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“Reservation was not contemplated for all the time by the Framers of the Constitution. On the one hand, there is no exclusion of those who have come up, on the other hand, if sub-classification is denied, it would defeat right to equality by treating unequal as equals”

- Arun Mishra, J. in
State of Punjab v. Davinder Singh,
(2020) 8 SCC 1, para 45

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Lex Revolution

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- To provide a platform to discuss the problems related to socio-legal and research issues.

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A STUDY OF THE IMPACT OF CLIMATIC HAZARD ON AGRICULTURAL PRACTICES IN ASSAM WITH SPECIAL REFERENCE TO BHURAKALA GAON, JORHAT

Nitumoni Gogoi* & Bhupali Saikia**

Abstract

Climate change can drive significant and long-term changes in the statistical distribution of weather patterns over periods of time ranging from a few decades to millennia, regardless of the cause. Climate change and agriculture are interrelated processes, both of which take place on a global scale. Global warming affects agriculture in a number of ways, including through changes in average temperatures, rainfall and climate extremes; changes in pests and diseases; changes in atmospheric carbon dioxide and ground-level ozone concentrations; changes in the nutritional quality of some foods; and changes in sea level. The main objective of this study is to identify the root causes and consequences of climatic hazard on agriculture and to access climate change influencing farmers' livelihood and productivity. The researchers tried to identify the legal parameters in maintaining climatic hazard for better protection and for that researchers have adopted both primary and secondary sources of data, the former one is collected through survey and field visit in the study area and the later one is collected through books, journals, magazines etc.

Keywords: *Climate change, Agriculture, Climatic Hazards, Global warming*

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INTRODUCTION

Climate change is the global phenomenon of climate transformation characterized by the changes in the usual climate of the planet (regarding temperature, precipitation, and wind) that are especially caused by human activities. As a result of unbalancing the weather of Earth, the sustainability of the planet's ecosystems is under threat, as well as the future of humankind and the stability of the global economy.¹

NASA's definition of climate change says it is "*a broad range of global phenomena created predominantly by burning fossil fuels, which add heat-trapping gases to Earth's atmosphere. These phenomena include the increased temperature trends described by global warming, but also encompass changes such as sea-level rise; ice mass loss in Greenland, Antarctica, the Arctic and mountain glaciers worldwide; shifts in flower/plant blooming; and extreme weather events.*"²

While the word *agriculture* is a late Middle English adaptation of Latin *agricultūra*, from *ager*, "field", and *cultūra*, "cultivation" or "growing". Agriculture is the science and art of cultivating plants and livestock and thus agriculture usually refers to human activities. Agriculture is defined with varying scopes, in its broadest sense using natural resources to "produce commodities which maintain life, including food, fiber, forest products, horticultural crops, and their related services".³ Agriculture has an important role to play in the economic growth of an agrarian economy like that of India. Therefore, this study would mainly focus on the State of Assam considering the Jorhat District where the local habitants totally depends their earning sources on agriculture.

In Assam among all the productive sectors, agriculture makes the highest contribution to its domestic sectors, accounting for more than a third of Assam's income and employs 69% of workforce. Assam's biggest contribution to the world is Assam tea. It has its own variety, *Camellia sinensis* var. *assamica*. The state produces rice, rapeseed, mustard seed, jute, potato, sweet potato, banana, papaya, areca nut, sugarcane and turmeric. Assam's agriculture is yet to experience modernization in a real sense.

¹ Climate Change: Meaning, Definition, Causes, Examples And Consequences; Available at: <https://youmatter.world/en/definition/climate-change-meaning-definition-causes-and-consequences/>

² Ibid.

³ Available at: <https://www.coursehero.com/file/61075691/AGRICULTUREpdf/>, Accessed on 29th May, 2020.

Study Area

Here, the study area comprise of Jorhat district of Assam. Jorhat is an administrative district of the Indian state of Assam situated in the central part of the Brahmaputra Valley. The district is bounded by Majuli on north, Nagaland state on the south, Sivasagar on the east and Golaghat on the west. On the north of the district, the river Brahmaputra forms the largest riverside island of the world. The administrative seat is at Jorhat town.

With the tropical monsoon climate, Assam is temperate (summer max. at 95–100 °F or 35–38 °C and winter min. at 43–46 °F or 6–8 °C) and experiences heavy rainfall and high humidity. The climate is characterized by heavy monsoon downpours reducing summer temperatures and affecting foggy nights and mornings in winters, frequent during the afternoons. Spring (March–April) and autumn (September–October) are usually pleasant with moderate rainfall and temperature.



Source: Internet (Google map)

The researcher has adopted both primary and secondary sources of data, the former one is collected through observation visiting in the study area and the later one is collected through books, journals, internet etc.

CLIMATIC CHANGES AND ITS EFFECT ON AGRICULTURE

The potential major effect of climate change on agriculture are the shifts in the sowing time and length of growing seasons geographically, which would alter planting and harvesting dates of crops and varieties currently being used in an area. Seasonal precipitation distribution patterns and amounts could change due to climate change. With warmer

temperatures, evaporate transpiration rates would raise, which would call for much greater efficiency of water use.

In order to understand the farmers' response to changing climatic condition, a very primary survey was conducted in Jorhat District. Jorhat regularly faces severe flood, and farmers need to adjust with changing climate for survival.

One of the important characteristics of the survey areas are that the chosen farm families are mostly small (more than 1 ha but less than 4 ha) and marginal (below 1 ha) farmers. Also, there is none uniform distribution of cultivated area among farming households in all the survey areas. About 65% of the respondent farmers in Jorhat district, respectively, small holders. However , more than 25% of farmers have landholdings between 30.0 and 75.0 bighas in Jorhat district .It also indicates the presence of common land-leasing practice in all those survey areas. The landholdings are not only small in size but also fragmented into many parcels due to subdivisions on account of breakdown of the joint family system and law of inheritance. The lease out and lease in phenomena are found to be more prominent among the marginal and small farmers. However, lease on short-term contracts and sub-stantial fraction of croplands would lead to fewer incentives for investments in soil conservation by the operators. However, owner farmers have more capacity to adopt new technologies frequently than owner-cum-tenant and tenant farmers (Habiba et al. 2012).Moreover, it is widely believed that land ownership encourages adaptation of technologies like irrigation , application of fertilizer , etc. Farmers adapt their choice of farm type and irrigation to their local climate that treats the choice of crops, livestock and irrigation as endogenous factors (Mendelsohn and Seo 2007).

Various types of crops are cultivated by the respondent farmers in different seasons. Generally, the major crops grown are paddy, wheat, mustard, sesamum, blackgram, greengram, lentil, pigeon peas, chillies, turmeric, ginger, sugarcane and others are grown to a minor extent.

Paddy is mostly grown as both Ahu (autumn) and Sali (winter) in kharif season. Ahu is grown by broadcasting in the month of March- April and harvested in June-July. Sali is cultivated by both broadcasting and transplanting in June-August and harvested in December-January. Bao (low land/deep water) paddy is also grown to some areas in kharif season. Boro paddy (summer) is grown in Rabi season to a less extent. A majority of farmer pointed

out the irrigation system is not suitable for Boro cultivation; therefore they are not able to adapt to changes. The general crop rotations followed in the district are paddy-wheat, paddy-pulses or oilseeds, paddy-fallow-paddy, pulses-vegetables and major areas are under only one crop, mainly paddy.

Rice occupies the predominant place in the total cropped area, and mustard is the second most important crop. Share of non-food gains is still very less (merely 18% of GCA). This is an indication of very poor level of diversification and that toward inferior crops, which happens only when there is a lack of basic inputs like irrigation, access to capital, and other technology. However, there is significant inter-village variation in allocation of land toward non-food crops including jute, areca nut, sesamum, mustard, bamboo, and tea. Most of the farmers in Jorhat district utilize a part of their cultivable land for mustard, bamboo, and areca nut. This may be due to the occurrence of floods in rainy seasons that force the poor farmers to cultivate early some winter crops but less capital intensive and cultivate bamboo that can sustain in flood and protect homelands from the flood. However, for non-food-grain crops, it is irrigation that is important, as many of these crops are highly water intensive. Potato and chilly are grown mostly for home consumption like other vegetable crops by the farmers in the study area. All these above reflect the non-arrival of the Green Revolution technology at desired level, and the rural farmers have not yet fully adapted to the modern methods of cultivation.

Another important feature of surveyed area is that most of the farmers follow single cropping system. The low incidence of double cropping is due to the prevalence of traditional and subsistence farming depending primarily on rainfall with very limited irrigation facility, use of chemical fertilizer and flood and pesticide control arrangements. Moreover, there is great variation in the pattern of diversification across the survey areas in the district. This variation is in line with the disparity in share of income generated from the crop-raising activities. However, some varieties of rice are found to be grown by the sample farms. Overall, about two-third of the total sample farmers are agriculturally low crop diversified. It may be due to the impact of extreme climate hazards (especially regular food) in the area. The low diversified farm families have an average farm size of 24.95 bigha. Per capita income of those high diversified families is much more than that of the low diversified families is much more than that of the low diversified families. Total area under cultivation and degree of

diversification have significant positive impact on earnings from agriculture, while with rising number of agricultural labourer adversely affect the agricultural earning of the families.

Picture 1: Sugarcane cultivation



Source: Internet

Picture 2: Banana Cultivation



Source: Internet

Picture 3: Crop cultivation



Source: Internet

MEASURES ADOPTED TO MITIGATE CLIMATE RISK

The study tried to focus on farmer's perceptions and adaptation strategy followed in Assam. It provides information on the farmer's response to climate change and possible factors that influence their adaptation of strategies to moderate extreme climate impacts. Diversification of crops is one of the important adaptation measures where with the changing climatic conditions farmers can choose suitable cropping pattern over the years to adjust with the changing climate and simultaneously maximize returns from agriculture in their respective region. However, geographical locations and socioeconomic conditions have important influence on the farmer's adaptability with the changing technology and climatic conditions in diversifying their crops. Sources of acquiring new knowledge or information about agricultural technologies and their cost effectiveness are important factors that also affect technology adoption. However, most of the farmers in Assam particularly the survey areas are unaware of many programs sponsored by the government to promote adaptation of new technologies. It may be due to lack of information or knowledge regarding agricultural techniques. These farmers being more tradition ridden and conservative are found to be less responsive toward the adoption of new agricultural technology. However, some farmers are ready to adopt new agricultural technology but are not in a position to adopt the improved technology at the full scale due to certain socioeconomic constraints faced by them in their daily life. Farmers produce both the modern and traditional varieties of crops simultaneously depending upon the availability of seeds and capital.

Experience of last 5 years by the respondents reveals that the entire Jorhat District has never been affected by floods but rarely do they face flood. Farmers of survey areas are reported damage of their crops due to floods and damage of some crops of a few farmers due to pests and insects are reported for the last 5 years. Farmers of survey areas are reported several adaptation measures to save their crops particularly from floods that occur frequently every year and at different times. Most of the respondents adopt early cultivation method and cultivate short period crops to save from floods and harvest early. They argued that early land preparation and plantation is associated with increased chances of survival of the crops (mainly winter paddy) from floods. Over three-fourth of the respondents preserve seedlings for sowing again if the crop is damaged due to flood during the peak monsoon time. It is clear that, despite a number of constraints faced by the farmers in the study area, there is enormous scope to diversify their crops and adaptability varies across the space with the changing

technology and environment. Adaptation and disaster mitigation requires adequate knowledge, access to suitable technology, capital and appropriate policy measures. A failure in adaptation with the changing climatic uncertainty may lead to socioeconomic disaster and jeopardize the livelihood security of the people particularly those who are dependent more on natural weather for agricultural activities.

ADAPTABILITY OF FARMERS IN RESPONSE TO CLIMATE CHANGE

Agricultural adaptation to climate risk is a relatively new field of inquiry in North-East India. Knowledge of the respondent farmers and farm size and area of holdings and share of family income from agricultural activities are found to be important factors for the diversification by the farmers. Training to the farmers and irrigation intensity however do not significantly influence crop diversity here. This may be due to the fact that training on cultivation of particular crops makes the farmers proficient on some specific crops and not on diversification needs. Also slowly growing irrigation facilities helped the small and marginal farmers to go for some staple food crops for food security, and agriculture is still at subsistence stage. In respect of adaptation, looking at the features of the farmers, it is observed that the level of education of the heads of households improves level of adaptation. Education generally increases knowledge and helps farmer to gain adaptive capacity to the changing climatic conditions and use of appropriate agro-technologies. The size of operational holding of the farmer (total cropped area) and years of cultivation experience also have significantly positive impacts on adaptation. The implication is that adaptive capacity of farmers increases with the increasing size of the landholdings and cultivation experience. However training of the farmers is found to have no impact on adaptation as the training conducted by the concerned departments are basically held to train farmers on raising crop productivity through the use of modern technology rather than on adaptation and awareness strategy toward climate change in Assam. The above discussion reveals that, in spite of many problems and limitations, the rural farmers of Assam manage to raise varieties of crops under rain-fed weather condition depending upon their availability of resources. One of the major factors hindering the proper utilization of new farm technology is the dominance of scattered tiny plots (marginal and small in size) in the state. It is needless to mention that training of farmers on available modern technology can go a long way in accelerating the agricultural production and productivity.

Most of the farmers are found to be risk averter and are sceptical in trying new varieties. It is also observed that farmers are not aware of the concept of crop planning, and the effort of the agriculture department to train the farmers is inadequate. As expected in the traditional cropping system, thus crop diversification is limited as the farmers do not have suitable facilities and supporting agro-infrastructure. Lack of climatic changes perception of the farmers in the survey area of Jorhat district is due to limited climate change effects in the area. Nature of adaptation with the changing technology and climatic conditions by some sample farmers proves that farmers are eager to adopt newer technology in their cropping activities to save their crops and moderate climate change impacts.

Table 1: Agricultural facility provided by the Government for farmers found during survey.

Facility provided by Government	Total percentage (%)	Yes (%)	No (%)
Soil health care	100%	0%	100%
Krishi vigyan kendra	100%	10%	90%
Krishan call centre	100%	10%	90%
NICRA	100%	20%	80%
Insurance	100%	10%	90%

Bhogdoi River collects its water from the monsoonal rain, thus it is non perennial, for this non perennial nature, the problem of flood effective in region. In this radius the bed appears to stand above the agricultural field and village.

1. At Bhurakala gaon area primary source of livelihood is agriculture and climate change has gradually started affecting this source of livelihood. During the discussion, the participants also mentioned that till about a decade back they used to raise two to four crops and used to earn enough for themselves but this has started falling down.
2. According to the union budget 2016, there are few scheme which has been launched in the favour of farmers like, ***Pradhan Mantri Krishi Sinchai Yojana, Parampragat Krishi Vikas Yojana, Soil Health Card*** etc.

3. According to the information obtained from agriculture information centre (ATIC) of Assam Agriculture University(AAU), Krishi vigyan Kendra have been set up in all the districts and Kisan call centres in every state to help the farmers by disseminating useful information.
4. The National initiative on climate resilient agriculture is a project which was launched in 2011, with the aim to mitigate the problem of the villages facing extreme weather condition, NICRA provide location specific climate resilience interventions to minimize production loss.
5. A majority of the farmer pointed out the irrigation system is not suitable for Boro cultivation, therefore they are not able to adapt to the changes.
6. Most farmers have not enjoyed the soil health card as yet. Moreover farmers have least idea about kisan call centre (**1800-180-1551**), they hardly interact with the Krishi Vigyan Kendra officials. The farmers have not adopted any agriculture insurance policy for agriculture felid and other instruments.

The farmers point out that as result of climate change there has been a rise in temperature and also the frequency and intensity of flood has increase which is affecting their source of livelihood.

Most of the farmers also said that their agricultural production has gone down over the years, and this is affecting their source of income for families. Farmer also mentioned that the rate of river bank erosion also affect in agriculture felid.

IMPLEMENTATION OF LEGAL ASPECTS IN CLIMATIC HAZARD

India became a signatory to the Montreal Protocol in 1992. India is an Article 5 country and is entitled to assistance from the Multilateral Fund in its efforts to phase out ODSs and switch over to non-ODS technologies. India mainly manufactured and utilized 7 of the 20 substances controlled under the Protocol. These are CFC-11, CFC113, CFC-12, Halon-1301, Halon-1211, Carbon tetrachloride, Methyl Bromide and Methyl Chloroform.⁴ In India, the implementation of the Montreal Protocol comes within the ambit of the Ministry of

⁴ Montreal Protocol [UPSC Environment & Ecology]; Available at: https://byjus.com/free-ias-prep/montreal-protocol/?utm_source=Google&utm_medium=CPC&utm_campaign=MI_IAS_BMM_Mumbai_Eligibility_Dec_&utm_term=&gclid=Cj0KCQjw9b_4BRCMARIsADMUIyph7cwZQr1dn6SvHd2_WGPWBcqTfvXAjvRAIS53VfeNikwnfKenLscaAnRIEALw_wcB Accessed on: 16.07.2020.

Environment, Forests and Climate Change. The Ministry has established an Ozone Cell for the purpose of implementing the Protocol.

The Kyoto Protocol is an international treaty which extends the 1992 United Nations Framework Convention on Climate Change (UNFCCC) that commits state parties to reduce greenhouse gas emissions, based on the scientific consensus that (part one) global warming is occurring and (part two) it is extremely likely that human-made CO₂ emissions have predominantly caused it.⁵

The Vienna Convention for the Protection of the Ozone Layer is a multilateral environmental agreement signed in 1985 that provided frameworks for international reductions in the production of chlorofluorocarbons due to their contribution to the destruction of the ozone layer, resulting in an increased threat of skin cancer.⁶

The Paris Agreement's long-term temperature goal is to keep the increase in global average temperature to well below 2°C above pre-industrial levels; and to pursue efforts to limit the increase to 1.5 °C, recognizing that this would substantially reduce the risks and impacts of climate change. The Paris deal is the world's first comprehensive climate agreement.⁷

In India the Ministry of Environment and Forests (MoEF) is the nodal agency in the administrative structure of the Central Government for planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes.⁸ The National Action Plan on Climate Change (NAPCC) encompasses eight core missions on specific areas of Solar Energy, Enhanced Energy Efficiency, Sustainable Habitat, and Water, Sustaining the Himalayan Ecosystem, Strategic knowledge for Climate Change, Green India and Sustainable Agriculture.⁹ State Action Plans on Climate Change (SAPCC) have been prepared in line with the NAPCC to achieve coherence between the strategies and actions at national and sub-national level. Climate Change Action program (CCAP) is a central sector scheme with an objective of building and strengthening scientific & analytical capacity for climate change assessment, establishing appropriate institutional

⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change. UN Treaty Database.

⁶ Nolan, C.V.; Amanatidis, G.T. (1995), *European commission research on the fluxes and effects of environmental UVB radiation*, Journal of Photochemistry and Photobiology B: Biology

⁷ Paris Agreement, FCCC/CP/2015/L.9/Rev.1 (PDF). UNFCCC Secretariat

⁸ About MoEFCC - PARIVESH, Available at: <http://parivesh.nic.in/About.aspx>, Accessed on: 06.08.2020

⁹ Annual Report 2019-2020 Ministry Of Environment, Forest and Climate change Government of India, Available at: <http://moef.gov.in/annual-report-2019-2020/> Accessed on: 08.08.2020

framework and implementing climate related actions in the context of sustainable development at Central and State levels.¹⁰

In response to the decisions of the Conference to the Parties, India submitted its Nationally Determined Contribution for the post-2020 period to UNFCCC on 2nd October, 2015, outlining the climate actions intended to be taken under the Paris Agreement. The period of implementation for India's NDC is 2021-2030. For preparing the road map for implementation of India's NDC, the Ministry is holding inter-Ministerial consultations through an NDC Implementation Committee Chaired by Secretary, EF&CC, and six thematic Sub-committees, involving key Ministries and Departments of the Government of India.

OTHER SUCH INITIATIVES UNDERTAKEN BY GOVERNMENT OF INDIA

- Upskilling air-conditioner service technicians under Pradhan Mantri Kaushal Vikas Yojana,
- Department of Agriculture & Horticulture in Assam to provide food and nutritional security to the people of Assam and make Agriculture profitable and attractive enterprise with sustainability,
- Mukhya Mantri Krishi Sa Sajuli Yozana,
- National e-Governance Plan Agriculture (NeGP-A),
- Paramparagat Krishi Vikas Yojana(PKVVY),
- National Mission on Agricultural Extension & Technology (NMAET),
- Rashtriya Krishi Vikash Yojana (RKVVY),
- Assam Government has launched a Mega Mission named as Chief Minister Samagra Gramya Unnayan Yojana(CMSGUY)to double the farm income in five years.

VARIOUS LEGISLATIVE ENACTMENTS

According to Article 38 of the Constitution of India, State must secure social order for promotion of the welfare of the people and to minimize inequalities and income and endeavour to eliminate inequalities in status, facilities and opportunities. Article 39 assures right to an adequate means of livelihood. Article 39(A) speaks of free legal aid. Article 48 the Constitution of India deals with organization of Agriculture and Animal husbandry.

- The Insecticides Act, 1968

¹⁰ Ibid

- Agricultural Produce (Grading and Marking) Act, 1937
- The Seeds Act, 1966
- Protection of Plant Varieties and Farmers' Rights Act, 2001
- The Assam Agricultural Pests And Diseases Act, 1950
- Assam Farmers (Group Irrigation) Act, 1978

CONCLUSION

In the context of foregoing discussion, it is felt that there is urgent need of improving the present agricultural situation in Assam by raising the crop intensity through multiple or relay cropping and substantially raising the productivity of crops per unit of area.

It is very unfortunate that the various land reform measures undertaken in Assam have not been implemented properly to assist the farmers in their endeavours to raise agricultural production. Therefore, the following steps should be taken to implement these measures properly and if necessary by changing the existing policies.

- a) For this purpose, a drastic land distribution policy should be taken, which will break the monopoly of big farmers and help equal distribution of rural income.
- b) The agricultural land distribution policy of the Government should be such that each farmer gets sufficient land for remunerative production.
- c) In order to reduce the pressure of population on agricultural land, Government should undertake programmes for the development of rural based industry and other projects such as transport, irrigation projects, rural electrification etc. Such programmes will absorb a large labour force and thus will release the excess surplus labour force from agriculture.

SUGGESTIONS

Following the suggestions provided by the researchers in the context of the climatic hazards.

a. Development Of Agricultural Research, Education, Training And Extension Services

For the development of agriculture, the research and extension services of Assam will have to be strengthened to provide solutions of problems faced by the farmers. For this purpose,

agricultural research institution should be revitalized. The various research conducted by the Agricultural University should be based on local level problems and production oriented so that it can suit the specific needs of the state. The agro-climatic and other situations of Assam are different from other parts of the country. Assam has fertile soil for different crop cultivation, but the soil of certain area need special treatment to raise the yield of crops. Therefore, agricultural research work in the state should be directed to evolve such seeds and technology that will be most suitable for the different types of soils and climatic conditions of the state and farming technology appropriate for small and marginal farmers. Further, there must be wide publicity about the seeds and technology developed by such research work among the farmers through establishment of experimental farm and by holding field demonstrations.

b. Pest Management

As the HYV seeds are easily susceptible to pest and diseases, necessary steps should be taken to protect the crop from the ravages of pest by adopting appropriate pest management practices.

c. Irrigation And Water Management

Agricultural development depends a great deal on the availability of adequate and assured irrigation facilities. Assured irrigation especially during winter months is an imperative need for the optimum utilization of chemical fertilizers and HYV seeds. Irrigation also enables diversification of cropping pattern from the traditional mono-cropping to multiple cropping vis-a-vis increase in productivity. So, required steps should be taken in time to develop the irrigation facilities and water management system in the state. For this purpose the following measures have been suggested:

- a) Detail soil surveys should be carried out in the areas where irrigation facilities are available to find out the optimum requirements and over application of water. Incentive should be given to those farmers who save water and the motto for the farmers should be '*more crop per drop of water*'
- b) Govt. should identify areas suitable for setting up Lift Irrigation schemes and provide adequate funds for completion of schemes.

- c) To minimize wastage of water and water logging and salinity proper drainage facilities should be developed.
- d) Financial assistance should be provided to farmers for purchasing and repairing of machines, pump sets etc in time.
- e) The micro irrigation system such as drip irrigation not only saves each drop of water most efficiently, but also save the soil from getting water logged or saline. Steps should be taken to adopt and develop such schemes in the district and in the state.
- f) Water management requires substantial skill which depends upon technical knowledge of the persons involved in irrigation. So, proper training should be given to farmers and irrigation workers.
- g) High priority should be given on rural electrification.
- h) In Assam there is a wide gap between irrigation potential created and utilized. Govt. should take steps to reduce the gap.

d. Natural Hazards

Flood in Assam is main natural and regular hazard which causes much damage to crops every year in all the localities of the state; as a result, control of flood is the urgent necessary for increasing production. Actually, the flood problem of Assam is caused by the mighty river Brahmaputra and its tributaries. The problem is so severe and costly that it is not possible to tackle it by the state Govt. alone. Some part of the state is sometimes suffered from drought situation due to irregular rainfall. The following suggestions have been made to minimize the damage due to flood and drought in the district and the state:

- a) To minimize the damage early variety of paddy and short duration crops should be cultivated before the probable flood period.
- b) There are some flood resistant paddy and other crops, which should be cultivated during the flood period. Proper selection of crop rotation also help the flood affected farmers to a great extent.
- c) Flood can be controlled scientific way by constructing dams and reservoir in flood prone area.

- d) Proper irrigation facilities can minimize the effect of drought in drought prone areas.
- e) The flood problem in Assam should be recognizing as a National Problem and Government both a State and Union should think for permanent solution.
- f) For all these, research is essential and Govt. should install such research centre under the guidance of reputed scholars in the line.

Agriculture is strongly influenced by weather and climate. While farmers are often flexible in dealing with weather and year-to-year variability, there is nevertheless a high degree of adaptation to the local climate in the form of established infrastructure, local farming practice and individual experience. Climate change has significant economic effects on agriculture including changes in farm productivity cropping pattern, profitability price, supply and trade. The variability of climate poses major challenge for the large peasantry and small farmers. Climate change can therefore be expected to impact on agriculture, potentially threatening established aspects of farming systems but also providing opportunities for improvements.

ANALYSING THE INTERLINK BETWEEN INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS

Rima Ghosh* & Dr. Shova Devi**

Abstract

The Interlink between Intellectual Property Rights (IPR) and Human Rights are very substantial in nature. Diverse contextual aspect of intellectual property has been extended with human right as IPRs are creation of human intellect. The interphase between Intellectual Property and human right are supported by the policy makers, academic critics, bureaucrats and civil society organizations. By this it can be assured that the existence of the coexistence approach, notwithstanding, the human rights obligation towards the intellectual property arena is not yet explored in a greater context. The boundary of human rights and willingness to accept human rights are extending to the corporate's owners through intellectual property rights. These extensions require the protection of individual through different kind of intellectual property registration. Registration of intellectual property within the ambit of constitutional values needs to be taken care for the prevention of human rights violation. This also prevents the work from being recoded or any other modification which prejudice to the authors reputation. Similarly, other intellectual property aspects also attract the same. This research work identifies and analyses the holistic approach of intellectual property rights and human rights with different attributes.

Keywords: *Human Rights, Intellectual Property, Author, Inventor*

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INTRODUCTION

People's standard of living is tremendously changing in the recent days. The lifestyle of the people from normal life to quality life is shifting towards advancement. It is because of the improvement and development of technology and knowledge various fields including the medical field. Moreover, enhanced quality of life to produce new drugs, labour for invention and productivity has been growing increasing concern for the human rights as well as intellectual property. With that inequalities prevail in health sector is in more related to the theme. There is a significant relation with that of developed and developing countries. Every country has their own agenda to improve human right. This apprehension is with the human rights fascination. There are lots of recognized and enforced mechanisms which suggest that the new forms of intellectual property fall under human rights.¹ With the said context human rights placed as a trump card for every country to respect their human centric behaviour. In all the sector of human rights arguments are set for the benefit of the human being and respected to an ultimate extent.² This is also fact that both the side good and bad phenomenon available. If the calculation of good happens, then the idea for human rights is exclusively successful. At the same time, if the bad calculation happens then the aspects of all high ended 'trump Card' are wastes.³ However, with this variety of argument, the aspect of human rights is interrelated with intellectual property rights. There is sector specific relation which adds the value of human rights in a very lucid way.

BRIDGE OF HUMAN RIGHTS & INTELLECTUAL PROPERTY RIGHTS

The bridge of the human rights and intellectual property depends on the below attributes:

Intellectual Property Rights , Human Rights And Economy

In the aspect of intellectual property, the only aspect is economy growth of an individual as well country. The idea is being placed for the growth in different way, like the innovation of the country may lead the notion of economy. This notion can only be recognized by the system of strengthening the original process of intellectual property protection. In the same

¹ Neumayer, E. (2005). Do international human rights treaties improve respect for human rights? *Journal of conflict resolution*, 49(6), 925-953

² Macmillan, F. (2008). Human rights, cultural property, and intellectual property: three concepts in search of a relationship. *See Gruber & Burri-Nenova*, 2008, 50-63.

³ James, F. D. (Ed.). (2010). *Educational Judgments (International Library of the Philosophy of Education Volume 9): Papers in the Philosophy of Education*. Routledge

way IPR regime could contribute the foreign direct investment for the country's growth. It is the growth of international trade inflow between the countries to community. These community benefits are more effectual in most of the developed countries where the IPR protection laws are strong. The valid ground of human right for the individual needs to be ensured by the protection of intellectual property through economy.

Intellectual Property Rights, Human Rights And Innovation

Intellectual property is the only factor to address innovation of a country. The relation of the innovation with human right is only connected by intellectual property. Appropriate condition for the protection of intellectual property is made through the patentability. The patent protection is varying from industry to industry that is more effective on pharmaceutical industry. For better protection and appropriateness of the innovation argument put forward to be implement more stringent intellectual property laws. There is study which shows that 65 percent of pharmaceutical and in 30 percent in chemical innovation not guaranteed under patent protection.⁴ It is also accepted that most of the innovative areas are lacking the patent protection because of its nature. Likely, product patent is in demand for the different sector of drug, organic chemical, and pesticides.⁵ It is given the power to the real invertor in this competitive market. As a result of it the invention gets the higher life scale and has a vital role in terms of the IPR.

Intellectual Property Rights, Human Rights And Culture

As the mounting controversies round pharmaceuticals, genetically modified organisms, generation transfer, and faculty readings make clear; the expansion of corporately-held intellectual assets rights can battle with other diagnosed human rights together with rights to health, meals security, economic development, and education.⁶ One prominent response has been the movement to "loose way of life," based upon the large conviction that the growth and enforcement of intellectual belongings have a chilling effect on cultural creativity and the sharing of public items. It's not possible to safeguard the public domain work in patent protection from the crooked corporate system.

⁴ Arundel, A., & Kabla, I. (1998). What percentage of innovations are patented? Empirical estimates for European firms. *Research policy*, 27(2), 127-141.

⁵ Clark, T. (2011). *The Cambridge introduction to literature and the environment*. Cambridge University Press

⁶ Coombe, R. J. (1998). Intellectual property, human rights & sovereignty: New dilemmas in international law posed by the recognition of indigenous knowledge and the conservation of biodiversity. *Indiana Journal of Global Legal Studies*, 59-115.

The rights of peoples with admiration to their cultural history pose new and essential challenges for balancing the exercising of highbrow properties with individual freedoms of creativity. Those consist of a need for the global human rights gadget to pay more interest to capability violations of the cultural rights of minorities and indigenous peoples.⁷ Obligations to guard conventional environmental understanding and to appreciate indigenous cultural background are already internationally identified. States are seeking to satisfy their felony duties below the conference on organic variety and to appreciate global standards set up by using the Draft declaration at the Rights of Indigenous Peoples. The sector highbrow assets corporation (WIPO) has, likewise, identified a need to attain out to “*new beneficiaries*” if the highbrow property machine is to obtain worldwide legitimacy. This includes an extensive attempt to articulate the standards through which traditional knowledge and traditional cultural expressions are pleasant diagnosed, maintained, and guarded. All of these projects contain the elaboration of cultural rights, even though they're not often framed as such.⁸

There are UNESCO Conventions available which can be undergoing immediately on the question of “*the right lifestyle*”. These Conventions are: the sector history convention of 1972; the conference for the Safeguarding of Intangible Cultural historical past, 2006; and the conference at the protection and advertising of the diversity of Cultural Expressions, 2007. Of course, it seems pretty abnormal to share the first convention in the present context. That is, perhaps, due to the fact the continual linking among a few sorts of cultural rights and intellectual assets rights has inclined to advocate that what is probably defined as “*tangible tradition*”.⁹ The final phase of this bankruptcy queries this taxonomy, however; in thrall to it with the end result that this section can have extra to say about the alternative UNESCO Conventions. Further, in the aspect of evaluating human rights start before focusing at the UNESCO Conventions it's vital to not forget worldwide prison background.

Ultimately, to argue that just a few factors of a proper to existence constitute human rights, well defined, is interesting however does not solve the query of which, if any cultural rights ought to be issue to unlawful safety. It may be accepted that to protect cultural rights far from the truth of human rights. It also extends the arguments of protecting the cultural

⁷ Coombe, R. J. (1998). Intellectual property, human rights & sovereignty: New dilemmas in international law posed by the recognition of indigenous knowledge and the conservation of biodiversity. *Indiana Journal of Global Legal Studies*, 59-115.

⁸ Dutfield, G. (2001). TRIPS-related aspects of traditional knowledge. *Case W. Res. J. Int'l L.*, 33, 233

⁹ Macmillan, F. (2008). Human rights, cultural property, and intellectual property: three concepts in search of a relationship. *See Gruber & Burri-Nenova*, 2008, 50-63.

heritages and diversity, “*a guarantee of sustainable development*”,¹⁰ “*of general interest to humanity*”, and “*a common heritage of humanity*”.¹¹

Notwithstanding the commonalities among the human rights and highbrow property regimes, the Committee's “*center responsibilities*” method to authors' rights leaves many troubles unresolved. Maximum appreciably, it does now not outline the content of the “*ethical and materials pastimes*” which states are required to “*admire, shield, and fulfill.*” Here, the conflict lies with the domestic and international regulation of the intellectual property assets.

Intellectual Property Rights, Human Rights And Traditional Knowledge

Traditional knowledge is knowledge that belongs in various parts of the world to traditional cultures. It is found in the developing world in particular. It is spoken by mostly people, groups or communities from one generation in the next. Over the last few decades, the big companies have taken full advantage of this experience. Big firms discover traditional knowledge and transform it into products for commercial use with technology. Developing countries have recognized the consequences of these exploitations and, in particular at the WTO, raised concerns at various international levels. Through this way, the economic and other benefits which corporations reap from using their expertise are denied for many traditional societies. The right to use their own knowledge as multinationals are granted patents on this use are further deniable to these communities. In many cultures traditional expertise is often used to supply medicines. The problem is more aggravated when firms who exploit the traditional knowledge not only “*neglect to ask permission to reproduce these items, but also fail to acknowledge the source and even pass off productions and works as authentic expressions or products when they are not.*”

Traditional expertise is information owned in one-of-a-kind components in the sector with the aid of traditional communities. There are miles especially discovered in the world's development. Its miles have been transferred by the term, often by means of cultures, businesses or societies, from one technology to another. This information has been exploited notably by big companies within the previous few years. Large numbers explore common understanding and use technology for industrial purposes to turn into products. The consequences of these exploitations have been realized by increasing countries and the

¹⁰ Preamble, Convention for the Safeguarding of Intangible Cultural Heritage, 2003

¹¹ Preamble, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005

concerns posed at various international levels, particularly in the WTO. Therefore, the money and numerous benefits that can be obtained by the use of understandings by agencies are denied to many traditional groups.¹² The right to use its own definition as multinationals have been licensed on this use is further denied to these classes. Conventional experience is used in many communities routinely to provide medicines (Bodeker, G. 2003). The problem is more irritated when companies who make the most the traditional information no longer simplest “*forget about to invite permission to reproduce these items, however additionally fail to acknowledge the supply or even skip off productions and works as genuine expressions or merchandise when they're not.*”¹³

INTELLECTUAL PROPERTY RIGHT AND HUMAN RIGHTS CONFLICT

The issue of human rights is not only that of drug admission alone but also that of normal knowledge and transition of generations. Traditional groups make medicines using their traditional knowledge. Often major drug companies market this knowledge without even paying royalties or knowing the source.¹⁴ There are severe concerns in developing countries about protecting traditional know-how owned by their nations' conventional communities. In addition, one of the key roles of journeys is to help turn generation to develop international locations which are that and less advanced. Multinational parties, however, are not usually prepared to collaborate. Increasing foreign locations have expressed concern about the safety, conventional knowledge and technology transfer implications of the tool for intellectual property. Within this text, the relationship between the regimes is to be clear. That human rights and intellectual property rights that co-exist jointly is the key problem it addresses? The aim is to understand this complicated debate in the Indian context by reading it.

Intellectual property rights and Human rights once strangers are becoming increasingly close supporters at present. The two subjects progressed for decades in total isolation from each other. Over recent years however, global favourite putting practices have started to chart obscure intersections between, on the one hand, the legal rules on intellectual property and,

¹² Ghosh, S. (2003). Globalization, Patents, and Traditional Knowledge. *Colum. J. Asian L.*, 17, 73.

¹³ Dutfield, G. (2001). TRIPS-related aspects of traditional knowledge. *Case W. Res. J. Int'l L.*, 33, 233

¹⁴ Helfer, L. R., & Austin, G. W. (2011). *Human rights and intellectual property: Mapping the global interface*. Cambridge University Press.

on the other, the human rights rule.¹⁵

This is very important to take into account that there is only one aspect of human rights and Intellectual-property rights. As fundamental to human rights, intellectual property rights are contract rights given by government to knowledge owners in exchange for the value of such an invention; even as human rights are never expired, the intellectual property rights are restricted in time. Intellectual property rights are unlimited and not exhaustive in nature.¹⁶ It is accepted that intellectual property and human rights are primary responsibility for a country. In its overall statement the Committee defined: human rights are important because they can be intrinsic to the individual as such, while intellectual property rights are first and foremost a fundamental way in which states try to offer opportunities for innovation and originality, inspire new and modern innovations to be disseminated, and improve culture.¹⁷

India is a signatory member of the conventions respectively ICCPR & ICESCR. Both the convention assures the human rights of the individual and long with that the constitution of India guarantees the same in wider way. Nevertheless, the best Court in India found that any law given by the legislature to the legislative capacity could not override the fundamental human rights enshrined in Article 21 of the Constitution of India, especially the right to life and privacy.¹⁸ The appropriate residence in dignity and equality is provided for under Article 21 of the Charter. Article 21 no longer calls an animal of a trivial nature such as existence the right to life confident. That requires the freedom to live, higher standards of living, safety in the workplace and recreation. This is even broader. By its numerous rulings, India's very best court finds the right to lifestyle to the right to health and “*access to medical treatment.*”

INTELLECTUAL PROPERTY RIGHTS: SOCIO-ECONOMIC RELATION

Socio- economic condition of an individual can be enriched by the intellectual property value. The value of intellectual property vouched the norms of human rights as its moral rights. Anatomy of the socio-economic condition of an individual can be flourished by accepted nature of human intellect. This diagnosis is related to the reality of socio-economic aspects of

¹⁵ Helfer, L. R. (2003). Human rights and intellectual property: Conflict or coexistence. *Minn. Intell. Prop. Rev.*, 5

¹⁶ Cullet, P. (2007). Human rights and intellectual property protection in the TRIPS era. *Human Rights Quarterly*, 403-430.

¹⁷ Tully, S. (2006). Flighty purposes and deeds: a rejoinder to Malcolm Langford. *Netherlands Quarterly of Human Rights*, 24(3), 461-472.

¹⁸ Tamvada, S. S. (2010). TRIPS and Human Rights: The Case of India. *Jindal Global Law Review*, 2(1)

human being. Also, for non-ethical realists, a basic awareness check tends to be an ineffective way to determine whether or not anything is a human being. Examples of commonly-identified criteria are etiquette guidelines for the engagement of holidaymakers at international airports in the field. Also, for non-ethical realists, a simple identification check tends to be unsatisfactory to see if anything has the value of a person. Examples of commonly established norms are the etiquette regulations regulating contact between holiday makers at international airports across the industry. Does it comply with that the proper to queue, for example, has the equal general repute because the rights of existence and liberty? There appears to be “*something more*” worried within the concept of an everyday human rights norm whether or no longer is one a moral realist.¹⁹

Human rights are often regarded as a civil right Can it be argued plausibly that all states will enforce a small patent gadget and individuals who do not violate human rights? The philosophical framework of the principle of herbal rights does not contribute to an herbal right to property from labour practice.²⁰ “*In the 21st century, the economic growth of developing countries, as indeed also of the developed ones, will depend on the international competitiveness of their economy, industry, and business. Such international competitiveness, in turn, will be driven by knowledge-based technological progress, which can be achieved only through a well-functioning national system of innovation that has as its core, a strong, modern and well enforced intellectual property system,*” says Mr. Alikhan, a well-known author in IPR. ²¹

CONCLUSION AND SUGGESSTIONS

It's far as a result crucial to craft a *sui generis* machine of safety capable of assembly the heterogenic desires of respective communities, each with their personal peculiarities, cultures and assets, and of creating legal rights that not best defend against the perceived abuse of cultural heritage, but that also defend, at least in precept, absolutely everyone who can satisfy its necessities. Cultural historical past rights developed on this foundation can have stronger credibility and compatibility with current belongings rights and legal responsibility structures.

¹⁹ Perry, M. J. (1997). Are human rights universal? The relativist challenge and related matters. *Human Rights Quarterly*, 19(3), 461-509.

²⁰ Mitchell, C. (1998). Peter Drahos, a Philosophy of Intellectual Property.

²¹ Hughes, J. (1998). The Personality Interest of Artists and Inventors in Intellectual Property. *Cardozo Arts & Ent. LJ*, 16, 81.

The manner wherein the right to health, freedom of expression, get admission to understanding, and the rights of disabled humans were lately addressed in the Intellectual Property regime indeed endorse that human rights ends can be accomplished inside bendy Intellectual Property frameworks. The Intellectual Property and human rights interface give a platform for developing new areas or attractive to opportunity institutions where Intellectual Property rights may be challenged, changed, and otherwise balanced. Notwithstanding this, Intellectual Property rights continue to grow and beautify safety for highbrow creations continues to be an excessive priority for evolved countries because the interaction among Intellectual Property and human rights maintains to unfold, positive key limitations of putting Intellectual Property in a human rights framework where development is worried have emerged.

On this context, Intellectual Property flexibilities are certainly crucial. However, also essential is the potential of nations to enact exceptional forms of regulations, select exclusive models of innovation, and live underneath their personal set of values, all even as leveraging domestic norms to help form cultural and technological situations that strengthen their potential to take part meaningfully in a globalized international. As human rights frameworks hold exerting moral pressure on the course and workout of Intellectual Property rights, they also must exert comparable force at the layout of those rights and the means by way of which states grow to be obliged to adopt them inside local situations. As currently practiced and conceptualized, human rights norms will not inexorably facilitate results steady with human flourishing in the way that resonates with communities labouring under wonderful cultural, social, and institutional environments. Academic scholars must remain attentive to the distributive justice factors and inherent biases of the human rights framework as a good deal as they may be alert to the ones within the Intellectual Property framework.

CAPITAL PUNISHMENT IN THE 21ST CENTURY

Samiksha Mathur*

Abstract

Capital punishment is often considered as an evil to human rights which plagues the society. This article studies the dichotomy between capital punishment and human rights. It delves into international instruments aiming to abolish capital punishment and the world's position on capital punishment. The article also studies India's position on death penalty and protections guaranteed under Indian Constitution. The article deals with fundamental questioning of capital punishment vis- a- vis human rights. It addresses the key issue pertaining to justifiability of judicial execution in context with international framework and constitutional guarantees. The article closes with weighing death penalty on the golden scale of justice to determine its position in the 21st century and the way forward.

Keywords: Capital Punishment, Human Rights, International Instruments, Indian Constitution.

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INTRODUCTION

“Returning violence for violence multiplies violence, adding deeper darkness to a night already devoid of stars”.

- Martin Luther King Jr.

(I've been to the Mountaintop)

The incessant emphasis on blissful human existence, carving principles of liberty and freedom are not just fictions but contemporary reality. The ideas of free and unbridled lifestyle have found a way to cherish the values of a free man. However, these freedoms are not absolute they are accompanied by blocks of state control. States having control over the lives of people within their territory in order to fulfil duty entrusted to it i.e. maintain peace and security. There are various mechanisms through which a state exercises its control, the most important being legislations. In case there is derogation of legislation it is accompanied by punishment. State also has the capacity to impose a punishment leading to loss of life of an individual. This phenomenon has been referred as Capital Punishment.¹

Capital Punishment or Death Penalty is a legal process whereby life of a person is taken away by state as a punishment for crime committed by them. The person is put to death as measure to deter the crime committed by him and create fear in minds of possible offenders. Infliction of death by state has been practiced popularly in all world regimes. The recent development and realization of human rights have led to taking a diverging view by abolishing age old practice of capital punishment. A major part of the world has completely abandoned death penalty leading to abolition of this archaic practice. Infliction of death penalty has been seen as fundamental violation of basic human rights mainly right to life and right not to be subjected to cruel, inhuman and degrading punishment. These rights are considered as the foundation of human existence and have been vividly embodied in Universal Declaration of Human Rights, in Charters of International and Regional Organizations and also in Constitutions of all states. According to latest report of Amnesty International of 2017 a major portion of the world i.e. 142 countries have abolished death penalty either in law or in practice.² The major retentionists of this form of punishment remain China, Pakistan, Iran,

¹ Gopalkrishna Gandhi, *Abolishing The Death Penalty* (2016)

² Abolitionist and Retentionist Countries, Death Penalty Information Center, Available at: <https://deathpenaltyinfo.org/abolitionist-and-retentionist-countries>

Iraq, and Saudi Arabia as surfaced from the latest figures declared by Amnesty International in 2017.³ India is also one of the 53 countries which have retained capital punishment within its Penal Code.⁴ India though a supporter of capital punishment has restricted infliction of death only in “rarest of rare” cases.⁵ The doctrine which was developed in the landmark judgment of *Bachan Singh* still holds a significant position in contemporary times and is inevitably applied in all cases which have shaken the human conscience.

Death penalty has been a controversial issue igniting debates among supporters and opponents over the viability of this practice. Many international organizations like Amnesty International have referred to it as cruel and degrading to human existence. The practice of judicial murder is contradictory and ironical as when a man kills he infringes the law but when the state penalizes by death it upholds the law. A human rights based approach does not take issue with the accuracy, technique, or timeliness of an execution. It provides a strict standard with which to say simply and unequivocally the death penalty is wrong. The Universal Declaration of Human Rights though not having an exclusive provision dealing with issue of capital punishment but emphatically suggests the provision of right to life is profound enough to conclude that taking away of human life is against the very existence of human rights.⁶ The UN General Assembly, the representative body of recognized States, through resolutions⁷ has called for an end to the death penalty and human rights organizations agree that its imposition breaches fundamental enshrined under human rights norms.

DEATH PENALTY versus HUMAN RIGHTS

The constant battle of capital punishment and human rights has called for an intricate study to address the viability of death penalty vis-a-vis human rights. Human rights are the foundation for all other rights attributed to humans. The most important right of humans lies in their existence. When this right is taken away by state agencies in order to punish the person for

³ The Death penalty in 2016: Facts and figures, Amnesty International, Available at: <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>

⁴ Oliver Smith, mapped: The 53 places that still have the death penalty- including Japan, The Telegraph, Jul 6, 2018, Available at: <https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>

⁵ The Death Penalty in India, Cornel Center on Death Penalty Worldwide, Available at: <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=India>

⁶ Article 3, UDHR.

⁷ UN Resolutions on moratorium on death penalty, A/RES/62/149(2007), A/RES/63/168(2008), A/RES/65/206(2010), A/RES/67/176(2012), A/RES/69/186(2014), A/RES/71/187(2016).

crimes committed by him it is referred as capital punishment. It is important to analyze if such state sanctioned deaths are free from human rights violations or they too come within the ambit of infringing the most integral right of humans. Capital punishment as an instrument of punishment violates the core guarantees of human existence is a matter of discussion and deliberation.

DEATH PENALTY AND HUMAN RIGHTS VIOLATION

Death penalty, an outcome of the deterrent school of thought for punishments and high headedness of the dated sovereign powers, still has many of the states in its clutches. While some of the countries follow it as a tradition, some follow it because of religious purposes, and while some because nothing instrumental has changed in the judicial system of their respective countries.⁸

Wherever any form of capital punishments is found in a system, the international community unequivocally has condemned the same as such punishments directly hit and affect the very basic right of an individual which is guaranteed by the Universal Declaration of Human Rights (UDHR) as right to life under Article 3. Taking away a right, which has been termed as the basic essence of the human rights is not only the highest violation but it also curtails the idea of providing any further rights as the individual no more survives to enjoy the same.⁹ The international community in pursuance to abolish the capital punishments from its roots has emerged with various instruments and charters that ban the use of judicial capital punishments in any form; each and every one shall be illustrated and demonstrated at length in the coming paragraphs.¹⁰

Studies¹¹ several times have shown that death penalty does not answer the problem per se, but barbarically hunts the question down from its existence. The problems that evolve from such type of punishments are many folds. The basic problem is though the justice delivery system in almost all the nations cannot be challenged in its efficiency, but the fact of the matter is,

⁸ V. R. Krishna Iyer, *The barbarity of Death Penalty*, The Hindu, Feb 22, 2014, Available at: <http://www.thehindu.com/opinion/op-ed/the-barbary-of-the-death-penalty/article5714209.ece>.

⁹ Vincent Warren, The Death Penalty Is a Human Rights Abuse, Huff Post, Nov 10, 2010, Available at: https://www.huffingtonpost.com/vincent-warren/the-death-penalty-is-a-human-right_b_757004.html

¹⁰ Death Penalty and International Law, International Commission against Death Penalty, Available at: <http://www.icomdp.org/death-penalty-and-international-law/>.

¹¹ Study: 88% of criminologists do not believe that death penalty is an effective deterrent, Death Penalty Information Center, Available at: <https://deathpenaltyinfo.org/study-88-criminologists-do-not-believe-death-penalty-effective-deterrant>.

cases are contested and defended by humans and to top it off, decided by the statutes of justices who are embodied in, again human beings, which creates the fraction of possibility of commission of error. The punishment of death penalty is one, where such errors or mistakes create an irreversible situation, where, at a later stage if the final outcome of the trial is reversed, no judicial entity, having plenary jurisdiction can blow life into an accused-convict.¹²

The usage of such punishments are also discriminatory as in the countries where it is being practiced, sometimes, can also be used to settle scores of personal vendetta, which obviously has precedents established in China, Iran, Sudan and the British India.¹³

More than 160 Members States of the United Nations with a variety of legal systems, traditions, cultures and religious backgrounds, have either abolished the death penalty or do not practice it.¹⁴ Yet, prisoners in a number of other countries continue to face execution arbitrarily without allowing them a fair trial.

INTERNATIONAL INSTRUMENTS AND POSITION ON CAPITAL PUNISHMENT

International Covenant on Civil and Political Rights (ICCPR): The International Covenant on Civil and Political Rights is one of the core United Nations human rights Treaties.¹⁵ From the inception of ICCPR, the treaty was committed to upholding human rights of individual all across the globe. It recognizes core values necessary for human existence and proliferation. It recognized the need to strengthen the fabric of right to life of an individual, thereby enacting Article 6 of the Convention. Article 6 permitted the use of death penalty in difficult of the difficult cases. It also provided that nothing in that framework would stop countries to amend the same in order to speed things in the motion of abolishing capital punishments. The Convention considered abolition of capital punishment as a desirable option. The multilateral treaty in a rhetoric manner urged the states to not delay the movement towards abolition of

¹² James Q Wilson, *What Death-Penalty Errors?*, NY Times, July 10, 2000, Available at: <https://www.nytimes.com/2000/07/10/opinion/what-death-penalty-errors.html>.

¹³ Death Penalty: 2390 executions in 2008 Worldwide, 72 % in China, Amnesty International, Available at: <https://www.amnesty.org/en/press-releases/2009/03/death-penalty-2390-executions-2008-worldwide-72-cent-china-20090324/>.

¹⁴ Death Penalty, UN Human Rights, Available at: <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIIndex.aspx>.

¹⁵ Summary: International Covenant on Civil and Political Rights, Canadian Civil Liberties Association, Available at: <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/>.

death sentence.¹⁶

Second Optional Protocol to the International Covenant on Civil and Political Rights:

State Parties to this Protocol have solemn faith that abolition of the death penalty contributes to enhanced human dignity and progressive development of human rights¹⁷.

The second optional protocol embarks upon the Article 6 of the International Covenant on Civil and Political Rights which mandates to the covenant which makes the death penalty mandatorily be discontinued as it strongly suggests death penalty to be disconcerted, it also refers to all the steps which should be considered as progression towards the enjoyment of ultimate right to life by abolishing death penalty. The members of this treaty are committed towards abolition of death penalty from their legal system as they consider it as an impediment in exercising basic human entitlements.

All the member states have undertaken a pledge of not executing any individual within the territories of their respective states and immediate measures towards abolition making their countries death free zone.¹⁸

The optional covenant also mandates that there shall be no exceptions, other than war times, in which permissions should be sought and granted to execute individuals. The member also has to intimate the Secretary General of the United Nations about the relevant legislations which the member country aims to implement during the wartimes. The Covenant also lays down that as per Article 40 of ICCPR the present member countries to intimate the measures that are adopted by them to effectuate the protocol through directives and legislations in their respective countries. Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights are also to be governed by the Second protocol unless they make a statement deferring from it, the articles of the second protocol are only an addition to the articles and covenants of the first protocol. Article 41 ensures such parties to be governed by the Human Rights Committee and the Human rights committee can give directives with

¹⁶ International Covenant on Civil and Political Rights, Article 6, Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹⁷ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, UN Human Rights Office of High Commissioner, Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

¹⁸ Elaboration of a second optional protocol to the International Civil and Political Rights, aiming at the abolition of the death penalty, General Assembly, Available at: <http://www.un.org/documents/ga/res/44/a44r128.html>.

regard to the same on the issues pointed out by individuals.¹⁹ The Convention has been ratified by 85 state parties which is a large number depicting the success of movement towards global abolition.²⁰ This international treaty has reaffirmed rights of a man to live his natural life without being impeached by state authorities. The Convention has persuaded states to categorically move away from primitive practice of executing individuals.

Impact of the Second Optional Protocol to the Covenant on Civil and Political Rights

The impact of was at two levels, first at national level where the signee country resorts to capital punishments' complete ban in its jurisdiction where the only exceptions remains of serious war times where it is unavoidable, however in general conditions it makes sure that that the rights which are guaranteed are non-revocable and unmistakably banned. Secondly at international level, it creates a critical mass of the countries where right to enjoyment of life becomes a quintessential form.²¹ The Convention helps in preventing re introduction of death sentence in member states. Some Flagrant examples of the second protocol are Azerbaijan, Brazil, Chile, Salvador, these states may not be prominent states of the world but they have committed themselves to cause of recognizing individual freedom and preventing arbitrary execution of people.

Protocol No. 6 to the Convention for Protection of Human Rights and Fundamental Freedoms concerning abolition of the Death Penalty²²: European Council is committed to embrace right to life, prohibition of torture and degrading treatment and the Convention is a mark of this commitment. The Convention has laid down various freedoms which need to be recognized for an honourable living. The Council comprises of 47 member states.

¹⁹ Eric Neumayer, *Death Penalty Abolition and the Ratification of the Second Optional Protocol*, 12 (1) International Journal of Human Rights, 3-21(2008), Available at: http://eprints.lse.ac.uk/6202/1_Libfile_repository_Content_Neumayer%2C%20E_Death%20penalty%20abolition%20and%20the%20ratification%20of%20the%20second%20optional%20protocol_Death%20penalty%20abolition%20and%20the%20ratification%20of%20the%20second%20optional%20protocol%20%28LSE%20RO%29.pdf.

²⁰ Second optional protocol to the International Civil and Political Rights, aiming at the abolition of the death penalty, UN Treaty Collection depositary; Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&clang=en.

²¹ Key Issues on International Legal Obligations under the ICCPR and Second Optional Protocol related to death penalty, Available at: http://bangkok.ohchr.org/files/Legal%20Arguments_ICCPR_Second%20Op%20Protocol_Feb%202017.pdf.

²² Protocol No. 6 to the Convention for protection of Human Rights and fundamental freedoms concerning abolition of the Death Penalty, Available at: https://www.echr.coe.int/Documents/Library_Collection_P6_ETS114E_ENG.pdf.

The Protocol No. 6 to the convention accedes for the abolition of capital punishments in the limited territorial jurisdiction of the European Council where the protocol finds its routes. Though the protocol only refers to the signatories to abolish such punishments, its non-implementation on war crimes creates a vacuum making it relatively weak. But the efforts to remove death penalty cannot be undermined. The protocol per se, as under Article 1 abolishes the death penalty and directs that no one should be exposed to such punishments. The protocol also, in its Article 4 & 5 prohibits any kind of reservations from the signatory states and any state may at the time of deposition of the instrument undertakes to abolish such laws in its territories.²³

The protocol marked the decision of the European Council to unanimously abolish the death penalty as a whole and aimed at achieving the goal at a much larger perspective in the Europe. With introduction of the same more and more countries made parties to the protocol and abolished the gore punishment schemes from their respective countries.²⁴

The main objective under the protocol was to achieve the concept of fair trial which can only be possible by keeping the accused convict alive and its right to minimum representation before the various forums within its territory.

With the limited scope and ambit of the protocol, the protocol helped countries at mass to take steps and administer the right to life concept in a standardized way. The Convention has been ratified by all European Council members except Russia which though signed but has not yet ratified.²⁵

Protocol No.13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all Circumstances²⁶: This 2002 Protocol is a further step towards absolute abolition of death penalty from European Council. After the No.6 Protocol there was hue and cry over allowing death penalty in wartime in order to make reparations to that this Protocol has come to existence. The Convention was a

²³ Council of Europe Treaty Series, Available at: <http://www.worldlii.org/int/other/COETS/1983/6.html>.

²⁴ Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Council of Europe, Available at: <https://rm.coe.int/1680083746>.

²⁵ Rudolf Hnidka, *European perspective and legal framework of death penalty*, 1(4) Challenges of the Future, 159–171(2016), Available at: http://www.fos-unm.si/media/pdf/ip/death_penalty_hnidka_10.pdf

²⁶ Protocol No.13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all Circumstances, Council of Europe, Available at: <https://www.echr.coe.int/Documents/Library Collection P13 ETS187E ENG.pdf>.

step forward to keeping human dignity above all in a democratic set up. The Convention has been ratified by 42 state parties to the Convention.²⁷ The Convention does not permit any derogation even in times of war. It has reiterated its aim of complete abolition war being no exception.²⁸ The protocol became a benchmark in EC's attempt to completely abolish death penalty from their region.

European Union Guidelines on Death Penalty²⁹: Another significant step for reinstating its position of defiance against capital punishment EU came up with its guidelines on the issue. The European Union, being the flag-bearer of the anti-death penalty world has shown its credence towards the ultimate objective of eradication by being an active signatory to the ICCPR, Second Optional Protocol and some of its countries being successful in taking the nascent steps towards reducing the number of offences for which death penalty can be awarded and complete irrevocable ban on the same.

The countries of the European Union and EU in its capacity have voted in favour of General Assembly the resolution on abolition and moratorium of death penalty between 2007 to 2014. In all the resolutions invoked for moratorium of death sentence so far by the General Assembly, European Union countries have supported it unequivocally. Except Belarus all EU states have abolished capital punishment from their criminal justice system.

The European Union by accession of the document ensured; firstly, for working in the motion which supports complete eradication of capital punishments from all the members of the esteemed European Union, as its ultimate objective, in which the Union can be safely said to have progressed. Belarus and Russia being the only countries of the Union where capital punishments still exists³⁰ and Secondly, in the member countries, where it still survives, advocate the immediate establishment of a moratorium on the use of death penalty; ultimately leading to abolition and provide minimum guidelines for the same.

²⁷ Abolition of the death penalty, OSCE Human Dimension Implementation Conference, Available at: <https://www.osce.org/odihr/83116?download=true>.

²⁸ Article 2, Protocol No.13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all Circumstances

²⁹ EU Guidelines on Death Penalty, Available at: https://eeas.europa.eu/sites/eeas/files/guidelines_death_penalty_st08416_en.pdf.

³⁰ The Death Penalty in 2017: Facts and Figures, Amnesty International, Available at: <https://www.amnesty.org/en/latest/news/2018/04/death-penalty-facts-and-figures-2017/>

Protocol to the American Convention on Human Rights to abolish Death Penalty³¹: The protocol has been adopted in 1990. It expresses that each individual has the basic ideal to life, that can't be contradicted for any reason; the propensity among the American States is to be agreeable to abrogation of capital punishment. The use of capital punishment has unavoidable results, abandons the remedy of legal blunder, and blocks any probability of changing or restoring those sentenced. Nullification of capital punishment guarantees more viable security of the privilege of life. The Convention has not been very successful as it has been ratified by only 13 states out of 23 states.

That States Parties to the American Convention on Human Rights have communicated their aim to receive a universal concurrence with a view to uniting the act of not holding a candle to the current situation of capital punishment in their territories. Reservations have been prevented but death penalty is permitted to apply in wartime in extreme situations.³²

The Convention on the Rights of the Child³³: The UN Convention protects and recognizes various rights of child including civil, political, economic and cultural. The Convention was drafted in 1989 and came into existence in 1990. The Conventions aims to promote child rights within all members and prevent ill treatment of children. It recognizes that a child needs special care and attention for personal development to which he is not deprived of. It prohibits subjecting a child to cruel, inhuman and torturous treatment. Article 37 (a)³⁴ specifically ensures that child below the age of 18 years is not subjected to cruel treatment and prohibits punishing a child with death penalty and life imprisonment. The express prohibition on death penalty for children has enhanced human values by denouncing brutal practices.

The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment³⁵: This Convention exuberating principles of freedom and justice and prohibiting torture, inhuman treatment came into existence on 26 June 1987. Capital punishment has been referred as a degrading inhuman treatment which is violating principles

³¹ Protocol to the American Convention on Human Rights to Abolish the Death Penalty, Human Rights Library, Available at: <http://hrlibrary.umn.edu/oasinstr/zoas8pdp.htm>.

³² Article 2, Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

³³ Convention on the Rights of the Child, Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

³⁴ Article 37 (a), Convention on the Rights of the Child.

³⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

lay down under this Convention.³⁶ The Convention does not contain express provision on death penalty but certain phenomenon's associated with it have been considered degrading like agony of convicts on death row. Certain forms of execution have also been referred as torturous violating the fabric of this Convention.³⁷ United Nations itself has referred putting people to gallows torturous.³⁸

Economic and Social Council (ECOSOC) Safeguards: UN organization ECOSOC has laid down Safeguards guaranteeing protection of the rights of those facing the death penalty. There are series of safeguards the first one came in 1984 and the most recent one in 1996. According to the guidelines the states which have retained death penalty can only apply it in only in exceptional cases.³⁹ The safeguards have tried to ensure justice to those facing trial. Safeguards require transparency and fair trial to be ensured to those facing death trials.⁴⁰

United Nations General Assembly Resolutions on Death Penalty: The United Nations from time to time has ascended various resolutions in order to eradicate the death penalty from judicial systems worldwide. In a series of four resolutions adopted in 2007, 2008, 2010, 2012 and 2014, the General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death. Resolution has also attempted to urge states retaining death penalty to put a moratorium.

In 2007, resolution demanded states to slowly limit the use of capital punishment by reducing the number of offences for which death is sanctioned and initiate a moratorium on execution with the aim of ending practice of putting people to gallows.⁴¹

³⁶ Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Human Rights Council (2009), Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.44AEV.pdf>.

³⁷ The Committee against Torture should take a stronger stance against the death penalty, OMCT, Available at: <http://blog.omct.org/committee-torture-take-stronger-stance-death-penalty/>

³⁸ UN Calls Death Penalty "Torture", Death Penalty Focus, Available at: <http://deathpenalty.org/blog/un-calls-death-penalty-torture/>

³⁹ Safeguards guaranteeing protection of the rights of those facing the death penalty, 1984, Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

⁴⁰ Safeguards guaranteeing protection of the rights of those facing the death penalty, 1996, Available at: <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm>.

⁴¹ General Assembly adopts landmark text calling for moratorium on Death Penalty, UN Press Release, and Available at: <https://www.un.org/press/en/2007/ga10678.doc.htm>.

In 2007, the UNGA called on states to “progressively restrict the use of the death penalty, reduce the number of offences for which it may be imposed” and “establish a moratorium on executions with a view to abolishing the death penalty.

Another resolution was adopted in the year 2008 for reinforcing the previous resolution. This again opened the floor for welcoming decisions of state parties to progress in direction of abolition.⁴² The resolutions were said to be in pursuance of furthering and securing human rights. In 2010, another UN resolution reaffirmed the principles set out in previous resolutions. The UN resolution as adopted in 2014⁴³, on the touchstone of the resolutions of 2008, 2010, 2012 and all the previous resolutions the assembly on 18.12.2014 as the Moratorium on use of the death penalty, by reaffirming to the UDHR, ICCPR and CRC. The General Assembly also urged that it is essential for the member countries to restrict and not to reintroduce the death penalty and to ratify the Second Optional Protocol.

By the use of the resolutions referred hereinabove, the United Nations General Assembly has on various occasions has created the international iron-hand to reduce and abolish death penalty from the judicial establishments of all the member countries by active use of legislations.

The General Assembly, as only being a pressure group has failed to substantiate the fact that many of the countries (member-states) have opposed the resolutions mentioned in the foregoing paragraphs and has continued to practice the heinous practice of death penalty.

The countries already being governed and adhering the second optional protocol have consolidated their view on capital punishments, however, the resolutions with regard to a majority of VETO holders, have only proven to be an eye-wash, as the so called VETO holders have continued to award and execute the sapiens on regular basis. The same has been followed by some of the developing as well as third world countries.

India’s Position on UN General Assembly Resolutions on Death Penalty: India, though being an active member of the UN has at various times in past strongly opposed all the resolutions of the General Assembly on death penalty. The secular state has not always

⁴² Resolution adopted by the General Assembly, Moratorium on the use of the death penalty, Available at: <http://www.refworld.org/docid/49a2b8952.html>.

⁴³ Resolution adopted by the General Assembly, Moratorium on the use of the death penalty, Available at: http://dag.un.org/bitstream/handle/11176/158748/A_RES_69_186-EN.pdf?sequence=3&isAllowed=y.

rejected the resolutions, nor did it adhere to the Second Optional Protocol's norms as referred above. Also India voted against the latest 2016 Record of Votes on the UN General Assembly Moratorium Resolution and has continued retain capital punishments.

On the contrary, India never made changes to its penal statutes in order to abolish death penalty nor it decreased the number of offences in which death penalty was to be awarded, more so, the country, a few months back, introduced death sentences in other offences, child sexual abuse, in particular.

DEATH PENALTY AND PROTECTIONS UNDER INDIAN CONSTITUTION

Indian Constitution embraces the spirit of nation. It lays down the moral values which the country cherishes and upholds. The Preamble has been specifically dedicated for giving a brief account of core values which the country recognizes and preaches.⁴⁴ They are the aspirations which the country strives for. The framers of the Constitution have very delicately framed the Preamble in a manner which reflects ideas of modern independent India.⁴⁵ The Preamble of India cherishes great values like liberty, equality, justice⁴⁶. But these ideas are jeopardized when application of death sentence come to fore. Capital punishment hinders the sanctity of values enunciated under Preamble of the nation. In reality India has never seen any development for the annulment of capital punishment. This does not imply that no endeavour has been made for its cancellation. The sacred values of the nation are offended by legitimacy of capital punishment.

Death Penalty and Article 21: The Constitution of India, guarantees many fundamental rights to its citizens, the most significant being fundamental right of Protection of life and personal liberty, as promulgated by the Article 21.

So far as the paradox of death penalty with the constitutional right is concerned, the legislation, itself has provided for an exception to the right, i.e. the same can be taken away by the procedure established by law, which not only empowers but also provides mostly bridled powers to the criminal judicial courts to grant death penalties in certain cases,

⁴⁴ Dr (Prof) K.L. Bhatia, *Preamble: Spirit of Constitution*, Available at: <https://klbhatia.wordpress.com/2016/01/09/preamble-spirit-of-the-constitution/>.

⁴⁵ Sanjay Srivastava, *Is India faithful to the spirit of Constitution?* DNA, Available at: <http://lawcommissionofindia.nic.in/reports/report262.pdf>.

⁴⁶ Preamble to The Constitution of India, Available at: https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf.

interpreting it to be just and essential in the rarest of rare cases. However, a pseudo protection against the same has been provided for, by the constitution itself by establishing a procedure for application before the Hon'ble President of India for grant of pardon, which, if granted, converts the sentence of death, into the one of life sentence. As interpreting Article 21, judiciary has maintained constitutionality of death penalty as the same has been sanctioned by the Constitution. Article 21 apart from guaranteeing right to life also recognizes branches attached to it like due process of law and procedure established by law. There have been instances where this has not been ensured to those on death row thereby leading to miscarriage of justice. The fine line is hard to achieve as there are all possibilities of a decision which fail to ensure fair trial to a convict due to his disadvantageous position.⁴⁷ Right to life has been of primary importance to the Constitution as it caters to existence of person in case of wrongful conviction the person loses the utmost guarantee which has been promised to him.⁴⁸

Efforts have been made by judiciary to prevent wrongful convictions by introducing various concepts but again they fail to provide a straightjacket formula to be applied in all cases leading to unbridled discretion failing which a person loses his right of existence.⁴⁹

Death Penalty and Article 14: Article 14 is a cornerstone for equal rights. It does what preamble in its vision claims i.e. it ensures all members within Indian Territory are treated equally. The Article also ensures that all are protected equally without giving any one special privilege over the other.⁵⁰ This non-discrimination policy is the foundation stone for a progressive democracy to ensure all members can develop themselves without setbacks. While considering these principles capital punishment infringes the idea as arbitrariness seeps in the process where discretion has been allowed. The lack of clear provision and obsolete “rarest of rare” doctrine fails to ensure equality in similar cases. The arbitrary decision making in similar cases infringes the right to equality thereby leading to conflicting

⁴⁷ Innocence and Wrongful Conviction, Cornell Center on Death Penalty, Available at: <http://www.deathpenaltyworldwide.org/wrongful-convictions.cfm>.

⁴⁸ Neetika Vishwanath, *Criminal Justice and the Death Penalty in India: An Opinion Study with 60 Former Supreme Court Judges*, Oxford Human Rights Hub, Feb 14, 2018, Available at: <http://ohrh.law.ox.ac.uk/criminal-justice-and-the-death-penalty-in-india-an-opinion-study-with-60-former-supreme-court-judges/>.

⁴⁹ Suhrit Parthasarathy, *India's muddled thinking on death penalty*, The Hindu, Sept 16, 2013, Available at: <http://www.thehindu.com/opinion/lead/indias-muddled-thinking-on-punishment/article5131843.ece>.

⁵⁰ Article 14, The Constitution of India.

decisions.⁵¹

Therefore, it can be concluded that apparently death sentence does not seem to violate fundamental right guarantee under Article 14 but uneven application leads to implicit violation. Also it is to be noted that once a life is lost the same cannot be retrieved, in case of discriminatory conviction it creates a bloat on the image of the nation.⁵²

Death Penalty and Article 19: Article 19 of the Constitution provides a series of rights to citizens of India which includes free speech and expression, free movement, right of assembly; freedom to practice any profession, to become a part of a union etc.⁵³ The Article per se does not mention anything about capital punishment but in case of execution a person loses all his freedoms under this Article. Here there is indirect violation of guarantees under Article 19.⁵⁴ The person losing life will not be able to enjoy these freedoms which have been promised by the state.

Death Penalty and Article 51: Article 51 of the Constitution is a commitment towards international law and treaty obligation. Indian ideology believes in promoting its international relations and respecting its duties under international conventions.⁵⁵ It encourages obedience towards international frameworks. While this Article does not per se deal with capital punishment it refers to those treaties which have been ratified by India prohibiting death penalty. India has ratified ICCPR and Convention on Rights of the Child. While both these treaties refer to promoting human dignity and desirability of abolition of death sentence, India has failed to do so. In a landmark judgement of *National Legal Services Authority v. Union of India*⁵⁶, the Hon'ble Supreme Court observed that international frameworks should be read in a manner to enlarge the freedoms guaranteed under Article 14, 19 and 21 as it will strengthen the aim of constitutional protections. India's international obligation also calls for steps to be taken towards abolition of death sentence in the country.

Besides what is discussed above, the basic stepping stones of the rule of law that even a

⁵¹ Constitutional Validity of Death Penalty, Shodhganga, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/132600/8/08_chapter%203.pdf.

⁵² Available at: Constitutional validity of Death Penalty, Lex Khoj, <https://lexkhoj.com/2015/08/22/constitutional-validity-of-death-penalty/>.

⁵³ Article 19, The Constitution of India.

⁵⁴ Death Sentence: A critical analysis, Shodhganga, Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf.

⁵⁵ Article 51, The Constitution of India.

⁵⁶ (2014) 5 SCC 438

single innocent should not be held guilty, even if in achieving the same a hundred of guilty are set free. The capital punishment or death sentences not only shreds the concept down but also violates the individual's liberty. As discussed, the death penalty, though being evolved from the deterrent ideology of punishments, has proven to be failing in deterrence and till date there is no substantive proof of it being affecting the society in the correct way. The only objective it achieves is the canal satisfaction of the systems to put an end to the personal life and liberty of the individual, which it deems to be involved in so called heinous crimes.

The invocation of the ICCPR, the second optional protocol, the condition, that a country can only be a part of the European Union, only when it completely restricts death penalties and the Resolutions of the General Assembly has created a concrete path for the pure-eradication, and it gathered shoulders of many member states of the UN which resulted in irrevocable ban on capital punishments in as many as 140 nations across the world, safeguarding the rights of international citizens.

However, the same is not being followed in countries like India, which desisted from the Second optional protocol and the resolutions of the general assembly and has been a retentionist throughout. The world forum, time and again, has requested the countries to reduce the number of offences for which capital punishments can be given; however, on the contrary the republic of India has increased the number in recent past.

Time has come, when the leading nations, irrespective of their status of being developed, developing or under-developed to approve the correct jurisprudence of non-activism of the death sentences as the same has no place in the civilized society and only denotes the feudal characteristic. The need of the hour must not go unanswered. As rightly stated by the EUA⁵⁷, "*the death penalty is incompatible with human dignity*". "*It comprises inhuman and degrading treatment, lacks deterrent proof and allows judicial errors to become irreversible and fatal.*"

CONCLUSION

There are a number of protections against capital punishment accorded at both international and domestic level. The above discussion has made it clear that position of retention will be

⁵⁷ EU strongly and unequivocally opposes death penalty, European Union External Action, Available at: https://eeas.europa.eu/headquarters/headquarters-homepage/33622/eu-strongly-and-unequivocally-opposes-death-penalty_en.

very difficult to defend considering international obligations. A growing number of nations against this archaic practice have raised concern towards the other retentionists member states. UN on various occasions has placed its view of supporting abolition of death sentence. All the international obligations and highest charter of the nation provides evidence that capital punishment is an infliction on core human rights which needs to be protected by all states. It can be concluded that capital punishment is a violation of human rights as it not just bereaves a person of living a natural life but also because the punishment is cruel and inhuman. Moreover, the manner of reaching the decision is arbitrary depriving the individual of right to equality. All these rights have been protected by international treaties as well as domestic legislations.

Capital punishment remains a controversial point even as India embarks on 73rd year of independence. This relic from past has weakened the visions envisaged by framers of the Constitution. Death penalty remains a popular choice among the masses but it cannot outdo constitutional principles and ethos. Majoritarian view cannot sabotage the visions of vibrant constitution of the nation. The movement towards abolition is picking up momentum in all parts of the world India being no different. The abolition of judicial execution is a reasoned choice as inferred from the research, carrying forward this would only weaken the foundation of right to life. India being a progressive nation needs to be free from clutches of this age old form of punishment. Positive steps taken by judiciary⁵⁸ in this regard are noteworthy. The block in the path of abolition lies at the level of legislature which sways in the direction of popular beliefs keeping vote bank their priority. The law makers of the country look out for easy and quick fix in times of social crises. Death penalty serves as a go to option to deal with serious offences negating the need of better criminal justice system. In order to create a niche for itself among nations respecting human rights India needs to give up its position on capital punishment and follow the league of abolitionists.⁵⁹ True spirit of a modern progressive democracy lies in respecting core values of human existence and cherishing them through underlining laws. Law makers and enforcers have to positively strive towards achieving greater goals in upholding right to life and abolishing archaic practice which has become termite eating the constitutional ethics of liberty, equality and justice.

⁵⁸ *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, (2009) 6 SCC 498

⁵⁹ Indulekha Aravind, *So what is India's human rights record really like?*, The Economic Times, May 14,2017, Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/so-what-is-indias-human-rights-record-really-like/articleshow/58662843.cms>.

ATMANIRBHAR INDIA: REBUILDING ECONOMY

Misha Jain*

Abstract

At present, almost everyone in this entire world is aware of the ongoing Covid-19 pandemic. This pandemic has affected the life of every single individual in some way or the other. It has disrupted economies and downgraded business sectors of many countries including India. India's economy has drastically gone down due to this pandemic. Many countries prioritized economy over life, but in India, life was prioritized over economy because it was believed that if there will be life then only there will be livelihood. Economy was shut down completely. Gradually, people started facing financial crisis because their savings were going down and there were no earnings because of the lockdown. As a result, Prime Minister Narendra Modi equalized economy and life. He said this will be our new normal in our coming times. We will have to survive with this only, because if there will be no economy there will be no livelihood and if there will be no livelihood there will be no life.

On 12th May 2020, Prime Minister Narendra Modi marked the nation mentioning that Covid-19 has paved the road for India to become self-reliant. He proposed the Self-Reliant India Mission (Atmanirbhara Bharat Abhiyan). This Abhiyan focused on domestic products and self-reliant economy. This mission had both criticism and positive responses. Now the question is whether this Abhiyan will prove beneficial for our country or not and what all efforts are required to adopt this mission in this era of globalization where the world has become interdependent village.

Keywords: Capital Punishment, Human Rights, International Instruments, Constitution of India.

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INTRODUCTION

‘Atmanirbhar Bharat’ which was first mentioned in the form of ‘Atmanirbhar Bharat Abhiyan’ or ‘Self-Reliant India Mission’ is the vision of the Prime Minister of India Narendra Modi to take India on the path of Self Reliant Nation. On 12th May, 2020 ‘Atmanirbhar Bharat’ was stated during the declaration of economic package of Rs. 20 Lakh Crores. It is corresponding to roughly around 10% of India’s GDP. Next day, Finance Minister Nirmala Sitharaman outlined the financial package declared by Prime Minister. This abhiyan is not aimed at separating India from rest of the world. Finance Minister clarified “The aim is not to cut ties from the rest of the world but to make India a self supporting nation.”¹ India has exhibited how it stands strong to the obstacles which come in its way and unwrap opportunities therein. Guidelines for phased Re-opening i.e. Unlock 1 have been provided so as to continue the economic activities along with certain curtailments so as to move forward with a caution.

India stands on five support systems namely:

- Economy- Economy is the state of country or region regarding production and consumption of goods and services and supply of money. After many weeks of lockdown, there has been tragic loss of economy leading to several uncertainties over the global market. In this era of globalization, it is difficult to completely become self reliant. It is also not recommendable in this pandemic to ignore self reliance and rely completely on imports and exports. There is a need to thrive the balance between self reliance and globalization. Experts of economics are of the view that in this time of crisis, countries should try to seek their own energy and food supplies in this globally interdependent world. The aim under this is to bring significant change by 2025 in India’s economy and not just a progressive change. The goal is to make India a USD 5 Trillion economy in the next five years.
- Infrastructure- The economic infrastructure of any country is the base of an economy because for the establishment of any business, certain infrastructure elements such as better communication, transportation facilities, financial institutions, supply chains

¹ Amit Chaturvedi, *To spur growth: Nirmala Sitharaman on PM Modi's Atamanirbhar Bharat Abhiyan*, Hindustan Times, Available at: <https://www.hindustantimes.com/india-news/to-spur-growth-nirmala-on-pm-modi-s-atamanirbha-bharat-abhiyan/story-s71j5O0ZG21QY4qsTsUnTP.html> (Accessed on: 13.05.2020)

and distribution networks are mandatory. The Indian government is of the view that infrastructure of the country should be first class and complement with the modern era. During this pandemic, the special reference is in terms of health infrastructure such as increasing the number of hospital beds, medical equipment and health care units. A huge amount of Rs. 100 Lakh Crore will be invested in infrastructure in order to achieve the objective of USD 5 Tn economy.

- Technology Driven System- In this era of advanced technologies, it has become important to have efficient technology driven system so as to ensure fast and smooth operations and less cost of establishing business. Technology and internet has reduced the physical barriers to enable fast communication in long distances. In this 21st century, it is important for India to establish advanced technology driven system where virtual communication over long distances can be done easily so as to fulfil the objective of becoming self-reliant. The latest technology advancements include robotics, AI, data analytics, machine learning etc.
- Vibrant Demography- Demographic economics include the study of the size, density, growth and other important part of statistics regarding human population. India has the second largest population comprising of one-fifth of the world population. Indian Government is of the opinion that such a huge population can be utilized as a great source of energy generation for Aatma Nirbhar Bharat. India is also known as young country because it comprises of huge number of youths who are below the age of 25 years. This implies that India's population comprises of young and energetic working class people who can bring great outcome for the country if their coordination is complemented with each other. If the determination and willingness of these young working class people is combined together, the country does not remain very far from achieving the goal of self-reliant India.
- Demand-In economics, supply and demand is a relationship between the price at which producer is willing to supply certain quantity of goods and the quantity at which consumer is willing to pay. In order to make India self-reliant, it is important to increase aggregate demand in the country, wherein the strength of the relationship between demand and supply should be utilized to their maximum potential. India's supply system can be empowered by fulfilling demand of the consumers.

Five tranches of Atmanirbhar India are:

- Businesses inclusive of MSME's,
- Poor people including farmers and migrants,
- Agriculture,
- New Ambit of Growth and
- Government reforms and enablers.²

Atmanirbhar Bharat has, for the first time, focused on the approach of 'Vocal for Local' as its internal strength and took it to the global level.

The purpose of the Atmanirbhar Bharat Abhiyan should be to spur the growth of our country at a faster rate than that of the Pre Covid-19 India because this pandemic has not only slowed down the growth of our economy but has also took India's economy several years back.

FRAGMENTATION OF AATMA NIRBHAR BHARAT ABHIYAN PACKAGE

The biggest financial crisis since 1979 has emerged due to Covid-19 pandemic. This pandemic has adversely effected and drained much of our economy. The worst effected section has been poor and middle income groups. In order to address the needs of poor and restructure our economy, Financial Minister, Nirmala Sitharaman, elaborated the split up of economic package announced by our Prime Minister. This package was introduced to insert liquidity in our economy and to reinforce infrastructure of sectors comprising majorly of poor people such as agriculture, animal husbandry, fisheries etc. However, this package has only broached the needs of poor and has not considered the state of middle income class groups who are entirely dependent on their savings which will ultimately exhaust after some time and nothing will remain with them because this pandemic has touched our economy in such a way that it will take a lot of time to return back on the ground.

The appropriation of the economic package is given as under³:

² Building Atmanirbhar Bharat and overcoming COVID-19, india.gov.in, Available at: <https://www.india.gov.in/spotlight/building-atmanirbhar-bharat-overcoming-covid-19> (Accessed on: 03.06.2020)

³ Finance Minister announce measures for relief and credit support related to businesses, especially MSME

- The first allotment of Modi's Atmanirbhar Bharat Abhiyan economic package was done towards backbone of India's economy- MSME. It contributes to the huge part of our economy employing 11 crore people and GDP share of around 29 per cent. MSMEs are worst hit in the country by this lockdown. The total of Rs. 5.94 lakh crore i.e. 2.97 percent of our GDP, were allotted in order to pervade fluidity of cash in this segment.

Out of which:-

- Rs. 3 lakh crore were directed towards providing collateral free loans to MSMEs,
- Rs. 20 thousand crore were addressed to aid stressed MSMEs with equity by providing subordinate debt,
- Rs. 25 hundred crore were aimed at subsidizing businesses and workers with EPF support for 3 months,
- Rs. 30 thousand crore were directed towards providing special liquidity relief appraisals for NDFCs/ HFCs/ MFIs,
- Rs. 50 thousand crore were allotted for 25 per cent reduction TDS/TCS rate,
- Rs. 90 thousand crore were issued for Power Distribution Companies,
- Rs. 4 thousand crore were accommodated for NBFCs regarding Partial Credit Guarantee Scheme 2.0,
- Rs. 6.7 thousand crore were allocated for reduction in EPF contribution by businesses and workers,
- Rs. 50 thousand crore were assigned for equity injection through Fund of Funds for MSMEs,
- Second tranche of Atma Nirbhar Bharat Abhiyan package constituting 3.1 lakh crore and 1.55 per cent of our GDP was announced by Nirmala Sitharaman on 14th May,

2020. It was introduced to assist poor migrant workers and street vendors. The principle of “One Nation- One Ration card” was introduced. It means that the same ration card can be used at any ration distribution shop throughout the country to procure ration. It will bestow welfare to 8 crore migrants by yielding food grains at no cost for the next two months.

- Rs. 5 thousand crore were issued to provide an access to Rs. 10000 initial working capital to 50 lakh street vendors,
- Rs. 30 thousand crore were directed towards providing emergency working capital through NABARD,
- Rs. 2 lakh crore will be provided to equip 2.5 crore farmers through Kisan Credit Cards,
- Rs. 35 hundred crore will be provided to stock migrants with food grain supply at no cost for two months,
- Rs. 15 hundred crore were addressed to Mudra-Shishu loans,
- Rs. 6 thousand crore were provided for afforestation and plantation works by states.
- Rs. 70000 crore for housing industry.
- The third tranche of this economic package valued at 1.5 lakh crore and comprising of total 0.75 per cent of our GDP, was concentrated on agriculture and associated sectors including fisheries, dairy products and animal husbandry. The key announcement made in this package is towards micro food enterprises to promote the ‘Vocal for local’ scheme of our Prime Minister. Its purpose was to take the value added products of our country to the global level. The main objective of this package was to reinforce the farming sector of our country by strengthening infrastructure of marine, inland fisheries, aquaculture, agriculture and animal husbandry. It also eliminated various selling barriers to take our local products to the global level.
 - Rs. 500 crore for expanding Operation Green to all vegetables,

- Rs. 20,000 crore were supplied for PM Matsya Sampada Yojna for the welfare of fishermen,
- Rs. 4,000 crore were directed towards encouragement of Herbal Cultivation,
- Rs. 15,000 crore for fund regarding development of Animal Husbandry Infrastructure,
- Rs. 10,000 crore for Micro Food Enterprises,
- Rs. 1,00,000 crore for development of agriculture infrastructure projects,
- Rs. 500 crore for Beekeeping start-up projects.

The fourth and fifth part of this economic package worth Rs. 48,100 crore were dedicated towards refinement of structural sector including minerals, atomic energy, airports, space sector, defence generation, MRO and air space management and MANGREGA. Out of Rs. 48,100 crore:

- Rs. 40,000 crore i.e. 0.2% of GDP were allocated for employment generation scheme, Mahatama Gandhi National Rural Employment Guarantee Act (MANREGA) to create jobs in the rural areas and reduce unemployment. This employment generation scheme will not only help in making poor people self-sufficient but will also help in improving standards of living and elimination some part of poverty from the country.
- Rs. 8,100 crore i.e. 0.04% of GDP were employed for strategic development.

LEGAL REFORMS

Finance Minister, Nirmala Sitharaman announced the package of 20 lakh crore in 5 tranches. She also explained the breakup of the package in different announcements. She elaborated how this package will address the needs of farmers, fishermen, MSMEs, street vendors, migrant workers etc. The Introduction of this package required amendments and interpretations in various fields of law. The amendments⁴ in various acts and statutes are noted below:-

⁴ Major announcements and policy reforms under Aatma Nirbhar Bharat Abhiyan, MY GOV (May 25, 2020), <https://blog.mygov.in/major-announcements-and-policy-reforms-under-aatma-nirbhar-bharat-abhiyan/>.

1. Income Tax Act, 1961: This act is enabled in order to levy and collect income tax and recoveries on it. The rates of Tax Deduction at Source (TDS) for non-salaried resident payers and the rates of Tax Collection Source (TCS) has been reduced by 25% of the prevailing rates so as to render more funds at the disposal of tax payers. This reduced rate of TDS will apply to interest, rent, contract, commission, brokerage, professional fees, dividend etc. This tax reduction till applicable till 31st March, 2021.

Further the date for income tax returns has been extended to June 30, 2020 and filing of GST returns extended upto June, 2020. Moreover, the due date of income tax return for the financial year 2019-2020, which was earlier July 31, 2020 and October 31, 2020 has been extended to November 30, 2020 and extension of Tax Audit to October 31, 2020 from September 30, 2020.

2. Insolvency and Bankruptcy Code, 2016: The purpose of this code is to safeguard the interest of small investors and make the business less burdensome. With the purpose of Atmanirbhar Bharat, government is focusing on the ease of doing business in India by bringing less complex tax reforms, simple registration of property and quick disposal of commercial disputes. These reforms are all aimed at making India one of the easiest places to do business so as to earn more and more revenue with the intention of making it self-sufficient. The recent amendments in IBC are vis-à-vis ease of establishing business. In case of MSME's, the minimum threshold limit to commence Insolvency Proceedings was Rs. 1 lakh, which after amendment, was raised to Rs. 1 Cr.

Section 240-A of the code mentions about the application of IBC to Medium, Small and Micro enterprises. It will acquire Special Insolvency Resolution Framework which shall be notified soon. The fresh commencement of insolvency proceedings are suspended for upto 1 year, subject to pandemic situation.

Another measure which was taken was to authorize Central Government so as not to include debts related to COVID-19 in the definition of 'default' with the intention of triggering insolvency proceeding under the Code.

3. Companies Act, 2013: The Companies Act governs the working of the company ranging from its incorporation to its dissolution.

- All the compulsory Board Meetings were extended by 60 days till 30th September and all the Extraordinary General Meetings were allowed using video conferencing with online voting system.
- Easier proforma for incorporating company online was introduced i.e. SPICe +. An exclusive form provides 10 services of different ministries and one state government.
- Various actions were taken to reduce the burden of compliance under Companies Act, 2013 during the pandemic.
- Independent Director's databank was launched.
- All the negligible contraventions under the Companies Act, 2013 including little mistakes in board report, loopholes in CSR reporting, default filing etc. got decriminalized.
- Majority of the sections relating to compoundable offences were transferred for Internal Abjudication Mechanism.
- The amendments will free NCLT and Criminal Courts from difficulties or obstructions.
- Seven compoundable offences were removed and five were to be handled by alternative framework.
- Other major reforms included provisions of Part IX-A of Companies Act, 1956 were included in Companies Act, 2013, penalties for small companies, OPC, startups and producer companies were reduced, powers were extended to form additional benches of NCLAT, securities by Indian Public Companies were allowed for direct listing in some of the allowed foreign jurisdictions

4. Essential Commodities Act, 1955: The essential commodities act came into being in the days of scarcity. Its purpose was to ensure delivery and supply of goods without any blackmarketing and hoarding so as to ensure that everyone in need of basic needs get access to it. Government proposed various amendments in the act. The amendments are regarding:

- Finer price accomplishment for farmers by bringing in more and more investments in agriculture sector and making this sector more competitive.
- There shall be no limit on the stock of producers with regard to their installation capacity and exporters vis-à-vis export demand.
- The agricultural food products like cereal, pulses, potatoes, tomatoes etc. shall be deregulated by the act.

5. Real Estate (Regulation and Development) Act, 2016: The aim of this act was to safeguard and protect the interest of house buyers and attract the investments in real estate properties.

- Due to Covid-19 all the dates which were registered under RERA for compliance will now be extended so as to unburden real estate developers.
- With this regard, Ministry of Housing and Urban Affairs has suggested regulatory authorities to extend compliance dates under RERA by 6 months for all the registered projects and if required, it can be extended for 3 months more.
- Other statutory compliances under RERA will also be extended to the new timelines.
- Fresh ‘Project Registration Certificates’ will be issued according to the new timelines.

6. Micro, Small and Medium Enterprises Development Act, 2006: The MSME Act provides for the promotion and facilitation of fair development of small and medium enterprises and increase their competitiveness so that they get equal chances in terms of loans, growth etc.

- The definition of the MSMEs will be rephrased so as to eradicate the differentiation between manufacture and service sector.
- Limit of the investment limit will be upgraded.
- Additional basis of turnover will be introduced.

7. Other laws: The conference proposed regarding implementation of laws for farmers so that they can sell their products without any barriers to price. They also stated that new statute shall be enacted so as to provide an aid to the farmers so that they can engage with large retailers and wholesalers with complete transparency.

STANCE OF THE MISSION ON “VOCAL FOR LOCAL”

Prime Minister, Narendra Modi, boosted the very old measure “Vocal for Local” which was first initiated by Gandhiji in the form of “Swaraj”. Atmanirbhar Bharat Abhiyan is a step towards Gandhiji’s vision of Swaraj i.e., Self-Independence. It is an initiative to help poor people and improve the standards of living in our country by decreasing the reliance on imported products and increasing the use of domestically manufactured products. This mission is an important move towards eradication of unemployment and supporting our local products to pave the way for them towards global platform. However, it is not possible to become completely Atmanirbhar (self-reliant) in today’s world of globalization where nations have become dependent on each other in some way or the other. In this era it has become very difficult to develop by remaining in isolation from rest of the world but what PM Narendra Modi meant by Aatmanirbhar is to replace imported products with products manufactured domestically to the maximum possible extent and not completely cut ties with the rest of the world. His aim is to make India self-sustaining and self-producing by clicking on the unutilized, inevitable and vast potential of the youth of our country.

One example where India showed its excellent capacity is producing a large amount of PPE Kits, Ventilators and N95 Masks domestically where initially there was no production and all these things were imported but in a very less time domestic manufacturers were able to meet the requirements of these products. The proactive efforts of Government of India pushed domestic manufacturers to produce these products indigenously.

“In order to foster Atmanirbhar Abhiyan, the NDA Government will manufacture arms and ammunitions domestically by procuring it from local private industries instead of importing it. The private industries need to be price competitive and focus on quality so as, to not only satisfy domestic needs of security products but also to export it. Government will also use Government e-marketplace to nurture domestically manufactured products. Only then there is

the scope of attaining the mission of Atmanirbhar Bharat.” said G Kishan Reddy, Union Minister of state for home.⁵

A step taken by Government of India to protect integrity, supremacy and safety of our country is digital blocking of 59 Chinese apps in India. The Ministry of Information Technology, citing its jurisdiction under section 69-A of Information Technology Act⁶ read with Information Technology⁷ Rules, 2009 reached to the conclusion to ban 59 Chinese apps after receiving complaints regarding malicious activities going on through these apps. This step was taken to protect the country from threat posed to the National Security and Defence of India.⁸ As a result of ban, Prime Minister Narendra Modi launched Digital India Atmanirbhar Bharat App Innovation Challenge created by Meity-NITI. This challenge was created not only promote old Indian Apps but also to promote development of new home grown apps. This paved the way for Indian Tech Startups, Businesses, and Companies etc. to nurture and grow not only on domestic platform but also on global platform.⁹

Another step taken by Modi government in the vicinity of Aatmanirbhar Bharat Abhiyan is restricting the import of TV Sets by licensing them.¹⁰ This measure was taken to make it difficult for other countries especially China to export TV Sets to India and to encourage TV Sets manufactured by indigenous manufacturers. A complete list of items is created to come under the purview of “restricted list”. Not just TV Sets but CCTV Cameras and Set Top

⁵ *Government to focus on domestic manufacturing of arms, ammunition to promote to promote ‘Atmanirbhar Bharat Abhiyan,* The Economic Times, Available at: <https://economictimes.indiatimes.com/news/defence/government-to-focus-on-domestic-manufacturing-of-arms-ammunition-to-promote-atmanirbhar-bharat-abhiyan/articleshow/76302244.cms?from=mdr>. (Accessed on: 10.06.2020, 05:10 PM)

⁶ Information Technology Act, s. 69-A (2000)

⁷ Information Technology (Procedure and Safeguards for Blocking of Access of Information by Public) Rules, 2009

⁸ *Government Bans 59 mobile apps which are prejudicial to sovereignty and integrity of India, defence of India, security of state and public order,* Public Information Bureau, Available at: <https://pib.gov.in/PressReleseDetailm.aspx?PRID=1635206> (Accessed on: 09.06.2020)

⁹ *Digital India AtmaNirbhar Bharat Innovate Challenge,* My Gov., Available at: <https://innovate.mygov.in/app-challenge/> (Accessed on: 27.07.2020)

¹⁰ Pankaj Doval, *Government licenses TV imports to support local production,* The Time of India, Available at: <https://timesofindia.indiatimes.com/business/india-business/government-licenses-tv-imports-to-support-local-production/articleshow/77274188.cms> (Accessed on: 31.07.2020)

Boxes are also put in the “restricted list”. These items were imported in a huge amount in the past years leading to loss of Indian Manufacturers. This move will not only benefit local manufacturers but will also generate employment.

OBSTACLES IN AATMA NIRBHAR BHARAT ABHIYAN

In the country where corruption has always remained a major problem, the question that arises here is that whether this 20 lakh package will reach directly to the most distressed section of the country for which this package was meant to be. The inadequacy lies in the uncertainty regarding actual expenditure in the Aatma Nirbhar Abhiyan. There is no sure way to know that ultimately whether the amount of this package will help the people in need. Many a times whenever government releases any benefits for the less privileged section of the society, it is taken away by middlemen and it never reaches people for whom they were provided. Same problem might occur with this package until and unless there is strict check upon them. Out of this package, most of the measures are monetary measures such as the transmission of funds from RBI to banks and from banks to citizens. Looking at the inadequate monetary system of the country, this transmission is not going to be as smooth and effective as it is talked about.

Aatmanirbhar Bharat Abhiyan can be said to be the remake of ‘Make in India’. Both of them focused on manufacturing goods and services in India. ‘Make in India’ was not very successful because importing goods was much cheaper than making them domestically. The question that arises here is regarding the element that will make this movement different and more successful than the previous one. The intention of Aatma Nirbhar Abhiyan is to focus on making Bharat self-reliant by manufacturing most of the things in India instead of importing them but this will bring more sufferings to the businesses which are already suffering drastically from this pandemic. This is so because imported raw materials were more competitive and low priced than those which are domestically manufactured. This will lead to higher costs in manufacturing domestically, ultimately leading to low incomes adding on to sufferings that they are already facing.

Prime Minister Narendra Modi wants to make Indian markets competitive on the Global platform by producing efficient goods and services but that seems difficult with manufacturing everything in India because lets accept the fact that Indian markets are still not capable of producing all the goods and services of good quality at lower prices. This scheme

will exactly do the opposite of what Prime Minister wants. Finance Minister, Nirmala Sitharaman, introduced many welfare policies in this Abhiyan but many of them were repeated.

MSMEs were given special category with the intention to give them favourable treatment by public sector banks in proving loans but still there has not been any effective results seen out of this. Public sector banks were resistant in giving loans to small and medium sector businesses but giving them special category has also not made them any less resistant. The solution to this is investing of private banks created primarily with the purpose of granting loans to MSMEs.

Further, this package has excessively concentrated on raising investments by infusing easy credits but they forgot that investments will shoot up only when people will have money to spend. During this lockdown most of the savings and incomes of people are drained due to which they are left with very little disposable incomes at their hand. This will reduce aggregate demand in the economy. Moreover, owing to the worries regarding fiscal deficit it is difficult for the government to finance 20 lakh crore packages. The solution to this is strategically using India's foreign reserves to finance this stimulus package. The rest can come from privatization, taxations etc.

This package has overwhelmingly dealt with the poor and distressed section of the society but the middle class people has not found any solace from this package. This lockdown has heavily impacted them. Their savings are completely exhausted and many of them are out of the jobs. Their sufferings are huge and unmet by this stimulus package of 20 lakh crore.

Although it is important to solve the problems of falling businesses, poor sectors etc but this abhiyan should also invest in the health infrastructure. Health expenditures are so large and heavy that both poor and middle income groups get affected by it. Whatever earnings remain in their hands are spent on health treatments after which they are left with nothing. In order to be self-reliant it is also important for government to focus on enhancing health infrastructure.

CONCLUSION

The just and proper implementation of Aatma Nirbhar Abhiyan will take a very long time because since 1991 most of the developed and developing countries are following LPG and sudden withdrawal from it is not possible in such a short time. Today, all the countries of the

world have somehow become dependent on each other for manufacture of certain goods and services. Competition has also increased in terms of quality and quantity and without relying on each other it is very difficult in today's world for any country to manufacture highly efficient products independently. India is still in the developing stage where becoming independent may prove harmful for the country and its businesses. However, it is not impossible. It can become self-reliant with proper implementation of laws and policies. It is not only the duty of government but its citizens should also try to consume domestically manufactured goods to support this movement.

We use large no. of foreign products in our daily lives ranging from basic goods to leisure goods. It was mentioned by Prime Minister Narendra Modi in his speech that the brands which have now become globally popular were initially supported by their local consumers then only they gained such a huge market. Similarly if we will also support our local brands then only they will be supported by other countries. We, as citizens, should support and promote them loud not only at national level but at the global level as well.

In this time of crisis everyone should come together and stand for each other to make the best out of this crisis. However, we should also remember that the aim of this abhiyan is not to cut ties from the rest of the world. We should not take the short term approach to fight from this pandemic but instead a long term and futuristic approach.

Prime Minister said "Self-reliance leads to happiness, satisfaction and empowerment" If the energy of 130 crore citizens will be collaborated, nobody can stop 21st century to become the century of India. It will take place slowly but if everybody is determined and diligent in making India self-reliant then nobody can stop it.

RECOMMENDATIONS

The objectives of the Abhiyan can be achieved by proper implementation of some measures. The government allotted large amount of the fund towards development of sectors and schemes for poor. Measures should be taken to make sure that amount reaches in actual hands. This abhiyan focuses mainly on poor people and middle class people are not taken into consideration or even given a thought about. They were not given any kind of relief. Middle class people are surviving on their savings which sooner or later will get exhausted. Their businesses are not working and there is no reliable source of income left. This package should be restructured in such a way so as to include middle income groups.

To become self-reliant and competitive on the global platform it is important to increase quantity as well quality of commodities. The potential of various sectors existing in urban and rural areas of India should be recognized and provided with appropriate resources. Futuristic approach will go a long way instead of adopting short term approach.

Country should learn from this pandemic and understand that poor and low income groups are most affected from natural calamities and pandemic. It should be prepared for such situations so that people do not die of hunger. Success of any policy depends on good governance and just and proper implementation of measures. Such pandemics are inevitable and uncertain. Focus should be to frame such policies that help in recovering with the minimum loss and within the limited time period.

Credit infusion in the market will be successful only when aggregate demand will be increased. Government should focus on increasing demand in the market only then investments will pick up. To make this abhiyan a reality, the government should focus on producing long term sustainable assets to eliminate the ambiguity between the country and the notion of Aatma Nirbhar.

TRADEMARK AS A VEHICLE OF SOCIAL DIVIDE

Palak Agrawal*

A trademark is a mark used in relation to the goods for the purpose of indicating a connection between the goods and some person having the right as the proprietor to use the mark. In India, the laws relating to trademarks are dealt in with the Trademarks Act, 1999. Apart from the Act, the international treaties and protocols like the Madrid protocol, the bilateral treaties, the judgments of the court, common practices in offices, the decisions given by the Intellectual Property Board, and some excellent books written by some eminent jurists are also used to govern the laws and actions for the trademarks in India.

A trademark has been defined as follows under the Trademark Act, 1999:

Section 2 (zb): "*Trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and— (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.*"¹

The trademark can be registered by the proprietor for the period of 10 years, which can again be extended for a further period of 10 years on payment of the renewal fees. To register a trademark, some essentials need to be fulfilled, i.e, furnishing of some documents and proofs like the name and address of the applicant, Country where the firm is incorporated, the

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¹ The Trademark Act, 1999, No. 47, Acts of Parliament (India)

description and the representation of the trademark, list of merchandise which is to be dealt under that name, fees, priority claim.²

In India, the proprietor of the product or services can obtain the trademark for his goods and services, which would make his goods distinguishable from the others in the same line. Not only the names are subject to the trademark, but also holograms, 3D marks, sound effects, designs of the logo, packaging, taglines with the logos, numbers, and letters can be used as a sign for trademark, and can be registered effectively. For eg, the brand “NIKE” uses the tick logo, and also uses a tagline saying “*Just do it*”; Mc Donald’s uses the sign “M” as a logo, and the tagline says “*I’m loving it*”; BMW uses “*The ultimate driving machine*” as its tagline with a logo consisting of blue and white coloured triangles in a circle; and in all these cases both the tagline and the logos have been registered as the trademarks for the company.

A trademark has multidimensional uses in the domain of business. The Trademark allows the customer to find the exact product in the market, without getting deceived by similar logos or brand names. It clearly distinguishes a product from the rest, and makes them identifiable to the consumers. Moreover, it provides an assurance to the consumers that they will get the exact quality of the product, as has been guaranteed. The markets are full of various similar kind of products and services, which can lead to confusion to the buyers, thus the trademark helps in getting rid of such kind of confusion. The trademarks have often been used to advertise the products. The most important role of the trademark is that the product or the service has its own face value, and the same are purchased by the consumers only because of the face value and the trust imposed by the consumers in the market. The companies keep their prices high as compared to the amount invested on the merchandise, and the products are still getting sold only because of the brand value. For eg, “*Gucci, Chanel, Michael Kors, Louis Vuitton, Salvatore ferragamo, Prada, Dior, Hermes, etc.*”

However, the downside of these trademarks is that they create social inequality. People who are unable to buy the real high end brands and opt for fake copies are ridiculed and looked down upon. The youth today feel pressurised to buy unnecessarily expensive brands to make a mark and fit in the social circle, ignoring the basic fact that these products are overpriced and their customer services are below average. Rather than wasting exorbitant amount of money on these brands, people can opt for low cost, sustainable local products which come

² *Trademark in India*, Madaan, Available at: <http://madaan.com/trademarks.html>

with better services. But no, the same is being as a tool to decide the social and economic status of the person and whether or not he can get up with the similar kind of society. Moreover, there is a common belief amongst the younger generation of the society that the product which is more on the expensive side is guaranteeing better quality goods. There are some products whose value is not as worthy as is being charged by the companies under the “brand name”. For eg, a normal watch which could be sold for Rs. 1000 or Rs. 1500 depending upon the value, can be sold for Rs. 25000 under the brand “Armani Exchange” or “Michael Kors”, and the same watch can be sold for Rs. 3 Lakhs under the brand name “Rolex”. A plain T -shirt if bought from a local market for Rs. 100, the same can be sold for Rs. 500 under the brand “Lifestyle” and the same can be sold for Rs. 3500 under the brand “Superdry”. This is how the brand value has captured the entire market and has created a sense of inequality amongst the society. If a person wears a local T Shirt, he might be judged based on his economical capabilities, and he might face some or the other kind of differentiation amongst his peer group, and he might also become a subject for mockery. On the other hand if a person from the same group is wearing a branded t-shirt, even though it is of poor quality, he might be seen as somebody who is rich, and he might be given all the attention of the group. This is the typical mind-set of the people who actually judge people according to the brands. There can be incidents where a person is wearing “PAMA” or “POMA” instead of “PUMA”, or “ADIBAS”, “ABIDAS” instead of “ADIDAS”, such a person can also be humiliated by his peer group.

There are fake copies of the brands available in the market, and the consumers of such fake copies are increasing, only in order to live up to the expectations of their peer group, and in fear of not losing their importance in the group. However, a person who is well versed with the brands might always tend to understand and differentiate between the real and fake merchandise. The entire Intellectual Property business is based upon the economics of the money, and thus the trademark which has the brand value attached to the merchandise, has a crucial role attached to it. With this, we can come to the conclusion that the “trademark” is now being used more as a means of socio-economic divide, apart from all the other uses which it serves. Although using the trademark of another brand name is illegal in itself, and the person might be held guilty of “tarnishment”, we still see much fake copy merchandise circulating in the market. In India, in case there is infringement of the trademark i.e. a third person is making an unauthorised use of the trademark that is registered by the proprietor, there are two remedies that can be availed by the proprietor. The fake products are present in

the market, and the proprietors of such fake brands or the second copy of the original products are doing great business nowadays. The only reason behind this that the youth and the middle-aged are more concerned with looking expensive and classy ,and are ready to compromise the quality by buying the fake merchandise. All they want to do is to maintain their social status, and for that, it is quintessential to follow the major brands in order to become the talk of the town. People who cannot afford such high-end brands, or even those people that it is an unnecessary expenditure for a one day affair, fall harder for such fake merchandise, and are willing to buy the same for very low prices. The shops and the vendors in the local markets such as Pallika Bazar, Chor Bazar, Sarojini Nagar, Lajpat Nagar market in Delhi have often been seen selling fake copy of the products, mostly the T-shirts, jeans and makeup products. In 2005, the vendors in the Sarojini Nagar Market were caught selling the fake and cheap copies of the leading brands of cosmetics MAC, Huda Beauty, Lakme, Nars, and the same has impacted the skin and the eyes of many customers who bought such products.³ The Delhi Police, with the “*Hindustan lever*” raided the market and many vendors were caught red-handed selling such fake products and ruining the brand value of the products. Not only the shops in the local markets have adopted such kind of ill-practices, but many reputed online websites have also adopted the same practices, and are supplying the products which are high-end at a very low cost by displaying such merchandise on discount. For instance, Flipkart, the leading online retail store, was sued by the American company named “*skechers*” known for its high-quality footwear for men, women and kids, as flipkart was selling fake copies of the same.⁴ Almost 15,000 products were alleged to be fake by the brand, and it was requested by them to the court to counterfeit the same as they are playing fraud on their customers who trust the brand and buy their products. Not only sketchers, but other leading brand such as “*Tommy Hilfiger, Calvin Klein and Superdry*” have also reported such kind of incident, as the retailers on “*Flipkart, Snapdeal and Amazon.in*” were selling fake copies of their brands and the merchandise has been successfully confiscated by the court in the warehouses of these online websites.⁵

³ Amita Ghose, *Dirty Cheap – and fake – cosmetics sell in Sarojini Nagar despite raids, give you swollen eyes, rashes*, The Times of India, Available at: <https://timesofindia.indiatimes.com/city/delhi/Dirt-cheap-and-fake-cosmetics-sell-in-Sarojini-Nagar-despite-raids-give-you-swollen-eyes-rashes/articleshow/48178632.cms> (Accessed on: 01.10.2020, 13:33 PM),

⁴ Business Today, *Skechers takes flipkart to court over counterfeit shoes*, Business Today, Available at: <https://www.businessstoday.in/current/corporate/skechers-flipkart-court-counterfeit-shoes-fake-copy/story/266859.html> (Accessed on: 29.09.2020, 17:52 PM)

⁵ Akshay Sawai, *Making moolah with fakes: amazon, flipkart & snapdeal waging a war against counterfeit*

The first remedy is taking legal action against the infringement of the trademark, or an action for the passing off. In case of legal action against the unauthorised used is concerned, compensation is awarded to the owner, and the court may grant injunction to the aggrieved party. It is an undeniable fact that the social status of a person is judged based on the kind of merchandise he has put on, and what luxury brands can he afford, and thus, the trademark has become a means to judge the people based on their capability and ultimately resulting in the not so required "*Social Divide*" amongst the people. Even though the basic product features remains the same, but the brand attached to it makes it look fancy, and is a kind of an ornament to the product and in a way a "*Badge of honour*" is attached to the same.

CONCLUSION

A trademark is a mark used in relation to the goods for the purpose of indicating a connection between the goods and some person having the rights as the proprietor to use the mark. In India, the laws relating to trademarks are dealt in with the Trademarks Act, 1999. The trademark can be registered by the proprietor for the period of 10years, which can again be extended for a further period of 10years on payment of the renewal fees. To register a trademark, some essentials need to be fulfilled, i.e., furnishing of some documents and proofs like the name and address of the applicant. Country where the firm is incorporated, the description and the representation of the trademark, list of merchandise which is to be dealt under the name, fees, priority claim.

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SHORT COMMENTS: HUMAN TRAFFICKING AND ITS LEGAL STATUS IN INDIA

Priyanka*

I am writing short comments on Human Trafficking and its legal status in India. Human trafficking is one of the main problems in India. Human trafficking is the third largest gangland in violation of basic human rights.¹

I believe that this issue should also conceivable one in this present era. Here, I am analyzing the existing and proposed regulations (legislation, policy, and so on) on this issue, including present status in Parliament, salient features, and important gaps. Also, in this piece of work, I would like to discuss the present development in Bihar regarding Human Trafficking.

While analyzing the issue, I found that there is no specific law to affect this crime yet. During this context, we first got to know what's the term "human trafficking" and to develop a deeper understanding of those points, which are the legal provisions in our country.

According to the Oxford Dictionary of English language - the word "smuggling or trafficking" means a kind of deal or trade, which is against the law, like trafficking of narcotics, smuggling of arms, or illegal trafficking of citizens from one place to another. Therefore, this idea of trafficking refers to humans as 'a criminal practice of exploitation of humans', during which they're used as an object of profit and that they are exploited for an extended time after smuggling.²

It is unfortunate that till now there's no legal definition of 'human trafficking' at the national level. But Article 23 (1) of the Indian Constitution has been declared illegal and prohibited. It states that human trafficking and made labour and other similar forced labour are prohibited and any violation of this provision is going to be an offense punishable by law. The exception to Article 23 (1) in Article 23 (2) provides that nothing during this Article shall prevent the

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¹ 18 Million- Women and Children are involved in Sexual slavery in India.

200000-Women and Children are forced into prostitution through threats and coercion each year.

6500 Children- Below the age of 16 are trafficked each year. Some of them are as young as 5ys.

90% Trafficking- In India happens inter-state. Only 10% of trafficking is international. Available at: PRAJWALA: <https://www.prajwalaindia.com/index.html> (Accessed on: 08.10.2020)

² Gonsalves, Colin (June 2006): *Trafficking & The Law*, New Delhi: Human Rights Law Network, p3. Available at: <https://hrln.org/publication/trafficking-and-the-law> (Accessed on: 08.10.2020)

State from imposing compulsory service for public purposes. In imposing such service, the state won't make any distinction on the idea of faith, descent, caste or class or any of them.

Also, Article 39 (e) and Article 39 (f) there are associated with the vulnerable section of the society. The above-mentioned articles fall under Part Three (Fundamental Rights) and Part Four (Directive Elements of State Policy) respectively of the Indian Constitution, during which the difficulty of human trafficking has been accepted very closely.

It is known that while the elemental rights are directly justifiable and enforceable by the court, this is often not the case with the Directive element of state policy. However, they play a crucial role in shaping the policies of the state and providing the idea for legislation. Article 23, which is described partially 3 of the Constitution, prohibits trafficking and made the labor of citizens. Article 39 (e) and (f), which is described partially 4 of the Constitution, emphasizes the misuse of the health and power of workers.

India became a signatory nation of the International Convention for the Prevention of Immoral Traffic on 9 May 1950, also as India developed a selected act called the Immoral Traffic Prevention Act, 1956 (ITP Act) against trafficking. Even during this Act, the definition of trafficking is unclear and it only mentioned the commercial sexual exploitation of girls and youngsters.

It is the sole act specifically associated with human trafficking. A number of the key elements of human trafficking are incorporated by this Act. These include the acquisition of citizens, inducing or taking an individual for prostitution, detaining an individual on the premises where a lady is being taken for prostitution, and being implicated.

The Act provides for rescue on the difficulty of rescue and rehabilitation, on the instructions of a magistrate. Also, consistent with this act, to save lots of the rescued women from harassment, two female cops should be present during the search process. And at an equivalent time, a lady officer also has the proper to inquire during this order.

Additionally, under sections 15 and 16 of the Act, there's a provision to stay women and youngsters rescued from human trafficking in safe places far away from the reach of individuals who may adversely and adversely affect them. The Immoral Traffic Prevention Act (ITPA), 1956 also has many flaws, that the Immoral Traffic Prevention Amendment Bill,

2006 was brought.³

Although, there are various provisions in Indian laws to punish the trafficking of persons, all of them lack a comprehensive definition.

Apart from all of the above mentioned legislations, recently the Union Cabinet approved the Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018

The proposed bill provides for all times imprisonment for people convicted of human trafficking from 10 years to a minimum of 1 lakh rupees. There's a provision for quick protection and rehabilitation of the rescued people.

The Union Cabinet has approved the introduction of the Trafficking in Persons (Prevention, Protection, and Rehabilitation) Bill, 2018 on 28 February 2018. The bill was chaired by Prime Minister Narendra Modi.

*Salient features of this bill:*⁴

1. The bill provides solutions to the trafficking problem in terms of prevention, rescue, and rehabilitation,
2. Serious forms of trafficking include forced labour, begging, giving a person a chemical substance or hormone for premature sexual maturity, trafficking under marriage or deceit of marriage, or the trafficking of women and children after marriage,
3. To obtain clearance and necessary documents from stickers and government agencies as evidence of registration, registration, or compliance of government requirements for creating, printing, issuing, or distributing forged certificates to promote the trafficking of persons and assist in trafficking there is a provision of punishment for the person committing forgery,
4. This bill, keeping confidentiality by not revealing the identity of victims, witnesses, and complainants. Confidentiality of the victim is recorded by recording his statement through video conferencing,

³ Available at: <https://wcd.nic.in/act/2316> (Accessed on: 08.10.2020)

⁴ JAGRAN JOSH, 1 March (2018), Available at: <https://www.jagranjosh.com/current-affairs/cabinet-approves-the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018-in-hindi-1519883332-2> (Accessed on: 08.10.2020)

5. There is a provision for speedy protection and rehabilitation of the rescued people. For dealing with physical, mental trauma, the victim is entitled to interim assistance within 30 days and appropriate relief will be provided within 60 days from the date of filing of the indictment.
6. For the first time, a rehabilitation fund was created, in which it would be used for the physical, psychological, and social care of the victim. This includes his education, skill development, health care, psychological support, legal aid, and safe residence, etc.
7. Special courts will be arranged in each district for speedy trial of cases.
8. The bill creates a dedicated institutional structure at the district, state, and central levels. It will be responsible for trafficking prevention, security investigation, and rehabilitation work. The National Investigation Agency (NIA) will undertake an anti-trafficking bureau at the national level under the Ministry of Home Affairs.
9. The proposed bill provides for life imprisonment for people convicted of human trafficking from 10 years to a minimum of one lakh rupees.
10. There is a provision for attachment of property and confiscation of money received from crime to break up organized alliances at the national and international levels.
11. The purpose of this bill is to tackle the problem of child labour, child abuse, organ trade, child use in war and internal disturbances, illegal adoption, and to prohibit any form of slavery, purchase of women, drug abuse, etc.

*An analysis of these bills:*⁵

This bill is incomplete in the sense that it does not cover all the scope of human trafficking. The Criminal Law (Amendment) Act, 2013 amended sections 370 and 370-A of two new sections under the Indian Penal Code, 1860 to deal with human trafficking, where section 370 deals with all types of misdemeanour crimes or trafficking of a person, which can be

⁵ S, Aatif 23, *Law Against Human Trafficking In India: A Critical Analysis*, Available at <http://www.legalserviceindia.com/legal/article-2150-laws-against-human-trafficking-in-india-a-critical-analysis.html#:~:text=Under%20the%20Indian%20Constitution%20the.has%20been%20dealt%20with%20specifically.&text=As%20per%20Article%2023%20which,workers%20should%20not%20be%20abused> (Accessed on: 08.10.2020)

understood from the Explanatory section of this section. Also, according to section 370 (2), there is a provision of punishable punishment of a minimum sentence of seven years for the crime of misdemeanour which can be up to ten years.

In this bill, once again, the word ‘trafficking’ is not defined. But the bill includes ‘trafficking’ in a separate category, that is, a serious and extreme form of ‘trafficking’, including forcible labour, marriage, childbearing and begging, trafficking. For which penalty of minimum imprisonment for ten years has been approved, this can be up to life imprisonment. Furthermore, the surprising point in this bill is that ‘trafficking’ or trafficking for sexual exploitation does not fall within the definition of the so-called ‘trafficking’ extreme form of trafficking. It is known that trafficking for sexual exploitation is counted among the top three major causes of human trafficking in India. According to various government and non-governmental organizations, more than 30 percent of people were rescued from groups that engaged in human trafficking, which were originally related to the crime of sexual exploitation. Despite all this, ‘trafficking’ for the crime of sexual abuse is not mentioned in the above bill which is surprising.

Also, there is no mention of any special provision in this bill for the victims or victims of trafficking during natural disasters (floods, earthquakes, etc.). The National Crime Records Bureau (NCRB) in its 2016 data said that the police registered 10,357 cases of forced labour trafficking, 349 cases of forced trafficking for marriage, and 71 cases of trafficking for begging. This bill has failed to address all classes equally.

On the issue of resettlement too, this bill is reflected in other current laws of the country mimicking the imprisonment method of rehabilitation, which has proved inadequate anyway. At the same time, the bill has also failed to alter the existing mechanisms of checks and balances on the investigating authorities and neither holds them responsible for improper training or any other defect.

There is another flaw in this proposed legislation that the bill burdens the accused with the principle of acquittal to prove his innocence without any valid and clear grounds until he is proved guilty.

Apart from this, the Bill also interferes with other penal statutes such as Section 383 of the Indian Penal Code 1860 and the legislative sphere of many other offenses. Hence, it can be said that no legal goal can be grounded in formulating this proposed legislation has been

made.

Human Trafficking in Bihar:

As we know, the state of Bihar has always been in the role of a fighter in the race to get its development. In this series, through this article, I am going to discuss some important aspects related to the serious crime of "human trafficking" growing in this state.

If we look at the statistics of 2017 of the National Crime Records Bureau (NCRB), we find - Bihar is third in the country in human trafficking cases⁶. Unfortunately, legislations and schemes such as Bihar Children Act, 1970 and Human Trafficking Prevention Program (2007) have been reported to at the state level for the prevention of human trafficking crime in Bihar for a long time⁷.

An initiative towards the prevention of the crime of human trafficking and this problem in Bihar:⁸

In this sequence, a study conducted by a joint team of America and India has shown that the spread of this crime in Bihar is spread in three categories - (1) Bonded and forced labour, (2) Sex trade, (3) Disordered forms of child labour.

Bonded and forced labourers: According to the 2011 census, there are an estimated 2.9 million adult labourers in rural Bihar, who are mainly forced labour. The problem of debt bonding is also responsible for the pathetic condition of such labourers.

Sex trade: Unfortunately, no official data is available on the number of sex workers in the state of Bihar. Following the information received by the UNAIDS, we find that there are an estimated 56,554 sex workers in the state of Bihar. However, the estimated total number of sex workers by the local NGO and community agency is 9, 0000. This crime of prostitution is present in Bihar.

⁶ Ramashanker, *Bihar police to book traffickers under tougher laws*, The Times of India, 15 March 2020, Available at: <https://timesofindia.indiatimes.com/city/patna/bihar-police-to-book-traffickers-under-tougher-laws/articleshow/74631230.cms> (Accessed on: 08.10.2020)

⁷ Policy Briefs on Trafficking of Persons (Prevention, Protection, and Rehabilitation) Bill, 2018; Available at: <http://www.swaniti.com/nexus-2/> (Accessed on: 08.10.2020)

⁸ Research Innovation, *Human Trafficking in the Indian State of Bihar: Prevalence and Characteristics*, 12 June 2020, Available at: <https://delta87.org/2020/06/human-trafficking-indian-state-bihar-prevalence-characteristics/#:~:text=Those%20who%20worked%20in%20another,of%20sex%20trafficking%20at%202.7%25> (Accessed on: 08.10.2020)

Disordered forms of child labour: According to the 2011 Census of India, information obtained from a survey conducted in urban centres estimated the number of about 167,000 child labourers. On the other hand, according to the Indian Child Labour Law, it is estimated that 91% of child labourers in the state of Bihar are involved in illegal and dangerous wages. Also, there is an excessive burden of work time on them.

Recently, the Bihar State Police is making hard efforts on its own in the absence of specific legislation for the prevention of the crime of human trafficking. The Bihar state police headquarter has been directed to all the Superintendent of police to file a case on persons arrested in the crime of human trafficking under laws such as Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences (POSCO) Act 2013 in addition to the Unlawful Trafficking (Prevention) Act (ITPA) 1956. The rationale behind this drastic step of Bihar Police is that such crimes are not easily available for bail and such cases can be disposed of by proper judicial process.⁹

Therefore, I believe that many social efforts also are needed to prevent the crime of human trafficking in our country. Also, ensuring the collective initiative of various government and non-government organizations to focus on improving the education and economic conditions of youth, women, and children in this direction will prove to be an inevitable task.

⁹ Supra note 6