month of December 2019, the Ministry of Defence decided to implement the decision of admission of girl students in a phase-wise manner into the Sainik Schools in India. As per the reply of the Minister of State for Defence to a question raised in the Parliament during a Question Hour Session in December 2019, the Government had approved the admission of girls in five Sainik Schools at Kalikiri in Andhra Pradesh, Kodagu in Karnataka, Ghorakhal in Uttarakhand, Chandrapur in Maharashtra and Bijapur in Karnataka for the academic session 2020-21. The Sainik Schools act as feeder schools to the Indian Armed Forces as they educate, train and prepare their students to take up the National Defence Academy and Naval Academy Examination. The Sainik Schools have actually emerged as the top institutes to send their students to the National Defence Academy. The decision of the Ministry of Defence to implement admission of girl students to Sainik Schools in India is a decision to be appreciated as it is a step taken to further the cause of doing away with sex-based discrimination to avail educational opportunities. Therefore, with girl students being admitted into the Sainik Schools, it is natural that they would also be educated and trained now by the Sainik Schools to prepare for a life and career as Officers of the Armed Forces.

The fact that eligible female candidates are now allowed entry into the National Defence Academy is only breaking the bridge of gender disparity in the Armed Forces and diversifying the role of Women Officers. With the admission of girl children into the Sainik Schools in the country, the girl students would be educated and trained to join the Armed Forces. However, once they complete the 10+2 level of education, as of the current position, they would be denied the opportunity to take the National Defence Academy and Naval Academy Examination and they would not be allowed entry into the National Defence Academy whereas their male classmates and friends would be allowed. This is going to act as a barrier to the restoration of equality of opportunity for eligible candidates of both sexes in the Armed Forces and would further carry forward the constitutional violations of Articles 14, 15, 16 and 19.

In *Charu Khurana v. UOI*⁶, Hon'ble Supreme Court considered the issue of gender bias in the matter of denial of membership in the "Cine Costume Make-up Artists and Hair Dressers Association" in Bollywood. It was held that such discrimination violates basic constitutional rights. Also, in the case of *Kush Kalra vs Union of India and Ors.*⁷, the Hon'ble Delhi High Court allowed the entry of women into the Indian Territorial Army after 73 years of Independence terming it as unfairness based on gender which was violative of the fundamental rights guaranteed to all women under Indian Constitution and also impinges on their basic human rights.

5. Conclusion

The inherent differences between men and women have to be appreciated and celebrated but should not be used to deny and discriminate. Such denials and discrimination based on inherent differences between men and women is not constitutionally justifiable ground for limiting and restricting opportunities to a woman, who is situated in a similar position and is equally eligible, competent and qualified as a man. Such denials and discrimination against women, based on inherent differences between men and women, is a case of discrimination whereby constitutional values get compromised. 'Benign' or generic justifications to defend such Constitutional wrongs should not be ground and should not be accepted to perpetuate such categorical exclusion based on sex. If such an Act of categorical exclusion has to be defended, it should be defended on the backdrop of actual state purposes and objectives and tenable justifications have to be provided to show that such constitutionally backed state purposes and objectives have been achieved by purporting such discrimination. If such constitutionally backed state purposes and objectives are not present, it should be considered a grave constitutional wrong committed by the State. This exclusive categorical exclusion of eligible and willing females being denied the right to appear for the National Defence Academy and Naval Academy Examination and being denied the right to train at the most premier joint training institute in India for the Armed Forces is a violation of the Constitutional guarantee of equality and the denial to women of availing extraordinary education and training opportunity, afforded to similarly placed men.

⁶ (2015) 1 SCC 192.

⁷ MANU/DE/0027/2018.

6. References

- Agnes, Flavia. *State, Gender and Rhetoric of Law Reform*. Research Centre for Women's Studies, S.N.D.T. Women's University, Bombay, 1995.
- Agorin, Marjorie. *Women, Gender and Human Rights*. Rawat Publications, Jaipur & New Delhi, 2003.
- Altekar, A.S. *The Position of Women in Hindu Civilization: From Prehistoric Times to the Present Day*. The Culture Publication House, Banaras Hindu University, 1938.
- Ambedkar, S.N., and Shilaja Nagendra. *Women Empowerment and Panchayati Raj*. ABD Publishers, Jaipur, India, 2005.
- Anand, A.S. *Justice for Women: Concerns and Expressions*. Universal Law Publishing, Delhi, 2003.
- Arunachalam, Jaya. *Women's Equality: A Struggle for Survival*. Gyan Publishing House, New Delhi, 2005.
- Arya, Anita. *Indian Women: Education and Empowerment*. Vol. 2, Gyan Publishing House, New Delhi, 2000.
- Asthana, Pratima. *Women's Movement in India*. Vikas Publishing House, Delhi, 1974.
- Atal, Yogesh., and Meera Kosambi. (eds.) *Violence Against Women : Reports from India and the Republic of Korea*, UNESCO Principle Regional Officer for Asia and the Pacific, Bangkok, 1993.
- Banerji, Anita., and Raj Kumar Sen. (eds.) *Women and Economic Development*, Deep and Deep Publications, New Delhi, 2000.
- Bano, Afsar. *Women and Social Change*. Reference Press, New Delhi, 2003.
- Baruah, Arunima. *The Soft Target: Crime Against Women*. Kilaso Books, New Delhi, 2004.
- Basic Facts About the United Nations*. United Nations Department of Public Information, New York, 2004.

- Basu, Srimati. *Dowry and Inheritance*. New Delhi: Women Unlimited; 2005.
- Baxamusa, Ramala (ed.) *Media Reflections on Women's Movement in India*. Research Centre for Women's Studies, Women's University, Bombay, 1991.
- Begum, S. Mehartaj (ed.). *Human Rights in India: Issues and Perspectives*. New Delhi, A.P.H. Publishing Corporation; 2000.
- Bhadauria, Mridula. *Women in India: Some Issues*. APH Publishing Corporation, New Delhi, 1997.
- Bhowmik, Krishna. *Indian Women: The Ushering of a New Dawn*. Mittal Publications, New Delhi, 2006.
- Biswal, Tapan. *Human Rights, Gender and Environment*. Viva Books Private Limited, New Delhi, 2006.
- Bryce, James. *Modern Democracies*. Macmillan Company, London, 1923.
- Carreiras, H. "The Role of Women in the Armed Forces of NATO Countries: Military Constraints and Professional Identities." *Minerva: Quarterly Report on Women and the Military*, vol.17, number 3-4, 1999, pp. 46-57.
- Chakrabarty, Manas. *Judicial Behaviour and Decision-making of the Supreme Court of India*. Deep and Deep Publications, New Delhi, 2000.
- Chakravorty, M. A. *Critical Note on the Interaction of the Social and Legal Environment of India*. edited by S. Singh and S. P. Srivastava, Bharat Book Centre, Lucknow, 2001.
- Chatterjee, Mohini. *Women's Human Rights*. Aavishkar Publishers, Jaipur (India), 2005.
- Pooncha, V. and Pandey, D. *Responses to Domestic Violence in the States of Karnataka and Gujarat*. Research Centre for Women's Studies, SNDT Women's University, Mumbai, 1999.
- Shah, Niaz A. *Women, the Koran and International Human Rights Law: The Experience of Pakistan*. University of Cambridge, Martinus Nijhoff Publishers, Leiden, Boston, 2006.

Steiner, Henry J. and Philip Alston. *International Human Rights in Context Law, Politics, Morals: Text and Materials*. Oxford University Press, New York, 2nd edition, 2000.

Wilkerson, Karen D. *Legal Issues in Intimate Partner Violence*. edited by Paula K. Lundberg-Love and Shelly Marmion, Praeger Publishers, London, 2006.

WITCH BRANDING IN INDIA: ISSUES AND CHALLENGES

Rishav Jain*

1. Introduction

Living in the era where life is full of opportunities and challenges, men and women are coming ahead hand in hand with zeal and passion. It has been seen that a lot of things are happening in favour of humans but against humanity. Deep down, if we move towards the roots of certain areas, we will witness certain things which shake our mind and soul. Certain social evils and issues are still prevailing in our society, which are more like a bug and eating our roots. Development is happening but such bug like social evils cannot be ignored. Buildings can only survive if the base is strong. Incidents like dowry, domestic violence, female feticide, witch branding and witch hunting are social evils.¹

Branding means the promotion of particular thing by highlighting the features. So, Witch Branding means the branding of women as witch who is believed to have evil magical powers. Witch branding is one of the public evil which is rarely talked about. It has never been taken seriously. Sometimes if a woman in problem approaches any person, orthodox people tend to tag these women as witches.² Witch branding led to male and female victimization in which females are often inflicted physical, psychological harm and sometimes it led to social ostracism and murder. Witch branding is practiced in a number of states in India and it is peculiar form of female victimization.

Witch-hunts don't typically occur in social life; instead, they appear to occur in dramatic eruptions. When accusations of crimes against the community or society are made during witch hunts, a community seems to suddenly become plagued with all kinds of subversive forces that are a threat to the collectivity as a whole. The nation, the community and the state are being undermined and subverted, putting the whole of our shared existence in trouble. When someone is accused of being a witch, a ritual contrast is made between representations of the corporate order and items that

* Assistant Professor, Department of Law, Government Mohindra College, Patiala

¹ Available at <https://vikaspedia.in/social-welfare/social-awareness> Accessed 14 July 2020.

² Available at <https://www.scientificamerican.com/article/why-are-women-accused-of-witchcraft> Accessed 29 July 2020.

would be in opposition to it.³ In most cases, the women targeted are especially vulnerable since they are either widows or abandoned adolescent single women. The faith in the existence of witches is strong and deep- rooted especially in clannish communities. The practice reflects the low status of women, particularly widows. It's fascinating to observe that people who harass, torture, and murder defenceless women are members of the same clan, tribe or same village.⁴

The highest incidences have been reported from different states in India such as Rajasthan, Gujarat, Assam, West Bengal, Bihar, Maharashtra, Andhra Pradesh and Odisha. People from different regions use different names, for instance, dakan, dain, bhootni, chudail, banamati, chetabadi, chillangi, hawa or evil eye, dahani, tonahi, etc. The names may be different but the practice seems to take a more or less similar form; witch hunts remain a continual scourge in rural parts of India. Supernatural and superstitious beliefs exist in every kind of society. Their variety seems endless. Witch craft is one such superstitious belief found amongst the people.⁵

2. Historical Background and Vulnerability of Women

The assumption that males are superior to women due to gender bias is the sole cause of violence against women. Gender violence is considered normal and enjoys social accreditation by giving subordinate status to women. Physical aggressiveness, torture, sexual assault, and rape are examples of physical violence. Psychological violence takes the form of insults, shame, compulsion, blackmail, financial or emotional threats, control over speech and behaviour, and even generating doubts about a person's humanity. One in three women has faced physical and sexual violence. Such violence may take place in family, within nuptial relationship and society. Usually domestic aggression against women is hidden.⁶

There are certain other cultural and social factors which are highlighters of this violent behavior. They are interlinked with the development and propagate such behaviors. Men and women were forced to undergo certain socialization process; men adopt the stereotypical gender roles of dominance and control, while women adopt the roles of dependency, submission, and deference to authority.

³ Englund, Harry. *Witchcraft, Modernity, and the Person, Critique of Anthropology*. Sage Publication, 1991.

⁴ Available at https://www.researchgate.net/publication/318653799_Witch Accessed 29 July 2020.

⁵ Statement of object and reasons of The Prevention of Witch Hunting Bill, 2016 (Bill No. 66 of 2016).

⁶ Available at <https://www.who.int/emergencies/diseases/question-and-answers-hub/q-a-detail/violence-against-women> Accessed 29 July 2020.

Unfortunately it can be seen that female child experiences growing up as weak and in need of care, whether it is physical, social, or economic. Such innate sense of dependency makes her witness violence at almost every stage of her life.

Males are said to be the first members of the family to adopt hierarchical relations, which are manifested in the unequal distribution of labour among the sexes and control over resource allocation. The child is exposed to gender inequalities in the family and its functional unit from birth, and more recently, even before birth, in the form of sex-determination tests that result in female foeticide and infanticide. Women are most frequently exposed to violence at home, despite the fact that it should be the safest location. It is home where a girl and woman face violence for the first time.⁷ Women formerly had an equal status to males in all aspects of life in ancient India. As a result of the Smritis and the Islamic invasion of several Muslim kings, who restricted women's independence and rights, the status of women started to deteriorate later in 500 B.C. The independence, dignity, and prestige enjoyed by women in society did not continue long, and they eventually began to lead sedentary lives.

There is a lengthy and tumultuous history to the practice of witchcraft and sorcery today. The "Santhal witch trials" of the Santhal tribes from Chotta Nagpur in Singbhum District in British India in 1792 are known as the first documented instance of witch-hunting in India. Even before that, during the pre-industrial revolution, the western world was still experimenting with the horrifying concept of branding and chasing witches. *Summis desiderantes affectibus*, a papal bull that was approved for correction, incarceration, and punishment of those labelled devil-worshippers, was published in 1484 by Pope Innocent VIII. It was carried out at Heinrich Kramer's request after the notorious inquisitor's request to investigate violent episodes involving witch branding and hunts throughout Germany was denied by the local bishops. Three years later, in 1487, Kramer produced the legendary *Malleus Maleficarum*, often known as the "Witch Hammer", which was well-read due to the newly developed printing presses. There are also several accounts of infamous witch trials, which infuriated a segment of the era's sensation-seeking audience.⁸

⁷ Available at <https://amnesty.org.in/projects/gender-based-violence> Accessed 27 July 2020.

⁸ Available at www.indiankannon.org/doc, BLAPL No.3707 OF 2020, High Court of Orissa. Accessed 27 July 2020.

During the medieval era, when social ills like sati and child marriages became acute, the status of Indian women in society progressively declined. The Devadasi or temple ladies were sexually abused in several areas of India. In particular, Hindu Kshatriya monarchs were engaged in widespread polygamy. Women's dignity was lost in the beginning of the 19th century. Women were totally sublimated to male superiority.⁹ Superstition was prevalent in the early period of history. The main reason for that was the illiteracy of the people in all walks of social life. Neither the education system was properly developed nor the general medical facilities were provided at that time. When there was epidemic of any disease, some people blamed others for the outbreak of disease due to the presence of rivalries between them. They used to brand member of opposite group as a witch and in the name of witch hunting, the person was brutally beaten and even killed.¹⁰

When people were caught with fever, they used to approach local quacks. If local quacks were unable to diagnose and treat the fever and disease then people used to approach exorcists or ojhas. The exorcists blamed others for the disease and used to brand any illiterate and weak person as a witch.¹¹ Many types of attacks were done on the person who was branded as witch and was exploited in the name of witch hunting. These attacks included midnight murders, causing grievous hurt, destruction and seizing of property of person.¹² Violence against women is not a new phenomenon. It exists almost in every society, be it developed, developing or underdeveloped. The forms of violence against women may vary but the consequence of the violence always place women in a poor manner. Whether it is a physical or psychological violence, women are at the receiving end. It includes sexual assaults, harm to the reputation or dignity of women.¹³

Rape, sati, female infanticide, female foeticide are some of the instances of violence against women. It is strange that even in the name of evil belief, witch hunting is not rare. The threat of violence on women manifest rights before their life begins, continues to sear the early life, follows in the married life, remains in the widowhood and worse than that, ends in murder and suicide in some cases.¹⁴ It is due to the superstition more often, women are labeled as "witch" and as a

⁹ Available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue2/Version-3/H020235155.pdf> Accessed 18 July 2020.

¹⁰ Dwimalu, Daina B. *Rourtwan*. Chirag Publication Board.

¹¹ Hagrama. *Illiteracy Root Cause of Witch Hunting*. The Sentinel Publication, Guwahati.

¹² Mochahari, Monjib. "Midnight killers." *Bibungthi- the opinion*, Barulungbuthur Publication Board, Kokrajhar, Assam.

¹³ Available at witchesmonstrous.com/witches-hunt-today Accessed 27 July 2020.

¹⁴ Chakraborty, Dipanshu. *Atrocities on Indian women*. A.P.H. Publishing Corporation, New Delhi, 1999.

consequence women hunt in the name of witch hunt. Though men and women may fall in victimisation but studies reveal that 9 out of 10 in witch hunt accusation are against women.¹⁵ Witch craft is nothing but only an evil belief, a terrible design of human psyche. Accusation of being a “witch” refers to the alleged custody by an evil spirit in a woman giving her supernatural powers to alter the course of nature.¹⁶

It is believed that evil spirited women, by using supernatural power, can alter the course of the nature or harm people so often for that allegation, the labeled witches are treated nastily. It is not that such labeled witches are hated by the neighbors but even mistreated by their kith and kin. The undefended women may easily fall in the dome of accusation. More often, single women or widowed are easily targeted as being vulnerable and defenseless. It is depicted that “Women are seen as evil and people whose weakness could summon the devil for sexual intercourse.”¹⁷

The plight of women in many societies is more or less same in the present time. Labeling a woman as witch is also seen as a method to suppress women.¹⁸ Any defenseless woman could be the easy victim of witch hunt. Ritual knowledge possessed by men is cherished but possessed by a woman is considered dangerous for the society. Evil is identified as living medium, in the form of women. In the name of witch branding and hunting, women are tortured very inhumanly and in most of the cases, the ultimate outcome of that torture is the murder of the victim. Due to the advancement of women brought about by the impact of social reforms, their participation in the labour force and other activities rose during the 19th and the early 20th centuries. In India, the social structure, cultural norms, and value systems have a significant impact in determining the role and status of women in society. One of the most outstanding sets of legislation for women is found in India. But this problem of witch- hunting and branding is still prevalent in India.

3. State Legislations and The Prevention of Witch Hunting Bill, 2016¹⁹

Apart from the national legislations which can be used for punishing the offenders of witch branding and hunting cases, there are specified state legislations for

¹⁵ Available at theviewspaper.net/witch-hunting-in-india/-cacedsimilar. Accessed 18 July 2020.

¹⁶ Available at [://C:/Users/MY%20PC/ Downloads/Shrestha2004Witch-huntingViolenceAgainstWomenIndia.pdf](http://C:/Users/MY%20PC/Downloads/Shrestha2004Witch-huntingViolenceAgainstWomenIndia.pdf). Accessed 3 July 2020.

¹⁷ Brite, Erin Nummey. “Historical summary of the European witch Hunts.” *The witch Hunts main pageat departments, kings.edu/women-history/witch*. Accessed 2 August 2020.

¹⁸ Balestraci, Mary. *Victorian Voices: Gender Ideology and Shakespeare’s Female Characters*. Northeastern University Boston, 2012.

¹⁹ Bill No. 66 of 2016 (Introduced by former Member of Parliament from Saharanpur Constituency Shri. Raghav Lakhanpal).

tackling the problems of witch-branding and hunting.

These provisions are as follows: The Prevention of Witch (Daain) Practices Act, 1999²⁰ in Bihar; The Prevention of Witch (Daain) Practices Act, 2001 in Jharkhand; Chhattisgarh Tonahi Pratadna Nivaran Act, 2005²¹; The Odisha Prevention of Witch Hunting Act, 2013²²; The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and black magic Act, 2013²³; The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017²⁴; The Rajasthan Prevention of Witch Hunting Act, 2015²⁵; The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015.²⁶

3.1 The Prevention of Witch (Daain) Practices Act, 1999

The Act was created to address the issues with witch branding in Bihar. Identification of a witch (Daain) carries a sentence that can include up to 3 months in prison, a fine of Rs. 1000, or both. According to this law, anyone who performs any acts of "Jhadphook" or "Totka" in an effort to heal or cure a woman who has been labelled a "Witch" (Daain) while also torturing or suffering them physical or mental pain is punishable.

In *Gaurav Jain v. State of Bihar and Ors.*,²⁷ The committee was set up by government of Bihar to deal with cases of witch hunting ultimately resulted in murder of ladies (mostly widow) in Bihar and some areas of Madhya Pradesh and Chattisgarh. The committee recommended special cell in each districts vulnerable to witch hunting and allowing intelligence officers in plain clothes in the locality.

3.2 The Prevention of Witch (Daain) Practices Act, 2001

To make effective measures to curb the branding and hunting of witch, the Jharkhand state has implemented this act. Section 3 to 8 of this act specifically mentions about punishments in contravention of this act. If any person identifies or brand any person as a witch, the person can be punished for 3 months and also liable to pay fine. This act also prescribes punishments for damaging for causing

²⁰ Bihar Act No. 9, 1999.

²¹ C.G. Act No. 17 of 2005.

²² Odisha Act No. 3 of 2014.

²³ Maharashtra Act No. 30 of 2013.

²⁴ Karnataka Act No. 46 of 2017.

²⁵ Rajasthan Act No. 2 of 2015.

²⁶ Assam Act No. 21 of 2018.

²⁷ Writ Petition (Criminal) No. 745 of 1950.

harm, abetment for committing offence and witch curing. The offence committed under this act is cognizable and non- bailable, but the punishment prescribed under this act is less. Unfortunately, this statute is unable to offer women who have been classified as witches practical, preventive, therapeutic, and punitive methods.

In *Mahesh Lohra v. State of Jharkhand*,²⁸ the Jharkhand High Court upheld the decision of Session Court, which has convicted the accused under section 302 of IPC and various sections of abovementioned act for torturing and killing of human being.

3.3 *Chhattisgarh Tonahi Pratadna Nivaran Act, 2005*

This Act has provided the definition of ‘Tonahi’ as person indicated by other person that he will harm or possesses power to harm by black magic or evil eye. ‘Tonahi’ is also known by other names like ‘Tonaha’ and ‘Daayan’. It has also provided the definition of ‘ojha’ as the person who claims to possess power to control, cure and treat ‘tonahi’. The Act has provided the punishment of 5 years for harassment, curing by jhaadfook, totka or using any tantra- mantra etc. The nature of these cases will be cognizable and non- bailable. The cases can be tried by judicial magistrate first class. It is also mentioned that the provisions of Probations of offenders Act and Code of Criminal Procedure, 1973 are not applicable for the offences tried under this act.

In 2014, a woman in Chattisgarh was stripped, beaten and tortured for hours by brother-in-law. She was killed due to intense torture. 10 persons including 5 women were arrested by police in connection of the killing.²⁹ In the case of *Ghurthu Ram v. State Of Chhattisgarh*,³⁰ the court convicted the accused for the offence punishable under section 302 IPC and under Section 5 of Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 and sentenced him to undergo life imprisonment under section 302 IPC and to undergo rigorous- imprisonment for 1 year under the Act.

²⁸ Criminal Appeal No. 537 of 2009 (Jharkhand High Court).

²⁹ Available at timesofindia.indiatimes.com/city/raipur/chhattisgarh-women-branded-witch-one-set-ablaze. Accessed 12 August 2021.

³⁰ Sessions Trial at Jashpur (Chattisgarh) No.9/2008 dated 28.7.2008.

3.4 *Odisha Prevention of Witch Hunting Act, 2013*

This act made to provide effective measures to tackle the problems of witch branding, hunting, crafting and matters related to it. This Act has given the definitions of witch, witch hunting, witch craft and witch doctor. There are certain provisions which prohibit the practice of witch hunting and witch crafting. It specifically provides the punishment for witch hunting and witch branding. The punishment of 3 years is prescribed for witch hunting and branding. There is provision of enhancement of punishment also for the subsequent offence. It also provides the provision for providing the cost of treatment and damages to the victim. This act is progressive towards curbing witch branding and to prevent women from harassment. Every offence under this Act shall be cognizable and non-bailable.

In 2008, 73 witchcraft related cases were reported across Odisha, out of which 18 were murders. In 2017, there were 99 cases in which 18 were murders.

3.5 *Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and Black Magic Act, 2013*

It was drafted by anti-superstition activist Narendra Dabholkar in 2003. The act criminalises practices related to black- magic, human- sacrifices, use of vague remedies to cure ailments and other such acts which may exploit people.³¹ This Act provide effective measures to prohibit the practices of identification of witch (Daain), damages for causing harm to any person by branding him Daain, abetment in identification and branding witch, witch (daain) curing or jhaadfook or totka. It also provides punishment for persons who are associated with these activities. The act denotes the nature of these kinds of offences as cognizable and non- bailable. The punishment provided for the offences are inadequate and fines are ranging from 1000 to 2000, which is very less and not deterrent enough to curb these heinous crimes.³²

In the case of Pintu Maharaj @ Bhikan Natthu v. State Of Maharashtra,³³ the accused who has been convicted for the offences punishable under sections 376(2), 506 of the Indian Penal Code and under section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other inhuman, Evil and Aghori Practices

³¹ Available at <https://www.dnaindia.com> › India “The anti-black magic and superstition ordinance has been promulgated in Maharashtra.” Accessed 29 July 2020.

³² *Ibid.*

³³ Criminal Appeal No. 681 of 2018 (Bombay High Court).

and Black Magic Act, 2013 and sentenced to suffer Rigorous Imprisonment for ten years and to pay a fine of Rs.20,000. Accused as per judgment and order dated 04/08/2018 in Sessions Case No.37/2016, had prayed to suspend the substantive sentences recorded against him and to release him on bail pending the hearing and final disposal of his appeal. The application was allowed and bail was granted on strict grounds.

3.6 *The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017*

This act was created in response to the rising number of cases of ordinary people being exploited in society due to inhumane, evil, dark practices and black magic, as well as in response to the public's desire to prevent and eradicate the use of such practices in the state.³⁴

A violation of this act's provisions includes the commission of any inhuman, evil, or magical acts, as well as the advertisement, practice, or promotion of such acts by any person, whether directly or indirectly through another person. A violation of this act's provisions is punishable by a term of imprisonment of at least one year and up to seven years, as well as a fine of up to 50,000 rupees.

The vigilance officer designated by the act is responsible for detecting and preventing contravention or violation of the provisions, gathering evidence for the effective prosecution of those who do so, reporting such incidents to the local police station, and performing any other duties as may from time to time be delegated to him by the State government.³⁵

Certain rules are also made by the Government of Karnataka. The nodal department has been created and vigilance officers have been appointed under the act for proper implementation of the Act. Programs to raise awareness of the negative impacts of immoral, evil, and black magic are required under the regulations, as are efforts to treat harmed victims.³⁶

³⁴ Pathak, Manjushree, *Witch Hunting :A Comprehensive Study in Global Perspective 1st Edition*. Mittal Publication, 2018.

³⁵ Section 6 of The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017.

³⁶ Available at <https://dpal.karnataka.gov.in>. Accessed 13 July 2020.

3.7 *The Rajasthan Prevention of Witch Hunting Act, 2015*

This act is made to “provide effective measures” to tackle the problem of witch-branding and hunting and to curb the practice of witchcraft.³⁷ While the act has been in force for more than six years now, negligible conviction under the act has resulted as of yet. Section 3 of the act prohibits witch- branding and hunting and prescribes punishment which may extend to five years and fine which shall not be less than fifty- thousand.

Anyone who practices witchcraft or other similar activities with the intention of hurting or injuring another person is punishable, and possible punishments include imprisonment for a term of not less than one year but not more than three years, a fine of not less than ten thousand rupees, or both.³⁸

More than 70 cases have been reported in Rajasthan under this Act. The highest number of 25 cases was reported alone in Bhilwara district. From 70 registered cases, chargesheets have been filed by police in 36 cases. Police arrested 66 sorcerers on the charges of beating and molesting women in last two years.

In *Mahaveer v. State of Rajasthan*,³⁹ The petitioner had filed the bail application for the offence of Section 302, 201 of IPC and section 4, 7 of this Act. No evidence was recovered under this so far and considering the contentions put forth by counsel for petitioner, the bail application allowed with the bonds of rupees 50,000.

3.8 *The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015*

This Act is made in the State of Assam to provide more effective measures to prohibit witch hunting. It specifically contained the provisions to eliminate torture, harassment, killing of people by using that evil practices. It also provides punishment for offenders and rehabilitation for the victims. The punishment in this Act is stringent which may be extend to seven years and fine may be extended up to rupees 5, 00,000.

If any person with malicious intention commits damage to the reputation and dignity or intend to sexually exploit any women then the punishment of 7 years and fine up to rupees 10,000 can be imposed on the offender. The attempt to commit crime provided under this act is also punishable under section 511 of Indian Penal

³⁷ Preamble, The Rajasthan Prevention of Witch-hunting Act, 2015.

³⁸ Section 5 of The Rajasthan Prevention of Witch Hunting Act, 2015.

³⁹ Criminal Misc Bail Application No. 216 of 2018 (Rajasthan High Court).

Code, 1860. The State Government is empowered to make rules regarding the proper implementation of the law in the state. Athlete Debjani Bora, a Javelin thrower, who won several gold medals, was severely beaten after being branded as witch.

In the case of *Kamal Basumtary v. State of Assam*,⁴⁰ the accused has been charged with various sections of IPC and sections 4,5,7,9,15 of this Act in which accused brand, intimidate, stigmatized and assaulted the victim. The court granted bail to the accused on strict conditions.

3.9 *The Prevention of Witch Hunting Bill, 2016*

The Bill regarding witch hunting was presented in Lok Sabha by Member of Parliament Shri Raghav Lakhanpal in the year 2016. But unfortunately the Bill was not passed by Lok Sabha. In this Bill, the punishment for witch hunting has been provided. The provisions regarding relief and rehabilitation of women victims have also been mentioned. If anyone labels women as witch and blames any women for misfortune then the person who labels shall be punished with the punishment which may extend to three years.

Disappearance of evidence, attempt and abetment to commit offences under this act shall be punished in accordance with the provisions of Indian Penal Code, 1860. Not only that, the community participation in these activities are also discouraged by imposing fine of rupees five hundred to every person involved. The bill imposes the obligation on the public servant to lodge an F.I.R as earliest as possible and start investigation in the cases related to violence against women. Any public employee who willfully refuses to file a case, neglects an investigation, or tries to hide facts and evidence with the intent to downplay the seriousness of the offence is deemed to have assisted in the commission of the offence and is subject to the punishment for aiding and abetting provided by this bill.

4. Judicial Attitude

Judiciary also constantly helps the citizen of the country from the arbitrariness and harassment. It protects the human rights of the person irrespective of gender. Many landmark judgments saved marginalized people of the society by imposing stringent actions on the perpetrators. There are no guidelines by the courts regarding the procedure, which is to be availed by victim of witch branding and

⁴⁰ Criminal Petition No. 781 of 2016 (Gauhati High Court).

hunting. But there are some Judgments of the High Court which provide a light to the issue.

In *Babulal Modi v. State of Jharkhand*,⁴¹ the applicant and his grandmother have been branded as witch. They were assaulted mercilessly by clubs, spade and tangi etc. The case was registered under various sections of Indian Penal Code, 1860 and Section 3 and 4 of The Prevention of Witch (Daain) Practices Act, 1999. The court cancelled the bail after considering the gravity of the case.

In *Jitu Murmu v. State of Odisha*,⁴² the deceased had been ill for a number of days when she decided to seek some type of traditional treatment at the home of her maternal uncle Ram Mumru, a self-proclaimed expert in medicine. She was attacked by his uncle and his family while receiving treatment, and as a result, she died after sustaining numerous fatal injuries from Trisul, rope, and iron rod. The Petitioners allegedly thought that the deceased's aberrant behaviour was caused by an evil spirit gaining control of her body. In order to pull out the "evil spirit" from the body of the girl, the main accused and her family tied the hands of deceased and assaulted her with deadly weapons.

Police registered the case under various sections of the Indian Penal Code, 1860 and Sections 5 & 6 of the Odisha Prevention of Witch-Hunting Act, 2013. Maternal uncle's family got the bail from the Session Court but his bail application was rejected. So this bail application was presented in the High Court on the ground that the other co-accused got bail. The court stated that although this claim seems rather appealing at first glance, a closer examination reveals the differences in the accusations and the involvement attributed to the petitioners in this case. According to the autopsy report, the deceased had up to 27 wounds that penetrated the upper section of the body. The death of the deceased is purely homicidal in nature. Confessional statements were also given by two other co-accused, which is also examined in the trial court.

The court had referred to Gaurav Jain's case,⁴³ the Supreme Court has clearly directed the State to take effective actions to curb these practices opposing human values. Human sacrifice fraught with superstition and blind belief in which the boy's head was severed by the accused to placate a deity is held to be the appropriate case within the parameters of rarest of rare case and prescribed death

⁴¹ Available at www.indiankannon.org>doc, A.B.A. No 3326 of 2016. Accessed 5 July 2020.

⁴² Available at www.indiankannon.org>doc, BLAPL No.3707 OF 2020, High Court of Orissa. Accessed 18 July 2020.

⁴³ Gaurav Jain v. State of Bihar (1996) 5 SCC 125.

penalty.⁴⁴ The court also put prominence for providing the assistance to the victims through free legal services provided under the Legal Services Authority Act, 1987 and asked the State Government to provide the compensation to the victim under various schemes including victim compensation scheme provided under Section 357 A of Code of Criminal Procedure.⁴⁵ The cases related to the death by witch hunting are to be treated as murder.⁴⁶

After consideration, the Court, at this stage, rejected the release the Petitioners on bail. Justice S.K Panigrahi further elaborated the concept of witch hunting and remarked that at present, numerous precious lives are sacrificed on the altar of witchcraft in some parts of the world. Another revealing feature of the pernicious practice of witch branding is how closely it is associated with local politics in tribal societies. Numerous tribal women are also branded as witches and forced to endure excruciating mental and physical torment. Even in the twenty-first century, witchcraft remains common in tribal societies, albeit the reasons for modern witch hunting may be more heinous than spiritual.

Such activities can typically flourish unobserved because they are mostly concealed in remote settlements. This would also imply that the least fortunate and illiterate women, who are already the most vulnerable, fall victim to the cruel violence linked with this myth. It is horrifying that women who are accused of being witches may experience cruel treatment, murder, and other forms of violence.

5. Conclusion

When any female is branded as witch, it largely affects her psychological, social and economic life. Not only the person suffers but along with her, her loved ones like her children and other close people suffer too. Moreover, she faces brutal sufferings and social neglect. She is hardly offered any work because of the perception that she might be having powers which can harm surroundings. Her social life gets spoiled by such labelling. These women are brutally beaten, poisoned, paraded naked and even forced to consume human excreta. Sometimes widows or women with property are deliberately targeted to take the advantage from them. Women suffer from witchcraft accusations on refusing sexual advances from men. Women, who are alone, widowed, infertile, old, considered having unattractive face, mentally unstable, poor, socially ostracized are the easy targets.

⁴⁴ Sushil Murmu v. State of Jharkhand (2004) Cri. 658 (SC).

⁴⁵ Moyna Murmu v. State of W.B. Writ Petition No. 27093(w) 2015, High Court of West- Bengal.

⁴⁶ Laxman Sohoni & Anr v. State of Maharastra (AIR 1977 SC 1319).

In the tribal areas and villages, elderly single women and middle aged women are orchestrated as witches, leading to social stigma, full economic boycott, torture and even murder. To safeguard the lives of innocent women, strict laws are the need of the hour.

AN ANALYSIS OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Gurdas Singh Dahot *

1. Introduction

When it comes to protecting minors from sexual abuse, the legislation has long been overdue for an update. India has ratified the United Nations Charter. In 1992, India's government formally ratified the Convention on the Rights of the Child. Articles of the convention require signatory states to take "all appropriate national, bilateral, and multilateral measures" to protect children from a) being induced or coerced into engaging in sexual activity, b) being exploited for prostitution or other sexual activities, and c) having their likenesses or voices used in pornographic materials.

To prevent sexual abuse, sexual harassment, and pornography against children, the Indian Parliament created the POCSO Act, which creates special tribunals for the trial of offences under the Act.¹ The law also mandates that the judicial system priorities the child's emotional, mental, and social well.

The Hon'ble Supreme Court has also mentioned about the welfare of child and to provide them with adequate means when they are victim of sexual abuse. In case of *Machhi Singh v. State of Punjab*, Hon'ble Court pronounced death penalty to the accused, as he was charged with heinous offences having severe impact on the society aggrieved by such offences. In the present case, the accused has committed sexual intercourse against the will of victim (who was a child), and since children are considered to be the pillars our nation, it was too apposite to impose death penalty on the accused – which is applied in most exceptional of circumstances. The court added that it will take into account the public's moral compass before carrying out an execution. The court has recognized the importance of protecting children and observed that community concerns may be taken into account when determining whether or not to carry out a death sentence. This calls for perusing those provisions which caters to needs to child, who is victim of sexual abuse,

* LL.M. Student, USOL, Guru Kashi University, Talwandi Sabo.

¹ Statement of objects and reasons, the Protection of Children from Sexual Offence Act, 2012, Shree Ram Publications, (Bare Act-2021) at p. 2.

under the relevant provisions of protection of children from sexual offences Act, 2012.

2. Definition of Penetrative Sexual Assault

The Act provides following definition of sexual offence and punishment thereof.

Section 3 provides definition of “Penetrative Sexual Assault”, and it provides following essential elements:

- i. The male partner's penis must enter the female partner's vagina, mouth, urethra, or anus.
- ii. If he puts anything other than his penis into the child's vagina, mouth, urethra, or anus.
- iii. If he touches the child in any way that could lead to penetration through the vagina, mouth, urethra, or anus,
- iv. Penis, urethra, or anus penetration by mouth constitutes penetrative sexual assault.

3. Punishment

When victim is child	When victim is under age of 16 years	Criteria of fine
Ten years minimum, life in jail maximum, with a hefty fine	A minimum of 20 years in prison, with possible life sentences, and a hefty fine.	The victim shall receive compensation for reasonable and necessary medical and rehabilitation costs.

Similar language can be found in the Indian Penal Code, particularly section 375, which defines Rape.

3.1 What is the duty of Court, when the victim is girl and accused is charged with section 376 and section 4 of POCSO Act?

In the case of *Gaya Parsad Pal @ Mukesh v. State*,² the appellant/accused was charged with offence U/s 4 of the POCSO Act along with section 376 IPC. The Honorable Court ruled that it is improper to impose consecutive sentences for the same act. According to the section 375 of the Indian Penal Code, the "Penetrative Sexual Assault" of a female minor also constitutes rape. The law provides to charge the accused on both the offences. But, the punishment can only be awarded for one offence. Further, the court held that the punishment provided under section 376 IPC and provided under section 4 of the POCSO Act is in addition to imprisonment awarded U/s 376 IPC and Punishment provided U/s 376 (2) IPC provides imprisonment up to natural life and fine which is higher than punishment U/s 4 of POCSO Act. After a trial, the court found the defendant guilty of violating Section 4 of the POCSO.³

4. Aggravated Penetrative Sexual Assault

Section 5 contains provisions for the punishment of sexual assault, including the following A person who commits a sexual assault by piercing the victim's skin is accountable under Section:

- a. An officer engages in a sexually penetrating assault on a minor-
 - i. Inside the walls of the police station where he works; or
 - ii. Any station house, regardless of location, to which he has been assigned; or
 - iii. While performing his official duties or in another context; or
 - iv. In situations where he is identified as a police officer or when he is known to be one; or
- b. An armed member conducts sexual assault on a child-
 - i. within the limits of the person's deployment area, or
 - ii. territories governed by the armed forces, or

² 2016 SCC online Del 6214.

³ "1,04,976 cases registered under PoCSO Act during the year 2014-16." Ministry of Women and Child Development, Government of India, 08 February 2018, <http://pib.gov.in/pressreleaseshare.aspx?PRID=1519943>. Press Release.

- iii. whether or not in the execution of official duties; or
- iv. when it can be established beyond a reasonable doubt that the person is law enforcement officer or military personnel; or
- c. a public servant,
- d. When an adult in authority or working in such a facility sexually abuses a child, this is considered a sexual assault committed in a juvenile detention center, remand home, protection home, observation home, or other place of custody or care and protection established or under any law for the time being in force., or
- e. a member of the administration or staff at a public or private hospital carries out a sexual assault on a juvenile that involves penetration.; or
- f. a member of administration or staff at a school or place of worship conducts a sexual assault that involves penetration of the victim's body
- g. Engages in group sexual penetration of a youngster.
- h. anyone who performs a penetrating sexual assault on a minor with a dangerous weapon, fire, heated material, or caustic substance; or
- i The offender either commits a severe, penetrating sexual assault or causes severe bodily harm and sexual organ damage., or
- j. anybody who commits a sexual attack that involves penetration against a minor, which—
 - i. inflicts a mental or physical illness, disability, or other handicap, whether short-term or long-term, on the kid;
 - ii. results in a pregnancy for a girl child as a direct result of sexual abuse;
 - iii. causes the child to contract HIV or another potentially fatal sickness or infection that could leave him physically or mentally disabled for an extended period of time or permanently.
 - iv. results in the child's death; or
- k. uses a child's mental or physical disability as an alibi to carry out a sexual act of penetration; or
- l. conducts more than one or repeated acts of penetrating sexual abuse against the kid; or
- m. does a sexually penetrating act on a kid under the age of twelve; or

- n. a family member (through blood, adoption, marriage, guardianship, foster care, domestic relationship with the kid's parents, or living arrangements) sexually assaults the child; or
- o. having authority over or working for any organisation that offers aid to the kid, and then penetratingly sexually assaulting the minor; or
- p. engages in sexual penetration of a kid while in a position of trust or authority (whether at home, in a care facility, or elsewhere); or
- q. attacks the victim when she is pregnant and knows she is vulnerable;
- r. performs a penetrating sexual attack on a minor and makes a murder attempt; or
- s. violence of a sexual nature committed against a child during times of civil unrest, religious persecution, natural calamity, etc.; or
- t. who has a prior conviction for any sexual offence under this Act or any other sexual offence punishable under any other law now in effect and who conducts penetrating sexual assault on a minor; or
- u. An aggravated kind of penetrative sexual assault occurs when a person commits this crime against a minor and then forces the victim to undress or parade naked in public.⁴

5. Punishment for Aggravated Penetrative Sexual Assault

Section 6 provides that the Punishment for significant penetrating sexual assault includes either a lengthy jail sentence (at least 20 years) with the possibility of life in prison (the rest of the offender's natural life spent in prison) and a fine, or the death penalty. Victim's medical costs and rehabilitation costs will be covered by the fine, which must be fair and reasonable.

In case of *Tuka Ram and Anr. v. State of Maharashtra*⁵, also known as Mathura Rape Case, the little girl from the tribe was raped by two police officers while she was in the custody. After an appeal to the Supreme Court, both defendants were ruled not guilty, ending the worldwide public outrage that had led to the Criminal Law Amendment Act of 1983 being passed. The Rajasthan court has found the defendant guilty and sentenced him to death. In

⁴ Available at <https://www.jurist.org/commentary/2020/05/mayank-tiwari-posco-act/>. Accessed 31 December 2022.

⁵ 1979 AIR 185.

the case of *State of Rajasthan v. Manoj Partap Singh*,⁶ the court found that 8 years old girl has been brutally raped. Thereafter, the Post-Mortem had been conducted upon the girl, which shows the internal injuries had also been caused to her at the time of rape and she died due to aggressive rape and injuries. The respondent was found guilty of a capital sexual offence and sentenced to death by the Hon'ble. The Madhya Pradesh High Court heard a case involving allegations of rape committed by the accused against a victim between the ages of 13 and 15. During course of investigation, the medical examination of accused had been conducted and its report shows that accused is not fit for committing penetrative sexual assault and the counsel for accused prayed for the granting of bail before the Court. Therefore, the accused had been released on bail by the Court on the ground of custody for 9 months.⁷

In this instance, further punishment under section 8 & 10 have same ground as discussed above, but main difference is that there is no penetrative sexual assault.⁸

6. Judicial Consciousness

Now we will discuss landmark case which resulted in the enactment of protection of children from sexual offences Act, 2012.

In case of *Gurcharan Singh v. State of Haryana*,⁹ the Supreme Court of India has ruled that the alleged victims of rape and sexual assault cannot be considered suspects in the cases. In fact, the victim is aggrieved party and if there are any contradictions in her statement recorded during course of investigation of the case than the accused take only benefit of doubt. But, we cannot see the victim as suspect and treat as accused.

In case of *Ghanashayam Misra v. State (Orissa)*,¹⁰ the Hon'ble Orissa High Court had held that the person who was accused have trust and authority upon the victim and is school teacher of the minor girl. An accused committed rape with her in the school premises. Thereafter, the trial of case has been conducted and before the Court circumstance shows that offence is

⁶ 2015 Manu (Raj.) 0853.

⁷ Vanshdhari Kol. V. state of M.P 2020 SCC Online MP 1844.

⁸ Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3890930/>. Accessed 10 December 2021

⁹ 1972 AIR (SC) 2661.

¹⁰ 1957 AIR (Orissa) 78.

committed aggravating in nature. The court determined that the accused is around 39 years old and has legal custody of a minor girl in his capacity as her instructor.

In case of *Smt. Parvati Devi v. State of U.P.*,¹¹ the victim's confinement in the Nari niketan was deemed illegal by the court since it did not meet the criteria for a youngster in need of care and protection.

7. Conclusion

POCSO's main goal is to prevent sexual assault, sexual abuse, and other sexual offences against children. The purpose of this Act will not be realised, however, so long as discussions of good touch and negative contact remain taboo in many Indian homes. Most people in rural India still don't know about the Act that was passed to reduce sexual violence against children; as a result, any such incident typically results in child marriage, social isolation for the family, or full silence about such a horrible crime.

Child abuse have a long-lasting impact on the mental well-being of the child. In order to prevent the child from this problem, it is necessary to create awareness among the individuals through education and preventive programmes.

A multidisciplinary approach is required to educate the children and parents regarding the forms of abuse and the laws against child abuse. The parents and teachers should play an active role in educating the children regarding personal safety and self-defense which will help them in developing confidence and voicing their opinions.

Furthermore, in addition, the judiciary is also responsible for protecting the child's physical, mental, and social well-being. Steps should be taken by the authorities with caution and understanding to ensure that the act is implemented successfully.

¹¹ 1992 All Cri C 32.

8. References

- Heller, Henry. "Class and Class Struggle." *The Oxford Handbook of Karl Marx*. Edited by M. Vidal, T. Smith, T. Rotta, & P. Prew, Oxford University Press, 2019, pp. 56–76, <https://doi.org/10.1093/oxfordhb/9780190695545.013.4>.
- Jha, Prashant. "Coronavirus Crisis: A million that changed India in countless ways." *Hindustan Times*, 18 July 2020, [hindustantimes.com/india-news/a-million-that-changed-india-in-countless-ways/story-SVZjAdodFvXKDCfSsb97EO.html](https://www.hindustantimes.com/india-news/a-million-that-changed-india-in-countless-ways/story-SVZjAdodFvXKDCfSsb97EO.html). Accessed 22 August 2021.
- Kumar, Abhimanyu., and A. Sastry. "Contemporary Social Stratification in Indian Society." *Journal of Criminology and Forensic Studies*, vol. 3, no. 1, 2020.
- Levien, Michael., et al. "Agrarian Marxism." *The Journal of Peasant Studies*, vol. 45, no. 5–6, 2018, pp. 853–83.
- Libnus v State of Maharashtra https://images.assettype.com/barandbench/2021-01/4a6c67df-3ff3-4026-8164-24d331b8efd6/libnus_v_maharashtra.pdf. Accessed 20 July 2021.
- Manstead, Antony. S. R. "The Psychology of Social Class: How Socioeconomic Status Impacts Thought, Feelings, and Behavior." *The British Journal of Social Psychology*, vol. 57, no. 2, 2018, pp. 267–91.
- Milner, Andrew. "Class and Class Consciousness in Marxist Theory." *International Critical Thought*, vol. 9, no. 2, 2019, pp. 161–76.
- Ministry Of Women And Child Development Notification New Delhi, 9 March 2020, <http://egazette.nic.in/WriteReadData/2020/218601.pdf>. Accessed 20 July 2021.
- Nicola, Maria, et al. "The Socio-economic Implications of the Coronavirus Pandemic (COVID-19): A Review.", *International Journal of Surgery* vol. 78, no. 1, 2020, pp. 185–93.
- O'Kelly, Ciaran. "Nationalism and the State." *Political Concepts*, 30 July 2018, Manchester University Press, <https://www.manchesteropenhive.com/view/9781526137562/9781526137562.00009.xml>. Accessed 20 July 2021.

- Roy, Tirthankar. "Inequality in Colonial India." *The London School of Economics and Political Science*, 2018, <https://eprints.lse.ac.uk/90409/1/WP286.pdf>. Accessed 20 July 2021.
- Satish Ragde v. State of Maharashtra, <https://cdn.dynamic.soolegal.com/document-center/421/judgements/pressing-a-childs-breast-without-skin-to-skin-contact-does-not-amount-to-sexual-assault-under-pocso-act-bombay-high-court-388064.pdf>. Accessed 20 July 2021.
- Shah, Utsav and Cristophe J. "India Needs to Urgently Step into the Domain of Healthcare." *The Indian Express*, 9 June 2020, <https://indianexpress.com/article/opinion/columns/coronavirus-epidemic-healthcare-system-public-hospitals-6449264/>. Accessed 20 July 2021.
- Shaikh, Mujaheed., et al. "Waiting time at health facilities and social class: Evidence from the Indian caste system." *PloS One*, vol. 13, no. 10, 2018.
- Standing, Guy. "The Precariat and Class Struggle." *RCCS Annual Review*, vol. 7, no. 1, 2015.
- Supreme Court stays Bombay HC order on skin-to-skin contact for sexual assault under POCSO Act (Krishnadas Rajagopal) New Delhi, January 27, 2021 14:48 IST Updated: January 27, 2021 20:49 IST <https://www.thehindu.com/news/national/supreme-court-stays-bombay-hc-order-on-skin-to-skin-contact-for-sexual-assault-under-pocso-act/article33675124.ece>. Accessed 20 July 2021.
- The Protection of Children From Sexual Offences (Amendment) Act, 2019, https://www.prsindia.org/sites/default/files/bill_files/Protection%20of%20Children%20from%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf. Accessed 20 July 2021.
- Tiwari, Mayank. "Critical Analysis of India's Protection of Children from Sexual Offences Act 2012." *Jurist*, 8 May, 2020, <https://www.jurist.org/commentary/2020/05/mayank-tiwari-posco-act/>. Accessed 20 July 2021.
- Weber, Max. "Class, Status, Party." *Inequality*, Routledge, 2018, pp. 37–54.

Xiao, Hu. “Marx and Engels’ Interpretation of Ideology from Multiple Perspectives.” *Social Sciences in China*, vol. 33, no. 1, 2012, pp. 5–22.

ASSESSING HOMEMAKER'S FINANCIAL DECISION-MAKING SKILLS THROUGH FINANCIAL LITERACY PARAMETERS

*Ms. Somya Chaturvedi **
& *Dr. Hiteshkumar Thakkar ***

1. Introduction

The world is developing and so is society. Current trends show that people are coming forward for women empowerment but whether they are really moving in the desired direction is the question. Empowerment is the ability that one possesses to control one's life and claim rights. However, women are still being discriminated against because of the deeply rooted orthodox ideologies. Women are expected to be housekeepers and if they continue, their work is not recognized and valued and if they work, issues like the wage gap persist. When it comes to higher education costs for women, families usually take a step back. Many efforts are not taken by parents for daughters' education because it is considered that no returns will be gained in the future as per Desai (1994). According to Esteve-Volart (2004), many social and cultural practices keep women out of economic activities. Although in other cases, if the conditions are not so bad, still major decisions are taken without taking into consideration the women's point of view. If financial decisions are concerned, women in India keep on assuming a generally inconsequential job. Women empowerment is not only the right thing to do, but also it is essential for the sustainable development of society. Women comprise around 46% of the population and their empowerment is necessary not only for them but also for the economy. Financial independence is important for women because it provides one of the prominent ways through which women can effectively face obstacles. Once they start having some money on which they can take decisions, their confidence level increases leading to personality development and economic development of them and their families. The purpose behind financial freedom and literacy is not only to fulfill the present basic needs but also to utilize the money in such a way that allows to reap benefits both in the present and future. Private sector jobs are increasing so a certain income in the form of a pension after retirement facility is not available for all and if an individual is not working outside their homes then there is nothing which one can receive during her retirement days. Also, women tend to live longer than men

* Alumni, GNLU, MBA (Financial Management & Business Laws) 2017-19 Batch, Gujarat National Law University, Gandhinagar (Gujarat), INDIA.

** Assistant Professor of Economics, Gujarat National Law University, GNLU Centre For Law and Economics, Gandhinagar (Gujarat), INDIA.

creating a need for retirement planning which can be undertaken by being aware of financial planning.

Countries are developing and so is the case with financial opportunities. Women form a major part of these economies and if left excluded, it can lead to the wastage of several opportunities. A sustained drive supporting women empowerment is taking place all over the world but the desired outcomes have not been achieved yet.

In India, various developments are taking place with the change in mindset, government initiatives but knowledge about finance is still weak. Though women's financial behaviour and attitude seem to be positive. Women are stepping out of their homes and becoming financially independent but still major financial decisions are taken by men generally. There are various issues that still persist and so need to be dealt with. Financial literacy forms a major part of the development of an economy and if women become financially literate, the economy will be boosted.

2. Research Design

2.1. Objectives of Study

The present study aims to assess the awareness of women with respect to financial literacy and probable prospects of empowerment. The following objectives have been framed for this study.

- i. To examine the financial literacy level among homemakers and self-employed women in rural areas of Koba and Raysan (villages in Gandhinagar, Gujarat, India).
- ii. To identify the role that education level and household income play in the financial literacy of women.
- iii. To identify the relationship between the financial literacy level of women possessing decision-making ability and their awareness about financial products.
- iv. To identify the factors affecting the choices of these women towards financial decisions.

2.2. Research Hypotheses

The following hypothesis has been framed for this study.

H1: There is a correlation between the education level and financial literacy level of women.

H2: There is a correlation between the level of income and financial literacy level of women

H3: There is a correlation between the decision-making authority and the financial literacy level of women.

H4: There is a correlation between the awareness of financial products and the financial literacy level of women.

H5: There is a correlation between dependency on family/friend's opinions while making investment decisions and the financial literacy level of women.

2.3. *Limitations of the Research*

The study is only confined to 100 women who are homemakers/self-employed, residing in rural areas of Koba and Raysan (villages in Gandhinagar). The questionnaire used in this study is inherently limited in scope. The sample doesn't include women who are working for other organizations. There is a possibility to increase sample sizes and checking reliability and validity with more villages. The result of the same can certainly be generalized to the population. So, this study does provide future scope to do research with other demography with a larger sample size to get a robust result. Moreover, the contribution of this research will enhance the literature in the field of financial literacy and women empowerment.

2.4. *Research Methodology*

To carry out the purpose of the study i.e. to find the correlation between the level of financial literacy and women empowerment, data has been collected from primary and secondary sources. For primary data collection, the survey method had opted. Non-Probability (Convenience/ Purposive Sampling) method was adopted to select the required sample of 100 respondents. Data for the survey has been collected through a structured questionnaire: some questionnaires were handed over and some were completed by taking a semi-interview method if those women were unable to understand the related concepts. A sample size of 100 homemakers and self-employed women of Koba and Raysan (villages in Gandhinagar, Gujarat, India) is taken for the primary data collection. The study relied on 'cluster convenience/purposive sampling' because the clusters of Koba and Raysan (Village) each reflect mini-representations of the population. To assess their financial literacy, scores were assigned to the relevant questions. Afterwards, scores were cumulated and further categorized into women possessing very low, low, moderate and high

financial literacy for better interpretation as can be observed from Table 1. For the current analysis, scores can be interpreted as follows:

Table 1: Financial Literacy Scale: Scores Value

Score	Inference	Categorized Score
0-12	The financial literacy level of the respondent is assumed to be very low.	1
12.1 – 24	The financial literacy level of the respondent is low i.e. can be said to possess basic literacy.	2
24.1 – 36	The financial literacy level of the respondent is moderate.	3
36.1 – 48	The financial literacy level of the respondent is high.	4

The secondary data has been collected from various financial literacy surveys conducted previously and articles published in several journals. For analyzing the data and to arrive at appropriate conclusions, statistical tools have been used like frequency distribution, percentage, correlation, histograms etc.

The present research is confined to 100 homemakers and self-employed women residing in the rural areas of Koba and Raysan (villages in Gandhinagar, Gujarat, India). The questionnaires/instruments used in this study are inherently limited in scope.

3. Literature Review

Singh and Kumar (2017) have discussed the importance and barriers existing to financial literacy of women in India. They pointed out that as the life expectancy of women has increased, the need for financial planning also increases simultaneously. Baluja (2016) in her paper 'Financial literacy among women in India: A Review' highlighted that in spite of various initiatives taken by government and regulators like FLCC, PMJDY & establishment of NCFE etc., there are various hindrances that come between women and financial literacy. Women consider themselves to be weaker than men when it comes to financial literacy as they gave lower ratings to themselves consistently.

Gelb et al. (2019) research on digital payments posits that financial literacy can also speed up the payment of social benefits. A recent study on moving education subsidies in Bangladesh from cash to digital channels based on interviews with mothers from 100 households in 34 villages found that nearly 80 percent of mothers preferred digital payments, largely because they remove the need to travel and wait for cash disbursements and allow the mothers to draw down money

securely and at their own convenience. Demirgüç-Kunt et al. (2020) study emphasises the aspect of lack of identification (ID). One in five unbanked women globally says that a lack of ID is one of the reasons for the lack of an account. This problem may have been solved in India with Aadhar, however privacy issues persist.

Haque and Zulfiqar (2016) stated that financial attitude, financial well-being and financial literacy were significantly and positively related to the economic empowerment of women. The financial attitude which is a positive and a high level of financial literacy will lead to greater financial well-being which will ultimately lead to women's empowerment. T.S and S (2015) mentioned that on a small scale, women are better managers of money but when it is about investments for planning the retirement and financing for long terms, such decisions are generally handled by men. Roy and Jain (2018) pointed out that working women staying in Jaipur were not aware of various financial concepts and some of them didn't find it important even. Reasons behind this were stated to be high risk-averse nature, ignorance of financial innovations, being not aware of basic banking activities including the transfer of funds or cash payments and hardly using credit and debit cards. George and Thomachan (2018) in their paper examined that the financial illiteracy of women plays a major part in creating obstacles to accessing financial services. They described that financial literacy would develop financial knowledge, skills that would help in budgeting, planning, cash flow management, savings and in meeting financial goals. It would help women in ways like comparing the alternatives and choosing the best financial product as per their requirements. Deka (2015) stated that financial literacy assists financial inclusion in several ways. She pointed that financial literacy is a tool through which women empowerment can be achieved as it helps in the development of skills through which women can compare and select the products for their needs and goals. They act "Smart financially" as they possess knowledge about various financial aspects. Kumar Agarwalla et al. (2014) said as the role of government and employers in securing the financial future has shrunk, it has become a necessity for individuals to develop their understanding of finance so that their financial future can be secured. Despite of this, women scored low on financial literacy. The influence can be because of the tradition where men are the decision-makers or because of joint family culture. However, this paper endeavours to cross-verify relationship between the financial literacy and decision taking/making ability in homemakers and self-employment women in rural areas of Koba and Raysan (villages in Gandhinagar).

4. Women and Financial Literacy

Women form a major part of the population. Their economic well-being is crucial. Their involvement in financial matters is increasing and various measures are being taken by the government, and banks to make them economically independent but still, they lack access to the financial system which is of formal nature. So, if they possess no or limited financial literacy then it can become a hindrance in achieving or utilizing those financial services. Financial literacy assists in the comparison of financial products so that the best out of them can be selected according to women's needs, empowering them to access their rights. It helps in providing skills and knowledge so that financial decisions related to savings, financial planning, cash flow management, and banking activities can be taken smartly. There has been a revolution in the lives of women at the aspect of economic, social, family and demographic levels in the last 50 years and so their increased participation in the financial decision is not surprising according to Goldstein (2008). As stated above, poor financial literacy can have an adverse impact on women's lives. In reality, if we see, women actually in a greater need to have wealth management skills required for the long term because even if they are working, issues like short tenure and occupational segregation exist because of various social norms, restrictions in accessing the labour markets and other factors related to family matters like raising of children and other household responsibilities which make the need of a higher level of financial literacy more significant. Women are also subjected to a gender pay gap leading to a lower amount of savings. Other financial consequences of the situation like being a single parent or divorced or widowed can prove to be severe for them.

4.1. Financial Literacy – A Path to Achieve Women Empowerment

Financial literacy is a key through which these issues can be solved ultimately paving a way for women's financial well-being, economic empowerment resulting in women empowerment. If they will be aware of the effective handling of money, it will lead to possession of decision-making authority regarding money management making them empowered. As empowerment is actually not about a destination which one want to reach but is actually a journey, following which women will be shifted from a situation of feeling weak or having no power to make a decision into an ability that will give them freedom or power to take an action. It will bring them out from the shadow of their partners or family members, making them to participate more actively ultimately creating a positive and prosperous environment. Empowerment always needs to start from within and so developing the women's abilities is very

important. It is not only a right of women to be treated equally in various aspects but also a necessity for their welfare and the economy's welfare because if women will have access to available financial resources then the development goals which countries strive to achieve like reduction in the level of poverty, increase in the level of education and growth can be fulfilled in a better way.

5. Data Analysis and Hypothesis Testing

5.1. Data Analysis

The observations and information retrieved from the frequency distribution (figure 1 to 12) provide the ground reality of village homemaker and self-employed women notion toward financial literacy. As observed from figure 1, it was found that majority of the self-employed women were at least holding a Bachelor's degree. In the case of homemakers, around 48% percentage of women were not even graduates. Only 11% were found to be earning more than Rs.1,00,000 per month whereas around 43% were found to be earning up to Rs.50,000 monthly as shown in figure 2. As per figure 3, Only 17 respondents take their financial decisions independently i.e. not even half of the total respondents take their financial decisions. In other cases, either their husbands or their family members take decisions on their behalf. All the respondents were found to be aware about savings bank accounts followed by bank fixed deposits and gold. A significant number of women was found to be aware of insurance policies as shown in Figure 4. Only a few respondents were aware about Gold ETF, Unit Linked Insurance policies which shows that unawareness regarding the advanced financial products is still a major concern. Also, only 7% of respondents were found to be aware of Sukanya Samriddhi Yojana which was launched in 2015 concludes that women don't stay much updated about the innovations that keep coming in the financial world because of which they will not be able to use various benefits which are provided by the government through several schemes. Poor awareness about Post Office Monthly Investment Scheme (POMIS) and Senior Citizens Saving Scheme is a major factor to be concerned about. Factor like the opinion of friend/family/partner is considered to be very important. This factor brings out the fact that women take others' opinions into very much consideration showing their dependency on others as observed in figure 5.

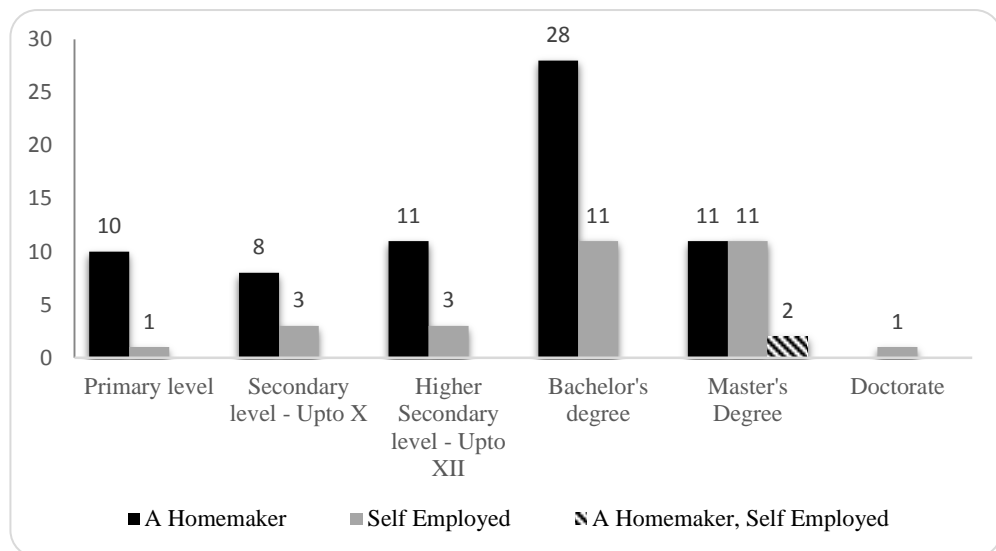
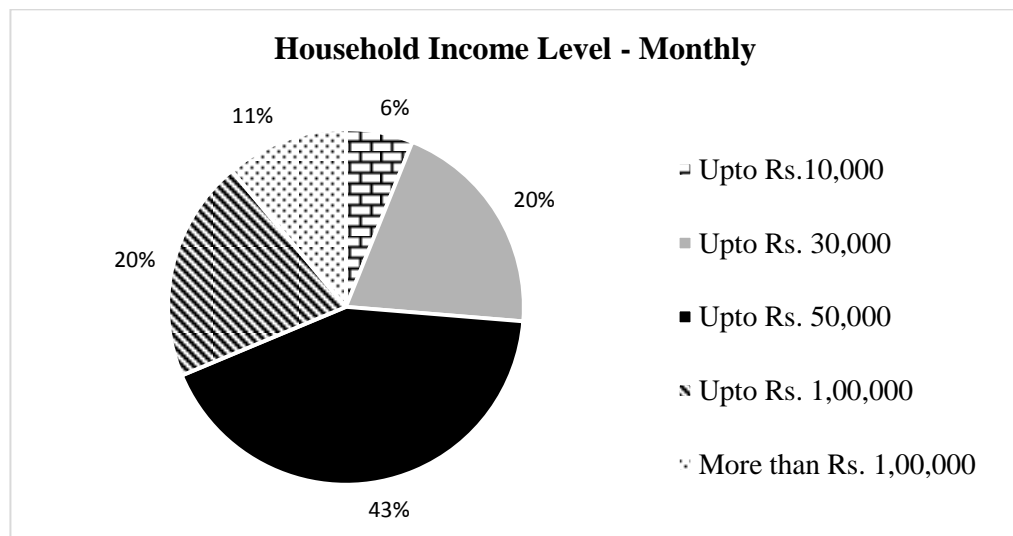
Figure 1. Education Level and Occupation**Figure 2. Household Income Level – Monthly**

Figure 3. Decision Making Authority

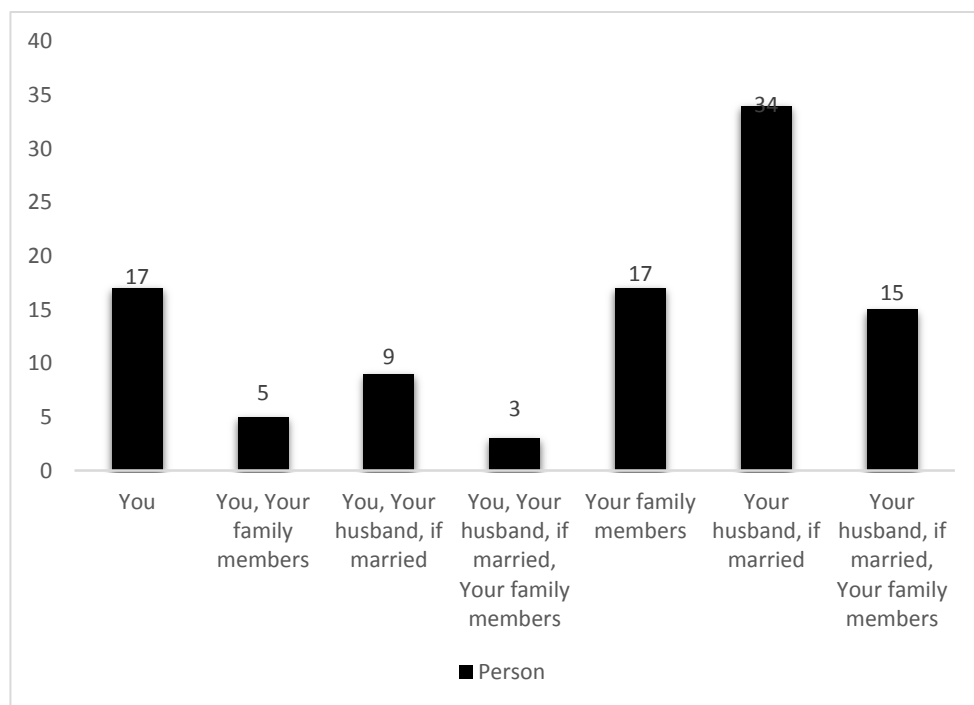


Figure 4. Awareness about Financial Products

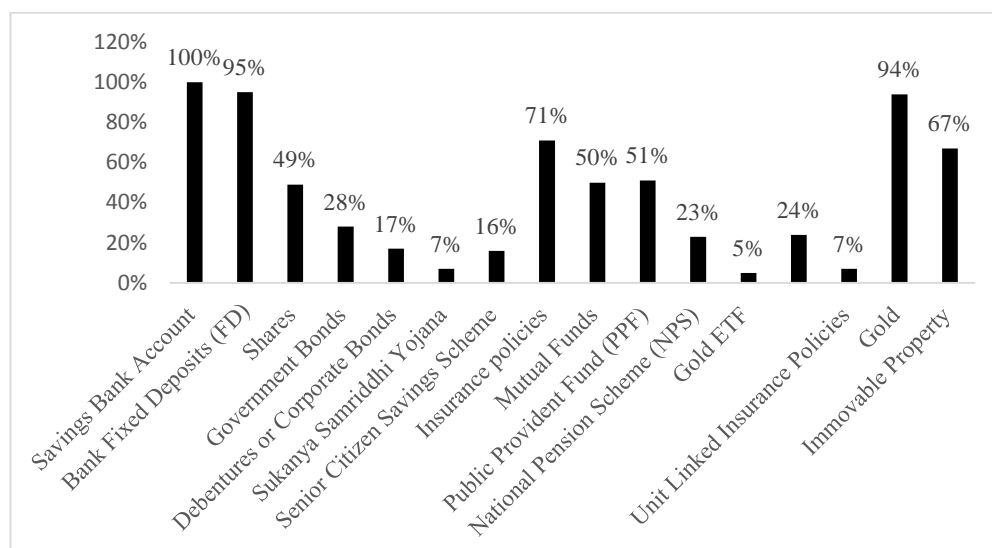
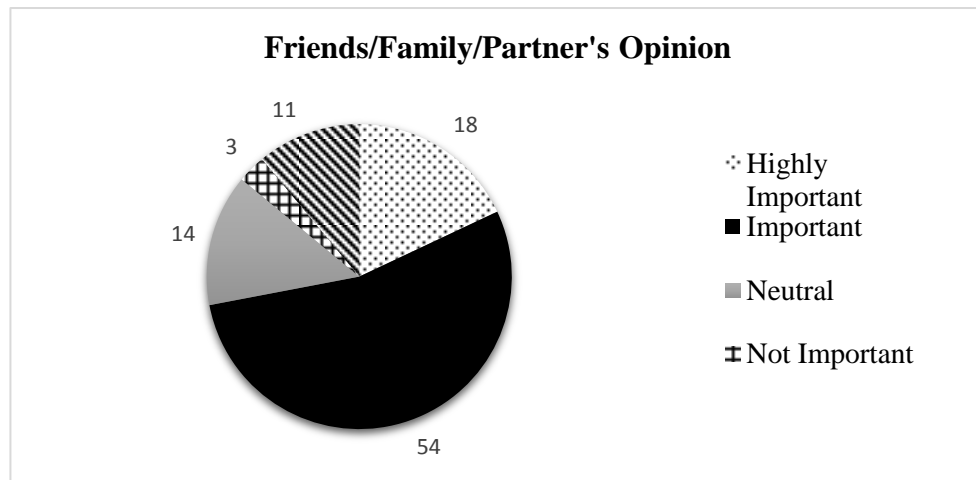


Figure 5. Factors that Affect Decision Making for Investment

5.2. Testing of Hypothesis

For testing of hypothesis, this paper has adopted the statistical technique of 'Correlation' to undergo the directional relationship between two variables. Correlation is described as the analysis which lets us know the relationship or the absence of the relationship between two variables.

For the research, the Kendall Tau-b correlation coefficient has been adopted to test the ordinal correlation between the variables as it has multiple ties.

$$t_b = \frac{P - Q}{\sqrt{(P + Q + X_0)(P + Q + Y_0)}}$$

The Spearman Rho correlation coefficient result has been enclosed in the annexure. Due to multiple ties, there are variation correlation coefficient values in Kendall Tau-b and Spearman. Therefore, in this study, the relationship between variables is measured through the Kendall Tau-b as seen in table 2.

Table 2: Correlation Statistic: Kendall's Tau-B

Correlation Coefficient	Financial Literacy Level	Sig. (2-tailed)
Education Level	.540 ^{**}	.000
Household Income Level	.359 ^{**}	.000
Who is the decision maker about money matters in your household?	.214 [*]	.020
Tick the financial products you are aware of	.705 ^{**}	.000
Factors which affect your decision making for Investment. [Friends/Family/Partner's Opinion]	-.285 ^{**}	.001
** significant at the 0.01 level and * significant at the 0.05 level		
N = 100		

H1: There is a correlation between the education level and financial literacy level of women.

Result

The study of the correlation between the education level and financial literacy level of women shows that there is a moderate¹ positive relationship as it is 0.54. The correlation is significant at the 0.01 level.

The possible reasons behind the existence of a positive correlation between education level and financial literacy level of women might be the awareness regarding the importance of financial literacy and financial concepts because of higher education level.

H2: There is a correlation between the level of income and financial literacy level of women

Result

The study of the correlation between the level of income and the financial literacy level of women shows that there is a weak positive relationship as it is 0.359. The correlation is significant at the 0.01 level.

¹ Taylor, R., Interpretation of the correlation coefficient: a basic review. *Journal of diagnostic medical sonography*, 6(1), p 37, 1990.

Reasons behind such a positive correlation might be because of affordability to access financial knowledge and financial products in a better manner and also as the money is generally saved so ways are found to invest it leading to procure financial literacy.

H3: There is a correlation between the decision-making authority and the financial literacy level of women.

Result

The study of the correlation between the financial literacy level of women and decision-making authority in households shows that there is a weak but positive relationship as it is 0.214. The correlation is significant at the 0.05 level.

The possible reason behind it could be that if women are financially literate then not only they start taking their own decisions but also their families/partners start considering women's suggestions. This would result in women possessing decision-making authority.

H4: There is a correlation between the awareness of financial products and the financial literacy level of women.

Result

The study of the correlation between the financial literacy level of women and awareness about financial products shows that there is a strong positive relationship as it is 0.705. The correlation is significant at the 0.01 level.

If one is aware of various financial products which means that women stay updated about the financial world leading to awareness regarding the products, their benefits, higher investments result in positive correlation between the financial literacy level of women and awareness about financial products.

H5: There is a correlation between the dependency on family/friends' opinions while making investment decisions and the financial literacy level of women.

Result

The study of the correlation between the financial literacy level of women and friends/family/partner's opinions affecting decision-making for investment shows that there is a weak negative relationship as it is -0.285. The correlation is significant at the 0.01 level.

The possible reason behind this could be that if women are financially literate then they take their own financial decisions and so their decisions don't get much influenced by what others are saying. There might be other factors like tax benefits and diversification which could affect their decision in more ways.

6. Conclusion

Though certain changes in society are taking place, various issues persist. If a woman is a homemaker, she has to perform the chores at home, often staying unappreciated and her work remaining undervalued. Moreover, homemakers were seriously bereft of active usage of digital finance due to their limited knowledge of operating digital platforms. According to the Socio-Economic and Caste Census of 2011 (SECC), 64 per cent of 'literate rural' Indians have not even completed primary education.²

Low literacy is the main hurdle to lack of knowledge about the usage of digital finance on the internet. Apart from this, the constrained mobility and accessibility to public spaces of rural women also account for the great divide with respect to gender that persists in digital financial literacy. The Reserve Bank of India (RBI) has also highlighted the challenges in achieving digital inclusion among rural households. Some of them are limited physical infrastructure, lack of availability of trained staff, poor transportation services, etc.

In rural areas, homemaker women take routine decisions in everyday life without any formal education. In fact, they manage the monthly budget without compromising on their responsibility.

The relation between financial literacy and women empowerment has been the focus of both theoretical and statistical forms. The results of the study support the view that if women are financially literate, they will feel strong and confident. Their dependency on their husband or family for financial matters will reduce leading to the possession of decision-making authority and making them independent. All these factors will lead to their empowerment which will result into the acknowledgement of their work, improvement in their social status and saving them from various atrocities.

However, it was found that the majority of the women's financial literacy level was low which gives a signal for the requirement of urgent attention towards steps to be taken to improve their financial literacy. It poses a serious danger to their present and

² The Hindu, <https://www.thehindu.com/news/national/socio-economic-and-caste-census-2011-shows-growing-illiteracy-in-rural-india/article7383859.ece> (last visited 23 November, 2020).

future as homemakers stay dependent on their families for their financial needs and such a situation can take away various opportunities away from them, making their presence and retirement years difficult to survive. The financial literacy of women can be improved through several measures which are needed to be altered according to the needs of women.

Lastly, a similar study can be further conducted in other geographical areas. Other factors related to family and marital status which can influence financial literacy can be included in future studies. The prospects of getting different results exist if the same study is done in urban areas i.e., cities as people there are found to be comparatively thriftier about their future.

The homemaker performs the work at home, often staying unappreciated and their work undervalued. In a given practical setup, providing financial literacy to homemakers will augment the economic growth of rural India, make women self-independent and decrease exploitation, and enhance family well-being. The financial literacy balance should be availed for even rural women living in the remotest corner of the nation. Conversely, we know that when women have the power to make, spend, save, and control. Moreover, they make gains not only for themselves but also for their communities.

7. Suggestions

- i. Financial awareness, education and training- There is a requirement for education and training programmes which will teach them about various financial products, making them aware of various opportunities which they can utilize as per their requirements, dealing and managing their finances effectively. For this, training workshops can be conducted; programmes and courses can be taught.
- ii. Benefits to women- Women would be motivated to get involved in financial activities if various benefits are offered to them such as providing monetary incentives for taking up educational courses, tax benefits for investing, low-interest rates on loans, higher interest rates on deposits, subsidies for entrepreneurship etc.
- iii. Creating customized financial products as per the needs of women.
- iv. In the COVID-19 pandemic, the rural economy has transformed from cash-based to digital mode due to multiple reasons. In the case of a female homemaker, the household is almost always dependent on the working

husband. As a result, there is no direct financial contribution/interaction in physical/digital mode by the homemaker. Therefore, there exists a possibility of adding her contribution as cash or credit/overdraft services, over and above the scheme of providing them with Jan-Dhan bank accounts. Though this credit may ultimately benefit her husband or other family members, it will recognize the contribution and importance of the homemaker in rural areas. It will be the first step in empowering homemakers in rural areas.

- v. Schemes like NYAY which tend to provide a certain amount of money to women can also be implemented which can improve their financial and social conditions. Projects and initiatives taken by Government and regulating bodies like Project Financial Literacy, Credit Counselling Centres, 'Beti Bachao Beti Padhao Yojana', 'Sukanya Samriddhi Yojana' will also help in achieving financial literacy among women.
- vi. Financial literacy should be made a fundamental right. Incorporation of financial education in school and college curricula must be there so that children can be taught from the beginning.
- vii. Establishment of various financial and other institutions which are closer and easier to access so that distance doesn't become a hindrance in achieving financial literacy. However, providing digital financial literacy to homemakers can also be thought of as a solution as it will augment the economic growth of rural India, make women self-independent and decrease their exploitation, and enhance family well-being. It will also help to achieve the desired outcomes for rural women living in the remotest corner of the nation.
- viii. Efforts should be made to ensure that the account is in the name of the woman and arrangements for her training in soft skills should be done so that she maintains control of her account – because if the husband or a family member controls the account, the purpose is not being achieved – as she is again bound to her partner or her family and cannot spend and take financial decisions as per her preferences.
- ix. Target and tie up with microfinance institutions to digitize their operations - assign the responsibility of training to some literate women for an incentive.

8. References

Agarwalla, Sobhesh Kumar., et al. "Financial Literacy among Working Young in Urban India." *Indian Institute of Management Ahmedabad*, Working Paper No. 2013-10-02, October 2013.

Baluja, G. "Financial Literacy among Women in India: A Review." *Pacific Business Review International*, vol. 9, no. 4, 2016.

Deka, Pratisha P. "Financial Literacy and Financial Inclusion for Women Empowerment: A Study." *International Journal of Applied Research*, vol. 1, no. 9, 2015, pp. 145–148.

Demirgüç-Kunt, Asli, et al., "The Global Findex Database 2017: Measuring Financial Inclusion and Opportunities to Expand Access to and Use of Financial Services." *The World Bank Economic Review*, vol. 34, no. 1, Oxford University Press, Feb. 2020, pp. S2–S8, <https://doi.org10.1093/wber/lhz013>.

Desai, M. "Concepts and Conceptual Frameworks for Understanding Family." *Enhancing the Role of the Family as Agency for Social and Economic Development*, Tata Institute of Social Sciences, 1994, pp. 16–41.

Esteve-Volart, B. "Gender Discrimination and Growth: Theory and Evidence from India." *DEDPS 42*, The Suntory Centre, Suntory and Toyota International Centres for Economics and Related Disciplines, London School of Economics and Political Science, January 2004.

Gelb, Alan, et al. "Primary Education Stipends in Bangladesh: Do Mothers Prefer Digital Payments over Cash?" *Centre for Global Development*, 14 May 2019, pp. 1–8.

George, B., and K. T. Thomachan. "Financial Inclusion And Women Empowerment: A Gender Perspective." *International Journal of Research-Granthaalayah*, vol. 6, no. 5, 2018, pp. 229–237, <https://doi.org10.5281/zenodo.1270189>.

Haque, Abdul., and Mehwish Zulfiqar. "Economic Empowerment through Financial Literacy, Financial Attitude and Financial Wellbeing." *International Journal of Business and Social Science*, vol. 7, no. 3, March 2016, pp. 78-88, https://ijbssnet.com/journals/Vol_7_No_3_March_2016/9.pdf. Accessed 5 Apr. 2023.

Lee, Candy. "Women Need to Overcome Their Aversion to Financial Literacy". *Time*, 23 December 2016, <https://time.com/4610016/women-financial-literacy/>.

Roy, B., and Ruchi Jain. "A Study on Level of Financial Literacy among Indian Women". *IOSR Journal of Business and Management*, vol. 20, no. 5, 2018, pp. 19–24.

Shobha, T. S., and S. Shalini. "A Study on the Perception of Women towards Financial Planning in the City of Bengaluru." *Asia Pacific Journal of Research*, vol. 1, no. 30, 2015, pp. 14–21.

Singh, C., and Raj Kumar. "Financial Literacy among Women- Indian Scenario." *Universal Journal of Accounting and Finance*, vol. 5, no. 2, 2017, pp. 46–53, <https://doi.org10.13189/ujaf.2017.050202>.

Taylor, Richard. "Interpretation of the Correlation Coefficient: A Basic Review." *Journal of Diagnostic Medical Sonography: JDMS*, vol. 6, no. 1, January 1990, pp. 35–39, <https://doi.org10.1177/875647939000600106>.

ANNEXURE A.1: Spearman's Rho - Correlation Coefficient

Correlation Coefficient	Financial Literacy Level	Sig. (2-tailed)
Education Level	.604 ^{**}	.000
Household Income Level	.398 ^{**}	.000
Who is the decision maker about money matters in your household?	.233	.020 [*]
Tick the financial products you are aware of	.801 ^{**}	.000
Factors which affect your decision making for Investment. [Friends/Family/Partner's Opinion]	-.320 ^{**}	.001
** significant at the 0.01 level and * significant at the 0.05 level		
N = 100		

ANNEXURE A.2

Some of the questions which were asked to know the demographic profile of the women respondents are as follows:

1. Education Level
 - Illiterate
 - Primary level
 - Secondary level - Up to X
 - Higher Secondary level - Up to XII
 - Bachelor's degree
 - Master's Degree
 - Doctorate
2. Occupation
 - A Homemaker
 - Self Employed
3. Household Income Level – Monthly
 - Up to Rs.10,000
 - Up to Rs. 30,000
 - Up to Rs. 50,000
 - Up to Rs. 1,00,000
 - More than Rs. 1,00,000

ANNEXURE A.3

Questions which were asked to assess financial literacy were as follows:

Ques. No.	Question	Answer Options	Weights	Remarks
1	Who is the decision maker about money matters in your household?	<ul style="list-style-type: none"> You Your husband, if married Your family members 	1 0 0	0.5 score was given to those responses where the respondent was contributing in decision making, i.e. decision was taken by her and her husband/her family members.
2	Do you have a bank account?	<ul style="list-style-type: none"> Yes, I hold a bank account individually. Yes, i hold a joint bank account. No 	1 0.50 0	
3	For which purpose you use your bank account?	<ul style="list-style-type: none"> Savings Fund Transfers Investments Shopping Other: 		1 – For more than 2 purposes mentioned 0.50 – For 1-2 purposes mentioned 0 – No bank account
4	Do you save money?	<ul style="list-style-type: none"> Yes, always No Sometimes 	1 0 0.50	
5	Does your household have a budget?	<ul style="list-style-type: none"> Yes No Not sure 	1 0 -1	-1 score has been awarded for not being aware about household activity.

Ques. No.	Question	Answer Options	Weights	Remarks
6	Do you prepare your budget?	<ul style="list-style-type: none"> • Yes • No • Sometimes • Not aware about budgeting 	1 0 0.50 -1	-1 score has been awarded for not possessing any awareness about budgeting.
7	Tick the financial products you are aware of	<ul style="list-style-type: none"> • Savings Bank Account • Bank Fixed Deposits (FD) • Shares • Government Bonds Debentures or Corporate Bonds • Sukanya Samriddhi Yojana • Senior Citizen Savings Scheme • Insurance policies • Mutual Funds • Public Provident Fund (PPF) • National Pension Scheme (NPS) • Gold ETF • Post Office Monthly Investment 		Equal weightage of 1 has been given to each product. For the purpose of research, complexity or the advanced nature of financial product has been ignored. E.g. If a respondent ticks 5 products then she will be awarded a score of 5.

**ASSESSING HOMEMAKER'S FINANCIAL DECISION-MAKING SKILLS
THROUGH FINANCIAL LITERACY PARAMETERS**

Ques. No.	Question	Answer Options	Weights	Remarks
		<p>Scheme (POMIS)</p> <ul style="list-style-type: none"> • Unit Linked Insurance Policies • Gold • Immovable Property • Other: 		
8	Select the avenues where you have invested your money.	<ul style="list-style-type: none"> • Savings Bank Account • Bank Fixed Deposits (FD) • Shares • Government Bonds Debentures or Corporate Bonds • Sukanya Samriddhi Yojana • Senior Citizen Savings Scheme • Insurance policies • Mutual Funds • Public Provident Fund (PPF) • National Pension Scheme (NPS) 		<p>Equal weightage of 1 has been given to each product. For the purpose of research, complexity or the advanced nature of financial product has been ignored.</p> <p>E.g. If a respondent ticks 5 products then she will be awarded a score of 5</p>

Ques. No.	Question	Answer Options	Weights	Remarks
		<ul style="list-style-type: none"> • Gold ETF • Post Office Monthly Investment Scheme (POMIS) • Unit Linked Insurance Policies • Gold • Immovable Property • Other: 		
9a	Are you aware about these concepts? [Time Value of money]	<ul style="list-style-type: none"> • Yes, i am fully aware. • Not at all aware • I have some knowledge about it. 	2 0 1	
9b	Are you aware about these concepts? [Calculation of Interest]	<ul style="list-style-type: none"> • Yes, i am fully aware. • Not at all aware • I have some knowledge about it. 	2 0 1	
9c	Are you aware about these concepts? [Risk and Return relationship]	<ul style="list-style-type: none"> • Yes, i am fully aware. • Not at all aware • I have some knowledge about it. 	2 0 1	
9d	Are you aware about	<ul style="list-style-type: none"> • Yes, i am 	2	

**ASSESSING HOMEMAKER'S FINANCIAL DECISION-MAKING SKILLS
THROUGH FINANCIAL LITERACY PARAMETERS**

Ques. No.	Question	Answer Options	Weights	Remarks
	these concepts? [Inflation]	fully aware. • Not at all aware • I have some knowledge about it.	0 1	
9e	Are you aware about these concepts? [Diversification]	• Yes, i am fully aware. • Not at all aware • I have some knowledge about it.	2 0 1	
9f	Are you aware about these concepts? [Credit Rating]	• Yes, i am fully aware. • Not at all aware • I have some knowledge about it.	2 0 1	
9g	Are you aware about these concepts? [KYC]	• Yes, i am fully aware. • Not at all aware • I have some knowledge about it.	2 0 1	
10	Whether you'll feel strong/ confident if you'll be financially literate?	• Strongly agree • Agree • Neutral • Disagree • Strongly disagree	2 1 0 -1 -2	

Ques. No.	Question	Answer Options	Weights	Remarks
11	Whether you'll opt for educational courses related to financial literacy if economic/monetary benefits are provided to you?	<ul style="list-style-type: none">• Yes• No• Maybe	1 0 1	1 score has been awarded to Maybe for the possible chances of opting for educational courses.

**RGNUL Social Sciences Review - a biannual publication of
RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB**

I want to subscribe to RGNUL Social Sciences Review for a period of

One Year (Two Issues) ☐

Two Year (Four Issues) ☐

Three Year (Six Issues) ☐

Five Year (Ten Issues) ☐

SUBSCRIPTION RATES

One Year ₹500/-

Two Year ₹900/-

Three Year ₹1300/-

Five Year ₹2000/-

Overseas US/UK \$20 /£10

Life Membership ₹10,000/-

Corporate Member ₹50,000/-

PRICE PER COPY

Individual ₹300/-

Institution ₹400/-

Alumni /Students ₹200/-

Name _____

Designation _____

Institution _____

Address _____

Tel. No. (with STD Code) _____ Fax _____

E-Mail _____

Enclosed Cheque / DD Number _____ Dated _____

Drawn on (Bank) _____ for ₹ _____

(For Outstation Cheques, Please Add ₹ 25/-)

Signature

Note: Cheque / Draft may be drawn in favour of the Registrar, Rajiv Gandhi National University of Law, Punjab, payable at Patiala

Send completed form to: The Editor, RGNUL Social Sciences Review
Rajiv Gandhi National University of Law, Punjab
Sidhuwal, Bhadson Road, Patiala - 147 006

SUBSCRIPTION FORM

FORM IV

(See Rule 8 of the Registration of News Papers (Central) Rules, 1956
under the Press and Registration of Books Act, 1867)

Statement of Ownership and other particulars about the RGNUL Social Sciences Review

Place of Publication	Rajiv Gandhi National University of Law, Punjab at Patiala
Language	English
Periodicity	Half-Yearly
Publishers Name	Professor (Dr.) Anand Pawar Registrar, RGNUL
Nationality	Indian
Address	Rajiv Gandhi National University of Law, Punjab, Sidhuwal, Bhadson Road, Patiala - 147 006
Printer	Phulkian Press Pvt. Ltd. C-165, Focal Point, Patiala - 147 001
Editor's Name	Ms. Jasmine Kaur Assistant Professor
Nationality	Indian
Address	Rajiv Gandhi National University of Law, Punjab, Sidhuwal, Bhadson Road, Patiala - 147 006
Owner's Name	Rajiv Gandhi National University of Law, Punjab

I, Professor (Dr.) Anand Pawar hereby declare that the particulars given above are
true to the best of my knowledge and belief.

Sd/
(Anand Pawar)

ISSN : 2582-1687
RNI : PUNENG/2018/76036

RGNUL Social Sciences Review (RSSR)



RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

Sidhuwal, Bhadson Road, Patiala - 147 006 (Punjab)

Ph. No.: 0175-2391600, 2391601, 2391602, 2391603 Telefax: 0175-2391690, 0175-2391692

E-mail: info@rgnul.ac.in, Website: www.rgnul.ac.in