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EDITORIAL

It gives me immense pleasure to bring to our readers the July-December 2020 Vol. X, Issue Number II of RGNUL Law Review. The Editorial Committee has painstakingly taken up this onerous task despite these tough pandemic times. This issue brings to you the following articles:

The first Article is dealing with the International Standards for Disciplinary Responsibility of Judges and co-relates it to the National Legislation of Uzbekistan suggesting how the process of Court Presidents should be limited to representative and administrative and proposes the reasons for which the Presidents should be deprived of the right to institute disciplinary proceedings

The Article on Protection of Elderly gives a historical perspective highlighting the role of the state and in particular the benevolent Legislation i.e. the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and brings out the procedural snags and legislative intricacies of the same.

The Article on Impact of National Education Policy 2020 on Legal Education is informative as it explores the NEP 2020 as an ambitious vision document and also points out the grey areas wherein changes have been suggested to amplify its objectives.

The Article on Fundamental Right to Privacy in India vis-à-vis Paparazzi Intrusion makes a Strong Case for protecting interests of the celebrities against unauthorized Paparazzi Intrusion and makes very pertinent suggestions.

The Article on Writ of Habeas Corpus vis-à-vis Queer Women is an Analysis of the existing law, the feminist legal debates and how this writ is used. It highlights the role of the lower judiciary which acts in complicity with the family to rescue adult women from so called improper alliances and, brings to light how silent prejudices work against lesbian relationships.

The Article on Indian MSME development Post 2014 gives an overview of the growth and performance of the MSME sector, the Issues and Challenges with the MSME sector. It discusses various government interventions through MSME

Programmes, support schemes and various policy measures which has ushered a transformation era for the MSME sector.

I sincerely thank the authors for their contribution and patience and we at RGNUL hope to continue in our endeavor to bring quality Research Papers to our dear readers.

Dr. Kamaljit Kaur

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Articles

THE INTERNATIONAL STANDARDS FOR DISCIPLINARY RESPONSIBILITY OF JUDGES AND THE NATIONAL LEGISLATION OF UZBEKISTAN

*Dr. Sulaymanov Odiljon Rabbimovich**

In his preliminary discussions Diego Garcia-Sayan, Special Rapporteur of the UN Human Rights Council on the Independence of Judges and Lawyers, expressed his concern about disciplinary proceedings against judges in Uzbekistan as stated below: the existing grounds for initiating disciplinary proceedings against judges are too general and broad, in particular the one referring to "violation of the rules of ethical judicial conduct". The grounds and procedure for conducting disciplinary proceedings against judges should be regulated by law, and the responsibility for carrying out such proceedings should be vested in an independent authority composed primarily of judges, such as a judicial council or a court. Court chairpersons should be deprived of their power to initiate disciplinary proceedings.[1]

According to the statistics from the Supreme Council of Judges of the Republic of Uzbekistan, in 2018 and 8 months of 2019, the Supreme Council of Judges initiated a total of 253 disciplinary cases against judges, according to which 123 (48.6%) judges were "excused". Moreover, 14 (5.5%) judges were subjected to "penal" disciplinary measures, 81 (32%) the disciplinary cases were dismissed, judges were warned, 14 (5.5%) judges were dismissed prematurely, 2 (0.7%) consideration of 19 disciplinary cases that were left without consideration of the decision since the judge's term was expired.[2]

Although the current legislation provides for the application of severe and penal disciplinary measures against judges, judicial qualification commissions practice warning judges as a disciplinary sanction and file a petition with the Council for early termination of powers. To solve these problems in practice, considering international standards and the experience of foreign countries, it is proposed to create an effective and efficient system of disciplinary proceedings against judges by introducing the following additional disciplinary measures into legislation: warning, restrict qualifications for up to six months, a fine of not more

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* Chief Specialist of the Supreme School of Judges, PhD in Law, Associate Professor.

1 Preliminary observations on the official visit to Uzbekistan. United Nations Special Rapporteur on the independence of Judges and lawyers Mr Diego GARCÍA-SAYÁN/ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25043&LangID=E>.

2 Current archive data of the Supreme Council of Judges of the Republic of Uzbekistan.

than thirty per cent of the average monthly salary, early termination of powers of a judge.

As recorded in international standards, the disciplinary responsibility of judges should be consistent with the basic principles of law. In particular, the occurrence of liability as a result of breach of obligations is clearly defined by law. A fair audit should be conducted and the views of the parties, including the judge, should be heard. Punishment should be clearly defined by law. The application of punishment should be based on the principle of proportionality.

A judge should have the right to appeal a disciplinary sanction to a higher court.[3] In its turn, the procedure for instituting disciplinary proceedings against judges also does not fully comply with the principle of judicial independence. Notably, the law states that disciplinary proceedings against a judge may be instituted by the Council and the Chairman of the Supreme Court. Peculiarly, the law stipulates that disciplinary proceedings against a judge may be instituted by the Council and the Chairman of the Supreme Court. Article 6, paragraph 6 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan clearly stipulates that one of the main tasks of the Council is to consider the issue of bringing judges to disciplinary responsibility, as well as issuing a conclusion to bring them to criminal and administrative responsibility.[4] In accordance with Article 49 of the Regulations on Qualification Boards of Judges, the Chairman of the Supreme Court of the Republic of Uzbekistan has the right to initiate disciplinary proceedings against judges of the courts of the Republic of Uzbekistan.

The authority to review disciplinary proceedings against judges should be vested in an independent body. The independent body may be the Council of Judges or the court itself. International law enforcement mechanisms, including the UN Special Rapporteur on the independence of judges and lawyers, violate the principle of the independence of the judiciary due to the participation of the executive in the work of the body considering disciplinary proceedings against judges[5]**.** This is to say that the decision of the Council on disciplining a judge is a guarantee of the independence of the judiciary. Accordingly, Article 7 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan defines the powers of the Council to bring judges to disciplinary responsibility. In the abovementioned law, the Council:

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[3] Opinion on the law on Disciplinary Responsibility and Disciplinary Prosecution of Judges of Common Courts of Georgia adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007). <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)009-e>.

[4] Law of the Republic of Uzbekistan "On the Supreme Council of Judges" dated April 6, 2017. Collection of Legislation of the Republic of Uzbekistan, 2017, No. 14, Art. 214.

[5] Report of the Special Rapporteur on the Independence of Judges and Lawyers. Human Rights Council Thirty-eighth Session 18 June-6 July 2018. A/HRC/38/38, 60paragraph.

- considers the issue of disciplinary proceedings in relation to judges and sends materials to the appropriate qualification commissions of judges;
- considers the issue of disciplinary proceedings against members of the Council, who carry out their activities on an ongoing basis;
- gives an opinion on the criminal or administrative prosecution of judges.[6]

Section 7 of the law defines the powers of the Council with respect to disciplinary proceedings. The Council considers the issue of disciplinary proceedings in relation to judges, and then send the materials to the relevant qualification boards of judges. In such case, the Supreme Council of Judges decides whether to prosecute the judge or not, and then sends the materials to the appropriate qualification boards. Next, qualification boards apply an appropriate disciplinary action.

Article 70 of the Law of the Republic of Uzbekistan "On Courts" establishes the procedure for bringing a judge to criminal and administrative liability. This means that a criminal case against a judge can be initiated only by the Prosecutor General of the Republic of Uzbekistan. A judge may not be prosecuted or arrested without the conclusion of the Supreme Council of Judges of the Republic of Uzbekistan and without the consent of the Plenum of the Supreme Court of the Republic of Uzbekistan. It is defined that a judge cannot be brought to administrative responsibility unless the Supreme Council of Judges of the Republic of Uzbekistan concludes so.[7]

The conclusion and consent of the judiciary to bring a judge to criminal and administrative liability is in line with international standards. This is an important factor in ensuring the independence of the judiciary. The Supreme Council of Judges of the Republic of Uzbekistan should play an important role in the fulfilment of disciplinary sanctions on judges.

At the same time, in practice, the disciplinary case instituted by the chairman of the Supreme Court is not referred to the Council, but is sent directly to the qualification commissions of judges who decide the issue of disciplinary action against a judge.

In particular, the Chairman of the Supreme Court initiated 23 disciplinary cases against judges in 2018 and 2 in the first 6 months of 2019, and the materials were sent to the qualification boards of the relevant judges.[8]

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[6] Law of the Republic of Uzbekistan "On the Supreme Council of Judges" dated April 6, 2017. Collection of Legislation of the Republic of Uzbekistan, 2017, No. 14, Art. 214.

[7] Law of the Republic of Uzbekistan "On Courts" of December 14, 2000 in the new edition. Bulletin of the Chambers of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Art. 47.

[8] Current archive data of the Supreme Council of Judges of the Republic of Uzbekistan.

As the experience of foreign countries depicts, the President of the Supreme Court of the Republic of Kazakhstan submits a proposal to the Supreme Council of Judges to consider disciplinary proceedings against all judges, the Chairman of the Supreme Court of Georgia sends materials on disciplinary proceedings in relation to all judges to the Supreme Council of Justice; In the case of lower court judges, only the President of the Supreme Court may initiate disciplinary proceedings against judges of the Supreme Court and send the materials to the Ethics Court, which is a separate body. In Armenia, the Minister of Justice, the chairman of the Court of Cassation and the Disciplinary Commission initiate disciplinary proceedings against judges and send materials to the Council of Justice.

With the aim of eliminating the current contradictions in the legislation, limiting the subordination of judges to the leadership of the Supreme Court and ensuring their true independence in practice, it is proposed to legislate the right of the Chairman of the Supreme Court to submit a disciplinary case to the Council.

In agreement with Article 50 of the Regulations on Qualification Boards of Judges, the Chairman of the Supreme Court of the Republic of Uzbekistan, who initiated a case on disciplinary liability of a judge, must analyze in advance the information on the grounds for bringing a judge to justice and demand a written explanation. A judge against whom disciplinary proceedings have been instituted is acquainted with the case materials before they are sent to the panel of judges. In this case, the judge has the right to provide additional explanations or to request a further investigation.[9]

Article 7 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan states that the Council considers disciplinary proceedings in relation to judges.[10] However, this legislation does not state that judge has the right to participate in the process of disciplinary proceedings by the Council or the Qualification Board of Judges, to exercise the right to defense, and to express his opinion.

In the Russian Federation, a judge has the right to participate in the disciplinary proceedings against him, while in Ukraine, Belarus, Georgia, and Kazakhstan, the participation of a judge in disciplinary proceedings is mandatory.

In order to safeguard the observance of the principle of independence of judges in the process of disciplinary proceedings, to ensure impartial and fair consideration of disciplinary cases by the Council and the Judicial Qualifications Commission, it is proposed to establish in law the obligation of a judge.

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[9] Regulations on Qualification Boards of Judges. Collection of Legislation of the Republic of Uzbekistan, 2014, No. 17, Art. 190; 2017, No. 37, Art. 978.

[10] Law of the Republic of Uzbekistan "On the Supreme Council of Judges" dated April 6, 2017. Collection of Legislation of the Republic of Uzbekistan, 2017, No. 14, Art. 214.

As pointed out in Article 76 of the Rules of Procedure of the Supreme Council of Judges of the Republic of Uzbekistan, the Council considers the issue of disciplinary proceedings against a judge, including a special ruling against a judge(s).[11]

The statistics from the Supreme Council of Judges demonstrates that in 2018, 40 of the 136 disciplinary cases against judges were initiated as a result of private rulings issued by the courts, while in the first 8 months of 2019, the figure was 60 respectively.[12]

It is stated in Article 73 of the Law on Courts, the annulment or modification of a court decision does not in itself constitute liability for a judge who participated in the issuance of a court decision in case he did not intentionally violate the law or cause dishonesty with serious consequences.[13]

Kiev recommendations on the independence of the judiciary also point out that disciplinary measures in relation to judges can only be instituted if they have made gross and unforgivable mistakes that could damage the reputation of the entire judicial community.

At the same time, the assessment of judges' professional performance should include an assessment of their professional and social skills. And this should not affect the independence of judges.[14]

As recorded in Article 66 of the Council of Europe Committee of Ministers' recommendations, "the application of the law by judges, the assessment of facts and evidence shall not be grounds for civil or disciplinary action, except for acts or omissions committed by them intentionally or as a result of gross negligence.[15]"

Nevertheless, there is a practice of making some decisions against judges without observing the above requirements in cases where decisions of lower courts are cancelled or amended by higher courts. The main reason for this

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[11] Regulations of the Supreme Council of Judges of the Republic of Uzbekistan, approved by the Resolution of the Supreme Council of Judges of the Republic of Uzbekistan No. 8/17 of May 17, 2017. <http://www.sudyalaroliykengashi.uz/uz/lists/view/164>.

[12] Current archive data of the Supreme Council of Judges.

[13] Law of the Republic of Uzbekistan "On Courts" of December 14, 2000 in the new edition. Bulletin of the Chambers of the Oliy Majlis of the Republic of Uzbekistan, 2019, No. 2, Art. 47.

[14] Recommendations of the Kiev Conference on the Independence of the Judiciary in Eastern Europe, the South Caucasus and Central Asia. Item 27. <https://www.osce.org/en/odihr/73488?download=true>.

[15] Council of Europe Recommendation CM/Rec (2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. 66 paragraph. <https://wcd.coe.int/ViewDoc.jsp?id=1707137>.

is that the procedural law does not establish clear grounds and criteria for special decisions against judges.

The main reason for this is that the procedural legislation does not set clear grounds and criteria for issuing special rulings against judges. In particular, the Law of the Republic of Uzbekistan "On Courts", the Administrative Procedure Code and the Economic Procedure Code do not include a special decision regarding a judge. It is difficult to determine whether it is possible to issue a separate ruling on judges from the content of article 496 of the Code of Criminal Procedure, but article 379 of the Code of Civil Procedure provides that the law has been violated to such an extent that there are no grounds for cancellation. It is stated that the courts of appeal, cassation and supervisory jurisdiction believe that violations of the law by the court that examined the case are not grounds for cancellation, amendment or adoption of a new decision.[16]

As a result, of the 63 private decisions submitted to the Council for the 9 months of 2019, 42 (66.7%) were deemed suitable for disciplinary proceedings against a judge, and 21 (33.3%) were rejected.[17]

It is proposed to amend the Law on Courts and all procedural codes in order to ensure the independence of judges in the administration of justice, to legislatively regulate the grounds and procedure for making special decisions regarding judges, as well as to unify judicial practice in this regard.

"In accordance with the Regulation on the Qualification Bodies of Judges, appeals against decisions of the qualification collegium of judges are considered by the High Qualification Commission of Judges,[18] and appeals against decisions of the Higher Qualification Council of Judges are examined by it.

The lack of impartiality in the trial gave the judges the impression that their decisions were unjust.

In countries such as Kazakhstan, Ukraine and Moldova, appeals against decisions of the qualification collegiums of judges are considered by the High Council of Judges.

Decree of the Supreme Council of Judges of the Republic of Uzbekistan No. 490-III of January 29, 2018 amended and supplemented the Judicial Code of Ethics and approved its new edition. This Code is mandatory for all judges in Uzbekistan, including judges whose powers were suspended on the grounds provided by law. In accordance with paragraph 6 of the decision of the

[16] Code of Civil Procedure of the Republic of Uzbekistan. <https://lex.uz/docs/3517337#3525602>.

[17] Data from the current archive of the Supreme Council of Judges.

[18] Regulations on Qualification Boards of Judges Collection of Legislation of the Republic of Uzbekistan, 2014, No. 17, Art. 190; 2017, No. 37, Art. 978.

High Council of Judges of the Supreme Council of Judges of January 29, 2018 No. 490-III, judicial officials must also comply with this code.[19]

Based on the above-mentioned regulations, with the aim of introducing international standards of judicial discipline into national legislation, the following conclusions and recommendations are accepted:

Due to international standards, the powers of court presidents should be limited to representative and administrative functions. They should not participate in the election of judges or in the discussion of disciplinary proceedings against judges; According to international standards, disciplinary proceedings against judges are regulated by law only if they are just and disciplinary in a judicial or other independent body for misconduct established by law, and the responsibility for such proceedings lies primarily with the judges, for example, an independent body, such as a council of judges or a court. Court Presidents should be deprived the right to institute disciplinary proceedings;

- ensuring the right of a judge to participate in disciplinary proceedings against himself and to have a representative;
- guaranteeing the right of a judge subject to disciplinary action by a decision of the High Qualification Commission to appeal to the Council;
- warning about the disciplinary system, a decreasing the qualification level for a period of up to six months, suspending a judge's term of office for a specified period or dismiss with an early termination;
- clearly indicate what disciplinary action a judge can apply for certain types of crimes;
- Prohibition of the participation of a person who initiated a disciplinary case or investigation as a "judge" in resolving the issue of disciplinary liability;
- the abolition of the disciplinary procedure against a judge for violation of the "Code of Ethics for Judges";
- revoking the right of the President of the Supreme Court to initiate disciplinary proceedings against judges, giving him the right to submit to the Council a proposal to institute disciplinary proceedings in relation to judges;
- the establishment of standards ensuring the right of a judge to participate in disciplinary proceedings, exercising his right to defense, expressing his opinion and have a representative.

[19] The Code of Ethics for Judges was approved by Resolution No. 490-III of January 29, 2018. <http://www.sudyalaroliykengashi.uz/uz/lists/view/37>.

PROTECTION OF ELDERLY: A HISTORICAL PERSPECTIVE

Dr. Neelam Batra[*]

1. INTRODUCTION

Security for old age is manifestly a human-culture achievement. The use of fire is a simple instance which shows that man's material culture can serve and ease the elderly. When fire was finally brought under control, it was used for many purposes such as a shield against climate, a guard against wild animals, functional in the manufacture of equipment and the preparation of food. In reality, the advantages of fire were so intimately connected with the frailties of age that when the need arose to abandon an old and enfeebled relative, it became a prevalent practice and an extremely cherished rite to leave with him or her supply of food, a flame, and some fuel.[1] There are likewise important examples of prolonged securities for the elderly in the development of social relations, such as rules obligating the young to respect and provide for the elderly in numerous and varied forms. Property rights, special privileges tabooed to others and prerogatives within the family are exceptional types of social measures for elders. But whether or how well any of these gains have been recognized depends significantly on the existing culture of the time and place and on the organization of the society involved.[2]

2. OBJECTIVE OF THE STUDY

(a) To study the role and status of elderly in traditional societies.

(b) To investigate the shifting status of elderly from the agricultural to industrial societies.

(c) To identify various social changes that impacted the status of elderly.

(d) To give an awareness and insight into the problems faced by elderly over the years. The study will aid us to visualize the involvement and contribution of elderly in various matters in earlier times.

(e) To assess the role of Sate to protect the elderly and the evolution of various schemes and programmes targeting elderly.

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[1] Clark Tibbitts, *Handbook of Social Gerontology: Societal Aspects of Aging,* 64 (1960).

[2] *Ibid.*

3. RESEARCH METHODOLOGY

The present research work required doctrinal study. The doctrinal work dealt with analytical approach where tools of research such as literature available in various text books and research articles were reviewed. The methodology of this paper is purely descriptive.

4. PROTECTION OF ELDERLY: THE ROLE OF FAMILY

The definition of ageing differs from society to society and has been modified significantly over time. Usually, people of 60 years and above are considered as elderly people in almost all the gerontological works and as representing the aged section of the social order.[3] It was considered obligatory in the traditional Indian society for the younger to respect this aged segment and have a high regard for their opinions. The joint family system in such societies provided the required financial and social protection to the elderly. The position as the senior most person in the family and presence of children and grandchildren supplied them with a sense of contentment and pride.[4]

4.1. Brief description of Ashrama theory

Traditional Indian society had shaped the life cycle of its persons in a way that aged people experienced psychological security. There was a steady progress from energetic, family oriented life to more withdrawn life style given to religious pursuits.[5] According to traditional Indian culture, the life span of a human being is 100 years. In the *Dharamasastra, Manu,* classified the life duration into four stages.

- *Brahmacharya*: As per this classification, the earlier stage was known as '*Bahmhacharya*'. This is the life of a student and a person had to be spent this stage of life at the guru's (teacher's) house in order to educate himself with the help of guru. The boy, already grown into adulthood, would be all set to enter into '*grihasthaashrama'* when once education was finished.
- *Grihasthashrama*: The phase of fulfilling the responsibilities of a householder including raising and maintaining a family. A man had to marry and have children. He had to perform various duties as a father of his

[3] Indira Jai Prakash, "Ageing in India", available at: <http://www.who.int/iris/handle/10665/6596>, (last visited on September 24, 2013).

[4] Indira Jai Prakash, "Psychological Security for Older Persons in India" in R.K.A. Subrahmanya (ed.), *Social Security for the Elderly,* 175(2005).

[5] *Ibid*.

children and son of his parents. He had to perform numerous household duties and perform various rituals.

- *Vanaprastha*: This was the third stage when a man had to give up all his worldly desires. He had to renounce all his household duties and move to the '*vana*' or forest for the spiritual growth.
- *Sanyasa*: This was the phase of entire renunciation of all attachments and surrender. He would abandon the world wholly and go into the period of *'sanyasa'* or simplicity. The ageing process starts somewhere in the third and four stages.[6]

It is remarkable to note that the *ashrama* theory presents an orderly approach to human life in developmental terms. The relationship between the individual and the society in its dynamic aspect is contained in this approach. The society was likely to look after the comforts and development of the individual during the *brahmacharyaashrama*. In the second *ashrama*, the individual had to serve the society. In the third *ashrama,* the individual started the process of steady departure from the previous stage and began enchanting himself with the interests of next *ashrama-the sanyas*. The individual severed his connections with the society in the fourth *ashrama* and directed his energies towards the self-realisation. In the third and in the fourth *ashramas,* the role of the individual was to deal with the supernatural, with the life within, and therefore the role of the group weakened till in the fourth and ultimately disappeared. In the last stage, the individual who was now totally liberated from any societal commitments had to help himself in the search of the self (*atma- chintana, atma jnana*). The concise narrative of the *ashrama* theory discloses that the traditional Hindu vision of life recognizes withdrawal from society as an approach towards old age.[7]

It is pertinent to mention here that in the whole scheme, description about different stages of man's life was only given. There was no mention about woman's life which gave rise to the assumption that woman's duty was to be faithful and loyal to their husband. Whenever sons are married and daughters-in-law come into the family, there was a marked change in the woman's life. The keys of the house were handed over to the daughter in law and there was a considerable shift in the rank of the mother-in-law/woman. Most of the household tasks were to be performed by the daughter-in-law. Ordinarily, irrespective of the age of a person, a person is considered old when the son or daughter gets married and give birth to the children.[8]

All the above mentioned stages or *ashramas*, nevertheless, are part of an individual life cycle that ultimately leads to ageing. It is also to be mentioned that there is a difference between the population ageing and individual ageing.

6 *Supra* note 3.
7 Tapan Benerjee (ed.), *Senior Citizen of India: Issues and Challenges*, 146 (2002).
8 *Supra* note 3.

Individual ageing is a persistent progression from birth till death whereas; depending upon the age structure, population of any country can be young or aged.[9]

5. STATUS OF ELDERLY IN TRADITIONAL SOCIETIES

In traditional Indian society, the aged people both men and women enjoyed high social status. They continued to live in the joint families where three generations lived under a single roof. It was predominantly the case in rural India where agriculture was the main occupation of majority of the people. Each person in the family worked on the land. Generally, the majority of elderly in India did not leave their family homes. The family members looked after them during sickness. Even the dying elderly were comforted by their families and hardly ever died in hospitals, which were almost missing in rural India.[10] The elderly people were appreciated for their wisdom, their understanding of the nature, and their know-how in the agriculture business. They were the repositories of rituals and took care of moral teachings of the young. They were the healers caring for the sick people of the community. Their power and status stemmed from the fact that they had survived the havocs of time efficiently. In rural areas, elderly people who managed the family property exercised authority over the youth. Religious ceremonies, initiation rites, decision concerning important matters to kin group or community were the realm of elderly. Usually, the traditions of a group were conveyed verbally from generation to generation.[11] The reputation accorded to the elderly generally depended on four components: advisory, contributory, control and residual. The first component comprised the better understanding of the elderly. The second arose from their involvement in cultural, ancestral and financial activities. The control component arose from their control of property, practical information and understanding. The residual component depended on their prior standing in their societies which also included the first component.[12]

In traditional societies, even factors external to family system were required to make sure that the elderly were treated well. The essential among these factors which reinforced the capability of the family to provide a considerate environment for the aged was the 'community'. This community, also known as '*biradri*', caste or kin groups or sect, constituted a social institution that defined and laid down the moral sanctions for the care of the elderly, feeble, handicapped and widowed. The moral sanctions were dynamic and continued to alter with changes in economy, ecology and demographic composition of the society. Joint family

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[9] Rajagopal Dhar Chakraborti, *The Greying of India: Population Ageing in the Context of Asia*, 159 (2004).

[10] Mohapatra, Urmila, "The Elderly and Social Change in Contemporary India: Governmental Response to the Needs of Elderly Population in India", available at: <https://eric.ed.gov/?id=ED444909>, (last visited on February 9, 2017).

[11] *Supra* note 4.

[12] Kumudini Dandekar, *The Elderly in India*, 25 (1996).

system had the slogan "from each according to his/her ability, to each according to his/her need". This covered not only the aged, but others in need like widows, physically handicapped and chronically ill. Family system with its extended structure had a great measure of steadiness and the aged had a safe place in it. Community also exercised pressure by close examination and would take over the care of the deprived in exceptional cases. Such a system guaranteed status, honour and protection to the elderly. On the whole, they enjoyed high social status in the family as well as in the community.[13]

5.1. From Agricultural to Industrial Societies: Shifting Status of Elderly

With the shift of society from the agricultural to the industrial phase, there was a mass departure from traditional agricultural practice and the situation of the aged people changed. In an agrarian setting, every member of the family had the identical source of income. On the other hand, in an industrialised society, an individual wage-earner makes for difficulties in budgeting because of the different sources of income available. The household is now a consumer unit, instead of being a productive unit providing for all, and those who do not earn are possibly to be ignored when their rights of utilization are assessed.[14] The elderly have lost influence over other family members by losing control over the land. Moreover, they cannot battle with younger persons in technological and non-agricultural occupations. Shifting from village to city worsens the authority of the elderly on the young and varying technology and social arrangement tend to make the elderly old fashioned and outdated. Social scientists observed that there is a radical transformation in the family and community at the present time. These changes will involve a different viewpoint of life and interactional pattern amongst generations. Age based ('Ascribed') status in the society is giving way to function based ('Achieved') status which is a common value in industrial societies.[15]

The elderly people accepted the burden of providing for the family in traditional families and the next generation residing with them could benefit from their incomes, if any. However, in the non-agricultural milieu, when the aged cease to earn they become intensely mindful of their non-earning position and experience a sense of powerless dependency. In urban areas, generally it is the elderly from rural areas that go to live in son's house and adult children might even take suggestion from the elderly but might not act on it, with the belief that their aged parents are not adequately acquainted with the demands of the new setting.[16]

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13 *Ibid*
14 *Id.*, at 26.
15 *Supra* note 4.
16 *Supra* note 14.

Finally new standards of behaviour, new ways of spending time and money, and like provide definite basis for disagreement between generations. The differences which would have remained concealed in the earlier period are currently clearly spoken. Unless the older generation remains quiet, suppressing its feelings of dissatisfaction before the young, it risks being subjected to verbal disputes and opposition. Within their cultural framework, this constitutes the antithesis of appropriate modes of intergenerational communication. In all the above ways, families which include elder people are affected by the social shift taking place in urban India. The impact of transition in the economic arrangement, geographical mobility, education and cultural ethics is felt at all economic and social stages. All the accompanying ills of this transition are further aggravated by poverty. For the destitute, particularly poor migrants of recent rural origin, these changes intimidates the time-tested system of old-age security since elderly members of these families have no material power base that can be used to enforce compliance and commitment from their children in the face of unfavourable state of affairs.[17]

The traditional family may possibly mitigate many of the potentially unpleasant effects of urbanisation on the existing social order. But it is a blunder to think that the future of the family is not varying in an Indian cultural context, given the material circumstances in which millions of urbanites resided today. It is not easy to say what way out can be found. But people must be at least aware about what the future has in store for them. Perhaps this is the first step needed to face the new problem.[18]

5.2. Various social changes that impacted the Status of Elderly

Traditionally, the family has been the primary and the foremost social institution in order to look after the aged people. It is the practice which has been followed since time immemorial in India. In ancient India, an important role was played by the aged persons in the family as well as in society. They also enjoyed social security against infirmities, losses and had the privilege of being cared for by the younger generations. They were accorded a high status as decision-makers in the joint family system. Over the years, changes have been taking place in the socio-economic and demographic dimensions. For example, there is a rise in the life expectancy of the people, women have started working outside, less number of children, standard of people has undergone a great change due to westernisation, children have started moving to the urban areas for employment purposes leaving their parents behind, etc. There is a great shift from the joint families to the nuclear families. Due to this changed scenario, the whole ancient system of looking after

[17] *Id*., at 27.
[18] *Ibid*.

the elders by the younger generation have been widely troubled.[19] The following eight social changes have impacted that Indian elderly:

1. Demographic Transition
2. Decline of Indian Joint Family System
3. Urbanisation of Rural India
4. Increasing Employment of Women in Workplace
5. Emigration of Young Indians
6. Commercialization of Entertainment
7. Increasing cost of Elder Care
8. Rise in the Number of Destitute Elderly[20]

The first major change that has impacted the elderly is the gradual increase in life expectancy in India. The number of aged people is escalating all over the world in proportion to the populations. Indian Social researchers have given different reasons for this substantial increase in the number of elderly population in contemporary India. The health care system in India has improved with increase in hospitals, doctors and high quality medicines. Moreover, people are leading a healthier lifestyle and have become more heath conscious. This increase in number of elderly in Indian population creates a major problem. The percentage of persons over 60 is increasing and so is the number of pensioners. During the last few decades, particularly since the beginning of the present century, the changes in the demographic composition of societies have made the aged a socially more noticeable section of the population. Likewise, social and economic changes brought about by the twin processes of industrialization and urbanization has produced a relative insecurity about the traditional status, role and significance of the elder people in the society. The challenges of old age come from a variety of other sources as well. There are signs of the elderly being pressed to a comparatively unimportant social position as the modern society is more and more getting youth- oriented, where utility, productive capacity, health, independence, individualism, and achievement are the dominant values.[21] Several developments have adversely affected the aged:

(i) The disinclination and inability of sons and daughter-in-law to keep their parents and parents-in-law with them.

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[19] S. Irudaya Rajan and Sanjay Kumar "Living Arrangements among Indian Elderly: New Evidence from National Family Health Survey" Economic and Political Weekly, Vol. 38, No. 1 (January 4-10, 2003), pp. 75-80, available at: <http://www.jstor.org/stable/4413048>, (last visited: 8-9-2016).

[20] *Ibid*.

[21] *Supra* note 7 at 84.

(ii) Rising difficulties of everyday living as a result of inflation, near impossibility of finding faithful servants; difficulties in relations between landlords and tenants;

(iii) The necessity of going out of the house to earn a little so as to supplement the income accruing from pensions/rents/interests. It is a common sight these days to see even persons over 70 making a living.

(iv) Due to economic reasons houses are not as sturdy as in the past and it is not difficult for burglars and thieves to gain entry.[22]

Second most important change that has impacted the elderly is that the system of joint family in India has declined. Family is considered to be the principal social unit and it has a particular importance for aged people. The most frequent form of interaction takes place in the family and a high occurrence of interaction in the family is imperative for retired people. After retirement, aged people have to depend on their family members for the fulfilment of varied requirements. The traditional joint families of Indian society are breaking up with the advance of industrialization and urbanization. The adult children are moving out of their traditional homes with their young wives. Therefore, only the older people are left behind in rural homes. Owing to the mobility of children to their places of work and the shifting attitudes of youngsters towards the old, joint families are yielding place to nuclear families. Increase in per capita income for the young couple makes it feasible for them to have their own house in urban settings. These urban houses do not have space for a large family. Elderly parents are left behind in their village homes. Joint family arrangement took care of the old in the past. The wives of the sons stayed home and did all domestic chores. They also used to look after the elderly at home. Now with the decline of the joint family, there is no one at home to look after the needs of the elderly people. It is often observed, in present society, particularly in urban areas, that older people are ignored by the younger and left to their own resources for the fulfilment of their wants.[23] Indian sociologist Prof. Gangrade has studied the change in Indian family structure. He observes that due to industrialization, urbanization and education, Indian young people are neglecting "parental responsibilities" in favour of careerism. He has compared the changes from "traditional Indian values" to "modern social values". These shifting value are impacting elderly care in India.[24]

Another change that has impacted the elderly is the increased employment of women. With the shifting role of women, they are increasingly

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[22] *Id.,* at 213.

[23] *Id.,* at 161.

[24] Cited in S. Irudaya Rajan and Sanjay Kumar "Living Arrangements among Indian Elderly: New Evidence from National Family Health Survey" Economic and Political Weekly, Vol. 38, No. 1 (January 4-10, 2003), pp. 75-80, available at: <http://www.jstor.org/stable/4413048>, (last visited: 8-9-2016).

working outside the house due to which their help to the elderly is going to suffer. They tended to take care of the elderly at home. More and more Indian women are entering the workplace on a full time basis. In particular, the young college educated women do not want to stay in homes. They want to have a profession and earn money. In the past, Indian women did not work outside their homes In India, in big cities women are now going to work outside the household.[25]

India has a large number of learned people in various fields. The salary for such profession in India is very inadequate. Therefore, there is huge immigration of Indian professionals to western countries like UK, USA and the Middle East. These Indians are very affluent in those countries compared to the people working in India. The majority of them leave their old parents behind in India. So, there is nobody to take care of the elderly parents of these emigrant Indians. Some aged people in India do not have any children and therefore, no one is there to look after them during the last phase of their life. Even the wealthy aged people having high income are unable to take care of themselves. They need some kind of caregiver.[26]

Moreover, taking care of the elderly parents has become costly in India. It is essentially so in the urban areas. Modern healthcare has become costly. So, many young Indians feel the burden of elder care. The majority of aged people do not have any pension or retirement income. Thus, they have to depend upon their children for financial support.[27] It is also important to note that the 'support given to the aged people' and 'to take care of the aged people' are both diverse conceptions. The 'support of the aged people' means giving monetary support either in the form of pensions or some benefit conferred under various social security schemes. 'To take care of the aged people', on the other hand, includes the moral as well as emotional support. This kind of support can only be provided by the members of the family of the aged people especially those with whom the aged lives. Although the nature of support and care are distinct, both are essential for the well-being of the elderly.[28]

In the past, old parents used to take care of the small children in the family. They also told them stories, which the children used to listen with immense interest. In contemporary Indian family, entertainment has been extremely commercialized. Television has entered the Indian homes with different television programs. Children enjoy these programs rather than listening to the stories of grandparents. Resultantly, the elderly have been deprived of their social roles of entertaining the small children and are thus less needed by the modern families.[29]

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[25] *Supra* note 12 at 23.
[26] *Supra* note 19.
[27] *Ibid*.
[28] *Ibid*.
[29] *Ibid*.

All the various factors have a considerable impact on the well-being of the elderly people. So there is a great need of some broad policy in order to fulfil the various requirements of the ageing population. There is a need to create awareness about the various human rights of the elderly people.[30]

6. PROTECTION OF ELDERLY: THE ROLE OF STATE

The childhood is fundamentally a period of dependence on one's parents for every person. A child does not have the physical or mental maturity which may permit him/her to take part as an effectual member of the society and is looked after by parents who accept this responsibility without any expectations. However there are times when a grown-up might require the aid of external sources temporarily or at times permanently and such spells are called contingencies. They may occur from various economic factors and biological causes. The old age of a person is an eventuality for which cautious preparation or planning is required. The experience of the erstwhile Soviet Union has established that old age becomes a contingency merely when the persons affected by it have not collected adequate resources during their working life to support themselves during the later phase of their life This is the phase when the elderly are not able to work efficiently to earn their livelihood.[31]

In both the developed and developing countries during the recent times, there is a great concern for various social security measures to be undertaken for the welfare of the elderly. It is not only the responsibility of the family but also of the State to provide for the maintenance and the welfare of the elderly so that these people can lead a normal and dignified life.[32] Social Security services have also been defined by the International Labour Organisation as those services which provide various facilities to this section of the people to fight and prevent diseases, or to support them when they are unable to engage them in any of the gainful activities. There are various eventualities which are shielded in the social security structure such as sickness, unemployment, maternity, retirement occupational risks, old age and medical care.[33] Therefore a perfect arrangement of social security is designed in order to serve the needy people.[34]

The protection envisaged for those whose income-earning capability has eroded due to age is the payment of lifetime pensions related to the same individual's general level of earnings before retirement. Nonetheless, numerous social security schemes have been set up around the world as provident funds, which generally supply benefits in the form of lump sums. Such schemes are well

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30 Rob Vos, Jose Antonio Ocampo, *et al.,* (eds.), *Ageing and Development*, 71 (2008).
31 S. Irudaya Rajan, U.S. Mishra, *et al*., *India's Elderly: Burden or Challenge?*, 139 (1999).
32 *Ibid*.
33 *Id*., at 140.
34 *Id.,* at 139.

appreciated by their members.[35] In the nature of a provident fund, the finances contributed by and on behalf of the members can be identified with each individual, and therefore a provident fund is the type of scheme described as 'funded' in most circumstances. A pension scheme may be either funded or unfunded and often labelled 'pay-as-you-go.' What is under consideration is the distribution of the country's total current, consumable resources between the active, working population and those who are not currently working, more significantly the aged and the young. This principle is not altered, whatsoever the economic arrangements underlying a scheme to give benefits to retiring or retired workers, and whatsoever notional monetary rights may be assigned on the basis of individuals' contributions. This, therefore, underpins at least a main part of the basic justification for the social basis of income support.[36]

There is no universal social security system followed in India in order to safeguard and protect the elderly people from economic dearth. This position is similar to many other developing countries. There are many factors responsible for this situation and the main factors are high rates of unemployment and poverty causing hindrance in achieving this goal. However a pension policy is adopted in India which primarily hinges on funding with the help of participation of employer as well as employee. But these policies are limited to the workers working in the organized sector. Due to this limited coverage, workers working in the unorganised sector could not avail the benefits of this kind of monetary support in old age.[37]

6.1. Evolution of the Social security Scheme

Historically, the requirements of the elderly were provided for by their families. In the predominantly rural and agrarian setting, in which the majority of the people lived until recently, it was usual for the families to deal with the requirements of not only the elderly, but also the young, the sick and any other deprived or incapacitated family members. The circumstances altered drastically when workers started to move to the big towns and cities, to take up work in the large factories, stores and other business enterprises established in those centers. In Europe and North America, this resulted in a more or less entire social transformation which took place relatively speedily beginning some three hundred years ago. The process had begun later in the less developed countries and had been incomplete with a much bigger section of the population remaining and working 'on the land'. Nonetheless, the shift to the urban areas had been very extensive and had deeply undermined the family ties on which those in need, could rely.

[35] S. John Woodall, "The Wrinkled Face of the Passing Years" in R.K.A. Subrahmanya (ed.), *Social Security for the Elderly*, 58 (2005).

[36] *Id.,* at 59.

[37] Ranadev Goswami, "Indian Pension System: Problems and Prognosis," available at: <www.actuaries.org/EVENTS/Seminars/Brighton/presentations/> (last visited on September 5, 2016).

These are the fundamental state of affairs in which the necessity for formal social security schemes became evident and in which schemes of the 'traditional' type have been planned, to meet the situations of those who experience the loss of their income on meeting with a range of contingencies. This was the background to the specification in instruments, notably, International Labour Convention No. 102 of 1952 regarding Minimum Standards of Social Security).[38]

Different schemes relating to formal pensions are not something which is new in its current form. It is something which has evolved over centuries. This system of formal pensions was considered to be discovered by United Kingdom in the year 1375. In the beginning years, the contribution for the pension was made through the wages of the successor to an office in the United Kingdom. The decision to pay the pension from the public funds was made in the later years i.e. in the year 1810 whereby the pension system was made non-contributory. Later in 1834, Superannuation Act was passed in United Kingdom whereby the non-contributory pensions were extended to the entire civil service. As far as the US is concerned, in the year 1862 the pension system was originally recorded in order to compensate those war veterans who were disabled. In New Zealand, pension system was initiated in the year 1856. Pension was granted initially in Mexico in 1820 to executive officials, treasury officers as well as officials in the judiciary.[39]

In India, the concept of social security of providing support and assurance is not a novel concept. The traditional joint family arrangement was the first of its type which used to provide such security to the elderly people in India. The idea of the concept social security was underway during the post-Vedic period. Diverse guidelines in order to regulate the guilds had been laid down by Kautilya in his *Arthashastra*, whose core motive was combined security for life, wealth and liberty from poverty and dejection. The observations by Shukracharya (A.D. 750-A.D. 850) in his penetrating *Shukraniti* have revealed at a number of places references concerning benefits relating to sickness, old age, pension, family pension and maintenance grants.[40] In *Sukraniti*, description of benefits relating to pension was made and it dates back to 3 BC. During this time, it was expected from the king that he would contribute half the earnings towards the employee as a pension in case the employee had worked for 40 years providing his services and unable to fulfil usual obligations owing to old age.[41]

There is a long practice of pension and different types of other recognised old age income provision arrangements in India notwithstanding the restricted size and scope. It began in the colonial period of British-India.

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[38] *Supra* note 35.

[39] Charan Singh "Ageing Population in India: Select Economic Issues" Working Paper No: 442, available at: <iimb.ac.in/research/sites/default/files/WP No. 442.pdf> (last visited on June 2, 2017).

[40] *Supra* note 31 at 140.

[41] *Supra* note 39.

Pension benefits were granted initially in 1881 by the Royal Commission on Civil Establishments to the government employees. Further provisions were made by the Government of India Act, 1919 and Government of India Act, 1935. Later on, these schemes were fused and extended in order to provide retirement benefits to the workforce in the whole public sector. Several provident funds were set up post-independence to extend coverage among the private sector workers.[42] However India is adopting measures, since independence, to improve and enlarge its social security net. Indian planning has laid constant emphasis on security and welfare of all fellow citizens. The social security movement in India may be divided into the following periods:

- Before 1920- Period of unconcern
- 1921-1941- Period of haphazard growth
- 1942-1951- Period of conscious planning
- 1952-1957- Period of implementation
- From 1958- Period of consolidation[43]

In India, nearly all the legislations relating to welfare of the labour are supported by ILO publications from the colonial era till independence and even later. Several committees were appointed during the period 1942-1951 for growing social security of workforce and ILO documents have greatly influenced all its decisions. In 1943, the Commission on Social Security was constituted headed by Professor Adakar. A Report was filed by the Committee and experts were appointed by the ILO in order to evaluate that report. This report shaped the basis of Employees' State Insurance Act, 1948 which provided essential benefits of social security like maternity benefit, dependant's benefit, sickness benefit, disablement benefit and funeral expenditures.[44] According to Prof Adakar, any social security scheme should have the few principles namely simple to administer; compulsory; contributory; execution with least burden; possibility of extension and expansion; economically sound and sustainable; flexible and nominal disputes.[45]

In 1950s and 1960s, there was the beginning of institutionalization of the provident fund schemes which proceeded further also. The major legislations was the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 This Act also incorporates the Employees' Provident Fund Scheme, 1952, the Employees' Deposit Linked Insurance Scheme, 1976, and Employees' Pension Scheme, 1995 which substituted the Employees' family Pension Scheme, 1971.

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42 *Supra* note 37.

43 *Supra* note 31 at 142.

44 "Social Security: International Labour Organization and India", available at: <shodhganga.inflibnet.ac.in/bitstream/10603/6251/7/07> (last visited August 8, 2015).

45 *Supra* note 31 at 142.

The law is applicable generally to organised sector's employees where, in comparison to those in the unorganized sector, working conditions are relatively good.[46]

The Period from 1952-1957 was the period of Concrete Action and may truly be called the dawn of the era of social security in India. Some of the major developments achieved during this period were: social insurance principles were recognised as the chief foundation for the social security legislations. An integrated approach to the problem of health insurance was made for the first time comprising of sickness, maternity, employment, injuries and allied contingencies. Social security measures were also introduced. Compulsory Provident Fund Scheme was introduced in factory- based industries. Protection was sought to be provided against certain types of unemployment of industrial workers. Measures of work-relief were undertaken on a large scale for fighting unemployment.[47]

During this period, the Employees' State Insurance Schemes was introduced for the first time. Two industrial centres, one in Kanpur, Uttar Pradesh and another in Delhi were chosen for this experiment covering 124,000 workers. Uttar Pradesh was the first State in India that took the lead by granting old age pension out of the State exchequer to those aged 70 or more, having no liable relations. The Employees' Provident Fund Scheme was introduced for the first time in 1952. Apart from this, the Government of India has promulgated the Coal Mines Provident Fund and Bonus Schemes ordinance on 23 April 1968.[48]. The Public Provident Fund Scheme was established in the year 1969 on a voluntary basis for those working in the private sector. This scheme was also available to the self-employed persons who were not protected by Employees' Provident Fund Scheme. It was also noticed that though this Public Provident Fund Scheme covered individuals in the unorganized sector and the needy people, yet the scheme was misused as a measure of tax circumvention by the self-employed due to which it could not serve the needy people.[49]

In India, new provisions relating to social security have been made a number of times for the government servants. The Indian Constitution has embodied, in Part XIV, appropriate provisions for the services under the Union and States. In Part XIV, Article 309[50] relates to the recruitment and conditions of services of persons serving the Union or a State. Various rules and principles have been outlined by the Government under these statutory provisions from time to time which laid down conditions of service including retirement/terminal benefits to its employees.[51] The Constitution of India directing that the state would

[46] *Ibid*.

[47] *Ibid*.

[48] *Id*., at 143.

[49] Hitoshi Ota, "India's Senior Citizens' Policy and an Examination of the Life of Senior Citizens in North Delhi", IDE Discussion Paper No. 402, (2013), available at <http://www.ide.go.jp/English/Publish/Download/Dp/pdf/402.pdf>, (last visited on September 4, 2013.

[50] The Constitution of India, Art. 309.

[51] *Supra* note 31.

give public assistance to senior citizens came into effect in 1950. The 1950s and 1960s saw institutionalization of the provident fund schemes. The Hindu Adoption and Maintenance Act was enacted by the Parliament in the year 1956 and in the year 1973, Code of Criminal Procedure was made. Both the legislations incorporated provisions regarding the rights of parents unable to maintain themselves to claim maintenance from their children.[52] Although even the most important ILO Convention on Social Security was not ratified by India, yet all the nine areas recognized in the convention and other connected conventions are made part of social security schemes in India. It is logical to settle that India has involved, through the Constitution and legislations, the obligations reflected in the ratified and unratified Conventions. Nevertheless, the OECD Report mentioned that in India, 9 out of 10 employees are outside the social security coverage.[53]

Regardless of the fact that few initiatives were taken by the government for the wellbeing of the aged people, but those initiatives were not enough till 1980s. The benefit in those times could be availed majorly by those workers whose working conditions were better than others and the existing policies were applicable only in case of formal employment providing income security to the workers and included the provident funds also. Only a small percentage of workers could avail the benefits.[54] However, in the year 1982, the World Assembly on Ageing was held in Vienna. This Assembly captured the attention of Indian Government and issues relating to senior citizens became a concern at the national level following which an Inter-Ministerial committee was constituted in 1987-88 by the central government to address various problems of elderly people. Non-governmental organisations were also encouraged to establish day care centres as well as old age homes and consequently, a pivotal role had been played by these organisations for the welfare of the elderly people.[55]

At national level, initially the comprehensive policy plan was adopted in India in the year 1999 for the senior citizens and their wellbeing. This broad policy is known as the National Policy on Older Persons. However, the Indian government began to execute this policy relating to older persons only after the mid-2000s. These senior citizens were considered as the normal beneficiaries of welfare aid as well as institutionalized facilities till 1970s. The States did not consider them as a resource or as dynamic contributors in scheduling their personal growth and wellbeing. This inactiveness on the governments' part was mainly due to two reasons. Firstly, the old age security had long been measured as a family as well as community concern and secondly, in India, the life expectancy was also short. The presence of elderly in the population started to increase only in the 1970s and 1980s.[56]

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[52] *Supra* note 49.
[53] *Supra* note 44.
[54] *Supra* note 49.
[55] *Ibid*.
[56] *Supra* note 49.

Although the services which were being made available to elderly people were playing significant role in lessening problems, but still there was pressing need to involve multi-dimensional, diverse activities to get rid of this rising problem. There was a need of the hour to make it people's movement and programme by creating awareness amongst the entire community, conducting surveys to identify the degree of this problem, coordinating the existing resources and avoiding the duplication of services in same area, knowing their areas of interest, making them mentally equipped to accept the challenges of hard realities of the age, and avail of the existing services.[57]

It is also pertinent to mention that in addition to governmental initiatives, various initiatives have also been taken by voluntary, non-governmental and/or non-profit organizations in order to improve the condition of elderly. These initiatives are complementary to or substitute the government initiatives and are not limited to help only the destitute elderly but some of these activities undertaken are particularly meant for affluent people. However, again the coverage is limited and the whole elderly population is not covered. Owing to this reason, the elderly who remain outside the scope have to depend on their family members or communities. In the absence of the family support, they have to live on their own.[58]

In spite of several programmes enunciated by government for senior citizens, it was felt that lack of legislation imposing legal obligations to take care of elderly was inevitable and hence central government enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The object of the legislation is to provide for the maintenance and welfare of parents and senior citizens. The Act of 2007 provides for:

i) Maintenance of parents and childless senior citizens by children as well as relatives and the constitution of Tribunals for this purpose.

ii) Revocation of transfer of property by senior citizens in case of failure to provide basic need and amenities by relatives.

iii) Punitive provision for abandonment of senior citizens

iv) Establishment of Old Age Homes for indigent senior citizens.

v) Protection of life and property of senior citizens.

vi) Medical facilities for senior citizens.

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57 *Supra* note 7 at 109.

58 Hitoshi Ota, "India's Senior Citizens' Policy and an Examination of the Life of Senior Citizens in North Delhi" IDE Discussion Paper No. 402, (2013), available at <http://www.ide.go.jp/English/Publish/Download/Dp/pdf/402.pdf>.

The Legislature has addressed the need arising from the regrettable plight which a lot of elderly have to suffer owing to the diminishing joint family arrangement, increase of nuclear families and due to economic compulsion of the family as both man and wife have to work full time. An obligation has been imposed on the persons who inherit the property of their aged relatives to maintain such aged relatives. The Act further intends to provide improved medical facilities and provisions for protection of life and property of the senior citizens. The Act has been introduced for maintenance and welfare of senior citizens/parents, who are not looked after by their children in spite of the latter having adequate means. The Act provides for a mechanism for protection of life and property of senior citizens and for providing need-based maintenance to parents and senior citizens[59].

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 defines a senior citizen as a person who has attained the age of 60 years or above[60]. The Act places an obligation on children and relatives to maintain a senior citizen or a parent to an extent so that they can lead a "normal life."[61] This obligation applies to all Indian citizens, including those residing abroad. A senior citizen who is unable to maintain himself based on his own earnings or property shall have the right to apply to a maintenance tribunal for a monthly allowance from their child or relative[62]. If he is incapable of filing the application on his own, he may authorise any other person or registered voluntary association to apply on this behalf. The maintenance tribunal may also, on its own initiate the process for maintenance.[63]

The Act defines "children"[64] as sons, daughters, grandsons and granddaughters and "relative"[65] as any legal heir of a childless senior citizen who is in possession of or would inherit his property upon death. Minors are excluded from both definitions. "Parents" include biological, adoptive or step parents[66]. In cases in which more than one relative will inherit the property of a senior citizen, each relative will be responsible to pay the maintenance fee in proportion to the property they will inherit. The State Government may establish one or more maintenance tribunals per sub-division to decide upon the order for maintenance. If the tribunal is satisfied that the senior citizen is unable to take care of himself and that there is neglect or refusal of maintenance on the part of the children or relative, it may order children or relatives to give a monthly maintenance allowance to the senior citizen.[67] The maximum maintenance allowance shall be prescribed

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[59] Statement of Objects and Reasons, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

[60] The Maintenance and Welfare of Parents and Senior Citizens, 2007, S. 2(*h*).

[61] *Id*., S. 4(2).

[62] *Id*., S. 4(1).

[63] *Id*., S. 5.

[64] *Id*., S. 2(*a*).

[65] *Id*., S. 2(*g*).

[66] *Id*., S. 2(*d*)..

[67] *Id*., S. 9(2).

by the state government and shall not exceed 10,000 per month.[68] On failure to comply with the maintenance fee, the tribunal may issue a warrant for collection within three months of the due date. Punishment for abandoning a senior citizen shall include an imprisonment of up to three months or fine of up to Rs 5,000, or both.[69] The tribunal can declare a transfer of property (as gift or otherwise) from a senior citizen to a transferee as void if the transfer was made under the condition of maintenance, and the transfree neglects the agreement.[70]

In *Shanti Sarup Dewan* v. *UT, Chandigarh*,[71] it was directed by Hon'ble Punjab and Haryana High Court that the adminstration of Union Territory, Chandigarh should forthwith take steps to bring into force proper rules under the Act so as to protect the life and property of senior citizens as envisaged under section 22 of the said Act. In this case son of the retired Chief Justice was also directed to vacate the property and the keys be handed over to his father. It emerges from the statement of objects and reasons[72] that the Legislature has, by enacting the Act, addressed the need arising from the unfortunate plight which many elderly persons and senior citizens have to suffer on account of declining joint family system and rise of micro families as well as on account of economic compulsion of the family where man and wife have to work full time.

In *Jayantram Vallabhdas Meswania* v. *Vallabhdas Govindram Meswania*,[73] the son was directed under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 to handover the possession of the part of the property which was in his possession to the father as the son was not taking proper care. In a writ petition, *Priti Dhoundial* v.*Tribunal (Under Maintenance & Welfare of the Parents and Senior Citizens Act, 2007)*,[74] Government was advised that before constituting the Tribunal, the Government must ensure the competence of the members and should ensure the members not only have basic knowledge

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68 *Id*., S. 9(1).

69 *Id*., S. 24.

70 *Id*., S. 23.

71 2013 SCC OnLine P&H 20369 : 2013 Ind Law P&H 2604, available at: <http://www.westlawindia.com/cases/index.htm> visited on October 13, 2013.

72 The Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
Objects and Reasons of the Act states:

> Traditional norms and values of the Indian society laid stress on providing care for the elderly. However, due to withering of the joint family system, a large number of elderly are not being looked after by their family. Consequently, many older persons, particularly widowed women are now forced to spend their twilight years all alone and are exposed to emotional neglect and to lack of physical and financial support. This clearly reveals that ageing has become a major social challenge and there is a need to give more attention to the care and protection for the older persons. Though the parents can claim maintenance under the Code of Criminal Procedure, 1973, the procedure is both time consuming as well as expensive. Hence, there is a need to have simple, inexpensive and speedy provisions to claim maintenance for parents.

73 2012 SCC OnLine Guj 6281 : AIR 2013 Guj 160.

74 2009 SCC OnLine Del 3832 : 2009 Ind Law Del 3469, available at <http://www.westlawindia.com/cases/index.shtm>.

of law but should also have basic knowledge of a fair trial and they should have respect for legislative enactments and for common man. Since its enforcement in 2007, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has developed significantly through judicial elucidation

7. CONCLUSION

Various factors had a considerable impact on the well-being of the elderly people during earlier times. Numerous changes had challenged the old notion of intergenerational harmony and unity which was responsible for the welfare of the elderly. So there had been a great need of some broad policy in order to fulfil the various requirements of the ageing population. The policies and programmes initiated for the elderly was a commendable step taken by the State to protect the elderly but needed to be seriously examined in order to improve the quality of their life. There was a need to create awareness about the various human rights of the elderly people. Issues related to women were also of vital significance and were required to be considered while drafting social policies for elderly population. As far as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is concerned; it has a pivotal role in the Indian societal framework. The Act, in fact, figures out a scheme of welfare provisions for senior citizens. The procedure is easier and less expensive. The Act contemplates right of senior citizens beyond right of maintenance. Despite this significant role, the Act suffers from many procedural snags and legislative intricacy. Hence the aim and objective cannot be achieved due to lack of clarity and lucidity which will ultimately lead it to a fertile ground for legal manipulation and interpretive complexity.

It may thus be concluded that there are certain factors which make elderly more helpless in old age. Proper care and support of elderly should always be a priority. Taking into account the present ageing situation, it is required to take care of various aspects for the wellbeing of elderly—financial, health, socio-economic, accommodation, recreation centres and other amenities. Improvement in all these areas would lead to active and graceful ageing. India needs to be well equipped to address the problems relating to ageing population.

IMPACT OF NATIONAL EDUCATION POLICY 2020 ON LEGAL EDUCATION

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1. INTRODUCTION

Education is fundamental for the empowerment and all round development of an individual and orderly development of a society. It is education alone which brings to an individual "successful employment, fruitful personal life and a respectable place in the society".[1] Nelson Mandela once said that "education is the most powerful weapon which you can use to change the world."[2] The Delhi High Court in a copyright infringement case observed that "the importance of education lies in the fact that education alone is the foundation on which a progressive and prosperous society can be built. Teaching is an essential part of education, at least in the formative years, and perhaps till post-graduate level. … So fundamental is education to a society – it warrants the promotion of equitable access to knowledge to all segments of the society, irrespective of their caste, creed and financial position. Of course, the more indigent the learner, the greater the responsibility to ensure equitable access".[3]

The first major step taken by the Government of India in the field of education was the adoption of National Policy on Education in 1968. It was adopted during the tenure of Prime Minister Mrs. Indira Gandhi. The second National Policy on Education was adopted in 1986 during the tenure of Prime Minister Sh. Rajiv Gandhi. These policies were by and large focused on the issues of "access and equity". The 1986 education policy was modified in the year 1992. The new National Education Policy (NEP) was approved by Union Cabinet on 29 July 2020 under the leadership of Prime Minister Sh. Narender Modi.[4] The NEP 2020 not only takes forward the unfinished agenda of the 1986 Policy as modified in 1992 but also envisions drastic changes in the education policies for the all-round development of students.

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1 V.K. Ahuja, "Right to Education in View of Copyright Protection: Contemporary Developments" in T.S.N. Sastry and Durgambini Patel, *Law, Development and Justice* (2017), pp. 223-35 at p. 223.

2 *See* <https://www.oxfordreference.com/view/10.1093/acref/9780191843730.001.0001/q-oro-ed5-00007046>, last accessed on 16 December 2020.

3 *University of Oxford* v. *Rameshwari Photocopy Services*, 2016 SCC OnLine Del 6229, para 30.

4 Sanjay Sharma, "National Education Policy 2020: All You Need to Know", posted on 30 July 2020 available at <https://timesofindia.indiatimes.com/home/education/news/national-education-policy-2020-all-you-need-to-know/articleshow/77239854.cms>, last accessed on 14 December 2020.

The NEP 2020 is a vision document which promises many positive things about education. It touches almost every aspect of education and sets certain goals to be achieved in due course of time. It also touches legal education which in fact comes in the jurisdiction of Bar Council of India (BCI) as far as its nitty gritty is concerned. The goals set for higher education in NEP are also applicable to legal education.

The Higher Education Commission of India (HECI) is proposed to be established and its first vertical National Higher Education Regulatory Council (NHERC) is going to be single regulator. The legal education has been excluded from its jurisdiction.[5] As a matter of fact, the power to regulate legal education at all levels, i.e. undergraduate, post-graduate, doctoral, etc. has been concentrated in the BCI and a Gazette notification in this regard has been issued. Under the Bar Council of India Rules 2020[6] as notified on 4 January 2021, the BCI has to regulate the entire legal education.

The present article discusses the vision of the NEP 2020 and analyses it in relation to legal education. The article will discuss the impact of NEP on legal education. It will also discuss how and to what extent the goals set by NEP will help improving the standard of legal education and the overall development of law students.

2. NATIONAL EDUCATION POLICY 2020

NEP deals with early childhood education to higher education and sets certain goals for every stage to be achieved. It discusses and sets to fix certain issues and lays down certain principles *inter alia* in "foundation literacy"; "drop-out rates"; "universal access to education at all levels"; school "curriculum and pedagogy"; "equitable and inclusive education"; "learning for all"; "effective governance through school complexes/clusters"; "standard-setting and accreditation"; "quality universities and colleges"; "holistic and multidisciplinary education" in which emphasis is to be put on critical thinking rather than rote learning; "teacher education"; "establishment of National Research Foundation" (NRF); "transforming the regulatory system of higher education" to ensure "integrity and transparency"; "professional education" including legal education; "adult education and lifelong learning"; "promotion of Indian languages, arts and culture"; "online and digital education"; "equitable use of technology"; and "affordable and quality education for all".

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5 NEP 2020, para 18.3.

6 Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical and other Continuing Education), Rules, 2020 dated 2 January 2021 were notified in Gazette on 4 January 2021.

NEP takes into account the needs of students of socially disadvantaged groups including *divyangs*. NEP focuses on inclusion of "ethics and human and constitutional values" and the promotion of life skills. It envisages substantial investment in a public education system which is strong and vibrant and encourages "philanthropic private and community participation".

The vision of NEP is to create an education system that transforms India and makes it a "global knowledge superpower". For this purpose, the curriculum and pedagogy to be adopted by educational institutions should be such which inculcate values among students and develop in them a sense of responsibility to respect fundamental duties as well as constitutional values. It must also develop in them the bonding with the country, and a deep sense of responsibility towards his/her role in the present scenario in this changing world.[7]

The NEP briefly touches professional education which also includes legal education. Principles laid down for higher education have to be incorporated in professional education as the latter is a part of the former. The legal education, which is regulated by Legal Education Rules 2008, is also to be governed by the principles laid down for higher education by NEP. It is noteworthy that in order to regulate the post-graduate and doctoral programs by the BCI, the Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical and other Continuing Education), Rules, 2020 dated 2 January 2021 were notified in Gazette on 4 January 2021. Once these 2020 Rules come into force the entire legal education right from the undergraduate courses till doctoral programs will be regulated by the BCI.

3. IMPACT OF NEP ON LEGAL EDUCATION

As far as legal education is concerned, the NEP indicates about "the essence of hard-core of the legal education, its multidisciplinary character, international approach to law and justice, humanizing the constitutional values, vocationalize legal skills, and need for having legal education to be competitive globally".[8] For this purpose, it has made some important recommendations which are meant for the professional education including legal education. These recommendations will impact legal education in a major way. Some of these recommendations have been analysed below to find out their impact on legal education.

[7] NEP 2020, p. 6.

[8] *See* Preamble, BCI Legal Education Rules, 2020.

3.1. Converting Stand-alone Universities into Multidisciplinary Universities

The NEP is not in favour of specialisation as such but recommends multidisciplinary approach. It states that the "preparation of professionals must involve an education in the ethic and importance of public purpose, an education in the discipline, and an education for practice. It must centrally involve critical and interdisciplinary thinking, discussion, debate, research, and innovation". In order to achieve the aforesaid, the NEP recommends that "professional education should not take place in the isolation of one's specialty".[9] The NEP further states that "professional education thus becomes an integral part of the overall higher education system". This also means that the recommendations laid down in NEP for the higher education becomes applicable *mutatis mutandis* to professional education including legal education.

The NEP does not agree with the concept of *stand-alone universities* and favours multidisciplinary education. It recommends that *stand-alone universities*, whether in the field of agriculture, law, health science, technology or any other field "shall aim to become multidisciplinary institutions offering holistic and multidisciplinary education". The word "shall" makes it mandatory for these institutions to aim to become "multidisciplinary" in nature and offer multidisciplinary education. The NEP further states that every institution whether offering general or professional education "will aim to organically evolve into institutions/clusters offering both seamlessly, and in an integrated manner by 2030".[10] The entire higher education sector, according to NEP is to "aim to be an integrated higher education system, including professional and vocational education".[11] The cluster system as stated by NEP may function in a better manner for National Law Universities (NLUs). But the NEP does not provide further details as to what will be the *modus operandi* of the cluster system. In absence of any details in the NEP, the BCI may amend the Legal Education Rules to accommodate such a system or simply allow NLUs to have a cluster system of their own.

The multidisciplinary universities no doubt are better than stand-alone universities for several reasons. Firstly, there is optimum utilization of human resources and infrastructure. Secondly, faculty members and students of one department will be able to associate with other departments for the purposes of participating in academic activities, such as webinars, seminars, conferences and conducting interdisciplinary research. For example, the faculty from the departments of science, technology, medicine, pharmacy, management, etc. may be associated with law department for the purposes of doing interdisciplinary research

[9] NEP 2020, para 20.1.

[10] *Id*., para 20.2. *See also* para 10.7 of NEP which states that by 2030 all Higher Education Institutions will "plan to become multidisciplinary".

[11] *Id*., para 10.13.

which may involve legal issues, such as public health laws and intellectual property laws. Thirdly, the intellectual property created by teachers and students of different departments in terms of patents, designs, plant varieties, etc. may be applied for protection with the help of law department. The IPR Cell may be created at the multidisciplinary universities which may consists of faculty members from different departments.

There are certain problems, however, in converting these stand-alone universities into multidisciplinary universities. These stand-alone universities were created with a particular objective in mind. These universities are small universities with limited infrastructure. In some of the cases, their infrastructure may not even be sufficient for their own requirements.[12] Developing more infrastructure by constructing more classrooms, new library or upgrading the existing library, science labs and computer labs, hostels, etc. would require additional space which may not be there in these universities. The infrastructure of some of these universities may be equivalent or even smaller than a big college. The infrastructure was developed in these universities keeping in mind the limited requirements. Converting stand-alone universities into multidisciplinary universities is not an easy task as recommended in the NEP.

In case of National Law Universities (NLUs), it is apt to remark that the vision of these NLUs was to revamp "the standard of legal education in the country which was in shambles, and to produce quality lawyers who would be reminiscent of the glorious past of the country that had produced legends in the field of law".[13] The NEP goal is in contravention to the aforesaid vision of NLUs.

Another problem of converting these NLUs into multidisciplinary universities is that the courses offered at NLUs are self-financed, which means that most of the NLUs depend more on students' fee for their sustenance. The fee charged in NLUs is somewhere around Rs. 2 lakhs per annum. Some of them get limited funding from the government or do not get any funding and therefore depend heavily on the fee received from the students.[14] Opening multidisciplinary courses may not be financially viable as the students seeking admission to various courses in social sciences or humanities may not join such courses due to very high fee structure. It is noteworthy that integrated BSc. LL.B. course had to be closed

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[12] See also Tanaya Thakur, "Legal Education under NEP 2020: Big Promises with Little Substance" posted on 1 August 2020, available at <https://countercurrents.org/2020/08/legal-education-under-nep-2020-big-promises-with-little-substance/> last accessed on 25 September 2020.

[13] Shreya, "Can Draft National Education Policy 2019 Improve Legal Education?" posted on 18 October 2019, available at <https://www.thequint.com/news/education/draft-national-education-policy-2019-national-law-universities-legal-education-revamp#read-more> last accessed on 1 December 2020.

[14] *See also* ShresthVardhan, "Hits and Misses of NEP 2020 and its Impact on Legal Education", available at <https://thedailyguardian.com/hits-and-misses-of-nep-2020-and-its-impact-on-legal-education/#:~:text=The%20revised%20NEP%20as%20it,necessary%20social%20relevance%20and%20acceptability.%E2%80%9D> last accessed on 2 December 2020.

down in one of the reputed NLUs because it was not being opted and became financially unviable. A cautious approach therefore, is required while converting stand-alone universities into multidisciplinary universities. It is suggested that the decision to convert these universities in the multidisciplinary universities should be left to them. Further, no stand-alone university may be allowed to be established in future in compliance with NEP.

3.2. Offering Bilingual Education in State Universities

The NEP recommends imparting of legal education bilingually. It states that "State institutions offering law education must consider offering bilingual education for future lawyers and judges – in English and in the language of the State in which the institution is situated".[15] This recommendation in NEP seems to be very attractive on paper but not attractive at all in practical terms. It is noteworthy that the recommendations have been made with respect to State universities only and not to Central universities. This means that at the Central University level, legal education is to be imparted primarily in English but at State university level, it should be imparted bilingually. This leads to a very interesting situation. For example, if one student in Tripura takes admission in Central University of Tripura and the other takes admission in the state university, both of them will be governed by different rules. The former will be taught in English and the latter bilingually. What will happen if the former in not comfortable in English and needs to be taught bilingually?

It is worth noticing that NLUs are State Universities only, but the students from all over the country study there. If the aforesaid recommendation of NEP is implemented, this would result in offering legal education at NLUs in English and the State language in which they are situated. Legal education may be imparted bilingually in two ways – firstly, the teacher using English and the State language at the same time while teaching; secondly, different sections are made for the students who would like to study in English and those in State language. Making additional sections may not be a good option for at least three reasons. Firstly, it will create a divide between the students. The students studying through State language will have the inferiority complex as English is spoken throughout the globe and considered a better language than State language. Secondly, imparting legal education bilingually by making additional sections may not be financially viable for NLUs. Thirdly, if there are just a very few number of students, say just 4-5 students only who are interested in being taught in the State language, what kind of arrangements are to be made for them?

In addition, an unwarranted situation will be created for outside State students if the law is taught bilingually at the same time. For example, if

[15] NEP 2020, para 20.4.

the NLU situated in West Bengal starts teaching in English and Bengali, this will make the outside West Bengal students quite uncomfortable. The students from Maharashtra, Kerala or Tamil Nadu may not like to learn Bengali if they have no plan to work in West Bengal. Same is the case with NLUs situated in other States. Similar problem will be faced by teachers because the teachers at NLUs or state universities are not from that State but from various parts of the country. It will be a problem for them to learn the language of that State to teach or interact with the students in the regional language.

From career perspectives, it is important to note that a substantial number of students in NLUs join law firms or corporate sector. Those who have studied in English have better chances than those who studied through State language. Studying through State language would by and large confine the students to their home State only after they complete their education. Further, the capabilities of teaching law in State language will become a criteria for the selection of teachers. This is likely to affect the chances of meritorious candidates to become law teachers. In other words, the knowledge of State language will prevail over merit.

Another important issue is the non-availability of reading materials in State languages. The Bare Acts and judgements of the High Courts and Supreme Courts are available in English only. Translating them into State languages is a herculean task. Who will do that? Further, a number of judgements are delivered by High Courts and Supreme Court every day. Not only that, judgements of foreign courts and International courts and tribunals are also taught in law courses. All these judgements are in English only and translating them into State languages at regular basis seems to be extremely difficult. It is not out of place to mention the study method adopted by Faculty of Law, Delhi University. Delhi University has adopted Case law based study method for LL.B. course. The University provides case materials in all the papers which consists of judgements of various High Courts and Supreme Court and also in some cases judgements of foreign courts. These case materials are updated in every semester and new cases are added. If any NLU or other State universities adopts a similar study method, it will have to translate these case materials in their State languages. Further, reading materials in the form of books and articles are largely available in English. The translation of these materials will also be a difficult task and the permission of copyright owner may also be required in certain cases, which make the task more difficult.

The situation will worsen further when the reading materials in State languages are to be converted in accessible format for the visually impaired and print disabled students. The facilities and software to convert such materials which is in State languages in accessible format copies may not be available with the State universities.

The NEP recommends that "legal education needs to be competitive globally …".[16] How can legal education be made *competitive globally* when it is to be imparted in State languages. The recommendations of NEP seem to be self-conflicting in this regard.

It is suggested that institutions imparting legal education should conduct remedial classes in English for the students who feel uncomfortable in studying through English medium. They need to be motivated and extra efforts should be made for them. In the long run, it will be beneficial for them as English remains the primary language for law practice and other legal matters.

3.3. Curricula for Law Courses

The NEP envisages that legal education is required to be "competitive globally, adopting best practices and embracing new technologies for wider access to and timely delivery of justice". The vision of NEP is good and the focus *inter alia* is on "wider access to and timely delivery of justice" by "embracing new technologies" in legal education. Not to talk of new technologies, the ground reality is that a substantial number of law institutes lack the minimum basic facilities. These institutes are good to be closed down. Looking at the mushrooming of sub-standard law institutes, even BCI has imposed moratorium on giving approval to new law schools for three years. This of course cannot be considered a good decision because many good universities which wished to start law courses have been deprived of doing so because of this moratorium.

The NEP further states that legal education "must be informed and illuminated with Constitutional values of Justice - Social, Economic, and Political". It further states that legal education "must be directed towards *national reconstruction* through instrumentation of democracy, rule of law, and human rights". According to NEP, the law courses curricula "must reflect socio-cultural contexts along with, in an evidence-based manner, the history of legal thinking, principles of justice, the practice of jurisprudence, and other related content appropriately and adequately". The aforesaid objective laid down in NEP prima facie seems to be "a reaffirmation of the Constitutional ethos in legal education".[17] The NEP expects the legal academia to take care of the aforesaid to make the curricula for law courses more meaningful in the socio-cultural contexts. The same can be done at the level of LL.B. and LL.M. courses taken together.

Apart from that, the curricula must reflect "holistic and multidisciplinary education". A "holistic and multidisciplinary education" is to be the

[16] *Ibid*.

[17] *See also* Tanaya Thakur, "Legal Education under NEP 2020: Big Promises with Little Substance" posted on 1 August 2020, available at <https://countercurrents.org/2020/08/legal-education-under-nep-2020-big-promises-with-little-substance/> last accessed on 25 September 2020.

approach in the long term for undergraduate programmes in all disciplines including professional discipline. Such an education aims to develop *inter alia* the "intellectual, aesthetic, social, physical, emotional, and moral" capacities of the students in a manner which is integrated. Further, the holistic education is going to "develop well-rounded individuals that possess critical 21st century capacities" in all fields including professional field; "an ethic of social engagement; soft skills, such as communication, discussion and debate; and rigorous specialization in a chosen field or fields".[18]

The NEP further states that for the purposes of "holistic and multidisciplinary education", the "flexible and innovative curricula" of all educational institutions is to "include credit-based courses and projects in the areas of community engagement and service, environmental education,[19] and value-based education".[20] By incorporating environmental as well as value-based education along with "lessons in *seva*/service and participation in community service programmes" in the holistic education as its integral part, the NEP has taken a commendable step. The need of the hour is to make the students responsible citizens by inculcating values in them; make them sensitive towards environment; and motivate them to do the community service. Further, the students of all higher education institutions are to be provided internship opportunities at "local industry, businesses, artists, crafts persons, etc., as well as research internships", so that "students may actively engage with the practical side of their learning". This will not only help them to learn the things practically but also improve the opportunities of their employability.[21]

For every law student, participation in legal aid activities should be made compulsory. All law students should be associated with State Legal Services Authority of their State and made to work under its guidance at different places. Working knowledge of local language will help non-local students to interact with the local people. Apart from that, every law student should be encouraged to attend the mediation proceedings with the permission of the parties, or else participate in the mock mediation conducted by law schools with the help of mediators, so that in their professional lives, they should help in reducing backlog of cases by resolving them through mediation. All law schools should put more emphasis on mediation practice to prepare good mediators who could become certified

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[18] NEP 2020, para 11.3.

[19] Environment education, according to NEP includes "areas such as climate change, pollution, waste management, sanitation, conservation of biological diversity, management of biological resources and biodiversity, forest and wildlife conservation, and sustainable development and living".

[20] Value-based education includes "the development of humanistic, ethical, constitutional, and universal human values of truth (*satya*), righteous conduct (*dharma*), peace (*shanti*), love (*prem*), non-violence (*ahimsa*), scientific temper, citizenship values, and also life-skills".

[21] NEP 2020, para 11.8.

mediator after taking the mandatory 40 hour course. There is a dire need to resolve disputes than to adjudicate.

To sum up, all round development of students is the key to their success. Confining only to law subjects in undergraduate law courses is not the right approach. The Legal Education Rules have to be amended suitably to incorporate the aforesaid objective of holistic and multidisciplinary education in the curricula as provided in NEP to create individuals possessing critical capacities of 21st century.

3.4. Multiple Exit Option

The NEP recommendation of multiple exits is a welcome move. This will be very helpful for drop out students. In an integrated degree program of 5 years like BA.LL.B or BBA.LL.B, there should be multiple exists. For example, a certificate may be given at the end of first year, diploma at the end of second year and a degree of BA(Law) or BBA(Law) at the end of third year. Similarly, in three year LL.B. course, certificate may be given at the end of first year, post-graduate diploma at the end of second year and degree at the end of three years.

It is witnessed in traditional universities including University of Delhi that a good number of students drop out without completing their degree. Giving them certificate or diploma at the end of first year or second year, as the case may be, will help such students in their career progression. It is seen that many students could not clear all the papers and their span period gets over and they end up nowhere. Allowing multiple exists will definitely be a good move towards drop out students.

It is however, noteworthy that curricula of these courses should be structured in such a manner that the certificate or diploma make sense. The present scheme of papers cannot be accepted as such for multiple exists.

3.5. Provision for Latest Educational Technology

NEP states that all higher educational institutions have to be equipped with basic facilities and infrastructure. This includes provisions for potable water, toilets, labs, libraries, teaching supplies, pleasant classroom spaces and campuses among other things. This recommendation is superfluous in nature because every HEI is required to have minimum infrastructure and facilities. In addition, however, the NEP states that access is to be provided to the "*latest educational technology*" in all classrooms that enables "better learning experiences".[22] This

[22] *Id*., para 13.2.

recommendation is very important in the light of Covid-19 pandemic. The present situation as already stated is that a significant number of law schools lacks even minimum infrastructure and facilities. They are simply pathetic. Expecting them to provide access to the latest educational technology in all classrooms is next to impossible. Many of these law institutes are not in a position to fill even 25% of seats. In this scenario, the expectation of the NEP is much higher for these law institutes. The NEP should have recommended the closure of sub-standard institutions in all disciplines which lack the basic facilities and infrastructure which take the students nowhere.

3.6. Promotion of Research

One of the most important objectives of NEP is to promote research across all the disciplines. Meaningful research is essential for a vibrant economy and upliftment of the society. It assists the policymakers to make suitable policies for public good. Unfortunately, the quality of research in India particularly in the field of law is not satisfactory at all. The research work produced in India cannot be compared with research done in the West. The major hurdles, *inter alia* are lack of motivation and funding. At present, the investment on research and innovation in India is just 0.69% of GDP which is far less in comparison to other countries.[23] To overcome the issue of funding, the NEP has put more emphasis on research in all disciplines by ensuring adequate funding. The establishment of "National Research Foundation" (NRF) has been envisioned by NEP in this regard. The NRF will be expected to nurture a culture of research in all the disciplines through funding. The NRF activities include to "fund competitive, peer-reviewed grant proposals of all types and across all disciplines" at universities and colleges. The NRF will be acting as a "liaison" between researchers and government branches/ industry; and also "recognise outstanding research and progress".[24]

This is a commendable step. Quality research in law is need of the hour and is required to be motivated with adequate grants. The NEP does not make distinction between private or government universities in this regard. It is important to note that research grant will not be confined to university teachers only, the college teachers will also be eligible for such grants. Quality research, *inter alia* will ultimately help legislators and policymakers to amend laws/make new laws and take policy decisions respectively.

[23] *Id*., para 17.3.
[24] *Id*., para 17.11.

3.7. Prevention of Commercialization of Higher Education

In ancient India, imparting of legal education by Gurus and teachers was never considered a commercial activity.[25] They considered it as their duty and discharged it honestly. Exceptions apart, those values do not exist in present scenario and commercialization has taken over those values. The NEP recommends that utmost priority of the regulatory system should be to prevent "commercialization of higher education" by providing checks and balances under multiple mechanisms. The educational institutions will be subjected to "audit and disclosure as a *not for profit entity*". If any institution has surpluses, the same will have to be reinvested at no other place but education sector. There has to be "transparent public disclosure" of all matters related to finances. There will also be a mechanism to have "recourse to grievance-handling mechanisms to the general public".[26] Further, checks have also to be made through "National Accreditation Council" and "National Higher Education Regulatory Council". This will prove to be a very good step only when an effective audit is done of the educational institutions and a strong mechanism is put in place for the public disclosure of their financial matters. Reinvestment of surpluses in educational sector will strengthen the educational sector and prevent the owners of these institutions from appropriating the money in one way or the other. Unfortunately, profits are being appropriated by the owners in the form of black money in many cases. This practice must be stopped. It is also to be noted that many institutions which do very good in terms of making surpluses fail to pay adequate salaries to the teachers and other administrative staff.

3.8. Establishment of Indian Institute of Translation and Interpretation (IITI)

The NEP, while highlighting the need for the expansion of translation and interpretation facilities, recommends the establishment of "Indian Institute of Translation and Interpretation" (IITI). It is recommended to provide high quality learning and other materials available in various languages both Indian and foreign. The IITI, according to NEP, is to employ "multilingual language and subject experts", as well as "experts in translation and interpretation", for the purpose of assisting it in the promotion of "all Indian languages".[27] This is no doubt, a very good step and help in generating reading and learning materials in various languages which will ultimately help the students to pursue their studies in their mother tongue or regional languages. As far as law is concerned, it is submitted

[25] V.K. Ahuja, "Right to Education in view of Copyright Protection: Contemporary Developments" in T.S.N. Sastry and Durgambini Patel, *Law, Development and Justice* (2017), pp. 223-35 at p. 223.

[26] NEP 2020, para 18.12.

[27] *Id*., para 22.14.

that it is an ever evolving area where new laws are made and the old ones are amended. Further, number of judgements delivered by High Courts and Supreme Court, orders made by various tribunals, judgements and orders delivered by international courts and tribunals, and judgements delivered by foreign courts on regular basis may have significance for students studying law in India. Translating them into different languages on day to day basis is not an easy task. Further, it is to be noted that correct translation is required of judgements and legislations as wrong translation may completely change the interpretation as every punctuation has a meaning in law.

The NEP should have widened the scope of the IITI by mandating it to convert the reading and learning materials in accessible format copies for *Divyangs*. The NEP refers to the accessible format copies, but it does not put in place a mechanism similar to IITI for the purpose of converting materials in accessible formats. It is submitted that the scope of IITI should be expanded to include preparation of accessible format copies for *Divyang* students. The present mechanism of making accessible format copies for these students is not satisfactory.

4. BCI LEGAL EDUCATION RULES, 2020

The NEP has proposed the establishment of Higher Education Commission of India (HECI). The National Higher Education Regulatory Council (NHERC), being the first vertical of the HECI will "function as the common, single point regulator for the higher education". It however, excludes legal education from its jurisdiction. The purpose of so excluding legal education is to eliminate the duplication of jurisdiction of several regulatory agencies existing presently.[28]

In order to regulate post-graduate and doctoral programs by the BCI, the Bar Council of India Legal Education (Post-Graduate, Doctoral, Executive, Vocational, Clinical and other Continuing Education), Rules, 2020 dated 2 January 2021 were notified in Gazette on 4 January 2021. The 2020 Rules state that MHRD, UGC and AIU have been addressing the issues of LL.M. course till now. However, in the considered view of these authorities, the BCI should regulate the higher education in the field of law.[29]

One of the functions of the BCI is "to promote legal education" and also to lay down standards in this regard.[30] The preamble of 2020 Rules while reiterating the aforesaid function, states that BCI has the "functional responsibility of promoting legal education, in all its dimension". It has the power to make legal education competitive at global level and set standards for "(a) Post Graduate and research education; (b) Continuing Legal education; (c) Vocational and Para-legal

[28] *Id*., para 18.3.
[29] *See* Preamble, BCI Legal Education Rules, 2020.
[30] S. 7(1)(*h*), Advocates Act, 1961.

Education; (d) Technology & Court-management education". It further states that the BCI has the power to provide "direct and institutional set up" which is required to deliver quality legal education at the aforesaid levels, which may include "on-line virtual education and off-line education in real terms, para-legal education for wider access to and timely delivery of justice".[31]

The 2020 Rules were therefore notified with "a view to strengthen legal education at each level of undergraduate, post graduate, legal research, technology & court management, continuing legal education and professional and clinical skill development courses conducted off-line and on-line".[32] These Rules are to be read along with Legal Education Rules 2008.[33]

A special sub-committee under the control and guidance of Legal Education Committee is to be constituted by the BCI for the purpose of implementation of 2020 Rules.[34] The BCI Rules abolish one year LL.M. course.[35] By abolishing one year LL.M., the BCI Rules have gone against the objective of NEP 2020 which recommends making legal education globally competitive. One year LL.M. course is offered throughout the world. How can legal education in India be made globally competitive when it takes divergent approach from the settled global practice?

The BCI Rules have taken a decision in the right direction by making rules for "faculty improvement and teachers training" through the organisation of "orientation programs" and "continuing legal education programs".[36] The Rules, however do not refer to offering of legal education in State universities bilingually. Further, multiple exit option or multi-disciplinary approach have not been adopted in the Rules as envisaged by NEP 2020.

5. CONCLUSION

NEP 2020 is an ambitious vision document, which is aimed at complete overhaul of the education system that exists today. It impacts professional education including legal education. Some of the principles laid down in the NEP are extremely good and will bring positive results for entire education system, provided the NEP is implemented in letter and spirit. It is also noteworthy that certain things in NEP may not bring good result for legal education.

The world is a global village today. A large number of foreign companies are conducting their businesses in India. They require a legal team and

[31] *See* Preamble, BCI Legal Education Rules, 2020.
[32] *Ibid*.
[33] *Id*., R. 22.
[34] *Id*., R. 3.
[35] *Id*., R. 6.
[36] *Id*., R. 19.

lawyers to take care of their legal issues. These companies look for the best brains as they may have high valued legal disputes. The lawyers studied in State languages will definitely be not on their list. In addition, law firms of other countries seeks legal advice from Indian law firms and lawyers. Here again, the lawyers who studied in the regional languages are going to lose this opportunity. The recommendation of NEP to impart legal education bilingually instead of taking legal education one step forward, takes it two steps backward. The lawyers who studied through regional languages may be able to serve the local judiciary till district level. The moment they move to metropolitan cities or High Courts they will feel their handicaps and will not be able to perform better. The impact of NEP recommendation, if accepted, will create a divide among law graduates, where lawyers who studied through English medium will be more in demand than those studied in State languages.

The multiple exit option is good for the students. The scope of IITI should be expanded as discussed above to mandate it to convert materials into accessible format copies for the benefits of *Divyangs* or alternatively a similar body should be established for this purpose.

It could have been better had the NEP made certain recommendations for the law teachers to take up the practice in the courts. The practical experience is extremely important for law teachers.[37] A policy which talks more of practical orientation is completely silent on the law teachers taking up practice in courts or indulging into alternative dispute resolution mechanism.

The NEP, no doubt is a good vision document adopted by the Government to bring drastic changes in the education system. The issues raised in this article however, should be taken care of at the time of implementing NEP. The BCI Rules of 2020 have failed to carry forward the vision of NEP. It is suggested that BCI should bring out comprehensive Rules on Legal Education covering all levels of legal education keeping in mind the key objectives of NEP 2020.

[37] *See also* Sairam Bhat and Gayathri Gireesh "Legal Education and National Education Policy" available at <https://nlspub.ac.in/legal-education-and-national-education-policy-2020/> last accessed on 15 December 2020.

THE FUNDAMENTAL RIGHT TO PRIVACY IN INDIA VIS-À-VIS PAPARAZZI INTRUSION: MAKING A CASE FOR PROTECTING CELEBRITIES AGAINST UNAUTHORISED PAPARAZZI INTRUSION

Ms. Kanika Jamwal[*]

1. INTRODUCTION

"*Why India has No Paparazzi*"[1] (2010); "*Stormed by the Paparazzi Culture*"[2] (2017); the titles of these articles reflect how, in India, the discourse on paparazzi has changed over a short span of 7 years. The *showbiz* culture began in the 1970s, leading to the emergence of paparazzi in the 1990s,[3] and the launch of several prominent newspapers and tabloids launched in Mumbai in 2005.[4] However, only in the recent times has this culture blown out of proportions.

Some celebrities have made their peace with it, other have not.[5] Currently, there is no legislation explicitly protecting celebrities from harassment by paparazzi, barring the tortious remedy against breach of privacy, nuisance etc. The discourse on rights of celebrities has been limited to publicity and personality rights aspect (predominantly governed by intellectual property law); the discourse on the privacy aspect of celebrities' rights, has been categorically limited to post-publication breach of right to privacy (hereinafter, post-publication privacy/privacy judgements), with no reference to paparazzi intrusion, which occurs mostly at the pre-publication stage.

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1 Rahul Bhatia, "Why India has No Paparazzi" (*Open Magazine*, 11 September 2010) <http://www.openthemagazine.com/article/india/why-india-has-no-paparazzi> accessed 12 April 2020.

2 Akanksha Mehra, "Stormed by the Paparazzi Culture" (*The Indian Weekender*, 8 December 2017) <https://www.indianweekender.co.nz/Pages/ArticleDetails/51/8939/Comment/Stormed-by-the-Paparazzi-Culture> accessed 12 April 2020.

3 Vishwas Kulkarni, "Mumbai Madeness: The Evolution of India's Paparazzi Culture" (*The National*, 21 October 2018) <https://www.thenational.ae/arts-culture/mumbai-madness-the-evolution-of-india-s-paparazzi-culture-1.782660> accessed 18 March 2020.

4 Omkar Khandekar, "The Man Behind Pretty Much Every Bollywood Photo You've Ever Seen" (*GQ*, 23 October 2017) <https://www.gqindia.com/content/the-man-behind-pretty-much-every-bollywood-photo-youve-ever-seen/> accessed 25 March 2020.

5 *See for example*, Rohit Khilnani, "Bollywood Vs Paparazzi - When Cameras Get Too Close" NDTV (Mumbai, 16 August 2017) <https://www.ndtv.com/blog/bollywood-vs-paparazzi-when-cameras-get-too-close-1738297> accessed 15 March 2020.

Given the growing trend of paparazzi, and the judicial recognition of right to privacy as a fundamental right under Art. 21 of the Constitution of India,[6] this is an opportune moment to make an intervention on the point of celebrities' right to privacy vis-à-vis the paparazzi culture in the Indian context. In this Note, I will argue that the right to privacy may be interpreted to protect celebrities against unauthorised paparazzi intrusion. To that end, I will address the impediments that preclude the exercise of the right against such intrusion, using the Indian Supreme Court's jurisprudence on the right to privacy. These impediments include, first, automatic extinction of right due to celebrities' presence in public domain; second, their physical presence in a public space; and third, no horizontal application of the fundamental right to privacy. The fourth issue is the reasonable limitations placed upon the exercise of the right. Although, this is not an impediment *strictosensu*, however, it is often (*ab)used* by the paparazzi as a justification for intrusion. To substantiate my argument, I will utilise relevant jurisprudence on the theme, emerging from European Union, United Kingdom and the United States of America.

Before moving further, I would like to clarify the scope of this research. Notably, paparazzi act may result in the invasion of privacy at two stages, first, at the pre-publication stage, i.e., the very act of clicking pictures and second, the publication of the said picture. While the former may violate the right of privacy, the latter invites additional claims, like defamation, violation of celebrities' rights to publicity and personality. Moreover, at the publication stage, the scope of who may be sued also expands considerably. In fact, the first target in a classic case of defamation is mostly the publisher of picture, and not the paparazzi. That is not to say that a paparazzi *cannot* be framed, rather, she may be charged as one of the defendants, subject to a State's laws relating to protection of news sources. Therefore, the thrust of my research is on the pre-publication stage, that is, the very act of paparazzi intrusion and the related breach of the right to privacy. That said, since the discourse on the right to privacy of celebrities in India, has so far focused on *published* biopics or biographies of celebrities (post-publication privacy), I will utilise the same to support my argument.

2. CELEBRITIES' RIGHT TO PRIVACY AND PAPARAZZI INTRUSION

In India, the judicial discourse on the right to privacy has existed since the 1950s. Since then, its status as a fundamental right though accepted, had been controvertible. Finally, in *K.S. Puttaswamy* v. *Union of India* (hereinafter *Puttaswamy*),[7] the right was unequivocally recognised and solidified as a fundamental right under Art. 21 of the Constitution of India. Herein, the core issue was

[6] Constitution of India, 1950.

[7] W.P. (Civil) No. 494 of 2012.

right to privacy vis-à-vis data protection. However, the Court dealt with the right more broadly, comprehensively defining its scope.

In this section, my objective is to put forth an interpretation of the right that may effectively protect celebrities against paparazzi intrusion. I will address four major impediments/arguments that preclude celebrities' exercise of privacy against paparazzi. These impediments are, first, the claim that celebrities lose their right to privacy by being in 'public domain'; second, the debate relating to loss of privacy when a celebrity moves into a 'physical public space'; third, the limited, *vertical* application of the fundamental right to privacy; and fourth, the reasonable limitations placed on the right, *abused* by paparazzi to justify their action.

2.1. Public Domain

It has been argued in a catena of cases before the Supreme Court of India, that public personalities have no right to privacy because they come under "public domain". In terms of information, public domain refers to such information is available for "everyone to see or know about".[8] Extending that to persons, public domain may then refer to a person coming into the eyes of the public i.e., entering/being in the intangible public sphere. In *Phoolan Devi* v. *Shekhar Kapoor* (hereinafter *Phoolan Devi*),[9] it was argued that once a person comes in public domain, they cannot claim privacy. Later, in *Selvi J. Jayalalithaa* v. *Penguin Books Ltd.* (hereinafter *Jayalalithaa*),[10] with respect to comments on private lives of celebrities, it was argued that such persons must not be "too thin skinned in reference or comments made upon them."[11] The underlying presumption is that with achieving the status of a public personality, one's life enters the *public domain*, subsequently precluding exercise their right to privacy.

This presumption is ill-founded and overarching. Undoubtedly, as observed by the Court in *Campbell* v. *M.G.N. Ltd.*,[12] many aspects of a celebrity's private life enter the public domain, however, that does not imply that he/she is stripped off the entire protection granted by the said right. Every aspect and detail of their private lives do not become "legitimate quarry" for the media.[13] In *Jayalalithaa*, the Court, while rejecting the absolute loss privacy, stated that, even in the case of a celebrity (Jayalalithaa was the famous politician, holding a public office), if her private life is touched and publications are made regarding it without

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8 "Public Domain" (*Cambridge Dictionary*) <https://dictionary.cambridge.org/dictionary/english/public-domain> accessed 12 April 2020.

9 1994 SCC OnLine Del 722 : (1995) 57 DLT 154.

10 2012 SCC OnLine Mad 3263.

11 *Ibid*.

12 [2002] EWHC 499.

13 *Ibid*. ¶ 66.

her consent, the same violates her right to privacy.[14] On similar lines, in *Phoolan Devi*, the Court while upholding the plaintiff's right to privacy, stated that:

> *Individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures and that is the content and meaning of privacy*[15]

The Court went on to hold that even a celebrity's right to privacy, extends to controlling what thoughts, sentiments and emotions they choose to communicate to the public.[16] In *Akshaya Creation* v. *V. Muthulakshmi* (hereinafter *Veerappan*),[17] the Court extended the protection of privacy to the family of a celebrity, while holding that media scrutiny of celebrities must not reach a level where it amounts to their or/and their family's harassment.[18]

Even though certain aspects of a celebrity's life are public knowledge, unwarranted encroachment upon the other private aspects (both, psychological and physical) is violative of their right to privacy, Thus, one may expect them to be reasonably "thick skinned" only w.r.t to critical comments made upon the public aspects of their life, and/or any information which they choose to make public.

These judgements laying limitations on the media scrutiny of celebrities and their families, form the primary base of my argument against unauthorised clicking of pictures of celebrities by paparazzi. Undoubtedly, by virtue of being a celebrity, a person gravitates public and media attention, however, that does not warrant violating the private aspects of their lives. In a case involving publication of intimate pictures of a former Bollywood couple, the Supreme Court of India, while expressing their discontentment held that such a publication was not "in good taste".[19] Intimacies of the home are covered under a person's right to privacy.[20]

While the Indian Courts have so far focused on publication, I submit that the very act of clicking such pictures amounts to invasion of privacy because the physical act of intrusion by the media is a graver violation of privacy compared the act publication of private information. The privacy concerns in the former

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14 *Jayalalithaa* (*supra* note 10).
15 *Phoolan Devi* (*supra* note 9).
16 *Ibid*.
17 2013 SCC OnLine Mad 391.
18 *Ibid*.
19 "Publishing Kiss in Bad Taste" *The Times of India* (Delhi, 18 December 2004) <https://timesofindia.indiatimes.com/india/Publishing-kiss-in-bad-taste/articleshow/963066.cms> accessed 12 May 2020.
20 *Gobind* v. *State of M.P.*, (1975) 2 SCC 148 : (1975) 3 SCR 946.

case are more substantive (as opposed to informational in the latter), and engage directly with individual dignity, autonomy and psychological well-being.[21]

I will substantiate my argument through illustrative case laws. In *Von Hannover* v. *Germany* (hereinafter *Von Hannover*),[22] the European Court of Human Rights (ECtHR) held that even though the case was related to publication, the Court could turn a blind eye towards the experiences endured by public figures.[23] In another case, singer Lilly Allen, succeeded to obtain an injunction against photographers who stalked her outside her house and in other public places.[24] Injunctions have also been granted to Siena Miller against being chased by paparazzi outside her house, while walking her dog etc.,[25] actress Tinglang Hong, the mother of Hugh Grant's baby,[26] and singer Amy Winehouse who was granted injunction against paparazzi outside her home and following her in public places.[27] These injunctions were granted against harassment (as opposed to breach of privacy) under the Protection from Harassment Act 1976 (hereinafter PHA). However, PHA has increasingly become "an 'Article 8' statute".[28] Consequently, the case laws do provide jurisprudence on privacy.

The causes for claiming injunction on grounds of harassment as opposed to breach of privacy are, *inter alia*, the unsettled position of the UK law on protection of privacy/misuse of private information to outside activities (for e.g. street photography).[29] Elaborating on this in the UK context is beyond the scope of our research, but this brings us to the next leg of our discussion, i.e., whether right to privacy in India can be construed to protect celebrities' outside activities i.e., activities beyond the realms of the physical private space.

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21 Andrew Scott, "Flash Flood or Slow Burn?: Celebrities, Photographers and the Protection from Harassment Act" LSE Legal Studies Working Paper No. 13/2009 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1417907> accessed 12 April 2020.

22 (2005) 40 EHRR 1.

23 *Ibid*. ¶ 68.

24 B. Dowell, "Lily Allen Given Legal Protection from Paparazzi Harassment", *The Guardian* (London, 16 March 2009) <https://www.theguardian.com/media/2009/mar/16/lily-allen-given-legal-protrection-from-paparazzi> accessed 14 April 2020.

25 Scott (*supra* note 21).

26 "Hugh Grant Injunction Due to 'Unbearable' Paparazzi" BBC News (London, 18 November 2011) <https://www.bbc.co.uk/news/uk-15788275> accessed 25 March 2020.

27 Ben Dowell and James Robinson, "Amy Winehouse Wins Court Ban on Paparazzi at Her Home" *The Guardian* (London, 1 May 2009) <https://www.theguardian.com/music/2009/may/01/amy-winehouse-big-pictures-paparazzi-privacy> accessed 12 March 2020.

28 Mark Thomson and Nicola McCann, "Harassment and the Media" [2009] 1(2) Journal of Media Law 149-158 <https://www.tandfonline.com/doi/abs/10.1080/17577632.2009.11427338> accessed 12 April 2020; Art. 8 of the ECHR entails recognises a right to privacy in terms of family life and private life.

29 *Ibid*.

2.2. Privacy of Space: Public Place

Most of the paparazzi intrusion in the case of Indian celebrities, has been in public places i.e., places outside their private property (for example, airports). The Indian paparazzi have not yet percolated majorly into the physical private dimensions (for example paparazzi trespass on celebrity's homes). Thus, one may ask whether the right to privacy can be interpreted to protect celebrities' activities outside the safe haven of their physical private property?

In *Puttaswamy*, the Court held that privacy is an incident of personal liberty, and includes, privacy of space, bodily integrity (both physical and mental), information and choice etc.[30] Consequently, the right to privacy extends to amongst other things, privacy of space. When a person leaves a (physical) private space, and enters a (physical) public space, he/she continues to enjoy the protection.[31]

Chandrachud J., identifies the reasoning for this in the assertion that, if the dignity of a person is rationale underlying the protection of a person's privacy, then it does not cease to exist only because "the individual has to interact with others in the public arena."[32] The right is thus, attached to the "person", and not the "place".[33] Therefore, per *Puttaswamy* even when a person leaves the safe bounds of her private space (say her home, where she is away from the gaze of the public) and enters into the public place, the right to privacy continues to exist. At the same time, the Court recognises that the "*expectations of privacy in a public street may be different from what is expected in the sanctity of the home*".[34] However, that does not imply that the protection is lost or surrendered altogether.[35] The scope of what may be a legitimate expectation of privacy in a public space, has not been explored by the Court, as it may differ on a case to case basis.[36]

To illustrate, in a striking incident, then-dating Bollywood stars Katrina Kaif and Ranbir Kapoor, after their private holiday in Ibiza, were thoroughly disappointed when photographs of them at a beach in Ibiza, were published

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30 Amber Sinha, "The Fundamental Right to Privacy: A Visual Guide" (Centre for Internet Society) <https://cis-india.org/internet-governance/files/amber-sinha-and-pooja-saxena-the-fundamental-right-to-privacy-a-visual-guide> accessed 10 April 2020.

31 *Puttaswamy* (*supra* note 7) ¶ 243.

32 Ibid¶ 28.

33 Sinha (supra note 30).

34 *Puttaswamy* (*supra* note 7) ¶ 28.

35 *Ibid*.

36 "Supreme Court Holds That the Right to Privacy is a Fundamental Right Guaranteed under the Constitution of India" (Nishith Desai Associates, 7 September 2017) <http://www.nishithdesai.com/information/news-storage/news-details/article/supreme-court-holds-that-the-right-to-privacy-is-a-fundamental-right-guaranteed-under-the-constituti.html> last accessed 12 April 2020.

in a tabloid magazine. Katrina Kaif wrote an open letter to the media,[37] expressing her indignation. She wrote, and I quote:

> *I feel most upset, distressed and invaded at my pictures published in a film magazine (and which were carried by other media). The pictures were taken while I was on holiday by someone who, in an act of cowardice, has shot without permission…There is a breed of journalism that preys on celebrities in the worst possible manner crossing all lines of privacy and decency...There is no reason for this furtive and invasive behaviour.*[38]

This is typical setting against which *Puttaswamy* accords protection- a celebrity, who moved outside the realms of her private place to a public place i.e., a beach on Ibiza, subjected to unauthorised media intrusion. Applying the Court's jurisprudence, one may conclude that the right to privacy is not denuded, even in such scenarios. The next question then is, what level of privacy public figures in a public place, can expect? Since there is no jurisprudence w.r.t. this in India so far, let's turn to *Von Hannover.*

German magazines had long been interested in the life of Princess Caroline. In the first case, the German Constitutional Courts failed to protect her right to privacy, against publication of a series of pictures of showing her on a horseback, while shopping, cycling, skiing or simply visiting the Monte Carlo Beach Club. The ECtHR, in its judgement, while upholding the Princess' right to privacy, ruled that the German Courts were wrong on denying the Princess her right on the grounds of the notion that she was a public figure of "*par excellence*", she can rely on the protection of her privacy/private life only when she is in a secluded place, out of the public eye.[39] Contradicting the assertion, ECtHR held that, "*the criterion of spatial isolation, although apposite in theory, is in reality too vague and difficult for the person concerned to determine in advance."*A logical argument that flows from this statement is that even a celebrity's right to privacy is not limited only to an isolated space, where they are away from public gaze. Although, the ECtHR does not directly spell out that the right is attached to the "person" and not the "place", the same may be interpreted from the Court's ruling.

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[37] "I Feel Upset and Distressed: Katrina Kaif's Open Letter" (*India Today Online*, 2 August 2013) <https://www.indiatoday.in/movies/celebrities/story/katrina-kaif-open-letter-172495-2013-08-02> last accessed 14 April 2020.

[38] Ibid.

[39] *Von Hannover* (*supra* note 22) ¶ 74.

2.2.1. Legitimate Expectation of Privacy

By holding that Princess Caroline's "legitimate expectation of privacy" could arise in the circumstances of the case,[40] and finding a breach of her right to privacy enshrined under Art. 8, the Court set a precedent, which subsequently formed the basis for injunction granted by the German Courts to Princess Caroline, against a different set of unauthorized pictures from a holiday she went to.[41]

As regards the question of what constitutes a *legitimate expectation of privacy* in the context of the given case, Baretto J., in his concurring opinion, stated that it is a subjective inquiry and such situations must be defined by a case-to-case basis.[42]

Drawing upon these observations, I opine that even when celebrities leave the bounds of their physical private space, and enter public place, the right to privacy continues to protect them. While there may be no straight jacket formula to determine when is a person "expecting privacy", it should be judged from the standpoint of a reasonable person, by a close judgement of the act such celebrity is involved in. A reasonable person can well understand that if a celebrity couple is on a private holiday, even if in a public space like a beach, slyly clicking photographs is a clear violation of their privacy.

3. HORIZONTAL APPLICATION OF THE FUNDAMENTAL RIGHT TO PRIVACY

The protection granted to any fundamental right, is mostly vertical i.e., against violation by the State. Paparazzi intrusion, especially at the pre-publication stage, constitutes violation of right to privacy by a non-state actor, *mostly* a private, freelance journalist. Does that mean that right to privacy cannot be claimed against majority of the paparazzi intrusion?

The answer to this question is not clear.[43] In *Puttaswamy*, the Court unequivocally agreed to the importance of privacy with respect to, non-state actors too,[44] but did not explicitly recognise it. However, they upheld the *R.*

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40 *Ibid*. ¶ 78.

41 GFE, "Von Hannover v. Germany (No. 2): Case Analysis" (Global Freedom of Expression) <https://globalfreedomofexpression.columbia.edu/cases/von-hannover-v-germany-no-2/> accessed 15 April 2020.

42 *Von Hannover* (note 22) Concurring Opinion's ¶ 2.

43 Prashant Thikkavarapu, "Great Supreme Court Privacy Ruling but…" (*The Hoot*, 26 August 2017) <http://asu.thehoot.org/free-speech/judgements/great-supreme-court-privacy-ruling-but-10267> accessed 14 April 2020.

44 *Ibid*.

Rajagopal v. *State of T.N.* (hereinafter *R. Rajagopal*),[45] which recognised the horizontal application of right to privacy. The particular paragraphs of the judgement endorsed by the Court, reflect that it endorsed the horizontal application of the right.[46] Notably, only Kaul J., explicitly recognised that the right exits against non-state/private actors too.[47] On the other hand, only Bobde J., specified that the fundamental right to privacy is available only against the State, and an identical interference with a non-state actor is actionable under common law. However, since all judges have concurred in a unanimous verdict, *arguably*, the right may be applied horizontally.

3.1. Preferring a horizontally applied fundamental right over a tortious claim

Right to privacy has existed against non-state actors as a common law principle in India.[48] Tortious civil claims may be filed under the Code of Civil Procedure 1908,[49] and injunctions may be sought in furtherance of such claims. Along with breach of privacy, celebrities may also claim damages and/or injunctions on grounds of tort of nuisance, trespass to property etc. However, a common law principle may be curbed by the Parliament and only be enforced in a civil court, as opposed to a fundamental right, which is inviolable and not subject to abridgment by the Parliament.[50]

In my opinion, right to privacy should be recognised as a horizontal fundamental right. Given that most paparazzi intrusion is from non-state, private actors, it will be unreasonable and absurd, if celebrities are not able to enforce their right to privacy against such a paparazzo, simply because they are not State/agency of State. A right without a means of enforcement, is no good. *Arguendo*, say there are paparazzi employed by State run newspapers, such that State can be vicariously held liable for their acts. However, being able to enforce the right against them and not against non-State paparazzi actors, would be irrational, if the acts of both constitutes breach of privacy.

Additionally, there are ample examples of such intrusion posing a threat not just to privacy, but also to the life and dignity of celebrities abroad. If a similar threat were to arise in India, it is crucial that the remedy is speedy and immediate. A fundamental right is enforceable under Art. 32 (Supreme Court)/

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45 (1994) 6 SCC 632 : AIR 1995 SC 264.

46 Ibid.

47 *Puttaswamy* (*supra* note 7) Kaul J.'s Concurring Opinion's ¶ 77.

48 Prashant Thikkavarapu, "Great Supreme Court Privacy Ruling but…" (*The Hoot*, 26 August 2017) <http://asu.thehoot.org/free-speech/judgements/great-supreme-court-privacy-ruling-but-10267> accessed 14 April 2020.

49 The Code of Civil Procedure, 1908.

50 Thikkavarapu (*supra* note 48).

Art. 226 (High Court of any State) of the COI. It is a relatively speedier remedy as opposed to a civil litigation which may take years, given the huge population of the country, and the problem of voluminous backlog in subordinate courts.[51]

4. REASONABLE RESTRICTIONS ON THE RIGHT

In *Puttawamy*, the Court unanimously held that the right to privacy is not an absolute right and is subject to *reasonable restrictions*. Since these may be (*ab)used* by the paparazzi as a justification for intrusion, it is pivotal to closely explore their scope and application to our context. The relevant restrictions are, first, a compelling public interest,[52] and second, voluntarily introducing/thrusting oneself into controversy.[53]

4.1. Compelling Public Interest

The Supreme Court has held that a violation of right to privacy, should be assessed in the light of a compelling public interest.[54] This limitation was discussed in several cases, including *Puttaswamy*.[55]

Extreme arguments have been made with regards to private life celebrities, like, "*private or public life of public personalities has to be brought to the public's view for the public interest and the personal interest of the plaintiff will not stand before the public interest*".[56] Responding to these, and differentiating between "*public interest*" and "*of interest to public*", Kaul J., in *Puttaswamy* held that:

> "*There is no justification for making all truthful information available to the public. The public does not have an interest in knowing all information that is true. Which celebrity has had sexual relationships with whom might be of interest to the public but has no element of public interest and may therefore be a breach of privacy.*

[51] Harish Nair, "3.3 Crore Backlog Cases in Courts, Pendency Figure at Highest: CJI Dipak Misra" *The Times of India* (Delhi, 28 June 2018) <https://www.indiatoday.in/india/story/3-3-crore-backlog-cases-in-courts-pendency-figure-at-highest-cji-dipak-misra-1271752-2018-06-28> accessed 18 April 2020.

[52] *Gobind* (*supra* note 20).

[53] *Phoolan Devi* (*supra* note 9).

[54] *Gobind* (*supra* note 20).

[55] IndraStra, "An Analysis of Puttaswamy: The Supreme Court's Privacy Verdict" (IndraStra, 17 November 2017) <https://medium.com/indrastra/an-analysis-of-puttaswamy-the-supreme-courts-privacy-verdict-53d97d0b3fc6> accessed 14 April 2020.

[56] *Ibid*.

> *Thus, truthful information that breaches privacy may also require protection*."[57]

The jurisprudence developed by ECtHR is on the same lines. In the *Von Hannover*, the Court held that to determine legitimacy of *public interest*, such interest must go beyond mere public curiosity.[58] The Court found that there exists "*no public interest in knowing facts of an essentially private nature that could override the applicant's privacy right*."[59]

In privacy related judgements, Californian Courts have adopted a similar standard, wherein, to gauge *public interest*, the ability of the information/act in question to contribute to widespread public debate is a crucial barometer.[60] American Courts have held that *public interest* cannot be equated with *public curiosity*.[61]

Paparazzi intrusion may not violate right to privacy of celebrities, provided it is feeding public interest. Therefore, in order to assess whether a paparazzi intrusion breaches the right, one must try and understand the *purpose* of the intervention. Let's understand this with an illustration. Say, Miss X, who is a movie star, is alleged of hiding illegal, prohibited ammunition in her house. A paparazzi intrusion trying to capture photographs of her activities inside her house, to investigate and expose such information, may be legitimate because the purpose of the intrusion is to serve a wider public interest i.e., prevention of criminal activities. In another scenario, and in the absence of the aforementioned allegation, a paparazzi intrusion is invalid if the purpose is to click unauthorised photographs of Miss X's new-born child. In the former case, the media may be playing the role of a "watchdog in a democracy",[62] while in the latter, it is merely acting to feed public curiosity.

4.2. Thrusting Oneself into Controversy

In *R. Rajagopal*, the Court carved out a limitation of voluntarily thrusting oneself into controversy, or voluntarily inviting or raising controversy. It

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[57] *Puttaswamy* (*supra* note 7) Kaul J.'s Concurring Opinion's ¶ 57.

[58] Zsolt Bobis, "Case Watch: Balancing Privacy and Public Interest on the Slopes of St. Moritz" (Open Society Foundations, 15 February 2012) <https://www.opensocietyfoundations.org/voices/case-watch-balancing-privacy-and-public-interest-on-the-slopes-of-st-moritz> accessed 18 April 2019.

[59] Beate Rudolf, "Council of Europe: Von Hannover v. Germany" [2006] 4(3) International Journal of Constitutional Law <https://academic.oup.com/icon/article/4/3/533/646397> accessed 19 March 2020.

[60] Patrick Alach, "Paparazzi and Privacy" [2008] 28 Loy. L.A. Ent. L. Review 205, 228 <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1535&context=elr> accessed 19 March 2020.

[61] *Ibid*.

[62] *Von Hannover* (*supra* note 22) ¶ 46.

was reiterated by the Court as a part of the general discourse on the right to privacy but was not elucidated in any case. However, foreign jurisprudence on this point, is relatively developed.

In the USA, the voluntary nature of notoriety is one of the determinant factors while taking into account the celebrities' privacy protection.[63] In the UK, there have been alleged examples of celebrities voluntarily inviting media to invade their privacy-celebrities voluntarily give interviews regarding their drink binges (Caroline Aherne), drug habits (Robbie Williams), emotional problems (Kate Moss), eating disorders (Geri Halliwell), relationship problems (Ulrika Jonsson), and abortions (Nicole Appleton).[64] Hollywood star George Clooney complained paparazzi invasion into his private life, but at the same time, gave an interview revealing details of his private life.[65]

Let's understand the judicial attitude towards such scenarios. In *Campbell*,[66] the claim concerned publication of a story along with a photograph of Naomi Campbell, concerning her attending a Narcotics Anonymous drugs rehabilitation clinic, in the newspaper *Mirror*.[67] The Appeals Chamber, over-turned the subordinate court's decision on the ground that Campbell "*had courted publicity and had gone out of her way to tell the media that, in contrast to other models, she did not take drugs, stimulants or tranquillisers*",[68] implicitly recognising the limitation of voluntarily exposing oneself to controversy.

Similarly, an argument by the defendant was made in *Phoolan Devi*, that by giving publically available interviews, which included description of the impugned controversy, the plaintiff and voluntarily thrusted herself into controversy.[69] Although the Court did not dispute the validity of the limitation itself, it held that in none of the interviews did the plaintiff unequivocally admit the occurrence of impugned incident.[70] Consequently, she cannot have said to voluntarily thrusted herself into controversy with regard to the impugned incident published by the defendant.

In my opinion, the limitation in question is very crucial in the context of paparazzi intrusion and requires celebrities to practice caution. As Scott observes "celebrities and the media are locked in symbiosis, and that in consequence

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63 Keith D. Willis, "Paparazzi, Tabloids, and the New Hollywood Press: Can Celebrities Claim a Defensible Publicity Right in Order to Prevent the Media from Following Their Every Move" [2007] 9 Texas Review of Entertainment 175.

64 Tessa Mayes, "Privacy vs Free Speech: Two Competing Ridhts" (*Spiked*, 22 October 2002) <https://www.spiked-online.com/2002/10/22/privacy-vs-free-speech-two-competing-rights/> accessed 4 April 2020.

65 *Ibid*.

66 *Campbell* (*supra* note12).

67 Mayes (*supra* note 64).

68 *Ibid*.

69 *Phoolan Devi* (*supra* note 9).

70 *Ibid*.

those who benefit from the media spotlight must accept paparazzi attention as the 'price of fame'."[71] In other words, celebrities and paparazzi exist on a typically co-dependant relationship and paparazzi intrusion is a "price" for the fame gained through it. Consequently, the line separating celebrities' voluntarily thrusting himself into controversy in order to seek fame, and unauthorised paparazzi intrusion, is already very thin. In such circumstances, celebrities should steer clear from voluntarily revealing private details of their lives because given their status as public figures, it ought to target public curiosity and consequent media scrutiny. We discussed in the previous chapter that paparazzi intrusion based on public curiosity is not *per se*, a defence to paparazzi intrusion. However, if the source of such curiosity is the information voluntarily revealed by the celebrity/deliberate engagement in controversial conduct/event, such *intrusion* may be valid.

5. CONCLUSION

Privacy aspect of celebrity rights, specifically w.r.t unauthorised intrusion by paparazzi, has not been a theme of academic discourse in India. Having said that, this is the most opportune moment to make an intervention on the theme, given the context of sudden increase in paparazzi intrusion and the recognition of right to privacy as a fundamental right under the Constitution.

Whilst the application of the right in the context of celebrities, has so far been limited to published material *vis.* books, biopics etc., I have interpreted the jurisprudence developed in those cases and in *Puttaswamy*, to argue that the right may be claimed against unauthorised paparazzi intrusion at the pre-publication stage, i.e., against the very act of clicking pictures. To that end, I have addressed the four arguments precluding the exercise the right *vis.* public domain, public space, horizontal application of fundamental right and reasonable restrictions. In this context, following suggestions may be made:

1. Simply being in the public domain, does not strip celebrities off the protection granted to their private lives. Any unwarranted encroachment on the private aspects of their lives, violates right to privacy.

2. Privacy is attached to the person concerned, and not the place. Therefore, even when public figures are in public places, they may have a reasonable expectation of privacy, which as per *Von Hannover*, has to be determined on a case-to-case basis.

3. Whether the right is available as a horizontal right, is a matter of debate. However, in *Puttaswamy*, *prima facie* a broad consensus does appear amongst the judges with regards to its horizontal application. At the minimum, this confirms the possibility of arguing for the horizontal

[71] Scott (*supra* note 21) 4.

application of privacy, with a strong judicial opinion backing such argument. Given that most paparazzi intrusion is from non-state actors, to ensure comprehensive protection against unauthorized intrusion, the right should be horizontally applicable.

4. With regards to the content of reasonable restrictions, we must not confuse the restriction of compelling "public interest", with "interest of the public". At the same time, celebrities must be cautious of not inviting controversy voluntarily, by making such details of their private lives public, which if subsequently forms the basis for paparazzi intrusion, will cause them discomfort.

The Indian judiciary has proactively utilised the right to privacy post *Puttaswamy* to address other privacy related concerns. A prime example is the de-criminalisation of homosexuality.[72] Given such progressive interpretation, and constructive judicial attitude towards respecting the private lives of celebrities, it is only a matter of time until an appropriate case comes before the Court where it may interpret and apply the right to privacy so as to protect celebrities against unauthorised paparazzi intervention.

[72] *Navtej Singh Johar* v. *Union of India*, (2018) 10 SCC 1.

WRIT OF HABEAS CORPUS VIS A VIS QUEER WOMEN: AN ANALYSIS

Ms. Ishita Sharma[*]

1. INTRODUCTION

Sexuality is one of the ways that we become enlightened, actually, because it leads us to self-knowledge**.** Alice Walker

Queer as a term has gained affluence among analysts as an exposition of behaviour that goes beyond the widely held norms of gender and sexuality. Queer as a term encapsulates within its ambit various stratified layers of society bound by class, caste, gender, sexuality, race , religion and region(1). As far as the article is concerned, the researcher has used the term as a reference to females in relationship, sexual or amorous with other females. In certain instances, the term is also used to refer to women who distinguish themselves as men or as transgender. Thus, the term is a distinct departure from the widely held terminologies out in the jargon of identifiers for individuals, who stand out as outliers to entrenched notions of sexuality. Through the article, the researcher has analysed cases of queer women disparaged on basis of class, religion and caste. It is the queer women from the marginalised sections of the society are ostracised for their distinctive sexuality.

Females, as a gender, have always suffered discrimination at various levels as well as at different stages of their existence. The discrimination at various stages also goes out in a similar fashion to queer women. These boundations of freedom of expression are a stark contrast when compared with the position of queer men, even in Indian context. Owing to family and societal pressures, queer men in India enter into marital bonds with women. Despite such marital bonds, they still enjoy the privilege of honing their sexuality in the private sphere.[1] But this multifaceted existence, is a dream far from reality when it comes to queer women. Discrimination and hostility, which is rampant towards women in the society also finds itself snaking into their private lives. Queer women, have a chance to meet their likes and explore relationships only through mediums created specifically for meeting females of like sexuality. While giving a blanket contention would be highly biased, the researcher does through this article try to illustrate that 'sex' as a 'boon' is more tilted towards men rather than women.

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[1] Flavia Agnes, "Protecting Women against Violence? Review of a Decade of Legislation", 27 EPWWS-19 (1992).

The law is also differential in its treatment of queer men and women. The law is quite conspicuous as far as the treatment of queer men[2] and women goes. It is quite discernible in case of queer men as seen through section 377 of The Indian Penal Code, 1860 (hereinafter referred to as IPC)[3] as well as the humiliation or harassment meted out to queer men sex workers at par with female sex workers. This traversion of law, introduced by our colonial masters into the private lives of men is not visible at the same pedestal into the private lives of women. The use of the legal dimensions have always been , at a large scale been directed towards queer men.[4]

Sequestered areas for expression of sexuality is a common phenomena in our society. These spaces often become clandestine zones where furtive titillations are experienced which the researcher shall also illustrate through a story of a female 'L' in a women's hostel. The hostel, in the instant case was a hub of often overt same sex activity, which were mostly casual in nature, with no emotional bonds between the women involved. Apart from the women also were covert in terms of expression of sexuality in the public sphere and did not identify themselves as 'lesbian' . 'L' was the term used in the precincts of the hostel for women engaged in such activity. The usage of the secretive alphabet 'L' is seen as a safe play in contrast to the more overt term lesbian. The act of being tagged overtly is a more dangerous game than the sexual activity itself.[5]

Before delving into the depths of the conditions of queer women and the differential treatment of law towards them, it is quite probable that a queer women is subject to the same tyrannies of society as a heterosexual woman (irrespective of caste, class, religion, race, region) in respect of private affairs such as marriage, sex whether inside or outside the marital bond. Despite such shared discrimination, the ordeals faced by a queer woman are distinct from that of a heterosexual women. Firstly, a queer woman challenges the norm of the society that establishes that a woman has to enter into an intimate relationship with a man. Secondly, such a relationship changes the dynamics and definition of a family, devoid of even the legal protections that a normal family enjoys as well as devoid of the bliss of procreation. Thirdly, the engagement of a female with another female is purely seen as an act of exploration and casual sexual gratification. Sexual gratification, unwarranted for women and in some cases for men (who challenge the societal norms of sexuality) is synonymous with same sex sexual engagement, making it a taboo.

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2 Here the term "queer men" is used in the same way that "queer women" has been used earlier, that is, those who are recognised by society to be "men" irrespective of their own identification vis-à-vis their gender and sexual orientation.

3 The Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

4 Ponni Arasu and Priya Thangarajah, "Queer Women and Habeas Corpus in India: The Love that Blinds the Law", 19 IJGS 414 (2012).

5 *Ibid*.

2. QUEER WOMEN AND LAW

Section 377 of the IPC[6] , now a part of which has been declared as ultra vires the Constitution by the apex court was primarily used for castigating same sex male relationships and left the female frontiers untouched. The genesis of the discourse on queer desires and law can be found in Section 377 of the IPC. The section has always been a debatable one, which culminated in it being declared as unconstitutional by the Apex Court.

Apart from the above mentioned section, there are many other legal aspects intimately associated with queer women which shall be highlighted by the researcher through the article. Since the association of law with queer women is still in its infancy, Habeas Corpus occupies a significant position in this respect. The researcher through various case studies has tried to bring forth the position of queer women.

Prior to an analysis of the cases, a mention of certain sections of IPC which are relevant becomes pertinent here. Section 339 and Section 340 of IPC penalise wrongful confinement. The crime of wrongful confinement takes place when an individual is detained by someone devoid of the power to do so. The use of these sections is prominent in cases of Habeas Corpus when it is alleged that a woman is being confined by the state/kin/friends. In a case of M and L, who eloped on account of social ostracization being faced by them on account of their sexuality, a case of illegal detention was filed by L's parents. Despite being a 21 year old and a major who was with M on her own accord, the court ordered the 21yr old to reunite with the family.

In a similar manner, Section 361 of IPC[7] penalises kidnapping from lawful guardianship. Section 361 of IPC reads as under,

> Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

But in the cases that the researcher shall mention in the article, it has been seen that the aspect of consent is completely oblivious to the law enforcement agencies. This section is the most widely used by the kin of the queer women who goes out bravely expressing her sexuality with her partner. The families go to unspeakable lengths to portray the woman as a minor before the courts. The

[6] The Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[7] The Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

conspicuous aspects of these cases is the decision, where despite the elopement being consensual, the court forces the female to return to the family that has objected to her expressions of sexuality. The same instance occurred in a case involving two queer women who eloped to Punjab and a case of kidnapping was filed by the parents of one of the women. One of the women who disguised as man to escape the ostracism of society was forced to undergo a medical examination to expose the factum of being a woman. Further, under duress, the women came out in the public sphere as 'normal friends'. But in the instant case, the magistrate of Halol, Gujarat , gave the decision that being adults in a consensual relationship, they had every right to live with each other.[8]

Another section of IPC that deserves mention is Section 362 that deals with abduction. Section 362 reads as under,

> Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

The manner in which this section is used is on the pretext of cajoling the other woman to another place with the intention of forcing her into an unwarranted relationship. Such a case occurred in Patna, Bihar where a widow with a 8 year old son was put behind bars for abducting Sarita, a 19 year old woman. The two women had eloped and married in a temple. The other woman was forced back to her family and the widow was branded as 'characterless' and a criminal by the police.[9]

In the conundrum of the use of various provisions of IPC to suppress the sexuality of women, a conspicuous use of the Section 366 of IPC[10] has been observed in a case. Section 366 of IPC reads as under,

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.

The use of the penal provision has been rampant in case of men and women who enter into marital bond against the wishes of the family. But a case occurred where two women eloped but their parents filed a complaint under the above mentioned penal provision. The lower court gave a decision in favour of the parents. However, on appeal before the Delhi High Court, the court ruled in

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8 Arasu and Thangarajah, *supra* note 4, at 417.
9 Arasu and Thangarajah, *supra* note 4, at 416.
10 The Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

favour of the women who were consenting adults, although the true nature of their relationship was never brought forth in the case.

The use of the provision of perjury under IPC has also been observed in case of queer women. The case involved the marriage of a female transsexual with a female. The case happened in Pakistan and proceedings associated with the instant case took place in Pakistani courts. The woman's family filed a case of kidnapping and fraud against the female transsexual. The lower court of Lahore ruled in the favour of the two consenting adults but on appeal to the High Court, based on the complaint by the woman's father, that the transsexual was actually a female and on forced medical examination. The court gave the ruling that the both were females and convicted them of perjury. But in an incredulous overturn of conviction by the Supreme Court, the apex court ruled no anomaly on the women to be involved in such a relationship as well as acquitted them of perjury on the ground that gender change is not a crime.

3. FEMINIST LEGAL DEBATES VIS A VIS LESBIANS

Feminist legal debates have been critiqued from various standpoints and through various spectrums. Legislation has made a significant contribution in emancipating women in India and enabling them to affirm their position in the society. In the words of Gloria Steinem,

> Feminism has never been about getting a job for one woman. It's about making life more fair for women everywhere. It's not about a piece of the existing pie; there are too many of us for that. It's about baking a new pie.

The efficacy of these laws in the emancipation of women has always been a subject of debate and discussion.

Certain points of feminist struggles' deserve mention here. Firstly, the focus of these struggles has primarily been violence against women and a cry for legislation surrounding them. These struggles have had an over-reaching impact. However, the same needs to be seen in context of queer women. It has been observed that the feminist debates have veered around violence against women and legislations barring the same. However, discourses among the feminists on prostitution, rights of bar dancers have been less vocal. It can be starkly noted that latter discourses are a clear epitome of sexual desires and gratification. Queer women also have tales of unprecedented violence unleashed against them by their families for expressing their sexuality in the public sphere.

There has been widespread sensitisation on aspects of violence due to dowry, female infanticide as well as the law in relation to women is entirely on

the basis of heterospective aspects of society. There have been demands from the sex workers to raise their concerns as well as issues at the same pedestal as women with classical issues (issues pertaining to violence, dowry etc.). This aspect of lack of visibility shall be highlighted in the further sections of the article as well by the researcher.

4. HABEAS CORPUS AND QUEER WOMEN

The use of the writ of habeas corpus has extensively been witnessed in case of the women who entered into marital bonds out of their own volition, against the wishes of their family. The same aspect has been taken note in various aspects of feminists' discourses as well. The earliest instance of case involving a woman and the writ of Habeas Corpus was where a girl becomes a member of another faith against the wishes of her family , the religious freedom also denied to the woman by the court also. In the pre- World War II era, where India was under colonial subjugation, the writ always was present as a façade to comfort people as a saviour of their rights, but at the same time maintaining the supremacy of the colonial masters over the people. This contrasting take is also seen in the case of the use of the writ of habeas corpus, in relation to women who come out assertively with their sexuality.

The first lacunae that is seen is the association of the institution of marriage , exclusively to genders of the opposite sex, wherein apart from proving the factum of legal marriage in court by the couples, the family members try to jeopardise the proceedings by use of various sections of IPC. This position can be succinctly summarised in the words of Ms. Pratikasha Baxi,[11]

> ...the lower judiciary acts in complicity with the family to 'rescue' adult women from 'improper' alliances, which contradicts the juridical emphasis on enforcing marital relations through the technique of reconciliation. The emphasis on upholding the institution of marriage means that distinctions between arranged marriages and marriages of choice must find challenge within the judiciary...

The researcher has for the purposes of the article come up with two cases , as gathered from various sources the cases of Habeas Corpus involving women from 1940 to October 2007. The case involved a lesbian couple who had left home and the parents of R, one of the women, charged the other, M, with kidnapping. R had to present herself at the Delhi High Court and declare that she left home out of her own will and volition. R and M 'won' the case as the judge declared that R was an adult and could live wherever she pleased. The charges against M were nullified. The exact nature of M and R's relationship is known only

[11] Pratiksha Baxi, "Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India", 25 AFLJ 70 (2014).

to the activists and lawyers involved in the case, and have been actively kept out of court records.

In another case which the researcher mentions, the case involved two women from Kerela working in an industrial unit. The two met and instantly struck up a friendship that blossomed into an amorous relationship which led them to abandon their village in May 2000. To sustain their relationship in the eyes of the public, one of the women entered into the garb of a male by cropping her hair as well as dressing as a man. Ultimately, the family of one of the girls filed a case of disappearance forcing the girls to return. The lower court ruled in favour of the women, as being adults and free to lead their life on their own terms but the families of the women refused to reconcile with the factum of their sexuality, leading one of the women to be forcibly be taken away by the parents. This led one of the partners to file a writ of Habeas Corpus before the Kerala High Court, on the pretext of forceful detention by the parents. However, under duress the other woman denied the factum of forcible separation which also led to their separation.[12]

In another case involving the same High Court in 2005, where a writ of Habeas Corpus was filed by one of the women on the grounds that her friend, also a woman was being illegally confined by her parents. The woman in question had abandoned her home, owing to the constant abuse that she faced at the hands of her brother. The women ran away from their homes and sought shelter in a woman's organisation. At the same time, they informed their parents of their safety. Getting the news of their daughters', the respective parents filed a police complaint, forcing their appearance before a magistrate who agreed to the union of the girls' as they were adults. On false promises from the parents, the woman went to their respective homes but one of the women was forced to see a doctor by her parents, owing to her *mental condition.* There was no news of the whereabouts of the other women . This led one of the women to file a writ of Habeas Corpus before the Kerala High Court. The petition was denied on the ground of lack of locus standi.[13]

The surprising anomalies that can be seen in the instant cases, even at the time of court proceedings are, firstly, nowhere is the term 'lesbian' used to describe the relationship and the women are in every instance referred to a 'friends'. Secondly, the relationship in both the cases was referred to by the media as well as judiciary as married, owing to the intimacy the individuals involved shared. The third conspicuousness is the family's non acceptance of the relationship , put on the same pedestal as blasphemy. Tagged as a blasphemous relationship, transcending all boundaries of immorality whereas in case of other instances of marriage between opposite genders, objection is always attributed to a particular reason such as caste, class, status etc.

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[12] Pratiksha Bakshi, Mini in Legal Battle to Get her Friend, MM, October 11, 2000.

[13] *Supra* note 5, at 420.

This leads to various important inferences. The true nature of the relationship is never brought forth in the proceedings before the court as well as the fact of the date of occurrence of these cases also needs to be taken into consideration. The cases have occurred at a time when Section 377 was a penal provision, punitive in nature. The media has highlighted the cases without addressing the inherent troubles of ignorance of true nature of the relationship, the legal conundrum owing to the lack of legal recognition to such bonds. Media may come out in support of such relationships but fails to address such concerns.

5. CONCLUSION

Same sex relationships, have crept into the social domain but the silent prejudices, that are absent in the case of heterosexual relationships also outlined by the researcher in the earlier part of the article need to be addressed immediately. Secondly, the attribution of marriage, by itself by media houses to such relationships brings forth the fact that only marriage is used as a means to accord a sanctity to such relationships, making it the only means of an intimacy and social affability.

The need of the hour is to sensitise ourselves outside of this paradigm and the societal structures that have been set up. The next step that is required is the setting up of forums where queer women are confident and comfortable to come out in the open, an acknowledgment as well as acceptance is that is required. In the words of Natasha Negovanlis

> How you identify or what you prefer in the bedroom does not define your goals, dreams or interests, and has no baring on who you are as a human being, You don't need to dress or behave a certain way because of your sexual orientation if you don't want to. Trust that there are groups and resources out there that will support you no matter what.

INDIAN MSME DEVELOPMENT POST-2014

Satish Kumar[*] *Shalini Arora*[**] *Anil K Pandey*[***]

1. INTRODUCTION

The Micro, Small and Medium Enterprises (MSME) sector has emerged as an essential pillar for India's development[1]. Following agriculture, the growth of the MSMEs sector significantly affects the country's socio-economic development[2]**.** This vibrant and dynamic sector provides tremendous employment opportunities, and it is a vast platform for promoting entrepreneurship at reasonably low capital cost. MSMEs corresponds to the ancillary units to large industries and contributes significantly to the country's comprehensive industrial development. Now the scope of MSMEs is widened, and it offers a wide range of product and services and therefore capable of fulfilling the demands of the local and global market.

MSME enterprises are mainly a labour-intensive sector that requires significantly low investment to set up the business. It can employ the surplus semi-skilled labourer coming from the agriculture or allied sectors. As per the annual report of the Ministry of MSME 2019-20, 51.25% MSMEs are situated in rural areas compared to 48.75% in urban areas and contribute towards egalitarian social structure and equal distribution of employment opportunities. The people employed in the MSMEs are generally migrated workers shifted from agricultural or semi-skilled small cities that are not skilled enough to get employment in large industries. This can be seen with the size of work-force employed in the MSMEs sector, approx. One hundred twenty million people are associated as a work-force, making the MSME sector the second large employable sector after agriculture. This MSME sector is spread across the country in a decentralized and heterogeneous manner in terms of the size, goods & services, and adoption of technology, focusing on the small markets. The sector got more importance with the national manufacturing policy wherein manufacturing sector share in GDP has been targeted from 16% to 25% by the end of 2022[2]**.** The Government has announced various measures like Startup India, Stand Up India, Make In India, and recently,

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[1] Ahmed A., "MSMEs: It's Role in Sustainable Development in India", Journal of Gujarat Research Society, 2019; 21(5):374-8588.

[2] Zanjurne P., "Growth and Future Prospects of MSME in India", International Journal of Advanced Engineering, Management and Science 2018; 4(8).

Atma Nirbhar Baharat (Self-reliant India) & vocal for local to make India a global manufacturing hub. The Government of India has further envisaged for reaching the target of 5 Trillion Dollar economy by 2024. This needs massive acceleration in production capacities, technological advancement & access to global markets. To achieve this vision the Union Minister (M/o MSME) has stressed to increase the contribution of MSMEs in GDP to 50% from the present 30% contribution to earmark the above said target[3].

Consequently, it has always been a vital sector where the Govt has stressed upon various measures to ensure fair competition. Therefore, the MSME sector is going to be a potential contributor to the Indian economy. However, these measures have taken a pace in post-2014. The post-2014 period has been a golden era with various reforms for the development of MSME sector wherein the sector ensures the equitable distribution of wealth and contributes to socio-economic structure & fair distribution of national income. This paper summarizes multiple initiatives undertaken & significant developments that occurred in the MSME sector in the past 5-6 years to strengthen Indian MSMEs and make them competitive in global markets.

2. OVERVIEW ON GROWTH AND PERFORMANCE OF MSME SECTOR

The Micro, Small and Medium Enterprises (MSMEs) sector contributes about 30 % to the GDP, manufacturing more than 6000 products, contributing about 45% of the total manufacturing output and 40% to the country's exports, directly and indirectly[4]. It constitutes a vast network of around 63 million units, which generates employment to about 120 million people; therefore, it offers the most considerable employment opportunities after India's agriculture sector.

Table : 1 Distribution of Enterprises (Figures in Lakhs)

Sector	Micro	Small	Medium	Total	Share (%)
Rural	324.09	0.78	0.01	324.88	51
Urban	306.43	2.53	0.04	309.00	49
All	630.52	3.31	0.05	633.88	100

[3] ET, "Vision is to Increase MSMEs Contribution to GDP to 50%: Nitin Gadkari" <https://economictimes.indiatimes.com/small-biz/sme-sector/vision-is-to-increase-msmes-contribution-to-gdp-to-50-nitin-gadkari/articleshow/69978436.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst>. 2019; <https://economictimes.indiatimes.com/small-biz/sme-sector/vision-is-to-increase-msmes-contribution-to-gdp-to-50-nitin-gadkari/articleshow/69978436.cms>.

[4] Lone T.A. and Mehraj M.Z., "MSMEs in India: Growth, Performance and Various Constraints, Impeding their Growth", Journal of Economics and Sustainable Development, 2015; 6(3):76-82.

MSME[5]

The MSME sector comprised both the organized and unorganized sector[5]. As per the Ministry of MSME's annual report (Table 1), out of 633.88 Lakhs MSME enterprises, 630.53 Lakhs enterprises falls under Micro units, 3.31 Lakh as Small & 0.05 medium companies. Therefore, 99% of MSMEs are micro-enterprises. This means the majority of enterprises structure in the country concentrated on Micro & Tiny enterprises. Further, 51.40 % of Micro Enterprises are situated in a rural area compared to 48.60 % in urban areas. However, small & medium enterprises are located more in urban areas than in rural areas (Table 1).

Table 2: Employment in the MSME sector (Figures in Lakhs)

Category of activities	Rural	Urban	Total	Share (%)
Manufacturing	186.56	173.86	360.41	32
Electricity	0.06	0.02	0.07	-
Trade	160.64	226.54	387.18	35
Other Services	150.53	211.69	362.22	33
Total	497.78	612.10	1109.89	100

MSME[5]

According to the 73rd round of the National Sample Survey[6] conducted during the period 2015-16 (Table 2), the MSME sector has created 11.10 crore employment in total with 360.41 lakh in manufacturing, 0.07 lakh in Non-captive Electricity Generation and Transmission, 387.18 lakh in Trade and 362.22 lakh in other Services across the country. Further, out of 11.10 crore jobs, employment in urban areas was 612.10 lakh and 497.78 lakh in rural areas.

Table 3: Distribution of employment by type of Enterprises in Rural and Urban Areas (Figures in Lakhs)

Sector	Micro	Small	Medium	Total	Share (%)
Rural	489.30	7.88	0.60	497.78	45
Urban	586.88	24.06	1.16	612.10	55
All	1076.19	31.95	1.75	1109.89	100

MSME[5]

[5] MSME, Annual Report, <https://msmegovin/sites/default/files/FINAL_MSME_ENGLISH_AR_2019-20pdf>, 2019-20.

[6] NSS, Key Indicators of Unincorporated Non-Agricultural Enterprises (Excluding Construction) in India, <http://wwwmospinicin/sites/default/files/publication_reports/NSS_KI_73_234pdf>, 2016.

By looking at the employment structure of the country from the MSME sector, it can be seen that the Micro sector, with 630.52 lakh enterprises, employs 1076.19 lakh persons, who are 97% of total employment in the industry (Table 3). In contrast, the small sector with 3.31 lakh and Medium sector with a level of 0.05 lakh contribute employment to 31.95 lakh and 1.75 lakh persons of total employment in the MSME sector, respectively[5].

3. ISSUES AND CHALLENGES WITH MSME SECTOR

Despite the potential growth in the MSME sector, it has many challenges to tackle, such as availability of funds, competition with Chinese dumped cheap products, access to market, access to advanced technology, lack of conducive infrastructure & environment, etc.

There has been significant thrust from MSME sector in accessing credit. Although various measures have been initiated to ensure the uncomplicated and smooth flow of credit to the MSMEs sector, there is a huge demand for credit that has never been fulfilled with existing institutional mechanisms. The primary reason for the denial of loans to MSMEs sector was their lack of financial discipline, high administrative costs of small-scale lending, high-risk perception and lack of collateral. As per the study conducted by the US-based Entrepreneurial Finance Lab (EFL), there is an estimated demand of 2,803,628 crores from the MSME sector; however, to fulfil this demand, finance available through banks stands at 1,038,948 crores only. Therefore, there is a huge demand-supply gap in this area that needs to be fulfilled. More than 50% of the demand for credit could not be accomplished through banks' institutional mechanism. MSME has been given a priority sector lending obligation, and 60% of total lending through banks are earmarked for MSMEs. However, banks have been hesitant to provide loans to MSMEs to believe that this sector has more susceptibility to evading[7].

On the contrary, MSMEs sector comprises only 15% of the total NPA in the country. With difficulties confronted for obtaining loans from the institutional mechanism, it becomes challenging for the millions of unfunded MSMEs to grow and expand during the journey of an enterprise. This has been a significant obstacle to the growth of the enterprise[7].

Various initiatives have been undertaken to foster the smooth flow of credit and emphasized lending to the MSMEs sector, and the primary concern has also been addressed. The ministry of MSME has introduced multiple schemes to provide collateral-free loans. Therefore, banks are at low risk of their investment. The Pradhan Matri Employment Generation Programme (PMEGP), Credit Guarantee Trust to Micro & Small Enterprises (CGTMSE), MUDRA Scheme,

[7] Singh S., Paliwal M. "Unleashing the Growth Potential of Indian MSME Sector", Comparative Economic Research, 2017; 20(2):35-52.

Stand up India, interest subvention schemes etc. were launched to bridge this gap and provide easy access to collateral-free & guarantee free, subsidized loans to MSMEs.

Another emerging area of concern for the MSME sector is their inability to compete with cheap Chinese products dumped in the market. Many manufacturing units have been shut down due to the replacement of cheap Chinese goods over time. Apart from goods coming from China, the MSME sector also faces competition with large companies. Further, the added advantage with the big giants is the large scale production of the manufacturing and service goods, and it's pretty challenging for MSMEs sector to compete with these big players. They have an added advantage in maintaining quality goods, product finishing, packaging and scale of production (economy of scale) etc.

A procurement policy has been introduced where 358 goods are reserved for MSME sector only. Further, in the procurement policy of MSME, 25 % of purchase from CPSUs, Govt/ autonomous bodies has been reserved for MSME enterprises. The Govt. e-Market portal has been launched (GeM), where it has been made mandatory to procure through GeM portal by the Govt/Autonomous organization/Department. On the other hand, MSMEs registered at GeM as suppliers of these goods automatically receive their buyers' products through the GeM portal. Therefore, it helps the small enterprise to access market opportunities at a low-cost[8].

Today, technology-based enterprises are hitting the market. To remain competitive, it is mandatory to access advanced technology to bring novel innovation and high-quality products to the market. Due to lack of awareness or inaccessibility of the recent technological advancement and other means, the MSMEs sector still uses traditional manufacturing products. With the Government's promotion of Start-Up based ecosystem under various initiatives such as Atal Incubation Programme, AGNI, BIRAC Incubation and various state Govt. start-up policies, the Government is nurturing new ideas. This has ultimately boosted the framework of MSME based enterprises. We expect that the MSME sector will be the market leader in terms of innovative products shortly.

Further, the Ministry of MSME, Govt of India has set up 18 Technology Development Centre, which caters to the industries' technology. This initiative is taken to fill the technology gap in the MSME sector. To further strengthen these areas, 20 new hubs and 100 spoke centres would be set up in various parts of the country, this will surely fill the requirement of technology to the sector. Credit Link Capital Subsidy Scheme (CLCS) was another big step to boost

[8] GeM, Government e-Market Place, <https://wwwindiagovin/spotlight/government-e-market-place-procurement-made-smart#tab=tab-1>, 2020.

technology upgradation amongst MSMEs. The scheme provides a 15% subsidy on loan taken for technology up-gradation[9].

It requires a conducive infrastructure to achieve potential growth for the MSMEs sector, which has been missing for a long. Govt of India has come up with a cluster development programme, where such cluster/group of industries are facilitated to excel in their work.

Despite enormous challenges with the development of the MSME sector, there has been much intervention from Govt. of India to fill the gap and strengthen the Small Enterprise sector.

4. GOVT. INTERVENTIONS THROUGH MSME PROGRAMMES & SUPPORT SCHEMES

There have been many programs introduced by the Ministry of MSME for promotion & strengthening the Micro Small & Medium Enterprises. Table4shows the intervention/ support program to resolve the issues associated with MSMEs regarding Credit, access to technology, competitiveness, skills and infrastructure etc.

Table 4: Schemes launched for promoting MSMEs sector[10],[11],[12],[13]

S.no.	Name of the Scheme/ Programme	Sector	Intervention
1.	Prime Minister's Employment Generation Programme (PMEGP)	Credit	Provides Subsidies loans for setting up new enterprises.
2.	Credit Linked Capital Subsidy Scheme for Technology Upgradation (CLCSS)	Technology Upgradation	Provides subsidy for adoption & upgradation of Technology
3.	Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE)	Credit	Provides Collateral Free Loans
4.	Interest Subvention Scheme	Credit	Provides subsidy on Bank Loans

[9] MSME, Indian MSMEs Marching Ahead <https://msmegovin/sites/default/files/MSME%20Achievement_English%202014-18pdf>, 2014-18.

[10] MSME, e Book of Schemes for Micro, Small and Medium Enterprises, <http://wwwdcmsmegovin/SAMACHAR/eBook%20of%20Schemes%20for%20MSMEspdf>, 2020.

[11] CHAMPIONS, Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength, <https://championsgovin/Government-India/Ministry-MSME-Portal-handholding/msme-problem-complaint-welcomehtm>, 2020.

[12] MSME, Ministry of Micro, Small & Medium Enterprises, <https://msmegovin>, 2020.

[13] MSME, Office of Development Commissioner, <http://dcmsmegovin/>, 2020.

S.no.	Name of the Scheme/ Programme	Sector	Intervention
5.	Entrepreneurship and Skill Development Programme (ESDP)	Skill/Training	Skill Up-gradation / Trainings
6.	Scheme of Fund for Regeneration of Traditional Industries (SFURTI)	Infrastructure	clusters forming for traditional industries and artisans
7.	Micro & Small Enterprises Cluster Development Programme (MSE-CDP)	Infrastructure	create/upgrade infrastructural facilities for MSMEs clusters
8.	Design Clinic Scheme	Innovation	Competitiveness through design Intervention
9.	Lean Manufacturing Competitiveness Scheme (LMCS)	Innovation	enhance competitiveness through lean techniques
10.	Digital MSME Scheme	Innovation	Adoption of digital tools
11.	Financial Support to MSMEs in ZED Certification Scheme	Quality & Competitiveness	Quality certification
12.	Support for Entrepreneurial and Managerial Development of MSMEs through Incubators	Innovation	Incubation support from concept to market.
13.	MSME Technology Centres (TCs)	Technology	Provides Technology support, Skill Development, and Product Development
14.	Procurement and Marketing Support (PMS) scheme	Marketing	Provide access to Market
15.	International Cooperation (IC) Scheme	Marketing	Provide access to International Market
16.	Public Procurement Policy for MSEs Order, 2012	Marketing	Ensure market opportunities
17.	A Scheme for Promotion of Innovation, Rural Industries and Entrepreneurship (ASPIRE)	Innovation	Incubation Support
18.	Promotion of MSMEs in NER and Sikkim- a sub-component of Central Sector Scheme "Technology and Enterprise, Resource Center".	Technology	Provides Technology support, Skill Development, and Product Development

S.no.	Name of the Scheme/ Programme	Sector	Intervention
19.	Intellectual Property Rights (IPR)	Innovation	Promotes Ip culture & adoption of IP as business Tool.

5. POLICY MEASURES

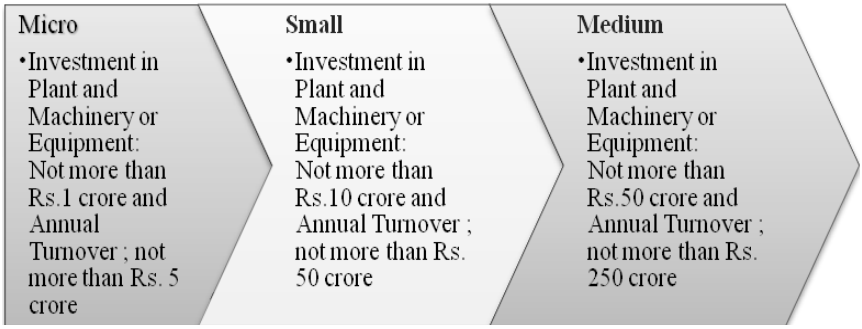
5.1. Redefining MSMEs (to widened scope):

There has been a strong urge to redefine MSMEs to make them compatible with the international definition of Small Enterprises. Internationally MSMEs are defined in terms of enterprise investment in plant & machinery, employment & turnover. Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 passed by Govt of India on 16th June 2006 wherein the MSMEs was defined into two categories namely manufacturing enterprises and service enterprises, and they are further classified based on their investment in plant and machinery, into categories of Micro, Small & Medium Enterprises (Table 5).

Table 5: Categorization of MSMEs sector

Enterprise	Manufacturing Enterprise (Investment in Plant & Machinery) In Indian Rupees	Service Enterprises (Investment in Plant & Machinery) In Indian Rupees
Micro	Up to Rs. 25.00 Lakh	Up to Rs. 10.00 Lakh
Small	More than 25 lakh but does not exceed five crore	More than 10 lakh but does not exceed two crore
Medium	More than five crores but does not exceed ten crore	More than two crores but does not exceed five crore

MSME Act was amended wherein the definition of MSMEs was revised, and the amended act was enforced from 1st July 2020. The new definition of MSMEs has replaced the classification of MSMEs based on manufacturing based enterprises and service-based enterprises and introduced the composite criteria based on the Investment in Plant & Machinery and Annual Turnover by the Enterprise (Fig. 1).



MSME[5]

Fig. 1 Redefining MSMEs based upon Investment in Plant & Machinery and Annual Turnover

5.2. Champion MSME

A platform was required where MSMEs can approach the Government and Their grievances can be addressed on a real-time basis. A portal named CHAMPIONS (Creation and Harmonious Application of Modern Processes for Increasing the Output and National Strength) was introduced in May 2020 to increase MSMEs' approachability to the government[11]. The Champion MSME portal's objective is to help MSMEs in some issues related to finance, raw materials, labour or any permissions required, etc. Further, the purpose is to capture new opportunities in the manufacturing and services sectors and identify the stimulus to brighten MSMEs. They can withstand various challenges at present and become national and international champions (Champions.gov.in, 2020) . The portal comprised all the information & programmes related to MSME Schemes and allowed the enterprise to interact with the Government online. The small enterprises face grievances & issues that can be registered at the portal, and suggestions/advice can also be submitted to the MSME Ministry on various ground realities.

5.3. Govt. e-market (GeM) Portal

This has been another significant step to promote inclusiveness, transparency and efficiency in public procurement through technology-driven solutions on Government purchase by various Ministries and Government agencies. In the Budget speech of financial year FY 2016-17, it was announced to set up a technology-driven platform to facilitate procurement of goods and services by various government agencies. To achieve this, a portal was launched in 2016, which provides quick, transparent, cashless, contactless and paperless transactions

and creates a more efficient procurement by the government department[8]. The MSMEs are registered as suppliers of the items to quickly get contracts and supply to Government as per procurement policy.

5.4. MSME Samadhaan

It was another step to help small enterprises and resolve their issues related to delayed payments. As per the MSME Act 2006, buyers would be liable to pay compound interest to the supplier for non-payment of the goods & services rendered within 45 days. The state government sets up the Micro & Small Enterprise Facilitation Council (MSEFC) for disputes settlement on delayed payments to Micro Small Enterprises. To provide ease of filing online application by the supplier, the Micro Small Enterprise units against the buyer of goods/ services before the concerned MSEFC of his/her State/UT. A portal, i.e. MSME SAMADHAAN- Delayed Payment Monitoring System, was launched on 30th October 2017 by the Ministry of MSME, Govt of India. As per the portal, till December 2020 approx. 62, 257 complaints have been filed by the MSMEs, which involves an amount of Rs.17,727 Crore approx. of delay payment to MSEs. Out of which 5497 cases were resolved through mutual consent comprising an approx. amount of Rs. 835.42 Crore. This platform has been a great instrument to monitor the delay payment issues with MSEs and provide speedy solutions[14].

5.5. Enterprise Development Centers (EDCs)

It was a much-awaited step capable of enhancing the MSME outreach and further consolidating the enterprise facilitation process. MSME-Development Institute has been conceptualized as EDCs and been a nodal point to provide all handholding support & information for entrepreneurship development.

5.6. National IPR Policy

After 2014, we witnessed many changes in Intellectual Property (IP) laws and associated business laws that have created an IP investment ecosystem in India. All these significant changes in IP and allied laws enable a robust innovation ecosystem in India, where the fruit of IP generation, protection, enforcement, and monetization is ripening. The change in the scenario in the last 5-6 years indicates significant IP landscape changes to attract Foreign Direct Investment (FDI) in India. It allows access to cutting edge technology and manufacturing expertise under Atma-Nirbar Bharat. India is now on the brink of a more substantial IP wave.

[14] MSME, MSME SAMADHAAN— Delayed Payment Monitoring System. <https://samadhaanmsmegovin/MyMsme/MSEFC/MSEFC_Welcomeaspx>. 2020.

As indigenous and international companies, Inventors, Innovators and Start-ups registered and operating from Indian soil, including prospective companies, want protection for their technology and intellectual property, which can be leveraged and commercialized globally. Hence strengthening IPR policy becomes imperative from the viewpoint of economic development in India. This policy will help alleviate apprehension among foreign companies that are cautious about investing in India while strengthening the current IP regime. There are two crucial aspects to IPR in India. One is the strengthening of the IPR policy regime through legislative, judicial, and executive framework; the other pertains to companies' awareness and use of such a regime. Therefore National IPR Policy 2016 has created a conducive environment for nurturing ground-level innovation and knowledge-system in the country, focusing on MSMEs sectors[15]. Towards this direction, various initiatives by the Govt. of India such as Digital India, Make in India, Stand Up India, Start up India, Vocal for Local making MSMEs self-reliant has been made towards nation growth.

Micro, small and medium enterprises (MSMEs) can reap huge benefits from automation and digital technologies in this rapidly digitizing world in this digital era. In the crisis time of COVID19, digital technology adoption plays a promising role in connecting with customers, enabling them to catch up with big companies and stay relevant in the global supply chains.

However, MSMEs in India have low awareness about all new digital technologies that are prevalent today. It is estimated that there are more than 70 million SMEs/MSMEs in India, but the digital penetration has not been that encouraging. The non-adoption of digital technologies by MSMEs may suffer due to lack of awareness and fear of adopting such technologies. Hence Govt. of India, through its Ministries, has been playing an instrumental role in spreading "digital literacy and adaption of digital technologies by Indian MSMEs". Recent funds announced and earmarked for MSMEs should be expressly set aside and used for long-term, soft funding of MSMEs' IT penetration. In parallel, the digital transformation efforts of MSMEs could be explored. In this direction, the Digital MSME scheme has a provision to provide subsidy to MSEs for using Cloud-Based software etc.

Further, the Covid-19 crisis has taught us the importance of local manufacturing, the local market and regional supply chains to fulfil the dream of Hon'ble Prime Minister of India of self-reliance: Make in India, lower import-dependent etc. The vocal for Local initiative helped promote local businesses, especially the MSMEs that have faced the severe burnt during the covid crisis time.

[15] DPIIT, National IPR Policy, Department for Promotion of Industry and Interenal Trade (DPIIT) <https://dippgovin/policies-rules-and-acts/policies/national-ipr-policy>. 2016.

5.7. Interventions during Covid Pandemic

It has been a tough time during the pandemic for the industry to survive. They are not getting any revenues due to lack of demand in the market; however, their expenditure was static. Industry, especially the small enterprises, required some immediate fund to stand again. To boost the flow of liquidity to MSMEs Govt. of India has announced some special packages to provide immediate relief to the industry.

Govt. of India had approved funding support of Rs. 3.00 Lakh Crore, which will provide guarantee free and collateral-free loan to 45 Lakh small enterprises. The support has shaped a scheme called the Emergency Credit Line Guarantee scheme, which provides 20% additional credit to an Enterprise on a total outstanding loan up to Rs. 50 Crore outstanding with the enterprise. The credit also being provided without any collateral.

The Indian Government has introduced another intervention to help the industry who are become NPA or on the verge of becoming NPA during the pandemic. Government of India had sanctioned funds for sub debt amounting to Rs. 20,000 crores which are likely to benefit approximately two lakh micro & small enterprises. This invention provides 15 % credit on the enterprise's stakeholding or a maximum of 75 lakh, which is being infused in the enterprise, so their debt to equity ratio enhanced[11].

The Government has disallowed the global tenders up to Rs. 200 crores, which has helped the small enterprise get business during the pandemic and make the road map for self-reliant India. There have been several interventions to make the small industry globally competitive.

6. CONCLUSION

Post-2014 has been the transformation era for the MSME sector to achieve global competitiveness and make India a manufacturing hub for the world market. With the size and contribution and the Government's ecosystem, the MSMEs industry will grow to become competitive worldwide. Government of India initiatives like Make in India, Digital India, vocal for local has created an environment where the sector can attain new heights. This support is required to be continued for MSMEs to make this sector world leaders. Access to technology, market, innovative products, digital space penetration is incentivising to set up the MSMEs industry. It has further impacted the whole chain of entrepreneurship positively.

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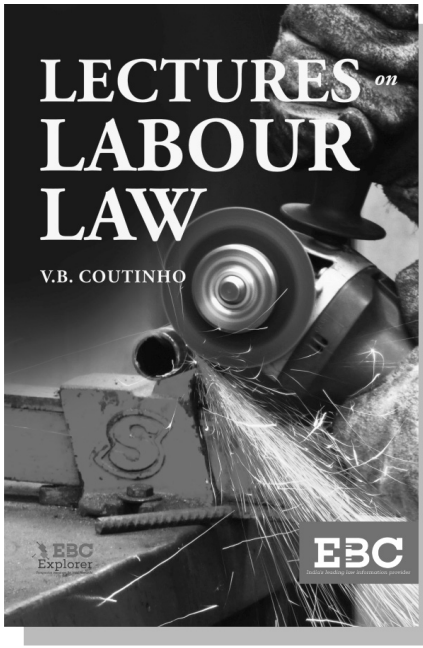

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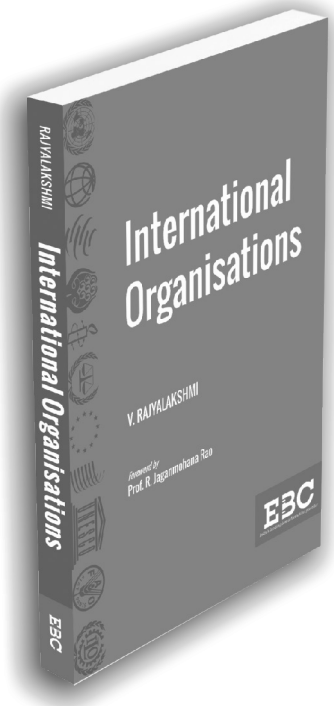

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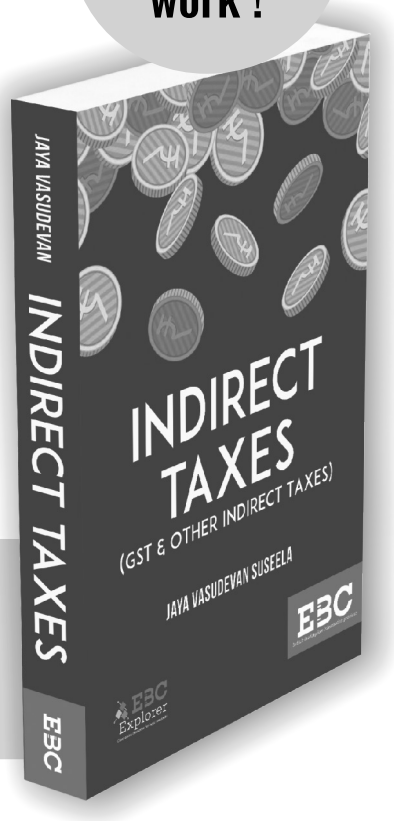

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